

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020070719**

**DECISION**

Carmen D. Snuggs, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on January 7, 2021.

Candace Hein, J.D., Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by his mother and father (collectively Claimant's Parents).<sup>1</sup>

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<sup>1</sup> Names are omitted and family titles are used to protect the privacy of the Service Agency's consumers and their families.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 7, 2021.

## **ISSUE**

Shall the Regional Center fund the services proposed by Lindamood-Bell Learning Processes (LMB) to be provided to Claimant?

## **EVIDENCE RELIED UPON**

In making this Decision, the ALJ relied upon exhibits 1 through 7 submitted by the Service Agency, and the testimony of Candance Hein, J.D., Fair Hearing Specialist and Claimant's Parents.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a 14-year old consumer of WRC based on his qualifying diagnosis of Autism Spectrum Disorder (ASD). He lives at home with his parents and younger brother.

2. On a date not made clear by the record, Claimant's Parents requested that WRC fund services for Claimant to be provided by LBM pursuant to a June 18, 2020 evaluation performed by LMB.

3. The Service Agency sent a Notice of Proposed Action to Claimant's mother indicating that it denied Claimant's mother's request effective July 2, 2020.

4. On July 3, 2020, a Fair Hearing Request on Claimant's behalf was submitted to the Service, which appealed the denial of the funding request.

5. The hearing in this matter was originally scheduled for September 1, 2020. On August 27, 2020, Claimant filed an unopposed motion for a continuance and agreed to extend the timeline for issuance of a decision. On August 31, 2020, Claimant's motion was granted and hearing in this matter was scheduled to commence on November 10, 2020. However, the Notice and Order of Videoconference or Telephonic Hearing served on the parties by OAH on October 27, 2020 incorrectly stated the hearing would commence on November 20, 2020. Accordingly, on November 12, 2020, a Continuance Order and Notice of New Hearing Date was issued, setting the fair hearing in this matter for January 7, 2021.

## **Background**

6. Claimant's Individual Program Plan (IPP), dated August 25, 2020, indicates that Claimant uses simple words, associate's words with appropriate objects, and speaks in sentences of more than three words. In addition, Claimant's speech is easily understood by others. He attends WISH Academy High School, which is an integrated school with fully integrated classes, and has Individualized Education Program (IEP).<sup>2</sup> Under "Social-Emotional/Recreation/Leisure/Plan Community," Claimant's IPP indicates that he initiates and maintains interactions and peers and others in both familiar and unfamiliar settings. Claimant's father reported that Claimant has "good circle of playmates," Claimant maintains friendships in familiar settings, and he participates in social activities with some encouragement. (Ex. 4, p.

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<sup>2</sup> Neither party produced Claimant's IEP at the hearing.

17.) The stated outcome is for Claimant to be exposed to a variety of community settings in order to increase his social skills. Claimant's Parents expressed a desire for Claimant to learn to engage in cooperative play and develop empathy for others in order to improve his social skills. Claimant's Parents planned to provide him with opportunities to socialize with peers. It was noted that Claimant will train with the Los Angeles County Fire Department Junior Lifeguard and Civil Air Patrol when they both resume.

## **LMB Evaluation**

7. On June 18, 2020, a Learning Ability Evaluation of Claimant was conducted by LMB. The Learning Ability Evaluation Summary (Summary) indicates that Claimant tested in the fourth percentile, and the age equivalent of 8 on the Peabody Picture Vocabulary Test-IV in receptive vocabulary (the ability to form mental images based on language). In addition he tested as follows: Detroit Tests of Learning Aptitude-5, expressive vocabulary (ability to communicate with clarity and precision), 25th percentile, 11-6 age equivalent; Woodcock Reading Mastery Tests-III, Form B, Word Attack (ability to decode or sound out words), 58th percentile, 16:1 mental age, 10.2 grade equivalent; Slosson Oral Reading Test-R3, (sight word proficiency), 50th percentile, 14.1 age equivalent, 8.1 grade equivalent; Gray Oral Reading Test, Form B (reading comprehension) 12.0 grade equivalency on paragraph reading; and Gray Oral Reading Test 4, Form B (second reading comprehension evaluation) 5th percentile, 8.9 age equivalent, 3.7 grade equivalent.

8. LMB determined that Claimant would benefit from sensory-cognitive instruction to develop imagery-language foundation for learning. LMB recommended instruction four hours per day, five days per week for 10 to 12 weeks at cost of

\$24,300. The cost would decrease if Claimant's Parents participated in the LMB program with Claimant.

## **Psycho-Educational Evaluation**

9. Claimant's parents referred him to Joseph Rubio, Ed.S., M.A., for a psycho-educational evaluation, which he conducted on August 16, 2020, for purposes of identifying Claimant's levels of cognitive, academic, and social-emotional functioning. Mr. Rubio, who is a licensed educational psychologist, interviewed Claimant and his mother, observed Claimant, and administered a battery of tests including the Kaufman Assessment Battery for Children, 2nd Edition NU (KABC-2 NU), Test of Nonverbal Intelligence, 4th Edition (TONI-4), Woodcock Johnson Test of Cognitive Abilities, 4th Edition (WJ-4), Wide Range Assessment of Memory and Learning, 2nd Edition (WRAML-2), Kaufman Test of Educational Achievement, 3rd (KTEA-3), Behavior Assessment System for Children, Third Edition (BASC-3) Parent Report, and Autism Spectrum Rating Scales (ASRS) Parent Report.

10. Claimant's mother expressed concern about Claimant's ability to process information and ability to comprehend written text. She noted the "inordinate" amount of time that it took Claimant to complete his homework. (Ex. 6, p. 37.) Claimant's mother reported that Claimant was the first to initiate conversations with strangers and Rubio observed that Claimant was very talkative and able to engage in small talk. Rubio described his conversation with Claimant as very short and not very substantive.

11. Claimant's scores on the KABC-2 NU, which tests cognitive ability, ranged between well below average and high average. His scores on the TONI-4, which tests reasoning, demonstrated average abilities. On the WJ-R, which tests processing speed,

Claimant scored in the below-average range, and on the subtests of the WRAML-2, which tests memory and learning, Claimant's scores in verbal learning, story memory, and verbal memory index, were in the below average, below average, and well below average range respectively. On the KTEA-3, Claimant's reading composite was below average, his reading fluency composite was average, his math composite was below average, and his written language score was below average. Claimant scored in the average range in all areas of the BASC-3. In addition, Claimant's mother reported average concerns for the social/communication scale of the ASRS, indicating that Claimant can communicate both verbally and nonverbally in social situations. She also reported average concerns on the peer socialization scale of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), indicating that Claimant can successfully develop peer relations and maintain friendships. However, Claimant's mother reported elevated concerns for the atypical language scale of the DSM-5, indicating that Claimant may have difficulty effectively communicating with others.

12. Mr. Rubio concluded that Claimant presented with a scattered profile and that his overall general intellectual ability on the KABC-2 fell in the below average range, indicating that Claimant has difficulty processing auditory information, and executive functioning. In addition, Mr. Rubio opined that Claimant has difficulty holding information in immediate awareness and recalling that information to answer novel problems. Mr. Rubio indicated that his conclusions are supported by Claimant's scores on the WRAML-2 and the WJ-4.

### **Service Agency's Evidence**

13. Candance Hein, J.D., Fair Hearing Specialist was a special education advocate prior to working at WRC and is familiar with WISH Middle School and LMB. LMB is renowned for its academic intervention services and is funded by the school

district. LMB does not, based on her experience, provide services to improve social interaction or develop social skills.

14. Ms. Hein reviewed the Summary prepared by LMB and noted that the testing involved reading comprehension and other areas related to academic intervention. She explained that the Service Agency is prohibited by statute from funding educational services for children ages three through 17.

### **Claimant's Evidence**

15. Claimant's father testified that Claimant suffers from social interaction deficits due to a lack in receptive language as determined by LMB. Claimant initiates interaction with others, but others do not initiate interaction with him. Claimant's Parents want Claimant to be independent and have the ability to advocate for himself. According to Claimant's father, Claimant cannot keep up socially, so people walk away from him. Claimant is a leader in certain situations because WISH's integrated program works well for Claimant, but outside of specific settings Claimant has a hard time engaging with people.

16. Claimant's mother described Claimant's early childhood. Claimant did not speak until he was 18 months old. Claimant received speech and occupational therapy as well as Applied Behavioral Therapy before age three through WRC's Early Start Program. Claimant's mother asserted that he looks like any other 14-year-old, but when you have a conversation with him, he is set apart from others his age. Claimant is the first to say "hi, how are you?" but he cannot maintain more than surface conversation. According to Claimant's mother, he lacks language and words as well as the social skills to have a back and forth conversation.

17. Claimant's mother described Claimant as socially isolated and states he has reported that his peers do not want to talk to him. She contends that Claimant's ability to go into the community and advocate for himself are limited.

18. Claimant's mother acknowledged that Claimant's IEP does not include goals for Claimant to acquire social skills and that she has not asked for those goals to be included. She is aware that she can ask for an increase in the time that is spent on speech and that she can request a new evaluation but has not done so. Claimant's mother contends that speech therapy provided by the school district is limited to addressing articulation issues and would not address Claimant's inability to communicate in a social setting. Claimant's Parents have not requested that their insurance company cover speech therapy services. Claimant's mother explained that she has not done so because Claimant's ability to speak is not impacted. Claimant's Parents have not requested that Claimant's Service Coordinator at WRC research social skills programs for Claimant.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq.,<sup>3</sup> referred to as the Lanterman Act. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested

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<sup>3</sup> Further references to statute are to the Welfare and Institutions Code unless otherwise stated.



a fair hearing to appeal the Service Agency's proposed denial of funding for services at LMB. Jurisdiction in this case was thus established.

2. When an individual seeks to establish eligibility for government benefits or services, the burden of proof is on the individual. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, §115.) Claimant is requesting that the Service Agency fund the provision of the services proposed by LMB. Under these circumstances, Claimant bears the burden of proof.

## **Applicable Law**

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The 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." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

4. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. 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 . . . ." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

6. Section 4648, subdivision (a)(6) provides:

The regional center and the consumer, or if appropriate, the consumer's parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) If appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall

be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

(E) The consumer's choice of providers, or, if appropriate, the consumer's parent's, legal guardian's, authorized representative's, or conservator's choice of providers.

7. Section 4648.5, subdivision (a)(3), prohibits regional centers from purchasing educational services for children three to 17, inclusive, years of age, effective July 1, 2009.

8. Claimant has not met his burden of proving that WRC should fund services for Claimant as proposed by LMB. The evidence established that LMB conducted testing of Claimant's learning ability including his receptive vocabulary, expressive vocabulary, and reading comprehension. LMB's recommended services, namely sensory-cognitive instruction, is educational and as such, the regional center is prohibited from funding the services pursuant to section 4648.5. Even assuming Claimant's ability to increase his social skills is impacted by his lack of receptive

vocabulary, nothing in LMB's Summary was geared to address those deficits. Moreover, LMB and their recommended services are not identified in Claimant's most IPP as a service or support that WRC is be responsible for funding or purchasing on Claimant's behalf to support the stated outcome in the area of Social-Emotional/Recreation/Leisure/Plan Community.

9. For the foregoing reasons, Claimant's appeal is denied.

### **ORDER**

Claimant's appeal is denied.

DATE:

CARMEN D. SNUGGS

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.