

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH Case No. 2015040270

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on October 7, 2015, in Van Nuys.

Claimant, who was present, was represented by Valerie Vanaman, Esq., and Sophia Bliziotis, Esq., of Newman, Aaronson, Vanaman.¹ Claimant's parents were also present.

The North Los Angeles County Regional Center (service agency) was represented by Stella Dorian, Risk Assessment Supervisor.

The record was held open after the hearing for the parties to submit closing argument briefs, which were timely received and marked as follows: claimant's, exhibit C19; the service agency's, exhibit 18. The record was closed and the matter submitted for decision upon receipt of the briefs on October 26, 2015.

¹ Names are omitted to protect the privacy of claimant and his family.

ISSUES

1. Shall the service agency reimburse claimant's parents for the tuition they have paid or owe for claimant to attend Exceptional Minds from September 2014 to the present?
2. Shall the service agency prospectively fund claimant's tuition so he can continue attending Exceptional Minds through June 2017?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits 1-4 and 15-17; took official notice of exhibits 5-11 and 13-14; exhibits C1-C18 submitted by claimant; as well as the testimony of Consumer Services Coordinator Kermit Jackson, Consumer Services Supervisor Steven Johnson, Consumer Services Supervisor Erica Beall, Gabriella Sanchez of Tierra Del Sol Foundation, claimant's mother, claimant, and Ernest A. Merlan of Exceptional Minds. The closing briefs, while reviewed, are not considered to be evidence.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 20-year-old unconserved male who is a service agency consumer based on his qualifying diagnosis of autism spectrum disorder.
2. As explained in greater detail below, during a June 2014 meeting with claimant's service coordinator, claimant's mother first asked about the service agency funding tuition for claimant to attend Exceptional Minds. The program was to begin in September 2014. In January 2015, she requested reimbursement from the service agency for tuition costs already paid by the family to Exceptional Minds after claimant had begun attending Exceptional Minds in September 2014.

3. After correspondence and meetings between the parties concerning reimbursement and prospective funding for the Exceptional Minds tuition, the service agency issued a written Notice of Proposed Action dated March 5, 2015, in which claimant's mother was advised that the service agency denied the reimbursement request because it had never agreed to fund the tuition before; Exceptional Minds was not a regional center vendor; and the applicable statutes and regulations provided no mechanism to reimburse the family.

4. On April 1, 2015, a Fair Hearing Request on claimant's behalf was submitted to the service agency, by claimant's authorized representative (his mother), which appealed the denial of the funding request.

5. On July 1, 2015, the parties participated in an Informal Conference to discuss the matter. No resolution was reached.

6. The hearing was initially scheduled for July 16, 2015. However, the hearing was continued at claimant's request, which was not opposed. The hearing was next scheduled for September 14-15, 2015. The hearing again was continued at claimant's request because his witnesses were unavailable. Therefore, the hearing was continued to the instant date. In connection with the continuances, claimant's authorized representative waived the time limit prescribed by law for holding the hearing and for the ALJ issuing a decision.

CLAIMANT'S BACKGROUND INFORMATION

7. Claimant is described by his mother as someone who is not intellectually disabled but who needs help socially. During the hearing, claimant was respectful, soft-spoken, thoughtful and engaged, and he very much appeared like any other young person of his age; i.e., consumed by his cellphone.

8. Claimant lives at home his parents, grandmother and a cousin. He completed his educational program by graduating in June of 2013 from Village Glen, a

state certified, non-public school for students with special needs.

9. The individual program plan (IPP) that followed claimant's high school graduation took place on July 25, 2013. At that time, Eric Ross was claimant's service coordinator. Claimant's mother told Mr. Ross that her son was interested in finding work in a field that he enjoyed and where he could make a living. She expressed hope that claimant would be able to take care of himself with less dependence on others. Both claimant and his mother were interested in a program that enabled claimant to attend college or a training program that would lead to skills he could enjoy and at which he would be proficient. Thus, claimant indicated a desire to attend Los Angeles Mission Community College (LAMCC). Mr. Ross offered the Nexus program as a support for claimant at LAMCC. The Nexus program is one of many programs offered through the Tierra Del Sol Foundation and is vendored through the service agency as a day program.

10. While claimant enrolled in classes at LAMCC, he did not elect to participate in the Nexus program. Claimant testified that he had no desire to be in that program because, among other things, he already knew the skills that were the focus of the meetings held between classes and he felt he was higher functioning than the students in the program. Moreover, as a participant in the Nexus program, claimant would have been required to be on the LAMCC campus for the entire day, even on days when he did not have class.

11. Claimant spent the year at LAMCC without enrollment in, or support from, the Nexus program. He passed his classes at LAMCC but felt that the junior college experience was too big for him. During that time, however, claimant decided on a career goal of becoming a digital artist in the entertainment industry.

THE REQUESTS FOR FUNDING

12. A. By the time of his annual IPP review meeting held on June 19, 2014, Kermit Jackson was claimant's service coordinator. The IPP review document (IPP review)

created from that meeting reflects claimant's stated interest in multimedia arts. The IPP review states that claimant had started utilizing the Nexus program but stopped attending once he realized the program was too elementary for him, which was slightly in error for the reasons discussed above.

B. The IPP review describes the program claimant wanted to attend: "Exceptional Minds is a vocational school that specializes in Multimedia Arts, which consist of the following programs: Graphic Arts, Animation, Web Design and Visual Arts. The school specializes in working with people with Autism." The IPP review states that the tuition is \$18,000 per year. Mr. Jackson testified that claimant's mother asked about service agency funding for the program, and that he told her the service agency "did not pay for that type of service."

C. The IPP review notes that Mr. Jackson suggested that claimant's family contact the Department of Rehabilitation (DofR) for possible financial assistance to attend Exceptional Minds. The IPP contains no offer of any other day program.

13. A. Mr. Jackson testified that after the meeting he researched Exceptional Minds over the internet. However, he did not generate a letter denying the family's request for funding of Exceptional Minds, nor did he provide the family with any information as to claimant's ability to appeal that denial. Mr. Jackson testified that was because he did not believe claimant's mother had "formally requested" the funding; he felt she simply "mentioned the program" and that the discussion shifted when he told her the service agency would not pay for it.

B. Claimant's mother testified that she had never seen a denial letter issued by the service agency before, so she did not know that was something that would be generated if she made a request for service funding that was denied.

C. The IPP review document had a signature page, which included a provision for a statement of any areas in which the parties disagreed or for which further resolution

was required. That part of the signature page was not completed. While claimant and his mother signed that signature page, claimant's mother testified that the signature page was signed before the IPP review meeting and essentially was used as a "sign-in sheet." Mr. Jackson testified that he could not remember when claimant's mother signed the signature page.

D. Mr. Jackson did not mail a copy of the IPP review to the family until many months later, on November 25, 2014.

14. As a result of the IPP review meeting, the family requested tuition funding for Exceptional Minds from the DofR. The request was subsequently denied by DofR in a letter dated April 30, 2015.

15. Claimant began attending Exceptional Minds in September 2014. Claimant's mother later learned that a few of the other students were regional center consumers; she was led to believe that those students' respective regional centers were funding their tuition.

16. On January 28, 2015, claimant's mother contacted claimant's service coordinator, Christie Sotelo, and requested reimbursement of the tuition the family had paid for claimant to attend Exceptional Minds. Ms. Sotelo had replaced Mr. Jackson at the family's request. On February 2, 2015, Ms. Sotelo advised claimant's mother that her funding request had been denied. Ms. Sotelo did not provide a formal notice of proposed action or denial letter; instead, she suggested that claimant's mother meet with her supervisor, Steven Johnson, in order to discuss the rationale behind the denial.

17. On February 25, 2015, claimant's mother met with Mr. Johnson and Ms. Sotelo. When claimant's mother was told that the service agency would not reimburse the family or fund future tuition for Exceptional Minds, she requested a written denial. That request by claimant's mother triggered the service agency's Notice of Proposed Action dated March 5, 2015. By that time, claimant had been attending Exceptional

Minds since September 2014 and his parents had paid a significant amount of tuition. As explained below, the Exceptional Minds program lasts three years, so the request for prospective funding would continue through claimant's graduation from the program in June 2017.

THE EXCEPTIONAL MINDS PROGRAM

18. Exceptional Minds is a vocational program that trains its graduates to work as digital artists in the entertainment industry. Exceptional Minds' Program Director, Ernest A. Merlan, testified that approximately 80 percent of its graduates find paid employment. Some students are placed at entertainment studios or post-production jobs. Other students not ready to "fly solo" have the option of working at the Exceptional Minds studio for compensation above minimum-wage. Exceptional Minds has contracts with various companies for editing and post-production work on major films and television shows. The program is designed specifically for consumers with autism, who are more high functioning and do not present serious behavior issues. The instructors there are not only trained in the technical aspects of digital arts, but also have training in working with autistic students. Students also learn the social skills needed to interview for jobs and maintain professional relationships while employed in the entertainment industry.

19. Claimant was accepted into the Exceptional Minds program. Mr. Merlan testified that claimant is doing very well so far. Claimant likes the program, he has already received certifications in computer programs needed to perform digital arts, and he wants to complete the three-year program and work in this field.

20. The efficacy and appropriateness of the Exceptional Minds program for claimant was established by a preponderance of the evidence, and was not subject to challenge by the service agency. Claimant's IPP goals can be implemented in such a program, in that he is receiving training in a vocation he likes and is likely to obtain

some sort of employment in that field after he graduates.

21. Claimant seeks retroactive tuition funding for the Exceptional Minds program from September 2014 to June 2015 (year one), and from September 2015 to June 2016 (year two) for both monies paid and monies owed to the program. For 2014-2015, the total amount of the program was \$18,350. Claimant's parents paid Exceptional Minds \$12,350 and they owe \$6,000. For 2015-2016, the total amount for the program is \$19,350. Claimant's parents have paid \$6,000 and they will owe \$13,350 for the remainder of the program through June 2016. Claimant also seeks funding for his third and final year at Exceptional Minds covering the period of September 2016 through June 2017, which will cost \$19,350.00.

THE SERVICE AGENCY'S POSITION ON PROVIDING FUNDING FOR EXCEPTIONAL MINDS

22. Exceptional Minds has a few other students who are regional center consumers, but it was not established how their tuition was/is funded. However, as long ago as August 2012, service agency staff worked with Exceptional Minds on ways it could become vendored. Ultimately, Exceptional Minds decided to not become a regional center vendor, primarily because the rates were too low and obtaining the required community care facility license was too difficult. Service agency staff testified that Exceptional Minds was not an "authorized service" for lack of being vendored and its services were therefore not eligible for reimbursement.

23. Consumer Services Supervisor Erica Beall testified that vouchers could not be used to reimburse the family, because the service agency interprets the guiding regulations as only allowing use of vouchers for one of five specially designated categories: diapers or nutritional supplements, nursing, transportation, respite, and day care. Tuition is not covered under any of those five categories.

24. The Department of Developmental Services (DDS) issues a list of approved

service codes along with a description of the services covered by them. DDS prohibits the use of a miscellaneous service code for funding if another specific service code applies to the program in question. In this case, Mr. Johnson testified that Exceptional Minds could not be vendored under a miscellaneous service code because it was essentially a vocational program and there were several other codes that would specifically apply to such a program. Ms. Beall also testified that because there are other service codes that apply to the Exceptional Minds program, claimant's parents could not be vendored themselves under a miscellaneous service code to receive reimbursement for tuition to Exceptional Minds.

25. DDS established miscellaneous service code 024, entitled "Purchase Reimbursement- 65070 or 65100," which is described as "Reimbursement for purchases to meet consumers IPP objectives." The numbers 65070 and 65100 are from the General Ledger Account Code; number 65070 allows for purchase reimbursement for "other authorized services." Ms. Beall testified that a miscellaneous service code could not be used for Exceptional Minds because other specific codes apply to vocational programs. She also testified that code 024 is used only to reimburse parents for insurance co-payments for behavior services. Ms. Beall did not know who decided that use in light of the fact that the code description provided by DDS did not delineate any such limitation.

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THE ALTERNATIVE PROGRAMS OFFERED BY THE SERVICE AGENCY

The Nexus Program

26. As discussed above, claimant was offered funding to participate in the Nexus program, operated by the Tierra Del Sol Foundation, when he attended LAMCC.

The Director of Integration Services for the Tierra Del Sol Foundation, Gabriella Sanchez, testified that the Nexus program is designed to provide support for disabled students transitioning from high school to college. In addition to providing support in and out of the classroom, the Nexus program can also provide career path assistance and guidance. The final phase is to place interested students in an unpaid internship position with the goal of being offered a job later.

27. It was established by a preponderance of the evidence that, considering the following factors, the Nexus program is not a good fit for claimant:

- A. The Nexus program works with students who are attending whatever classes that may be available on the campus. The work done by the Nexus program staff with students between classes focuses on assisting students with basic skills, such as public transportation and personal safety. Claimant has already acquired those skills. As he testified, the students in that program were lower functioning.
- B. The program is not geared toward a particular skill development sequence. There are no digital arts or entertainment industry programming. Mr. Merlan of Exceptional Minds persuasively testified that, given claimant's need for repetition and guidance in building from one class to another, he would not develop the type of generalized skills necessary to secure full-time employment in the entertainment field through this program.
- C. Ms. Sanchez testified that a majority of Nexus graduates work in a supported employment environment, group employment and/or unpaid internships in part-time capacities. The Nexus program does not have an employment component specifically designed to lead to full-time, paid employment in the entertainment industry. Ms. Sanchez also conceded that the Nexus program did not have any established contacts or relationships with film studios; and

that she was unaware of any Nexus graduate employed in the entertainment industry.

28. The rate for the Nexus program is \$93.36 per day or approximately \$2,000 per month. Nine months of the program would cost \$18,000. Ms. Sanchez testified that the approximate time frame to complete the Nexus program is three to four years.

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The New Horizons Media Arts Program

29. As a result of the informal conference process that occurred in July 2015, the service agency offered, for the first time, funding for claimant to attend the New Horizons Media Arts Program (New Horizons). The program is designed to teach employable skills in the area of technology or media arts, which can include development of internet applications or websites, edition graphics or videos, creating animations, coding and programming, etc. The program rate is \$37.84 per day.

30. It was established by a preponderance of the evidence that, considering the following factors, the New Horizons program is not a good fit for claimant:

- A. Mr. Johnson testified that New Horizons does not currently offer job placements.
- B. Mr. Johnson spent approximately 20 minutes at the New Horizons facility. He testified that he did not know the functional abilities of the students currently enrolled in the New Horizons program.
- C. Claimant and his parents visited the New Horizons facility before the hearing. Claimant testified that the students he observed there were lower functioning. He also testified that he was told by the person who gave him a tour of the facility that he would be bored there. Claimant's mother testified she heard the same comment from the tour guide and that she agreed with him.

Claimant also testified that he was told during the tour that he should “check out a program named Exceptional Minds.”

- D. Mr. Merlan of Exceptional Minds spent one to two hours visiting New Horizons. He testified that the students there were intellectually disabled and that claimant had abilities beyond the students he observed. Mr. Merlan was advised that New Horizons staff were not trained to work with autistic people and therefore had no students with autism. What he saw being taught at New Horizons were things claimant already knew or did not need. He described the topics and resources as being primitive and small. He also learned that there was no specific job development plan in place for students.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.²)
2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-6.)
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.)

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

4. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, claimant requests funding the service agency has not before agreed to provide and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

PROSPECTIVE FUNDING OF EXCEPTIONAL MINDS

5. A. Section 4501 directs that “consumers and their families . . . should participate in decisions affecting their own lives, including, . . . the way in which they spend their time, . . . education, employment, and leisure, the pursuit of their own personal future and program planning and implementation. . . .”

B. Section 4512, subdivision (b), provides, in part, that 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. (*Id.*) Similarly, section 4646, subdivision (a), provides that the provision of services to consumers and their families shall be effective in meeting the goals stated in the individual program plan, and reflect the preferences and choices of the consumer.

C. In this case, the above mandates of the Lanterman Act will be met by requiring the service agency to provide prospective funding for claimant’s tuition at Exceptional Minds. Beginning in 2013, and continuing thereafter, claimant’s IPPs have reflected his desire to learn a vocation in media arts so that he can support himself by employment in the entertainment industry. Claimant and his family have expressed their preference for him to enroll in and complete the three-year Exceptional Minds program, which is

specifically designed for autistic students. By completing that program, claimant will learn a vocation and is likely to find some type of compensated employment.³

D. When the parties were crafting claimant's IPP, only one other service was offered, the Nexus program. After this dispute arose, the service agency offered a second service, New Horizons. However, neither of those programs was proven to be an adequate resource for claimant, either in terms of training him to be a media artist or in helping him to secure employment in the entertainment industry. The common theme of those two alternative programs is that they are general and geared toward lower functioning consumers who do not have as laser-focused career aspirations as claimant. He should not be penalized from participating in his chosen program because his skills and desires in life and in his career are more advanced than the other regional center consumers who are better served by these two programs.

E. Sections 4512 and 4646 emphasize that regional centers should provide desired services in a cost-effective manner. In this case, the Exceptional Minds program lasts three years exactly and costs \$19,350 per year. The Nexus program lasts three to four years and costs \$2,000 per month, roughly equivalent to Exceptional Minds. Thus, Exceptional Minds is cost-effective when compared to the Nexus program. The New Horizons program daily rate is one-third that of the Nexus program. However, the New Horizons program is clearly not adequate for claimant's needs and should not be used as a comparison for purposes of establishing cost-effectiveness. In sum, prospective funding for Exceptional Minds was proven to be cost-effective.

6. A. The service agency contends that it has no mechanism for purchasing

³ Pursuant to section 4869, subdivision (a), "it is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities."

services from Exceptional Minds because that provider has refused to become vendored.

B. The service agency cites to section 4648, subdivision (a)(3), which provides that a regional center may purchase services and supports "pursuant to vendorization or a contract. . . ." "Vendorization or contracting" is defined as "the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).) The Lanterman Act seems to contemplate that services may be obtained for a consumer either by purchasing them from a vendor or by contracting with a non-vendored provider, so long as a regional center is otherwise required to provide the requested service. As discussed above, Exceptional Minds is providing a necessary, cost-effective service that will help claimant accomplish his IPP goals in terms of vocational training, employment and self-sufficiency.

C. There is no statutory provision prohibiting services under the Lanterman Act from being provided by a non-vendored provider so long as a contract is procured. Such an interpretation is in keeping with other provisions of the Lanterman Act which encourage regional centers to employ innovative programs and techniques (§ 4630, subd. (b)); find innovative and economical ways to achieve IPP goals (§ 4651); and utilize innovative service-delivery mechanisms (§ 4685, subd. (c)(3)). Thus, it cannot be concluded, as the service agency urges, that there is no mechanism for purchasing services from this provider.

7. A. The parties spent considerable time arguing over what service codes established by the DDS could be used to fund prospective funding of Exceptional Minds. This is because California Code of Regulations, title 17, section (Regulation) 54326, subdivision (a), states that a regional center shall "classify a vendor as a miscellaneous service provider only if the vendor does not provide goods or services which are similar

to any of the descriptions of goods or services contained within Sections 54342 through 54355 of these regulations.” The service agency contends that several service codes cover the vocational training provided by Exceptional Minds and therefore a miscellaneous service code cannot be used. Claimant disagrees and specifically urges that miscellaneous service code 024 can be used to fund this service.

B. This issue is not dispositive because Regulation 54326, by its own wording, applies only to an entity or person providing services as a vendor. As discussed above, Exceptional Minds is not a vendor; it would provide services under a contract, which appears to be a separate funding vehicle. The discussion above illustrates the point that a needed and cost-effective service should not be denied to a consumer due to the complexities of bureaucratic service codes. As the Lanterman Act mandates, regional centers shall be innovative and flexible in delivering services. In this case, the service agency shall make whatever administrative billing decisions are necessary and consistent with DDS mandates to provide the prospective tuition funding for Exceptional Minds.

8. Based on the above, and pursuant to sections 4501, 4512, 4630, 4646, 4651 and 4685, claimant met his burden of establishing by a preponderance of the evidence that cause exists to order the service agency to provide prospective funding for claimant to attend the Exceptional Minds program through June 2017. (Factual Findings 1-29.)

THE REIMBURSEMENT REQUEST

9. The Lanterman Act does not specifically authorize retroactive service payments in the fair hearing context. Regulations suggest that funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. (See, e.g., Cal. Code Regs, tit. 17, § 50612, subds. (a), (b) & (c).) As discussed above, Exceptional Minds was not preauthorized to

provide the service in question, nor is it eligible for an emergency reimbursement for the same reason. As Ms. Beall from the service agency testified, vouchers are not available here to provide reimbursement funding, because tuition is not one of the five specified services that can be funded by vouchers.

10. A. The service agency argues that reimbursement is not available here because it had not previously agreed to provide funding for Exceptional Minds through the IPP process. A consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).)

B. The process of creating an IPP, by its nature, is collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (§§ 4646, 4648.)

C. If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (§ 4646, subd. (g).) If the consumer or his parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (§ 4646, subd. (g).)

D. The issue of reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input and expect to be reimbursed.

11. Yet, the lack of specific statutory authorization is not necessarily

dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . .” (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Otherwise, the general requirements that services should be funded through the IPP process (§§ 4646, 4646.5, and 4648) would be made superfluous. Thus, prior Fair Hearing decisions have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted.⁴

12. A. In this case, the equities weigh in favor of claimant’s parents being reimbursed for the tuition they have spent on Exceptional Minds thus far. Claimant’s mother clearly made a funding request during the 2014 IPP annual review. Such was demonstrated by the facts that Mr. Jackson researched Exceptional Minds after the meeting, he documented the request in the IPP review document, and the family immediately requested funding from the DofR (which was denied) after the meeting. The IPP review document was written in a way indicating the family’s desire to have claimant attend Exceptional Minds as a way of meeting his vocational/education IPP goals. Despite denying the funding request out-of-hand during the meeting, Mr. Jackson never advised the family of their right to indicate disagreement over the denial of their funding request on the IPP review document. The part of the IPP review form used for that purpose instead was used as an introductory sign-in sheet before the

⁴ Prior OAH decisions are only advisory, not binding.

meeting began. Moreover, the family was never advised of their fair hearing rights after that meeting or provided with a written denial. In fact, several months later, when the family began requesting reimbursement for the tuition they had already paid, their new service coordinator still failed to provide them with a written denial, instead urging the family to meet with her supervisor. Through these actions, the service agency failed to fulfill the requirements of sections 4646, subdivision (g), or 4701. It was not until many months after claimant began attending Exceptional Minds that the service agency issued a written denial from which the family could submit a fair hearing request. By this time, the family had paid, or become indebted for, a significant amount of tuition to Exceptional Minds.

B. Denying reimbursement in this case would also thwart the purposes of the Lanterman Act. As discussed above, prospective funding for this service is warranted by the mandates of the Lanterman Act, demonstrating that retroactive funding would not be inconsistent. Moreover, denying reimbursement here would encourage regional centers to not provide timely denial of service requests or provide consumers and their families with notice of their rights to express disagreement with parts of an IPP and/or appeal the denial of a service request. Under these circumstances, the service agency should reimburse claimant's family for the tuition they have already paid to Exceptional Minds, as well as any amount they owe and have not yet paid. (Factual Findings 1-29; Legal Conclusions 1-11.)

ORDER

Claimant's appeal is granted.

The North Los Angeles County Regional Center shall forthwith provide funding for claimant's tuition at Exceptional Minds through June 2017.

In addition, the North Los Angeles County Regional Center shall reimburse claimant's parents for tuition they have already paid to Exceptional Minds or for which

they owe but have not yet paid. The family shall submit to the service agency documents demonstrating the amounts they have paid or owe to Exceptional Minds, and the service agency shall reimburse those amounts in a timely manner.

DATED: November 5, 2015

ERIC SAWYER,
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.