

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017071081

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on September 12, 2017.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present at the hearing.

The matter was submitted on September 12, 2017.

ISSUE

Should IRC be required to reimburse claimant for the cost of a weekend Special Needs Family Camp that claimant, her parents, and two siblings attended?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 20-year-old woman who qualifies for regional center services based on a diagnosis of mild intellectual disability. Claimant was recently diagnosed with serious mental health conditions.

2. Claimant's mother believes claimant requires one-on-one assistance and supervision every day. She located a Special Needs Family camp that operates on weekends. Claimant's mother believed the camp would provide important social and behavioral interventions while addressing claimant's needs for close supervision.

3. In or around June 2017, claimant's mother proposed that claimant would attend the weekend camp on July 21 through 23, 2017, and requested that IRC provide funding for the camp.

4. In a Notice of Proposed Action dated July 11, 2017, IRC denied claimant's request to fund the week-end camp. The basis of the denial was that "Regional Centers are prohibited [from] purchasing camping services and associated travel expenditures since July 2009," unless the requesting party can satisfy an exception to the law. IRC did not believe claimant's situation constituted an exception under the law.

5. Claimant disagreed with IRC's decision to deny funding, and she submitted a fair hearing request on July 15, 2017.

CLAIMANT'S REQUEST

6. Claimant's request that IRC fund a weekend camp was interwoven with her desire to obtain additional one-on-one services. Claimant's mother testified at the Fair Hearing and expressed that, in the last three years, claimant's ability to function on a daily basis has deteriorated. Claimant's mother stated that claimant is experiencing hallucinations and can be a danger to herself. Claimant has recently been diagnosed

with mental health conditions, and IRC is updating its information to reflect claimant's new diagnoses. To date, IRC has not held an Individual Program Plan meeting to evaluate claimant's new diagnoses.

7. In April 2017, claimant's mother discussed claimant's change in behaviors and claimant's mother's concerns about those behaviors with Kathrene Henderson¹, claimant's Consumer Service Coordinator. Ms. Henderson offered that IRC could provide behavior-related services to claimant, but claimant's mother declined those services at that time because claimant had been receiving behavior-related services from her health insurer, Kaiser Permanente.

8. Prior to June 2017, claimant's mother requested that IRC fund an appropriate camp for claimant. Ms. Henderson advised claimant's mother that IRC is not generally permitted to fund camps. However, she told claimant's mother that if she found a particular camp she wanted IRC to consider, Ms. Henderson would bring the information to, Brandie Parhm, Program Manager of the transition team for clients 16 to 25 years of age, and they would make a decision about whether IRC could fund the camp.

9. In June 2017, claimant's mother contacted Ms. Henderson and gave her information about a special needs family camp she felt would be beneficial to claimant. The family camp was to be held July 21 through 23, 2017. The description of the camp provided that "our Special Needs Family Camp brings families, which include a child with developmental disabilities, together for a retreat of respite, support, fun and prayer on the mountain" The camp brochure stated the camp was a place where families with children with disabilities could "have fun together in a safe and accepting environment,"

¹ Ms. Henderson testified at the Fair Hearing.

and that families could meet other families facing similar issues. The camp was staffed with “qualified special education educators, developmental disability specialists, and trained Special Needs Buddies paired with each family for their special needs child.” Activities at the camp were designed for the particular needs of the campers.

10. The total out-of-pocket cost for the camp was \$653, which included lodging and attendance at the camp for claimant, her mother and father and two of her sisters. Claimant’s mother paid a deposit of \$74 to the camp on May 3, 2017.

11. Ms. Henderson discussed claimant’s request with Ms. Parhm. Ms. Parhm asked if claimant’s family would be able to pay for any of the camp expenses if IRC determined it could fund the camp. Claimant’s mother agreed to not request reimbursement for the \$74 deposit she had already paid. That reduced claimant’s out-of-pocket expenses to \$579.

12. Ms. Parhm took claimant’s request and information about the special need family camp to IRC’s director. IRC’s director, Ms. Parhm and Ms. Henderson could not find an exemption that would permit IRC to fund the special needs family camp given the legal restraints placed on IRC of what kind of programs it could fund. IRC considered whether it could fund the camp as respite but IRC determined it could not because claimant’s family would also be attending the camp.

13. IRC determined it was not permitted to fund the camp as requested by claimant and advised claimant of its decision in the Notice of Proposed Action described above.

14. Claimant filed a Fair Hearing Request appealing IRC's denial of funding for the camp. Claimant sought reimbursement of \$541 and noted the family would "pay the \$56 fee for each of two siblings to attend."²

ADDITIONAL TESTIMONY OF CLAIMANT'S MOTHER

15. Claimant's mother testified that her family benefited greatly from the weekend of camp. She stated claimant was able to socialize more easily with others, claimant's sisters benefited by interacting with others who had disabled siblings, and claimant's parents benefited by being with families who had experiences similar to theirs.

16. In her presentation and testimony at the Fair Hearing, it also became clear that claimant's mother was seeking other services for claimant in addition to reimbursement for the family camp. Claimant's mother stated she believes that claimant's change in behaviors and new diagnosis support a claim for one-on-one assistance for claimant.

17. It was explained to claimant's mother that the only issue that could be determined at the Fair Hearing was related to reimbursement of the cost of the family camp because that was the only issue raised in claimant's Fair Hearing Request. The process for raising additional issues was explained to claimant's mother, and she was provided some guidance by IRC representatives of how to initiate that process.

² The total cost of the camp was \$653. After deducting \$112 for the cost of the two siblings, the amount claimed was \$541. This amount does not reflect claimant's alleged agreement not to claim reimbursement for the \$74 deposit.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is entitled to a specific service, the burden of proof is on the claimant to establish that he or she requires the additional services. The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

2. Under the Lanterman Act the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. The Lanterman Act is intended to provide an array of necessary services and supports sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. (Welf. & Inst. Code, §§ 4501, 4512, subd. (b).) Such services include locating persons with

developmental disabilities (§ 4641); assessing their needs (Welf. & Inst. Code, §§ 4642 – 4643); and, on an individual basis, selecting and providing services to meet such needs. (Welf. & Inst. Code, §§ 4646 – 4647.) The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685), 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. (Welf. & Inst. Code, §§ 4501, 4750.)

4. Welfare and Institutions Code section 4512, subdivision (b), defines “services and supports” and describes how one should determine which supports are necessary.

“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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination 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. Services and supports listed in the individual program plan may include, but are not limited to . . . recreation, . . . behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, . . . social skills training, . . . training for parents of children with developmental disabilities, Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

5. In order to be authorized, a service or support must be included in the consumer's individual program plan (IPP.) (Welf. & Inst. Code, § 4512, subd. (b).)

6. In 2009, the enactment of Welfare and Institutions Code section 4648.5 modified section 4512 and suspended a regional center's authority to purchase certain services, including social recreational activities. Subdivision (c) of section 4685.5 provides that an exemption may be granted "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."

EVALUATION

7. Claimant seeks reimbursement for the cost of attending a Special Needs Family Camp she attended July 21 through July 23 2017, with her mother, father, and

two sisters. The camp provides a fun weekend for families with special needs children and provides activities designed for the particular needs of the campers. The camp was beneficial for all members of the family who attended the camp and provided positive social interactions for the family.

8. Regardless of the undisputed value to claimant and her family in attending the camp, IRC is prohibited from purchasing services that constitute social recreational activities absent an exemption. (Welf. & Inst. Code § 4685.5.) An exemption exists only “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.” (Welf. & Inst. Code § 4685.5, subd. (c).)

9. IRC did not determine, and the evidence did not support a finding, that claimant’s attendance at the Special Needs Family Camp satisfied any of the exemptions in Welfare & Institutions Code section 4685.5, subdivision (c), that would allow IRC to fund the camp. Therefore, claimant has failed to sustain her burden to establish by a preponderance of the evidence that she is entitled to funding of the Special Needs Family Camp.

ORDER

Claimant’s appeal of IRC’s decision not to fund the Special Needs Family Camp is denied.

DATED: September 22, 2017

SUSAN J. BOYLE

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 ninety days.