

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

In the Matter of:

CLAIMANT,

VS.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020060405

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 22, 2020.

Claimant was represented by his mother. The names of Claimant and his mother are omitted to protect their privacy.

Jacob Romero, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC).

Bernadette Buckley provided Spanish interpreter services for Claimant's mother and other witnesses during the hearing.

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

ISSUE

Whether ELARC should fund instruction in language and literacy skills for Claimant at Lindamood-Bell Learning Center under the Lanterman Developmental Disabilities Services Act.

EVIDENCE RELIED UPON

Documents: ELARC exhibits 1 through 14; Claimant's exhibits A through E.
Testimony: Arturo Castellanos (by telephone); Armida Ochoa; Carina Lopez Zuniga; Claimant's mother.

FACTUAL FINDINGS

Background

1. ELARC determines eligibility and funds services for developmentally disabled persons under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)¹

¹ Undesignated statutory references are to the Welfare and Institutions Code.

2. Claimant is a 22-year-old man who is eligible for Lanterman Act services from ELARC due to a diagnosis of autism spectrum disorder. He lives with his mother, who has been his conservator since May 2016. Due to his developmental disability, Claimant struggles academically and needs help to continue his academic progress. Due to the COVID-19 pandemic, he currently takes just one online class in reading and writing at East Los Angeles Community College. ELARC funds a personal assistant and adaptive skills training for Claimant and respite services for his mother.

3. Claimant's mother is concerned about Claimant's academic progress and the limited support available at East Los Angeles Community College for his specialized academic needs. In October 2019, she had Claimant undergo a diagnostic learning ability evaluation at Lindamood-Bell Learning Center (Lindamood-Bell), an accredited private school offering one-to-one and small group instruction for children and adults. Lindamood-Bell found that Claimant "demonstrate[d] numerous areas of substantial weakness" during the evaluation and "recommend[ed] an initial period of instruction – 4 hours per day, five days per week – for 40-50 weeks to develop his language and literacy skills." (Exhibit D.)

4. In February 2020, Claimant's mother requested that ELARC fund the recommended instruction for Claimant at Lindamood-Bell. Arturo Castellanos, Claimant's service coordinator at ELARC, contacted Lindamood-Bell for more information about its recommendation and educational programs. Castellanos and his supervisor later met with Claimant's mother and Maria Ishibashi, the school's Associate Center Director, to discuss the recommended instruction. In addition, Castellanos contacted a counselor at East Los Angeles Community College regarding services that may be available to assist Claimant at the college, such as tutoring or accommodations.

5. On May 14, 2020, ELARC sent Claimant's mother a Notice of Proposed Action proposing to deny the request that ELARC fund instruction for Claimant at Lindamood-Bell. The reason given was that there appeared to be resources to assist Claimant at East Los Angeles Community College, "for example [its] Diversabilities Support Program and Services . . . which provides a variety of services such as Educational Planning, Note Taking Assistance, Test Proctoring[,] Counseling and Advising. This appears to be a generic resource that appears to not have been utilized to the fullest extent. Regional Centers must exhaust all generic resources prior to consideration of funding; it is the payor of last resort." (Exhibit 1.)

6. On June 9, 2020, ELARC received Claimant's Fair Hearing Request appealing the Notice of Proposed Action.

Hearing

7. Castellanos testified he has not yet determined whether East Los Angeles Community College offers the appropriate generic resources for Claimant, despite ELARC's indication in the Notice of Proposed Action that it does. Castellanos plans to continue contacting the community college to obtain more information. Castellanos also noted that ELARC's last psychological evaluation of Claimant was in 2010, and the evaluation did not give a clear picture of Claimant's cognitive skills. Given the request for funding for educational instruction, ELARC wants to assess Claimant's cognitive skills again to determine the appropriate educational resources and support for him.

8. Armida Ochoa, a person-centered planner for Claimant, met Claimant in October 2019. Ochoa testified she is familiar with the program at Lindamood-Bell, which is very good for persons with learning disabilities. Ochoa believes Lindamood-Bell could support Claimant and prepare him for classes at community college.

9. Carina Lopez Zuniga has known Claimant and his family since Claimant was in elementary school. Zuniga testified she is also familiar with the program at Lindamood-Bell, which would offer the resources and personal attention appropriate for Claimant's case. To her knowledge, Lindamood-Bell charges about \$100 per hour for its services.

10. Claimant's mother testified that East Los Angeles Community College has been unable to provide the resources that Claimant needs. The tutors at the college are fellow students who are not trained or able to help her son with his specialized learning needs. Lindamood-Bell would offer her son a better opportunity to learn and to increase his independence.

Analysis of Evidence

11. ELARC's evidence and arguments at the hearing do not match the reason for denial stated in the Notice of Proposed Action. Castellanos testified he did not yet know if East Los Angeles Community College offers the appropriate generic resources for Claimant, despite ELARC's indication in the Notice of Proposed action that it does. In addition, the Notice of Proposed Action says nothing about ELARC's interest in assessing Claimant's cognitive skills further, which ELARC first expressed at the hearing.

12. At the same time, the evidence presented does not establish whether funding for instruction for Claimant at Lindamood-Bell would be appropriate and cost-effective. If Lindamood-Bell's services in fact cost about \$100 per hour, then the "initial period of instruction" proposed for Claimant – four hours per day, five days per week for 40-50 weeks – would cost between \$80,000 and \$100,000. More evidence from educators or other professionals about Claimant's educational abilities and options is

necessary to prove that Claimant should receive this amount of funding from ELARC for the requested instruction at Lindamood-Bell.

LEGAL CONCLUSIONS

General Legal Standards

1. The Lanterman Act provides facilities and services to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) Under the Act, "'[d]evelopmental disability' means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a).)

2. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under its fair hearing and appeal procedures. (§ 4706, subd. (a).) "'Services and supports for persons with developmental disabilities' means 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 habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives." (§ 4512, subd. (b).)

3. The determination of Claimant's services and supports "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." (§ 4512, subd. (a).) Regional centers shall ensure "[u]tilization of generic services when appropriate" (§ 4646.4, subd. (a)(2)), and the provision of resources must "reflect the cost-effective use of public resources" (§ 4646, subd. (a)). The Lanterman Act requires regional centers to control costs so far as possible and to conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

4. ELARC has proposed to deny Claimant's request for funding for instruction at Lindamood-Bell. Claimant disagrees with the decision and has properly exercised his right to an administrative fair hearing. (See §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) This burden requires proof by a preponderance of the evidence, because no law or statute (including the Lanterman Act) provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Analysis

5. ELARC's evidence and arguments do not match the reason for denial stated in the Notice of Proposed Action, which is that East Los Angeles Community College is an appropriate generic resource for Claimant's educational needs. The evidence was insufficient to establish whether the community college is an appropriate educational setting for Claimant. (Factual Finding 11.) At the same time, the evidence presented does not establish whether funding for instruction for Claimant at Lindamood-Bell would be appropriate and cost-effective. More evidence from educators or other professionals about Claimant's educational abilities and options is necessary to prove that Claimant should receive funding from ELARC for the requested instruction at Lindamood-Bell. (Factual Finding 12.)

6. Considering these facts, the request for funding for instruction at Lindamood-Bell will not be granted at this time. However, the denial will be without prejudice to Claimant renewing the request after additional investigation of Claimant's educational abilities and options. ELARC has offered to assess Claimant's cognitive skills to help determine his educational abilities and options. If acceptable to Claimant, this offer is reasonable. Additional investigation of the educational resources available at East Los Angeles Community College or elsewhere in the community for Claimant would also be helpful in advance of Claimant renewing the request for funding.

ORDER

Claimant's request for funding for instruction at Lindamood-Bell is denied. However, the denial is without prejudice to Claimant renewing the request at a later date after additional investigation of Claimant's educational abilities and options.

DATE:

THOMAS HELLER
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.