

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022050654

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 14, 2022, by videoconference.

Ron Lopez, Special Education Advocacy Specialist, represented Westside Regional Center (Service Agency or WRC).

Claimant's mother (Mother) represented Claimant. Claimant and his family are identified by their titles to protect their privacy.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 14, 2022.

ISSUE

Should Service Agency be required to fund 10 hours per month of social skills services, 35 hours per month of respite, and 27 hours per month of specialized supervision for one and a half years, as compensation for the time that Claimant was deemed ineligible for regional center services under the Lanterman Act Developmental Disabilities Services Act (Lanterman Act)?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 2-15; Claimant's exhibits A-F.

Testimonial: Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a six-year-old boy. He qualifies for regional center services under the Lanterman Act based on a diagnosis of autism.
2. On May 2, 2022, the Service Agency issued a Notice of Proposed Action (NOPA) denying Claimant's request for social skills services and respite. Claimant claimed he was entitled to these services because WRC mistakenly deemed him ineligible for assistance for one and a half years, i.e., when he was between the ages of three and four and a half. (Ex. 3, p. A17.) The NOPA cited to Welfare and Institutions Code (all further references are to the Welfare and Institutions Code, unless otherwise designated) section 4710 and explained the deadline to appeal WRC's decision to

deny Claimant eligibility when he was three years old had passed. (*Ibid.*) The NOPA further stated: "WRC gave you adequate notice by sending the appeal on February 11, 2019[,] by certified mail. At that time, you would have had 30 days to appeal for regional center services. . . ." (*Id.* at p. A18.)

3. On May 6, 2022, Mother filed a request for a fair hearing on Claimant's behalf. (Ex. 3, p. A16.) This hearing ensued.

4. Although Claimant's request for 27 hours per month of specialized supervision was not included in the NOPA, the parties agreed at the hearing that this issue should also be decided in this proceeding, as it involves the same set of facts and arguments.

Claimant's 2019 Eligibility Determination

5. Before the age of three, Claimant was a regional center client who participated in Service Agency's Early Start Program and received early intervention services. "Early Start Program" is a common name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.). The Early Start Program is separate from, and does not have the same requirements as, the Lanterman Act (§ 4500 et seq.) An infant or toddler receiving early intervention services under the Early Start Program is not required to have a developmental disability. To be eligible for the Early Start Program, an infant or toddler must have at least a 33 percent delay in one of the five following areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development.

6. Eligibility for Early Start Program services ends at age three. (See Gov. Code, § 95014.) Upon Claimant's termination from the Early Start Program due to his

age, Mother asked Service Agency to determine whether Claimant was eligible for regional center services under the Lanterman Act. On November 27, 2018, an Interdisciplinary Team consisting of Alicia Bazzano, M.D. (Physician), Niasha Gonzalez (Early Start Manager), and Mayra Mendez, .Ph.D. (Psychology Consultant) determined that Claimant did not have an eligible condition that would qualify him for regional center services. (Ex. 7.) The Interdisciplinary Team recommended a referral to Claimant's school district for further services. (*Ibid.*)

7. In a letter dated February 19, 2019, Lizbeth Siria from Service Agency notified Claimant that he was found ineligible for regional center services. The letter stated:

This letter serves to inform you that your child's Early Start Program ends with their third birthday. Thus, as [of] that date, your child will no longer be eligible to receive services from the Regional Center under that program.

The evaluation completed was reviewed and your child was not found to have a diagnosis eligible to receive services from the Regional Center in accordance with the Lanterman Act.

For your information, the Lanterman Developmental Disabilities Service Act defines a developmental disability as: Intellectual Disability, Cerebral Palsy, Epilepsy, Autism, or a condition that requires treatment similar to that provided to persons with an intellectual disability. Your child may be eligible for special education services provided by the

school district serving your residence. You will need to work with the school district to determine their eligibility for services.

By law, you have the right to appeal this decision within 30 days of receipt of this letter. If you chose [*sic*] to appeal please read the appeals packet in its entirety and follow the procedures. I have enclosed the "Fair Hearing Process" literature which describes the process in depth.

(Ex. 5, p. A22.)

8. Attached to this February 19, 2019, letter is an eight-page pamphlet that describes the fair hearing process. (Ex. 6.) Claimant did not appeal WRC's 2019 determination that he was ineligible for regional center services under the Lanterman Act.

Claimant's 2020 Eligibility Determination

9. In 2020, when Claimant was four and a half years old, he again requested an evaluation to determine his eligibility for regional center services. On September 18, 2020, Beth Levy, Ph.D., conducted a psychological evaluation of Claimant using telehealth methods due to the COVID-19 pandemic. Based on this evaluation, Dr. Levy diagnosed Claimant with the following: "299.0 (F84.0) Autism Spectrum Disorder with cognitive impairment and with accompanying language impairment; Severity of social communication difficulties—Level 3—Requiring Very Substantial Support; Severity of restricted, repetitive behaviors—Level 2—Requiring Substantial Support." (Ex. 10, p. A59.) On September 25, 2000, WRC's Interdisciplinary Team, consisting of Maritz Cortez (Service Coordinator), Jessica Haro (Autism Specialist), Kaely Shilakes, Psy.D.

(Staff Psychologist), Ari Zeldin, M.D. (Physician), Mayra Mendez, Ph.D., (Psychology Consultant), and Rita Eagle, Ph.D. (Psychology Consultant), found Claimant eligible for regional center services under the category of autism. (Ex. 9, p. A45.)

Claimant's 2022 Individual Program Plan

10. Claimant's Individual Program Plan, dated March 7, 2022 (2022 IPP), describes Claimant's current condition as follows:

[Claimant] vocalizes and scripts. He displays minimal functional communication. He is able to use some individual words to request snacks. He does not display two-way communication. He is able to respond to his name and is able to follow simple directions. [Claimant's] attention to task is very minimal if non-preferred and 3-5 minutes if preferred. His preferred tasks are playing with play-doh and painting. [Claimant] requires prompts and support during transitions. [Claimant] is able to dress himself with prompting. He wears underwear but does not consistently communicate when he needs to use the bathroom. He requires support with bathing and showering. He needs assistance with brushing his teeth. He is able to use utensils to eat, however prefers to use his hands. He is able to drink from a closed cup, however if the cup is open, he pours the cup on himself. According to his mother's report, [Claimant] demonstrates non-compliance and he is unable to sit still. He does not always follow directions. He also grabs and takes items from others or off the table without asking.

[Claimant] is constantly moving from room to room, jumping and climbing. His mother noted that [Claimant's] aggressive behaviors have lessened. He does, however, continue to have impulsivity, highly distractible, and requires constant supervision to ensure his safety.

(Ex. 12, p. A65.)

11. The 2022 IPP also indicates WRC is funding the following services: 35 hours per month of respite with 24 Hour Homecare from March 1, 2022, through April 30, 2023; 27 hours per month of specialized supervision with 24 Hour Homecare from March 1, 2022, through April 30, 2023; and five sessions per month of social skills services with Therapy Place 4 Kids from October 11, 2021, to April 30, 2022. Under this IPP, WRC also funded five sessions per month of social recreation (gymnastics), five sessions per month of social recreation (swimming), 16 hours per month of DIR Floortime, among other services. However, it is unclear whether the 2022 IPP is the most recent individual program plan (IPP), as Mother testified that Claimant is participating in the Self-Determination Program (SDP), but an SDP budget was not submitted at the hearing.

Claimant's Special Education Records

12. In 2019, after Claimant was determined to be ineligible for regional center services, his school district conducted an evaluation of his condition. Claimant's Individualized Education Program (IEP), dated March 18, 2019, indicates Claimant did not meet the eligibility criteria for special education services. (Ex. C, p. B73.) Although a 2020 IEP was not submitted, Claimant's IEP dated November 17, 2021, shows he became eligible for special education services under the category of autism sometime

after the district's initial evaluation. Furthermore, Claimant's Amended IEP, dated May 25, 2022 (2022 Amended IEP), indicates he remains eligible for special education services under the category of autism. According to the 2022 Amended IEP, Claimant is currently receiving the following services from his school district on a weekly basis: (1) 1,800 minutes of behavior intervention implementation; (2) 60 minutes of speech therapy (ST); and (3) 30 minutes of occupational therapy (OT); (4) 30 minutes of OT clinic; and (5) 90 minutes of recreation therapy. (Ex. E, p. B124.) Claimant also receives extended school year (ESY) services for Behavior Intervention Implementation, ST, OT, and OT Clinic through his school district. ESY services are special education and/or related services provided beyond the usual school year, at times when school is not usually in session, typically during the summer.

13. On April 26, May 2, and May 12, 2022, Claimant's school's recreation therapist performed an initial recreation therapy assessment. In a report dated May 23, 2022, the recreation therapist wrote: "Rating forms completed by parent and teacher were consistent across both settings resulting in a rating of High Risk for Social Functioning for Social Competence. This suggests [Claimant] is exhibiting below typical, adequate adaptive social behavior characteristics, particularly in areas related to forming positive relationships with peers and self-management." (Ex. A, p. B16.) The recreation therapist concluded that Claimant needed recreation therapy to assist him with social functioning and positive group behaviors. (*Id.* at p. B17.) No other recreation therapy report or assessment was submitted into evidence.

Mother's Testimony

14. Mother testified at the hearing on Claimant's behalf. Mother described Claimant as a severely autistic child who requires 24-hour supervision. She recounted that Claimant was a client of WRC in the Early Start Program at 18 months old.

However, when Claimant reached three years old, WRC stopped providing Claimant services because he aged out of the Early Start Program. Mother reported she attempted to have WRC perform an assessment of Claimant at that time, but the regional representative was unresponsive to her inquiries. Nevertheless, Mother concedes she received the February 19, 2019, letter from WRC informing her Claimant was found ineligible for regional center services. Mother explained she did not file a timely fair hearing request appealing that decision because she was not adept at advocating for her son.

15. After the denial of eligibility by WRC in 2019, Claimant turned to his school district, but his school district also did not offer him any services. When Claimant reached four and a half years old, WRC found Claimant eligible for regional center services. According to Mother, the lack of services between 2018 and 2020, when Claimant was found ineligible for regional center services, caused him to regress. Mother believes if Claimant received regional center services during those one and a half years, he would have received peer modeling, a service that would have helped him with his social skills.

16. Claimant is currently enrolled in SDP, which according to Mother, includes a budget for social skills services. However, Mother reported she is required to find social skills vendors who are compliant with WRC's Home and Community Based Services (HCBS) rules, but she is having difficulties in finding such vendors. No evidence was presented regarding Claimant's need for any additional respite or specialized supervision hours.

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LEGAL CONCLUSIONS

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 WRC is required to fund 10 hours per month of social skills services, 35 hours per month of respite, and 27 hours per month of specialized supervision for one and a half years, as compensation for the time Claimant was deemed ineligible for regional center services. (Evid. Code, § 115.) He has not met that burden.

2. Based on Factual Findings 1 to 16 and Legal Conclusions 1 to 9, cause does not exist to grant Claimant's appeal.

3. The Lanterman Act 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.)

4. 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.)

5. The Lanterman Act defines “services and supports” to include respite, recreation, social skills, and community integration services. (§ 4512, subd. (b).)

6. In this case, Claimant requests social skills services, respite, and specialized supervision as compensation for the one and a half years during which he was deemed ineligible for regional center services after aging out of the Early Start Program. However, Mother received the February 19, 2019, letter informing her of her right to appeal WRC’s decision to deny Claimant eligibility under the Lanterman Act. For Claimant to continue to receive any services at that time, he was required to comply with section 4710.5 and appeal the decision within 30 days. (§ 4710.5, subd. (a).) Claimant did not file any appeal of the decision denying him eligibility within the

30-day period. Therefore, WRC properly discontinued services to Claimant after he reached age three, and WRC is not obligated to provide any compensatory services for the period that Claimant was deemed ineligible for those services.

7. Furthermore, there is no evidence, on this record, that the requested additional 10 hours per month of social skills services, 35 hours per month of respite, and 27 hours per month of specialized supervision are based on Claimant's needs. Per Claimant's 2022 IPP, he is already receiving 35 hours per month of respite and 27 hours per month of specialized supervision. No evidence was presented that these hours are not sufficient to meet Claimant's needs for respite and specialized supervision.

8. Based on the May 23, 2022, recreation therapy report, Claimant clearly suffers from social skill deficits. However, he is receiving 90 minutes of recreation therapy every week through his school to address his social functioning. Moreover, although Claimant's SDP budget was not submitted into evidence, Mother conceded that social skills services is already an allocated item in the SDP budget. No evidence was presented that the 90 minutes of recreation therapy and the allocation for social skills in Claimant's SDP budget are not sufficient to meet his needs for social skills. Mother may be experiencing difficulties in identifying social skills vendors who comply with HCBS rules, but this issue must be resolved through the IPP process rather than through this proceeding.

9. Under these circumstances, without a needs assessment indicating Claimant will benefit from additional social skills services, respite, and specialization hours, his request must be denied.

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ORDER

Claimant's appeal is denied. Westside Regional Center is not required to fund 10 hours per month of social skills services, 35 hours per month of respite, and 27 hours per month of specialized supervision for one and a half years, as compensation for the time that Claimant was deemed ineligible for regional center services under the Lanterman Act.

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.