

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No: 2017101014

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 12, 2016, in Pomona, California. Danielle Santana, Fair Hearing Coordinator, represented the service agency, the San Gabriel/Pomona Regional Center. Mother is conservator for and represented claimant (family members' names are omitted to preserve confidentiality). Claimant was present and testified at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 11, 2017.

ISSUE

Whether the service agency should fund claimant's participation in the Madeit Film Media program.

FACTUAL FINDINGS

1. Claimant will turn 24 in December 2017. He lives with his mother. He is

under the care of a psychiatrist. He is eligible for services based on a diagnosis of Autism. He has difficulties dealing and communicating with others. He takes direction well, but sometimes too literally, so that he continues to need supervision in many daily activities.

2. Claimant recently learned of Madeit Film Media (MFM), a program offered in San Bernardino County, California, which teaches skills useful in the film industry to people with developmental disabilities. He proposed that the service agency fund his participation.

3. On October 4, 2017, the service agency provided a notice of proposed action (NOPA) to deny funding. Claimant timely appealed and this proceeding ensued.

4. Claimant has studied karate and developed a good relationship with others at the dojo. He is particularly close to his instructor, whom he sees as a mentor. Claimant earned a black belt. He progressed to teaching karate to others at the dojo.

5. According to claimant's most recent Individual Program Plan (IPP), claimant "does not display disruptive or aggressive social behaviors." (Exhibit 3.) He has had to work on his interactions with others, however, because he "may be considered rude or inappropriate due to his tone or comments." (*Ibid.*)

6. While claimant functions well in many ways, there are gaps in his understanding. For instance:

A. After some struggle, claimant passed the written test for a driver's license. Driving with his mother and a learner's permit, one day he approached a red light at a busy intersection, intending to turn right. Having learned that a right turn is permitted against a red light, claimant did not understand that he must still obey the signal to stop before proceeding, and might have caused a serious accident. Such gaps in understanding have prevented his having a driver's license.

B. Mother operates a business that distributes books. Claimant has skills that make his working there quite valuable. His good memory allows him to locate a book quickly among the stacks of books on the premises. He is a diligent and reliable worker. He understands and carries out a variety of tasks. But while he follows specific instructions with exactitude, claimant would not be a good choice to manage the business. He is good at being responsive, not so much at independent responsibility.

7. At La Verne University, claimant completed some courses relating to motion pictures. He developed a nuanced appreciation both for cinematic techniques and movies considered exemplars of creativity and innovation. He also had some hands-on experience with the craft, such as relating to lighting, sound, and camera equipment. Claimant decided he would like to work in visual media post-college. He decided after receiving his degree and researching employment options that MFM would most likely lead to the sort of career he desires, in visual media.

8. Mother testified convincingly that claimant would benefit especially from studying and working on the craft of film and movie making in a structured environment such as MFM offers. As in her business, claimant would be able to apply his gifts, diligence, memory for details, and care in following instructions, to help move a creative project forward. He would also benefit from interacting and cooperating with others in an environment directed toward accomplishment of a specific goal, such as producing a film.

9. When feasible, the service agency follows a "Purchase of Service Policy" (POS Policy), Exhibit 7, which is available in print and online. Most pertinent here is the section of the POS Policy entitled "Employment Training and Support Services." It emphasizes that, when possible, consumers should apply to the Department of Rehabilitation (DOR) for assistance with employment before obtaining such services from the service agency.

10. The service agency followed the POS Policy by investigating MFM, after claimant proposed that the service agency fund the program. The service agency learned that MFM is an approved vendor to a service agency in San Bernardino County. A publication available from the County about the program states in part:

The program will serve 30 individuals, over a 20-week semester, at 25 hours per week. A typical program generally lasts 4 semesters. The program will explore in-depth film production, project management, marketing, graphic design, advertising and sales. Each session will develop and build upon the creative and practical skills of interested filmmakers who have a developmental disability, with the ultimate goal for them to become employed, independent and well-rounded individuals.

(Exhibit B.)

11. The cost of participation in MFM is approximately \$35 per hour.

LEGAL CONCLUSIONS

1. The burden of proof is on claimant. The applicable evidentiary standard is proof by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.)

2. A service agency is "charged with providing developmentally disabled persons with 'access to the . . . services best suited to them throughout their lifetime.'" (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388, quoting Welf. & Inst. Code, § 4620.)

3. Service agencies are authorized to provide many types of assistance. As set out in Welfare and Institutions Code section 4512, subdivision (b), "'[s]ervices 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.”

4. Welfare and Institutions Code section 4646, subdivision (a), mandates “the cost-effective use of public resources” but also “takes into account the needs and preferences of the individual and the family, where appropriate”

5. Subdivision (a)(1) of Welfare and Institutions Code section 4646.4 provides that service agencies must ensure: “Conformance with . . . purchase of service policies” Subdivision (a)(2) of the statute requires: “Utilization of generic services and supports when appropriate.”

6. In purchasing services for consumers, the service agency is sometimes called the payor of last resort. Thus Welfare and Institutions Code section 4659, subdivision (a), provides in part that “the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

7. Cause exists for the service agency's funding MFM for claimant. The program fits the description in Welfare and Institutions Code section 4512, subdivision (b), of a specialized service that alleviates claimant's disability.

8. Though claimant is high-functioning, his disability would be alleviated substantially if he were directed and instructed in a work setting such as the MFM provides. Such a setting would be doubly beneficial. Not only would claimant be exercising skills useful in media production, but also he would have the benefit of the social aspect of collaborating with others, both peers and mentors, in a specific creative environment.

9. The program also fits the description in Welfare and Institutions Code section 4512, subdivision (b), of a specialized service designed for claimant's economic habilitation. MFM is meant to give its participants skills to make them employable in media production.

10. The evidence did not indicate that the service agency's funding MFM would violate its POS Policy.

11. The evidence did not indicate that another funding source is available. It was not established that MFM is unduly costly or that similar programs, such as at DOR, or generic services, are available at lower cost or on better terms. Moreover, in providing claimant the means to participate in MFM, the service agency "takes into account the needs and preferences of the individual and the family," as set out in Welfare and Institutions Code section 4646, subdivision (a).

ORDER

Claimant's appeal is granted. The service agency shall fund claimant's participation in the Madeit Film Media program.

DATED:

THOMAS Y. LUCERO

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.