

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**TRI-COUNTIES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022120803**

**DECISION**

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 21, 2023.

Brenda Hurtado, Services & Supports Manager, represented Tri-Counties Regional Center (Service Agency).

Claimant's mother (Mother) and father (Father) represented claimant, who was not present. Names are omitted to protect the privacy of claimant and his family.

The ALJ received oral and documentary evidence. The record was held open until March 22, 2023, for Service Agency to file a copy of claimant's most recent Individual Program Plan.

On March 22, 2023, Service Agency filed a 10-page Individual Program Plan, dated November 3, 2021, marked for identification as Exhibit 17. Claimant did not object to the admission of Exhibit 17, and it is admitted.

The record closed and the matter was submitted for decision on March 22, 2023.

## **ISSUE**

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to obtain regional center funding for (1) a day program, (2) Independent Living Supports (ILS), (3) a social recreational program through Conejo Recreation and Park District (Conejo), and (4) transportation to the day program and social recreational program?

## **EVIDENCE RELIED UPON**

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 17 and the testimony of the following witnesses: Service Coordinator Sydney Rick, Transition Team Manager Vasti Mezquita, Program Specialist Ellen Friedland, Mother, and Father.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is 19 years old and lives with his parents. He is eligible for regional center services based on his diagnosis of autism. Mother and Father are claimant's conservators.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

3. On November 14, 2022, Service Agency sent Mother and Father a Notice of Proposed Action finding claimant ineligible for regional center funding of a day program, ILS, and a social recreational program for adults. In a letter sent on the same date, Service Agency stated it could not fund these services because claimant remains eligible for special education and related educational services through Simi Valley School District (District) and will remain eligible until he is 22 years old. (Ex. 1.)

4. In a Fair Hearing Request dated December 12, 2022, Mother stated she disagreed with Service Agency's denial of funding for the three requested services, including transportation as needed.

5. After two informal meetings between claimant's parents and Service Agency on January 12, 2023, and February 8, 2023, Service Agency maintained its decision to deny funding for a day program, ILS, and a social recreational program. In two letters from Service Agency to claimant's parents, summarizing the two informal meetings, Service Agency stated Claimant must obtain those services through the

District and an Individualized Education Plan (IEP). (Exs. 4, 5.) As to the Conejo social-recreational program specifically, Service Agency denied funding because the program occurs during school hours and “works on skills that could be addressed through the IEP.” (Ex. 4, p. A10.)

## **Claimant’s Request for Funding**

### **BACKGROUND**

6. Claimant graduated from Royal High School in June 2021 with a certificate of completion and remains eligible for special education services until he is 22 years old.

7. Claimant’s Individual Program Plan (IPP), dated November 3, 2021, calls for claimant to attend a post-secondary program through the District. Mother expressed several goals and needs for claimant, including “increase interests and frequency of leisure activities at home and in the community with peers and independently increase all language, communication skills, and self-advocacy skills to have needs met in the community.” (Ex. 17, p. Z3.) Service Agency provided information on day camps, but the IPP does not otherwise address or provide funding for a specific day camp, ILS, or any specific social-recreational program.

### **CLAIMANT’S SCHOOL DISTRICT SERVICES**

8. Between August 2021 and June 2022, claimant attended a post-secondary program through the District. He participated in community outings with a one-on-one aide and claimant’s parents believed the program met claimant’s needs.

9. Pursuant to an Individualized Education Plan (IEP) dated March 17, 2022, and revised September 8, 2022, the District offered for claimant to continue attending

a District-funded transition program for students who are 18 to 22 years old, to provide “instruction in functional academics, independent living skills, social/emotional behavioral skills, and exposure to exploratory work experience.” (Ex. 8, p. A77.) The program included 10 hours per week of experience in the community in small groups of students, comprised of three hours of travel training and seven hours of work, recreational, or leisure activities. The IEP also provided for 20 hours per week of classroom instruction.

10. Claimant no longer participates in the post-secondary program offered by the District. Mother testified the program is inadequate to meet claimant’s needs and he does not want to attend. She stated claimant requires a one-on-one aide in the community and the District no longer will provide one. She also stated the District restricted the activities offered for claimant and many of the offered activities are better suited for individuals who are lower functioning than claimant.

11. In both her testimony and a February 2, 2023 letter to Mother and Father, District Program Specialist Ellen Friedland asserted the services offered by the District to claimant are sufficient. In the letter, Ms. Friedland wrote, “The District believes the current offer of [Free and Appropriate Education] is reasonably calculated to ensure educational benefit while continuing to access a variety of different community activities.” (Ex. 10, p. A87.) The District did not indicate it is willing to provide a one-on-one aide or tailor claimant’s community activities to his personal preferences. Ms. Friedland stated, “The District has an obligation to provide activities to support [claimant’s] goals, and . . . these activities and curriculum are within the purview of the teacher. (*Id.*) Ms. Friedland testified the District remains “ready and willing” to offer claimant services as outlined in the IEP, if claimant decides to attend.

## **SERVICE AGENCY'S RESPONSE**

12. In September 2022, Mother requested Service Agency fund a day program, ILS, and a social-recreational program because she believed the District was no longer able to meet claimant's needs. Mother testified claimant wants to work on friendships and social connection, participate in community outings, and develop independent living skills such as cooking. Mother believes the District's program is designed for lower functioning individuals and both not beneficial and overstimulating for claimant.

13. Mother requested Service Agency fund claimant's attendance of the Conejo Adult Social and Friends program. The program occurs from 9:00 a.m. through 2:00 p.m. on Thursdays. The program focuses on socialization skills, interacting with peers, and life skills such as cooking and shopping.

14. On October 26, 2022, Service Agency received a letter from claimant's advocate, Vanea Schmies of Galt Advocacy, listing claimant's preferred day programs. This letter was not presented as evidence at the hearing by either party and the evidence did not establish a specific day program requested by claimant. When asked during the hearing, Mother did not request a specific program.

15. Service Agency does not dispute claimant would benefit from these services. In a note dated September 29, 2022, Service Coordinator Malena Muyaalde wrote, "[claimant] will be eligible for ILS and day program once he turns 22 years old." (Ex. 6, p. A15.) Transition Team Manager Vasti Mezquita testified Service Agency could fund a social-recreational program for claimant, but only if it took place outside school hours to avoid a conflict with District services.

16. Service Agency maintained it could not provide day camp or ILS services to claimant because the District had not denied claimant those services. Service Agency asserted it cannot fund such services when claimant is eligible for District services, even if he does not use them. Service Agency recommended Mother and Father use the District's appeal process if they disagreed with the District's offer of services.

17. Service Agency has not sufficiently assessed claimant's needs or whether those needs are met by the District's services. Claimant's most recent IEP is approximately 18 months old. In a January 20, 2023 letter to Mother and Father, Service Agency stated, "[claimant's] needs have not been fully addressed and accessed through the school district's IEP planning team or appeal process." (Ex. 4, p. A11.) In her testimony at the hearing, Transition Team Manager Mezquita stated Service Agency cannot determine whether the District is meeting claimant's needs. These statements indicate Service Agency has not conducted a substantive evaluation of the District's services for claimant and therefore has not determined whether those services meet claimant's needs.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. In a proceeding to determine whether an individual is eligible for regional center funding, the burden of proof is on the claimant to establish by a preponderance of the evidence he or she meets the proper criteria. (Evid. Code, §§ 115; 500.) A preponderance of the evidence means evidence that has more convincing

force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Applicable Law**

2. The Legislature enacted a comprehensive statutory scheme known as the 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Developing the IPP for a regional center consumer is the cornerstone of the Lanterman Act. The IPP process must consider the needs and preferences of the consumer and, where appropriate, the family, to determine the services and supports to be funded. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, 4648.) The planning process includes gathering information and conducting assessments to determine the “life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.” (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) The IPP process must ensure conformance with the regional center’s purchase of service policies and utilization of generic services and supports when appropriate. (Welf. & Inst. Code, § 4646.4, subds. (a)(1), (a)(2).)

4. While a regional center is obligated to secure services and supports to meet the goals of each consumer’s IPP, a regional center is not required to meet a



consumer's every possible need or desire but must provide cost-effective use of public resources. (E.g., Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4685, subd. (c)(3)(A), & 4697, subd. (b)(2).)

5. Regional centers must ensure services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and that those services and supports meet the individual's needs. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. However, regional centers may not use their funds "to supplant the budget of an agency that has responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subd. (a)(8).)

6. Regional centers must "identify and pursue all possible sources of funding for consumers receiving regional center services." Those sources include, but are not limited to, school districts and governmental agencies. (Welf. & Inst. Code, § 4659, subd. (a)(1).)

7. A regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the IPP planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption. (Welf. & Inst. Code, § 4648, subd. (a).) On an individual basis in extraordinary circumstances, an exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. (Welf. & Inst. Code, § 4648, subd. (d).)

## **Claimant's Request for Funding**

8. Service Agency is not barred by Welfare and Institutions Code section 4648.55 from funding a day program, ILS, and a social-recreational program for claimant. Section 4648.55 sets forth a three-pronged test: (1) the consumer is between 18 and 22 years old; (2) the consumer is eligible for special education and related education services; and (3) the consumer has not received a diploma or certificate of completion. For consumers who meet all three prongs, a regional center shall not fund those services unless it grants an exemption through the IPP process. In claimant's case, he meets only the first two prongs because he received a certificate of completion. Therefore, Service Agency cannot rely on section 4648.55 to deny claimant's request for funding.

9. Claimant established by a preponderance of evidence he would benefit from the services he requested: a day program, ILS, and a social-recreational program. Mother testified credibly regarding claimant's need for assistance with his transition from the educational system to adult life. Service Agency did not dispute these services would assist claimant with that transition.

10. The evidence did not establish whether claimant's needs can be met by generic services, specifically those offered by the District. Claimant's IPP is almost 18 months old and Service Agency has not conducted a recent formal assessment of claimant's needs. Service Agency relied on the existence of generic District resources in denying claimant's request for funding, but Service Agency also conceded it could not determine whether those District services met claimant's needs. Service Agency may not rely on the mere existence of generic resources, nor may it rely on speculation regarding the outcome of a possible appeal through the special education system. There is no evidence the District is willing to provide additional services to those

offered pursuant to claimant's most recent IEP, as demonstrated by both Program Specialist Friedland's testimony and her February 2, 2023 letter.

11. Pursuant to the order below, claimant's appeal is denied because the evidence did not establish available generic resources do not meet claimant's needs. However, Service Agency is obligated to assess claimant's needs and whether the District's offered services meet those needs. If generic resources do not meet claimant's needs, Service Agency will be obligated to fund the requested services. If claimant is eligible for such funding, Service Agency must also assess whether claimant is entitled to transportation services.

## **ORDER**

Claimant's appeal is denied.

Service Agency shall assess claimant's current needs and within 90 days of the date of this decision, update claimant's Individual Program Plan to reflect claimant's current Independent Living Supports and social interaction needs and whether generic services, specifically those offered by the Simi Valley School District, meet claimant's needs.

DATE:

HARDEN SOOPER  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.