

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2015080731

DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on December 7 and 8, 2015, in Culver City, California.

Lisa Basiri, Fair Hearing Specialist, represented Westside Regional Center (WRC).

Claimant's parents represented claimant.¹

Evidence was received, and the matter was submitted on December 8, 2015.

ISSUE

Whether WRC must request that the Department of Developmental Services (DDS) approve funding for claimant to reside at Riverview School (Riverview) in Massachusetts, from September 1, 2015 through June 30, 2016, and if so, in what amount.

¹ Claimant's name and the names of claimant's parents are not disclosed, in order to protect their privacy.

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EVIDENCE RELIED UPON

Documentary: WRC's exhibits 1-13; claimant's exhibits A-U.² Testimonial: Lisa Basiri, Fair Hearing Specialist, WRC; Mary Lou Weise-Stusser, Director, Community Services, WRC; Candice La Mere, Service Coordinator, Children's Unit, WRC; claimant's mother.

FACTUAL FINDINGS

1. Claimant is 20 years old; his parents are his limited conservators. He qualifies for regional center services on the basis of moderate intellectual disability. During early childhood and recently, in May 2015, claimant was also diagnosed with seizure disorder. His May 2015 diagnosis stemmed from a series of tonic-clonic (i.e., "grand mal") seizures that occurred during that month. Following the May 2015 diagnosis, claimant began taking anti-seizure medication daily.

2. On August 5, 2015, WRC sent claimant (through his parents) a letter and Notice of Proposed Action denying his request "for authorization and partial funding of out of state residential placement[.]" (Ex. 2.) On August 8, 2015, claimant submitted a Fair Hearing Request, asking that WRC "request permission from DDS to fund [claimant's] placement at Riverview[.]" (*Id.*) The hearing, originally scheduled for October 7, 2015, was continued at the parties' request; claimant waived the time limits for the hearing and decision set forth in Welfare and Institutions Code (WIC) sections 4712,

² Claimant's exhibits did not include C, G, N, or O.

subdivision (a), and 4712.5, subdivision (a).

3. Riverview, located in Sandwich, Massachusetts, is a boarding school and transitional program for developmentally-disabled young people. Since January 2013, claimant has lived most of the year at Riverview, returning home to California during breaks to stay with his parents and two siblings.

4. From at least 2011 through the present, claimant has had behavioral issues when he stays in the family home, including physical and verbal aggression toward family members, despite WRC's provision of behavior management services. Claimant is over six feet tall and weighs more than 200 pounds, and his aggressive behavior is alarming to his family.

5. Claimant's parents were also dissatisfied with his progress at school while he lived in California, where, for several years, he attended a non-public school for developmentally disabled children. Claimant's difficulties at home and in school led to mental health diagnoses, including attention-deficit hyperactivity disorder (ADHD), and a school-based determination of autistic-like behavior. Claimant took various psychotropic medications for his problems.

6. Claimant's issues at home and school prompted the family to seek placement for him outside the home. They found Riverview, and after a brief, successful trial period in 2012, placed claimant there full-time as a high school student in January 2013. In 2012, following claimant's trial period at Riverview, he was able to discontinue his psychotropic medications.

7. Claimant finished high school at Riverview in June 2014. After high school, he entered Riverview's post-high-school "GROW" program,³ which helps young adults transition from student life toward work, community involvement, and independence. In

³ GROW is an acronym for "Getting Ready for the Outside World."

prior years at Riverview, claimant lived in a dormitory setting. Now, as part of the GROW program, he lives off-campus with 11 other clients in a group setting, though he does have his own bedroom. In the next phase of the GROW program, claimant would live in a smaller setting with four housemates.

8. By all accounts, including those of claimant's parents and the professionals who have evaluated him, Riverview has helped claimant make remarkable and transformative progress.

9. A psychological evaluation performed for WRC in November 2013—approximately a year into claimant's stay at Riverview—noted, in relevant part, the following:

Since returning from the summer program at Riverview, [claimant]'s speech has improved and he no longer stutters. His mood improved such that he was able to stop all medications. He was prescribed Prozac, an antidepressant; Tenex, to control tics; and Vivanse, for ADHD. He comments, "I feel different inside. I feel calmer." He denied feeling any anxiety since February 2013. He also denied any depression or associated symptoms. In terms of the school and his mood he commented, "The kids are nice and kind and they do a lot of stuff I like to do."

[¶] . . . [¶]

The "proof is in the pudding" in that with the appropriate support, accommodations, guidance, and within a setting of like minded peers and staff with experience working with the

population [claimant] has experienced significant improvement in all spheres including social relatedness.

For the first time, [claimant] is flourishing in his environment, which appears to be meeting his needs academically, socially, physically and emotionally. He is obtaining A's and B's in his class work, making friends, participating in school-based sports and teams and learning as he says "how to be appropriate." His speech has also improved. He has made skill improvements at a slow, but consistent pace over the past year (except in the case of friendship, where he made "instant connections"). He has empathy for others, and does not appear to be "mindblind." As a result, [claimant] has been able to discontinue all medications

. . . . [Claimant] no longer experiences depression, anxiety or maladaptive behaviors and his social skills are improving. He is experiencing, rather, a newfound sense of inner calm and confidence. [Claimant], and his mother, would like him to remain at the Riverview School to participate in the post high school program where he can develop vocational training and independent living skills, which makes sense as he is growing in this environment.

(Ex. 12, Psychological Evaluation of Karen E. Hastings, Psy.D.)

10. Individualized education program (IEP) reports from Riverview and the Los Angeles Unified School District (LAUSD) have consistently confirmed claimant's progress

and the benefits he realizes from interacting with peers, and forming and maintaining friendships at Riverview. (Exs. 12, J, K, and M.)

11. Also confirming the importance of positive peer influence is claimant's behavioral services provider with the Shabani Institute, who noted in a March 12, 2013 email to Service Coordinator Candice La Mere,

[T]he academic and social amenities provided by Riverview ensure[] that same-age, verbal peers consistently surround [claimant], which will contribute to fostering the developing of []his social-verbal skills. . . . [C]ontinued development of [claimant]'s social-verbal skills require[s] that he be exposed to other students/individuals that display the sort of appropriate social skills that [claimant] can emulate.

(Ex. F.) August and December 2012 reports prepared by the Shabani Institute reiterated the same remarks (Ex. H), and claimant's mother voiced her concern that claimant's growth would stagnate without the positive influence of a peer group such as the one he has had at Riverview.

12. Claimant's Individual Program Plan (IPP) goals include providing him with an appropriate residential/academic program to meet his needs; reducing maladaptive behaviors; increasing his social emotional skills development; and maintaining good health. (Ex. 7.) Claimant's placement at Riverview has enabled him to make unprecedented progress toward all of these goals. (*Id.*) IPPs from July 2014 forward recognize claimant's improvement since enrolling at Riverview, noting that he has made many friends and "feels like he fits in with his peers" in the program (Exs. P, 7, and 8), among other markers of success.

13. Until the present academic year (September 2015 through June 2016), the

family was able to secure full funding for claimant's residence at Riverview. This year, the other source(s) of funding were withdrawn, except that LAUSD agreed to pay for the academic portion of the GROW program. As a result, the family is now seeking WRC's assistance in funding the remaining cost.

14. The non-academic portion of the cost of Riverview for the present academic year, from September 1, 2015, through June 30, 2016, is \$30,989.⁴ Claimant receives Social Security in the approximate amount of \$620 per month, and consequently has \$6,485 to contribute toward this cost, bringing the total unfunded amount to \$24,504. The family has paid installments to ensure claimant's ability to attend the program; \$13,487 remains to be paid, and is due on December 31, 2015.

15. Since claimant's completion of high school, WRC has sought an in-state placement for him. Its ongoing efforts have included statewide placement requests in December 2014, and in March, June, July, and October 2015. (Ex. 13.) IPPs have been conducted annually or more frequently, with the most recent one in November 2015.

16. In addition, in July 2015, WRC conducted a comprehensive assessment of claimant (ex. 6), which concluded that claimant needed round-the-clock, close supervision; medical support and monitoring; behavior management support; a highly-structured environment; and a day program with academic transition, community-based intervention, and vocational training and employment opportunities.

17. The comprehensive assessment further determined that claimant

⁴ The figure of \$31,732, set forth in claimant's Fair Hearing Request, is erroneous. (Testimony of claimant's mother.)

would require a supportive residential community placement with a special education academic program that is consistent with his educational needs.

[¶] . . . [¶]

The residence would need to provide 24-hour supervision, behavior management support, and a highly structured environment to help maintain the progress that has occurred in his current placement. [Claimant] requires an active schedule

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that is highly structured and would do best living with peers who enjoy being active and social.

(Ex. 6.)

18. WRC has considered several possible in-state living situations for claimant, including adult foster care, a specialized residential facility, supported living services (SLS) and/or independent living services (ILS) to help claimant live on his own, and most recently, a family teaching home.

19. Adult foster placement searches have thus far failed to turn up any foster home willing to accept claimant, and no suitable specialized residential facility has been located. Likewise, with regard to SLS and/or ILS, the consensus is that claimant requires more structure than such services provide, and is not yet ready for an independent-living situation; thus, no specific proposal for such an arrangement has been made. Claimant's return to the family home has also been ruled out because of claimant's

history of behavior problems there.⁵

20. In October 2015, however, a possible in-state placement for claimant was discovered at the 84th Street family teaching home (84th Street) operated by Diverse Journeys, and on October 28, 2015, claimant's parents toured the facility with Service Coordinator La Mere.

21. The family and Service Coordinator La Mere felt that 84th Street, a three-bed facility, was well-run and would provide adequate supervision to claimant. Nevertheless, if claimant were placed there, he would still need additional services such as a day program, academic transition services, vocational and employment services, and behavior management. Possible providers of these services would include the 84th Street staff, as well as an outside provider, for behavior management, and Project Search for vocational transition and employment services, which could also function as a day program. The cost of 84th Street alone (without the other services mentioned) is between \$10,000 and \$12,000 per month.

22. While touring 84th Street, the family and Service Coordinator met the other two current residents of the home, and were also able to have a discussion with the directors of Diverse Journeys. The two other residents, while also in their twenties, are older than claimant: one is 25, the other 28. In addition, both have "forensic" histories: i.e., histories of trouble with the law, though neither has a criminal conviction. Both are former residents of state developmental centers. Because of their histories, neither of the two other residents can attend a day program, and for both of them, Diverse Journeys has developed a "microindustry" in which they provide groundskeeping services to Diverse Journeys and are looking to expand.

23. Despite claimant's progress at Riverview, he is immature, socially naïve,

⁵ WRC recently provided the family with access a crisis support team, as needed.

and vulnerable to bullying and suggestion. He is friendly and has done well around others who are also socially naïve and gentle, in a setting in which he is able to emulate good social behavior and have experiences both following and leading others, such that the effect is mutually positive. Claimant's new WRC Service Coordinator, Monique Lazarus,⁶ acknowledged, "[W]e would not want [claimant] mixed with forensic clients and . . . he should not be around clients with behaviors, sarcasm, etc." (Ex. T.)

24. Placing claimant at 84th Street would deprive him of the type of peer group—in terms of size, age, and experience—which has been instrumental in his progress during his time at Riverview. The clients currently residing at 84th Street do not match or approximate that peer group. Because WRC's proposed in-state placement with 84th Street would not provide claimant with the kind of peer group from which he has benefited at Riverview, his parents rejected that placement, and have sought WRC's support for claimant's continued placement at Riverview, through June 30, 2016.⁷

LEGAL CONCLUSIONS

1. Claimant had the burden to prove, by a preponderance of the evidence, that WRC must submit a request to DDS to fund claimant's out-of-state placement. (Evid. Code, §§ 115; 500.) Claimant met the burden.

⁶ Claimant was recently assigned to Ms. Lazarus, who handles adult cases. His former service coordinator, Ms. La Mere, handles children's cases.

⁷ Diverse Journeys plans to open a second family teaching home, called "Flight," in early 2016, but that home is not yet open, and the evidence did not disclose whether it would provide for all of claimant's needs, including his need for a positive residential peer group.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (WIC, §§ 4500 et seq.), recognizes a public responsibility to provide services and supports for individuals with developmental disabilities. Regional centers are principally responsible for coordinating those services and supports, through the IPP process. (WIC, §§ 4620 et seq.)

3. Under WIC section 4648, subdivision (a), WRC must “[s]ecur[e] needed services and supports” for claimant, “[i]n order to achieve the stated objectives” of claimant’s IPP. Among the objectives stated in claimant’s IPP are providing him with an appropriate residential/academic program to meet his needs; reducing maladaptive behaviors; increasing his social emotional skills development; and maintaining good health. (Factual Finding 12.) Claimant’s placement at Riverview has been able to serve all of these objectives. (Factual Findings 3-12.)

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4. WIC section 4646, subdivision (a), requires regional centers to balance several interests in procuring services and supports, including “the needs and preferences of the individual and the family”; “promoting community integration, independent, productive, and normal lives, and stable and healthy environments”; providing effective services; and “reflect[ing] the cost-effective use of public resources.”

5. Claimant’s and his family’s preference is for him to stay in the GROW program at Riverview until he completes it, or at least through June 30, 2016, when the current academic year ends. (Factual Findings 2, 8, and 24.) Riverview has provided claimant with services and supports aimed at promoting community integration, and an independent, productive, normal, and stable life—with friends—and Riverview’s program has enabled claimant to make progress in unprecedented ways. (Factual Findings 3-12.) Riverview has not previously been funded by WRC (Factual Finding 13), but if it were funded by WRC, it would be cost-effective. (See Legal Conclusion 17.)

6. WIC section 4519 governs regional center funding of services and

supports outside California. It prohibits such funding unless the regional center first submits a request to the Director (Director) of DDS, and the Director determines that the expenditure is appropriate. (WIC, § 4519, subd. (a).)

7. WRC has not yet submitted such a request to DDS with regard to claimant's continued residence at Riverview (Factual Finding 2), and at the hearing, WRC's representatives expressed the belief that, under the present circumstances, WRC ought not submit such a request absent a fair hearing decision directing it to do so.

8. Before submitting a request to the Director, the regional center must "conduct a comprehensive assessment and convene an [IPP] meeting to determine the services and supports needed for the consumer to receive services in California and . . . request assistance from [DDS's] statewide specialized resource service in identifying options to serve the consumer in California." (WIC, § 4519, subd. (a).)

9. The regional center's request to the Director must also "include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs." (WIC, § 4519, subd. (a).) Likewise, the Director can grant a request to fund an out-of-state service or support only when he or she determines that "the proposed service or an appropriate alternative . . . is not available from resources and facilities within the state." (*Id.*)

10. WRC has fulfilled all of the statutory prerequisites for a request to DDS, and any request it submits will be able to include all of the required details. (Factual Findings 15-23.) An explanation "why these [in-state] options cannot meet the consumer's needs" follows. (See Legal Conclusions 11-16.)

11. Although several theoretical options exist for claimant to reside in California, including a foster family home, specialized residential facility, or SLS/ILS (Factual Finding 18), only one option for in-state placement has been deemed feasible for him by WRC staff. No foster family home placement has yet been offered to

claimant; no specialized residential facility has been located for him; he is not yet ready to live on his own with SLS and/or ILS; and it is undisputed that he should not reside in the family home. (Factual Findings 18 and 19.) Thus, the sole California option available to claimant is Diverse Journeys' 84th Street family teaching home.⁸ (Factual Findings 20-22.)

12. WRC contends the 84th Street placement could meet claimant's needs, based on the fact that the same categories of service claimant receives at Riverview can be provided either through, or in conjunction with, a placement at 84th Street. (Factual Findings 20-22.)

13. This contention, however, overlooks a key support claimant receives at Riverview, which claimant established would not be available at 84th Street: namely, the availability of a residential peer group with whom claimant can make friends, against whose conduct claimant can measure his own, and whom claimant can both emulate, and provide an example for, when appropriate. (Factual Findings 3-12 and 20-24.) Claimant's gains since his enrollment at Riverview have consistently been traced to his progress in interacting with, making friends with, and learning from, his peers there. (Factual Findings 3-12.)

14. The availability of such a residential peer group has created an environment for nurturing and developing claimant's personal growth and ability to associate positively with others, which has reduced his need for professional intervention, including medications. (Factual Findings 3-12.) Given claimant's status as an adolescent—a time when the need for peer interaction is great (Gov. Code, §§ 11415.10, subd. (b); 11425.50, subd. (c))—the availability of such a peer group cannot be

⁸ The other planned Diverse Journeys family teaching home, Flight, is not a current option for claimant, though it may become one in 2016. (Factual Finding 24.)

viewed as a “frill” or an “extra.” Rather, it must be viewed as a support integral to claimant’s development and improvement, as has been recognized by claimant himself, his parents, and the professionals who have evaluated him. (Factual Findings 3-12, 16, and 17.)

15. (a) At 84th Street, by contrast to Riverview, claimant’s residential peer group would be limited to only two other residents, both of whom are considerably older than claimant. (Factual Findings 20-22.) Gone would be the larger group of same-age cohorts from whom claimant has taken guidance and support. (Factual Findings 3-12.)

(b) In addition, the other two residents at 84th Street have “forensic” histories, and may pose a danger to claimant, who is socially naïve and vulnerable, and whose own history of periodic aggression could create peril for himself and others in such an environment. (Factual Findings 4, 19, 22, and 23.) Indeed, WRC has acknowledged that claimant should not be placed with forensic clients. (Factual Finding 23.) Beyond that, because of these clients’ forensic histories, they lack vocational options (Factual Finding 22), which also places them apart from claimant, who is not similarly confined in his vocational choices.

(c) In short, the 84th Street placement would not provide claimant with a peer group in which it would be reasonable to expect mutual positive influence of the kind that has so profoundly benefited him at Riverview. (Factual Findings 3-12 and 24.) This mutual positive influence is therefore a support that would be lost if claimant were relocated to 84th Street.

16. Since the only viable in-state placement option would fail to afford claimant the needed support of a positive peer group, that option “cannot meet the consumer’s needs” at present, and “the proposed service or an appropriate alternative . . . is not available from resources and facilities” inside California. (WIC, § 4519, subd. (a).)

As claimant matures and transitions out of the GROW program, other in-state options, not currently feasible for him, are likely to become more suitable.

17. In addition, the benefit to claimant of continuity, and of finishing the year he has started at Riverview, should not be overlooked. Neither should the relative cost-effectiveness of Riverview. At \$24,504, Riverview is \$75,000 to \$95,000 less than the cost for claimant to reside at 84th Street—excluding the cost of the adjunct services that would have to be provided in order to approximate what he receives at Riverview.⁹ (Factual Findings 14 and 21.)

18. In sum, claimant met his burden of establishing that WRC should submit a request to DDS to fund claimant's residence at Riverview. Based on the evidence presented in this case, such a request would have sufficient support for the Director's consideration.

19. The amount to be requested is the entire \$24,504. (Factual Finding 14.) This figure would include direct payment to Riverview of the final installment of \$13,487, assuming such payment can be made before the December 31, 2015 deadline, plus reimbursement to the family of the sums they have paid for claimant to attend Riverview this academic year. (*Id.*)

20. WIC section 4519, subdivision (a), allows DDS to "authorize for no more than six months the purchase of out-of-state services[.]" and limits extensions of such authorizations to six months at a time. Notwithstanding these limitations, there is no similar restriction on WRC's request for funding. Accordingly, WRC's request to DDS should cover the entire period from September 1, 2015 through June 30, 2016, to eliminate the need for serial fair hearing proceedings over the same issue.

⁹ Outside funding sources for Riverview have likewise been maximized. (Factual Findings 13 and 14.) (WIC, § 4659, subds. (a) and (b).)

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ORDER

Claimant's appeal is granted. WRC shall submit a request to the Director of Developmental Services, in compliance with Welfare and Institutions Code section 4519, for approval of funding in the amount of \$24,504, for claimant's out-of-state placement at the Riverview School, from September 1, 2015, through June 30, 2016.

Dated: December 15, 2015

ANGELA VILLEGAS

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.