

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL / POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2022090114

DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 6, 2022. Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel / Pomona Regional Center (SGPRC or Service Agency). Claimant was represented by her mother. (The names of Claimant and her family are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on October 6, 2022.

ISSUE

Should SGPRC be required to fund private piano lessons for Claimant?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 - 8. The testimonial evidence considered in this case was that of Claimant's mother.

SUMMARY

Claimant had previously requested and was denied funding for piano lessons by the Service Agency. A fair hearing was held on January 31, 2022 before Administrative Law Judge Julie Cabos-Owen in OAH Case. No. 2021120814. The Service Agency's denial was upheld. The evidentiary basis for Administrative Law Judge Cabos-Owen's decision remains unchanged. An independent program plan (IPP) meeting was held after that decision, but that meeting failed to provide any additional support for Claimant's request to fund piano lessons for social recreation. As such, Claimant's appeal is denied.

FACTUAL FINDINGS

1. Claimant is an 11-year-old female consumer of the Service Agency. She qualifies for regional center services under a diagnosis of Mild Intellectual Disability (ID) with additional diagnoses of etiology and down syndrome.

2. Claimant currently lives in a home with her mother and father. She is home-schooled and receives no services from the public elementary school district. Previously, Claimant attended a special day program at the public elementary school.

3. Claimant struggles with self-care, communication, and disruptive behaviors, such as aggressively hitting parents, herself and peers. Parents would like Claimant to improve her self-care and become more independent. (Exs. 3 and 4.)

4. Claimant previously requested piano lessons. A fair hearing was held on January 31, 2022 before Administrative Law Judge Julie Cabos-Owen in OAH Case. No. 2021120814. The Service Agency's denial was upheld. (Ex. 7.) The Administrative Law Judge ruled Claimant's parents were responsible for funding piano lessons as they would for any minor without a disability and that the piano lessons requested teach music skills on a specific instrument and do not constitute therapy or a specialized service focused on treating Claimant's developmental disability. (Exs. 2 and 7.) Claimant did not appeal the decision. (Portions of the findings contained in OAH Case. No. 2021120814, Exhibit 7, are incorporated herein.)

5. In a June 2021 annual IPP progress report, Claimant's mother reported Claimant's social skills were improving. Claimant was attending in-person summer school, and she enjoyed seeing her friends there. Claimant also had a neighborhood friend with whom she played. At that time, Claimant continued to qualify for speech therapy through her school district, and the Service Agency funded respite, daycare, and floor time therapy. (Ex. 4.)

6. On July 1, 2021, the Welfare and Institutions Code section that previously suspended a regional center's ability to fund "social recreational activities" and

"nonmedical therapies, including . . . art, dance, and music" became inoperative. (Welf. & Inst. Code, §4648.5.)

7. In an October 25, 2021 IPP Addendum, goals were added to Claimant's IPP. The 2021 Addendum noted:

Parents wants [sic] [Claimant to] also makes [sic] improvements with her fine motor skill/muscle tone through activities. Parents would like [Claimant] to become more independent, be productive, to have a normal life in the community, to be enable[d] . . . to approximate the pattern of everyday living of a non-disabled person of the same age, and to [have] opportunities to participate in community life.

(Exs. 5 and 7.)

8. On November 29, 2021, the Service Agency sent Claimant a Notice of Proposed Action (NOPA), denying the request for funding of swimming lessons and piano lessons. Claimant's mother filed a fair hearing request to contest the denial. (The request for funding swimming lessons was resolved by the parties prior to the previous fair hearing.) (Ex. 7.)

9. In its NOPA of November 29, 2021, the Service Agency cited Welfare and Institutions Code sections 4512, subdivision (b), and 4646.4, subdivision (a), as the laws supporting the denial of services. The stated factual bases for the NOPA were as follows:

You requested for regional center to fund piano lessons: four lessons at once a week, at the rate of \$150. [¶] You also stated that [Claimant] will be able to make improvement with her fine motor skill/muscle tone when she plays the piano while also learning to engage with other people. SG/PRC currently funds for [Claimant's] respite (20 hours/mo.), daycare (67hours/mo.), extended year (16 hours from 11/22/21 to 11/26/21), and floor time therapy (32 direct hours/mo. with 8 hours/mo. supervision) services.

Your request was reviewed, and it has been denied. The ability to fund for social recreation activities, specialized recreation, art, dance, and music has been re-stored to regional centers but regional centers consider the type of service being requested as a family's responsibility for providing services. Piano . . . lessons are not specialized services directed toward the alleviation of a developmental disability.

(Ex. 7.)

10. In January 2022, a Service Agency occupational therapist conducted a records review regarding Claimant's request for Service Agency funding of piano lessons. Following her review, the occupational therapist explained the difference between a "therapy" and other recreational activities, noting:

Parent is requesting piano lessons to help [Claimant] improve her fine motor skills[.]

The goal of piano lessons/instruction is to assist an individual in learning a new instrument and to improve musical skills. Therapy is intended to improve quality of life and provide treatment of disorders through improved motor skills or coordination with the use of remedial, rehabilitative, or curative process. [¶]

[P]iano lessons/instruction is considered to be an activity that is available to all individuals and that can be provided by a child's family as a typical or recreational activity.

[Recommendation:] Parent to pursue therapy services via school district to address her concerns with child's fine motor skills.

(Ex. 7.)

11. After the fair hearing decision in Case. No. 2021120814, on May 3, 2022, Service Agency adopted social recreation/camp and non-medical therapies policy (the Policy) approved by the Department of Developmental Services. The Policy provides guidelines for funding social recreation services consistent with the Welfare and Institutions Code. Social recreation activities, including music, are used to improve clients' "confidence, encourage independence, foster mental wellness, help them retain emotional stability, increase physical health, establish friendships, expand circles of support, and create diverse circles of friends that include persons with and without disabilities." (Ex. 8.)

12. Service Agency will fund social recreation through the IPP process to "ensure optimal participation within integrated community settings." (Ex. 8.) Funding is

not exclusive to the Service Agency; families, churches, schools, day programs, and residential services, are considered. (*Ibid.*) Most importantly, services funded “should include opportunities and experiences that improve self-reliance, increase adaptive behaviors, and improve the ability to establish social relationships. These are primary social and recreational benefits.” (*Id.*)

13. The reintroduction of social recreation services does not mean the Service Agency is responsible for funding such services upon request. Parents’ responsibility for paying for similar services and supports for a minor child without a disability are considered. “Parents will pay the typical cost of private lessons” unless parents are on a fixed income. (Ex. 8.)

14. Mother again requested Service Agency support for social recreation activities including swimming and private piano lessons which were denied. Mother requested four piano lessons per month at the rate of \$150 per month. (Ex. 2.) Mother maintained the social recreation activities would provide needed opportunities for Claimant to be part of the community, meet friends and increase her social life in a general setting. (Ex. 6.) She also offered, as she had done in the previous fair hearing, piano lessons will improve her fine motor skills and motor tone. (*Ibid.*) (The Service Agency and Claimant settled the issue of swimming lessons prior to the fair hearing and at the start of the fair hearing the parties stipulated the dispute was limited to swim lessons.)

15. On May 25, 2022, Service Agency issued a NOPA. Service Agency denied the request citing the reasoning set forth in OAH Case. No. 2021120814: parents are responsible for funding piano lessons as they would do so for any minor without a disability; piano lessons are to teach music skills on a specific instrument and not a

therapy or specialized service to treat Claimant's developmental disability. (Exs. 2 and 8.).

16. On June 14, 2022, Parents filed a fair hearing request challenging Service Agency's denial of piano and swim lessons. All jurisdictional requirements have been met for this matter to proceed to fair hearing.

17. In an IPP progress meeting held on June 29, 2022, memorialized in the IPP Progress Report dated August 3, 2022, Mother reported Claimant was making progress on her behaviors, enjoyed attending school in-person with peers, helps others and generally behaves well at school. At the fair hearing, Mother reported Claimant was being home-schooled. As such, Claimant's integration into the school setting, including recreational activities, is currently unknown.

18. At the fair hearing, the Service Agency maintained that nothing had changed since the decision in OAH Case. No. 2021120814, and they stood by the findings in that decision.

19. At the fair hearing, Claimant's mother insisted circumstances had changed since the last fair hearing. She pointed out that the Policy for implementation of social recreation was not in place at the time of the last hearing. In addition, the IPP Progress Report dated June 30, 2022 contains as Outcome 7, the goal of Claimant's parents to improve her fine motor skill/muscle tone through activities. Mother insists the piano lessons are incorporated into that outcome and such lessons assist in integrating Claimant into the community, meeting friends and learning appropriate behavior. However, Outcome 7, refers only to the Parents' request for piano lessons which were in dispute, not the IPP team's consent.

20. Claimant has been attending piano lessons. Mother has observed an improvement in her behavior and lower anxiety. Mother explained it is important to support Claimant's musical interests because she is enthusiastic about music, is motivated to go every week, and the lessons reduce her isolation. Mother provided no documentation from the class about the structure of the lessons, the degree of social interaction, or the special qualifications of the teacher to instruct children with developmental disabilities.

21. There is insufficient evidence of changed circumstances which would support funding piano lessons. There is insufficient evidence the piano lessons for which Claimant seeks funding are specialized or tailored for the needs of the developmentally disabled. At the previous fair hearing, it was established Claimant's chosen piano teacher will provide one-on-one lessons at Claimant's individual pace. Claimant's mother had acknowledged the selected piano teacher is not a licensed therapist and is not certified to provide lessons to individuals with developmental disabilities although she may provide lessons to children with special needs. Mother provided no additional evidence at this fair hearing to support the Service Agency's funding of piano lessons: she did not provide evidence it addresses a medical need or that it is an adequate replacement for occupational therapy (OT) services to address fine motor skills.

22. Claimant's mother emphasizes piano lessons as a social recreational activity to allow greater integration into the community. Claimant did not establish that private piano lessons are a social recreational activity focused on maximizing her integration in the community. Claimant did not establish that piano lessons qualify as specialized services designed to help her meet her IPP goals of approximating a non-disabled person's pattern of everyday living. Claimant did not establish that piano

lessons achieve the overall goal of the Lanterman Act to provide Claimant the skills to lead a more independent and productive life in the community. In summary, Claimant did not establish that piano lessons provide an opportunity, apart from the general opportunity shared by nondisabled community members, to participate in community life.

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 this appeal was established.

2. When a party seeks government benefits or services, she 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.) 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.)

3. In seeking funding for private piano lessons, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Claimant has failed to meet her burden of proving she is entitled to the funding she seeks.

Relevant Provisions of the Lanterman Act

4. 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 individual program plan. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

5. 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).)

6. 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).)

7. Welfare and Institutions Code section 4512, subdivision (b), specifically provides:

"Services and supports for persons with developmental disabilities" means 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 an independent, productive, and normal life. 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.

8. Welfare and Institutions Code section 4646.4 specifically 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.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

9. Welfare and Institutions Code section 4648, subdivision (a)(8), provides:

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:

(a) Securing needed services and supports. [¶] . . . [¶] (8)

Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

10. Welfare and Institutions Code section 4648.5, provides:

(a) Notwithstanding any other law or regulations to the contrary, effective July 1, 2009, and ending on June 30, 2021, a regional center's authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget 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:

- (1) Camping services and associated travel expenses.
 - (2) Social recreation activities, except for those activities vendored as community-based day programs.
 - (3) Educational services for children three to 17, inclusive, years of age.
 - (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
- (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.
- (c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in their home

and no alternative service is available to meet the consumer's needs.

(d) This section shall become inoperative on July 1, 2021, and as of January 1, 2022 is repealed.

11. Pursuant to Welfare and Institutions Code section 4648.5, beginning July 1, 2021, the Service Agency is no longer prevented from funding social recreational services and non-medical therapies such as specialized recreation and music therapy. However, the Service Agency's funding of any service must still comport with the remaining provisions of the Lanterman Act. The Policy is consistent with this provision. (Factual Findings 11-14.)

12. Pursuant to Welfare and Institutions Code sections 4646.4 and 4648, subdivision (a)(8), the Service Agency may not fund services if funding is available from a generic resource such as a school district or medical insurance. Claimant is currently home-schooled and is not receiving any services from the school district. However, it was not established Claimant cannot seek services from the school district even if home-schooled. Claimant's preference to work on her fine motor skills through piano lessons and as set forth in the previous decision OAH Case. No. 2021120814, her preference of improving fine motor and gross motor skills through piano lessons was not adequately supported. Generic resources must be utilized if possible, and Claimant's parent has not pursued school district funding for general OT services to meet Claimant's needs. Consequently, Claimant has not utilized available generic resources to address any gross motor or fine motor deficiencies, such as obtaining OT through her school district, and the Service Agency must not supplant funding available through that generic resource.

13. Claimant focused in this fair hearing on the benefits of piano lessons for Claimant's social recreation needs. However, regardless of the removal of the prohibition against funding social recreation programs pursuant to Welfare and Institutions Code section 4646.4, in determining Claimant's support needs, the Service Agency must consider parental responsibility for providing similar services and supports for a minor child without disabilities.

14. Although the Policy was issued after the last fair hearing and Claimant participated in an IPP meeting, the circumstances are unchanged. Claimant characterized piano lessons as a form of OT in the previous decision and social recreation in this decision, but these characterizations were not established by the evidence. Therapy is intended to provide treatment of disorders through therapeutic modalities, and OT is a therapy provided by licensed professionals to remediate or rehabilitate identified deficiencies. Unlike OT, piano lessons are intended to teach music skills on a specific instrument and is an activity available to all individuals. The piano lessons for which Claimant seeks funding are not therapy or specialized services with identified treatment goals to address Claimant's disability. Claimant did not establish that piano lessons were necessary and specifically tailored to address any identified deficits arising from her regional center qualifying diagnosis of ID. Claimant did not provide evidence the piano teacher has specialized credentials or does specialized instruction and any social benefits appear to be incidental or can be acquired through other community activities.

15. Claimant did not provide evidence piano lessons are a social recreation service tailored to Claimant's unique needs. Although the piano lessons may arguably expose Claimant to other students, and other students may be in attendance, by its very nature, piano lessons are taught on a one-on-one basis. In general, piano lessons

are services provided equally to typically developing children and from which Claimant, like typically developing children, could derive benefits. Claimant did not provide evidence of special circumstances that would distinguish her desire for piano lessons from that of any parent of nondisabled children. Consequently, Claimant's parents are responsible for funding Claimant's piano lessons as they would for a minor child without disabilities.

15. Given the foregoing, SGPRC's denial of funding piano lessons for Claimant was appropriate.

ORDER

Claimant's appeal is denied. San Gabriel/Pomona Regional Center's denial of funding private piano lessons for Claimant is upheld.

DATE:

EILEEN COHN

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.