

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018101273

DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge with the Office of Administrative Hearings, on December 5, 2018 in Los Angeles, California.

Claimant was represented by his mother who is his authorized representative.¹

South Central Los Angeles Regional Center (SCLARC or Service Agency) was represented by Karmell Walker.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 5, 2018.

ISSUE

Whether the Service Agency must continue to fund Claimant's attendance at the ARC Hillside Workshop Program.

¹ The names of Claimant and his family members are omitted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 21-year-old male. He is eligible for regional center services as a person with autism. Claimant also suffers from severe anxiety.

2. Claimant lives with his parents. He is ambulatory, dresses and feeds himself with minimal assistance and sometimes engages socially with others. Claimant has a small vocabulary, engages in self-stimulatory behaviors and is often non-compliant when asked to complete non-preferred tasks.

3. Claimant's March 23, 2016 Triennial Individual Program Plan (IPP) lists twelve outcomes.

A. *Outcome number 8 provides:*

Consumer will work on erasing or reducing his episode of running/wandering away from once a month to zero times a month.

B. *Outcome number 9 provides:*

Conservator would like for consumer to continue attending Perez Learning Center, five times a week, in order to improve social, emotional and cognitive skills/ability

C. *Outcome number 10 provides:*

Conservator would like for consumer to receive round trip transportation via LAUSD, five times per week, in order to ensure consumer attends school regularly.

D. *Outcome number 11 provides:*

Consumer will participate in community outings (personal errands, recreation activities) at least once a month in order to ensure social community integration.

4. At the time of the triennial IPP, Claimant was attending a school district program. In the time since the IPP was drafted, he aged out of the school district

program. At some point not clear from the evidence, he requested that SCLARC fund his attendance at the ARC Hillside Workshop program and SCLARC agreed to do so. The ARC Hillside Workshop program has community integration and a supervised work experience component. The ARC Hillside Workshop program picked Claimant up by bus; he attended with a friend, and enjoyed the program. On the second day, he was advised by the program staff that there was a problem with his paperwork and that he could not return to the program until his paperwork was in order. Apparently, there was some confusion about in which of ARC's programs Respondent was to enroll and it took some time for his enrollment paperwork to be properly routed. Coincidentally, around the same time, SCLARC stopped placing consumers in the ARC Hillside Workshop program based upon the implementation of the Home and Community-Based Services (HCBS) Final Act.² Because Claimant was not attending the program, due to the mix-up, at the time that SCLARC began its implementation of the HCBS, he was not allowed to continue in the program and transition to another program as the other attendees will over the course of the next year. Claimant has been despondent about the situation. Claimant's mother has requested mental health services for him because of Claimant's mood.

5. SCLARC notified Claimant that instead of the ARC Hillside Workshop program, he would be offered either a behavior program or a supportive employment program. Accompanied by his mother, Claimant visited many of the alternative supportive employment and behavior programs that were suggested by SCLARC. Claimant's mother credibly testified that the behavior program participants were lower

² 42 U.S.C. 1915, et. seq; 79 C.F.R. § 2947, et. seq. 2014) see also *Olmstead v. L.C.*, 527 U.S. 581 (1999).

functioning than Claimant and were not his peers. The supportive employment programs are competitive programs which pay minimum wage or more. Claimant has some behaviors, such as noncompliance and elopement, which do not make him an ideal candidate for supportive employment programs.

6. In its Notice of Proposed Action (NOPA) Letter dated October 4, 2018, SCLARC wrote:

You are not eligible for the requested level of service(s) because: The implementation of the Home and Community-Based Services (HCBS) Final Act indicates that people with intellectual disabilities are to participate in programs which enhance the quality of services provided by maximizing opportunities and choices for individuals.

7. At hearing, SCLARC did not provide specific evidence to support the contention that it was prohibited from continuing to fund Claimant's preferred program by the HCBS Final Act and there is no specific bar for such funding in the law referenced in the NOPA.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act), provides that developmentally disabled persons in California have a statutory right to treatment and habilitation services and supports at state expense. (Welf. & Inst. Code §§ 4502, 4620, 4646-4648;³ *Association for Retarded Citizens California v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.)

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

2. The Lanterman Act mandates that an “array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing IPPs for consumers, for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. The services and supports to be funded for a consumer are determined through the IPP process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as “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 rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).)

4. Welfare and Institutions Code section 4512, subdivision (b) provides:

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, when 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. SCLARC did not provide sufficient evidence to support its contention that under these particular circumstances it was prohibited from further funding of the ARC Hillside Workshop program for Claimant.

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ORDER

Claimant's appeal is granted. The Service Agency shall fund Claimant's participation in the ARC workshop for a period of six months. At the end of six months, an IPP team meeting shall be convened to determine whether the ARC Hillside Workshop remains an appropriate placement for Claimant and any necessary program transition.

DATED:

GLYNDA B. GOMEZ

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.