

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2018080588

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on November 28, 2018, in Culver City.¹

Claimant was represented by his mother (Mother).²

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency). Also present was Sonia Tostado, WRC Service Coordinator.

A Spanish-language interpreter, Doneida Marroquin, provided Spanish-language interpreter services during the hearing.

¹ Claimant's fair hearing requests designated as OAH Nos. 2018080589 and 2018080590, respectively, were also set for hearing on November 28, 2018, but were resolved prior to the hearing. Notices of Resolution for both cases were presented and marked for identification as Exhibits 9 and 10, respectively.

² Claimant and his family members are identified by titles to protect their privacy.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted on November 28, 2018.

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ISSUE

The parties agreed that the issue presented for decision is: Should WRC be required to pay for the services of an attorney to assist claimant and his mother with: (1) dealing with issues related to claimant's individualized education program (IEP), and (2) obtaining services from claimant's current and prior school districts pursuant to his IEPs?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-10; Claimant's exhibits A-H.

Testimonial: Lisa Basiri, Fair Hearing Coordinator; and claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is an 18-year-old male. He is eligible for regional center services based on his diagnoses of Autistic Disorder and Borderline Intellectual Disability, pursuant to a WRC Psychiatric Evaluation conducted by psychologist Dr. Jessica Quevedo, Psy.D., in February 2011.

2. On August 8, 2018, Mother filed a fair hearing request, on claimant's behalf, to appeal Service Agency's decision to deny her request that Service Agency pay for an attorney who specializes in special education matters to assist Mother in obtaining special education services from claimant's current and former school districts.

3. On September 5, 2018, Ms. Basiri held a meeting with Mother to discuss the fair hearing request. During the meeting, Mother explained that she wanted WRC to

provide reimbursement to a special education attorney for a \$5,000 retainer and an additional \$300 to \$500 to attend an IEP meeting. Ms. Basiri's understanding of Mother's request was that claimant's IEP through Inglewood Unified School District (Inglewood USD) had not been implemented completely as to 300 minutes of speech and language services. Also, due to the family's recent move from Inglewood to Los Angeles, the Los Angeles Unified School District (LAUSD) was now responsible for claimant's special education services. Mother stated she did not feel she received adequate support from WRC's education support advocate, Ron Lopez, and that WRC should be responsible for any request for due process submitted to LAUSD.

4. By letter dated September 20, 2018, Ms. Basiri notified Mother that, based on her review of the record, the information Mother provided at the meeting, and Welfare and Institutions Code section 4648, subdivision (b)(1) and (2), she was unable to grant Mother's request that WRC purchase attorneys fees. The letter explained in pertinent part:

WRC has provided advocacy for you and [claimant] as part of its effort to protect [claimant's] service rights, and there is no indication that you requested assistance from the state council or the Clients' Rights Advocate (Disability Rights California [DRC]) to assist you with the school district, (which are two generic resources available to you and [claimant]). You actually shared that you spend up to 20 hours per week working with the ICC; receiving training from DRC, Chris Arroyo from the State Council, and Public Counsel on how to assist families with the IEP process and issues with their regional centers. Additionally, after reviewing the June 2018 IEP for [claimant,] he is receiving 75 minutes per week of

speech and language services, and the indication is that he is on a diploma [track] and will be graduating from high school in June 2019.

(Exh. 3.)

CLAIMANT'S IEPs

5. Claimant qualifies for special education services from his local school district. Claimant's family moved from Inglewood to Los Angeles in May 2018. Prior to that move, claimant's special education services were provided through Inglewood USD. Claimant's IEP dated June 8, 2017 from Inglewood USD (Inglewood IEP) was presented. (Exh. 6) The Inglewood IEP indicated that claimant was on track to receive his high school diploma. The services provided in the Inglewood IEP included 300 minutes per month of speech and language (group) and 30 minutes per week of counseling and guidance. (Exh. 6, p. 22.) Pursuant to the Inglewood IEP, claimant's placement was at a non-public school, THG West (formerly Village Glen West). When claimant's family moved from Inglewood to Los Angeles in May 2018, LAUSD became the school district responsible for providing claimant's special education services. LAUSD developed a 30-day IEP dated June 14, 2018 for claimant (LAUSD IEP), which was presented at the hearing. (Exh. 8.) The LAUSD IEP provided for claimant's non-public school placement at THG West to remain, and provided for claimant to receive 75 minutes per week of speech and language services.

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CLAIMANT'S IPP AND EDUCATION ADVOCACY REFERRAL

6. Claimant's individual program plan (IPP) dated December 22, 2015 was presented. At the time of the December 22, 2015 IPP, claimant attended Village Glen West (now THG West) and received special education services through his IEP with Inglewood USD. The December 22, 2015 IPP included "Outcome #3," which was a goal that claimant "will continue to have an appropriate education in the least restrictive environment." The December 22, 2015 IPP states that WRC would support this goal by having a WRC service coordinator or education specialist "consult with parents as needs arise & if it is requested by parents." (Exh. 5.)

7. An IPP Progress Report dated January 13, 2017, was presented. The Progress Report indicated the goal of "Outcome #3" was met, "but it continues to be needed." The Progress Report, regarding "Outcome #3," further stated: "[Claimant] is currently enrolled in an 11th grade Spec. Ed. class in a Non-Public setting at Village Glen West School. [¶] [Mother] has a new lawyer since 8/14/16 who is assisting her with getting the appropriate services for [claimant]; however, she is not very happy with the results so she is planning to get another lawyer." (Exh. 5.)

8. Three months later, on April 13, 2017, WRC service coordinator Alma Vargas completed a written Education Advocacy Referral for claimant. The reason for the referral was stated as follows: "Mother would like for Education Specialist Ron Lopez to review [claimant's] IEPs and School Documentation for her to get appropriate services from Inglewood Unified School District. Mother would like for the school district to fund for services for [claimant] at LindaMood Bell Learning Program. Mother paid for an [sic] private Learning Ability Evaluation done on 5/24/16." (Exh. 5.)

9. WRC Education Advocate Ron Lopez attended the IEP meetings on May 31, 2017, and June 8, 2017, that resulted in the development of the Inglewood IEP.

Lopez's attendance at the meetings was documented on the signature pages for the Inglewood IEP.

10. Lopez and Mother had email exchanges in November 2017, March 2018, and April 2018. The email exchanges related to the attempts by Mother and Lopez to arrange a meeting with Inglewood USD, apparently related to Mother's request for the district to fund the Linda Mood Bell program for claimant. Mother had received a report from Linda Mood Bell for a Learning Ability Evaluation completed on February 24, 2018.

11. Lopez was unavailable to testify at this hearing. However, in an email to Ms. Basiri dated September 4, 2018, Lopez indicated that Inglewood USD had been "wanting to resolve the case." Lopez's email to Ms. Basiri explained the situation as follows:

We met twice in the new year in where the parent walked out without finishing the second meeting. At the first meeting, the [Inglewood USD] director, Marjorie Rudy offered a review of the parent's request for additional academic support by review of records and evaluations with her team and reconvene. She came back with a proposal to supplement [claimant's] current educational program with a district program to challenge him in both comprehension and math. As per the director at that meeting, her decision was due in part by her past experience with the Linda Mood Bell program's lack of success. [Mother] refused, since the director denied her request for Linda Mood Bell. Upon conclusion of the meeting, I informed [Mother] that the recourse after this resolution meeting was for her to file for a formal due process with the district and OAH with an

attorney as I was not able to pursue her request and Due Process.

(Exh. 7, p. 1.)

12. Ms. Basiri testified that WRC has three full-time education advocates. The education advocates can be effective to assist in the development of IEPs and services. But, since they are not attorneys, they are limited in what they can do. In claimant's case, Lopez assisted Mother in her IEP meetings and discussions with Inglewood USD regarding her request for Linda Mood Bell services. He also attended the two IEP meetings related to the development of the Inglewood IEP. Mother did not accept the offer made by Inglewood USD, as reflected in Lopez's email. At that point, according to Ms. Basiri, Mother's next step, if she chose, would be to pursue a due process hearing against the district, with an attorney of her own choosing and at her own expense.

MOTHER'S TESTIMONY

13. Mother testified that she needs an attorney to assist her in obtaining services from Inglewood USD and LAUSD. Mother is concerned that claimant is below grade level in his academic subjects, and she feels the school districts have not provided the services necessary to address that concern. The IEP and IPP documents presented include references that Mother has, in the past, retained attorneys to represent her in dealing with claimant's school districts and his special education services. Mother testified that her prior attorneys will not take the case because the regional centers pay too little and she cannot afford them. Mother testified she has not yet actually retained an attorney, but she has some attorneys in mind, including one attorney who she testified is paid by another regional center (i.e., South Central Los Angeles Regional Center) to assist families. Mother recently requested legal representation from the Office of Clients' Rights Advocacy (OCRA), but her request was denied. The denial by OCRA is

explained in its letter to Mother dated September 27, 2018, which states in part, that OCRA, in determining which cases to represent, considers a variety of factors, such as the merits of the case, the individual's ability to advocate for himself/herself, the availability of OCRA's resources, and other advocacy resources available. (Exh. C.)

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14. Mother contends Lopez's services as an education advocate were not effective. She contends the services provided under the Inglewood IEP were services that she obtained through her own advocacy, and not by anything Lopez did over the past year. Mother feels she is running out of time because Claimant is now in the 12th grade and set to graduate. Mother testified that she needs an experienced special education attorney to help get services for claimant from Inglewood USD and LAUSD. Mother testified that the services she wants from LAUSD are individual speech and language therapy, district funding of the Linda Mood Bell program, and accommodations for claimant's transition from high school to college. Mother testified that she wants Inglewood USD to provide compensatory therapy for the times claimant did not receive therapies pursuant to his IEP. Mother wants Inglewood USD to get claimant back to grade-level skills. No evidence was presented that Mother has, in fact, initiated a due process proceeding with either school district.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

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 1-4.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, claimant requests funding for attorney services that Service Agency has not before agreed to provide, and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

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4. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(1) and (2).) Regional center funds "shall 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." (§ 4648, subd. (a)(8).)

5. The services and supports that may be listed in an IPP include, among others, "advocacy assistance, including self-advocacy training, facilitation and peer advocates." (§ 4512, subd. (b).)

6. Section 4648 provides in pertinent part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

[¶] . . . [¶]

(b)(1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.

(2) Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request advocacy assistance from the state council.

7. (A) Claimant's appeal shall be denied. The Service Agency is not required to fund a private attorney to perform legal services on claimant's behalf. The Lanterman Act contains no provision requiring a regional center to fund the cost of private attorneys to advocate on behalf of consumers in disputes with their school district. The

Lanterman Act is unlike special education law, which does provide for the recovery of attorney's fees by the prevailing party in a due process hearing. (See Ed. Code, § 56507.) The Service Agency has provided appropriate supports and services by referrals to available generic resources, as well as the services provided by WRC Education Advocate Lopez. No evidence was presented to support Mother's contention that Lopez's advocacy efforts were ineffective.

(B) Mother's request, that Service Agency fund a private special education attorney for claimant, is contrary to the requirements of the Lanterman Act. For example, regional centers must purchase services after consideration of the cost-effectiveness of the service and its effectiveness in meeting claimant's IPP goals. Here, Service Agency would have no way to control a private attorney's fees to ensure cost-effectiveness nor assure the effectiveness of the attorney's services, paid for with WRC funds, in meeting claimant's IPP goals. Service Agency merely paying a private attorney for legal services is not "advocacy assistance" as contemplated under the Lanterman Act.

ORDER

Claimant's appeal is denied. Westside Regional Center is not required to pay for the services of an attorney to assist claimant and his mother in matters pertaining to claimant's special education services.

DATED:

ERLINDA G. SHRENGER

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.