

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2015090852

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 10, 2015, in Van Nuys, California. Claimant was present and was represented by his parents.¹ North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Stella Dorian, Fair Hearing Representative.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 10, 2015.

ISSUE

Should NLACRC be allowed to discontinue funding 22 hours per month of social skills training for Claimant?

¹ Claimant and his parents are identified by titles throughout this Decision to protect their privacy.

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EVIDENCE

Documentary: Service Agency exhibits 1-18; Claimant Exhibit A.

Testimonial: Sarah Yap, Service Agency Consumer Services Supervisor; Maureen Schwartz, Associate Clinical Program Coordinator for Passport to Adaptive Living; Claimant's mother and father.

FACTUAL FINDINGS

1. Claimant is a 13-year-old male client of the Service Agency, who qualifies for regional center services under a diagnosis of Autism Spectrum Disorder. He lives with his parents and his younger sister.

2(a). In a December 29, 2011 Addendum to Claimant's February 2010 Individual Program Plan (IPP), the parties noted the following added goal:

[Claimant] will interact and maintain engagement during a play activity with a peer for a minimum of 10 minutes, with minimal adult prompting. [Claimant] will engage in cooperative play with a peer (i.e. taking turns, sharing, following the rules, etc.) for a minimum of 10 minutes with minimal adult prompting, in at least 50 percent of opportunities.

(Exhibit 3.)

2(b). As set forth in the December 29, 2011 IPP Addendum, in order to meet that

goal, NLACRC agreed to fund social skills training for Claimant based on a December 14, 2011 Social Skills Assessment conducted by Passport for Adaptive Living (PAL).

2(c). The 2011 IPP Addendum noted, "Besides [Claimant's] social skills training goals, parents goals have also been incorporated into his program. [Consumer Services Coordinator (CSC)] emphasized with father the importance of increasing [Claimant's] opportunities for social interaction and following through with techniques outside of sessions to promote generalization." (Exhibit 3.) The plan for Claimant's family's participation in progress toward his goal included the following:

[P]arents will research group-based, social/recreation activities in their community that may be of interest to [Claimant], in order to increase opportunities for social interaction with peers outside of the structured, school setting.

[P]arents will arrange for play dates with peers for [Claimant] as available.

[P]arents will be actively involved in [Claimant's] social and play activities in order to prompt and guide him through peer interactions and to model appropriate play skills.

(Exhibit 3.)

3(a). Claimant's specifically identified goals set forth in the PAL assessment report were as follows: (1) introduce himself with an appropriate greeting while making eye contact; (2) respond to a greeting while making eye contact; (3) take turns during social games with peers or adults; (4) follow the rules when playing games with peers and adults; (5) appropriately reciprocate conversations with same-aged peers and adults; (6) maintain appropriate proximity with peers and adults, staying within two feet; (7) engage

in peer or adult preferred activity for 10 minutes; (8) recognize natural social cues in his environment when playing with typically developing peers; (9) demonstrate good sportsmanship (e.g. saying "good game") after playing an age-appropriate game with same-aged peer; (10) initiate play with peers.

3(b). In its assessment report, PAL's recommendations included the following: "PAL encourages parent observation during instructional opportunities to learn instructional techniques. PAL encourages parent to attend training opportunities offered by [PAL]." (Exhibit 10.)

4. In January 2012, NLACRC began funding 10 hours per month of social skills training for Claimant through PAL.

5(a). On July 2, 2012, PAL issued a Social Skills Progress Report noting that Claimant had met the goals of maintaining appropriate proximity with peers and adults and engaging in peer or adult preferred activity for 10 minutes. He continued to require assistance with the remaining eight identified goals consisting of the following: introducing himself with an appropriate greeting while making eye contact; responding to a greeting while making eye contact; taking turns during social games with peers and adults; following the rules when playing games with peers and adults; appropriately reciprocating conversations with same-aged peers and adults; recognizing natural social cues in his environment when playing with typically developing peers; demonstrating good sportsmanship (e.g. saying "good game") after playing an age-appropriate game with same-aged peer; and initiating play with peers.

5(b). The July 2012 progress report included a section entitled "Parent Training Goal Progress" listing three stated goals and the progress toward those goals. The first goal was that "[Claimant's parents] will provide age appropriate peers for [Claimant] to engage with, during his sessions, in their home or community, on 3 occasions per month." PAL noted, "Goal met." (Exhibit 11.)

5(c). PAL recommended continuing the 10 hours per month of social skills training and “encourage[d] parent observation during instructional opportunities to learn instructional techniques.” (Exhibit 11.) PAL’s recommendations included the following: “Upon successful completion of referral concerns, skill acquisition, and successful completion of parent training, PAL will create a comprehensive plan to systematically decrease and terminate services with the intent that [Claimant’s] parents/caregivers will continue to provide instruction and maintenance of [Claimant’s] behavior as needed.” (Exhibit 11.)

6. In a July 12, 2012 IPP Addendum, the following was noted:

Per [the PAL progress] report [Claimant] has made good progress with his social skills goals. . . . Father reports he is satisfied with [Claimant’s] social skills program and the services provided by PAL. Parents have been active participants in [Claimant’s] program and have been scheduling regular play dates for him so that he can have ample opportunities to practice his skills. CSC recommends that parents continue to maintain their high level of participation, seek out opportunities for social interaction, and follow through with techniques outside of sessions to promote generalization.

(Exhibit 4.)

7(a). In February 2014, PAL issued progress reports noting that Claimant had met the following goals: maintaining appropriate proximity with peers and adults; engaging in peer or adult preferred activity for 10 minutes; introducing himself with an appropriate greeting while making eye contact; responding to a greeting while making eye contact; recognizing natural social cues in his environment when playing with

typically developing peers; and initiating play with adults. He had also made progress toward the following still unmet goals: taking turns during social games with an adult; following the rules in a game with an adult; appropriately reciprocating conversations with an adult; and demonstrating good sportsmanship. However, PAL also noted that some goals were “more difficult” for Claimant or were newly identified goals and that “PAL staff will contrive more opportunities for [Claimant] to be able to make progress.” (Exhibit 13.) The unmet goals included: taking turns during social games with peers; following the rules when playing games with peers; appropriately reciprocating conversations with same-aged peers; demonstrating good sportsmanship (e.g. saying “good game”) after playing an age-appropriate game with same-aged peer; initiating play with peers; initiating a conversation; and remaining engaged in a conversation for 10 turns.

7(b). In one of its February 2014 reports, PAL noted that the previously-met parent training goal of “provid[ing] age appropriate peers for [Claimant] to engage with, during his sessions, in their home or community, on 3 occasions per month” was now unmet. Additionally, new parent training goals remained unmet; these goals were to “provide opportunities for outdoor games,” and to “provide opportunities to access peers.” (Exhibit 12.)

7(c). In its February 28, 2014 addendum report, PAL noted that the IPP team had recommended Claimant’s exit from the PAL program since he had met many of his goals with PAL staff, although not with peers. PAL also noted that Claimant’s parents “have not provided the opportunity to generalize his goals in the community or with other peers other than his younger sister in the past.” (Exhibit 13.) However, PAL recommended that, “if [Claimant’s parents] commit to providing peers for [Claimant],” his service hours should be increased to 22 hours per month of “social skills instruction within, but not limited to[,] structured home and community based social skills group instruction and/or

home and community based individualized social skills instruction for skill enhancement to ensure the skills that he mastered are generalized to the natural environment and maintained with his family over time.” (Exhibit 13.)

8. NLACRC did not agree with PAL’s recommendation of increased service hours, and denied the increase in hours. NLACRC continued to fund Claimant’s social skills training for 10 hours per month.

9(a). In a June 2014 progress report, PAL noted that Claimant was meeting most of his goals “with PAL staff only.” (Exhibit 14.) PAL summarized Claimant’s progress as follows:

During this last authorization PAL staff contrives opportunities for group sessions and community based sessions in order to generalize social game playing and conversations. However, PAL encountered some difficulty when working with [Claimant’s parents], as they have not provided the opportunities needed to generalize his goals in the community or with same aged peers. [Claimant] has met the criterion for most of his goals with PAL staff However, he continues to struggle with initiating conversation with peers and adults, initiating play with peers, following the rules with peers, good sportsmanship and appropriately expressing his frustration and aggression.

(Exhibit 14.)

9(b). PAL recommended that Claimant be exited from the program, noting that his exit had been proposed in February 2014, “unless [Claimant’s] parents committed to providing peers [Claimant’s] age in the home and in the community to work on

generalizing his goals in the community or with same aged peers.” (Exhibit 14.)

10. In an October 2014 progress report, PAL noted, “[Claimant] has met the criterion for most of his goals with PAL staff only at this time. [Claimant] has recently started to participate in group sessions while in the community in order to generalize social game playing, conversations, taking turns appropriately, and maintaining appropriate proximity while engaging with others. . . . [Claimant] is making some observable progress toward his goals.” (Exhibit 15.) Regarding the progress of parent training goals, PAL noted that the goals of providing age appropriate peers for Claimant’s sessions and providing opportunities for outdoor games had not been met. PAL again recommended increasing Claimant’s service hours to 22 hours per month.

11. In November 2014, NLACRC staff, PAL staff and Claimant’s parents met in an effort resolve Claimant’s parents’ appeal of NLACRC’s denial of increased funding for social skills training. At that meeting, NLACRC agreed to begin funding 22 hours of social skills training through PAL. The increased funding was to be effective until February 28, 2015, with the expectation that PAL and Claimant’s parents would collaborate to facilitate “weekly peer to peer interactions during sessions.” (Exhibit 8.) NLACRC noted that it would be reviewing “parent participation and efforts to incorporate more peer opportunities in the community.” (Exhibit 8.) NLACRC provided Claimant’s parents with a list of available social recreation activities.

12(a). On May 1, 2015, PAL issued a progress report noting that Claimant was making observable progress “within most of his social skills program” and that he was “participating in 1 community based group session per week and 1 in home parent/training session per week” in order to generalize his acquired skills. (Exhibit 16.) PAL observed, “Group sessions continue to be beneficial for [Claimant] to generalize his goals while in the community. [He] will make attempts to introduce himself to other peers [and he] has improved on choosing topics for conversations. [Claimant] will stay

within close proximity to the other peer without trying to reach out and grab him.”

(Exhibit 16.) PAL recommended that Claimant continue receiving 22 hour per month of social skills instruction.

12(b). However, PAL also noted problems with parent participation as follows:

During this authorization period, [Claimant’s mother] was 20-25 minutes late to 6 out of the 10 group sessions which is 60% of the time. As a result not all goals were targeted during session. On several occasions [Claimant’s mother] did not actively observe group sessions and instead chose to leave to take her daughter somewhere and come back when session was almost done. During individual sessions with [Claimant], mom was observed becoming easily distracted with her daughter or other house issues and would get up in the middle of session for several minutes at a time to attend to the issues. PAL continues to recommend that a meeting be set up between the family, PAL clinical team and [NLACRC] to ensure the services [are] still at high value to the family.

(Exhibit 16.)

13. On May 5, 2015, a meeting was held between PAL staff, NLACRC staff and Claimant’s father via conference call. The parties agreed that Claimant’s social skills program would continue through August 31, 2015, “for skill enhancement to ensure the skills are generalized to the natural environment and maintained with his family outside of sessions.” (Exhibit 9.) The family was prompted to take advantage of the summer break to find community activities in which Claimant could participate “for social skills practice via community integration.” (Exhibit 9.) The parties also discussed the need for

Claimant to have more exposure to peers his age, and the CSC again provided Claimant's parents with a list of mainstream activities in their home area for social skills generalization. NLACRC noted in a May 11, 2015 IPP addendum that "consideration of program continuation past August 31, 2015 is incumbent upon consistent parent participation and skill generalization in all environments over the course of the next authorization period." (Exhibit 9.)

14. On August 25, 2015, PAL issued an Exit Report recommending that Claimant be exited from its program. This recommendation was based on continued lack of parental involvement and failure to provide group socialization opportunities for generalization of Claimant's skills.

15. Based on the findings and recommendations in the PAL reports (which indicate that Claimant had met most of his goals with the adults on the PAL staff, but that his progress toward his goals with same-age peers had been stalled through lack of parental participation and their failure to provide group opportunities for him to generalize his skills), the Service Agency decided to terminate funding of the 22 hours of social skills training for Claimant. (Exhibit 1.)

16. In a Notice of Proposed Action (NOPA) dated August 31, 2015, NLACRC informed Claimant's parents that it was terminating funding for 22 hours per month of social skills training for Claimant. The stated reason for the NOPA was "No assessed need to continue service." (Exhibit 1.)

17. Claimant's father filed a Fair Hearing Request on Claimant's behalf.

18(a). At the Fair Hearing, Claimant's father disagreed with PAL's recommendation that Claimant exit from the program, arguing that Claimant had not met all of his goals. Claimant had met a limited portion of his goals with PAL staff only, but had not done so in a group setting with peers. Claimant's father pointed out that Claimant is still not ready to participate in a group setting and needs to be trained on

how to do so. Claimant has some basic capability, such as eye contact and maintaining appropriate distance, but he is still unable to read social cues or communicate with people at a social gathering. Claimant's father argued that discontinuation of the program would damage all of the work Claimant has done.

18(b). Despite arguing for continuation of the PAL program, Claimant's father also stated that the PAL program was not the appropriate program for Claimant, and that he "objected to the whole social skills program." He argued that if the identified goals "were good," Claimant would be able to socialize at this point. Claimant's father also maintained that PAL, not Claimant's parents, were responsible for providing Claimant with peers with whom to socialize, and that PAL failed to do so.

19(a). Service Agency Consumer Services Supervisor, Sarah Yap, testified credibly in support of discontinuing Claimant's participation in the PAL program. She noted that the social skills training sessions were intended to teach Claimant basic skills with PAL staff, but that Claimant was expected to practice what he learned in other environments in order to generalize his new skills in more natural settings with same-age peers. Broadening the application of learned skills into group settings is the essence of socialization.

19(b). Since the inception of the PAL services, Claimant's family was encouraged to find opportunities for Claimant to practice and generalize his skills while engaging in activities he enjoys. The PAL program design allows for greater flexibility to facilitate socialization within activities Claimant is already engaging or peers to whom he has already been exposed.

19(c). As part of the service delivery for someone Claimant's age, NLACRC must consider, and will expect parents to contribute, what is normally parental responsibility for typically developing children. In order to promote socialization, parents need to provide opportunities to allow their child to engage and interact with other children. As

part of PAL's parent training, Claimant's parents were expected to learn how to seek out socialization opportunities for Claimant so that he could continue to practice his skills. It was not PAL's responsibility to bring groups or peers to Claimant in order for him to practice his learned skills. However, they did, on their own, try to incorporate another peer into Claimant's training. Nevertheless, this extra effort by PAL did not absolve the family of its responsibility to provide peers with whom Claimant could interact.

19(d). Based on PAL's reports, the Service Agency believes that Claimant has met his goals on an individual basis with the PAL staff, but that he still needs to work on practicing and expanding his skills outside of individual sessions. The Service Agency understands that Claimant will continue to mature and that his skills and needs will continue to be assessed.

20. Maureen Schwartz, Associate Clinical Program Coordinator for PAL, testified credibly at the Fair Hearing, and her testimony confirmed the findings and recommendations in PAL's reports. She noted that it was not PAL's responsibility to arrange play dates for Claimant and that PAL did not have a group service within its program. Nevertheless, to help with Claimant's generalization outside of sessions, PAL facilitated some group sessions for Claimant. Ms. Schwartz opined that Claimant should be exited from the program because he has met his goals and continues to maintain significant progress in the social skills program with PAL staff. Her clinical recommendation for Claimant is that he should continue generalizing his learned social skills out in the community in social group settings, which PAL does not provide. Her recommendation includes Claimant finding another program to provide such group services.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal of the Service Agency's discontinuation of funding for social skills training provided by Passport to Adaptive

Living. (Factual Findings 1 through 20.)

2. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (Welf. & Inst. Code, § 4502, subd. (b)(1); and “maximize opportunities and choices for living, working, learning and recreating in the community” (Welf. & Inst. Code, § 4640.7, subd. (a).).

3. A service agency “shall give highest preference to those services and supports . . . that allow all consumers to interact with persons without disabilities in positive, meaningful ways.” (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. Pursuant to Welfare and Institutions Code section 4512, subdivision (b), the “services and supports” which may be provided to a consumer include “training, education, . . . behavior training and behavior modification programs, . . . [and] social skills training”

5. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.)

6. In attempting to discontinue the social skills training, NLACRC bears the burden of proving, by a preponderance of the evidence, that the services are no longer effective in meeting Claimant’s goals. (See, Welf. & Inst. Code, §§ 4646, 4646.5 and 4648.) NLACRC has met this burden.

7. Welfare and Institutions Code section 4648, subdivision (a)(7), provides:
(7) No service or support . . . shall be continued unless the consumer

... is satisfied and the regional center and the consumer ... agree that planned services and supports have been provided, and reasonable progress toward objectives have been made. (Emphasis added.)

8. NLACRC has established, by a preponderance of the evidence, that the individual goals of the social skill training have been met to the extent that PAL can provide them and, therefore, there can be no further “reasonable progress toward the objectives.” Additionally, regarding the generalization of Claimant’s skills to a social group setting and the unmet parental goals of providing Claimant group socialization opportunities, NLACRC has established, by a preponderance of the evidence, that these goals have not been met and that no “reasonable progress toward these objectives” has been made because Claimant’s parents’ are unable or unwilling to provide socialization opportunities. Given the foregoing, NLACRC’s discontinuation of funding 22 hours of social skills training for Claimant through PAL is appropriate.

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ORDERS

1. North Los Angeles County Regional Center's discontinuation of funding 22 hours of social skills training for Claimant is upheld.
2. Claimant's appeal is denied.

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.

DATED: November 20, 2015

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings