

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2018050856

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 2, 2018, in Culver City, California.

Claimant, who was not present, was represented by his mother,¹ who used the services of Spanish-language interpreter Marianna Rudy of Hanna Interpreting. Lisa Basiri, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 2, 2018.

ISSUE

Whether the Service Agency must fund private golf lessons for claimant at The Links at Terranea Golf Academy.

¹ Family titles are used to protect the privacy of claimant and his family.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-6.

Testimony: Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 15-year-old male who is a consumer of WRC based on his qualifying diagnosis of Autism Spectrum Disorder (ASD).
2. Claimant lives at home with his mother and brother; his father died three years ago. Claimant's mother works full-time. Claimant performs self-care activities independently, when reminded. He requires assistance to avoid injury in unfamiliar settings and is unable to safely access public transportation. He focuses on preferred tasks and activities for up to 30 minutes, and uses sentences of three words or more. Claimant receives psychological services at Children's Hospital to help him address his father's death.
3. Claimant is in high school; he started 10th grade in fall 2017. His school district diagnosed him with autism and specific learning disability and placed him in a general education program with additional services and supports, including specialized academic instruction and language and speech therapy. His favorite subject is math. He enjoys spending time with his friends in the schoolyard. He can socialize but prefers to stay home when not in school, and likes to garden.
4. Claimant's most recent Individual Program Plan (IPP), dated September 21, 2017, reflects that WRC currently funds in-home respite, specialized supervision (84 hours per month of after-school care), counseling (Choice and Consequences Training), and interpreter services. WRC was funding social skills services for claimant through Leaps and Boundz, but claimant chose to stop attending and the authorization ended on August 31, 2017. Claimant's mother, who testified at hearing that claimant did not like having to

spend the training time indoors, has told WRC she would explore other agencies to find a social skills program where claimant feels more comfortable.

5. In early 2018, claimant's mother requested funding for private golf lessons for claimant at The Links at Terranea Golf Academy. By a Notice of Proposed Action and letter dated April 3, 2018, WRC notified claimant's mother of its denial of her request, citing Welfare and Institutions Code section 4648.5, subdivision (a)(2),² which suspends regional center funding for social and recreational activities. The Service Agency wrote that such activities, which "enable the development of social skills and personal relationships that foster a sense of community and provide enjoyment to daily life . . . should be provided by the client's family, community, or [through] generic resources." (Ex. 2.)

6. On May 4, 2018, claimant's mother submitted to WRC a Fair Hearing Request on claimant's behalf, requesting funding for private golf lessons. She attached and summarized an article by "Edwin Roald, Golf Course Architect, EIGCA Council Member," on the benefits of golf, which purportedly include brain stimulation, heart health, stress reduction, improved sleep, low risk of injury, and longer life.

7. Ms. Basiri met with claimant's mother informally on May 22, 2018, to discuss the Fair Hearing Request. In a letter dated June 4, 2018, Ms. Basiri summarized the meeting and reiterated the Service Agency's decision to refuse the funding request.

- a. Claimant's mother had asked that the Service Agency fund individual golf lessons for claimant once or twice per week at a rate of \$500 per month at The Links at Terranea in Rancho Palos Verdes. Claimant's mother discussed claimant's attendance at a two-week golf camp in the summer of 2017, funded through a foundation, and how much claimant had enjoyed the camp.
- b. Ms. Basiri wrote that "[g]olf is considered a social-recreational activity that may

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

provide many benefits; however, there does not appear to be any empirical studies that support it as a specific therapeutic activity for individuals on the autism spectrum. Ms. Basiri wrote that the Lanterman Developmental Disabilities Services Act (Lanterman Act) prohibits regional centers from funding therapeutic services that have not been clinically determined to be effective and safe, or from funding social recreational services, absent extraordinary circumstances. "Based on the information provided there is no indication that an extraordinary circumstance exists or whether golf lessons constitutes the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of [claimant's] autism. There is also no indication that golf lessons are necessary to allow [claimant] to remain in the family home." (Ex. 3.)

- c. Ms. Basiri enclosed with the letter a list of golf courses that could provide lessons close to claimant's home. Ms. Basiri also provided information to claimant's mother about an entity that provides golf lessons for high school students 18 years of age and younger for \$60 per year for monthly golf outings and \$1 to \$5 for green and range fees.

8. Claimant's mother testified that she wants claimant to participate in a program that allows him to interact socially with others his age. Claimant's participation in golf camp one year ago changed claimant, emotionally and behaviorally, pushing him to better himself. When he enjoys an activity, he is more organized, behaves better toward his brother, and is more obedient. Also, claimant has a special emotional attachment to golfing, because claimant's father used to take claimant golfing with him. Claimant wants to play all the golf courses his father played. Claimant's mother is concerned that the golf programs of which Ms. Basiri informed her will not include instruction tailored for claimant, and claimant requires that kind of attention. She believes the Service Agency should fund lessons because they are healthy for claimant and motivate him.

DISCUSSION

JURISDICTION AND BURDEN OF PROOF

1. Under the Lanterman Act (§ 4500 et seq.), which governs this case, all issues concerning the rights of persons with developmental disabilities to receive services must be decided under the appeal and fair hearing procedures set forth in section 4700 et seq. (§ 4706, subd. (a).) As the party seeking services not agreed to by the Service Agency, claimant bears the burden of proving that the denial of services was improper and he should receive funding for those services. (See § 4712, subd. (j); *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant must prove that he is entitled to the funding by a preponderance of the evidence. (Evid. Code, § 115.)

2. Claimant's mother requested a fair hearing to appeal the Service Agency's denial of funding for private golf lessons. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

FUNDING FOR SUMMER CAMP AT TEENS ON THE GO

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers such as the Service Agency play a critical role in the coordination and delivery of services and supports. (§ 4620 et seq.) They are responsible for developing and implementing IPP's, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. Section 4512, subdivision (b), defines the role of the IPP process as follows:

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 where 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

5. Services and supports for a particular consumer may include "community integration services . . . [and] social skills training" (§ 4512, subd. (b).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) The Legislature intends that the IPP and the services and supports provided by the regional center promote community integration, independent productive lives, and stable and healthy environments for consumers. (§4646, subd. (a).)

6. In 2009, the Legislature amended the Lanterman Act in ways intended to reduce regional center funding of certain services. Section 4648.5, subdivision (a)(2), suspended regional center funding for "social recreation activities, except for those activities vendored as community-based day programs." In this case, golf lessons at The Links at Terranea Golf Academy are a social recreation activity subject to suspension by section 4648.5, subdivision (a)(2). There was no evidence on the record that it is a vendored community-based day program.

7. The Service Agency may not fund golf lessons at The Links at Terranea Golf Academy for claimant. Section 4568.5 provides for an exemption from the suspension to allow funding "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." (§ 4648.5, subd. (c).)

8. An exemption is not warranted in this case. Golf lessons at The Links at Terranea Golf Academy has not been shown to be the only structured service available to claimant that is designed for social interaction and that allows claimant any significant social interaction with peers. The primary means for ameliorating the effects of claimant's developmental disability are the services currently funded by WRC and claimant's educational programming. An appropriate social skills program, which WRC has already shown a willingness to fund, would also be a primary means of addressing claimant's social deficits. In the circumstances of this case, golf lessons at The Links at Terranea Golf Academy does not constitute a critical means for ameliorating the physical, cognitive, and psychosocial effects of claimant's developmental disability, and claimant's mother offered no evidence that a failure to obtain funding for the golf lessons will jeopardize claimant's ability to reside at home.

LEGAL CONCLUSION

Cause was not established under section 4648.5 to require Service Agency funding for golf lessons at The Links at Terranea Golf Academy for claimant. (Factual Findings 1-8, and Discussion.)

ORDER

Claimant's appeal is denied. Westside Regional Center's decision denying claimant's request to fund golf lessons at The Links at Terranea Golf Academy is sustained.

DATE:

HOWARD W. COHEN
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.