

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022030515

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 18, 2022, by videoconference.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant's wife (Wife) represented claimant, who appeared at the hearing. Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and his family.

Adriana Pope, court-certified interpreter, provided language interpretation in Spanish.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 18, 2022.

ISSUE

Should NLACRC fund claimant's participation in the vocational day program, AFA HUB?

EVIDENCE

Documentary: Exhibits 1 through 20; A through I.

Testimonial: Andrea Mojica, NLACRC Consumer Services Coordinator (CSC); Nedy Monteiro, NLACRC Consumer Services Supervisor (CSS); Wife; and claimant.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 58-year-old male who qualifies for regional center services under the category of autism. He lives at home with Wife and their three children.
2. On February 28, 2022, claimant filed a request for a fair hearing appealing NLACRC's denial of his request for funding to participate in a vocational day program, AFA-HUB. This hearing ensued.

Claimant's Individual Program Plan

3. Claimant's most recent individual program plan (IPP), dated September 27, 2021, contains Service Agency's and claimant's agreements, sets forth specific objectives and goals, and identifies the services and supports to achieve them. It also describes claimant's needs and behaviors.

4. As set forth in the IPP, claimant can walk on his own, and he can grasp objects without assistance. Claimant eats by himself without spillage. Although he toilets independently, on some occasions, claimant becomes so focused when using his computer that he may have accidents. Claimant performs personal care activities (dressing, bathing, feeding, hygiene, and grooming) independently when reminded. Claimant is able to prepare simple snacks and knows how to use a microwave and a toaster oven, but he has food sensory issues with certain textures, tastes, and smells that sometimes cause him to vomit. With prompting, claimant is able to complete household tasks such as serving food, taking out the trash, washing dishes, and mopping the floor.

5. The IPP notes as claimant's strengths that "[he] is very good at computers and overall has great computer skills. He is also good at photography, photoshop, and editing 3D videos." (Ex. 2, p. A3.) With respect to claimant's goals, the IPP indicates: "[Claimant] wants to improve his social and communication skills and learn how to cope with his feelings appropriately. In addition, he would also like to gain the skills needed to know how to maintain employment and follow a daily routine." (*Ibid.*) The IPP further states: "[Claimant] indicated that he would like to participate in a day program where he could work with computers or learn how to BBQ grill. [Claimant] says he is not interested in participating in any program that involves him cleaning, lifting heavy objects, or doing repetitive tasks that require him to stand for long

periods of time." (*Id.* at p. A8.) During the IPP meeting, claimant's CSC, Andrea Mojica, gave claimant information about local day programs for which NLACRC provides funding. CSC Mojica also explained to claimant that pursuant to regional center laws and regulations, all generic resources must be exhausted before Service Agency may fund any programs selected by claimant.

6. Although it is not noted in the IPP, CSC Mojica, testified at the hearing that NLACRC is currently funding claimant's dental work and three hours of Independent Living Services assessment for claimant.

Claimant's Request for Funding of AFA HUB

7. On October 24, 2021, claimant sent CSC Mojica an email to inform her that he attended a Resource Fair in which a day program, AFA HUB, was a participant. Claimant expressed his interest in attending the AFA HUB program to learn animation and special effects. Because AFA HUB is not an NLACRC vendor, but a provider outside of the NLACRC catchment area, CSC Mojica sought more information on the program. On a date not established by the record, CSC Mojica obtained the program design for AFA HUB.

8. After a review of the AFA HUB program design, CSC Mojica noticed that claimant did not meet the program's educational prerequisites. AFA HUB required its participants to be either 18 years old or older with a high school diploma or 22 years old or older and out of high school with a certificate of completion, but claimant does not possess either a high school diploma or a high school certificate of completion. Additionally, CSC Mojica found that AFA HUB is a vocational training program. Upon completion of the program, its students are awarded a certificate of completion with which students are expected to gain employment. However, claimant is an

undocumented immigrant, and CSC Mojica was uncertain whether claimant possessed the legal permit necessary to secure employment.

9. In December 2021, CSC Mojica asked claimant several times whether he had a work permit, but claimant refused to answer. During this time, CSC Mojica also provided claimant with information on the Department of Rehabilitation (DOR) and Antelope Valley College (AVC), as two generic resources for claimant to explore. According to CSC Mojica, claimant did not provide to her any evidence that he has fully explored these generic resources.

10. On January 20, 2022, CSC Mojica, Nedy Montiero (CSC Mojica's supervisor), claimant, Wife, and another advocate acting on behalf of claimant held a meeting by videoconference to discuss NLACRC's funding of AFA HUB. During this videoconference, CSC Mojica reiterated that generic resources must be exhausted before funding by Service Agency will be considered. Additionally, claimant, during this meeting, confirmed that he does not possess a work permit.

11. Service Agency contends that its denial of claimant's request is based on the following reasons: (1) AFA HUB is a vocational program with the end goal of obtaining employment for its students, but claimant does not have a work permit; (2) claimant does not meet AFA HUB's education requirements; and (3) claimant has not fully explored generic resources.

Claimant's Testimony

12. At the hearing, claimant testified on his own behalf. Claimant confirmed that he had applied for AFA HUB's vocational program. Although he does not have either a high school diploma or a high school certificate of completion, AFA HUB had waived its educational prerequisites and accepted claimant into its program. Claimant

conceded that he does not have a work permit, and he is unable to secure employment even if he obtains AFA HUB's certificate of completion. However, claimant stated that AFA HUB's program is also aimed at helping its students create micro-companies. Claimant asserted that his goal is to create a micro-company that would hire others to work, which would not require him to possess a work permit. There is no evidence that claimant made NLACRC aware of his goal of creating a micro-company until his testimony at the administrative hearing.

13. Claimant also has explored the generic resources suggested by NLACRC. Specifically, claimant applied for DOR services, but he was rejected because he is an undocumented immigrant and DOR only serves those who have immigration status. Claimant also explored the programs at AVC. However, the only course he could take at AVC is beginning photography, which does not address graphic design, claimant's true interest. According to claimant, the only program that meets his needs is AFA HUB.

Wife's Testimony

14. At the hearing, Wife testified on claimant's behalf. She stated that claimant is gifted in three-dimensional graphic design, even though he suffers from autism. Wife testified that claimant's goal is to set up a micro-company and teach other kids with autism.

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LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that Service Agency is required to fund AFA HUB. (Evid. Code, § 115.) Claimant has not met his burden.

Applicable Law

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code (all further references are to the Welfare and Institutions Code, unless otherwise designated), § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

4. As set forth in 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. Services funded by regional centers include both pre-employment and employment support services. Section 4869, subdivision (a), provides, in pertinent part: "it is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities. This policy shall be known as the Employment First Policy." A regional consumer may participate in "[p]ostsecondary education, technical or vocational training, and internship programs . . . as a means to achieve integrated competitive employment or career advancement." (§ 4689, subd. (a)(4).)

6. However, a regional center is required to identify and pursue all possible funding sources for its consumers from generic resources, and to secure services from generic sources where possible. Section 4646.4, subdivision (a), provides, in relevant part:

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, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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:

[¶] . . . [¶]

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

7. Section 4648, subdivision (a)(8), also provides:

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.

Disposition

8. In this case, claimant requests funding for a day program, AFA HUB. Service Agency contends that claimant does not possess the educational requirements for AFA HUB and has not exhausted generic resources. However, these arguments are not convincing, as AFA HUB has already accepted claimant into its program. Moreover, claimant has explored DOR and AVC as generic resources, but he was rejected from DOR due to his immigration status and AVC's programs do not suit his needs.

9. Nevertheless, AFA HUB is a vocational program, whose aim is to enable its students to find employment after the completion of the program. Under section 4869, subdivision (a)(4), NLACRC's funding of vocational training must be a "means to achieve integrated competitive employment or career advancement." Here, claimant

does not have a work permit. Therefore, even assuming that claimant completes AFA HUB, he will not be able to gain employment or achieve career advancement. Claimant contends that his goal is not to seek employment after completion of AFA HUB, but to create a micro-company and hire others to work for him. However, claimant provided little evidence that he is legally authorized to employ others given his lack of a work permit.

10. Additionally, claimant's goal of creating a micro-company is not a part of his IPP. Under the Lanterman Act, services are provided to the consumer through the IPP process. The consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).) The process of creating an IPP, by its nature, is collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (§§ 4646, 4648.) If the consumer does not agree with all components of an IPP, they may indicate that disagreement on the plan. (§ 4646, subd. (g).) If the consumer does "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (*Ibid.*)

11. Claimant's stated goal in his IPP is to participate in a day program where he could work with computers or learn how to BBQ grill. By changing his goal now to creating a micro-company, claimant has made the decision unilaterally, and NLACRC has had no notice of this decision until the administrative hearing. If claimant wishes to pursue that goal of creating a micro-company, he must do so collaboratively,

through the IPP process so that NLACRC may be given an opportunity to gather information and conduct assessments, in accordance with section 4646.5, subdivision (a). Under these circumstances, NLACRC is not obligated to provide funding for claimant's attendance in AFA HUB.

ORDER

Claimant's appeal is denied. North Los Angeles County Regional Center shall not be required to fund claimant's attendance in the day program, AFA HUB.

DATE:

JI-LAN ZANG

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.