

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

In the Matter of the Fair Hearing Request of:

CLAIMANT

v.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency

OAH No. 2020020156

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 22, 2020, by videoconference.

Jacob Romero, Fair Hearing Coordinator, appeared for Eastern Los Angeles Regional Center (ELARC or Service Agency).

Claimant's mother and conservator represented claimant, who was not present.¹ A Spanish language interpreter, Doneida Marroquin, Hanna Interpreting Services, interpreted and translated documents for claimant's mother.

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

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 22, 2020.

ISSUE

Must the Service Agency fund a psychological evaluation of claimant?

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 14.

Testimony: Jacob Romero; claimant's mother and conservator.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 28-year-old conserved woman, is an eligible consumer of ELARC based on her diagnosis of mild to moderate Intellectual Disability (ID). Claimant's most recent Individual Program Plan (IPP),² dated November 26, 2019, reflects an additional diagnosis of "rule out mental illness," and also recommended a neurological consultation to rule out brain impairment. (Ex. 4.) Since that IPP was

² The Lanterman Developmental Disabilities Act (Lanterman Act) requires regional centers to develop a person-centered "individual program plan," or "IPP," for each client. (Welf. & Inst. Code, § 4646; further statutory references are to the Welfare and Institutions Code.)

issued, claimant has been diagnosed variously with schizophrenia and bipolar affective disorder. (Exs. 8 & 11.) No mental health professional has diagnosed claimant with Autism Spectrum Disorder (ASD).

2. At claimant's most recent IPP meeting on June 5, 2019, her mother requested that ELARC fund a psychological evaluation for claimant. Among other things, she would like to ascertain whether claimant should be diagnosed with ASD.

3. By a Notice of Proposed Action (NOPA) dated January 10, 2020, ELARC notified claimant's mother that it declined to fund a psychological evaluation. The NOPA states that a review of years' worth of claimant's clinical records by Randi Bienstock, Ph.D., a consulting clinical psychologist, revealed that none of those records included "any comments, notations or diagnostic impressions related to Autism Spectrum Disorder," and that they "include consistent diagnostic impressions over several years (ID-Mild to Moderate Severity and Schizophrenia)." (Ex. 1, quoting Ex. 8.) Because a psychological evaluation was conducted as recently as 2016, "there does not appear to be a need for an updated ELARC Psychological Evaluation at this time." (Ex. 1.) The NOPA cited, as authority for its denial, various sections of the Lanterman Act (§§ 4646, subd. (a), 4646.4, subd. (a), 4512, subds. (a), (b), and (j), 4646.5, 4690.2, subd. (a), 4659, subds. (a) & (c), 4697, subd. (a), 4620.3, subd. (a), and 4643, subd. (b)).

4. Claimant's mother filed a Fair Hearing Request dated January 22, 2020. She wrote that a psychological evaluation was necessary because claimant's mental and intellectual state had drastically changed over the past 10 years, from 2010 to 2019.

Claimant's IPP

5. According to claimant's most recent IPP, claimant resides at home with her mother, two brothers, and a sister. Her parents are divorced and her father has little contact with the family; claimant's mother is her primary caregiver. She speaks "in a nonstop fashion and most of what she says is incoherent"; she is unable to have a conversation. She "is fully ambulatory but struggles to walk long distances." Claimant requires "constant supervision due to her psychosis" Claimant is obese and has high blood pressure, and must have her food chopped up for her so she does not choke while eating, as she does not chew her food properly. Her mother believes she may have seizure disorder, "though there is no medical documentation at this time to support that diagnosis." A personal assistant "will be serviced at day program due to recent increased behaviors. . . . All medical expense[s] are covered through Medi-Cal." (Ex. 4, pp. 7-8.) Claimant requires assistance with all of her personal hygiene tasks. She has control of her bladder and bowel but requires assistance when wiping, and must be picked up from her day program repeatedly due to accidents. She has made some progress on showering independently, but her mother must continue to assist her with washing her hair, shaving, scrubbing her body, brushing her hair, and selecting and putting on her clothing each day. Claimant is unable to make even simple meals, but eats independently. She has no concept of time or of money management.

6. The IPP notes that claimant's mother "has requested a psychological evaluation for current levels and clarification on diagnosis. Her last evaluation was completed on 11/4/16. [Claimant's mother] feels as if [claimant] displays Autistic characteristics and explained that some doctors have also noticed the characteristics in her. There is no documentation to support this claim. Service Coordinator asked mother to collect documentation that justifies these characteristics. Service

Coordinator submitted a clinical review to request a psychological evaluation, recommendations are pending.” (Ex. 4, p. 9.) Claimant’s mother reported that claimant “was being monitored by Dr. Zada at Pacific Clinics but since has changed providers and is awaiting a psychiatrist assignment at Alma Family Center.” (*Ibid.*) Claimant’s mother reported that claimant “screams, uses inappropriate language, and throws objects when frustrated. [She] will get upset when items are taken away from her and will tantrum. Her behaviors typically consist of screaming but recently aggressiveness towards others has increased. . . . [She] will laugh and giggle when it is not appropriate. . . She continues to receive [Applied Behavior Analysis (ABA) services] through Howard Chulder [*sic*]. Mother has learned new strategies to calm behaviors.” (*Ibid.*)

7. The IPP notes claimant’s mother’s report that claimant’s “behaviors have increased during her day program and in the community,” requiring her to leave places because of her behaviors. (Ex. 4, p. 10.) She becomes physically aggressive toward her mother, and throws things, destroying objects at grocery stores. It is “difficult to do family outings because [claimant’s] behaviors are radical and unexpected. [¶] Ability First was struggling to manage her behaviors during program hours. They requested a 1 to 1 aid[e] to help prompt and guide [claimant] without compromising the safety of others.” (Ex. 4, p. 10.) The IPP notes that claimant also wanders away from her group while at her day program, and that ELARC agreed to fund the one-on-one aide Ability First requested.

8. ELARC currently funds five days per week of claimant’s day program at Ability First, 30 hours per month of respite services, 18 hours per month of ABA services through Howard Chudler, translation services, mileage, and a personal assistant through Cambrian Home Care. (Ex. 4.) Claimant receives mental health

services from Alma Family Services. She has a contract with the Crisis Response Project, a service available to regional center clients; it is a hotline a family can call in order to de-escalate a situation that might turn into a crisis. Claimant receives \$895 per month from Supplemental Security Income (SSI), and 276 hours per month of In-Home Supportive Services (IHSS).

Service Claimant Has Requested

9. Claimant's mother requested funding for a psychological assessment for claimant due to claimant's difficult behaviors. At the hearing, claimant's mother testified she wants to learn the root cause of claimant's behaviors, to which end she believes a new psychological evaluation is necessary.

10. Claimant's last psychological evaluation funded by ELARC was in November 2016. Larry R. Gaines, Ph.D., conducted a clinical interview and a records review, and applied various testing instruments: the Wechsler Adult Intelligence Scale–IV (attempted), the Beery-Buktenica Development Test of Visual Motor Integration (Beery VMI), and the Vineland Adaptive Behavior Scales, Second Edition (Vineland–II). Dr. Gaines noted that claimant could not communicate meaningfully about her experiences, giggling and speaking incomprehensibly. Claimant's mother reported she had deteriorated since she turned 18; she hits her siblings and cannot be taken into the community without great difficulty. She was "unable to respond to any verbal test items and could not complete nonverbal test items on the Wechsler Adult Intelligence Scale–IV, and this test was discontinued." (Ex. 3, p. 3.) On the Beery VMI, claimant tested at the five-year, six-month level of cognitive development, which is the moderate range of deficiency. Her language skills fell within the severe range of deficiency on the Vineland–II. Dr. Gaines diagnosed her with Intellectual Disability, and recommended referring her for a mental health examination to rule out mental illness, and for a neurological

consultation to rule out brain impairment (caused, for example, by a stroke or tumor). (Ex. 3.)

11. Pacific Clinics for “several years” diagnosed claimant with “ID-Mild to Moderate Severity and Schizophrenia.” (Ex. 8.) After claimant began receiving services at Alma Family Services, replacing Pacific Clinics, Ricardo Ramirez, M.D., diagnosed her in June 2019 with bipolar affective disorder. (Ex. 11.) Claimant’s June 2019 IPP notes her increased behaviors, but does not specify the mental health diagnoses of Pacific Clinics or of Alma Family Services and Dr. Ramirez. None of the medical records in evidence diagnoses ASD.

12. Mr. Romero, who was claimant’s previous service coordinator, is familiar with her file, with discussions at IPP meetings, and with claimant’s past and current services and supports. He testified that the 2016 psychological evaluation yielded no evidence of severe ID, or of ASD, a condition that would usually appear early in a person’s development. Claimant’s ABA provider’s current primary goal is to reduce claimant’s emotional outbursts. The provider tracks progress made in its intervention plan for claimant, which includes implementing communication models so claimant can express her needs, helping claimant transition into non-preferred activities, and helping the family structure claimant’s schedule for smoother transitions between activities. (Ex. 10.)

13. Mr. Romero testified that, at an informal meeting in February 2020, claimant’s mother requested more ABA hours. In response to claimant’s mother’s request, ELARC’s clinical team reviewed claimant’s file and concluded claimant presented now with what is primarily a mental health issue, and was uncertain whether more ABA hours would be appropriate. They are relying on Howard Chudler, the provider, to advise them on whether to increase ABA hours.

14. Mr. Romero obtained claimant's mother's consent to communicate with Dr. Ramirez. Dr. Ramirez provided a letter dated February 13, 2020, diagnosing claimant with schizoaffective disorder and moderate ID, rule out ASD, rule out Attention Deficit Hyperactivity Disorder (DHD). He wrote that claimant presents a complicated clinical picture, with features of bipolar affective disorder, schizophrenia, ADHD, ID, and ASD. The finding of ASD "features" was not supported with any diagnostic measures or instruments. Mr. Romero testified that Dr. Ramirez said he did not believe claimant satisfied the diagnostic criteria for ASD, so he diagnosed it as "rule out." Dr. Ramirez wrote that the main concern is irritability, that Risperdal is effective and that he plans to increase claimant's dose and address mood instability and hallucinations. He wrote that he told claimant's mother he is concerned that she over-reports claimant's symptoms. (Ex. 11.) Mr. Romero testified that the ELARC clinical team has seen no documentation of ASD, but Dr. Bienstock, ELARC's consulting psychologist, is willing to consider any pertinent documentation claimant's mother submits. As of now, however, it appears to the team and the professionals who have evaluated claimant that her behaviors and symptoms have a mental health origin. Mr. Romero suggested referral to Coordinated Life Services (CLS), to maximize mental health interventions through Medi-Cal. CLS is designed for clients at risk of being placed in mental health locked facilities or who have complicated cases and need help from mental health resources.

15. Claimant's mother testified that her daughter is nonverbal; she can tell you her name, but largely communicates by signs and cannot carry on a conversation. Claimant's mental state has changed drastically since 2010, and she now requires 24-hour per day supervision. Claimant's mother and siblings are all working hard to prevent claimant from harming herself and others. She would like claimant's IPP to be changed to reflect her current mental health diagnosis, and would like an in-depth

mental health evaluation. Claimant's mother took claimant to a neurologist for a neurological examination, but due to claimant's behavior the examination had to be terminated after only 30 minutes. Claimant's mother tried to have claimant examined again, but again claimant did not cooperate.

16. Claimant's mother testified that she believes claimant would benefit from some form of psychotherapy, in addition to the medications she takes. At Alma Family Services and Pacific Clinics, claimant receives only psychiatric care and medications. They say claimant does not qualify for therapy because she refuses to cooperate. Claimant's mother would like a referral to a psychotherapy provider to address claimant's disabilities. She testified that ELARC told her they only fund a mental health examination every 10 years, and the last one was only four years ago. Claimant's mother would also like a medical bracelet for claimant, to advise people in the community that she is "high risk" and a danger to herself and others, because claimant's mother cannot control her when she becomes aggressive.

DISCUSSION

1. The Lanterman Act governs this case. (§ 4500 et seq.) 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 her request for funding a psychological evaluation. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, she bears the burden of proving she 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 her case by a preponderance of the evidence. (Evid. Code, § 115.)

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 other “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 no generic agency will fund a service specified in a client’s IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

Services for Claimant

6. The Lanterman Act defines “services and supports” to include “diagnosis, evaluation, treatment, . . . mental health services, [and] assessment.” (§ 4512, subd. (b).)

7. The Service Agency denied funding based on portions of the Lanterman Act requiring the utilization of generic services and supports when appropriate (§§ 4659, subd. (a), 4646.4, subd. (a)); defining “developmental disability,” “substantial disability,” and “services and supports” for regional center purposes (§ 4512, subds. (a), (b), & (h)); and evaluations and tests to determine whether an individual qualifies for regional center services (§ 4643). (Factual Finding 3.)

8. Claimant did not establish that ELARC must fund a psychological evaluation. The Service Agency based its decision not to fund an evaluation on the relatively recent 2016 psychological evaluation and years’ worth of claimant’s medical and psychological records from various sources, including Alma Family Services and Pacific Clinics. The 2016 psychological evaluation was conducted *after* claimant’s mother notified ELARC of claimant’s changed behaviors and thus took those changes into account. (Factual Findings 3, 6, 8-14.) ELARC’s finding that a psychological evaluation is not warranted at this time was reasonable.

9. Services and supports tailored to addressing claimant's mental health needs, addressing both her diagnosed mental illness and possible brain impairment, should be implemented, funded by appropriate sources. To the extent claimant's IPP does not reflect her current diagnoses (e.g., schizophrenia or bipolar affective disorder) and identify services intended to ameliorate the effects of those conditions, claimant's mother may request an IPP meeting to address those issues.

LEGAL CONCLUSION

The evidence did not establish that the Service Agency is required under the Lanterman Act to fund a psychological evaluation of claimant at this time.

ORDER

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings