

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency

OAH No. 2019050250

DECISION

Administrative Law Judge Penelope Pahl, State of California, Office of Administrative Hearings, heard this matter on March 4, 2020, in San Jose, CA.

James Sibley, Attorney at Law, represented Claimant at hearing. Claimant was not present. Claimant's Father (Father) attended the hearing.

James Elliott represented service agency San Andreas Regional Center (SARC).

The hearing concluded and the matter was submitted for decision on March 4, 2020.

ISSUE

Is Claimant entitled to out of home respite or community integration services through the Monterey Bay Horsemanship Therapeutic Center during weekdays after school, and on weekdays and weekends when school is not in session.

FACTUAL FINDINGS

Introduction

1. Claimant is an 18-year-old regional center consumer who lives in an adult residential facility in Hollister, California. Claimant is eligible for regional center services due to his diagnosis of autism.

2. SARC is one of 21 regional centers in California that serve people with developmental disabilities and their families. SARC provides service coordination and individualized planning to assist consumers and their families in accessing services and supports to meet the individuals' needs. Service planning may include resources in the community, or services funded by the regional center, including respite for parents and caregivers, day activity/work programs for adults, and residential and community living options for individuals. Following this planning process, each regional center "consumer" is provided with an Individual Program Plan (IPP) which is periodically updated thereafter.

3. Claimant originally sought funding so he could attend the Monterey Bay Horsemanship Therapeutic Center (Horsemanship Center) with a staffing ratio of 3:1 for Claimant, after school, on weekends and during school holidays; and sought respite care from 10:00 p.m. to 8:00 a.m. daily. At the time, Parents were considering moving Claimant home. On April 18, 2019, SARC issued a Notice of Proposed Action (NOPA)

denying Claimant's request. On April 23, 2019, Claimant filed a request for fair hearing. On March 3, 2020, Claimant withdrew the request for overnight respite care and a 3:1 staffing ratio while attending the Horsemanship Center. This hearing followed.

Claimant's Personal Service Needs and Current Residence

4. Claimant was born with profound autism. At age 18 he is non-verbal and continues to work towards being able to perform necessary self-care tasks. Claimant communicates with a few basic signs and uses an iPad with a program with pre-loaded icons that show images of preferred foods, activities, common items and animals.

5. Claimant is a very large young man at 6'1 inches tall and approximately 295 pounds. He occasionally becomes physically violent; however, his violent outbursts have become less frequent since he began taking his most current medications in July of 2018. His violence is usually triggered by frustration or a change in his routine. He has lived outside his family home since he was at least 17 years old as his family is unable to manage him when he becomes violent.

6. In January of 2019, Claimant was placed in the Level 4-I adult residential facility where he currently resides. Level 4-I facilities provide some of the most intensive services provided for regional center consumers. They accept residents with challenging behaviors and significant support needs. Residents are cared for 24 hours per day. Level 4-I homes are required to be staffed by a behaviorist who provides consultation regarding each resident at least quarterly. Staff receive training on implementing behavior plans and taking data regarding a consumer's behavior. Level 4-I facilities also provide a higher ratio of staff to consumers. Claimant requires round-the-clock supervision.

7. When regional center consumers reside in a 24-hour residential facility, families do not contribute to their care. Thus, families are not entitled to respite services from the regional center to give the family a rest from providing care to their disabled family member.

8. Claimant's residential facility is provided with his IPP which is developed by a regional center team that includes Claimant's Father, various SARC professionals, and the Director or other administrators of the residential facility. The residential facility, in collaboration with SARC, is expected to provide all of the services necessary to meet Claimant's IPP objectives. One of those is that Claimant will have the opportunity to participate in community outings at least once a week while living in the residential facility.

9. Claimant is the youngest resident of his current adult residential facility. Claimant is still eligible for public education until he is 22 years old, as he has not graduated from high school. Claimant currently attends an non-public school (NPS) near his residence that serves autistic students with substantial behavioral needs. Non-public schools are schools certified by the state of California to serve student populations with a variety of special needs. Claimant returns to his residence after school concludes at 2:30 p.m. Father asserts Claimant has no activities in the afternoon or on the weekends and, thus, SARC should be required to fund the Horsemanship Center.

Claimant's Current Community Integration Services

10. Claimant has an IPP objective of being offered the opportunity to go out into the community at least once a week to take a walk or play basketball. Claimant is resistant to leaving the house. Claimant also has behavioral issues that present safety

concerns that must be addressed when taking him in the community. In May of 2019, Claimant was provided with additional staff at his residence, over the normally high staffing to individual ratio in a 4-I level residential facility, to assist him in managing his behaviors, including a registered behavioral technician and a trained direct support professional. Claimant's more difficult behaviors in the community have lessened; thus, his primary need when on community outings is to be kept safe.

11. Father is concerned that Claimant is not getting out into the community on a regular basis and is not getting the exercise as an objective in Claimant's IPP. However, Father's evidence was vague and inconsistent. Father primarily relies on information regarding Claimant's activities that is provided by the person who helps Claimant with his internet based visits each evening. No evidence was presented as to the identity of the assistant(s), the position this person or persons holds, or whether they would have detailed knowledge of Claimant's activities. According to Father, when asked what Claimant did that day, the assistant has either been unable to describe what Claimant had done or did so in vague terms, telling him Claimant walked around listening to music or giving him other general answers. Father asserted that he "had no indication" Claimant had been taken out of the house for the last six months, but offered no evidence to support his assertion. Father asserted Claimant lived in a locked facility. This was inaccurate information. Claimant does not live in a locked facility. Father is also aware Claimant would sometimes close the door before leaving the house when staff wanted to take him out for a walk indicating Claimant did not want to go out.

12. Michael Keely, SARC's Director of Consumer Services, explained that it was not unusual for consumers to require work on steps towards getting into the community; and that going out of the house was one step in the process. Consumers'

wishes regarding going out were respected as is required. Claimant's residential facility has a behaviorist who develops a behavior plan, and then works with the staff to help them implement the plan as part of encouraging residents to meet their IPP objectives. Staff are trained in assisting Claimant with his behavior plan. Father was unaware that Claimant had a behavior plan at his residence or that the residential facility had a behaviorist.

13. In addition to community integration opportunities offered at the residential facility, Claimant also goes to school each day, which provides a generic resource to provide Claimant with community integration services. His current individualized education program provides a community access goal that describes behavior challenges when Claimant ventures out into the community and the plan to work on those behaviors during Claimant's outings. No evidence was presented establishing that Claimant was not pursuing this goal or that the community integration being offered was inappropriate to meet Claimant's needs. Although Father stated that the school was afraid to take Claimant into the community, he offered neither specific facts, nor any corroborating evidence, in support of the assertion.

14. Father acknowledged that he found it difficult to pursue questions about Claimant's activities with the Director of the residential facility because Father found him intimidating. As a result, he had not explored exactly what activities Claimant engaged in and had not discussed possible alternatives for increasing Claimant's community integration and exercise in the IPP process. Father failed to establish that he had accurate information regarding Claimant's current activities. He offered no corroborating evidence establishing that the services being provided were inadequate to meet Claimant's needs. Father's testimony regarding the services being provided to

Claimant lacked credibility as he lacked knowledge of the details of the services Claimant received.

Prior Respite Provided By Monterey Bay Therapeutic Horsemanship Center

15. Due to Claimant's very high level of needs, at times, placement has been challenging. In November of 2018, the specialized housing placement where Claimant resided closed, and it took several weeks to find him a new place to live. During the search, Claimant's Parents were unable to have him at home due to their inability to control Claimant. Therefore, SARC made emergency arrangements for services to meet Claimant's needs.

16. During the transition period, Claimant lived on his own, with supports, continued attending his NPS, and was provided with respite and independent living skills (ILS) training at his residence which, in combination, covered his 24-hour care needs. Part of the respite care was provided by the Horsemanship Center where Claimant was transported after school and remained until 9:30 to 10:00 p.m. On weekends and school holidays he attended from 8:00 a.m. to approximately 9:00 p.m.

17. The Horsemanship Center is approved as a vendor by SARC to provide two kinds of services: out of home respite and community integration. The staff is not trained in behavior modification or implementing a behavior plan, but does have experience working with developmentally disabled clients.

18. According to Father, after a rocky start that included some violent episodes, he received reports that Claimant was doing well at the Horsemanship Center, was calmed by the large animals and responded to instructions. While he had to be enticed to go to the Horsemanship Center with a cupcake, Father was told

Claimant followed instructions without inducement when picked up by residence staff to go home, cooperation which Father attributed to Claimant's experiences at the Horsemanship Center. Father was told Claimant worked in a small group of three young men at the center, and, while they did not interact, they did work near each other without incident. Claimant also participated in basketball activities, walks, and art activities and had occasional contact with the horses. No evidence of the extent of Claimant's participation in these activities was submitted. These emergency arrangements for services were terminated when Claimant began receiving services from his current adult residential placement.

19. Father asserts that Claimant needs to attend the Horsemanship Center because it is an environment where Claimant had done well in the past. Father believes that continuing activities at the Horsemanship Center would be healthy for Claimant.

LEGAL CONCLUSIONS

1. Claimant filed the request for fair hearing seeking additional services; therefore, Claimant has the burden of proving by a preponderance of the evidence that the additional service being requested is needed. (Evid. Code, §§ 500, 115.)

2. The State of California accepts responsibility for persons with developmental disabilities. The Lanterman Developmental Disabilities Services Act (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 life of the community. California provides services and supports to enable persons with developmental disabilities to be empowered to make choices in all life areas and approximate the pattern of everyday living available to people of disabilities of the same age." (Welf. & Inst. Code, § 4501.)

3. Regional centers must develop and implement IPPs which shall identify services and supports, "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option . . ." (Welf. & Inst. Code, § 4512, subd. (b); see also, §§ 4646, 4646.5, 4647 and 4648.)

4. The provision of regional center services to consumers and their families are intended to be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).) In implementing IPPs, regional centers, through the planning team, shall first consider services and supports in the natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer, and, if appropriate, to his family. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

5. Respite services are provided to families to assist them in keeping a disabled family member in the home and to provide relief from the constantly demanding responsibility of caring for the disabled family member. (Welf. & Inst. Code § 4690.2.) These services are not available to families of consumers who receive 24-hour per day care in an out-of-home adult residential facility. Claimant is not entitled to any type of respite services due to his current placement in a 24-hour out-of-home adult residential facility.

6. The Lanterman Act prohibits the purchase of day programs, vocational education, independent living programs or mobility training and any related transportation for consumers who are 18 to 22 years of age, inclusive, if that consumer is also eligible for special education and related services, unless it has been determined that the consumer's needs cannot be met in the educational system or an

exemption is granted. Exemptions are granted for certain paid internships and related programs or in extraordinary circumstances. (Welf. & Inst. Code, § 4648.55, subd. (a).) Extraordinary circumstance exemptions must be sought through the IPP process and must be based on a finding that the generic service available is not appropriate to meet the consumer's needs. (Welf. & Inst. Code, § 4648.55, subd. (d).)

7. In addition to living in a residential facility that provides community integration services, Claimant receives community integration services through the non-public school he currently attends. Claimant failed to meet his burden of proving that the community integration services being received from the residential facility or from school were not appropriate to meet his needs. No corroborating evidence was offered supporting Father's testimony of his suspicion that Claimant never left the residential facility other than for school or medical appointments. Father also stated that he has not challenged the school's provision of community integration services as inappropriate to meet his needs. The school's community integration work is a generic resource for Claimant's community integration needs.

8. Even if Claimant had met his burden of establishing the community integration services currently received were not appropriate to meet his needs, which he did not, Claimant failed to establish that he explored an extraordinary services exemption through the IPP process as required by the Lanterman Act. (Welf. & Inst. Code, § 4648.55, subd. (d).) Father admitted that he failed to discuss the current community integration services being provided to Claimant by the residential facility in the most recent IPP meetings because he was concerned about the facility's Director's response to such a conversation; and instead focused the discussions on his desire that Claimant be granted permission to go to the Horsemanship Center.

ORDER

Claimant's appeal is denied.

DATE:

PENELOPE S. PAHL

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.