

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2015120750

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 4, 2016, in San Leandro, California.

Claimant's mother and father represented Claimant, who was present.

Mary Dugan, Fair Hearing and Mediation Specialist, represented Regional Center of the East Bay (RCEB).

Claimant offered a DVD in evidence, which was marked as Exhibit K. RCEB retained Exhibit K to make a copy for its records, and then forwarded the original to OAH. It was received on April 11, 2016. RCEB did not anticipate objecting to Exhibit K's submission, but after watching it, did object. The ruling on the objection is set forth below.

The record closed on April 11, 2016.

ISSUE

Whether RCEB should fund additional time for Claimant in a specialized vocational program.

RULING ON EVIDENTIARY OBJECTION

Claimant offered Exhibit K, which is a DVD produced by various program participants that describes the program and their desire to attend more sessions. Although Claimant is listed in the production credits, he does not have a speaking role. RCEB objects to the admission of Exhibit K, essentially on relevance grounds. The information about the content of the program is relevant; the participants' desire to continue is not. The irrelevant portions will not be considered. The objection is overruled and Exhibit K is admitted.

FACTUAL FINDINGS

1. Claimant, born May 16, 1986, is currently 29 years old. He receives services from RCEB pursuant to developmental delays and a seizure disorder in accordance with his Individual Program Plan (IPP). Claimant lives with his mother and father at present, but according to his IPP is looking forward to working in the community and living in an apartment in the future.

2. Claimant graduated from high school and completed a transition program, but was having difficulty deciding what to do next. In 2013, Claimant learned of a new vocational program in the field of film and media production. He applied, was accepted, and attended the program from May 6, 2013, until May 22, 2015. During breaks, he attended the Go Group day program.

3. The record contains several different titles for the vocational program. A newspaper article identifies it as The Practical Film & Media Workshop, which resulted from a partnership between Inclusion Films and "Futures Explored, a nonprofit that

provides life-skills and work-related training to adults with developmental disabilities.” The application Claimant used is entitled Futures Explored Film Project-Application. A report concerning Claimant’s progress is entitled Futures Explored, Inc., Practical Film and Media Workshop. In a comprehensive description of the program, RCEB identifies it as the Inclusion Films Practical Film Workshop, and in various documents as the Film and Media Workshop. It will be identified in this decision as the Film Workshop.

4. RCEB’s program design document describes the Film Workshop as

A vocational program designed to provide adults with developmental disabilities an initial entry-level working knowledge of film production and related industries and then build those skills over subsequent workshops. The curriculum moves beyond classroom instruction and offers the individual real-world practical experience. By combining film history and theory with the “studio that teaches” experience, the goal is to prepare the individual to make entertaining, commercially viable and purposeful films.

The Film Workshop consists of four semester segments, with 25 to 30 hours per week of instruction. The program design document states that a semester segment “can be repeated no more than 4 times without Regional Center approval.”

5. Claimant’s most recent IPP document is dated May 18, 2015. It notes that Claimant “has thrived” at the Film Workshop and notes that he would like to re-join it if approved by RCEB. The IPP identifies as a goal that Claimant “will develop his social and vocational skills through 5/31/18.” The IPP communicates Claimant’s desire to re-join the Film Workshop, but the plan is noted as “RCEB will fund the Go program which includes transportation via Go program 5 days per week from 6/01/15 – 5/31/18.”

6. On September 17, 2015, Claimant's planning team met to discuss his request to continue to attend the Film Workshop. A letter from Gina Rose Sass, Case Management Supervisor, dated October 9, 2015, states that "RCEB is unable to meet your request," and points to an attached Notice of Proposed Action (NOPA) for the rationale and authority underlying the decision. Sass also wrote that allowing Claimant to attend for longer than "the 2 year program design for specialized program would be essentially allowing Film and Media Workshop to operate as a day program, which they are not licensed to do."

7. The NOPA states that RCEB is denying Claimant's request to continue to attend the program "because he has already completed the 2 years, 4 session maximum per service plan of specialized program." As authority, it cites two statutory provisions and two regulation sections. (All statutory references are to the Welfare and Institutions Code, which contains the Lanterman Developmental Disabilities Services Act, beginning at section 4500.) The first citation states:

No service or support provided by any agency or individual 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. (§ 4648, subd. (a)(7).)

It is unclear how this provision is relevant here. There is no evidence that planned services were not provided, and no contention that Claimant did not make progress in the Film Workshop; to the contrary. It is undisputed that Claimant was highly engaged, had good attendance, and learned a great deal. The second citation states:

A regional center may terminate payments for services, and may terminate its contract or authorization . . . if it determines that the provider has not complied with provisions of its contract or authorization with the regional center or with applicable state laws and regulations (§ 4648.1, subd. (d).)

No evidence was presented that the Film Workshop did not comply with its contract with RCEB. It appears that RCEB contends that this section was violated in that the Film Workshop did not comply with applicable regulations that it cites. But California Code of Regulations, title 17, section 5671, subdivision (a)-(c), does not exist. There is a regulation section 56711, with subdivisions (a) and (b), in title 17. It concerns when regional centers may waive or modify program service standards. But it is unclear how that regulation would apply to the situation here.

RCEB also cites title 22, section 80001, subdivision (c)(2). Division 6, where section 80001 is located, contains the requirements for licensing community care facilities. Regulation section 80001 contains a long list of definitions of terms used throughout subsequent regulations. Subdivision (c)(2) defines the term "capacity" ("the maximum number of persons authorized to be provided care and supervision at any one time in any licensed facility").

8. In addition to the authorities cited in the NOPA, RCEB staff testified that the law prohibits further funding of the Film Workshop. But no particular statute or regulation was identified in the testimony, and the citations in the NOPA do not support RCEB's position.

9. Claimant's parents, who are his conservators, filed a Fair Hearing Request. As a reason, they wrote that Claimant

excelled in the Film and Media Workshop. Although the program was only approved for 4 semesters, he still has much to learn and will greatly benefit from the formal instruction provided by the program. He would like to continue in the program and work toward employment in the film industry.

10. In a letter dated December 31, 2015, Dan Seda, Case Management Supervisor, wrote Claimant "to communicate [his] decision to uphold the Inter-Disciplinary Team (IDT) meeting's decision to deny" Claimant's request to fund further participation in the Film Workshop. This letter cites an additional reason for denial: that continued attendance would violate a contract with the program that specifies a two-year enrollment period. Seda also suggests that Claimant consider other options and encourages him to revisit his decision not to take anti-anxiety medication daily. Finally, he concludes:

Please consider having your medication re-assessed and couple behavioral interventions (e.g. regular counseling) with day program activity that is modified to include your interests (i.e. film).

Claimant disagreed with Seda's decision and this hearing followed.

11. As first stated above, it is undisputed that Claimant experienced great success at the Film Workshop. Hester Wagner is the Director. She described Claimant's progress in a letter, writing that Claimant "excelled in this program." Among many different skills, he

learned to independently run sound and was paid to be a sound assistant on a number of jobs. When [Claimant] was working, he was focused, professional and reliable. It is my belief that with continued education and training, he would be able to continue to work in supported environments on film related jobs.

Wagner wrote that four semesters is not enough time for many of the students to be able to move into employment in the industry. She points out that four semesters is less time than many students without disabilities receive in comparable educational settings. In Claimant's case, continuing would have allowed him more repetition and opportunities to cement what he had learned in a strong foundation. Wagner notes that

having a developmental disability does not mean an individual is not capable of achieving or learning these marketable skills; only that the time it takes can be longer and the importance of continued repetition and review higher.

12. An Annual Report of Claimant's progress following two years in the Film Workshop described his attendance as excellent. It notes that his speech and spatial awareness are barriers to employment, but that improvement was seen in those areas. The author opined that Claimant "would benefit from a few more semesters"

13. Claimant's mother testified that Claimant, although challenged, is very social and "high functioning." He was attending a day program and not happy with it when he heard about the Film Workshop and was "over the moon" when he was accepted. Claimant was one of the first students to attend and complete four semesters. Among the results was a lengthening of his attention span and ability to concentrate.

The first time he was charged with filming, the former director had hoped for five minutes of his attention. After three and one-half hours, she told him to take a break.

Although the design is for 25 to 30 hours weekly, Claimant often spent more than 30 hours. Given production schedules, he sometimes spent nights and weekends working. Claimant was committed to attending, and was absent only one day. Claimant's parents are convinced that additional instruction time will further Claimant's realistic goal of becoming employed in the film and media industry.

In response to Case Management Seda's recommendations, Claimant's parents strongly disagree that Claimant needs regular anxiety medication or counseling. They assert that what he needs is a strong educational opportunity such as is provided by the Film Workshop.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

"[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers." (§ 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place: "A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP]." (§ 4648, subd. (a)(3).)

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects. Regional centers are specifically charged to provide services in the "most cost-effective and beneficial manner" (§ 4685, subd. (c)(3)) and with "the maximum cost-effectiveness possible" (§ 4640.7, subd. (b)).

5. At hearing, RCEB stated that "the law" does not allow it to fund more than four semesters of the Film Workshop. In connection with the assertion, it stated that to fund additional time in the Film Workshop would make it into a day program, which can be funded indefinitely, but must adhere to licensing requirements that apply to day programs. But the evidence did not demonstrate that denial of Claimant's request for additional time in the Film Workshop is required under the law or regulation, and it is clearly not a day program; it is a vocational program. It is concluded that RCEB's refusal to approve additional semesters of the Film Workshop is not supported by the evidence or referenced statutes or regulations. Claimant has shown he will benefit from the additional instruction and such is consistent with his IPP goals. Accordingly, Claimant's appeal will be granted and RCEB ordered to fund two additional semesters in the Film Workshop for Claimant.

ORDER

Claimant's appeal is granted. RCEB shall pay for Claimant to attend two additional semesters of the Film Workshop.

DATED: April 12, 2016

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.