

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER

OAH No. 2019080842

DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge with the Office of Administrative Hearings, on November 6, 2019, in Alhambra, California. Claimant was present at the hearing and was represented by his father.¹ Eastern Los Angeles Regional Center (Service Agency or ELARC) was represented by Jacob Romero, Fair Hearing Coordinator.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 6, 2019.

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¹ Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and his family.

ISSUE

Must the Service Agency fund an additional 12 hours per month of Community Participation Training (CPT) for Claimant?

EVIDENCE

Documentary: Exhibits 1-17, A and B.

Testimonial: Kristine Cheung, Service Coordinator; Jacob Romero, Fair Hearing Coordinator; and Claimant's mother and father.

FACTUAL FINDINGS

BACKGROUND FACTS

1. Claimant is a 15-year-old male client of ELARC who lives with his mother (Mother), father (Father), his 12-year-old sister, and his maternal grandmother.

Claimant is eligible for, and receives services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

2. Claimant has been diagnosed with Autism Spectrum Disorder, Developmental Condition Disorder, Feeding Disorder of Infancy, Williams Syndrome, and sensory processing problems. He has low muscle tone and must walk slowly to prevent falls. Claimant is able to speak in two-word phrases with verbal prompts, his vocabulary is limited, and his speech can be difficult to understand. He requires a great deal of assistance with self-help skills. He displays maladaptive behaviors including

eloping, engaging in self-injurious behavior, staring inappropriately at females, and touching himself inappropriately and urinating in public. During the hearing, Claimant played with his iPad and did not participate in, or appear to follow, the proceedings.

SERVICES PROVIDED

3. ELARC funds 16 hours of in-home respite care services per month for Claimant, which is provided by Maxim Healthcare Agency. Claimant also receives 54 hours per month of In-Home Supportive Services (IHSS). Mother is his IHSS service provider.

4a. Claimant receives special education services through the San Gabriel Unified School District (School District). He attends Villa Esperanza School, a non-public school. Life Skills training is provided to Claimant in school. Claimant also receives Socialization Skills Training provided by CBC Education, Inc. Panda Services provides Applied Behavioral Analysis (ABA) services to Claimant which is funded by Medi-Cal, Claimant's health insurance provider. ABA services, which focus on increasing communication and working on self-help skills such as dressing and brushing his teeth, are provided to Claimant in his home.

4b. ELARC suggested that ABA services could focus on some of the skills covered by CPT. However, his parents contend that ABA would not be helpful in addressing Claimant's behaviors, which include eloping, lack of danger awareness, prolonged inappropriate staring at women, and urinating and touching himself inappropriately in public. Claimant's parents point out that ABA has a different focus than CPT, and is provided in the home. Claimant's mother emphasized that it is essential that these skills be taught while Claimant is out in the community.

COMMUNITY PARTICIPATION TRAINING

5. The Service Agency currently provides funding for Claimant to receive 36 hours per month of CPT, which is provided by SEEK Education, Inc. (SEEK). SEEK began working with Claimant on February 1, 2019. This training targets skill deficits to increase Claimant's independent functioning in the community. The SEEK program focuses on developing social skills, safety skills, and appropriate behavior to assist Claimant with social interactions needed to integrate into the community. The plan would be to fade out CPT services over time.

6a. Claimant had previously received Community Integration Training (CIT)² services provided by Total Program, Inc. (Total). On January 9, 2018, ELARC sought to reduce his hours from 48 hours per month to 36 hours per month. Claimant's parents took issue with the reduction of hours and on February 18, 2018, the reduction was reversed following mediation.

6b. Total was not able to provide Claimant with 48 hours per month of CPT. Mother became dissatisfied with Total due to lack of staffing and poor communication, and ELARC provided her with other referrals for CPT. On November 14, 2018, Mother consented to having SEEK take over as Claimant's CPT provider. SEEK performed an assessment, based upon a review of records, direct observation, and interviews with Claimant's parents. SEEK prepared a Community Participation Training Service Assessment Report, dated December 7, 2018. (Exhibit 7.) Based on its assessment, SEEK recommended that Claimant receive 36 hours per month of CPT. Eight goals were set out including self-management; self-help; safety awareness; communication/social

² Some vendors use the term CIT, rather than CPT, but they are synonymous.

interaction skills; navigation and mobility skills; purchasing skills; restaurant skills; and community participation.

6c. Mother had assumed that SEEK would provide the same number of CPT hours that Total had provided. She expressed her view to Claimant's service coordinator, Kristine Cheung, that additional CPT hours were needed. After discussion with the service coordinator, Mother agreed to proceed with 36 hours per month with the understanding that additional hours could be sought in the future if justified by SEEK. (Exhibit 11, p. 9.)

7. CPT services were discussed at the April 3, 2019 Individual Program Plan (IPP) meeting. Claimant's parents expressed the desire to increase the number of CPT hours funded by ELARC. This discussion was not included in the IPP.

8. Claimant has not been receiving the full 36 hours per month of CPT per month which the Service Agency agreed to fund, due to staffing issues experienced by SEEK. Claimant has received nine hours per week of CPT only about 50 percent of the time. SEEK was finally able to provide Claimant with the full 36 hours per month of CPT during the month prior to the hearing. As of the date of the hearing, none of the goals set out in the CPT assessment had been met. However, Mother is satisfied with SEEK and believes SEEK has begun to resolve its staffing issues. She would like to have additional CPT hours funded by ELARC, but does not wish to change to a different CPT vendor.

9. SEEK prepared a six-month progress report dated June 14, 2019, in which it recommended that Claimant receive 48 hours per month, stating "we would like an increase in hours per parents' request." (Exhibit 8, p. 9.) It is anticipated that SEEK will submit a new authorization request in December 2019 or January 2020.

10. Alexander Beebee, M.D., is a child psychologist who is very knowledgeable about Autism Spectrum Disorder. He provides psychiatric care to Claimant. In a letter dated September 11, 2019, Dr. Beebee states that Claimant has major problems relating to his behavior in public. He opines that Claimant has shown clear improvement from the 48 hours of CPT he received in the past, but he has not shown improvements justifying a reduction in hours. However, Dr. Beebee acknowledges that he is "not experienced in knowing how to prorate the length of time for various behavior interventions." (Exhibit B, p. 2.)

11. ELARC denied Claimant's request that CPT be increased from 36 hours per month to 48 hours per month in a Notice of Proposed Action (NOPA), dated July 31, 2019. ELARC asserts that SEEK's June 14, 2019 Progress Report does not support an increase. The Service Agency points out that Claimant's initial CPT goals are the same as the new CPT goals set out in the June 2019 Progress Report. ELARC also asserts that services similar to CPT can be provided to Claimant by the School District which offers a Life Skills High School Class, Transition High School Class, and Vocational High School Class. An informal meeting was also held on August 19, 2019 in regard to the number of CPT hours funded.

12. Claimant filed a timely request for hearing and this matter ensued.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of an increase in CPT hours is denied. (Factual Findings 1 through 11; Legal Conclusions 2 through 10.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center

decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of an increase in CPT hours, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services or items not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for an increase in CPT hours, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet his needs. Claimant has failed to meet his burden.

4. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, e.g., Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

5. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

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:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports

that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

6(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

7. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he 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. . . .

8. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

9. Claimant has not presented sufficient evidence at this time to establish that requiring ELARC to fund additional CPT hours would be a cost-effective use of public resources. It was established that Claimant has not met his current CPT goals. However, SEEK has not been able to consistently provide Claimant with the full 36 hours per month of CPT currently approved. Accordingly, it is not possible to adequately assess whether funding additional hours of CPT is warranted at this time. Moreover, in its most recent assessment, SEEK failed to provide adequate justification for an increase in CPT hours, primarily noting that it was seeking additional hours based on the parents' request. (Factual Findings 1-10.)

10. Given the foregoing, the Service Agency's denial of an increase in CPT hours was appropriate.

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ORDER

1. Claimant's appeal is denied. Eastern Los Angeles Regional Center's denial of an increase in CPT hours is upheld.

2. Upon Claimant's request, his parents' dissatisfaction with the amount of CPT hours approved shall be included in the IPP.

DATE:

LAURIE R. PEARLMAN

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.