

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

C.C.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2016070912

DECISION

This matter was heard before Administrative Law Judge Timothy J. Aspinwall, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on November 11, 2016.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant, who was not present at the hearing, was represented by his mother.<sup>1</sup>

Oral and documentary evidence was received. The record remained open until December 1, 2016, for the parties to submit written closing arguments. OAH received claimant's closing argument, marked for identification as Exhibit N, and ACRC's closing

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<sup>1</sup> Names are not being used for claimant and his parents to protect claimant's privacy.

argument, marked for identification as Exhibit 13. The record was then closed and the matter submitted for decision on December 1, 2016.

## ISSUE

Is ACRC required to pay claimant's parents for a personal attendant (PA) to accompany claimant at various community activities that took place in the summer of 2016?

## FACTUAL FINDINGS

1. Claimant is a nine-year-old boy eligible for ACRC services based on a diagnosis of mild intellectual disability and autism. Claimant has also been diagnosed with epilepsy and has sensory sensitivities to loud noise. Claimant resides with his parents and two younger siblings in the family home in Rocklin.

2. Claimant's ACRC Individual Program Plan (IPP) dated November 9, 2015, states that claimant has challenges with community safety and needs supervision 100 percent of the time. He also requires assistance with daily living skills such as dressing if there are any time constraints and toileting.

3. In approximately March 2016, Claimant's mother requested that ACRC provide funds for PA services to allow claimant to attend summer camp and other activities during the period of July 18 through August 12, 2016, while school was out of session. The activities for which a PA was requested included camp at Vacation Bible School, swimming at a community pool, outings to the Chuck E. Cheese restaurant, musical robots, visiting the Sacramento Children's Museum, and camp at Lifetime Fitness. In March 2016, claimant's mother also requested reimbursement for the purchase of a Buddy Bike (a tandem bicycle with the smaller rider in the front, and the adult in the rear controlling the steering) at a cost of \$1,849.95.

4. By Notice of Proposed Action dated July 6, 2016, ACRC notified claimant's mother that the funding request was denied for the following reasons:

**(1) Request for Personal Attendant Services**

ACRC is supportive of [claimant] participating in recreational opportunities. However, it is the responsibility of parents of a minor child to provide the child care and supervision during recreational activities, just as they would provide all of their minor children care and supervision, whether or not the children had developmental disabilities.

Additionally, some of the activities for which you have requested Personal Attendant services may be taking place during the period during which [claimant's] school district provides extended school year services. As you have not authorized us to review a copy of [claimant's] IEP, we cannot rule out the possibility that [claimant's] school district may be responsible for providing [claimant] with extended school year services ....

Additionally, protective supervision may be available to [claimant] through In Home Supportive Services (IHSS) which could provide care and supervision hours during the planned activities. ... ACRC may not fund Personal Attendant services on the requested dates without insuring that IHSS is exhausted as a generic resource for [claimant's] care and supervision on those dates.

## **(2) Request for reimbursement for Buddy Bike**

You have stated that you purchased the Buddy Bike to: help [claimant] develop transportation independence; to allow him to participate in community outings with his family; and to obtain the reportedly multiple therapeutic benefits of riding a bicycle.

Your decision to purchase the Buddy Bike was made outside the planning team process and without agreement by the regional center. ACRC cannot reimburse families for purchases which are not first agreed upon by the entire planning team as required by the Lanterman Act.

5. Claimant's mother filed a Fair Hearing Request on his behalf, dated July 13, 2016. The Fair Hearing Request did not address ACRC's denial of the request for reimbursement for the cost of a Buddy Bike, which is therefore not considered in this matter. The Fair Hearing Request states, in relevant part, as follows:

I ([claimant's] parent) have requested a Personal Assistant to allow [claimant] to access his community and attend summer camps. Due to his disability [claimant] is a safety hazard, can't use the toilet independently, and needs assistance accessing activities, school including ESY is not in session. [Claimant] is not able to access his community and is being institutionalized in our home by Regional Center.

Regional Center can authorize Personal Assistant hours to allow [claimant] the same access to his community as his non-

disabled peers during breaks in school including Christmas break, Spring break, Summer break.

6. Claimant's mother did not testify at hearing. She did not present evidence that claimant received PA services for any or all of the activities for which a PA was requested, nor was there any evidence that claimant's parents incurred any costs to provide claimant PA services for the requested activities. She presented two witnesses on claimant's behalf – his instructional aide at school, and a behavioral consultant.

7. Jennyfer Garcia serves as claimant's one-on-one instructional aide at school. Claimant is in a third grade general education classroom. Ms. Garcia described her interactions with claimant throughout the school day. Ms. Garcia accompanies claimant the entire school day, except during lunch. Claimant needs prompts and physical assistance throughout the day. For example he needs help to find his chair in the classroom, help going different places in and out of the classroom, and physical prompts to unload his backpack. Claimant takes four or five sensory breaks during each day to prevent overstimulation. He does not use the same restroom as other students because there is too much echoing which causes overstimulation, and because he needs assistance toileting. Claimant eats lunch in a room with four of his peers, not with the other students in the cafeteria. He needs prompts to help him remember to chew, and swallow. Without prompts, claimant would fill his mouth without taking time to properly chew, thus creating a risk of choking. Claimant goes to recess with the rest of his classmates. He needs prompts to help choose an activity, to go straight to that activity, and to ask if he can play. Claimant appears to enjoy games such as football with his classmates. Claimant requires the one-on-one support to be successful in a general education setting.

8. Tessa Hesse is a behavioral consultant who has worked with claimant for approximately four years helping him to develop life skills. Based on her experience working with claimant, she opined that claimant requires 100 percent supervision in the

community because he is so easily stimulated and lacks awareness about how to stay safe. For example, when exiting a vehicle in a parking lot he must be verbally and physically prompted to keep his hand on the car while other kids get out, and to hold hands with an adult. Otherwise, he could quite easily become overstimulated and dart in front of a car, for example. Also, claimant lacks an awareness of how to behave with strangers. When walking through a store, for example, he can become preoccupied with workers and will want to stop and stare or hug them because of his over-excitement. Claimant has made slow and steady progress during the past four years. He works very hard for all of his accomplishments. Claimant enjoys outings, and needs constant practice in the community with one-on-one supervision to stay safe and appropriate.

9. Herman Kothe is a client services manager at ACRC in Roseville. He was involved in reviewing claimant's request for a PA. Mr. Kothe explained that ACRC does not dispute that claimant requires 100 percent supervision. ACRC carefully considered claimant's request for a PA, and also considered whether claimant's parents are capable of meeting his social and recreational needs. ACRC's view is that claimant's family should attend to his social and recreational needs, just as they would for a child without disabilities. ACRC was not presented with any evidence that claimant's family is not able to meet his social or recreational needs, or that a PA is necessary to maintain claimant in the family home.

ACRC explored possible alternatives to a PA, including day care and respite care. Funding through ACRC for day care is available only when both parents are employed outside the home. Claimant's mother is employed in the home, thus ACRC may not fund day care. Respite care is an option, but claimant already receives the statutory maximum of 90 hours per quarter. Finally, ACRC took into account that they are prohibited by statute from funding social or recreational activities, except when there are extraordinary circumstances. ACRC found that claimant did not qualify for an exemption from the

prohibition against funding social or recreational activities. ACRC also reasonably determined they would be similarly prohibited by statute from funding a PA to accompany claimant to social and recreational activities.

## DISCUSSION

10. From the testimony and evidence presented at hearing, it is clear that claimant benefits from supervised participation in social and recreational activities. However, ACRC reasonably determined that claimant's family should be primarily responsible for supervising him during his social and recreational activities, and that statutory restrictions prohibit ACRC from funding a PA to accompany claimant during such activities, absent extraordinary circumstances. ACRC reasonably found that extraordinary circumstances did not exist to justify an exemption from the statutory prohibition against funding social or recreational activities. Such "extraordinary circumstances" would, by statute, require a showing that the PA service is "a primary or critical means of ameliorating the physical, cognitive, or psychosocial effects of [claimant's] developmental disability" or that the PA service is "necessary to enable [claimant] to remain in his ... home." (Welf. & Inst. Code §4648.5, subd. (c).) There was no evidence that such extraordinary circumstances exist in this matter. When all of the evidence is considered in light of the applicable law cited in the Legal Conclusions below, claimant's mother did not demonstrate that ACRC should be ordered to pay the cost of a PA claimant's parents requested to be provided for claimant at various community activities during the summer of 2016.

## LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the

needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. In seeking government benefits, the burden of proof is on the person asking for the benefits. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. An IPP must reflect a cost-effective use of public resources. Welfare and Institutions Code section 4646, subdivision (a), states as follows:

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.



4. Consideration must be given to the family's responsibility to provide for a child's needs. Welfare and Institutions Code section 4646.4, subdivision (a)(4), states as follows:

Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

5. Family is among the natural supports contemplated by the Lanterman Act. Welfare and Institutions Code section 4512, subdivision (e), defines "natural supports" as follows:

"Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

6. ACRC is prohibited by statute from funding social or recreational activities, except in extraordinary circumstances which do not exist in this matter. Similarly, ACRC is prohibited from funding a PA for the sole purpose of helping claimant attend social or recreational activities. Welfare and Institutions Code section 4648.5 provides in pertinent part as follows:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

[¶]...[¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her

home and no alternative service is available to meet the consumer's needs.

7. When all the evidence is considered in light of the applicable law, it was not established that ACRC should be ordered to pay claimant's parents for a PA to accompany claimant at various community activities that took place in the summer of 2016. Consequently, claimant's appeal must be denied.

## ORDER

Claimant's appeal is DENIED.

DATED: December 14, 2016

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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)**