

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2018040969

DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Westside Regional Center in Culver City, on June 14, 2018. Claimant was present and was represented by his mother.¹ Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or the service agency).

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on June 14, 2018.

ISSUE

The parties agreed that the following issue is to be decided by the ALJ:

Should the regional center pay for Claimant to attend gymnastics classes?

¹ Claimant and her family are referred to by their initials or family titles to protect their confidentiality.

EVIDENCE RELIED UPON

Regional Center exhibits 1-9; Claimant's exhibit A. Witnesses: Lisa Basiri; Sylvia Calatayud, service coordinator; Shannon Stanford, clinical supervisor, Behavioral Intervention Specialists of Los Angeles; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a five-year, six-month-old girl. She is a consumer of the Service Agency by reason of diagnoses of Severe Intellectual Disability, Epilepsy and Cerebral Palsy. Her first Individual Program Plan (IPP) was prepared in March 2017.

2. The evidence did not establish a date when the request was made for funding for gymnastics classes at Los Angeles School of Gymnastics. However, the request was made in early 2018. The service agency sent a Notice of Proposed Action (March 29, 2018), and explanatory letter (March 28, 2018) (Exhibit 2) that informed Claimant that funding for gymnastics was denied.

3. Claimant's mother filed a fair hearing request on April 8, 2018. (Exhibit 2.)

4. Several services for Claimant are funded by WRC, including in-home respite, behavior intervention, child care services and legal services. There have been some issues about appropriate vendors and providers, however funding for these services has been approved.

5. Claimant has been found eligible for special education services by the Los Angeles Unified School District. She receives special education services that include adapted physical education, occupational therapy, and physical therapy. Claimant also receives some services from California Children's Services (CCS).

6. Claimant exhibits numerous challenging behaviors, symptoms and limitations. These are described in various reports, including IPP's and a behavioral progress report from Behavior Intervention Specialists of Los Angeles, the vendor

providing Applied Behavior Analysis services (ABA) for claimant.

7. Claimant's mother described issues with various services that have been approved for Claimant. For example, the school occupational therapist is often absent and Claimant therefore does not receive all of the services that have been approved. Although there is funding for in-home respite services, the full amount of hours has not been used and the services were terminated when the vendor could not reliably provide them. Similarly, claimant is not receiving child care services due to an issue with the vendor.

8. Claimant's mother focused on Claimant's needs relating to the request for gymnastics. For example, although Claimant needs help with her body awareness, the occupational therapy does not cover this. Claimant's mother believes that gymnastics would not be a recreation program but, rather, a therapy. Claimant needs help with sensory integration, gravity, and has no notion of space and time. Her doctor through CCS recommended gymnastics or swimming, which could assist her with feeling her skin and joints and increasing her coordination.

9. Shannon Stanford, Ed.D., is a clinical supervisor at Behavioral Intervention Specialists of Los Angeles who, until recently, supervised Claimant's ABA services. Dr. Stanford is familiar with Claimant's behaviors and limitations and her family situation. Dr. Stanford is also familiar with the gymnastics school, and recommended it for Claimant, to assist in meeting her sensory needs. Gymnastics would assist Claimant to feel the weight of her body, focus on body movements, and teach her strategies to be more aware of her muscles and movement.

10. There were issues related to the credibility of an assessment paid for by Claimant's mother from the Los Angeles School of Gymnastics. It appeared identical to an assessment for a different person, which the school sent to Claimant's mother with the suggestion that she remove the other name, add Claimant's name, and submit it to

WRC. However, WRC's denial of the request was not based on issues relating to the credibility of the assessment.

11. WRC contends that, pursuant to Welfare and Institutions Code² section 4648.5, gymnastics is a social recreational service that cannot be funded. The Service Agency also contends that, pursuant to Code section 4646.4, subdivision (a)(4), gymnastics classes are the type services for which parents typically pay for a child without disabilities. The pertinent statutory language is found in the Legal Conclusions below.

12. Claimant did not establish that gymnastics is the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of his developmental disability, or that gymnastics is necessary to enable her to remain in her home and no alternative service is available to meet the consumer's needs. As such, Claimant did not establish an exemption to the general rule stated in Code section 4648.5, subdivision (a)(2).

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Code section 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 2 and 3.)

2. When a service agency consumer such as Claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing Claimant to demonstrate the service agency's decision is incorrect.

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

3. Code section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (Code section 4502.)

4. Code section 4646.5 defines the content of the planning process for the IPP. It must include a statement of goals based on the consumer's needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

5. The Service Agency relies upon the language of Code section 4648.5, which states, in pertinent part:

- (a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's 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 costs of providing the following services: [¶]

- (2) Social recreation activities, except for those activities vendored as community-based day programs. [¶]
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music. [¶]
- (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 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.

6. Under the language of Code section 4648.5, subdivisions (a)(2) and (c), gymnastics classes are the type of social recreational services for which funding has been suspended.

7. Claimant did not submit sufficient evidence to qualify for the exemption under the language of section 4648.5, subdivision (c). It was not established that gymnastics classes "is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects" of Claimant's disability, or that "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." Rather, the evidence established that gymnastics classes could be an important service for Claimant and that she might benefited from them. However, Claimant's ABA program is the primary means for ameliorating the physical,

cognitive, or psychosocial effects of the consumer's developmental disability. Claimant did not submit sufficient evidence to prove an exemption, or that the service should be provided at this time. (Factual Finding 12.)

8. Code section 4646.4 states, in pertinent part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan . . . the establishment of an internal process.

This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting.

9. Code section 4646.4, subsection (4), clearly states that the service agency is to consider the family's responsibility for providing similar services and supports for a minor child without disabilities. Many parents with minor children without disabilities fund gymnastics classes for their children. Similarly, Claimant's family should be required to fund Claimant's gymnastics classes which are recreational in nature. If Claimant feels that she requires additional physical or occupational therapy, nothing in this decision is meant to restrict her ability to request those services.

///

///

///

10. Under all of the circumstances presented, WRC is not required to provide funding for Claimant to take gymnastics classes.

ORDER

Claimant's appeal of the Westside Regional Center decision to refuse funding for gymnastics classes is denied.

DATED:

DAVID B. ROSENMAN

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.