

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

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2022090693 (Primary)

DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 10, 2023. Three cases were consolidated for hearing, OAH No. 2022090693, OAH No. 2022090741 and OAH No. 2022100127, as they involve a common question of law and fact.

Claimant was not present but was represented by his mother (Mother). Claimant and his family are identified by their titles to protect confidentiality.

Kern Regional Center (Service Agency) was represented by Jimmy Alamillo, Fair Hearing Officer.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on January 10, 2023.

ISSUE

Must the Service Agency fund the purchase and installation of a front yard perimeter fence at Claimant's family home?

EVIDENCE RELIED UPON

Service Agency exhibits 1 through 20 and the testimony of Jennifer Delgadillo, Service Coordinator, Yesenia Mackie, Assistant Director of Client Services, and Mother.

Jurisdictional Matters/Background Information

1. Claimant is a seven-year-old boy who lives in the family home with Mother and four siblings. His twin brother and his younger brother are also Service Agency clients.
2. Claimant receives services from Service Agency under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq.), referred to as the Lanterman Act, based on his diagnoses of autism spectrum disorder (severe) and mild intellectual disability, with cognitive and language impairment. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.)
3. On July 11, 2022, Mother sent an email request to Claimant's Service Coordinator (SC) Jennifer Delgadillo, for funding to enclose the front yard of Claimant's family home to decrease elopement.

4. Service Agency sent Mother a letter dated August 22, 2022, enclosing the Service's Agency's Notice of Proposed Action (NOPA). The NOPA stated Claimant's request for funding was denied because Service Agency did not have detailed information regarding the height, type, location, and permit requirements of the proposed fence; Claimant had not exhausted generic resources; and construction of a perimeter fence is the responsibility of a regional center client's parent. Service Agency cited Code sections 4646.4 and 4512, subdivision (b), as the authority for its denial. (Ex. 3, p. A.)

5. On August 26, 2022, Mother signed and thereafter timely filed a Request for Fair Hearing.

6. On September 28, 2022, the Service Agency conducted an Informal Meeting with Mother to discuss Mother's funding request. During the meeting, Mother reported that Claimant and his two brothers attempt to elope from the home although she has taken preventative measures including ongoing behavior assessments conducted by Applied Behavior Analysis (ABA) providers, installing alarms on the home's windows and doors, and installing heavy-duty locks on doors throughout the home. Mother also feared for Claimant's safety in the event of elopement because their home is near a water canal. Mother explained that she had applied for a grant from the City of Bakersfield through its program which provides funds for home modifications for persons with developmental disabilities, but the application is pending, and no decision had been made. Private insurance was unavailable for funding a perimeter fence. The Service Agency requested that Mother provide a copy of the City of Bakersfield grant application, photographs of the front yard, and quotes from vendors listing the cost of construction for a perimeter fence.

7. On October 5, 2022, Jimmy Alamillo, the Service Agency's Fair Hearing Officer (FHO), sent Mother a letter informing her that he recommended deferring an informal decision regarding Claimant's funding request until Service Agency gathered additional documents and information to assess the request. FHO Alamillo indicated that Service Agency would inform her of its decision in writing once it completed its assessment.

8. On October 12, 2022, SC Delgadillo visited Claimant's home and performed a Client Assessment for Home Modification. Service agency's decision to deny Claimant's funding request remained unchanged.

9. This hearing ensued. All jurisdictional requirements have been met.

Claimant's Individual Program Plan (IPP) and Individualized Program Plan (IEP)

10. According to Claimant's IPP dated August 17, 2022, Claimant requires supervision in the home and during community outings because he lacks safety awareness and attempts to elope "multiple times [per] day." (Ex. 5, p. A66). Mother reported that in the past two years, Claimant eloped four times and the furthest he traveled was to the neighbor's front yard. When Claimant elopes, his brothers elope with him. Mother also reported that Claimant had recently eloped from a family gathering; during that incident Claimant crossed the street to reach his family's vehicle. Claimant has taken swimming lessons since May 2022, and his social skills had developed to a point where incidents of elopement while in the pool have decreased.

11. Due to Claimant's history of eloping by pushing the button in the garage to open the garage door, Mother disabled the garage door opener. She also installed cameras, alarms, and baby gates at the entrance to the kitchen, Claimant's room, and

the top and bottom of the stairs to prevent elopement. However, Claimant can unlock the baby gate if he is determined to elope.

12. Pursuant to Claimant's IPP, Service Agency funds 95 hours of in-home respite care services. Mother uses respite overnight services to ensure Claimant does not elope at night.

13. Claimant receives in-home ABA services five days per week, for three hours per day. ABA is therapy geared toward increasing helpful behaviors and decreasing maladaptive behaviors in children with autism. At the time of the IPP meeting, Mother was in the process of completing an application for In-Home Supportive Services (IHSS) to determine Claimant's eligibility for monthly supervision hours.

14. Claimant is eligible for special education services under autism and intellectual disability diagnoses. He receives services in the areas of speech and language, occupational therapy, health and nursing, and behavior intervention services. Pursuant to Claimant's IEP dated October 13, 2022, when a desired item is unavailable, Claimant engages in self-injurious behaviors, "some" eloping to the item, and he attempts to hit others. (Ex. 11, p. A477.) In the area of behavior intervention, Claimant's goals include decreasing aggressive episodes to two or less per day and accepting redirection, but do not include decreasing elopement.

Hearing

SERVICE AGENCY'S EVIDENCE

SC Delgadillo

15. SC Delgadillo has been Claimant's Service Coordinator for approximately two years. On August 10, 2022, she sent a referral packet to Kern County in support of IHSS services for Claimant. The referral included information regarding Claimant's lack of safety awareness, maladaptive behaviors, elopement, living arrangements and self-care needs. Kern County accepted the referral, but Claimant is not receiving IHSS services.

16. SC Delgadillo spoke with Mother on September 19, 2022, who reported that Claimant had eloped twice in two years and reached his neighbor's yard.

17. SC Delgadillo noted that when she performed the Client Assessment for Home Modification on October 12, 2022, she observed locks and alarms installed by Mother to prevent elopement. Claimant is no longer able to elope through the garage because the garage door opener is disabled and a door in the garage that leads outside is blocked by a chair. SC Delgadillo asserted the water canal which is of concern to Mother is a 40-minute walk from the family home. The backyard of the home is enclosed and there are no elopement concerns about that area.

18. Mother provided SC Delgadillo with two quotes from construction companies for installing a perimeter fence, one for \$4,464.80, and the other for \$13,000.

19. SC Delgadillo took photographs of Claimant's home and completed the Client Assessment for Home Modification form, which asks whether: the need for

service was assessed during a face-to-face visit with the family; the service was reviewed with the Service Agency's Program Manager; the service was discussed with the Service Agency's physician and/or nurse; the client uses any adaptive equipment in the home; the client owns the residence; the mortgage is in good standing; and the value of the home warrants the cost of the modification. SC Delgadillo noted that Mother rents the home from her son's father, she reviewed the service need with the Program Manager overseeing Claimant's case, Claimant uses an Augmentative and Alternative Communication (AAC) device, and the mortgage is in good standing.

20. At the time SC Delgadillo conducted the Client Assessment for Home Modification, Claimant's ABA service plan had not been updated by Claimant's ABA provider to include elopement goals. SC Delgadillo offered the opinion that if elopement was a "severe" issue for Claimant, then his ABA plan would identify it as such and list in detail strategies to address it. She also explained that if Claimant's incidences of elopement have increased, then ABA is the appropriate intervention and support.

21. SC Delgadillo forwarded her assessment and supporting photographs and documentation to the Service Agency's managers.

22. On October 12, 2022, Mother forwarded an email to SC Delgadillo from the City of Bakersfield (City) dated October 3, 2022. The City's Economic & Community Development Planner informed Mother that the City does not provide assistance for the installation of fences; the City's Home Accessibility Program pays for modifications to improve access within the home.

23. On October 18, 2022, Mother forwarded the following elopement goal to SC Delgadillo that had been prepared by Holdsambeck Behavioral Services: "You will

hold [Claimant's] hand and walk towards the door and use the phrases 'stay with me' when walking, then 'stop' and point to the stop sign on the door or show a mini stop sign. [Claimant] needs to completely stop. You'll do this 3-5x in a row and take data on the prompts he needed." (Ex. 13, p. A180.)

Yesenia Mackie

24. Yesenia Mackie is the Service Agency's Assistant Director of Client Services (AD). She is familiar with the Claimant, his funding request, Service Agency's Purchase of Service of Guidelines (POSG) dated June 2022, and the Lanterman Act provisions that govern Claimant's request.

25. AD Mackie's testimony established that Claimant's request for Service Agency to fund a perimeter fence falls under the POSG's Durable Medical Equipment provisions. Service Agency is authorized to purchase durable medical equipment only if:

There has been an assessment by a [Service Agency] approved specialist, which indicates that the specific equipment to be purchased would enable the client to live a more independent and productive life in the community.

The need for the specific equipment is associated with, or has resulted from, a developmental disability.

The equipment to be purchased has been denied by, or the client is not eligible for, California Children's Services, Medi-Cal, EPDST, private insurance or any other third party payer.

[¶] . . . [¶]

As a rule, [Service Agency] does not purchase equipment that is intended to become a permanent fixture and does not provide funds for construction, modification or alteration of real or personal property to accommodate equipment. However, such purchases may be considered, in individual circumstances, as an exception to this policy.

The cost effectiveness of rental versus purchase will be determined on each request for equipment.

[¶] . . . [¶]

(Ex. 16, p. A277.)

26. The POSG prohibit Service Agency from purchasing a permanent fixture such as a perimeter fence and from funding construction of a fence. Service Agency determined that Claimant's circumstances and the purpose of his request do not meet the standard for an exception to the POSG.

27. In considering Claimant's funding request, Service Agency reviewed Code section 4502, subdivision (b)(1), which provides that persons with developmental disabilities have a right to services and supports in the least restrictive environment. Those services and supports should be directed to achieve the most independent and normal lives possible for regional center clients, and they should be provided with the least restrictive conditions necessary.

28. Service Agency determined that the installation of a perimeter fence would prohibit Claimant from living a more independent life, and that the fence would restrict his movement, making him less productive. AD Mackie asserted that the

Lanterman Act provides for integrating consumers into the community, and teaching Claimant the dangers of eloping, i.e., via ABA therapy, is the least restrictive option, while allowing him to access his community. She noted that Claimant's IEP raised minimal to no issues with elopement and his IPP does not identify a need for a perimeter fence or an agreement for Service Agency to purchase of it.

29. AD Mackie contends that Service Agency complied with its obligation under the Lanterman Act to conduct an assessment to determine Claimant's needs and to comply with federal and state laws and its POSG when considering Claimant's funding request. She further contends that SC Delgadillo is qualified to conduct the Client Assessment for Home Modification as she is able to assess for health and safety concerns and she properly utilized the Client Assessment for Home Modification's assessment tool.

30. Based upon SC Delgadillo's Client Assessment for Home Modification, review of the information provided by Mother, the POSG and the Lanterman Act's provisions, Service Agency denied Claimant's request on the grounds that there is no need for Service Agency to purchase the perimeter fence at this time.

CLAIMANT'S EVIDENCE

31. Mother made the request for funding a perimeter fence because she is concerned about Claimant's and his brothers' safety and well-being. She contends that the water canal is seven minutes from the family home, not 40 minutes as stated by SC Delgadillo.

32. Mother initially requested assistance from Kern County for installing the fence, but her home is not within County lines. She requested assistance from Claimants' insurer, Dignity Health, but her request was denied because installation of

the fence is not considered a medical issue. Mother's Home Accessibility Program application with the City is still pending, but she expects that it will be denied based on the October 3, 2022 email from the City stating that the program does not fund fencing.

33. Claimant has worked with his ABA providers on preventing elopement since he was three or four years old. ABA providers have implemented the plan to put stop signs on the door using Velcro, and one of the providers had to help Mother return Claimant and his brother to the home when they eloped. Mother currently uses wrist tethers when she takes Claimant and his brothers out in the community to prevent eloping.

34. According to Mother, Claimant has eloped more than is indicated in his IPP because she does not report every incident.

35. Mother noted that Claimant's IEP does not list elopement as a major concern because Claimant is in a self-contained classroom where there are two adults for each child.

36. Claimant was deemed eligible for IHSS services, but Mother is required to provide the supervision services. She was under the impression someone else would provide the services. Mother chose not to move forward with IHSS services because she already provides supervision, and she needs assistance. According to Mother, she was informed that unless she is unavailable to provide IHSS supervision services for Claimant, no one else can provide them.

37. While Mother agrees that ABA services are technically the least restrictive support for Claimant, she believes Claimant and his brothers are currently being restricted by the locks and gates installed in her home. They cannot play in the front

yard because there is no safety barrier. A fence would keep them in the yard where they like to watch the mailman and the garbage man. Mother also believes that the door alarms, locks, and baby gates make Claimant and his brothers dependent instead of independent. While they receive ABA therapy, their autism and intellectual disabilities prevent them from quickly learning the elopement strategies and they do not understand that they must stay in a safe place.

38. Mother understands that building a perimeter fence is typically the homeowner's responsibility and she agrees that moving the button that opens the garage door and buying a "clicker" is less expensive than constructing a fence.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.)

2. Claimant requested a fair hearing to appeal the Service Agency's denial of his request to purchase a perimeter fence. Because Claimant seeks benefits or services, he bears the burden of proving he is entitled to the benefits or services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) DDS, the state agency charged with implementing the Lanterman Act, is authorized to contract with regional centers to provide developmentally disabled

individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a)(1), 4512, subd. (b), & 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.)

6. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or some other "generic resource." Regional centers are required to "identify and pursue all possible sources of funding[.]" (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a client's IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

7. Regional centers must also ensure “[c]onformance with the regional center’s purchase of service policies, as approved by the department” (§ 4646.4, subd. (a)(1).)

Analysis

8. Though Claimant’s requested service has a logical connection to his autism and intellectual disability, there is not a close enough connection for purposes of the Lanterman Act. Mother surmises a front yard fence will decrease Claimant’s ability to escape from the yard but did not present corroborating evidence. There was no evidence that those treating Claimant’s developmental disabilities opined this service is necessary. No evidence indicates the absence of a front yard fence will jeopardize Claimant’s ability to live at home or lead to imminent harm. The measures that Mother has taken to decrease elopement, though burdensome, have been successful. Claimant’s ABA provider has only recently implemented the updated plan to decrease elopement. There is also no specific evidence indicating failure to fence the front yard will prevent Claimant from otherwise being able to interact with his neighbors or the community. He can still play with neighborhood friends in the much safer confines of his backyard or inside the house. Claimant currently engages in recreational swimming activities. His interactions at school have, and will, further increase his community involvement. Moreover, Claimant’s IPP does not provide for funding of a perimeter fence and the Lanterman Act does not include a perimeter fence as a service or support. Finally, Service Agency’s POSG prohibit it from funding the installation of a permanent fixture and construction. Claimant did not provide evidence that his family meets the standards for an exception.

9. Claimant failed to establish by a preponderance of the evidence that the Lanterman Act requires the Service Agency to fund the installation of a perimeter fence at Claimant's family home.

ORDER

Claimant's appeal is denied.

DATE:

CARMEN D. SNUGGS-SPRAGGINS
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.