

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2017081278

DECISION

Administrative Law Judge Chantal M. Sampogna of the Office of Administrative Hearings heard this matter on November 1, 2017, in Alhambra, California.

Jacob Romero, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Daniel A. Nardoni, Attorney at Law, represented claimant, who was not present.

Oral and documentary evidence was received and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

Whether the Service Agency must fund the Ability First College to Career Program for claimant.

EVIDENCE RELIED UPON

Documents. Claimant's exhibit A; Service Agency's exhibits 1 through 10.

Testimony. George de la Loza, Employment Specialist; Ana Bonilla, Service Coordinator; Lonetta Johns-Yarleque, Unit Supervisor; Father; Mother.¹

FACTUAL FINDINGS

1. Claimant is a 36-year-old woman who resides with her mother and father (parents) in California. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)² because she has Moderate Intellectual Disability. (§ 4512, subds. (a).) Claimant was diagnosed with Down Syndrome as an infant. She was a consumer of the San Gabriel Pomona Regional Center and transferred to ELARC in the beginning of 2017.

2. Claimant is fully ambulatory, verbal and communicative, and in good health. She enjoys dancing, swimming, horseback riding and bible study. She is responsible for her own self-care needs. Claimant reads at approximately a fifth grade level, and performs math skills at a first grade level. She can recognize and understand other's emotions, and often engages in reciprocal dialogue.

3. In early 2017, claimant attended Tierra Del Sol, a community based career pathway program. Originally, this program offered claimant educational, social, and employment programs. Soon after claimant began Tierra Del Sol, funding was cut, and the remainder of her time with this program consisted of Tierra Del Sol supporting

¹ Titles are used to protect the family's privacy. Claimant's mother and father were granted a limited conservatorship over claimant in 2003 by the Superior Court of California, County of Los Angeles.

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

claimant in her work for the Boys & Girls Club of Pasadena, where claimant performed janitorial work. Claimant and parents were dissatisfied with the Tierra Del Sol program and were interested in claimant obtaining training in, and completing, a short-term certificated program in office skills.

4. In March of 2017, claimant and her parents learned about Ability First and its College to Career (C2C) program. They were impressed and excited about the educational, employment, community integration, and social skills development opportunities the Ability First C2C program offered. Claimant made a request of her Service Coordinator (SC), Ana Bonilla, for the Service Agency to fund this program. The SC consulted with her supervisor, Lonetta Johns-Yarleque, confirmed Ability First was a vendor with the Service Agency, and made a referral on behalf of claimant to Ability First. On March 28, 2017, Ability First interviewed claimant. On April 27, 2017, Ability First accepted claimant into its program with an anticipated start time of fall 2017.

5. Claimant's April 12, 2017, Individual Program Plan (IPP) provides that claimant was dissatisfied with Tierra Del Sol and that she had been referred to and approved by Ability First to begin the C2C program in July 2017. Claimant's IPP included an outcome which provided that claimant would participate in her choice of vocational and career program. However, at the time of this IPP, the Service Agency had not yet authorized Ability First as the service provider, and Ability First had yet to receive all of claimant's required documents and evaluations.

6. Between April and May 2017, the parents and SC worked on completing claimant's paper work for Ability First enrollment. Based on consultation with Ms. Johns-Yarleque, on June 2, 2017, the SC informed the parents that though Ability First was a Service Agency vendor, it was a client specific vendor. Before funding a service provided by a client specific vendor, the Service Agency must determine on a case-by-case basis

that all generic resources and funding sources have been exhausted and that the vendor works directly with the Department of Rehabilitation (DOR).

7. In late June 2017, claimant and parents visited American Job Center (Center), a DOR service provider. Claimant, the parents, and the Center representative determined the Center was not a good fit for claimant's needs and abilities due to the length of the program and the speed at which information is provided. The Center representative suggested the certificate and diploma program at Pasadena Community College's (PCC) Disabled Students Programs & Services (DSPS) program could be more appropriate for claimant.³

THE CAREER PATHWAY PROGRAM OPTIONS

8. The Service Agency, through George de la Loza, Employment Specialist, investigated generic resources available to claimant that might provide her with the services offered through Ability First. Mr. de la Loza spoke with directors of both programs and reviewed supportive materials. The information he considered shows that PCC's DSPS program offers claimant nearly identical, if not more comprehensive, services at no cost to claimant. In addition to the actual services described below, the PCC DSPS program is a more effective program because it adheres to the Department of Labor edict which calls on career pathway programs for persons with special needs to

³ The Pasadena Community College, a public institution, is part of the Pasadena Area Community College District and works with DOR.

provide the assessment, educational, and employment services and opportunities concurrently, rather than consecutively.⁴

- A. PCC's DSPS program offers claimant the following comprehensive program, free of cost: 1) a Personal Service Assistant (PSA) assigned to claimant to assist claimant in the classroom; this PSA is hired by, and works directly with, PCC; the PSA can support claimant in the classroom, and provide tutoring and intense follow-up on service provision; 2) an educational assistant who oversees the PSA, is the main contact with the Service Agency, acts as the consumer and family advocate, and supervises claimant's entire experience; 3) a certified vocational rehabilitation counselor who directly develops claimant's educational plan in accordance with the Education Code, and who oversees the matriculation of students into employment; and 4) PCC faculty that

⁴ The concurrent provision of services allows the consumer an opportunity to discover her interests both through inquiry and real-time course work and internship placement. Consumers can learn about the course work and related work environment of any chosen topic as soon as possible, so the consumer can determine if the area of interest is a good match, or if further discovery of other interest areas may be necessary. In contrast, Ability First's consecutive model requires a consumer to spend 30-45 days discovering interests; after a preferred topic is chosen, the consumer then moves on to the course work; once course work is successfully completed, the consumer can seek a related internship or employment opportunities. The DOL has found that using the consecutive model often results in a consumer spending much time in one area of interest which, once placed in a job opportunity, is found to be poor fit, and the consumer must begin the process anew.

develop and teach all the DSPS pre-employment curriculum, including a variety of certificate programs in basic office technologies and computer applications.⁵ In accordance with the DOL, this program provides its assessment, educational, and internship and employment services and opportunities concurrently. When claimant finds a paid internship or job, the Service Agency is able to partner with that employer and offer claimant its Paid Internship Program (PIP) which provides claimant at or above minimum wage up to \$10,400 per year. Though the PCC DSPS program does not have a set schedule, it would develop an individualized plan for claimant that would meet claimant's needs for cohesion, schedule, and social and community integration.

- B. Ability First offers the claimant the following at a cost of \$138 per day: Ability First would use the PCC DSPS services described in Factual Finding 8.A to provide claimant a PSA, an educational coach, and vocational courses and oversight.⁶ Ability First uses the DSPS courses, curriculum, and teaching staff

⁵ PCC's DSPS program offers a certificate program that matches claimant's interests and goals. The Administrative Office Assistant Program prepares students for employment as an entry-level secretary or office assistant. This short-term certificate program would teach claimant how to properly navigate Microsoft operating system, use a word processor, enter data, and similar related skills.

⁶ In its written materials, Ability First describes its program as offering social and community skills and programs that would develop claimant's peer group and community integration. However, Ability First's representative could not explain to Mr. de la Loza how the program actually provides this service, other than that during the

to provide its services. PCC must hire Ability First's PSAs, and a DSPS certified vocational counselor would need to finalize any education plan suggested by the Ability First education coach. The C2C program is provided in three consecutive phases of discovery, education, and internship and employment, and could not offer claimant the Service Agency's PIP program because Ability First does not work with DOR. An additional benefit to Ability First's C2C program is that its education coach would be a consistent person working with claimant every day during the entirety of the program, at a ratio of one coach to two students; this education coach would help claimant navigate DSPS services, understand available educational accommodations, develop learning strategies specifically designed for claimant, and provide activities that would promote claimant's community involvement, socialization, and wellness. In addition, Ability First's program is offered Monday through Friday, from 7:45 a.m. until 2:00 p.m., on the Ability First campus, within walking distance to PCC.

- C. To account for the added benefits of the Ability First program, the Service Agency offered to provide claimant a minimum of 25 additional hours of a one-on-one education coach, which could be provided through claimant's current Adaptive Skills Training vendor, Independent Steps. This education coach would provide the same services as the Ability First education coach, but on a one-to-one ratio. This addition to the PCC DSPS program and the fact that PCC will develop an individualized plan to meet all of claimant's

discovery phase claimant would stay on the Ability First campus and meet with other consumers.

needs, make the Service Agency's offer a generic resource that provides the service requested by claimant.

- D. Parents researched the PCC DSPS program online, but did not visit the program or meet with any representative to ask questions about the available services or how they compare to Ability First's C2C program. Parents and claimant met with an Ability First representative and completed the intake process. Parents believe Ability First's C2C program offers more oversight and a more cohesive program based on its set hours and education coach service. Claimant was disappointed when she did not begin the C2C program as anticipated. Parents are not confident that an education coach provided through AST hours will provide claimant the necessary supports to successfully complete the PCC DSPS program, achieve employment, and increase her peer group and community integration.⁷

⁷ On behalf of claimant, parents raised additional arguments against the NOPA, including that claimant detrimentally relied on the SC's referral for claimant to Ability First, the SC's statement that Ability First was a Service Agency vendor, and the identification of Ability First in the IPP. Claimant also argued that the Service Agency's refusal to fund Ability First's C2C program was discrimination because it and other Service Agencies have funded Ability First's C2C program for other consumers. These claims are without merit. The SC's statements and actions regarding Ability First did not constitute a promise that the program would be funded. While claimant was disappointed to not attend Ability First, she did not rely on the SC's information to her detriment. Finally, there was no injustice to be avoided where Service Agency's offer of services was more than comparable to the Ability First C2C program. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 803; Rest.2d Contracts, § 90,

9. In a Notice of Proposed Action (NOPA) letter dated August 7, 2017, the Service Agency denied claimant's request for funding for Ability First's C2C program.

10. Parents filed a Fair Hearing Request on August 21, 2017, asking for the Service Agency to fund Ability First's C2C program.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal a denial of claimant's request for funding for the Ability First C2C program. Jurisdiction was established. (Factual Findings 1, 8-10.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that claimant requires the Service Agency to fund the Ability First C2C program. (Evid. Code, § 115.)

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) 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." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, quoting from § 4620.)

subd. (1).) As to parents' discrimination claim, the fact standing alone that ELARC and other Service Agencies have funded Ability First services for other claimants does not prove discrimination.

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer's independent, productive, and normal life that allows the consumer to "approximate the pattern of everyday living available to people without disabilities of the same age." (§§ 4501, § 4512, subd. (b).) Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).) Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

5. The Service Agency must identify and pursue all possible sources of funding for consumers available through governmental programs, including school districts, required to provide or pay the cost of providing services. The Service Agency must apply any revenues collected against the cost of services prior to use of regional center funds for those services. (Welf. & Inst. Code, § 4659)

6. Regional center funds may 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. (Welf. & Inst. Code, § 4648, subd. (a)(8).)

7. Cause does not exist for the Service Agency to fund Ability First C2C program for claimant. (Factual Findings 1-10.)

8. The PCC DSPS program is a free program which offers nearly identical, but demonstrably superior, services to claimant as compared to the Ability First C2C program. The Service Agency's offer to provide at least 25 hours of AST one-on-one services to claimant for her participation in PCC's DSPS program, which provides its services concurrently and will develop an individual plan for claimant provides to claimant a generic and cost-effective resource which meets claimant's educational, employment, social, and

community integration needs. The Service Agency may not supplant the budget of PCC, a public educational institution which has a legal responsibility to serve all members of the general public, by paying Ability First to provide claimant the same services.

ORDER

The appeal by claimant is denied.

DATED:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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