

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

In the Matter of:

CLAIMANT (CLAIMANT 1),

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022110556

and

In the Matter of:

CLAIMANT (CLAIMANT 2),

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022110558

DECISION

Administrative Law Judge Chantal M. Sampogna, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 12, 2023.

Pursuant to Welfare and Institutions Code section 4712.2, Claimant 1's matter, OAH case number 2022110556, was consolidated for hearing with his brother Claimant 2's matter, OAH case number 2022110558. The parties agreed to receive one consolidated decision.

Claimants' aunt (Paternal Aunt) appeared by videoconference on behalf of Claimants 1 and 2. (Titles are used to protect the privacy of Claimants and their family.)

Tami Summerville, Fair Hearings and Governmental Affairs Manager for South Central Los Angeles Regional Center (Service Agency) appeared by videoconference on behalf of Service Agency.

Witness testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on January 12, 2023.

ISSUE

Whether Service Agency must fund for Claimants to receive a personal trainer and weight training three times per week at "A Tighter U Fitness Studio" (A Tighter U).

EVIDENCE RELIED ON

Documents for Claimant 1: Service Agency's Exhibits 1 through 9; Claimant's Exhibits A through D.

Documents for Claimant 2: Service Agency's Exhibits 1 through 8; Claimant's Exhibits A through D.

Testimony: Melissa Guzman, Team Leader and Service Coordinator; and Paternal Aunt.

SUMMARY

Claimants are 15-year-old twin brothers and are each eligible for services under the Lanterman Developmental Disabilities Act (Welf. & Inst. Code, § 4500 et seq. (Lanterman Act)) based on a diagnosis of intellectual disability and mild autistic disorder. (Further statutory references are to the Welfare and Institutions Code.) Claimants request funding for a personal trainer and weight training, to be provided three times per week by A Tighter U, to help them with weight loss and weight management. Claimants established the requested service is consistent with their Individual Program Plan (IPP) outcome goals and with their rights under the Lanterman Act. However, Claimants have not exhausted all generic resources and did not establish the requested service is cost effective or that the requested service should not be funded by Claimants' family as a parental responsibility. Claimants' appeals are denied.

Jurisdiction

1. Claimants 1 and 2 are 15-year-old twin brothers who reside with their father, paternal grandmother, and Paternal Aunt. Claimants are each eligible for services under the Lanterman Act based on a diagnosis of intellectual disability and mild autistic disorder.

2. On July 24, 2022, Paternal Aunt requested funding for a personal trainer and for weight training offered at A Tighter U, located in Culver City, to help Claimants with weight loss and weight management.

3. On September 21, 2022, Service Agency issued a Notice of Proposed Action denying Claimants' requests.

4. On October 24, 2022, Claimants requested a fair hearing.

Claimants' Needs for a Personal Trainer and Weight Training

5. Claimants currently attend Culver City High School (CCHS). Over the past two years they have each mainstreamed into general education classrooms and physical education classes. In 2021 they were both on the principal's honor roll, and in 2022 they each received an athletic award for their participation on the CCHS junior varsity (JV) water polo team. Claimants are physically active; they regularly jump rope, walk around their neighborhood, swim, and play on the CCHS JV water polo team.

6. Claimants each receive 30 hours per month of in-home respite services and 100 hours per month of personal assistant services funded by Service Agency. Claimants each receive a monthly Social Security Income benefit of \$573 per month.

7. Claimants have achieved some of their August 2020 IPP, and subsequent IPP addendum, goals, and related personal goals. However, over the past two years Claimants have continued to gain weight at a rate beyond medical health standards and their treating physicians have diagnosed them with morbid obesity. As of August 2022, Claimants were five-feet five-inches tall, and each weighed 244 pounds; they are at the 160th percentile of the 95th percentile for Body Mass Index. As indicated in letters written by their treating physicians and by Paternal Aunt's testimony, Claimants are currently motivated to make lifestyle modifications such as eating healthier and exercising, and they would greatly benefit from a weightlifting program.

8. The requested service is consistent with Claimant 1's Outcome Goal numbers 1 and 10, and Claimant 2's Outcome Goal numbers 1 and 12. Claimants' Outcome Goal 1 provides Claimants will continue to receive preventive medical and dental care at least once to twice per year to promote an optimal level of health status. The family is responsible to ensure Claimants regularly attend appointments and to contact Service Agency if any issues arise related to Claimants' health conditions. Service Agency is to monitor Claimants' progress annually or as needed. Claimants have been attending their medical appointments and Paternal Aunt timely communicated Claimants' shared diagnosis of morbid obesity with Service Agency.

9. Claimant 1's Outcome Goal 10 and Claimant 2's Outcome Goal 12 provide that Claimants will be afforded opportunities to go on community outings at least twice per week to improve their social participation and community integration. To achieve this goal, Claimants' family agreed to look into available Parks and Recreation Department activities, and Service Agency was to provide Claimants with generic recreational activity information. Paternal Aunt researched Parks and Recreation activities and, once the city pools reopened after Covid-19 restrictions were

lifted, enrolled Claimants in swimming classes. Through the swimming classes, Claimants met the CCHS water polo coach and then began to play on their school's JV water polo team.

10. In response to Claimants' July 2022 requests for funding for a personal trainer and weight training, Service Agency provided Claimants a referral to nutrition classes and to CCHS's athletic program, the local YMCA, and to the local LA Fitness. Claimants participated in nutrition classes with the Sandy Segal Youth Health Center, as recommended. Paternal Aunt researched personal trainer and weight training opportunities at CCHS, but the school does not offer these services to students. Paternal Aunt did not contact the local YMCA or LA Fitness to see what personal trainer or weight training services they might offer or at what price, or what financial assistance might be available. Rather, Paternal Aunt found the gym, A Tighter U, owned and operated by Steven Zim, known to be "the Hollywood Trainer" who trains celebrities and Olympic athletes. Paternal Aunt believes she has exhausted all generic resources, though she acknowledged she had not explored other gyms.

11. At a November 7, 2022, informal meeting with Team Leader Melissa Guzman, Paternal Aunt clarified Claimants' requests. Paternal Aunt explained that due to Claimants' ages and developmental disabilities, Claimants need assistance with their weight training and therefore seek the assistance of a personal trainer for an unspecified period of time to help them learn how to safely use weights. She further specified Claimants are seeking funding for a personal trainer from A Tighter U, costing \$95 per one-hour session, to provide each Claimant three one-hour sessions per week, until Claimants can safely use weights independently. Once they can safely and independently use weights, Claimants seek a membership at A Tighter U at a rate of \$90 per month each. Finally, Claimants began their personal training at A Tighter U

on October 1, 2022, and, if successful in their appeal, Claimants will seek reimbursement for costs already paid toward the personal trainer.

Service Agency's Cause for Denial

12. Service Agency denied Claimants' requests because it determined they were inconsistent with the Lanterman Act and Service Agency's Purchase of Service Funding Standards (POS policies) for the following reasons: Claimants had not exhausted available generic resources; the requested service is a parental responsibility; and the requested service does not address the needs or problems associated with Claimants' developmental disabilities.

13. Service Agency's POS policies provide under what circumstances Service Agency may fund for recreational activities. Per the POS policies, Service Agency finds recreational activities valuable to a consumer if they are designated to enhance social interaction opportunities and social skills. Social recreation is defined as activities in inclusive settings including the YMCA or community organizations in which individuals are engaged with others. The inherent purpose of a social recreational program is to provide an opportunity to recreate in an inclusive environment of their choosing which promotes a beneficial environment that allows for the regional center consumer to have full access to their communities.

14. The POS policies further provide that funding for social recreation will be provided to individuals who meet the following criteria:

1. All generic resources have been explored in the individual's community prior to requesting regional center funding [WIC 4659.10].

2. Exploration of community resources has been documented to include public parks and recreation departments, civic groups such as the YMCA or YWCA, scouting programs, service organizations, local cultural organizations, churches, and community organizations [WIC 4659.1(a)(3), (b)(2), (c)(2); 4659.10].

3. The activity will be provided in the individual's community, show a cost-effective use of public resources, and will be delivered by the least costly vendor [WIC 4648(a)(6)(D)]. ¶ . . . ¶

For an individual served by [Service Agency], family's personal resources, and parental responsibility, should be explored to determine if anyone else, including extended family, friends, or a regular paid support can provide social recreation services [WIC 4646.4(a)(4)].

(Exh. 5, pp. A73-A74.)

15. Team Leader Guzman testified at hearing regarding the basis of Service Agency's denial. She was assigned to be Claimants' service coordinator one week before the hearing and had recently reviewed their IPPs. For reasons unrelated to this matter, she went to A Tighter U approximately one year ago, and to her memory the facility and machines are state of the art, and therefore the requested funding would not be a cost-effective use of public resources. Further, because Claimants' family did not research other gym options, such as the YMCA, which might include personal

training services within the cost of membership fees, family memberships, and possibly financial assistance options, Claimants failed to exhaust generic resources.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative fair hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimants requested a fair hearing to appeal Service Agency's denial of their requests to have Service Agency fund for a personal trainer and weight training classes. Jurisdiction was established. (Factual Findings 1-4.)

Burden and Standard of Proof

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162.) In this matter, Claimants bear the burden of proving, by a preponderance of the evidence, that Claimants require the requested service. (Evid. Code, §§ 115, 500.)

Regional Center Responsibilities

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.)

4. 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." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

5. A range of specialized services and supports should be established which is "sufficiently complete to meet the needs and choices of [the consumer], regardless of age or degree of disability, and at each stage of life and to support [the individual's] integration into the mainstream life of the community." (§ 4501.) The services and supports should enable the consumer to achieve and maintain an independent, productive, and normal life that allows the individual to "approximate the pattern of everyday living available to people without disabilities of the same age." (*Ibid.*)

6. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

7. To achieve the stated objectives of a consumer's IPP, the regional center must provide the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible and exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

8. Though regional centers have wide discretion in how to implement the IPP, "they have no discretion in determining whether to implement: they must do so." (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

Service Requirements

9. In the development and implementation of a consumer's IPP, the services to be provided to any consumer must be individually suited to meet the unique needs

of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

10. Consumers have the right to social interaction and participation in community services, and a right to physical exercise and recreational opportunities. (§4502, subd. (b)(6) & (7).)

11. At the time of development or modification of a consumer's IPP, regional centers must ensure: conformance with Service Agency's POS policies; generic and other available services and supports are utilized when appropriate; the family's responsibility for providing similar services and supports for a minor child without disabilities is considered, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care; and that information obtained from the consumer and family about the consumer's need for the services, barriers to service access, and other information are considered. (§ 4646.4, subd. (a)(1)-(5); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

Funding for Services

12. Regional Centers must conform to their respective POS policies. (§ 4646.4, subd. (a)(1).)

13. Regional Centers must pursue all possible sources of funding for services, including insurance. (§ 4659, subd. (a)(1).)

Consideration of Costs

14. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

15. When selecting a provider of consumer services or supports, the regional center and the consumer, or conservator, must, pursuant to the IPP, consider the following: a provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's IPP; and a provider's success in achieving the objectives set forth in the IPP; and "The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, . . . who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected." (§ 4648, subd. (a)(6).)

16. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC, supra*, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort. (*Ibid*, § 4659.10)

Analysis

17. Although Claimants did not establish their obesity was a need or problem associated with their developmental disabilities, Claimants did establish their developmental disabilities necessarily affect their ability to independently manage their health and weight and to address their obesity. Claimants' developmental disabilities, consisting of intellectual disability and mild autistic disorder, affect their

cognitive understanding of obesity and their ability to make and implement life choices to manage their weight, and affect their current ability to be safe with weights or weight machines. (Factual Findings 5, 7-9, 11.)

18. Claimants' requested services of a personal trainer and weight training serve the purpose of providing Claimants with social interaction, physical exercise, and recreational opportunities, which are rights provided to Claimants under the Lanterman Act. The requested services are consistent with Claimants' IPPs, specifically their outcome goals related to addressing their health condition of obesity and their goals related to social participation and integration. (Factual Findings 8 & 9; Legal Conclusions 5, 6, 10.)

19. Claimants' requested services are further supported by the Lanterman Act because it will offer them independence, patterns of everyday living, and social interactions. The personal trainer will allow Claimants to become independent in a gym and will allow them to achieve greater independence in their own health care and weight management. Further, as Claimants are currently in high school and active on the JV water polo team, the requested service will help them approximate the pattern of everyday living common with many high school students who are on sports teams who often develop at this time in their lives an interest in health and weight training that can last their lifetime. Further, the time spent with a personal trainer and in the gym weight training will provide Claimants invaluable experience with self-sufficiency, personal choices, and social interactions with persons without disabilities in positive, meaningful ways. (Factual Findings 5-11; Legal Conclusions 5 & 7.)

20. Though Claimants established the requested services would serve needs within their respective IPPs and is consistent with their rights under the Lanterman Act, Claimants' requests do not conform with Service Agency's POS policies. Claimants

have not exhausted generic resources in their community before requesting funding, including the YMCA or other gyms. As Claimants did not research other possible service providers, either in their ability to provide the requested service or in comparable costs, it could not be determined whether A Tighter U and the associated costs of a personal trainer and membership were comparable, for instance, to personal trainer and weight training services available at a local YMCA or other gym. Further, Claimants did not establish the requested service was cost-effective or that all possible sources of funding were pursued, such as financial assistance which may be available, for instance, at a YMCA. (Factual Findings 9-15; Legal Conclusion 9, 11-15.)

21. Without information about comparable service providers and costs, it cannot be determined whether any costs associated with the service are wholly a parental responsibility. Use of a personal trainer and a gym to address obesity is not a universal cost all parents must incur, such as the costs of childcare or clothing. Rather, the cost of a personal trainer and weight training to address obesity could be seen as cost to be incurred solely due to Claimants' developmental disabilities because Claimants might not, on their own and due to their developmental disabilities, be able to achieve weight loss or use of gym in a manner that a high school student without a developmental disability would be able to. Because evidence was not submitted regarding generic resources and their comparable services, costs, or possible financial assistance, and because more information about Claimants' income and expenses was similarly not provided, it cannot be determined if all or a portion of the requested service is a parental responsibility.

22. Claimants' requests do not comply with Service Agency's POS Guidelines because Claimants have not exhausted all generic resources or explored community

resources and have not established the requests are cost effective. (Legal Conclusions 17-20.) Claimants' appeals are denied.

ORDER

The appeals of Claimant 1 and Claimant 2 are denied.

DATE:

CHANTAL M. SAMPOGNA
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.