

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

and

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2017080866

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on September 22, 2017. Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or service agency). Mother represented Claimant.¹

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

The sole issue for determination is whether the service agency should fund swimming lessons for Claimant.

¹ Claimant and Claimant's mother are not identified by their names to preserve their privacy and confidentiality.

FACTUAL FINDINGS

1. Claimant is a fifteen-year-old consumer of FDLRC due to her qualifying diagnoses of Autism, Intellectual Disability, and Epilepsy. She is non-verbal. She presents with aggressive and self-injurious behaviors. She requires assistance with all of her self-care and daily needs. She requires constant supervision for safety. She resides with Mother and her sibling.

2. Claimant's service agency-funded services and supports include speech/language therapy, occupational therapy, behavioral interventional therapy, and a one-on-one personal assistant for behavioral support/respite care.

3. The service agency additionally funded Extended Year Program at Rose Bowl Aquatics/Camp Splash for Claimant for the period July 17 through July 28, 2017.

4. In May 2017, Mother informed the service agency that once Camp Splash was concluded, she would be requesting funding for private swimming lessons for Claimant at Rose Bowl Aquatics for the period July 31 through August 11, 2017. Mother did not specify the number of weekly hours of swimming lessons she sought for Claimant. Mother informed the service agency that the private swimming lessons are to teach Claimant water safety skills because she (Mother) was thinking about buying a 10-foot above ground pool for their home.

5. On June 9, 2017, Claimant's service coordinator informed Mother that the service agency would be denying her request for funding for private swimming lessons for Claimant's water safety. The service coordinator advised Mother to apply to Rose Bowl Aquatics for scholarship funds, and Mother in turn informed the service coordinator that she had done so, and that such a scholarship would only pay half the costs of the private swimming lessons.

6. By letter dated June 13, 2017, the service agency formally informed mother that her "request for weekly swimming lessons for [Claimant] through the Rose

Bowl Aquatic Center has been denied.” (FDLRC Exh. A.) Citing to Welfare and Institutions Code section 4646.4, subdivision (a)(4), the service agency informed Mother that provision of such lessons is a parental responsibility. The service agency additionally informed Mother that it is prohibited from funding social recreation programs such as swimming, unless Claimant satisfies the requirements for an exemption set forth in Welfare and Institutions Code section 4648.5. (See FDLRC Exh. A.)

7. Mother appealed by timely filing a fair hearing request. Thereafter, these proceedings ensued.

8. At the administrative hearing, Mother confirmed that she has purchased an above-ground pool that is two feet deep and 10 feet wide. She testified that Claimant is “highly attracted to water,” that Claimant “wants to be in the water,” and that water “helps [Claimant] to sleep well at night.” Mother additionally testified that “swimming lessons have therapeutic value for [Claimant’s] sensory needs.”

9. Shafali Jeste, M.D. is Associate Professor of Psychiatry, Neurology and Pediatrics at the Center for Autism Research and Treatment at the UCLA David Geffen School of Medicine. Dr. Jeste treats Claimant. In an April 19, 2017 letter, Dr. Jeste, asserts, among other things, that “Aquatic therapy, in particular, would be beneficial in improving [Claimant’s] mobility and muscle strength.” (Claimant’s Exh. 1 at p. 1.) Dr. Jeste did not testify at the administrative hearing.

LEGAL CONCLUSIONS

1. Cause exists for the service agency to deny funding private swimming lessons for Claimant by reason of Factual findings 1 through 9 and Legal Conclusions 2 through 7.

2. Under the Lanterman Developmental Disabilities Services Act (the Lanterman Act), developmentally disabled persons in California have a statutory right to treatment and habilitation services and supports at state expense. (Welf. & Inst. Code, §§

4502, 4620, 4646-4648;² *Association for Retarded Citizens—California v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.)

3. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing IPPs for consumers, for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

4. The services and supports to be funded for a consumer are determined through the IPP process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as “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 rehabilitation 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).)

5. When identifying and funding Lanterman Act services and supports, the service agency is required to consider a consumer’s “family’s responsibility for providing

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

similar services and supports for a minor child without disabilities.” (Welf. & Inst. Code, § 4646.4, subd. (a).)

6. Section 4648.5 of the Lanterman Act, which was enacted to address a budgetary imbalance, provides the following:

- (a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers’ (*sic*) 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 cost 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 of 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.

7. As the party seeking funding for Lanterman Act services or supports, Claimant bears the burden of establishing her entitlement to those services or supports by preponderance of the evidence. (Evid. Code, § 500.)³ Claimant has not met her burden.

8. Aquatic therapy is distinct from swimming lessons for safety. Aquatic therapy consists of treatments and exercises focusing on certain physical functions, such as mobility and muscle strength, and administered by a trained or specialized therapist in a body of water. By contrast, swimming lessons for safety entails instructions on swimming techniques to avoid or prevent drowning. Swimming lessons for safety is a service, the payment for which a minor child's family is responsible. And, as recognized in section 4646.4, subdivision (a)(4), the family of a minor child with disabilities is similarly responsible for the payment of such service. In addition, swimming lessons for safety constitute a "social recreational activity" or "nonmedical therapy," which the service agency is restricted from funding, as provided for in section 4648.5, subdivision (a). The evidence offered at the administrative hearing did not establish whether or how Claimant presents with extraordinary circumstances warranting Claimant's exemption from the budget spending reductions for a social recreational activity or nonmedical therapy such as swimming lessons for safety, as provided for in section 4648.5, subdivision (c).

³ Evidence Code section 500 provides that "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."

ORDER

1. Claimant's appeal is denied.
2. FDLRC may deny funding for private swimming lessons for Claimant until such time that Claimant establishes her extraordinary circumstances warranting an exemption from the state's budget spending reductions under Welfare and Institutions section 4648.5, subdivision (c).

Dated:

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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