

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2015041210

DECISION

The hearing in the above-captioned matter was held on September 14, 2015, at Alhambra, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Claimant was represented by his mother (Mother) who was assisted by Victoria Baca, advocate.¹ The Service Agency, Eastern Los Angeles Regional Center (ELARC or Service Agency), was represented by Elizabeth Ornelas, Supervisor.

Evidence was received, the matter was argued, and the case submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

ISSUE PRESENTED

May ELARC reduce the Adaptive Skills Training (AST) services currently

¹ Titles are used to protect the family's privacy.

provided from 20 hours per month to 12 hours per month?

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FACTUAL FINDINGS

THE PARTIES AND JURISDICTION

1. Claimant is a 19-year-old man who is a consumer of regional center services from the Service Agency. He receives the services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.,² based on diagnoses of Epilepsy, Cerebral Palsy, and Intellectual Disability. During the hearing there was some dispute as to whether Claimant's Intellectual Disability is moderate or severe. The weight of the evidence indicates the condition is severe.

2. On April 7, 2015, the Service Agency served a Notice of Proposed Action (NOPA) on Claimant. The proposed action was to reduce AST hours from 20 to 12, per month. (Ex. 1.) The stated reason for the action was that based on review of Claimant's file, assessment, and policies, the hours should be reduced. It was further stated that the vendor of the AST services, California Pediatrics & Family Services (CalPeds) recommended a reduction in the hours. The NOPA also asserted that there had been no progress during a period of training that began in 2008. The NOPA stated that the effective date would be May 9, 2015. (*Id.*)

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

3, On April 16, 2015, Claimant submitted a Fair Hearing Request, bringing the matter within the provisions of section 4715, so that the services had to continue "aid paid pending." (Ex. 2.) This proceeding then followed.

4. All jurisdictional requirements have been met.

CLAIMANT'S DISABILITIES AND NEEDS

5. As noted above, Claimant suffers from three conditions that establish eligibility for services under the Lanterman Act. He lives with his parents, his brother, his sister, and his sister's three children. His sister is also a consumer of ELARC's services. (Ex. 3, p. 6.)³ Claimant's brother serves as his respite worker, with ELARC funding 30 hours per month of respite services. The family is further assisted in caring for Respondent by In Home Supportive Services, which funds 150 hours per month of services. (*Id.*, p. 7.) Claimant receives Social Security payments as well. According to his last Individual Program Plan (IPP), generated in April 2015, Claimant needs constant attendance and assistance.

6. Claimant receives special education services. He is enrolled, five days per week, at a local high school. He receives language and speech services, because he is non-verbal and uses rather limited vocalization and gestures to communicate his needs and desires. He receives a small amount of school based physical therapy as well. He was receiving some occupational therapy, has a one-to-one aide in the classroom, and receives transportation services. He receives some adaptive physical education and Deaf and Hard of Hearing Services, as he

³ The document contains several sections and was not internally paginated. The ALJ has paginated it, and page citations shall be to those added page numbers.

has a severe hearing loss. (Ex. 3, pp. 8-9.)

7. Claimant uses a manual wheelchair. He can propel it himself, for a short distance on a level floor, with supervision. Otherwise, an adult pushes him in the wheelchair. (Ex. 3, p. 11.) He can take small steps in his Rifton Pacer, but depends on an adult to maneuver and propel it. He must wear a helmet, especially when he is not in the wheelchair.

8. Because of several issues associated with his disabilities, Claimant's food must be chopped up, and he must be constantly supervised when he is fed, to prevent choking. (Ex. 3, pp. 9, 12.) He weighs 74 pounds, and a goal has been established in the IPP that he will gain appropriate weight. Claimant needs substantial equipment including his manual wheelchair, commode, ramp, bath chair, helmet, and knee immobilizers. (*Id.*, pp. 11, 15.)

9. Claimant is not toilet trained, and has neither bladder nor bowel control. He therefore wears diapers. (Ex. 3, p. 11.) He has virtually no self-help skills. He cannot feed himself. He is not able to use utensils during a meal. He needs assistance in personal hygiene tasks such as brushing his teeth. Claimant cannot dress himself, or bathe himself. (*Id.*, p. 16.) He has these self-help deficits despite several years of AST training.

THE AST SERVICES

10. AST services were first provided in 2008. In November 2007, CalPeds performed an assessment of Claimant. They proposed service objectives pertaining to toileting and socialization. (Ex. 4A, pp. 3-4.) At that time a baseline was set forth, noting that Claimant would sit on the toilet, but not eliminate, so an objective was set out, to the effect that he would learn to sit on the toilet and urinate. As to socialization, it was noted that Claimant was physically aggressive when trying to communicate his needs, and so an objective was set to reduce

aggressive behavior. The initial assessment recommended that 12 hours of AST be provided each month. (*Id.*, p. 5.)

11. By November 2012, the objective related to toileting had changed, to one where Claimant would communicate to others his need to go to the bathroom, before he went in his diaper. (Ex. 4B, p. 2.) The objective of communicating needs without physical aggression remained in place. A new objective pertaining to Claimant brushing his teeth had been put in place. That objective was that he would initiate brushing his teeth by cooperating with a guardian, and put the toothbrush in his mouth without assistance. (*Id.*, p. 4.) And, an objective of Claimant learning to wash his hands was established; it called for Claimant to do so with little or no assistance. Finally, an objective had been added whereby he would be able to put on a shirt and pull up his pants with minimal assistance.

12. It appears that the objectives described in the 2012 progress report had been in place before that report was written, but it is not clear as to when those goals had been set out. The 2012 report noted that Claimant would avoid the tasks by acting out. The 2012 report recommended that the AST be continued, for 20 hours per month. (Ex. 4B, p. 7.)

13. In November 2014, CalPeds issued another progress report, found at exhibit 4C. This report shows that no progress had been made in Claimant's use of the toilet, and it does not appear he communicates to others the need to go to the bathroom before using his diaper. (This is inferred because the goal of communicating the need to eliminate remained as it had in the 2012 report.) (Ex. 4C, p. 2.) The report describes how Claimant has a tantrum when his caretakers would try to change his diaper, and he was fearful when placed on his toilet.

14. In terms of communication, the objective remained to obtain

communication of needs without aggression; again, largely unchanged from prior progress reports. As to brushing his teeth, the report states that Claimant makes the task difficult for his mother, in that he would misbehave because he does not like the toothbrush in his mouth. When given the toothbrush, he would throw it or indicate he was done, when he had not started. If the caretaker—typically Mother—can get the toothbrush in his mouth, he resists brushing. His mother did not believe that the problem was with the toothpaste, “because she has tried all the flavors and he still responds the same way.” (Ex 4C, p. 4.)

15. The same objectives remained in place in November 2014, as had been in place two years earlier, as to hand washing and dressing. A goal of cooperating with showering, at least half the time, had been added between October 2012 and November 2014. According to the report, Claimant was very fearful when put into his shower chair, and he would physically resist the process. The report stated that it was recommended that this goal be removed because of mobility issues. (Ex. 4C, p. 6.)

16. The November 2014 CalPeds report indicated that Claimant continued to need full assistance with daily skills. It was recommended that services continue, but that they should be reduced to the rate of 12 hours per month.

17. The Service Agency relied on the recommendation of CalPeds in moving to reduce the AST hours. Further, the reports indicate a lack of progress on Claimant’s part in meeting many of the goals set by the AST provider.

SUBSEQUENT ASSESSMENT OR PROPOSED SERVICES

18. The Service Agency, through Claimant’s service coordinator, gave notice during the April 2015 IPP meeting that it would seek a reduction in the AST hours. (Ex. 3, p. 9; see also pp. 16-17.)

19. An assessment of Claimant for further AST services was made by Almansor Center, in June 2015. That firm took the position that Claimant was not eligible for that vendor's AST services, in part because staff was not trained to deal with Claimant's feeding and diaper changing needs. (Ex. 8.) At the hearing, ELARC stated a disagreement with Almansor's assessment; at this point ELARC would continue to provide AST, but at a reduced rate.

20. Claimant's mother obtained an assessment from Partnership for Active Learning (PALS). That firm recommended 40 hours per month of AST services.

21. The PALS "Individual Service Plan" (PALS Plan), found at exhibit A, states that Claimant needs AST "to help him gain [more] independence." (Ex. A, p. 1.) It lists the following daily living areas where he needs to gain skills: showering, eating, toileting, communication, brushing teeth, washing hands, and dressing. (*Id.*) These are the same areas that CalPeds had reported on in November 2014, when that latter firm recommended a reduction in hours. (See Factual Finding 16, above.)

22. (A) The PALS Plan is vague regarding the goals set, and says nothing about when they might be met. In several instances, they state a plan for meeting the vague goal that appears nonsensical.

(B) For example, in the area of showering, it describes the problems encountered with giving Claimant a shower, stating in part that Mother believes that Claimant may not feel safe sitting on the shower seat. The long term goal is that Claimant will cooperate with staff and Mother for showering. As for a plan, it simply states "[Claimant] will feel safe before and after shower." (Ex. A, p. 2.)

(C) As to eating, a goal was set for Claimant to be able to eat by himself with less spillage. The proposed plan was: "[Claimant] uses fine motor strengths

and visual perceptual skills when he places coins in a container and in assembling basic puzzles.” (Ex. A., p. 2.) The connection between the plan activities and the goal is hazy, at best.

(D) As to toileting, the old goal of Claimant notifying staff when he needs to use the restroom is set out. Why such a goal is set when he cannot use the restroom is not explained. The proposed plan states “on a hot day, [Claimant] will reference the heat and take his hat off.” (Ex. A, p. 2.)

(E) As to tooth brushing, a goal would be set for Claimant to brush his teeth for five to ten seconds. The plan states “[Claimant] will be introduced to different toothpaste flavors and brushes.” (Ex. A, p. 2.) However, prior efforts have convinced Mother that toothpaste flavor is not the problem, as she had tried them all. (Factual Finding 14.)

23. Based on the foregoing, the PALS Plan is inadequate in several respects. It is entitled to little or no weight, cannot justify an increase in AST hours, and is insufficient to contradict the CalPeds recommendation to reduce existing AST hours to 12 per month.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

2. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties can not agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See § 4710.5, subd. (a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within

the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

4. Services provided must be cost effective (§ 4512, subd. (b), *supra*), and the Lanterman Act requires the 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.) To be sure, the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many consumers families.

5. Section 4512, subdivision (b), of the Lanterman Act provides, in pertinent part, that

"Services and supports for person 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, normal lives.
... The determination of which services and supports are necessary 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's family, and shall include consideration of ... the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, ... physical, occupational, and speech therapy, ... habilitation, ... recreation, ... behavior training and behavior modification programs, ... community integration services, ... daily living skills training

Thus, AST services are specifically authorized under section 4512, subdivision (b), and in any event may be used to habilitate an individual.

6. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased, is made up of the individual consumer, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

7. The planning process includes the gathering of information about the consumer and “conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals” (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer’s needs, it is plain that assessments must be made so that services can be properly provided, in a cost effective manner.

8. CalPeds is the vendor most qualified to assess Claimant’s needs in the area of AST services, having long tenure with Claimant and his family. (Factual Findings 10 through 16.) As found, little or no weight is given to the PALS Plan. (Factual Findings 20 through 23.) If anything, the assessment by Almansor Center would support the Service Agency’s position, even though the Service Agency has chosen not to follow that assessment.

9. It must be concluded that 20 hours of AST services per month are not cost effective given the lack of progress over a period years. (Legal Conclusion 4, Factual Findings 10 through 17.) Therefore, the Service Agency’s action must be upheld, and the appeal denied.

ORDER

Claimant's appeal is denied, and the Service Agency’s proposed action is sustained. Claimant’s AST hours shall be reduced from 20 hours per month to 12 hours per month.

Date: September 25, 2015

/s/

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision.