

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

v.

HARBOR

REGIONAL CENTER,

Service Agency.

OAH Case No. 2016020673

DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, heard this matter on June 7, 2016, in Torrance, California.

Claimant,¹ who was present, was represented by her father (father). Claimant's mother (mother) was also present.

Gigi Thompson, Fair Hearing Coordinator (FHC Thompson), represented the Harbor Regional Center (HRC, or service agency).

Evidence was presented and argument was heard. The matter was submitted for decision on June 7, 2016.

¹ Claimant's and her parents' identities are not disclosed to preserve their confidentiality.

ISSUES

Should HRC be required to fund claimant's tuition at Exceptional Minds beginning in September 2016?

Should HRC reimburse claimant's parents \$1,100 for a two-week course entitled Flash Animation, and \$110 for two Bridge Program classes, which claimant attended at Exceptional Minds in 2015?

FACTUAL FINDINGS

1. Claimant is a 22-year-old female and HRC consumer based on her diagnosis of autism spectrum disorder in 2010 at age 16. Claimant, who has no siblings and lives at home with her parents, is intelligent and artistically inclined. She has a particularly skilled hand for drawing, cartoons, and animation. Her autism diagnosis was revealed after claimant had a difficult time integrating socially in high school. Her parents knew she was enduring mistreatment from peers, and even teachers, as a result, but they did not know why. Once claimant was diagnosed, her challenges were more identifiable.

2. Claimant's parents are college-educated, so when claimant graduated from high school, they assumed she would also pursue a college education. They enrolled her in the College 2 Career program, but claimant would have had to live away from home and was not ready for that challenge. She attended Long Beach City College (LBCC), but received scant assistance from the school's Department of Students with Disabilities and had difficulty recording class lectures and managing the details of her course work. She attempted to commute to and from school using public transportation but had trouble navigating bus routes alone. Her LBCC experience became arduous and frustrating. Her parents decided claimant should take a break from her studies to consider other educational options.

3. For years, claimant's parents had little interaction with HRC and felt the service agency was not responsive to their daughter's needs. From April 2013 to December 2014, HRC had no contact with claimant or her parents. But in early 2015, after claimant attended LBCC, they enrolled claimant in an HRC job-training program, which she enjoyed and participated in fully. However, the program manager informed mother that claimant was not ready for employment. Claimant's parents felt the manager's position was vague and asked HRC's assigned case coordinator to follow up with more specific objectives to suit claimant's employment goals, but they received no further input from HRC.

4. Claimant's parents presented as passionate advocates for their daughter. Claimant attended the hearing with a service dog by her side. The service dog is a constant companion that also helps her deal more comfortably with new social situations. It came at a high cost, which her parents absorbed completely.

5. In 2015 claimant's parents learned about Exceptional Minds, a non-profit vocational school that prepares young adults with autism for careers in digital animation and visual effects, either in the entertainment industry or at the school's own on-site animation studio. Located in Sherman Oaks, California, Exceptional Minds describes itself as "a dynamic answer to the high unemployment² and social isolation characteristic of today's young adults with [autism spectrum disorder] as they age out of the public school system." (Exhibit E.) Its three-year, full-time course curriculum focuses on instruction in visual effects, digital animation, and work readiness. Students learn sought-after, specialized technical skills and obtain software certifications that meet industry standards. Exceptional Minds has a strong connection with the entertainment

² According to the Exceptional Minds web site, 90 percent of adults with autism are unemployed or under-employed. (Exhibit E.)

industry and offers instruction from film and television professionals. Its staff includes counselors who support students in developing the problem-solving and social skills necessary to become self-sufficient adults. Its students have worked on feature films and television shows, including *Dawn of the Planet of the Apes*, *American Hustle*, *Ant-Man*, *The Hunger Games*, and *Sesame Street*. Exceptional Minds is a unique success in the vocational training and instruction of autistic teens and young adults. In 2011, its first year of operation, its incoming class totaled nine students. By 2015, its spring class enrollment was over 160. (Exhibit E.)

6. Claimant had a completely positive experience at Exceptional Minds' two-week summer course in August 2015, and she was accepted into the Exceptional Minds fall 2016 full-time program. Her parents were excited that after years of searching for the right education and career path, claimant had found what appeared to be a perfect match for her abilities, needs, and interests. Claimant now wishes to pursue a vocation in media arts and gain employment in the entertainment industry. HRC agrees that Exceptional Minds is well suited to Claimant's needs and goals as reflected in her Individual Program Plan. HRC does not dispute the cost-effectiveness of Exceptional Minds. HRC recently visited the campus and was impressed with every aspect of its program. Parents contend that if Exceptional Minds achieves its overriding objective, which is to train claimant for a lifelong career in a field in which she can excel, it will be a far more cost-effective result for HRC in the long run, as claimant will be employed and self-sufficient and, hence, will have less need for HRC-funded services.

7. HRC's only objection to claimant's request that it fund the tuition for her to attend Exceptional Minds' full-time program is that regional-center regulations require HRC to fund services through approved vendors, and Exceptional Minds is not a

vendor of HRC or the service agency in its geographical area.³ HRC contends that these regulations, set forth in California Code of Regulations, title 17, sections 50601 through 50612, prohibit HRC from contracting with Exceptional Minds for services. HRC's Director of Community Services, Colleen Mock, and its Client Services Manager, Hiram Bond, both testified that the Lanterman Act requires regional centers such as HRC to purchase services through authorized vendors, and that HRC funding Exceptional Minds' services is not possible due to Exceptional Minds' non-vendor status.⁴

8. Claimant disagrees with HRC's interpretation of the relevant statutes regarding HRC's ability to fund the services of a non-vendor service provider. Claimant relies on Welfare and Institutions Code section 4648, subdivision (a)(3), which authorizes a regional center to make purchases "pursuant to vendorization or a contract," to contend that HRC may enter into a contract with Exceptional Minds, a non-vendor, for the provision of these services.

9. At the hearing, claimant presented copies of the decisions entered in OAH case number 2012021179, and OAH case number 2015040270, and official notice was taken of these decisions. The service agency presented a copy of the decision entered in OAH case number 2016020644, and official notice was taken of this decision. Because they are not binding as legal precedent, the administrative law judge received these decisions as argument only.

³Exceptional Minds lies within the North Los Angeles County Regional Center's catchment area.

⁴Commendably, HRC made significant efforts to persuade Exceptional Minds to become a vendor in order to accommodate claimant's desire to attend Exceptional Minds, and to resolve the funding issue.

10. Claimant stated that if as a result of this case, HRC is ordered to fund her tuition at Exceptional Minds, she will withdraw her request for reimbursement for the Flash Animation and Bridge Program classes she completed in 2015. (Testimony of father.)

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. and Inst. Code, § 4500 et seq.)⁵ An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established.

THE STANDARD AND BURDEN OF PROOF

2(a). The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.)

2(b). When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, because Claimant seeks service-funding through HRC, she bears the burden of proof by a preponderance of the evidence that she is entitled to the funding. (Evid. Code, §§ 500, 115.) Claimant has met her burden of proof.

APPLICABLE STATUTORY LAW AND ANALYSIS

3(a). Welfare and Institutions Code section 4646 states in part:

⁵All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

(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.

[¶] . . . [¶]

(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.

3(b). 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: [¶] . . . [¶]

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

3(c). 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. [¶] . . . [¶]

3(d). Welfare and Institutions Code section 4501 states in part:

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.... In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation. . [¶] . . . [¶]

3(e). Welfare and Institutions Code section 4869 states in part:

In furtherance of the purposes of this division to make services and supports available to enable persons with developmental disabilities to approximate the pattern of

everyday living available to people without disabilities of the same age, to support the integration of persons with developmental disabilities into the mainstream life of the community, and to bring about more independent, productive, and normal lives for the persons served, it is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities. This policy shall be known as the Employment First Policy.

3(f). Welfare and Institutions Code section 4648, subdivision (a), states in part:

[¶] . . . [¶]

(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. [¶] . . . [¶]

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

¶] . . . [¶]

3(g). The above sections of the Lanterman Act, taken together, effectively mandate that HRC prospectively fund claimant's tuition at Exceptional Minds. After years of struggle, claimant has found a vocational school tailored to her interests and artistic abilities, sensitive to her special needs as an autistic young adult, and focused on the shared goal of optimizing claimant's opportunities for long-term employment. Exceptional Minds' full-time program is also the strong preference of both claimant and her parents, and HRC has confirmed its uniqueness, high quality, and suitability. The program's cost-effectiveness is not in dispute.

3(h). For all these reasons, claimant's participation in Exceptional Minds is the most appropriate delivery of services in this case. Yet, the service agency contends it is unable to purchase services from Exceptional Minds because that service provider is not

a vendor. The issue of whether HRC has a mechanism for funding such services from a non-vendor is addressed as follows.

4(a). 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) A regional center may, **pursuant to vendorization or a contract**, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan. [¶] . . . [¶] (Emphasis added)

4(b). The language of the above statute is unambiguous. "If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Estate of Griswold* (2001) 25 Cal.4th 904, 911.) A plain reading of this provision indicates that the Lanterman Act conferred on regional centers the authority to purchase services or supports from either a vendor or a non-vendor service provider pursuant to a contract. Although HRC established through testimony of its employees that its modus operandi is to purchase services through vendors, there appears to be no prohibition under the Lanterman Act which would bar

HRC from contracting with Exceptional Minds to purchase its services on claimant's behalf.

4(c). In argument, HRC relied on the concept that its regulations set forth in California Code of Regulations, title 17, sections 50601 through 50612, essentially prohibit HRC from contracting with Exceptional Minds for services. This contention overstates the effect of the regulations, which only set forth a structure and process for regional centers to vendorize, and subsequently interact with, vendorized service providers. Although one regulation does define a "service provider" as a person, program, or entity "vendored to provide services to regional center consumers,"⁶ none of the regulations expressly limits or prohibits regional centers from contracting with non-vendors.⁷ Nonetheless, the service agency contends its regulations for vendorization take precedence over the Lanterman Act's authorization for regional centers to contract with non-vendors, based on the principle that in cases of conflict, a regulation validly adopted pursuant to a delegation of authority under a special statute prevails over the terms of a general statute.⁸ Yet here, no direct conflict between the regulations and the Lanterman Act exists, as the regulations do not expressly ban regional centers from contracting with non-vendors.

5. As a result, claimant met her burden of establishing by a preponderance of the evidence that cause exists to order HRC to provide prospective funding for claimant

⁶ See California Code of Regulations, title 17, section 50602, subd. (o).

⁷ See, e.g., California Code of Regulations, title 17, section 50602, subd. (o).

⁸ See *Canteen Corp. v. State Bd. of Equalization* (1985) 174 Cal.App.3d 952, 960.

to attend the Exceptional Minds full-time program from fall 2016 through spring 2019, as set forth in Factual Findings 1-10.

ORDER

Claimant's appeal is granted. The service agency shall provide funding for claimant's tuition at Exceptional Minds from fall 2016 through spring 2019.

Pursuant to claimant's statement that if her above appeal for tuition funding was granted, she would withdraw her appeal for reimbursement of the cost of Exceptional Minds courses taken in 2015, claimant's appeal regarding reimbursement is thereby deemed withdrawn.

Dated: June 17, 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.