

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SOUTH CENTRAL LOS ANGELES

REGIONAL CENTER,

Service Agency.

OAH No. 2014100150

DECISION

Administrative Law Judge David B. Rosenman, Office of Administrative Hearings, State of California, heard this matter in Los Angeles on July 28, 2015. Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented South Central Los Angeles Regional Center (Service Agency). Claimant was represented by his mother. (Names are not used to protect confidentiality.) Spanish interpretation was provided by Victor Ramos.

The matter was submitted for decision on July 28, 2015.

ISSUE PRESENTED/EVIDENCE RELIED UPON

The parties agreed the following issue is to be determined: Should Claimant's day care program be moved to the Dream House Day Program, or should he continue to attend the L. McKinney Jenkins Behavior Management Day Program?

In determining this issue, the evidence relied upon was exhibits 1-7 and the testimony of: Claimant's mother; Laschell Miles, Service Agency program manager; and Churchill Onuselogu, Service Agency service coordinator.

FACTUAL FINDINGS

1. Claimant is 31 years old, male, and a consumer of the Service Agency who is eligible for services due to a diagnosis of moderate intellectual disability. He is also diagnosed with Down Syndrome. Claimant lives in the family home with his mother. His older sister is close to the family

2. A meeting was held on January 24, 2013, to create the current plan for services, referred to as an Individualized Program Plan (IPP) (exhibit 7). The Service Agency agreed to fund 24 hours per month of in home respite, transportation of Claimant to his day program, and five days per week of day care services at the L. McKinney Jenkins Behavior Management Day Program (Jenkins Program). With respect to challenging behaviors, the IPP noted that Claimant had not caused injury in the last 12 months; physical aggression occurred less than once per month, and there was self-injurious behavior on the average of twice per month. Somewhat contradictory, the IPP stated that a goal was for Claimant to reduce his frequency of physical aggression of hitting peers from an average of four times per month to zero. The IPP included that the Jenkins Program behavior specialist and staff would use interventions to eliminate assaultive behavior. Another goal was for Claimant to reduce tantrum behavior from an average of one incident of angry behavior per month to zero. The plan was for Jenkins Program staff to encourage use of words or sign language, use interacting tasks, and reward compliance with praise and privileges. The Jenkins Program was also recommended to assist Claimant in social, cognitive and communication skills.

3. An Annual Consumer Contact document from January 2014 (exhibit 6) included a review of progress from the 2013 IPP. Of relevance, it stated that "disruptive behavior interferes with social participation less than once a month," and repeated that Claimant had not caused injury in the last 12 months, physical aggression occurred less than once per month, and outbursts occurred less than once per week but did not

typically require intervention. Challenging behaviors are noted as hitting people, on an average of two times per year, and temper tantrum behavior on an average of two times per year. Although it was noted that the next scheduled contact was for January 2015, there were no records presented documenting whether that meeting occurred.

4. The documents include three types of reports from the Jenkins Program: quarterly progress reports dated July 2013 and April 2014 (exhibits 11 and 8); an Individual Service Plan dated January 2014 (exhibit 10); and an Annual Progress Report dated January 2014 (exhibit 9). The July 2013 quarterly progress report noted that there had been decreases in tantrums, disruptiveness, physical aggression and resistive behavior, and that the current intervention plan would be maintained. Close supervision was required due to Claimant's resistive behavior, physical aggression and tantrums. The January 2014 Annual Progress Report noted Claimant's behavior modification plan targeted tantrums, disruptiveness, physical aggression and resistive behavior. Program staff was to chart every behavioral episode and the interventions used. It was also noted that Claimant was not toilet trained and needed support to complete his toileting routine. Goals for reduction of tantrums, disruptiveness, physical aggression and resistive behavior were discussed in detail, including the strategies and interventions to be used. The data indicated the following reductions over the course of the year: tantrums, from 17% to 5%; disruptiveness, from 20% to 3%; physical aggression, from 12% to 1%; and resistive behavior, from 27% to 6%. The April 2014 quarterly progress report, the latest document in evidence, noted that tantrums were measured at 1%, disruptiveness was measured at 5%, physical aggression was measured at 4% and resistive behavior was measured at 13%.

5. In August 2014, Claimant's mother requested that Claimant attend the Dream House Day Program in El Monte. On August 28, 2014, the Service Agency sent a

Notice of Proposed Action (NOPA; exhibit 1) indicating that the request was denied. Claimant filed a timely request for fair hearing (exhibit 2).

6. The NOPA cited several reasons for denial, including that the Jenkins Program meets Claimant's needs; that Dream House was located outside of the Service Agency's boundaries, known as its "catchment area"; and that Dream House did not have a behavioral management component, which was determined as necessary for Claimant.

7. Leschell Miles is the program manager and supervisor over Claimant's service coordinator. Her testimony at the hearing supported the reasons cited in the NOPA. Dream House is outside of the Service Agency's catchment area. It is in the catchment area, and is a vendor of, the San Gabriel/Pomona Regional Center. If Claimant attended Dream House and any problems arose, the Service Agency would not have any direct means of monitoring the vendor, as that responsibility would fall upon the San Gabriel/Pomona Regional Center. Further, Claimant has been evaluated by a psychologist in 2004 (exhibit 4) and a psychiatrist in 2003 (exhibit 5), and both reports included diagnoses and behaviors for which a behavior management plan was needed. According to Ms. Miles, behavior management day care programs like the Jenkins Program customarily have a ratio of one staff person to three consumers, while the Dream House program has a ratio of one staff person to four consumers. There are concerns that the Dream house program was less structured and may lead to regressions in Claimant's behavior. Claimant has attended the Jenkins Program since 2006. Ms. Miles is aware of a special incident report from December 2014 when he was physically aggressive by pushing another consumer in the restroom.

8. Churchill Onuselogu is Claimant's service coordinator. Claimant's mother is happy with his services. He received the December 2014 special incident report but did not discuss it with Claimant's mother because he knew she visited the Jenkins Program

often and he believed the program manager would discuss it with her. Mr. Onuselogu receives reports regularly from the Jenkins Program that Claimant behaves well there.

9. Claimant's mother wants to change programs for several reasons. She does not believe that Claimant is learning anything at the Jenkins Program, based on her observations there. At Dream House he will learn to cook, wash clothes, and will exercise and be put on a diet. (There was no evidence that Claimant is overweight.) She says Claimant leaves her home with clean clothes but that Jenkins Program staff does not help him after toileting and he comes home very dirty. According to Claimant's mother, the staff at the Jenkins Program is happy with Claimant because he helps serve food, clean up, and interact with other consumers. She is familiar with someone at Dream House who previously ran free programs in Montebello that she thought were good programs. Additionally, many of Claimant's friends, who are consumers of the Service Agency, also attend Dream House. Claimant had lived in a group home from 2000 to 2006, and it was not a good placement; he was very aggressive there. Now, Claimant's behavior has improved and his psychiatrist recently advised his mother to reduce or stop some medications.

10. Ms. Miles stated that she was not aware of any particular consumers of the Service Agency that attended the Dream House program. If there are any, it may have been as a result of a fair hearing order.

11. Claimant has not presented sufficient convincing evidence to support a change in his day program from the Jenkins Program to Dream House.

LEGAL CONCLUSIONS AND DISCUSSION

JURISDICTION AND BURDEN OF PROOF

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the

Lanterman Act).¹ Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (Section 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s denial of a change in day program providers. Jurisdiction in this case was thus established. (Factual Findings 1, 2, 5 and 6.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Claimant’s mother wants a change in services. Claimant bears the burden of proof regarding her request.

SERVICES

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Section 4501.) These services and supports are provided by the state’s regional centers. (Section 4620, subd. (a).)

4. Under sections 4646, subdivision (d), and 4512, subdivision (b), services are to be provided in conformity with the IPP. Consumer choice is a part of that process, as discussed further below. The services to be provided must be individually suited to meet the unique needs of the individual, and within the bounds of the law each consumer’s particular needs should be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4648, subd. (b), and 4648, subd. (a)(1) and (a)(2).)

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

5. Services must be cost effective (sections 4512, subd. (b), and 4646, subd. (b)), and the regional centers must control costs as much as possible and otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

6. Section 4512, subdivision (b) provides, in pertinent part:

“‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.”

7. Section 4646, subdivision (a) provides:

"It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

8. Section 4648, subdivision (a)(1) provides, in pertinent part:

"It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan. . . ."

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9. Section 4652 provides:

"A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region. If suitable care cannot be found within the region, services may be obtained outside of the region."

10. Based on the entirety of the evidence, Claimant's mother did not provide sufficient reason to change day programs. Claimant's needs, established in his IPP, include a behavior management program. On the one hand, Claimant's mother stated that his behavior has improved and his psychiatrist recently recommended stopping his medications. On the other hand, the Jenkins Program reported a decrease in incidents during 2013, but a continuing, albeit low level of incidents since, including as recently as December 2014. It is likely that any reduction in challenging behaviors is due to the success of the behavior intervention plan at the Jenkins Program. As there is no behavior management component of the Dream House program, it would not meet Claimant's needs in this regard. Further, no evidence was submitted relating to costs of both programs, and costs of transportation to and from the programs. The Lanterman Act repeatedly refers to cost-effectiveness of services. Without comparison cost information, it cannot be determined if the Dream House program and transportation to and from is a cost effective use of Service Agency funds. There was no evidence of any efforts made by Claimant's mother or the Service Agency to address the concerns she raised about the Jenkins Program to see if changes can be made to better meet Claimant's needs. It is recommended that Claimant's mother and his service coordinator work together, along with the Jenkins Program, to address current concerns. The Service Agency may also wish to explore whether the Dream House can provide behavior management, and gather information on the costs related to the Dream House

program, and transportation, to determine whether it can be a cost effective alternative to the Jenkins Program.

ORDER

Claimant's appeal of the Service Agency's decision to deny a change in day programs is denied.

Dated: July 29, 2015.

DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.