

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014110342

DECISION

Administrative Law Judge Eileen M. Cohn, Office of Administrative Hearings, State of California, heard this matter on December 16, 2014, in Culver City, California.

Claimant was represented by his father and did not attend the hearing. Lisa Basiri, M.A., Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency).

This case was consolidated with OAH Case Number 2014110345 which was resolved and dismissed.

Evidence was presented and testimony heard. The record was closed and the matter submitted for decision on December 16, 2014.

ISSUE

The parties agree that the sole issue is whether WRC is obligated to fund a third weekly session of social skills training.

FACTUAL FINDINGS

1. Claimant is a 4-year- old child eligible for regional center services based

upon a diagnosis of autism and related global delay, including delays in intellectual and adaptive functioning, such as toileting, and expressive and receptive language. Claimant functions two years behind his same-aged peers. Claimant lives with his parents and twin brother, who does not have special needs. Claimant's twin brother is very solicitous of Claimant's special needs, and Claimant enjoys being with his twin.

2. Claimant contends that WRC should fund an additional session of social skills training so that he can have more opportunities to learn how to interact with his peers and further foundational skills necessary to function in the community and, eventually, to live independently. Claimant contends that WRC is required to defer to the family's preference, instead of its own, and that one additional session of social skills training is consistent with this requirement. WRC maintains that Claimant is already receiving two sessions a week of social skills training, and that an additional session is not necessary as it will not be effective to further his social skills functioning, or a cost-effective use of public resources. Instead, WRC maintains that one-on-one in-home behavioral training services would be a more effective use of public resources by providing foundational skills for social interaction.

3. Claimant's Individual Program Plans (IPPs), dated August 2013 and August 2014, identify persistent deficits in the area of social skills and making and maintaining friendships. Claimant displays an interest in peers but does not know how to engage them, and he has language delays and poor articulation that make communication difficult.

4. As part of his August 2013 IPP, WRC funded weekly social skills training with Step-by-Step, a WRC vendor, for a year ending September 30, 2014, with reauthorization subject to Step-by-Step's progress report. Step-by-Step's social skills training consist of a 90-minute program with a high teacher to pupil ratio, and a 30-minute parent training component. Step-by-Step's program is managed by highly-qualified facilitators with graduate level degrees in psychology or a related field and experience facilitating social

skills groups comprised of individuals with developmental disabilities in excess of three years. Likewise, group assistants are highly qualified with undergraduate degrees in a related field and experience working with the same population. Step-by-Step follows the general protocols for social skills programs. It provides a structured setting with opportunities for skill development in a variety of ways, including, turn taking, joint attention, and pragmatic language. The curriculum requires parent involvement with weekly homework assignments, handouts and meetings where parents are provided support on various strategies.

5. Step-by-Step developed goals for Claimant which were used to measure his progress and the effectiveness of its social skills training. Step-by-Step developed three goals. Goal one required Claimant to acknowledge and greet his peers by waving or saying "hi" with moderate prompting. Goal two required Claimant to take turns with his peers during a preferred activity or with a preferred object with moderate prompting. Goal three required him to respond to his name with moderate prompting when called by his peers and adults by showing signs of name recognition (e.g., turning his head when being called, making eye contact, or reaching out).

6. In February 2014 Step-by-Step provided WRC with a written progress report where it reported that Claimant's progress on all his goals was "emerging." His progress on his first goal of greeting peers was minimal as he acknowledged his peers with eye contact but required moderate to maximum prompting to gesture and to use speech, and to transition. Claimant made minimal progress on his second goal requiring him to take turns. He was becoming more familiar with his adult facilitator's expectations but was only starting to take turns, share and obtain a better sense of his surroundings, with maximum prompting. Claimant's progress on his third goal of responding to his name when called was improved as he sometimes used eye contact and gesturing, but he mostly performed with adult facilitators or assistants, not his peers.

7. In its February 2014 report, Step-by-Step recommended that WRC increase its funding for Claimant to two social skills training sessions per week, which WRC did. Step-by-Step does not typically recommend a second session of social skills training, as each session places time demands on the family to complete between 6 and 8 hours of weekly homework practice. Step-by-Step recommends a second session only for 10 percent of children, who, like Claimant, require intensive interventions. Step-by-Step's recommendation was supported by their observations and familiarity with Claimant and his progress. Its staff had been observing him and working with him since his infancy. Claimant first attended a "mommy and me" program at 7 months, and participated in Step-by-Step's early start program. In addition, Claimant currently attends Step-by-Step play before/after school play program, funded by his parents five days a week, three hours daily. During this before/after school program, Claimant has exposure to typically developing children.

8. In addition to WRC funded social skills services, Claimant's school district provides a wide range of special education and related services, with the exception of physical therapy and occupational therapy, which serve to advance his social skills. Claimant attends a preschool special day class in his local public elementary school, 20 hours weekly, where he receives group speech and language services, 75 minutes weekly, and individual speech services, 60 minutes weekly. At school, Claimant can produce age-appropriate sounds within some consonant-vowel and single syllable combinations, but has not been able to communicate words to anyone but his speech pathologist. At school, Claimant can sometimes follow one-step directions but generally needs maximum adult support to perform school tasks. At school, Claimant requires adult facilitation to parallel play and shows interest in other pupils by running after them outside or touching them with his hands.

9. On April 14, 2014, Claimant's school district held his annual individual

education program (IEP) team meeting, which included Claimant's parents, and developed several goals for Claimant to implement at school, designed to further his social interaction skills. Two social skills goals were developed which were similar to Step-by-Steps goals. One goal required Claimant to demonstrate awareness of adults or peers when they call his name by looking at them. A second social skills goal focused on Claimant's play skills and required him to purposefully play with age-appropriate toys and materials for four minutes with only one prompt. Other language goals provided the foundation for social interaction. Claimant's pre-linguistic communication goal required him to imitate non-vocal actions including gestures and facial expression during interactive exchanges. Claimant's receptive language goal required him to demonstrate understanding of familiar objects and actions by following simple one step commands. His expressive language goal requires him to use a range of communication (e.g., verbal approximations, words, signs, gestures and a picture exchange system) to request preferred toys, objects, and food items.

10. In August 2014, at the time of Claimant's annual IPP, Step-by-Step had completed another progress report, where it noted some improvement in Claimant's still "emerging" goal-related skills. Step-by-Step reported that Claimant required one-on-one maximum facilitation to engage in his goals. Without one-on-one support, Claimant was prone to tantrum. Claimant demonstrated some improvement in his first goal for greeting, with more engagement when called upon and with eye contact, but struggled with entering peer social situations. Claimant showed more resistance to his second sharing goal, with instances of "acting out," and inconsistent improvement with his third goal of responding to his name through eye contact, gesturing and verbalizations.

11. In its August 2014 progress report, Step-by-Step recommended that WRC continue to fund Claimant's social skills program for two sessions, from September 2014 through February 2015, at which time Claimant's progress and the effectiveness of the

program for him will be reviewed. As part of the August 2014 IPP, WRC accepted Step-by-Step's recommendation and continued funding Claimant's social skills program at Step-by-Step at the level of two weekly sessions.

12. Claimant's father requested that WRC fund three sessions weekly, not two, and asked for Step-by-Step's support, which it denied. Kimberly Cox, Step-by-Step's Director, who was responsible for social skills intervention, enrichment and after school programs, wrote an e-mail explaining that a third session was not clinically justified. Instead, Ms. Cox recommended that father revisit one-on-one behavior intervention "to work on behaviors as well as social-emotional development."

13. At hearing, Ms. Cox's e-mail was endorsed by Shelly Pederson Cox, Step-by-Step's founder and Executive Director. Ms. Pederson Cox has known Claimant since his first involvement with Step-by-Step when he was seven months old and has been following his progress since. She possesses the necessary education and experience with developmental disabilities, social skills, and understanding of related behavior interventions, to understand the propriety and effectiveness of his current social skills program. As Step-by-Step's director, Ms. Pederson Cox oversees the programs and contracts with WRC, and either prepares or approves of all the progress reports for WRC. For these reasons, Ms. Pederson Cox's testimony was given great weight in determining whether WRC is obligated to fund a third session of social skills training.

14. Ms. Pederson Cox confirmed that Step-by-Step has never recommended a third session due to the intensity of the program, which requires on average 6 hours of homework per weekly session, or 12 hours for two sessions. In addition to its demands, which would be too much for a four year old, she did not recommend a third session for Claimant because it would not be effective. Ms. Pederson Cox maintained that the additional time that would be devoted to a third session should be used instead for one-on-one behavior program focusing on specific foundational skills, such as transitions,

which complement Step-by-Step's play-based social interaction program. Ms. Pederson Cox noted that a third session would not be necessary to provide Claimant opportunities to engage with his peers. Claimant is not deprived of social interaction. Currently, Claimant has multiple opportunities to engage with peers, with typical and special needs, in a variety of settings, including his 20 hour school week and his 15 hour weekly before/after school Step-by-Step program.

15. WRC's refusal to fund a third session of social skills training was further supported by the observations of witness Soryl Markowitz, a licensed clinical social worker and autism and behavior specialist, who oversees all behavior intervention programs for WRC. Ms. Markowitz has extensive training and experience in autism behavior intervention. Her testimony was given great weight based upon her observation of Claimant, her understanding of his school and WRC programs, and her demonstrated knowledge of autism behavior programs. Ms. Markowitz observed Claimant at Step-by-Step, and found that he required maximum assistance to participate in most activities. He required hand-over-hand assistance to work on puzzles and other classroom table top activities. Without intervention, he would perseverate by picking up the same two pieces over and over again. Claimant's ability to interact was limited to some eye contact. Claimant's greatest challenges were with transitions where he would protest and tantrum. Based upon her observations and her experience, Ms. Markowitz concluded that Claimant would not benefit from an additional social skills session. Instead of group social skills services, like Ms. Pederson Cox, Ms. Markowitz recommended one-on-one behavior intervention services to assist him with foundational social skills in making transitions, completing tasks and following directions. In contrast to group social skills classes, individual behavior services would include a high degree of repetition or drilling of skills that he requires to interact in a variety of environments.

16. Claimant's father did not oppose additional behavior intervention services,

but insisted that WRC was obligated to fund services preferred by the family. At hearing, Claimant's father was a sincere and capable advocate. He insisted that a third session of social skills would provide the intense intervention recommended for young autistic children, such as Claimant, and neither Ms. Pederson Cox nor Ms. Markowitz established that a third session of social skills would not benefit him. Father submitted three letters in support of an additional session, from Claimant's speech pathologist, stating that "any additional time" in a social skills program "can only benefit his social language progress;" from his 2012-2013 preschool teacher, and from his physician, in the form of a prescription stating that Claimant "needs" an additional social skills session. These supportive letters do not overcome the credible testimony of Ms. Pederson Cox and Ms. Markowitz. The letters suggest that more social skills sessions would be helpful, but do not establish the necessity of a third session of social skills training with Step-by- Step given the demands of the program, his progress to date, his other school-based services and opportunities for social interaction, and his more immediate need for one-on-one behavior services to supplement the two sessions of social skills training he still receives.

LEGAL CONCLUSIONS

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. WRC is not obligated to fund a third weekly session of social skills training.
2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)¹ An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Proper jurisdiction was established by virtue of WRC's denial of the

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

request for funding and the Fair Hearing Request on behalf of Claimant.

3. 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.) The burden of proof is on the person whose request for government benefits or services has been denied. (*See, e.g., Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, WRC denied Claimant's request for a third session of social skills training, and as such, he has the burden of proof on the merits of this matter.

4. The purpose of the Lanterman Act is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as WRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et. seq.)

6. Section 4512, subdivision (b), defines services and supports for persons with developmental disabilities as 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, normal lives. Regional centers are responsible for developing and

implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

7. The preferences of the family are important in developing the IPP, but must be weighed against competing interests of effectiveness, and cost-effective use of public resources. Section 4512, subdivision (b), provides for the IPP process to determine which services and supports are necessary based on “the needs and preferences of the consumer or, when appropriate, the consumer’s family, “and to ‘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 . . . ’.” Section 4646, subdivision (a), requires that services be effective in meeting consumer needs, and maintain a balance between reflecting consumer and family preference on the one hand while being a cost-effective use of public resources on the other hand. The Lanterman Act requires regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) Under section 4685, a regional center is to provide services in the “most cost-effective and beneficial manner” and any expenditure should be accomplished in the “most cost-effective” way.

8. Before funding services, WRC is also required to consider the availability of similar services from other sources, including school districts. Section 4646, subdivision (a)(4) requires WRC to consider the family’s responsibility to provide services similar to services provided to nondisabled children. As amended in 2009, section 4659, subdivision (a)(1), directs regional centers to “identify and pursue all possible sources of funding,” including school districts.

9. Here, Claimant’s preference for a third session of social skills training with Step-by-Step does not support funding when weighed against the other required considerations of effectiveness, cost-effective use of public resources and the availability of

complimentary social skills services at Claimant's public school. The weight of the testimony supported WRC's denial of funding. Claimant's evidence did not overcome the overwhelming evidence against funding. Aside from Claimant's supportive letters, there was no evidence that the third social skills session was necessary. Claimant's progress on his goals was minimal and his challenges persisted, with his resistance to transitions growing and manifesting in tantrums. While two sessions were considered necessary and were funded, there was no evidence that an additional social skills session would be effective to ameliorate his social skills deficits and advance his goals, given his needs and the time demands of a third session. There was no evidence that a grant of a third session of social skills training was necessary to compensate for an absence of opportunities for social interaction in other environments, including his school. The evidence overwhelmingly established that Claimant's social skills deficits were being addressed in a variety of environments, including his school. Claimant was engaged in a 20-hour weekly classroom setting, a three-hour daily before/after school program, and had a twin brother, a typical peer, at home. Claimant's school district implemented goals addressing social skills and provided group speech and language services. There was no evidence that granting a third session of social skills was required to meet WRC's obligation to utilize public resources cost-effectively. The credible testimony of two experts established that public resources would be better used to provide Claimant with behavior intervention services needed to improve social interaction. For these reasons, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied. Westside Regional Center is not obligated to fund a third weekly session of social skills training.

DATED: December 24, 2014

/s/

Eileen M. Cohn

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.