

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

In the Matter of:

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER, Service Agency

OAH No. 2020070249

DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via videoconference on August 4, 2020.

Candace Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or service agency).

Claimant's mother represented Claimant. Claimant was present for approximately the first 45 minutes of the hearing.¹

¹ To preserve confidentiality, claimant and claimant's parents are not identified by name.

Testimony and documentary evidence was received and the matter was submitted for decision on August 4, 2020. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

Should the service agency be ordered to fund Supportive Living Services (SLS)/Independent Living Skills² (ILS) for claimant to be provided by Autism Asperger's Network (AANE)?

FACTUAL FINDINGS

Jurisdictional Matters

1. By Notice of Proposed Action letter, June 11, 2020, WRC denied funding, by way of purchase reimbursement, for claimant's request that AANE provide SLS services for him. AANE is a provider located in Boston, Massachusetts. WRC initially contended that Welfare and Institutions Code section 4519, subdivision (a), prohibited WRC from funding services for claimant outside of California.

² The titles SLS and ILS are different in name only. Both services are designed to assist claimant in accessing his community and to become independent. WRC uses the designation SLS. AANE uses the designation ILS. These acronyms will be used interchangeably throughout the decision.

2. On June 13, 2020, claimant filed a timely Fair Hearing Request and he appointed his mother as his authorized representative. Thereafter, these administrative proceedings ensued.

Claimant's Background and Changing Needs

3. Claimant is a 19-year old consumer of WRC due to his qualifying diagnosis of Autism. He was only recently diagnosed as having Autism and accepted as a client by WRC within the last two years. Prior to that, claimant's parents made multiple requests for assistance to claimant's public school, WRC, and other entities.

4. Claimant currently resides with his mother in Los Angeles. He also sees his father, who resides at a different address. Claimant is moving to Boston, Massachusetts and will attend Emerson College. Classes begin on August 22, 2020.

5. Claimant requires SLS services as detailed in his most recent Individual Program Plan (IPP). SLS services are intended to assist a consumer in engaging with their community and in becoming more independent. With support, he was able to find a job he enjoyed, but that employment ended with the onset of Covid-19.

6. Claimant is receiving SLS services from Independence Plus (IP), a WRC vendor, at the rate of eight hours per week and at a cost of \$1,577 per month.

7. WRC also funds eight hours per month of psychotherapy services for claimant, which are currently being provided by Chris Mulligan, at a cost of \$675 per month.

8. After initially denying claimant's request for funding for AANE, WRC reversed its opinion. WRC and claimant now agree that AANE is the best choice to

meet claimant's needs. AANE will provide claimant with SLS/ILS services while he is attending college in Boston.

9. AANE is capable of providing all needed ILS services to claimant, including in-person meetings, which IP is currently unable to provide for claimant due to Covid-19.

Funding Issues

10. WRC is generally prohibited from funding out-of-state services for consumers. However, WRC may fund AANE if the director of Department of Developmental Services (DDS) approves the request.

11. WRC's Interim Executive Director Thompson J. Kelly (Kelly), PhD, sent a letter to Brian Winfield at Department of Developmental Services (DDS), dated July 28, 2000, (exhibit 7) which details WRC's change in position. The letter states that IP cannot transition to provide SLS services to claimant in Boston. Claimant is in "desperate" need of SLS/Independent Living Skills services when he begins attending Emerson College. AANE has been in operation for 24 years and currently serves approximately 45,000 individuals in the New England area. Several of AANE's programs are vendored with Massachusetts' DDS. Emerson College lists AANE as a recommended provider. AANE will provide approximately 22 hours per month of services which will fully support claimant. A minimum of 11 hours will be in person with AANE staff, while using Covid-19 precautions. WRC personnel will be allowed to be part of a bi-monthly meeting to discuss claimant's needs. AANE is willing to have its personnel obtain licenses in California in order to provide services to claimant during school breaks when he returns to California. WRC is requesting that AANE be

allowed to become a vendor so that AANE can be paid directly, rather than having the family pay and then seek reimbursement.

12. After Kelly's letter of July 28, 2000, DDS requested additional information, documents, and analysis from WRC. WRC responded appropriately to each request by providing the requested information. The evidence did not establish why DDS has not yet approved funding for AANE.

The Two Possible Service Providers

13. There is no dispute that claimant requires SLS/ILS services to attend college in Boston. The two possible providers are IP in California and AANE in Massachusetts.

14. AANE can provide for all of claimant's needs through their Life Net Independent Living Skills (ILS) program, at a rate of \$2,000 per month, billed as \$24,000 for a one-year contract and payable in quarterly installments. There is also a one-time \$1000 administrative fee.

15. Claimant is attending college far from his home. Leaving home for the first time and attending college is a step toward independence. It is important that he have SLS/ILS services to support him in Boston. While some of his needs may be able to be met with phone calls and videoconferences, having the vendor physically present with claimant in Boston is necessary to meet claimant's needs. Claimant will need assistance with self-care, such as cooking and cleaning, becoming familiar with his new surroundings, classes, classmates, and other aspects of his new life. Some of these needs will require in-person meetings and assistance. An example would be the vendor helping familiarize claimant with the college campus. If IP was going to continue to provide services, they could likely only provide a map or "virtual tour."

16. IP was asked to assess claimant's needs if IP provides SLS services for claimant when claimant moves to Boston. IP concluded that claimant would require a higher level of care, namely SLS-A6, which would require an increase in SLS hours to 12 hours per week, at a cost of \$2,435 per month.

17. If IP were to remain as claimant's service provider, WRC would pay approximately \$435 more, per month, as compared to if AANE becomes the service provider. AANE is offering to provide more services for claimant, for less money, and AANE can offer claimant in-person assistance.

18. It was established that claimant's needs require that AANE provide SLS/ILS services while claimant attends college in Boston. It was established that only AANE can provide the appropriate level and quality of SLS services that claimant requires.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) "Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

2. Services and supports for persons with developmental disabilities are defined as "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 rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).)

3. As the party asserting a claim for services and supports under the Lanterman Act, claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has met his burden.

4. Welfare and Institutions Code section 4519, subdivision (a), provides that, "... a regional center shall not expend funds . . . for the purchase of any service outside the state unless the Director of Developmental Services . . . approve(s) a plan for out-of-state service . . ." Section 4519, subdivision (a), then lists the information that a service agency must submit to DDS for approval of funding for an out-of-state service. WRC has provided this required information to DDS. AANE can provide more services, for less expense, than IP, the current in-state service provides. Section 4519, subdivision (a), concludes by stating, "[F]or purposes of this section, the department shall be considered a service agency . . ." This language provides the authority for the ALJ to order both WRC and DDS to fund AANE services.

5. By reason of Factual Findings 3-18 and Legal Conclusions 1-4, cause exists to grant claimant's appeal.

ORDER

Claimant's appeal is granted. The service agency Westside Regional Center and the Department of Developmental Services shall, jointly and individually, fund SLS/ILS services from AANE's Life Net Independent Living Skills program. This funding shall include a one-time \$1000 administrative fee and a \$24,000 per-year fee, while claimant attends college in Boston. The funding shall be paid directly to AANE or, in the alternative, paid to claimant's parents as reimbursement.

DATE:.

CHRIS RUIZ
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.