

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH No. 2017040348

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 18, 2017, in Whittier, California.

Jacob Romero, Fair Hearing Coordinator, represented the service agency, Eastern Los Angeles Regional Center (Service Agency or ELARC). Claimant's mother represented claimant, who was not present.

Testimony and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 18, 2017.

ISSUE

Whether ELARC should be required to fund Adult Dog Level 2 training at Petco for claimant's family dog.

EVIDENCE RELIED UPON

*Documents.* Service Agency's exhibits 1-5, 7-10, and 12; claimant's exhibits A-M and O.

*Testimony.* Josephina Ramirez-Waugh (ELARC Service Coordinator); Jennie Alvarado (Easter Seals Coordinated Life Services Worker); Veronica Valenzuela (ELARC Consumer Services Supervisor); claimant's mother.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a 19-year-old adult male who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder (ASD). He is under the conservatorship of his parents and his brother.

2. On October 17, 2016, claimant requested ELARC to consider funding to train his family dog to serve as support for him during medical appointments. On March 16, 2017, ELARC sent claimant a Notice of Proposed Action letter (NOPA). The NOPA stated, "ELARC is hereby providing you with written notice that your request for funding of a service dog has not been denied, however, funding cannot be determined until denials have been obtained, additional information has been received, and case has been reviewed by ELARC clinical team. You were asked if you would like a notice of proposed action while this process is occurring and you requested your notice of proposed action." (Ex. 1.) On March 28, 2017, claimant filed a request for a fair hearing.

3. At the hearing, claimant's mother specified that claimant is requesting Adult Dog Level 2 training at Petco for the family dog, Simba. She stated that, as of the date of the hearing, she had submitted to ELARC all available information in support of claimant's request for dog training. ELARC indicated that, based on the information that claimant provided, it was denying claimant's request for dog training. Thus, this hearing ensued, and the issue

under consideration is whether ELARC should be required to fund Adult Dog Level 2 training at Petco for claimant's family dog.

## BACKGROUND

4. Claimant currently lives at home with his family. In addition to ASD, he has been diagnosed with a rare genetic disorder involving a mutation of the GRIN2b gene. He walks on his own and has functional use of his hands and feet. He does not engage in any meaningful conversation and uses scripts and phrases to communicate. He also communicates through gestures, facial expressions, vocal utterances, and a communication device on his iPad. Claimant needs assistance to complete self-care tasks such as dressing, bathing, brushing his teeth, and combing his hair. He uses his fingers to eat, although he makes attempts at using a spoon. He has no safety awareness and requires 24-hour care and supervision.

5. Claimant has many health issues. He experiences one to four asthma attacks a year. He has hearing loss in the left ear due to chronic ear infections. He is allergic to grass, pollen, bees, cats, and certain types of medications. He also suffers from constipation due to low muscle tone. Claimant is epileptic and suffers from seizures. Claimant's team of health care professionals includes a pediatrician, a neurologist, a gastroenterologist, a dentist, an endocrinologist, and a psychiatrist.

6. Although claimant has a loving and affectionate personality, he experiences behavioral challenges. He engages in physical aggression, including hitting, biting, and scratching others. He also engages in self-injurious behavior, including head banging, slapping himself, and biting down on his own nails and skin. Claimant's maladaptive behaviors are particularly severe during medical

appointments. Claimant's most recent individual program plan (IPP),<sup>1</sup> dated July 13, 2017, states that "[claimant] can be resistive and has a history of meltdowns during doctor visits." (Ex. 5, p. 7.) The IPP indicates that claimant's dentist was unable to complete an x-ray during a visit on January 4, 2016, because claimant was uncooperative. According to the IPP, claimant's mother also reported an incident during which, on their way to a doctor's visit, claimant's behavior escalated to a point where she had to pull to the side of the road to avoid a car accident.

7. Currently, Service Agency is providing claimant with 90 hours of respite services, 50 hours of DIR floor time,<sup>2</sup> and 96 hours of personal assistance services on a monthly basis. Personal assistance services are provided to claimant to assist him during medical visits and community outings. The personal assistant helps and redirects claimant whenever his behavior escalates. On August 17, 2016, claimant's personal assistance hours were increased from 66 hours to the current level of 96 hours to reflect an increase in his medical appointments and his need for additional support at home. Moreover, Service Agency is funding 40 hours per month of Coordinated Life Services (CLS) through Easter Seals. The focus of the CLS service is to centralize communication for claimant's various medical providers.

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<sup>1</sup> Claimant's IPP contains the Service Agency's and claimant's family's agreements, sets forth specific objectives and goals, and contains the services and supports to achieve them. It also describes claimant's needs and behaviors.

<sup>2</sup> DIR floor time is floor time therapy derived from the Developmental, Individual-difference, and Relationship-based model. It is a more flexible model of therapy than Applied Behavior Analysis.

Claimant's CLS worker helps him to obtain certain medical services, organize his medical records, and search for generic resources for any other needs.

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8. Pursuant to the IPP, claimant's CLS worker is to assist claimant with attaining a "therapeutic pet." (Ex. 5, p. 10.) Additionally, the IPP's stated goals for support service agencies include the following :

1. Private insurance and/or Medi-Cal to fund all medically related services.

[¶]. ... [¶]

5. SC [service coordinator] may refer case for clinical review, upon parent request and once all medical records have been attained.

(Ex. 5, p. 10-11).

#### CLAIMANT'S REQUEST FOR DOG TRAINING

9. On August 21, 2015, claimant was admitted to Children's Hospital Los Angeles (CHLA) for three days in order to monitor him for seizure activity. In the hospital, claimant was frantic and screamed, but he calmed down when the hospital provided him with a therapeutic dog. The nursing notes from CHLA states, "[patient (pt)] calmed down for a little bit when the dog therapy came to his room. Started screaming again when the dog left. child life [CHLA's patient support program] was able to pacify pt when they brought the wii game, pt played and still continued to have intermittent screaming bouts." (Ex. K.)

10. On October 17, 2016, during a meeting with ELARC and his CLS worker, Jennie Alvarado, claimant requested funding from ELARC to train the family dog as a therapeutic dog to support him during his medical appointments. Subsequently, Ms. Alvarado, referred claimant's mother to several dog training classes in the community. Additionally, Ms. Alvarado provided claimant's mother

with an application for a service dog with Canine Support Teams, Inc. (Canine Support). The Canine Support application consists of two parts. The first part is a personal information application, which claimant's mother completed. The second part is a professional reference report to be completed by a physician. Although claimant's mother asked claimant's psychiatrist, Priti Sahgal, M.D., to complete this second part, Dr. Sahgal did not complete the professional reference report. No physician or other professional caring for claimant completed the professional reference report. The form, as it is submitted to ELARC, is blank.

11. On March 9, 2017, during another meeting with Ms. Alvarado and ELARC, claimant again requested funding from ELARC for dog training. At this meeting, claimant's mother specifically requested Adult Dog Level 2 training classes at Petco. ELARC informed claimant's mother that, in order for it to consider funding for the requested service, she must provide the following: proof from Petco that the trainer is a licensed therapy/service dog trainer, information on the process to train the family dog as a therapy/service dog, cost of the dog training program, and proof that all generic resources and grants have been exhausted.

12. On March 14, 2017, ELARC provided claimant's mother with additional referrals to community resources for therapy dogs or service dogs. These resources include K-9 Behavior Services, Pet Assistance, The Assistance Dog Institute, and Top Dog.

13. On a date not established by the record, claimant's mother submitted some notes<sup>3</sup> on information that had been gathered about the Adult

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<sup>3</sup> The record did not establish the identity of the author of these notes. It can be inferred, however, that Ms. Alvarado was the author of these notes

Dog Level 2 training at Petco. These notes show that the Adult Dog Level 2 training is an 18-week course which costs \$349. The course teaches the dog to obey the following commands: stay calm, sit, stay, stand, come, heel, leave it, roll over, jump, shake, and fetch. Additionally, according to these notes, the dog trainer at Petco was "unable to be specific [that] training to deal [sic] with children with Autism, but training is very similar and close to it." (Ex. 8, p. 3.) There is no indication in these notes that successful completion of Adult Dog Level 2 training classes at Petco will result in the certification of a pet as a service dog or a therapeutic dog.

14. ELARC subsequently submitted this information, along with the incomplete Canine Support application, to Angela Espinoza Puopolo, Service Agency's occupational therapist, for review. On April 7, 2017, Ms. Puopolo wrote in a memorandum:

I have been asked to review the family request for the ELARC to fund for PETCO dog training. The family has asked that the Regional Center fund for their family dog to be educated as a service dog. We do not know the age of the dog, it's [sic] intellectual attributes or temperament. We also do not know what types of service they wish the dog to perform. The PETCO training is not specific to Service [sic] dog training. The 18 week course per their online information indicates following simple commands that a personal

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because she testified that she had assisted claimant's mother in researching information about the dog training.

pet would be trained in, ie. [s/c] sit, stay, stand, come, heel, leave it, roll over, jump ,shake, fetch. The Rep, "Jenny" at PETCO indicated that this is not specific training to deal with Autism, but similar. I do not know how that is determined.

Recommendations: I cannot recommend this service. There are too many unknowns and the service is not specific to the consumer's needs. It is a service for the general public.

(Ex. 8, p. 1.)

#### TESTIMONY OF CLAIMANT'S MOTHER

15. At the hearing, claimant's mother described claimant as a "19-year-old toddler," in that his developmental age is between two- to three-years old. Claimant is beloved by his family. His parents take him to church on Sundays and to the movies and swap meets on Saturdays. However, claimant's mother reported that her son suffers from very high anxiety and has many behavioral "outbursts." She testified that, because claimant weighs approximately 200 pounds, people often attempt to restrain him as a method of managing his behavioral problems. Previously, claimant attended two nonpublic schools where he was injured at least twice when school staff members restrained him by force. As a result of one of these incidents, claimant suffered hemorrhage on his face and swelling in his hands. Claimant's behavioral problems are often exacerbated in the medical setting. He often requires the assistance of two or three people during visits with doctors. Claimant has also been removed from his psychiatrist's waiting room due to other patients' complaints of his behavior. Claimant's



mother believes that training the family pet will help claimant because “humans can’t get near him, but a dog can quiet him down.” In particular, she stated that Simba, the family dog, has a special bond with claimant and has the ability to calm claimant when he throws a tantrum. Claimant’s mother also testified that, in order for claimant to bring Simba to his doctor’s appointments, it must be certified as a therapeutic dog.

## LEGAL CONCLUSIONS

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that ELARC is required to fund Adult Dog Level 2 training at Petco for his family dog. (Evid. Code, § 115.) He has not met that burden.

2. Based on Factual Findings 1 to 15 and Legal Conclusions 1 to 9, cause does not exist to grant claimant’s appeal.

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act)(Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center’s obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: “to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community” and “to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.” Under the Lanterman Act, regional centers are “charged with providing developmentally disabled persons

with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made "on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (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.

6. Welfare and Institutions Code section 4646.4, subdivision (a), provides, in relevant part:

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:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate. . . .

7. Welfare and Institutions Code section 4648, subdivision (a)(8) provides:

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

8. Here, claimant is seeking for the family pet to be trained to provide additional support to him during medical appointments. Clearly, claimant experiences many behavioral challenges, and these issues are exacerbated in the medical setting. However, a personal assistant currently accompanies claimant to these medical appointments and redirects him when his behavior escalates. Although a therapy dog was helpful to claimant when he was hospitalized in 2015, there is little evidence that a therapy dog, in addition to the personal assistant, would be an effective means of managing claimant's behavior. Neither Dr. Sahgal nor any other professional caring for claimant proffered an opinion that a therapy dog would be a successful behavioral management tool for claimant. Furthermore, claimant's mother testified that the family dog must be certified as a therapy dog in order for claimant to bring it to any medical appointments. Nevertheless, there is no evidence that a dog, upon successful completion of the requested Adult Dog Level 2 training classes at Petco, will be certified as a therapy dog. The dog training classes at Petco appear to be an obedience course that teaches some basic commands but does not train the dog to assist a person with ASD.

9. Under these circumstances, the dog training classes at issue are not “specialized services” within the meaning of Welfare and Institutions Code section 4512, subdivision (b). The evidence did not establish that this service is necessary to meet claimant’s individual needs. These classes are generic services, same as those that are available to the general public. (See Welf. & Inst. Code, § 4646.4, subd. (a)(2).) In sum, ELARC’s decision to deny claimant’s request for dog training was proper.

## ORDER

Claimant’s appeal is denied. ELARC will not be required to fund Adult Dog Level 2 training at Petco for claimant’s family dog.

DATED:

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JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.