

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022080077

DECISION

Kimberly J. Belvedere, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on November 21, 2022. The ALJ, claimant's mother, and one witness appeared by video. All other individuals appeared by audio only.

Senait Teweldebrhan, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 21, 2022.

ISSUE

Is IRC authorized to refund claimant the cost of the Program for the Education and Enrichment of Relational Skills (PEERS) she completed through a non-vendored provider?

FACTUAL FINDINGS

1. The following factual findings are derived from documentary evidence presented at hearing and the testimony of IRC Consumer Services Coordinator, Anthony Berumen, IRC Program Manager, Anthony Dueñez, and claimant's mother.

2. Claimant is a 20-year-old regional center consumer who qualifies for services based on a diagnosis of mild intellectual disability. Claimant receives funding for services under the traditional funding model but is exploring the possibility of transitioning to the self-determination model. According to claimant's most recent Individual Program Plan (IPP), she lives at home with her family. Claimant is very social and enjoys being with friends. Claimant would like to someday work with special needs children.

3. In early July 2022, claimant's mother sought funding for the PEERS program offered by the University of California, Los Angeles (UCLA). The PEERS program is a 16-week online program that assists teenagers and young adults with developing social skills such as maintaining friendships, organizing social events, resolving conflict, exercising good sportsmanship, changing a bad reputation, and handling bullying. It costs approximately \$4,500. IRC consumer services coordinator Anthony Berumen informed claimant's mother that the PEERS program was not a

vendored service. Mr. Berumen further informed claimant's mother that IRC had vendored services that could address claimant's needs, such as independent living services and adaptive skills training, which have social skills components built into those services. On July 12, 2022, claimant's mother notified Mr. Berumen that she had already enrolled claimant in the PEERS course to commence on July 26, 2022, and would like the appeals paperwork sent to her as soon as possible.

4. On July 18, 2022, IRC denied claimant's request and sent claimant a notice of proposed action. The letter attached to the notice of proposed action explained that claimant's request for PEERS funding was denied because:

PEERS does not have a rate agreement and contract with Inland Regional Center (IRC). Regional centers are required to adhere to the mandates of the Lanterman Act and related regulations, which authorize regional centers to reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the Department of Developmental Services [¶] . . . [¶]

Vendors with IRC are required to submit progress reports and develop individual service plans with measurable goals. This ensures that the individual is benefitting from the service and the vendor is working toward the goals that have been established and agreed on by IRC and the individual. Since PEERS does not have a rate agreement with IRC, there is no way for IRC to know if this is an

appropriate service or any measurable way to ensure this service is beneficial. IRC also has a duty to be cost effective with funding of services. Since there is no measurable way to determine the impact of this service, this is not a cost-effective way to provide services.

5. On July 25, 2022, claimant's mother filed a fair hearing request appealing IRC's determination and requesting \$4,500 for the cost of the 16-week PEERS program.

6. The parties held an informal meeting on August 11, 2022, to discuss the fair hearing request. Following the informal meeting, IRC adhered to its position that it would not fund the non-vendored PEERS program for claimant for the same reasons discussed in the letter attached to the notice of proposed action.

7. In September 2022, IRC referred claimant to the California Autism Network (CAN) to determine the need for "support and training in the areas of work readiness, self-advocacy, and increased independence." CAN is a vendored service. The CAN program, like PEERS, is also for teenagers and adults to develop social skills, but is an in-person program that focuses on helping an individual discover his or her personal strengths, develop self-confidence, overcome barriers, effectively communicate, write a budget, solve problems, exercise good self-hygiene, explore career goals, become ready for employment, and learn how to make decisions for his or her future. Following the denial of funding for PEERS, claimant was approved to attend the CAN program where she can obtain individual and group training.

8. According to Program Manager Anthony Dueñez, the CAN program is tailored to meet claimant's needs given that it is modeled based on claimant's IPP goals and the progress reports contain measurable goals. The measures are a form of

quality control so claimant's progress can be reviewed every six months to see if goals are met. The CAN program is a suitable alternative to the PEERS program, given that both programs address social skills and the CAN program is a vendored service.

9. Claimant's mother testified that claimant is relatively new to IRC services, having just become a consumer in 2019. Claimant's mother understands that medical insurance must first be consulted, and if a request is denied, then the regional center would be the next option for funding. Claimant's mother learned of the PEERS program from teachers at Cal Poly Pomona who spoke very highly of the program. She was excited about it because it offers wonderful services to address many of the needs claimant has. Claimant's mother submitted multiple scholarly research articles showing the benefits of the PEERS program as well as progress reports showing claimant benefitted from her PEERS training. Although the PEERS program does accept medical insurance, it does not accept claimant's insurance. Claimant's mother is hopeful that IRC will reimburse her the \$4,500 for the cost of the program.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052).

The Lanterman Developmental Disabilities Services Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) (Lanterman Act) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized 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. 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (department) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in

meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

9. Welfare and Institutions Code section 4648, subdivision (a)(3), provides:

A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; and the procedure for an individual or an agency to appeal a vendorization decision made by the department or regional center. [Emphasis added.]

10. Welfare and Institutions Code section 4648, subdivision (a)(4), provides:

Notwithstanding subparagraph (B) of paragraph (3), a regional center may contract or issue a voucher for services

and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, a provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

11. California Code of Regulations, title 17, section 50612, provides:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider [Emphasis added.]

12. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver

quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumer's, or, where appropriate, the parents', legal guardians', or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

13. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

Evaluation

14. The PEERS program is a non-vendored 16-week online program that assists teenagers and young adults with developing social skills such as maintaining friendships, organizing social events, resolving conflict, exercising good sportsmanship, changing a bad reputation, and handling bullying. The vendored CAN program is also for teenagers and adults to develop social skills, but is an in-person program, and focuses on helping an individual discover his or her personal strengths, develop self-confidence, overcome barriers, effectively communicate, write a budget, solve problems, exercise good self-hygiene, explore career goals, become ready for employment, and learn how to make decisions for their future. While the programs may not be identical, they offer similar services. The CAN program is therefore a comparable vendored service for the non-vendored PEERS program.

15. This is not to say the PEERS program is deficient or otherwise not suitable to assist persons with developmental disabilities. According to claimant's mother and several scholarly articles provided, PEERS is an effective program for many individuals and provides beneficial services to its clients. However, the nature or propriety of the PEERS program for regional center consumers is not the subject of this appeal. This appeal is limited to whether the request to fund the PEERS program for claimant is legally appropriate.

16. There are two reasons why funding for PEERS must be denied. First, PEERS is not vendored or otherwise contracted to provide services to IRC consumers. Before providers can provide and be reimbursed for services from IRC funds, they must go through the regulatory process to become a vendor or obtain an approved contract from IRC, as stated in Welfare and Institutions Code section 4648, subdivision (a)(3), and California Code of Regulations, title 17, section 50612. Without vendorization or a contract secured under those sections, there is no mechanism for a regional center to fund a service.

17. Second, claimant has already completed the PEERS program, which would render any decision for IRC to fund the service a retroactive payment. Welfare and Institutions Code section 4648 and California Code of Regulations, title 17 section 50612, require that all services funded by a regional center be pre-approved; retroactive reimbursement for services already provided are not permitted except in the case of an emergency, and even then, only when it is provided by an IRC vendor and the service is later determined to have been necessary and appropriate. No evidence supported, nor was it claimed, that claimant's attendance in the PEERS program was an emergency.

18. Claimant's mother is a zealous advocate for claimant and has her daughter's best interest at heart. However, based on applicable law, IRC is prohibited from reimbursing claimant for the cost of the PEERS program she already attended, and similarly prohibited from funding the PEERS program for claimant going forward unless and until the entity that administers the PEERS program becomes an IRC vendor.

ORDER

Claimant's appeal for IRC to reimburse her for the cost of the PEERS program is denied.

DATE: November 28, 2022

KIMBERLY J. BELVEDERE

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.