

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2021120103

DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 22, 2022.

Claimant's mother (Mother) represented Claimant. (Names are omitted and family titles are used to protect the privacy of Claimant and her family.) Jacob Romero, Regional Center representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Evidence was received, the record was closed, and the matter was submitted for decision on February 22, 2022.

ISSUE

1. Should ELARC be required to fund attorney services for Claimant to appeal the Los Angeles Unified School District's denial of Claimant's request for a one-to-one aide?
2. Should ELARC be required to fund a one-to-one aid for Claimant during school hours?

EVIDENCE

Documents: Service Agency's Exhibits 1-12

Testimony: Irma Macias-Reyna, ELARC Consumer Service Representative (CSR); Mr. Romero and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an eight-year-old regional center consumer who receives services from Service Agency under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a qualifying diagnosis of Autism Spectrum Disorder (ASD).
2. In a Notice of Proposed Action (NOPA) dated October 4, 2021, Service Agency notified Mother that "ELARC is denying your request for attorney support to assist with the request of the 1:1 aid from the school district." (Exh. 1, p. A2.)

3. Mother submitted a Fair Hearing Request dated November 1, 2021, to appeal Service Agency's decision. In the section asking for a description of what is needed to resolve the complaint, Mother noted:

Send a Notice of Proposal [*s/c*] Action for denying my request that they Gap Fund an advocate with IHSS [In-Home Supportive Services] Hearing experience. Also Gap Fund a personal assistant for the applicable goals in [Claimant's] IPP pending resolution of IHSS appeal. I need Attorney representation for LAUSD [Los Angeles Unified School District] & IHSS.

(Exh. 2, capitalization in original.)

4. On December 20, 2021, Mr. Romero met with Mother to discuss the Fair Hearing Request. During the meeting, Mother explained that she wanted ELARC to: (1) complete a courtesy vendorization for Keith Davis, an attorney who is vendorized by South Central Los Angeles Regional Center (SCLARC); (2) hire Mr. Davis to represent Claimant during the IEP process; (3) provide Claimant with a personal assistant at school; and (4) fund an attorney to represent Claimant in the event of an IHSS appeal with the County of Los Angeles.

5. During the meeting, Mother advised Mr. Romero that SCLARC had previously funded Mr. Davis's legal services when Claimant had been attending a private school and that Mr. Davis had been successful in getting the Los Angeles Unified School District (School District) to commit to conducting all the necessary assessments before Claimant left that school.

6. Mother advised Mr. Romero that the School District wanted to place Claimant in a special education classroom, which she did not believe was appropriate. Mother expressed her belief that Claimant should be placed in a mainstream classroom, with a personal assistant who could provide Claimant with verbal reinforcement.

7. Mother noted the school wanted to document Claimant's behavior across various settings for 90 days before making a determination about whether Claimant needed a one-to-one aide. According to Mother, though the observations began in October 2021, due to the school holidays in November and December, it was unlikely that the documentation will be completed until February 2022.

8. By letter dated December 20, 2021, Mr. Romero notified Mother that based on his review of the record: (1) ELARC could not fund personal assistant services during school hours as the School District is the responsible party for securing classroom support; and (2) ELARC could provide Claimant with advocacy assistance through Claimant's service coordinator. (Exh. 10.)

9. At the hearing, Mother confirmed that she was not challenging ELARC's denial of her request to fund attorney services for an IHSS appeal. Mother, however, stated that she wanted the hearing to address her request for additional respite hours. Service Agency objected to inclusion of that request.

10. As a request for additional respite hours was not included in Claimant's Fair Hearing Request, Mother's request was denied as OAH was without jurisdiction to proceed on that issue at the hearing.

Background

11. Sometime after August 1, 2018, Claimant and her family moved to a home located in the ELARC catchment area. Prior to the move, Claimant had been receiving services from SCLARC.

12. On October 10, 2018, SCLARC authorized the Law Offices of Keith E. Davis to provide 10 hours of legal services per month for a three-month period from October 1, 2018 to December 31, 2018, to assist Claimant's family with the IEP process.

13. Irma Macias-Reyna, Claimant's ELARC Service Coordinator (SC), met with Mother and Claimant's father (Father) on December 18, 2019, for an initial Individual Program Plan (IPP) meeting. During the meeting, Mother stated she wanted Claimant to be placed in a regular class with a one-to-one aide and not in a class with all special education students. Mother indicated that she would like ELARC to fund for attorney services now that Claimant was returning to a public school within the School District, stating that SCLARC had paid for attorney services when Claimant was attending private school.

14. SC Macias-Reyna advised Mother to address Claimant's placement with the school during Claimant's next IEP meeting. SC Macias-Reyna did not offer to attend Claimant's IEP with Mother or advise her that Service Agency provides advocacy services but did refer her to the Office of Clients' Rights Advocacy (OCRA), stating that ELARC does not fund for attorney services. (OCRA is a program offered by Disability Rights California that offers free legal information, advice, and representation to regional center clients.)

2021 Individual Program Plan Meeting

15. On April 13, 2021, SC Macias-Reyna conducted a telephonic IPP meeting with Mother.

16. During the IPP meeting, Mother reported Claimant was in the second grade and attending a public school by videoconference Monday through Friday, from 9:00 a.m. to 1:20 p.m. Although LAUSD had announced schools were scheduled to be re-open soon for in-class instruction, Mother elected to continue with distance learning for the remainder of the school year.

17. Outcome Number 4 of Claimant's IPP included the goal for Claimant to receive an appropriate education that will meet her educational goals through April 2022 and noted Mother's plan to have Claimant continue with distance learning.

18. During the IPP meeting, Mother noted Claimant had several behavioral issues that were impacting Claimant's ability to access her education. Mother was providing all the support and supervision Claimant needed during her schooling. Mother, however, did not reiterate her concerns regarding Claimant's level of instruction during the IPP.

Subsequent Communications with Service Agency

19. On June 1, 2021, Mother sent an email to SC Macias-Reyna requesting information about personal assistant hours. In the email, Mother stated that she had been advised by an advocacy group that Claimant qualifies for personal assistant hours and expressed her frustration that SC Macias-Reyna had not suggested those services to her.

20. In Mother's email, she conflates "personal assistant" hours with "respite hours" and suggests that she would use the hours while Claimant attended school so that she could keep Claimant on task.

21. SC Macias-Reyna responded by email and explained respite hours are used as a relief for the parent and are not to be used during school or therapy hours, but stated that she would speak with her supervisor regarding Mother's request for personal assistant hours. SC Macias-Reyna asked Mother if Claimant was receiving one-to-one support from the school, and advised Mother could request additional support from ABA staff during the school hours and could ask for additional IHSS hours

22. On June 3, 2021, SC Macias-Reyna spoke with her Program Manager (PM) Elizabeth Ornelas about Claimant's request for personal assistant hours. PM Ornelas advised SC Macias-Reyna that ELARC only provided personal assistant hours during the regular school year to regional center consumers who were 13 years old or older. ELARC, however, could fund personal assistant hours for those consumers who were virtually participating in a summer program.

23. After Mother provided the required documentation, personal assistant hours were approved for the summer term.

24. On August 18, 2021, Mother notified SC Macias-Reyna Claimant would continue to attend class virtually through online classes offered through City College during the regular school week and asked to maintain the previously authorized personal assistant hours.

25. SC Macias-Reyna advised Mother that as school was in full session, Mother needed to request personal assistant services from the School District because

those services are school supports and a generic resource and therefore not funded by ELARC.

2021 IEP Meeting

26. On October 28, 2021, an IEP meeting was held telephonically. A copy of the IEP was produced to ELARC as part of the fair hearing process. The IEP report that was provided noted that Claimant's autism has affected her ability to meet common core standards in reading, writing and math and notes that Mother had requested an assistant to help Claimant in the classroom. The IEP report does not indicate what other supports the School District was providing Claimant.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." (All further statutory references are to the Welfare and Institutions Code unless noted otherwise.) Claimant timely requested a hearing to appeal Service Agency's denial of her request for legal services and personal assistant hours. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

Standard and Burden of Proof

2. When a party seeks government benefits or services, he bears 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.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See, Evid. Code, § 115.)

3. Claimant, as the party seeking payment for previously unfunded services, has the burden of proving, by a preponderance of the evidence, that the additional services are necessary to meet her needs.

Applicable Law

4. In enacting the Lanterman Act, 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.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.)

5. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

6. The consumer's needs are determined through the IPP process. (Welf. & Inst. Code, § 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (Welf. & Inst. Code, § 4646, subd. (b).)

7. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the particular desires and preferences of the consumer and the family when appropriate. (Welf. & Inst. Code, §§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a)(4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

Request for Attorney Services

8. The services and supports that may be listed in an IPP include, among others, "advocacy assistance, including self-advocacy training, facilitation and peer advocates." (Welf. & Inst. Code, § 4512, subd. (b).)

9. Welfare and Institutions Code section 4648 provides in pertinent part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

[¶] . . . [¶]

(b)(1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.

(2) Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request advocacy assistance from the state council.

10. ELARC is not required to fund a private attorney to perform legal services on Claimant's behalf. The Lanterman Act contains no provision requiring a regional center to fund the cost of private attorneys to advocate on behalf of consumers in disputes with their school district. The Lanterman Act is unlike special education law, which provides for the recovery of attorney's fees by the prevailing party in a due process hearing. (See Ed. Code, § 56507.) The Service Agency provided appropriate supports and services by providing Mother with a referral to an available generic resource, as well as offering advocacy services through ELARC's service coordinator. In addition, according to the information Mother provided Service Agency, the School District is currently assessing Claimant's need for school supports and has not currently denied Claimant's request for a one-to-one aide. Therefore, Mother has not established the necessity for attorney services.

Request for a Personal Assistant During School Hours

11. Although an IPP must reflect the needs and preferences of the consumer, a regional center is not mandated to provide all the services a consumer may request.

Pursuant to Welfare and Institutions Code section 4646, subdivision (a), a regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(1) and (2).) Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subd. (a)(8).)

12. The School District is the generic resource that is responsible for providing Claimant with appropriate school supports. There is no current indication that the School District has denied Claimant's request for a one-to-one aide or that Claimant requires a one-to-one to achieve her IPP goals. Based on the forgoing, Claimant failed to establish that ELARC should fund personal assistant services during school hours.

//

//

//

//

//

//

ORDER

Claimant's appeal is denied.

DATE:

NANA CHIN

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.