

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2019030205

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 23, 2019, in Pomona, California.

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant represented himself.¹

¹ Claimant's and family members' names are omitted in order to protect their privacy.

ISSUE

Must the Service Agency, under the Lanterman Developmental Disabilities Services Act (Lanterman Act), fund the AbilityFirst Social Recreation program for claimant to develop social skills?

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1 through 9; claimant's exhibits A and B.

Testimony. Daniel Ibarra; claimant's foster mother; claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 19-year-old non-conserved man, is an eligible consumer of SGPRC based on his diagnosis of mild intellectual disability.

2. In response to a request by claimant that SGPRC fund his participation in the AbilityFirst Social Recreation Program,² SGPRC's Instructional Services Committee (ISC) recommended on October 16, 2018, that SGPRC deny the request because "social skills training is not appropriate at this time." (Ex. 1, p. 1.) The ISC recommended

² The program claimant requested SGPRC fund, as his foster mother testified testimony, is entitled, in the AbilityFirst brochure, "Social Recreation Program." Though it is referred to in the Fair Hearing Request as the "After-School Socialization Program," that designation is deemed to refer to the "Social Recreation Program."

instead that claimant receive increased counseling hours through a current service provider "to address socialization goals" and that claimant ask his school district to target socialization goals.

3. By a notice of proposed action dated January 24, 2019, the Service Agency declined to fund the AbilityFirst program, citing the findings of the ISC and noting that "[s]ocial skills program training is a service that is intended to be funded for a limited amount of time which focuses on instruction and skill acquisition to clients as well as provides parent training so that parents can help clients generalize the skills learned. In addition, social skills can also be addressed through [claimant's] educational program where he can generalize the skills learned." (Ex. 1, p. 2.) The Service Agency cited Welfare and Institutions Code sections 4512, subdivision (b), 4646.4, subdivision (a), and 4648, subdivision (a)(8), and its own Purchase of Service (POS) policy as authority for its denial.

4. Claimant filed a Fair Hearing Request dated February 26, 2019, accompanied by a letter of the same date in support of his request for the AbilityFirst program.

5. At an informal meeting on April 9, 2019, Mr. Ibarra and claimant's foster mother discussed social skills programs, and Mr. Ibarra provided her with a list of program alternatives to AbilityFirst, which SGPRC did not believe offered an appropriate program for claimant. The parties did not resolve the matter, and this hearing ensued.

Services Claimant Receives

6. Claimant has resided at home with his foster mother since September 2018, where he shares a room with a friend. He would like to live independently with

his friend in the future. Before that, he lived in group homes. He has no contact with his biological mother or brother. He is a dependent of the court and has an open case with the Department of Children and Family Services (DCFS).

7. According to claimant's most recent Individual Program Plan (IPP), dated July 2, 2019, claimant is able to perform tasks of daily living, though he requires prompts for some tasks and assistance with his medications. He is not able to cook independently, and he requires supervision in unfamiliar settings to maintain personal safety. Claimant can verbally communicate his needs and desires and can answer open-ended questions and share personal experiences, though he needs some support to stay on topic. Claimant stated at his IPP meeting that he does not have trouble conversing with others at school and maintaining a conversation.

8. At a follow-up IPP meeting on July 18, 2019, claimant's DCFS independent living skills worker reported that she has observed claimant in a group setting and observed claimant communicating and interacting well with others.

9. Claimant's IPP lists as a goal or outcome that he "increase his social skills." (Ex. 9, p. 12.) Supports identified in the IPP to help claimant achieve that outcome are his school district, and Service Agency advocacy services provided at claimant's school Individualized Educational Plan (IEP) meetings. To achieve the goal of increasing his independent living skills, the support provider is identified as claimant's foster mother; the Service Agency "will monitor progress." (Ex. 9, p. 13.) To achieve the goal of increasing appropriate behaviors, thought to be an appropriate goal because of claimant's cursing at others in the past, SGPRC will fund behavior intervention services through Howard Chudler & Associates from September 1, 2019, through March 31, 2020, for four one-hour sessions per month.

10. Through his school district, claimant attends the PALS Adult Transitions Program (PALS), which takes him into the community and provides job training.

11. Mr. Ibarra testified that the AbilityFirst program will not meet claimant's needs as described in the IPP. SGPRC's POS policy provides that the regional center may fund time-limited social skills programs once or twice per week for consumers with "significant challenges" in the areas of engagement with others, social interaction, verbal and non-verbal communication, or play skills. (Ex. 8, p. 31.) Claimant, who does not present with these challenges, does not qualify for funding for this service. Mr. Ibarra testified that current services funded by SGPRC and by claimant's school district are appropriate and sufficient to help claimant reach the goals identified in his IPP, which encompass social skills, peer interactions, and community integration. Mr. Ibarra testified that any supplemental programs to help claimant develop those skills must be sought by claimant's foster mother through the use of generic resources, i.e., programs offered to the general public and not funded by the regional center. Mr. Ibarra provided claimant's foster mother with a list of generic service providers and their contact information.

12. Claimant's foster mother telephoned several of the providers on the list Mr. Ibarra gave her. One is not applicable to claimant, as it services only high school aged youth on a diploma track, whereas claimant is obtaining a certificate of completion. Another is for consumers with autism. Another is a daycare program for school aged children. A fourth, which has an ILS program, did not return phone calls.

13. Claimant's foster mother believes AbilityFirst would help claimant meet his IPP goals because he is very far behind his peers in social interactions and in his awareness of his environment. Being raised in a group home limited his ability to function well in the community. Claimant's current programs, including PALS, are good

and appropriate, but he has been so sheltered for so many years in the group home environment that additional support is needed. His foster mother testified that claimant will be 20 years old in January 2020 and he will have to act appropriately in all situations, but he lacks the skills to do so—that is why he is still living in her foster home. AbilityFirst would further support his development by reinforcing his other programs.

14. AbilityFirst’s Social Recreation program seems to claimant’s foster mother to be robust and intense. She presented an AbilityFirst brochure that describes the requested “Social Recreation” program as follows: “Social Recreation programs encompass a variety of interests. Friday Night Socials in Pasadena offer a fun, party atmosphere for adult[s]. Activities include dancing, gardening, swimming, community outings, karaoke/singing, [and] drama” (Ex. A.)

15. That program segues into another AbilityFirst program, Explore/Ability, for which claimant will eventually seek SGPRC funding because, claimant’s mother believes, it will help claimant communicate and become well rounded as an independent young adult. The brochure describes the “Explore/Ability” program as “site-based activities and extensive community activities aimed at achieving the personal goals of each participant. [¶] Individuals are able to explore the local community and also gain exposure to new experiences with an emphasis on building socialization, work readiness, life skills and autonomy.” (Ex. A.)

16. SGPRC’s POS policy provides for social skills training only for consumers with certain challenges. Claimant’s foster mother acknowledged that claimant does not exhibit behavioral challenges but testified that he does demonstrate challenges in his social interactions. She believes that the AbilityFirst Social Recreation program can benefit claimant.

17. Claimant's foster mother testified that claimant participates in a generic activity, volunteering for one hour each week at the Pasadena Humane Society; he also goes to the local library several times per week.

18. Claimant testified he believes that social skills training would help him talk with others and speak up for himself. Currently, at PALS, he receives training in budgeting, going into the community, and reading street signs.

DISCUSSION

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)³ An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of his request for funding for social skills services through the AbilityFirst Social Recreation program. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

2. Because claimant seeks benefits or services, he bears the burden of proving he is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

³ Further statutory references are to the Welfare and Institutions Code.

The Lanterman Act

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or "generic resource." Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if a service specified in a client's IPP is

not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

Services for Claimant

6. The Lanterman Act defines “services and supports” to include “community integration services . . . [and] social skills training.” (§ 4512, subd. (b).)

7. The Service Agency denied funding based on the sufficiency of the services currently funded, on the Lanterman Act’s mandate that services be cost-effective, and on the availability of generic services available to claimant to supplement the services funded by the Service Agency and by claimant’s school district. (Factual Findings 2, 3, 5, & 11.)

8. Claimant did not establish that SGPRC must fund the AbilityFirst program. Though there is some evidentiary support that claimant has not yet met all his IPP social interaction and community integration goals, the insufficiency of claimant’s current services and supports to allow claimant to achieve those goals was not demonstrated.

9. As important, the evidence on this record does not establish sufficiently that the AbilityFirst “Social Recreation” program is a social skills program designed to help claimant achieve his IPP goals and objectives, rather than a social recreation program. (Factual Findings 13-16.) Regional center funding for social recreation programs has been suspended since 2009. (§ 4648.5.) The few exceptions to the suspension were not shown to apply in this case. The AbilityFirst brochure does not detail the nature of the training or how its success in helping claimant achieve his IPP goals will be measured, as would be required for any social skills program or other service or support under section 4512. Instead, by its title and the description of social

and recreational activities the program affords participants, it appears the program provides consumers with an opportunity to socialize with peers. While this is a valuable service, without more evidence of the training to be provided, regional center funding is not currently permitted under the Lanterman Act.

10. Claimant's foster mother has begun trying to find generic service providers to supplement claimant's current programs, but has exhausted the list of such providers Mr. Ibarra gave her. Claimant's service coordinator may be available to help her identify other, more appropriate generic resources.

LEGAL CONCLUSION

Cause was not established to require Service Agency funding for claimant to participate in the AbilityFirst Social Recreation program.

ORDER

Claimant's appeal is denied.

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.