

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

OAH Case No. 2016020124

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 19, 2016, in Los Angeles, California.

Claimant¹ was present and was represented by his mother (Mother).

Jacob Romero, Fair Hearing Coordinator (FHC Romero), represented the Eastern Los Angeles Regional Center (ELARC, or Service Agency).

A certified interpreter was present to provide Spanish-English interpreting services, but Claimant and Mother, who are both fluent in English, declined to use the interpreter.

Evidence was presented, argument was heard, and the parties submitted the matter for decision on May 19, 2016.

¹ Claimant's identity, and that of his mother, is not disclosed to preserve his confidentiality.

ISSUES

Claimant is appealing ELARC's denial of his request for reimbursement of funding for personal assistance services (PAS) necessary to support him in his pursuit of a higher education at East Los Angeles College (college). ELARC contends that it properly denied funding because the documentation Claimant provided was insufficient to substantiate payments made for the services.

FACTUAL FINDINGS

1. Claimant is a 23-year-old male with developmental disabilities who has been attending college with the help of PAS funded by ELARC since 2012. The parties agree that one of Claimant's primary goals is to attend college and complete a college education. The parties also do not dispute the fact that Claimant requires PAS in order to attend college, nor do they dispute whether he attended college² during the months and years in question, or that funding for PAS in the amount of 90 hours per month, reflected in his individual program plan (IPP), is appropriate. ELARC reimbursed Mother for some of the PAS provided, but not for certain months and years. Some reimbursement disputes that led to the fair-hearing request were resolved prior to the fair hearing, and are referred to in order to provide Mother with clarity, as she testified that she has become disoriented by the reimbursement process and is unsure of the results. Other requests for reimbursement remained unresolved between the parties. The disputes are as follows.

2. January 2013:

Mother submitted a check for \$180 made out to Mr. Avalos for PAS in January 2013. At the fair hearing, ELARC provided evidence that it already had reimbursed

² Claimant is now attending the University of California at Riverside.

Mother for this expense.

September 2013 through December 2013:

3(a). ELARC did not reimburse Mother for \$383 in PAS expenses from September 2013 through December 2013, for services provided by personal assistant Miguel Avalos. ELARC denied reimbursement because no specific information was provided detailing the hours spent and when the services were actually provided. ELARC did not dispute that Mr. Avalos had provided the PAS, or that the dollar amount for the services was appropriate. Mother provided copies of canceled checks prior to the fair hearing, and on April 20, 2016, ELARC reimbursed Mother for these expenses.

3(b). Mother submitted a copy of a one-page receipt for a total of \$3,545 she paid in cash to Lucy Zagal for four months of PAS provided to Claimant from September 2013 through December 2013. Mother paid Ms. Zagal, a student who had no bank account, in cash at Ms. Zagal's request. ELARC did not dispute that Ms. Zagal provided the PAS, or that the dollar amount for the services was appropriate. ELARC denied reimbursement because no specific information was provided detailing the hours spent and the specific dates when the services were actually provided.

4. January 2014:

ELARC did not reimburse Mother for PAS expenses for January 2014. Mother did not provide ELARC with documentation to show she had made payment to a PAS provider for those services, but later provided copies of checks she had paid to Mr. Avalos. Prior to the fair hearing, ELARC paid mother \$540 in reimbursement for these expenses.

5. February 2014 through July 2014:

Mother contended ELARC did not reimburse her for PAS provided from February 2014 through July 2014. However, an ELARC Purchase of Services (POS) document Mother offered in evidence shows ELARC paid her \$495 per month for February through

June 2014, and \$468 in reimbursement for July 2014 for PAS services. (Exhibit B.)

6. August 2014:

Mother contended ELARC did not reimburse her for PAS provided in August 2014. However, an ELARC POS document Mother offered in evidence shows ELARC paid her \$468 in reimbursement for that month. (Exhibit B.)

7. September 2014:

ELARC did not reimburse Mother for PAS expenses for September 2014. Mother did not provide ELARC with documentation to show she had made payment to a PAS provider.

8. October 2014:

Mother contended ELARC did not reimburse her for PAS provided in October 2014. However, an ELARC POS document Mother offered in evidence shows ELARC paid her \$468 in reimbursement for that month. (Exhibit B.)

9. January 2015 through June 2015:

ELARC did not reimburse Mother for PAS expenses for January through June 2015. For this time period, Mother provided receipts signed by Mr. Avalos and dated January 15, 22, and 29.). At the fair hearing, ELARC provided evidence showing that in April 2016, it reimbursed Mother for these PAS expenses.

REMAINING DISPUTED REIMBURSEMENT REQUESTS

10. As a result of ELARC's recent reimbursement payments to Mother, the number of non-reimbursed PAS expenses still in dispute was reduced to: September through December 2013, totaling \$3545; and September 2014, for an undetermined total.

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ADDITIONAL EVIDENCE

11. Mother provided complete college transcripts showing Claimant's year-round, full-time college enrollment and attendance, with passing grades in all of the courses he took, from January 2012 through June 2015. The college winter sessions Claimant attended lasted one month and one week; the spring sessions lasted four months; the summer sessions lasted two and one-half months; and the fall sessions lasted approximately three and one-half months. Thus, for each calendar year, Claimant spent approximately eleven months and one week enrolled in college. (Exhibit 4.) Mother testified credibly that Claimant received PAS at all times he attended college.

12(a). Mother presented copies of emails between herself and ELARC's prior service coordinator, Minerva Salcedo, regarding ELARC's requirements for documentation in order to reimburse Mother for PAS expenses. On November 25, 2014, Ms. Salcedo informed Mother via email that Mother would have to provide copies of social security cards for each personal assistant, copies of Mother's personal income tax returns, and copies of W9 forms.

12(b). At the fair hearing, the parties stipulated that Mother provided to ELARC copies of her 2013, 2014, and 2015 personal income tax returns. It was further stipulated that Mother provided W9 forms for three PAS employees,³ and a copy of Mr. Avalos's driver's license, to Ms. Salcedo in February 2015.

12(c). A pending audit meeting was planned but was not conducted before Ms. Salcedo stopped working on Claimant's case.⁴ Mother understood the purpose of the

³ The other two employees who provided PAS to Claimant were Nayers Sizood and Ms. Zagal.

⁴ ELARC did not provide evidence as to whether Ms. Salcedo was replaced by another case coordinator.

audit to be an opportunity for her and ELARC to resolve any issues regarding reimbursement for PAS expenses. The emails between Mother and Ms. Salcedo showed Mother was continuously available for the audit meeting. Mother was disappointed that there was no audit because she had been frustrated for years with various requests and requirements ELARC had made Mother meet prior to reimbursing her for the PAS expenses.

13. On cross-examination, ELARC asked Mother if she had entered into a services contract with ELARC for the PAS services for which she was seeking reimbursement. Mother admitted she had not entered into such a contract.

14. Ms. Salcedo did not testify on ELARC's behalf.

15. ELARC provided documentation, in the form of invoice reports, of various reimbursement payments it had made to Mother based on PAS expenses for January 2013 through August 2013, and February 2014 through December 2014. (Exhibit 5.)

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. Claimant bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

APPLICABLE STATUTORY LAW

2. Welfare and Institutions Code section 4646 states in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable

and healthy environments. It is the further intent of the Legislature 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.

- (b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents . . . shall have the opportunity to actively participate in the development of the plan.

[11] . . . [11]

- (d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents . . . at the program plan meeting.

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3. Welfare and Institutions Code section 4646.4 states in part:

- (a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[11] . . . [11]

- (c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

4. Welfare and Institutions Code section 4646.5 states in part:
- (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:
- (1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.

[¶] . . . [¶]

5. Welfare and Institutions Code section 4646.5 states in part:
- (a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:
- (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.
- (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] . . . [¶]

6. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

[¶] . . . [¶]

(a)(3)(B). A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.

[¶] . . . [¶]

ANALYSIS

7. As noted above, Welfare and Institutions Code section 4648, subdivision (a)(3)(B), provides that regional centers may reimburse individuals for services under a variety of circumstances and in particular, if an individual has entered into a contract with the regional center and is in compliance with the contract. In this case, ELARC elicited an admission from Mother that she had not signed a contract with ELARC for reimbursement of PAS. However, the language of that statute indicates that the regional center should prepare such a contract and set forth its contracting requirements. In turn, the individual is expected to comply with those requirements. Because ELARC did not produce a contract at the fair hearing, it is reasonable to infer there was no contract between ELARC and Mother regarding reimbursement for PAS.

8. The lack of a contract makes the issue of reimbursement, and Mother's attempted compliance with ELARC's demands, difficult to assess because there were no set parameters for reimbursement. The evidence showed a disparate history of communications and documentation between Mother and ELARC on the issue of

reimbursement, both in general and in reference to specific monthly expenses Mother incurred for PAS. Mother consistently attempted compliance. She was in constant communication with the previously assigned service coordinator. Mother repeatedly made herself available to meet regarding documentation and accounting issues related to Claimant's care, submitting substantial tax, employment, and other documentation upon the Service Agency's request. On the other hand, ELARC did not provide the audit meeting for Mother, who was anticipating such a meeting to help clarify the issues surrounding reimbursement. It authorized reimbursement payments to Mother based on her submission of copies of checks she had written to PAS providers, yet it rejected payment when Mother provided receipts for cash she had paid to two different providers. There was no evidence to suggest that an ELARC policy regarding reimbursement for cash payments was ever made clear for Mother to follow. Although ELARC was responsible for establishing a framework for invoicing and reimbursement, no framework or set guidelines were put in place.

9. Welfare and Institutions Code section 4646 requires regional centers 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. With this in mind, ELARC's refusal to reimburse Mother is contrary to Claimant's primary goal of completing a college education. This is an unusual result because ELARC does not dispute the legitimacy of PAS for Claimant, as Claimant requires PAS to attend college. At the fair hearing ELARC also did not contest whether the PAS in question was actually provided, nor did it take issue with the dollar-amounts claimed. In fact, Claimant's college transcripts showed he attended college nearly year-round during the time-period Mother is seeking reimbursement for PAS. ELARC's dispute over reimbursement instead centers on the extent of verification Mother provided for particular payments

she made to PAS providers. Because the PAS is both vital to Claimant and was actually provided, ELARC's refusal to reimburse Mother for these services defeats the mandate that ELARC should be effective in meeting Claimant's goals and preferences.

10. Claimant met his burden of proof in his appeal regarding reimbursement for PAS services provided by Lucy Zagal, as set forth in Factual Findings 1, 3(b), and 11, and Legal Conclusions 7 through 9. These services were necessary and ELARC did not contest whether they were provided, or their actual cost. There was no evidence that the Service Agency ever informed Mother of a reimbursement policy regarding cash payments for services. Under all of these circumstances, ELARC's refusal to reimburse Mother for the cost of these services was unreasonable.

11. Claimant did not meet his burden of proof in his appeal regarding reimbursement of PAS services provided to Claimant in September 2014. Mother submitted no evidence that Claimant incurred this expense, as set forth in Factual Finding 7.

ORDER

Claimant's appeal is granted as to the request for reimbursement for PAS expenses incurred from September 2013 through December 2013. The Service Agency shall reimburse Claimant the sum of \$3,545 within thirty days of this order.

Within 30 days of this order, the Service Agency shall provide Mother with a written statement of its policy and procedure regarding the reimbursement process for services paid for in cash.

Claimant's appeal requesting reimbursement for PAS expenses incurred in September 2014 is denied.

Dated: June 2, 2016

JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.