

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2015080809

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 8, 2015, in Pomona, California.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency). Claimant's mother represented claimant, who was not present.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 8, 2015.

ISSUE

Whether the Service Agency may terminate funding for claimant's adaptive skills training (AST) provided by Connecting Dot By Dot.

¹ Names are not used in order to protect the privacy of claimant and his family.

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-6; claimant's exhibit A.

Testimony. Daniela Santana; claimant's mother.

FACTUAL FINDINGS

1. Claimant is a seven-year-old boy. He is an eligible consumer of SGPRC based on his diagnosis of autism.
2. The Service Agency currently provides funding for claimant to receive 10 hours per month of AST from Connecting Dot By Dot (CDD).
3. By a Notice of Proposed Action letter dated July 29, 2015, the Service Agency notified claimant's mother that it proposed to terminate claimant's AST funding. The letter recites:

[Claimant] has been provided adaptive skills training services through Connecting Dot By Dot since March 2014. In January 2015, the clinical recommendation of the program was to fade and terminate the service by 8/31/15. CDD staff noted [claimant] had already made significant progress within his program and was ready to fade out. At the time of the last report, the focus of the service was to shift to working on good sportsmanship, turn taking, money value, table etiquette and telling time. Some of the goals that are now being worked on are educational and can be addressed via his educational planning and IEP.² Connecting Dot By Dot has provided [a] clinical recommendation that [claimant] is

² [Claimant's Individualized Education Plan, offered by his school district.]

ready to exit the program, as [claimant] has maintained appropriate progress. [Claimant's] mother has been present and has received training so that parent is prepared to support [claimant] in skills maintenance and continue with parent-led instruction. If additional support is desired by the parent, parent may attend group adaptive skills training that is offered periodically at SGPRC. (Ex. 1.)

4. Claimant's mother filed a Fair Hearing Request on August 3, 2015, appealing the termination of funding and requesting that claimant continue to receive funding for at least two to four hours of AST per week and that claimant's skills be reevaluated.

5. The Service Agency has continued to provide claimant funding for the service in question while this matter has been pending. (Welf. & Inst. Code, § 4715, subd. (a).)³

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BACKGROUND INFORMATION

6. According to claimant's most recent Individual Program Plan (IPP), dated July 16, 2015, claimant lives at home with his parents; he also has an older brother. He is verbal and ambulatory and performs self-care tasks without prompting. He eats independently but stuffs his mouth, eats rapidly, and takes food without asking while his mother is cooking. Claimant is in good health, but his mother's main health concern is claimant's weight; claimant is 51 inches tall and, his mother testified, he weighs over 100

³ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

pounds. Claimant is toilet-trained but continues to require assistance with cleaning himself after a bowel movement.

7. He attends an elementary school within his local school district, where he receives special education programming and speech therapy. According to claimant's IPP, he is well liked by peers, with whom he initiates interaction. His mother reports, though, that he continues to need assistance developing his social skills.

ADAPTIVE SKILLS TRAINING

8. AST is training designed to "enhance existing consumer skills" and to "remedy consumer skill deficits in communication, social function or other related skill areas." (Cal. Code Regs., tit. 17, § 54342, subd. (a)(3).)

9. The Service Agency has been funding AST for claimant from CDD since 2014. The IPP reflects that, on CDD's recommendation, the Service Agency decreased funding for AST from 20 hours per month to 10 hours per month in January 2015, as part of a fade to a planned termination on August 31, 2015. The IPP also notes that AST is a time-limited service. Desired outcomes in claimant's IPP include that he "will wipe on his own, tie his shoelaces, and eat safely. He will no longer stuff his mouth or eat too quickly." (Ex. 4.) As for claimant's progress toward those outcomes, the IPP recites that claimant's mother believes that claimant forgets learned skills and should continue to receive AST funding; the Service Agency takes the position that parent training will enable claimant to achieve the objective.

10. A "Termination Report" from CDD dated August 2015, states that claimant had mastered skills and achieved 27 goals in safety awareness, self-help skills, functional communication, and socialization from April 2014 to August 2015. The only focus of intervention at the time of termination was table etiquette, a self-help skill. The report states that, since claimant began receiving AST from CDD, he "has shown great progress" and "he has mastered most of his goals in his program." (Ex. 3.) "Based on the

great outcome of [claimant's] program, CDD provided him with a fade out plan and ended services as of August 25, 2015." (*Ibid.*)

11. Claimant's mother contends that Service Agency funding for AST should continue. She believes that claimant has an eating disorder, because he fills his mouth with food and tries to swallow everything without sufficient chewing, and is overweight for his age. He has difficulty cleaning himself after a bowel movement because of his weight. She testified that claimant has not mastered safety skills; he knows and recites, for instance, the steps to take before crossing a street, but he does not implement them. He shares things with his teacher, but not with other children. She would like additional training for herself, but believes that claimant also needs more services, and that he should be evaluated again.

12. Danielle Santana, SGPRC's Fair Hearing Manager, testified that AST is a time-limited service, not a permanent one. She testified that such training is designed to teach a skill and then be phased out and discontinued. AST includes a caregiver education component, and so claimant's mother was trained to help claimant continue to progress toward his goals. Santana testified that claimant's mother may continue to attend group AST sessions offered quarterly at SGPRC. In a discussion with claimant's mother, Santana also recommended that claimant's mother apply for applied behavior analysis (ABA) coverage through Medi-Cal. The Service Agency suggested that, with respect to weight reduction, an ABA program might be an appropriate service, and that Medi-Cal covers ABA services. Claimant's mother informed the Service Agency that claimant is covered by Medi-Cal, but she has not yet applied for coverage for ABA services for claimant. As for safety skills, the Service Agency concedes that claimant still requires training in this area.

13. The evidence on the whole supports the conclusion that claimant no longer needs AST. The evidence also suggests that claimant requires safety awareness

training and assistance with other behavioral issues, including his eating habits. With respect to those and other skill deficits discussed by claimant's mother, services designed to address those deficits may be provided by claimant's school district or funded either by Medi-Cal or the Service Agency, as appropriate. Services and supports and sources of funding should be discussed at a future IPP meeting; claimant's mother may request such a meeting.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (§§ 4502, subd. (a), 4640.7.) The Legislature also explicitly intended "to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (§ 4646, subd. (a).)

2. An administrative hearing to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a hearing to appeal the Service Agency's proposed termination of service funding. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

3. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.) A regional center seeking to reduce funding has the burden to demonstrate its decision is correct, because the party asserting a claim or making

changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof for that reason. (Factual Findings 1-5.)

4. The Lanterman Act requires the parties to develop goals, as well as the services and supports necessary to achieve those goals, in the process of creating an IPP. A client'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 Lanterman Act directs service agencies to put in place services and supports designed to accomplish agreed-upon IPP goals in a cost-effective manner (§§ 4646, subd. (a), and 4648, subd. (a)(11)). When a goal specified in an IPP has been met, there is no further purpose in providing funding to meet that goal; to do so would violate the Lanterman Act's requirement that services be cost-effective.

5. Regional centers may not supplant the budgets of other public entities, such as school districts. (§ 4648, 4648.5.) Regional centers may not fund any service for which funding is available from Medi-Cal if the consumer is covered by Medi-Cal. (§ 4659, subd. (d).) Regional centers must consider a family's responsibility for providing similar services to a minor child without disabilities in making decisions regarding funding for service and supports to minor consumers. (§ 4646.4, subd. (a).)

6. In this case, CDD reports that claimant has mastered all his skills except table etiquette, and recommends terminating the program. A termination of funding for AST through the CDD program is warranted. (Factual Findings 6-13.) Other goals for claimant, including weight loss, social skills, and safety awareness, may be pursued by other means than AST, which claimant's mother may request from claimant's school and from SGPRC during the IPP process. She may also request coverage for ABA services from Medi-Cal.

ORDER

Claimant's appeal is denied.

DATE: October 2, 2015

HOWARD W. COHEN

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.