

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

Westside Regional Center,

Service Agency.

OAH No. 2017061260

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Culver City, California on August 10, 2017.

Claimant's mother represented Claimant, who was also present. Their names are omitted to protect their privacy.

Lisa Basiri, Fair Hearing Specialist, represented Westside Regional Center (WRC).

The matter was submitted on August 10, 2017.

ISSUE

Is Claimant entitled to funding from WRC for swimming lessons?

EVIDENCE RELIED UPON

Documents: WRC Exhibits 1 through 10. Claimant presented no documents.

Testimony: Lisa Basiri; Claimant's mother.

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FACTUAL FINDINGS

1. WRC determines eligibility and funds services for developmentally disabled persons under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)¹
2. Claimant is a three-year-old boy eligible for Lanterman Act services, based on a diagnosis of Autism Spectrum Disorder.
3. On a date not established, Claimant's mother asked WRC to fund swimming lessons for him.
4. On June 1, 2017, WRC sent Claimant's mother a Notice of Proposed Action, proposing to deny the request.
5. Claimant submitted a Fair Hearing Request, which WRC received on June 20, 2017.
6. Due to its congested calendar, the Office of Administrative Hearings set the matter for hearing one day later than the 50-day time period provided for by section 4712, subdivision (a).

BACKGROUND INFORMATION

7. Claimant lives with his parents and younger sibling. He has limited verbal communication skills, and is also unable to communicate using gestures or signals. He is fully ambulatory and has full use of his hands. He requires constant supervision to prevent endangering himself in all settings, and often climbs and jumps from objects, sometimes risking injury.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

8. Claimant's Individual Program Plan (IPP) states that his mother's goals are for him to be able to pursue what he wants to do in life, be creative, and work to his full potential. It lists four desired outcomes: (1) continuing to reside with his family in a comfortable and loving home environment; (2) attending a preschool program; (3) improving his social skills and behavior by playing cooperatively with peers and recognizing social boundaries; and (4) maintaining optimal health status. In the IPP, WRC agreed to fund in-home respite, behavioral therapy, and socialization training, all to help achieve those outcomes. Claimant's insurance has since replaced WRC as the funding source for behavioral therapy, and funds 30 hours per week of behavioral intervention services. WRC still funds the other two services.

SWIMMING LESSONS

9. Claimant enjoys being in the water, and visits community swimming pools regularly with his family. While there, his mother has noticed he is interested and engaged, and will follow instructions, which he will not do at home. She wants him to take swimming lessons to help him learn to behave the same way outside the pool.

10. In April 2017, Leaps n Boundz, Inc., the vendor for Claimant's socialization training, evaluated him for its swimming program at his mother's request. The company offers swimming lessons for children with developmental disabilities, but Claimant's socialization training does not include the lessons. The report of the evaluation indicates Claimant is a non-swimmer, and that the near-term goals of the lessons would be basic water safety, "doggie paddle" swimming, and increasing Claimant's level of comfort in the pool, ability to use pool equipment, and ability to float or swim on his back. Long-term goals would include more advanced swimming skills.

11. Claimant's mother requested that WRC fund swimming lessons for him at Leaps n Boundz, Inc., or through a comparable program for special needs children. WRC's Purchase of Service Committee proposed to deny the request, informing her that

WRC's ability to fund swimming lessons and other social recreation activities has been suspended since July 1, 2009, and there were no extraordinary circumstances justifying an exception. She disputes that the lessons would be a social recreation activity, and asserts the primary purpose of the lessons would be therapeutic, to help her son improve his behavior. She requests that WRC fund lessons at least twice per week.

LEGAL CONCLUSIONS

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under its fair hearing and appeal procedures. (§ 4706, subd. (a).) "'Services and supports for persons with developmental disabilities' means 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, and normal lives." (§ 4512, subd. (b).) The determination of Claimant's services and supports "shall be 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.*)

2. Claimant has the burden of proving WRC should fund the disputed services (see *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161), and must do so by a preponderance of the evidence (Evid. Code, § 115). A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Claimant did not meet his burden of proof. Since July 1, 2009, WRC has been prohibited from purchasing four categories of 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." (§ 4648.5, subd. (c).) An exemption may be granted on an individual basis in "extraordinary circumstances . . . 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." (*Ibid.*)

4. WRC determined that the requested swimming lessons are a social recreation activity that WRC is prohibited from funding. (Factual Finding 11.) Claimant's mother disagrees, and asserts they are a form of therapy to help improve his behavior. (*Ibid.*) The swimming evaluation report of Leaps n Boundz, Inc., supports WRC's position that the lessons are a social recreation activity, because the stated goals of the lessons would be to improve Claimant's water safety and swimming ability, not to provide therapy for his disability. (Factual Finding 10.) Moreover, to the extent the lessons would be a form of therapy, WRC would still be prohibited from funding them absent extraordinary circumstances, because the therapy would be nonmedical. (§ 4648.5, subd. (c).) No evidence suggested the lessons would be medical therapy falling outside the scope of section 4648.5.

5. In addition, Claimant did not prove he qualifies for an exemption due to "extraordinary circumstances." (§ 4648.5, subd. (c).) The evidence did not establish that the lessons are a primary or critical means to ameliorate the physical, cognitive, or psychosocial effects of his developmental disability, or are necessary to enable him to

remain in his home. Claimant receives 30 hours per week of insurance-funded behavioral intervention services, plus WRC-funded socialization training and in-home respite. (Factual Finding 8.) His mother's testimony did not prove the swimming lessons would be a critical addition to those services, or a primary means of addressing his developmental disability.

6. Based on the above, Claimant is not entitled to funding from WRC for the requested swimming lessons.

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ORDER

Claimant's appeal is denied.

DATED:

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.