

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

In the Matter of:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency

OAH No. 2021020727

PROPOSED DECISION

Marlo Nisperos, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 6, 2021. Daniel Ibarra, Fair Hearing Representative, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency). Claimant was represented by Armida Ochoa, Independent Facilitator. Claimant's Parent and sole conservator attended the hearing.

Testimony and documentary evidence were received in evidence, and argument was heard. The record closed and the matter was submitted for decision on May 6, 2021.

ISSUE

Is SGPRC required to fund a social skills program?

Is SGPRC required to fund personal assistance services?

Is SGPRC required to fund a speech and language assessment?

EVIDENCE

Documentary: Service Agency exhibits 1-11 and Claimant's exhibits A-K.

Testimonial: Ruby Ponce, SGPRC Service Coordinator; Zhorhida Preciado, SGPRC Manager for Adult Services; Claimant's sister and Claimant's Parent.

FACTUAL FINDINGS

1. Claimant is a 26-year-old male client of SGPRC and qualifies for regional center services based on the diagnosis of Mild Intellectual Disability. He also has the diagnoses of asthma, chronic rhinitis, lactose intolerance and gastro reflux. (Exhibit 3, p. 13.) On March 19, 2021, Claimant's treating physician listed his diagnoses as intellectual disability, speech and language development delay due to hearing loss, mental retardation, hyperactivity and trichotillomania, which is the urge to pull out his hair from his scalp, eyelashes and eyebrows. (Exhibit H, p. 76.)

2A. Claimant lives in a home with his parents and sister. Claimant's Parent is his sole conservator pursuant to a limited conservatorship. Claimant can complete most activities of daily living with supervision and support. Claimant requires support,

prompting and reminders to complete most personal hygiene tasks. Claimant requires assistance choosing weather appropriate clothing and does not distinguish if he puts his clothes on backwards; he can physically dress himself if the clothing is selected for him. (Exhibit 3.)

2B. Parent takes Claimant to all medical appointments and supervises his taking of medication because he will take the wrong medication if unsupervised. (Exhibit 3.) Claimant requires support, modeling and supervision when preparing a simple meal. He does not appreciate the risks associated with knives, and he is not permitted to use them. Claimant cannot prepare food in a microwave because he does not recognize the time and will set the timer longer than needed; he nearly caused a fire by attempting to microwave popcorn for 30 minutes. Claimant requires support, prompting and supervision to complete household chores or else they will not be completed properly. Claimant completes his chores depending on his mood. (Exhibit 4.)

3. Claimant currently receives regional center services in the form of independent living skills (ILS) services (25 hours per month) provided by Adult Community Independence; community adult day program services (44 hours per month) provided by Tailored Day; behavior intervention services (20 hours per month) provided by Get Safe; day care (80 hours per month); and respite (36 hours per month).

4A. Parent requested personal assistance services because she would like someone to guide and motivate Claimant. Parent would like the personal assistant to take him into the community and help him make good decisions, keep him safe from danger and monitor him while he attends class via Zoom and in-person when COVID-

19 restrictions are lifted. Parent would like the assistant to support Claimant with hygiene and grooming and other activities of daily living.

4B. Claimant and his family recently moved to a new home and the family would like him to become familiar with the neighborhood. Parent does not permit Claimant to leave the home by himself because of safety concerns. Claimant does not know how to read and does not know his home address. He trusts people who are strangers to him and he is unable to distinguish dangers in the community. Claimant is unable to manage his money and needs assistance with payment transactions and counting change. Claimant does not display appropriate personal boundaries and behaves inappropriately in social interactions including inappropriate expression of his sexuality. Parent gave an example of his lack of boundaries as Claimant calling a friend 10-15 times in a day, causing the person to become annoyed. Parent is concerned that Claimant may get into trouble if he interacts with women in an inappropriate way. Parent wants Claimant to have one or two friends with whom he can socialize and safely engage in activities outside of the home.

4C. Parent does not leave Claimant home alone because he lacks safety awareness and would not know how to respond if there were an emergency. One time when Claimant was unsupervised, he left the home and was detained by police when he crossed the street. Parent located him and when he saw her, he ran away from the police officer and hugged her while crying. On another occasion, when alone in public, Claimant saw a girl and began following her. Claimant's behavior scared the girl and she notified the police. No report was generated after Parent informed police of the circumstances. Parent has many concerns regarding Claimant being unsupervised in the community based on prior negative experiences.

4D. Parent believes Claimant needs to be supervised at all times by a personal assistant because he doesn't appreciate the consequences associated with his behavior. For example, Parent observed Claimant teasing the family dog and it reacted negatively towards him. Parent does not allow Claimant to be unsupervised when playing with animals because he does not recognize the dangerous consequences that could result. On one occasion when Claimant was unsupervised and had anxiety, he ate 10-15 apples at one time and made himself sick. Parent is worried about consequences that may result if Claimant is left alone and makes bad decisions while in the community.

5. Parent contended Claimant's anxiety is escalating and has resulted in him having difficulty sleeping. Parent's proposed schedule shows Claimant utilizes In Home Supportive Services (IHSS) hours beginning at 1:00 a.m. because Claimant won't sleep without someone sleeping next to him. As a result of utilizing the IHSS during these hours, Parent is requesting personal assistant services to support Claimant during the day. (Exhibit D.)

6. In support of Claimant's request for additional IHSS, Claimant's physician, who has treated him since birth, completed an assessment of need for IHSS protective supervision services. (Exhibit G.) The doctor noted that Claimant has severe memory deficits, severe disorientation and severely impaired judgment. Claimant's doctor noted Claimant needed help with most activities of daily living and must be supervised in order to prevent injuries, such as being close to hot surfaces.

7A. Claimant's service provider, Alma Osuna, has been working with him via Zoom for approximately six months. They meet three days per week for two hours. Osuna believes Claimant is willing to learn new things; Claimant is currently learning his home address and days of the week. Osuna observed that Claimant requires

constant verbal prompting and constant redirecting due to his inability to focus for long periods of time. (Exhibit H, p. 77.) During their sessions, Claimant reviews the same curriculum for months due to his inability to remember things. Osuna observed Claimant struggles with patience and saw that he becomes frustrated and has outbursts based on not being able to understand the course material.

7B. Claimant is always supervised by someone in the home during his sessions with Osuna. The support person helps him maintain focus and calms him down when he is frustrated so he can continue with the lesson. Osuna opined that Claimant has difficulty advocating for himself. Osuna believes Claimant has made great strides but continues to need daily supervision, redirecting and verbal prompting.

8. Maricela Madrigal, has been providing Claimant individual therapy since March 29, 2021; she is not a vendor with SGPRC. Parent sought Madrigal's services to address Claimant's anxiety. In a written statement, Madrigal described the purpose of Claimant's therapy was to learn healthy coping skills to manage his mood. During the intake assessment and individual therapy sessions she has observed Claimant display difficulty with daily functioning. Madrigal observed that he does not understand the concept of money to make transactions, he requires assistance in navigating new environments, and his speech can be incoherent. Madrigal opined Claimant's sexual behaviors have increased in frequency and require monitoring. Madrigal observed that Claimant exhibits difficulty accepting his cognitive limitations, and he has decreased socialization and interactions with others. (Exhibit H, p. 78.)

9. Claimant's aunt submitted a written statement describing how his family provides support to meet many of his daily needs. (Exhibit I, p. 81.) She described that access to Claimant's bedroom is through his parents' bedroom. The location of his bedroom ensures that Claimant doesn't leave the home without Parents knowing, and

it makes him feel safe. Claimant's aunt observed him having trouble sleeping, and she knows he is afraid of the dark. She opined that he needs constant supervision, especially in public, because he may get lost or victimized by a stranger.

10A. Claimant's older sister is a professional development specialist at a science museum. She teaches summer camp for students ages 4 to 18 with all types of abilities. She receives annual training on how to teach students with disabilities. She is also a high school chemistry teacher who works with high-risk students and English language learners. Some of her students have Individualized Educational Plans (IEPs) and she is trained to abide by and implement all accommodations and supports listed in them.

10B. In her written statement and testimony at hearing, Claimant's sister described some difficulties she has observed Claimant experience. (Exhibit I, pp. 79-80.) Claimant's anxiety and insomnia causes him to have difficulty falling asleep, so she lies next to him to help him fall asleep. She opined that if someone does not wake Claimant in the morning, he will sleep into the late morning or early afternoon because he doesn't sleep well and is tired in the morning. She observed Claimant display anxious and compulsive behaviors like picking the skin around his nails or pulling out his hairs. She opined that Claimant's difficulty communicating has resulted in his struggle to make friends. She would like Claimant to have a group of friends and to be part of society.

10C. Claimant's sister is his respite care worker when parents are out of town or at work. She also supervises him during his Zoom classes because he is unable to use technology without assistance. She keeps him motivated to engage with the teacher because if he faces any technical difficulties, he gets frustrated and shuts

down. She watches movies with him with subtitles to help encourage him to learn vocabulary words, and they walk the family dog and do simple Legos together.

10D. Claimant's sister observed that he has difficulty expressing his thoughts and needs based on his speech impediment. When he speaks with people outside of their family he struggles with maintaining a conversation and goes off topic. He gets frustrated when someone doesn't understand him, and this causes him to shut down. She acknowledged that the day program Claimant attended prior to the COVID-19 pandemic provided socialization opportunities, but based on the pandemic, those services are no longer available.

11A. At fair hearing, Ruby Ponce, SGPRC service coordinator for almost two years, testified that the criteria for a consumer to be eligible for personal assistance services is that they must be non-ambulatory, nonverbal, have no family support or live independently. Ponce opined Claimant does not meet criteria for a personal assistant because he is ambulatory. Ponce believed Claimant's needs were met because he was receiving services from the behavior intervention provider to address safety awareness.

11B. SGPRC relied on an IHSS closing statement report denying Claimant's request for protective supervision. (Exhibit 8.) Ponce contended that the protective supervision services offered by IHSS is similar to the personal assistance services. IHSS denied Claimant's request for protective supervision services because IHSS believed the services and hours they currently were offering was more than fair and appropriate based on his physical functioning and capacity for self-care. The IHSS report concluded the Claimant treating physician's statement that Claimant has severe memory, orientation and judgement issues was not reliable. IHSS pointed out the

doctor's claims were contradictory to all other documentation including Regional Center reports and psychological evaluations.

12A. Zorahinda Preciado, SGPRC manager for client services for two years and five months, contended that personal assistance services support consumers who exhibit severe aggressive behaviors and as a result are a danger to themselves or others. Another category of consumers that are eligible for personal assistance services are those that are bedbound, have a gastronomy tube, require diapers, are nonverbal or require total care. Based on the need expressed by Parent, Preciado determined Claimant did not meet the criteria to receive personal assistance support, and his needs did not entitle him to services based on an exception to that criteria.

12B. Preciado opined that Claimant's needs are being met by the services currently being provided based on reports from vendors which show he is working toward his goals. Preciado opined Claimant was not eligible for personal assistance services because he doesn't demonstrate the need for a high level of care. Preciado claimed the criteria for protective supervision by IHSS was similar to requirements for personal assistance services and noted that IHSS denied Claimant's request for protective supervision.

13. Preciado and Ponce testified that SGPRC did not offer social skills programs to individuals in Claimant's age group according to their purchase of service policy. SGPRC's purchase of service policy for social skills training states it is provided to children and young adults. (Exhibit 11, p. 135.) Preciado opined that the programs requested by Parent, involving sexuality, hygiene, socialization and community integration, were areas already being addressed by the current programs Claimant is attending. (Exhibit K.) Preciado believed that Claimant did not require a social skills class because he has services in place meeting these needs from Tailored Day, ILS and

Get Safe. (Exhibits 4, 7 and 9.) Tailored Day provided support for vocational training, ILS is intended to help him develop independent skills, and the Get Safe program addressed his inappropriate behaviors involving sexuality. (Exhibit 10, p. 96.)

14A. Ponce testified the Tailored Day program provides Claimant with an opportunity to socialize with peers and work on communication and social skills. During the COVID-19 pandemic, this service has been delivered via a virtual program. As a result of COVID-19 restrictions, Claimant is temporarily prevented from socializing with peers. Ponce contended that the ILS provider addresses socialization in the community in the category "home and community awareness" goal. To achieve this goal Claimant's instructor will accompany him in the community and teach him about public safety. (Exhibit 9, p. 91.)

14B. SGPRC refers adult consumers to day programs to address their needs related to social skills rather than referring them to social skills programs. In the day programs, vocational training or employment preparation programs, adults have an opportunity to develop their social skills. Ponce contends the services that Claimant is receiving meets his needs for social skills development. Ponce noted that Claimant may not be experiencing all the benefits of the socialization education from the current programs because of the restrictions placed on the service agencies based on the COVID-19 pandemic.

14C. Parent was not satisfied with the previous day program, Howard Chudler, because she felt that it was not challenging enough for Claimant. (Exhibit 5.) In response, SGPRC referred Claimant to the current program Tailored Day. (Exhibit 4.) Ponce felt it was too early to determine the effectiveness of the new program based on the COVID-19 restrictions.

15A. Ponce opined that Claimant did not need a speech and language assessment based on her interactions with him over Zoom. In the last year, Ponce had three brief conversations with Claimant. Ponce did not remember the content of their conversation but remembered that he answered with long sentences, and the answers he provided were responsive to her questions. Ponce claimed that Parent did not include Claimant in the Individual Program Plan (IPP) meetings which restricted her ability to assess him. Ponce believed if Parent included Claimant in the IPP meetings, Ponce would have more information to assess his speech and language abilities. Ponce testified that she was unaware Claimant's diagnoses included speech and language development delay due to hearing loss as she had not been notified of this prior to reviewing the doctor's report in the Claimant's exhibit binder for this fair hearing. (Exhibit H, p. 76.)

15B. SGPRC also relied on Claimant's February 12, 2015, IEP from his 12th grade year in high school. The IEP documented a present level of performance in the area of voice and noted that Claimant's primary health care specialist and his ear, nose, and throat specialist recommended speech therapy to treat his pitch breaks. In high school, Claimant demonstrated a need in maintaining the appropriate pitch across settings and during conversational speech. (Exhibit 6, pp. 50 and 81.)

15C. Based on Preciado's observations, Claimant could answer her questions appropriately and she experienced a pleasant conversation with him during the two brief interactions over Zoom which lasted for less than 10 minutes total. Preciado opined that Parent's complaint of Claimant's speech being unable to be understood was unsubstantiated. Preciado also considered the IHSS report that showed Claimant had no issues with communication. (Exhibit 8.) During her interactions with Claimant, she did not have any problem understanding him, his communication was clear, and

he was able to interact and engage with her. Preciado considered previous reports and her contact with Claimant when she denied his request for a speech and language assessment.

16. SGPRC's purchase of service policy include the provision of speech therapy services and supports that are required to prevent deterioration of a specific condition, or to improve functional skills. (Exhibit 11, p. 139.) Provision of speech therapy requires an assessment by a qualified licensed professional with a specialty in the therapy service and/or by the appropriate regional center specialist which indicates that the client would benefit from therapy.

17. On January 28, 2021, SGPRC issued a Notice of Proposed Action (NOPA) stating the action it proposed was to deny funding for a social skills program, deny funding for personal assistance services, and deny a request for a speech and language assessment. (Exhibit 1, p. 2.) As authority for its action, SGPRC cited Welfare and Institutions Code sections 4501, 4512 subdivision (b), and 4648.5 subdivisions (a)(1), (a)(2), and (a)(4).

18. Claimant's parent filed a Fair Hearing Request appealing the Service Agency's denial.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-

4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for these appeals was established.

2A. When a party seeks government benefits or services, they bear the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

2B. In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. Claimant bears the burden of proof that the increased funding is necessary to meet his needs. Claimant has not met his burden of proving funding is required for a social skills program or personal assistance services. Claimant has met his burden of proof that a speech and language assessment is necessary to meet his needs.

General Provisions of the Lanterman Act

3. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPPs. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

4. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

5. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

6. Welfare and Institutions Code section 4646.4 provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5. . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

7. Welfare and Institutions Code section 4648.5 states, in pertinent part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall

be suspended pending implementation of the Individual Choice Budgets and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services: . . .

(2) Social recreation activities, except those activities vendored as community-based day programs. [¶] . . . [¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

Claimant's request for funding for social skills program

8. SGPRC's purchase of service policy offers social skills training to children and young adults. For adults Claimant's age, SGPRC refers them to day programs, instead of social skills programs, to address their needs for socialization. Claimant is participating in Tailored Day, ILS and Get Safe, and these programs address his need to develop social skills. (Factual Finding 13 through 14C and Legal Conclusion 7.) Claimant did not prove that SGPRC is required to fund a separate social skills program.

Claimant's request for funding for personal assistance services

9. SGPRC provides personal assistance services to consumers who are non-ambulatory, nonverbal, exhibit severely aggressive behaviors that cause them to be a danger to themselves or others, require total care or have no family support. Claimant's needs do not rise to the level that meet the criteria for personal assistance

services. (Factual Findings 4A through 6, and 9 through 12B.) Claimant did not prove he meets the criteria for personal assistance services.

Claimant's request for funding for speech and language assessment

10. Parent and Claimant's sister established that Claimant experiences difficulty communicating effectively. They observed that his inability to communicate his needs and feelings results in frustration and is an obstacle to making friends. The testimony from Claimant's current service providers, Osuna and Madrigal, further establishes he has difficulty advocating for himself and his speech is sometimes incoherent. Claimant's treating physician diagnosed a speech and language development delay due to hearing loss, a diagnosis that SGPRC was unaware of prior to fair hearing. Accordingly, Claimant has proved by a preponderance of the evidence that he may have a need in the area of speech and language therapy. As a result, a speech and language assessment is required to investigate his potential need. SGPRC's employee's brief casual undocumented conversations with Claimant via Zoom are not sufficient to dispel the need for a formal assessment. (Factual Findings 7A through 8, 10A through 10D, and 15A through 16.)

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ORDER

1. Claimant's appeal is denied regarding funding for a social skills program and personal assistance services.

2A. Claimant's appeal is granted related to a speech and language assessment funded by SGPRC.

2B. SGPRC shall fund a speech and language assessment by a qualified licensed professional within 60 days of the issuance of this decision.

DATE:

MARLO NISPEROS

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.