

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020080803

DECISION

Ted Mann, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 15, 2020.

Jacob Romero, Manager of Rights and Quality Assurance, appeared for East Los Angeles Regional Center (ELARC or Service Agency). Claimant's mother and conservator represented claimant, who was not present.¹

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 October 19, 2020.

ISSUE

Whether ELARC is required under the Lanterman Developmental Disabilities Services Act to provide funding for the College Connect program for claimant while he attends post-secondary education at Rio Hondo College (RHC).

EVIDENCE RELIED UPON

Documents: ELARC exhibits 1 through 26; claimant's exhibits A through V.

Testimony: Jacob Romero, Mark Jia; claimant's mother.

FACTUAL FINDINGS

Background

1. ELARC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.)²

2. Claimant, an 18-year-old conserved man, is eligible for services from ELARC under the Lanterman Act based on his diagnosis of autism spectrum disorder

² Undesignated statutory references are to the Welfare and Institutions Code.

(ASD). Claimant also has borderline intellectual functioning, language impairment, memory issues, attention deficit hyperactivity disorder (ADHD), and difficulty communicating and interacting with others.

3. According to claimant's most recent Individual Person-centered Plan (IPP),³ dated February 26, 2020, claimant resides at home with his parents and older brother. At that time, he was finishing his high school education and preparing to graduate with a high school diploma. He requires assistance from his parents, brother, and an aide on an on-going basis for supervision, redirection, and safety. He receives 261.50 hours per month of IHSS services through DPSS for protective supervision and self-help needs, including supervision while eating due to a choking problem. He struggles with social awareness, interpersonal relationships and communication, and peer interaction. His parents want him to gain independent skills and attend community college after high school.

4. According to a biannual report from SEEK Education, claimant's community integration training provider, dated July 15, 2020, claimant receives 40 hours per month of one-to-one programming in community participation training provided by SEEK's community inclusion specialist and funded by ELARC. The focus of the community participation training is to target skills necessary for him to participate in community activities of his choice and includes seven ultimate goal areas, including safety awareness skills, navigation and mobility skills, communication and self-

³ For each regional center client, the Lanterman Act requires a person-centered "individual program plan," or "IPP." (§ 4646.) ELARC, rather than using the Lanterman Act term to describe the consumer's plan, refers to an "Individual Person-centered Plan," also abbreviated as "IPP."

advocacy skills, social interaction/emotional skills, life skills, community participation skills, and post-secondary education skills. Claimant also receives social skills development services through PCDA, an ELARC vendor for socialization training, for four and one-half hours per week funded by ELARC.

Service Request

5. Claimant's mother and brother assisted him in researching and applying to college at Rio Honda. He began attending Rio Hondo for the Fall semester and presently attends classes virtually due to Covid-19. During her interaction with Rio Honda, Mother contacted the DSPS program and also received information from the college that the College Connect program was available. A school brochure describes the College Connect program and the services it provides to students as follows:

College Connect is an evidence informed program for students with disabilities to enhance independence, promote academic success and create opportunities for meaningful social and emotional relationships. [¶] . . . [¶]

College Connect is a skills building program that focuses on increasing academic success, fostering social relationships and building the students independence. College Connect is not a passive program in where services are done for the student. Our team, and students are actively committed to a partnership with student services, the college campus and the greater community. . . .

College Connect has been developed to support students in all areas of the college experience. Our team provides

ongoing support by developing social-emotional skills, and academic and educational strategies for success and independence. . . .

Services include individual counseling, groups, campus observations, academic support and family contact. (Ex. J, p. B167)

6. The program design guidelines drafted by College Connect and submitted for Regional Center approval summarize the service as focusing on behavioral, psychological, and community support services for qualifying individuals. The core elements of the Collect Connect program include campus support, individual counseling for social-emotional and behavioral support, family support, and supervision. The guidelines estimated that the weekly hours for a program participant range from 19 to 20, but were only estimate, and were variable based upon a client's needs.

7. On June 12, 2020, claimant's mother called Mark Jia, claimant's long-time service coordinator at ELARC, to request that ELARC fund services for claimant from College Connect. Jia requested that claimant's mother provide the rationale for the program, and he confirmed that request in an e-mail. On July 12, 2020, in an e-mail to Jia, claimant's mother explained the rationale for claimant to receive College Connect including his need for college orientation, facilitation of interactions with classmates and professors, regular workshops, and one-to-one counseling.

8. On July 14, 2020, Jia informed claimant's mother that ELARC was denying the request. By a notice of proposed action letter dated July 21, 2020, ELARC formally notified claimant's parents that the Service Agency declined to fund the College

Connect program for claimant. The letter described the Disabled Students Program & Services program, referred to as the DSPS program, including the specialized, disability specific, advisors and counseling services available to all registered students. The DSPS program included academic advisement, academic counseling, career counseling, disability management, and course planning. The notice of proposed action listed claimant's then currently funded programs from ELARC that included community integration services for 40 hours per month from SEEK education, an assessment for PCDA's Young Adult Program, and in-home respite for 22 hours per month for family relief. In the notice, ELARC also agreed to fund Personal Assistance services for 75 hours per month on a temporary basis to assist claimant in accessing and utilizing the DSPS program. In summary, the notice stated:

In considering the services from DSPS (generic services) and the current services in placed (sic) funded by ELARC, we have to deny the request of College Connect program. However, we agree to fund for Personal Assistance (PA) on a temporary basis to assist [claimant] in acclimating to college and to assist in accessing the Disable (sic) Students (sic) Program and Services.

(Ex. 1.) ELARC cited sections 4512, 4646, and 4646.4 as authority for its denial.

9. Claimant's mother filed a Fair Hearing Request dated August 11, 2020.

Hearing

10. At the hearing, claimant's mother argued that the College Connect program offers her son the best opportunities and chance of success in college. She testified that claimant has started at Rio Hondo and is studying art and animation, and

that he needs assistance and support to navigate and access a college education. Claimant has particular needs in planning, time management, and peer interaction, and College Connect would support these needs.

11. ELARC argued that the services and supports it proposed were preferable to the College Connect program.

12. The DSPS program includes the preparation of an academic accommodation plan, referred to as an AAP, that documents the interactive process between each DSPS student and a DSPS certificated staff member regarding the academic adjustments, auxiliary aids, services and/or instruction necessary to provide the student with equal access to the educational process. Such adjustments, aids, services and/or instruction may include such elements as interpreters, notetakers, class aides, disability-related counseling, liaison with faculty and staff, and provision of assistive technology. Services may specifically include assessment of needs, academic counseling/advising, disability-related counseling, personal counseling, job placement, liaison/referral to other resources, orientation, registration assistance, disability-specific tutoring, and co-curricular activity support, as well as specific classes geared to helping a student access their education.

13. ELARC presented testimony by Mark Jia. Jia had been a service coordinator for ELARC since 2002 and had been claimant's service coordinator since 2007. He was very familiar with claimant and claimant's needs. Jia's opinion was that DSPS, along with the 75 hours of Personal Assistance offered by ELARC in combination with the other funded services from ELARC, provided the same or better tailored services for claimant at much lower cost. Jia testified that the College Connect program would only report to the Rio Hondo DSPS and not to ELARC or the parents,

did not provide the in-class assistance needed by claimant, and in his opinion charged for otherwise generic services.

14. Jacob Romero, ELARC's representative at the fair hearing, testified that the combination of the DSPS program, Rio Hondo's Counseling Center program and services, Rio Hondo's Center for Career and Re-Entry program and services, along with services already funded by ELARC, and the addition of 75 hours per month of Personal Assistance as offered by ELARC, provided an overall program that better served claimant's needs than the College Connect program, and at a lower cost through the use of generic resources. He also testified that ELARC was required to explore generic resources and defer to them before turning to non-publicly funded resources.

Analysis of Evidence

15. The evidence shows that the constellation of services proposed by ELARC provides an equivalent, and possibly superior, program to meet claimant's needs at Rio Hondo, and at a lower cost. The DSPS program allows for more in-class support for claimant, including the possibility of disability-related aide support. The DSPS program provides a suite of personalized academic advising and counseling services and includes a series of classes that assist disabled students in accessing their education at college.

16. ELARC proposed that the DSPS services be combined with those offered by both Rio Hondo's Counseling Center and the college's Center for Career and Re-Entry. Included in the constellation of services ELARC proposed are the funded programs for personal assistance, community integration, and social skills. In total, this package of services and supports meets or exceeds the capabilities of the College Connect program, and at a lower cost. Notably, the evidence showed that the College

Connect program could not provide the same level of in-class support as the program proposed by ELARC. In sum, the evidence presented by ELARC was more persuasive than that presented by claimant, and claimant did not present persuasive evidence that the College Connect program was necessary for claimant over the program offered by ELARC.

LEGAL CONCLUSIONS

Legal Standards

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 lifetimes. (§ 4520.) Those services and supports may include "community integration services," training, and counseling. (§ 4512, subd. (b).)

2. 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).)

3. 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 “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 a service specified in a client’s IPP is not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

4. 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 his request for funding the College Connect program at Rio Hondo to facilitate his transition to college. Jurisdiction in this case was thus established.

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

Analysis

6. The Service Agency denied funding based on the College Connect program not providing more benefit to claimant than the DSPS services in tandem with ELARC funded services, combined with the DSPS services being generic services that do not require additional funding by ELARC. Claimant had the burden of proof and did not prove by a preponderance of the evidence that this determination was incorrect. Claimant did not establish that the College Connect program offered advantages to him when compared to the bundle of services proposed by ELARC and did not establish that funding of College Connect by ELARC was justified when generic resources were available. The testimony of witnesses Jia and Romero in support of ELARC's determination was credible, reasonable, and persuasive.

7. Therefore, the evidence did not establish that the Service Agency is required under the Lanterman Act to provide funding for the College Connect program for claimant under the facts of this case.

ORDER

Claimant's appeal is denied.

DATE:

TED MANN

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.