

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2017031288

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on May 9, 2017.

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

Claimant was represented by his sister.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on May 9, 2017.

ISSUE

Is ACRC required to purchase voice recognition software and associated training for claimant?

FACTUAL FINDINGS

1. Claimant is a forty-five year old man who is eligible for ACRC services based

on his diagnosis of moderate intellectual disability. This condition was determined to cause a substantial disability for claimant in the areas of self-care, receptive and expressive language, learning, self-direction, capacity for independent living and economic self-sufficiency. He is also diagnosed with psychotic disorder NOS and paranoid schizophrenia/schizoaffective disorder, depressed type. Claimant resides with his sister in the family home and receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. Rob Franco is claimant's ACRC Service Coordinator. He testified that claimant and his sister requested assistance purchasing voice recognition software, and providing training in its use, to help claimant with spelling, reading and writing on his computer, and to increase his vocabulary. Mr. Franco followed up with that request and claimant was referred to Rehabilitation Engineer Jeff Symons, MSE, CEAS, CEAC, for an evaluation of the appropriateness of the requested service.

3. Mr. Symons conducted an initial assessment on September 8, 2016. Claimant's sister reported to the assessor that claimant was not having a good day, so Mr. Symons chose to conduct a follow-up assessment on September 30, 2016. The environmental accessibility assessment report noted that claimant's moderate intellectual disabilities "make it difficult for him to spell when using the computer" and "the purpose of this assessment was to see if there was a way in which [claimant] could use the computer effectively."

4. Mr. Symons was concerned that claimant may "tend to speak too fast or too soft which can make it difficult for the speech recognition to understand him" and

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

that there are "a lot of commands to remember with voice recognition and this may be difficult for [claimant]."

Mr. Symons's major concern, however, was with claimant's ability to spell. He was reported to often misspell words and leave out the space between words. Mr. Symons explained that "though voice recognition will not misspell a word, it may miss-recognize a word; for example you may have said 'and' and the computer may have typed 'canned.'" When a word is misspelled claimant would need to recognize that and make corrections. Claimant "could not always accurately recognize the mistake or even the correction."

5. During the second assessment, Mr. Symons tried additional programs that he thought might help claimant. He tried a word prediction program, which shows a list of words on the screen, which may be selected. Claimant had difficulty recognizing the correct word and, when typing in a word, would often misspell the word in such a way that even the word prediction software could not identify what he was spelling.

6. The assessor concluded that voice recognition would not be practical for claimant. He opined that even with extensive training, if claimant learned how to use this program he would not be able to do so independently and would "probably need someone working with him to make corrections." He was also unable "to identify any other programs that will help [claimant] with his spelling."

7. On October 25, 2016, Mr. Symons contacted claimant's Service Coordinator, Mr. Franco, and explained that he doubted claimant would be able to effectively use the voice recognition software. Mr. Franco shared this information with claimant's sister, who continued to request ACRC purchase the software, and training on the software, for her brother.

8. On January 25, 2017, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising "Alta California Regional Center is denying your request to purchase

voice recognition software and associated training for [claimant].”

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

The voice recognition software is not appropriate to meet the client’s needs. In September 2016, Rehabilitation Engineer Jeff Symons completed an environmental accessibility assessment, funded by ACRC, to determine if voice recognition software might allow [claimant] to use a computer effectively to assist with his spelling, reading, and writing before he decides to attend a day program. Mr. Symons determined in his assessment that [claimant] would not be able to utilize the software effectively to do so, which Mr. Symons further explained to claimant’s Service Coordinator in an October 25, 2016 telephone conversation.

Alternative services are available to meet [claimant’s] needs. Specifically, day program options exist that can offer [claimant] support in enhancing his computer, spelling, reading, and writing skills. Those skills are not a prerequisite to accessing day program services.

Finally, to the extent that the software and associated training are desired to allow [claimant] to use the computer in the home for recreational purposes, ACRC is currently prohibited from funding social and recreational services unless a client qualifies for an exemption to that prohibition. ACRC has determined that [claimant] does not qualify for an exemption to permit us to fund the software and associated training

because they are not primary or critical for ameliorating the physical, psychosocial or cognitive effects of [claimant's] developmental disability, because they are not needed for [claimant] to remain in his home, and because alternative services are available to meet [claimant's] recreational needs.

9. Claimant filed a Fair Hearing Request dated March 12, 2017, appealing that decision. The reason for the request stated:

I am requesting a hearing to challenge the denial of Atla [sic] CA Regional Center to purchase the voice recognition for [claimant].

This request would be resolved if Alta CA Regional Center would approve the voice recognition to be purchased for [claimant] and provide the necessary training.

10. Mr. Franco testified that alternative services are available to meet claimant's needs. Specifically, appropriate day program options exist that could provide claimant with activities to keep him engaged and to help improve his computer, spelling, reading, writing and vocabulary skills. Those skills are not a prerequisite for accessing day program services.

He explained that the planning team had been considering day programs since claimant's 2015 IPP. Claimant's sister shared claimant's interest in art and ACRC subsequently referred claimant to the Studio 700 site-based art program. The program contacted the family but never received a response.

11. Claimant's sister testified that, while claimant enjoys art, she is concerned that at his age he needs stronger reading, writing and spelling skills. She explained that she has been "home-schooling" claimant, which includes working with him on a computer to

increase these skills. She also travels extensively with claimant and takes him out in the community often.

Claimant's sister contends that though claimant would require extensive training to use the voice recognition software, it could be done. She also explained that she would assist in the training and be present to help him with its use.

Claimant's sister also opined at hearing that the timing might be appropriate now to pursue a day program for claimant. She and Mr. Franco agreed to work together with claimant on that pursuit.

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.)

Section 4646, subdivision (a) provides:

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 further the 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.

Section 4646.4, subdivision (a)(1) specifies:

(a) Effective September 1, 2008, 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, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

Section 4646.5, subdivisions (a)(1) and (2) clarifies:

(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. For children with disabilities, this process should include review of the strengths, preferences and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and family.

- (2) A statement of goals, based on the needs preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increased control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

2. A party seeking to add a service or support to a consumer's IPP typically has the burden of demonstrating that its proposed addition is appropriate. Therefore, claimant bears the burden of establishing that he requires the requested voice recognition software, and training in its use.² Claimant has not met that burden.

² 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

The evidence does not support a finding that ACRC fund voice recognition software and supportive training for Claimant. The requested service was not based on assessed need, as set forth in the environmental accessibility assessment, and here was no evidence that voice recognition software would be effective in assisting claimant with his spelling, reading and writing.

The evidence did show that even with extensive training, claimant is unlikely to be able to use the voice recognition software, and would never be able to use it independently. It is not cost-effective for ACRC to purchase a support that is not appropriate for claimant's assessed need. If the best scenario requires one-on-one support for use, then the purchase would not support claimant's independence and self-sufficiency. Further, more appropriate service options exist that would better meet claimant's needs, including participation in a day program. The planning team, including claimant and his sister, is exploring that option.

ORDER

The appeal of claimant is denied. ACRC is not required to purchase voice recognition software and associated training.

which is essential to the claim for relief or defense that he is asserting."

DATED: May 19, 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).)