

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2016100766

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on January 4, 2017.

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

Claimant was represented by his brother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on January 4, 2017.

ISSUE

Is Alta California Regional Center required to fund camp and/or equestrian services for claimant?

FACTUAL FINDINGS

1. Claimant is a twenty-three year old man who is eligible for ACRC services based on his diagnosis of autism. He resides with his parents and three younger siblings in

the family home. Claimant is mostly non-verbal and requires continuous care to ensure his health and safety. He is very active and gets irritated easily. Claimant receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.) subdivision (c).¹

2. Claimant's parents requested that ACRC fund his attendance at camp and his participation in therapeutic horseback riding. ACRC stipulated at hearing that these services may be beneficial for claimant but that, after reviewing the request, it was determined that these are suspended services which the regional center is prohibited from funding unless claimant qualifies for an exemption. ACRC determined claimant did not qualify for an exemption.

3. Regional centers are governed by the provisions of the Lanterman Act. Section 4648.5, subdivision (a), which was enacted in 2009, suspends regional centers' authority to purchase the following services: (1) camping services and associated travel expenses; (2) social recreation activities, except for those activities vendored as community-based day programs; (3) educational services for children three to 17, inclusive, years of age; and (4) nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

Regional centers retain authority to purchase the services enumerated in section 4648.5, subdivision (a), only where a consumer falls within the exemption set forth in section 4648.5, subdivision (c), which provides:

An exemption may be granted on an individual basis in
extraordinary circumstances to permit purchase of a service

¹ Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

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.

4. In response to the mandates of section 4648.5, ACRC determined that the agency is prohibited from purchasing camp services and equestrian services because these services are recreational in nature. ACRC further determined that neither of these services is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability and claimant did not qualify for an exemption permitting the purchase of these services.

ACRC determined that not only were the requested services suspended, but also they are not evidenced-based for the treatment of autism and other services are available to more appropriately address claimant's needs.

5. On September 9, 2016, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "Alta California Regional Center (ACRC) is denying your parents' requests to fund camp services and equestrian services for you to meet your needs for socialization and recreation."

The NOPA advised claimant that the reason for this action was as follows:

In 2009, regional centers' authority to purchase camp services and equestrian services for client was suspended pending implementation of the Individual Choice Budget, unless the client qualifies for an exemption. ACRC has determined that

[claimant] does not qualify for an exemption from this suspension as ACRC has determined that extraordinary circumstances do not exist and that neither camp services nor equestrian services are a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the disability of autism; nor are camp services and horse riding services necessary to enable you to remain in your home, and because alternative services are available to meet your needs for socialization and recreation, such as the ARC on the Go program, Access Leisure, the Special Olympics, and Warmline. Further, the CITP program you started this week is likely to be providing you with social and recreational opportunities.

6. Claimant filed a Fair Hearing Request dated October 4, 2016, appealing that decision. The reason for the request stated:

Our request to fund camp services and equestrian services to our son has been denied. We believe that these services have mental and physical benefits to our son.

We hope that ACRC [will] re-evaluate [claimant's] conditions and qualify him [for] these services as we requested.

7. Janette Mercier is claimant's ACRC Service Coordinator. She testified that ACRC funds claimant's participation in the InAlliance CITP², which provides 1:1 staffing support and activities, specialized to claimant's needs. The family provides input and

² Community Integration and Training Program.

claimant is integrated into the community to meet his recreation and socialization needs. Claimant, with the aide of his InAlliance instructor, is able to participate in community outings such as visiting the park, library and gym, as well as volunteering at the Salvation Army.

Ms. Mercier also testified that claimant receives ABA-based behavioral health treatment services provided six days per week through Kaiser. Intercare is the provider. Kaiser also funds Occupational Therapy (OT) services.

Other services and supports provided to claimant include respite and In Home Supportive Services (IHSS).

8. Herman Kothe is claimant's ACRC Client Services Manager. He testified that the regional center is prohibited from funding camp and equestrian services pursuant to section 4648.5 absent a finding that a consumer qualifies for an exemption. After reviewing the evidence, ACRC determined that claimant did not qualify for an exemption to the prohibition on purchasing these services because they are not the primary or critical means for ameliorating his developmental disability. There was also no evidence presented that without these services, claimant would be unable to remain in his family home.

9. Mr. Kothe explained that regional centers are also prohibited from funding experimental or investigational treatments. He testified that equestrian services are considered experimental or investigational and that insurance companies specifically do not fund equestrian services due to the lack of evidence of its effectiveness. Aetna takes the position in its literature that it "considers hippotherapy (also known as equine therapy)³ experimental and investigational for the treatment of [indications including autism] and all other indications because there is insufficient scientific data in the peer reviewed medical

³ Equestrian services are referred to by varying terms including hippotherapy, equestrian therapy and therapeutic horseback riding.

literature to support the effectiveness of hippotherapy for the treatment of individuals with these indications.” Mr. Kothe concluded that the regional center is further precluded from funding equestrian services, as they are presently considered experimental or investigational.

Mr. Kothe testified that claimant did not qualify for an exemption because other services, specifically the ABA-based behavioral health treatment services provided six days per week through Kaiser (by Intercare), OT, and his InAlliance CITP, are the primary or critical services for ameliorating the effects of his developmental disability. ABA-based behavioral health treatment such as that which claimant is receiving is considered the gold standard evidence-based treatment to ameliorate the effects of autism. Claimant’s attention, focus, tolerance and other behaviors can be addressed through those behavioral health treatment services. OT is designed to help address fine and gross motor skills as well as to address sensory issues. The CITP program at InAlliance can also be determined critical services to meet claimant’s needs.

While camp and equestrian services may provide a benefit to consumers in general, in light of the statutory changes, ACRC is prohibited from providing these services absent an exemption.

10. Claimant’s current Individual Program Plan (IPP) includes the following:

Objective #3: Given day program support, [claimant] will enhance his social/recreational, volunteer, and community skills, through 9/2017.

3.1 ISP will be developed jointly by planning team participants.

3.2 InAlliance will be responsible for implementation of ISP including care/supervision during established program hours.

3.3 ACRC Service Coordinator will request continued ACRC funding for up to a maximum of 138 hours per month of day program services for [claimant] at the InAlliance CITP for as long as this program is appropriate for [claimant].

[¶] . . . [¶]

3.7 [Claimant] will participate in program activities to accomplish goals/objectives established in his ISP documents.

11. Claimant's mother testified that the requested equestrian and camp services would be recreation services to meet the stated need in his IPP. She explained that claimant has had more difficulty managing the effects of his autism as he has aged. The family uses the ABA strategies but claimant can become anxious and overwhelmed at times which results in outbursts and crying. In the past, claimant participated in horseback riding and his mother reported that his behaviors were better at home during that time. Some benefits she observed were less crying, more compliance with instructors, and claimant feeling accomplished and successful. Claimant also has sensory concerns that can be addressed with this service.

Claimant attended camp in the past and enjoyed the experience. She believes that he would benefit from an additional opportunity to participate.

Claimant's mother contends that these requested services can be considered primary or critical services for ameliorating the effects of claimant's developmental disability, autism, because they have been beneficial to him in the past and would be beneficial currently. She stated that they would offer growth opportunities for claimant and improve the quality of his life.

Claimant's mother testified that camp and equestrian services are not required to maintain claimant in the family home.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . to support their integration into the mainstream life of the community . . . and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4648.5 of the Lanterman Act provides:

(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.

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(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.

3. Section 4648, subdivision (a)(16), specifies:

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

(a) Securing needed services and supports.

(16) Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments,

therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for risks and complications are unknown. Experimental treatments or therapeutic include experimental medical or nutrition therapy when the use of the product for that purpose is not a general physician practice

4. The evidence demonstrated that camp and equestrian services fall within the prohibition of section 4648.5. ACRC determined that it is prohibited from funding these services for claimant as they are identified as suspended services and section 4648.5 expressly prohibits regional centers from purchasing camp and equestrian services by suspending their authority to do so. ACRC determined that such services are no longer authorized and that claimant did not otherwise qualify for an individual exemption.

5. Claimant bears the burden of establishing that he qualifies for an exemption under section 4648.5, subdivision (c).⁴ Claimant has not met that burden.

6. While the parties agreed that these services may benefit claimant, there was no persuasive evidence that either service is the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the claimant's developmental disability. Evidence was clear that these services are not necessary to enable the claimant to remain in his home and alternative services are available to meet the consumer's needs.

Even though these services may provide benefit to the claimant, ACRC is prohibited from funding a suspended service unless claimant qualifies for an exemption. In addition, while the equestrian service may be beneficial for claimant there is currently insufficient

⁴ California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

scientific data in the peer reviewed medical literature to support its effectiveness for the treatment of individuals with autism.

The evidence does not support a finding that ACRC fund camp services or equestrian services for claimant.

ORDER

The appeal of claimant is denied. ACRC is prohibited from funding camp services or equestrian services for claimant at this time.

DATED: January 17, 2017

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)