

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

In the Matter of the Fair Hearing Requests of:

CLAIMANT 1 and CLAIMANT 2,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH Nos. 2020100650 and 2020100651

DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on April 16 and 26, 2021.

Aaron Abramowitz, Attorney at Law, represented the South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant 1 and Claimant 2 were represented by their mother. (Titles are used to protect confidentiality.) Spanish interpretation was provided by certified interpreter Sonia Hernandez.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on April 26, 2021.

During the hearing, the ALJ informed the parties that translations from Spanish to English of several of Claimants' exhibits would be added to the record when received; more specifically exhibits C1, C2, C3 (only the letter dated November 6, 2020, as the translation of the letter dated November 12, 2020, was received as exhibit 12 during the hearing), C5 and C6. These translated exhibits were received by the ALJ on April 26, 2021, marked for identification as exhibit 13, and received in evidence.

ISSUE PRESENTED

Should the Service Agency approve funding for Claimant 1 and Claimant 2 to receive floor time therapy?¹

EVIDENCE RELIED UPON

SCLARC's exhibits 1-12, exhibit 13, Claimants' exhibits C1-C17, and testimony of Robin Houston, Jennifer Guerrero, Karina Saldaña, Lucila Seccone, Cristal Nuñez, and Claimants' mother.

¹ During the hearing, mother argued the Service Agency should pay for current assessments of Claimants for floor time therapy. However, the Issue is taken from the Fair Hearing Requests and was agreed upon at the outset of the hearing.

FACTUAL FINDINGS

Jurisdiction

1. Claimants are brothers. Claimant 1 is 14 years old and Claimant 2 is 13 years old. They are consumers of the Service Agency who live in the family home with their mother and younger sister. Claimants receive services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act),² based on their diagnoses of autism.

2. On February 15, 2020, mother requested funding for DIR/floor time therapy. (Exhibit C1.) DIR stands for Developmental milestones, Individual differences, and Relationship-based interventions, as described in testimony by Robin Houston and described in more detail below.

3. On September 2, 2020, SCLARC sent Notices of Proposed Action (NOPA) to mother indicating the requests were denied, for the reasons discussed below. (Exhibit 2.)³

² All further statutory references are to the Welfare and Institutions Code (Code) unless otherwise indicated.

³ Mother complained to the Department of Developmental Services (DDS) about the delay in SCLARC's response to the requests for services. (Exhibit C2, translation exhibit 13.) DDS determined a consumer rights violation occurred because SCLARC did not meet the 15-day timeline to render a service decision and directed SCLARC to submit a corrective action plan. (Exhibit C3, translation exhibit 13.)

4. On October 7, 2020, mother filed Fair Hearing Requests for Claimants. (Exhibit 1.) The consolidated fair hearing then occurred.

Review of Requests for Services

5. There was no evidence of when Claimants began receiving services from SCLARC. Services have been provided for at least five years based on mother's testimony that they received social skills training about five years ago, funded by SCLARC. Among other things, SCLARC provides or provided funding for educational advocacy, personal assistance, and respite. Claimants also receive In-Home Supportive Services funded by the county, and special education services by their school district.

6. The requests for floor time were reviewed by Robin Houston (Houston), a speech pathologist who works as a consultant for SCLARC. Houston has a master's degree in speech and language pathology, has more than 30 years' experience working with the developmentally disabled community, and has received training and a certification as a floor time therapist. By her testimony, Houston established her familiarity with the goals and components of floor time therapy. As she described it, floor time is often optimal for a child up to age four, to reach the six overlapping core milestones used in the therapy. Floor time is usually one-to-one therapy.

7. Houston reviewed the materials she found relevant in each of the Claimant's records. More specifically, as to Claimant 1, she reviewed his Individualized Program Plan (IPP) dated June 10, 2019 (exhibit 6), a psychological evaluation from September 2015 (exhibit 4), and his Individualized Education Program (IEP) from his school district dated March 19, 2019 (exhibit 9). Houston noted relative strengths for Claimant 1 such as good behavior, follows rules, language skills for vocabulary and grammar, and no problem behaviors. His challenges were low processing speed for

verbal interaction, memory of verbal information, task completion, initiating interactions, social problem solving, and conversational effectiveness.

8. Houston acknowledged Claimant 1 would benefit from many aspects of floor time therapy, which might provide breakthrough for some of his constrictions. However, in Houston's opinion, it would be better for Claimant 1, as a teenager, to address those needs in a social skills program. Houston noted Claimant 1 has some of the basics in social-emotional development that would be promoted through the DIR intervention, but his need to improve skills for interpersonal relationships would be better met with a social skills program. Claimant 1 was already participating in more mainstream activities, had interactions with typically developing peers, and would benefit more from the semi-structured activities in a social skills program to gain skills used in regular life. Houston suggested programs, and strategies to address COVID limitations.

9. As to Claimant 2, Houston reviewed his IPP dated June 10, 2019 (exhibit 7), a psychological re-evaluation from October 2012 (exhibit 3), his IEP from his school district dated February 9, 2018 (exhibit 8), and a progress report from vendor Holding Hands of his participation in a social skills program, dated August 3, 2018 (exhibit 5). Houston noted relative strengths for Claimant 2 such as his good mood, joint shared attention with others, ability to initiate some interactions, language skills for grammar and articulation, participation in peer activities, and no problem behaviors except for occasional wandering. His challenges were limited ability to remain engaged in peer activities, understanding the emotions of others, identifying common interests, and social communication.

10. Houston acknowledged Claimant 2 would benefit from many aspects of floor time therapy, which might provide breakthrough for some of his constrictions.

However, in Houston's opinion, it would be better for Claimant 2, as a teenager, to address those needs in a social skills program. Houston noted Claimant 2 has some of the basics in social-emotional development that would be promoted through the DIR intervention. But he is ready for social skills training, which supports interpersonal development and building better relationships with others. Houston noted vendor Holding Hands offers both floor time therapy and social skills training. Holding Hands had recommended further social skills training for Claimant 2 in the progress report, in part due to his attendance at only five of the 16 sessions. Houston suggested Claimant 2 might benefit from a program by a different vendor. She suggested programs, and strategies to address COVID limitations.

11. The NOPA's advised mother of the reasons the requests for floor time were denied and added that the SCLARC Purchase of Service policy for social skills training requires a request to be made to Claimants' insurance provider, which is considered a generic resource. If denied by the insurance provider, SCLARC would then consider funding for the service.

12. Houston testified some of the higher milestones in DIR could be beneficial for Claimants but explained there were more advantages to social skills programs utilizing a larger group, such as more teachable moments. Although Houston could have recommended an assessment to determine if Claimants would benefit from DIR/floor time, she believed Claimants had accomplished the first four milestones and were ready to be "promoted" to the higher level of training of a social skills program. Her opinion did not change after mother informed her that Claimants had attended other social skills programs in the past. In fact, Houston attended a prior fair hearing after her earlier recommendation of social skills training and assumed the Helping Hands program was authorized as a result.

13. SCLARC has funding standards for social skills training. (Exhibit C7.) Among other things, the standards refer to age ranges of three to 10 years old, 11 to 17 years old, and adults. For the group of 11 to 17-year-olds, the focus is on the skills necessary for functioning as independently as possible and emphasize skills generalized across settings. The funding may only be provided when skills deficits are not addressed by generic services or other regional center services. The policy was approved by DDS in January 2019.

14. On September 4, 2020, mother received a NOPA denying social skills training for Claimant 1. She had not requested it and questioned why it had been sent, particularly after social skills training had been recommended by Houston. (See mother's letter requesting clarification, dated October 12, 2020, exhibit C5, translation exhibit 13.) As explained by Jennifer Guerrero, Claimants' service coordinator at SCLARC, generic funding sources for social skills training include insurance and Medi-Cal, and are considered before the regional center provides funding. On February 1, 2021, Claimants began receiving social skills training funded by SCLARC from provider Miracle Project, funded for three months.

Other Evidence

15. Mother's sister Karina Saldaña testified she has children who are clients of SCLARC. She requested floor time therapy in February 2021 for her eight-year-old daughter. She received a response in two weeks and had a meeting with Houston in March 2021.

16. Mother's friend Cristal Nuñez has children ages six years old and three years old, both diagnosed with autism. When she asked her service coordinator at the Eastern Los Angeles Regional Center (ELARC) for floor time therapy for her son, she

received an answer in three days and an appointment for an assessment was made a few weeks later.

17. Mother's friend Lucila Saccone (Saccone) has a seven-year-old child with autism. She requested and received floor time therapy. Saccone has a master's degree and has training to perform floor time assessments but has not completed the requirements for full certification. She can conduct assessments, with supervision. She has not assessed Claimants for floor time. Saccone suggested floor time to mother, who was opposed to it for a period of time but now agrees. Saccone testified that a decision to determine if floor time therapy is appropriate would depend upon the level the child has attained.

18. Mother submitted several exhibits and provided testimony about them, some of which is summarized below. On March 13, 2020, mother, in her position as Area Manager of the Integrated Communities Collaborative, wrote to the Executive Director of SCLARC regarding the effects of COVID-19, possible additional resources, and a request to collaborate to get support for the Service Agency's consumers. (Exhibit C9.) In a letter dated September 16, 2020, mother and several other representatives of the Latino community informed the SCLARC Board of Directors of concerns that the community had not received the respect or access to decision makers necessary to meet families' need for accurate information and services. (Exhibit C10.) The letter specifically references social skills training being considered as a generic resource and the resulting difficulty in going through the process to obtain the service. The letter requests transparency and assistance.

19. Mother submitted an article posted on the internet concerning the science behind treating autism with DIR/floor time. (Exhibit C11.) Of note, the article generally describes floor time as child-directed, with a therapist guiding the child

through the six milestones by following the child's lead through play. The article examines the scientific and anecdotal studies of floor time. The authors conclude DIR/floor time does not meet the standards of care for a treatment intervention, citing lack of objective evidence of effectiveness or replication, and use of non-standard measures to evaluate progress.

20. Mother submitted an announcement from Public Counsel of a 2010 settlement with ELARC and the settlement agreement, whereby ELARC agreed to issuance of an injunction preventing it from terminating funding for DIR treatment programs under certain conditions. (Exhibits C12 and C13.) ELARC had terminated such funding based on its interpretation of the Legislature's trailer bill that funding should not be provided for experimental treatments.

21. In a Decision after a fair hearing in March 2013, an ALJ denied a consumer's parents' request for reimbursement of payments they made for Applied Behavior Analysis (ABA) therapy in the form of floor time. (Exhibit C14.) The consumer was nine years old and the floor time therapy had helped him. Reimbursement was denied because the parents had not sought floor time therapy from any of the three vendors offered by the regional center.

22. In her testimony and exhibits, mother raised several contentions, including: SCLARC had not provided a timely response to her request for floor time therapy; protocols were not followed regarding that timing; an assessment should have been provided to determine the potential for floor time therapy to be of benefit to Claimants; in reaching her conclusions, Houston relied upon old reports and IPP's to which mother had not agreed and was predisposed to denying floor time; and SCLARC failed to provide the proper level of services and communication to the Hispanic community.

23. Mother expressed reasonable concerns about her sons' services and supports. She is knowledgeable about their rights and works actively to support the community of individuals with developmental disabilities. Mother was particularly concerned about the delays by SCLARC in responding to her requests and, when social skills training was recommended instead of floor time, was surprised that, without making a request for it, she received a denial of social skills training.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimants requested a fair hearing to appeal the Service Agency's denial of funding for DIR/floor time therapy. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. 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.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimants bear the burden of proof regarding their request for funding for DIR/floor time therapy services. (Factual Findings 1-14.)

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.” (Code, § 4501.) Funding for these services and supports is provided by the state’s regional centers. (Code, § 4620, subd. (a).)

4. Services to meet the needs of a consumer is also referenced in Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. A consumer’s needs and goals, and the services and supports to address them, are determined through the IPP process, described generally in Code section 4512, subdivision (b), which states in part:

The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination 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.

6. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in Code section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and school districts, and private entities such as insurance. (*Id.*, subdivision (a)(1) and (2).) Code section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources.

7. This is stated differently in Code section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

8. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in section 4659. (Code, § 4646.4, subd. (a).)

9. SCLARC established a reasonable basis, supported by the evidence, for its determination DIR/floor time therapy was not the most effective service to address Claimants' needs. Houston specified Claimants' strengths and challenges as part of her process to make that determination. Houston relied upon documents that were often several years old. However, mother did not establish there was different information Houston should have considered in reaching her conclusions and recommendations, or that Houston was unreasonable in considering the information upon which she relied.

10. Houston could have recommended that assessments be performed to determine if DIR/floor time therapy would be effective for Claimants. As she explained, DIR/floor time is usually directed to consumers younger than Claimants, and Claimants had attained skills commensurate with several of the milestones that form the direction of floor time therapy. There was evidence to support Houston's conclusions that, although floor time might allow Claimants to have breakthroughs for some of their constrictions, Claimants were ready to be promoted to social skills training. In social skills training, Claimants would work with peer groups to further develop skills and reach the milestones. Mother did not establish it was necessary for SCLARC to conduct assessments in connection with her requests for floor time therapy.

11. Mother's evidence and contentions often were tangential to the issue to be determined. DDS determined SCLARC exceeded the deadline to act on her service requests. The outcome was DDS's instruction for SCLARC to submit a corrective action plan. It does not follow that, due to the delay, the requested services must be provided, particularly where, as here, that outcome is not supported by the evidence.

12. In the examples provided by mother of instances where SCLARC, or other regional centers, provided floor time, there were significant differences from the

scenarios presented by Claimants. Where ages were available, the consumers were younger than Claimants. Floor time is, generally, designed for younger children. The settlement related to ELARC's interpretation that floor time was experimental and, therefore, not permitted by law. Here, SCLARC does not take that position. In fact, one of mother's friends has obtained an assessment of her child for floor time from SCLARC.

13. With regard to services for the Hispanic community, mother did not provide evidence from which it could be inferred the decisions by SCLARC were motivated by any bias or animus. SCLARC's funding policy follows the laws, noted above, requiring regional centers to identify and pursue funding from generic resources. The community's letter to SCLARC's Board raising concern that social skills training would not be provided if it was available from a generic source was dated more than one and a half years after SCLARC's funding policy was approved by DDS. Despite the numerous issues and concerns raised in the community's letter, there was no evidence of a connection to this case. Any general failure of SCLARC to address needs of the Hispanic community as listed in the letter does not provide a basis for ordering SCLARC to provide DIR/floor time therapy or assessments to Claimants. To be clear, it is beyond the jurisdiction of this hearing to determine the existence or non-existence of the circumstances listed in the letter.

14. SCLARC's denial of social skills training was odd in that there was no evidence mother had requested those services. Logically, the decision followed from Houston's recommendation of social skills training. However, the denial was on the basis Medi-Cal or insurance was a generic resource to be explored before SCLARC could consider the service. And SCLARC began providing social skills training to Claimants in February 2021 for three months.

15. Mother is an active and involved parent and advocate for her children and for others in the community. She and SCLARC should continue to work collaboratively for the benefit of Claimants. In this instance, mother did not submit sufficient evidence to support the conclusion SCLARC should have provided either DIR/floor time assessments for Claimants or provided DIR/floor time therapy for Claimants. The appeals of the SCLARC denials of floor time therapy are therefore denied.

ORDER

The appeals of Claimant 1 and Claimant 2 of the Service Agency's decisions to deny DIR/floor time therapy are denied.

DATE:

DAVID B. ROSENMAN

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.