

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

In the Matter of:

CLAIMANT,

vs.

San Gabriel/Pomona Regional Center,

Service Agency.

OAH No. 2023040161

System Tracking No. CS0004064

DECISION

Laurie Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 20, 2023.

Claimant was represented by her mother (Mother). (Family titles are used to protect the privacy of Claimant and her family.) Korean language interpretation services were provided to Mother pursuant to her request.

San Gabriel/Pomona Regional Center (SGPRC or Service Agency) was represented by Daniel Ibarra, Fair Hearing Specialist.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision, on June 20, 2023.

ISSUE

Is Service Agency required to fund remote Adaptive Skills Training for Claimant with A Change of Trajectory (Vendor) until a vendor can be found that can provide all approved hours of training in person?

EVIDENCE RELIED UPON

Documentary: Service Agency exhibits 1 through 8.

Testimonial: Daniel Ibarra and Mother.

Background

1. Claimant is a 12-year-old girl who lives with her parents and older brother. Claimant has been eligible for regional center services since 2014 based upon diagnoses of autism spectrum disorder and severe intellectual disability. She also has DiGeorge Syndrome, cardiac and pulmonary issues, and a weakened immune system. Claimant's behavioral issues have become more severe as she approaches puberty.

2. The SGPRC funds an extended day program and behavioral respite care for Claimant. However, those services have not been consistently provided to Claimant due to staff shortages.

3. SGPRC also funds Adaptive Skills Training for Claimant, a service designed to instruct and support individuals with developmental disabilities to

perform daily living skills, both at home and in the community. Claimant's Adaptive Skills Training has included topics such as dressing, choosing proper clothing based on the weather, counting money, brushing her teeth, and showering.

4. Claimant has been receiving four hours per week of Adaptive Skills Training through Vendor since October 2, 2021. On Tuesdays and Wednesdays, Vendor provides Adaptive Skills Training to Claimant in-person. Vendor provides the remainder of Claimant's approved hours of Adaptive Skills Training remotely every Saturday via Zoom because Vendor does not have staff able to cover those hours in person.

DDS Directives

5. On August 31, 2020, the Department of Developmental Services (DDS) sent a directive to Regional Center Executive Directors regarding alternative nonresidential services (August 2020 Directive). The August 2020 Directive stated that when providing services to regional center consumers during the COVID-19 State of Emergency, providers shall be creative, resourceful and make modifications as needed to how existing services are delivered.

6. To carry out the goals of the August 2020 Directive, SGPRC allowed Adaptive Skills Training, among other services, to be provided remotely in order to protect regional center consumers' health, welfare, safety, and the right to access services. Following the August 2020 Directive, SGPRC funded Adaptive Skills Training for Claimant from Vendor through a hybrid model of in-person and remote services.

7. On November 23, 2022, DDS sent a new directive to Regional Center Executive Directors (November 2022 Directive) (Ex. 5). The SGPRC contends that the November 2022 Directive directs regional centers to stop funding remote delivery of

services as of December 31, 2022. However, the November 2022 Directive states that remote services “have played an important role in protecting consumer welfare” during the pandemic and DDS recognizes that remote delivery of certain services may be “useful in ensuring continuity of and access to services, and may remove barriers for consumers and families to receive services.” (Ex. 5, p. A20).

8. The November 2022 Directive provides regional center consumers the ability to voluntarily choose remote delivery of day programs, look-a-like day programs, and independent living services through December 31, 2023. The November 2022 Directive states that regional centers shall inform consumers of the option to voluntarily choose remote service delivery of these services. Providers were required to determine each consumer’s preference as to mode of delivery of these services and the consumer preferences were to be confirmed by the regional center which was instructed to discuss the supports needed to allow consumers to effectively participate in remote services.

9. DDS sent out another directive to Regional Center Executive Directors on December 1, 2022, to provide “guidance regarding the conclusion of the provision of Alternative [non-residential] Services.” (December 2022 Directive) (Ex. 6). It states that Welfare and Institutions Code (Code) section 4690.7 authorizes a provider of nonresidential services to utilize alternative services until December 31, 2022, if needed to meet a regional center consumer’s needs. Service providers and regional centers were directed to engage consumers to present options for services upon the conclusion of alternative services. These options could include “certain traditional services delivered remotely and/or tailored day services.” (*Ibid.*) In its Position Statement, SGPRC refers to Adaptive Skills Training as a traditional service. (Ex. 7, p. A24.)

Currently No Vendor Is Able To Provide All Approved Training Hours To Claimant In Person

10. On a date and manner not established at the hearing, Vendor was made aware of the December 2022 Directive but to date, it has continued to provide Adaptive Skills Training to Claimant both in person and remotely, via a hybrid model. In an undated letter, Nadia Diaz, B.S., Vendor's Adaptive Skills Program Coordinator, states that Vendor does not have any staff available to cover the training hours the instructor is providing to Claimant remotely. Vendor is trying to hire staff to provide all of the approved Adaptive Skills Training hours to Claimant in person and has placed Claimant on a waiting list, but Vendor does not expect to have adequate staff for at least two or three months. Ms. Diaz states that providing a hybrid of remote and in-person training enables Claimant to receive all her approved hours of Adaptive Skills Training. (Ex. 8).

11. SGPRC contacted Mother on March 27, 2023, to inform her that in accordance with DDS directives, remote service of Claimant's Adaptive Skills Training should have ended on December 31, 2022, but Vendor failed to comply with the directives.

12. In its Notice of Proposed Action dated March 28, 2023, SGPRC extended Claimant's remote service to March 31, 2023, to enable the regional center to find a vendor able to provide the authorized Adaptive Skills Training hours in person. Currently, neither SGPRC nor Mother has been able to find a vendor that can provide in-person service of all the Adaptive Skills Training hours authorized for Claimant by the regional center. SGPRC was able to extend funding beyond the December 2022 cut-off it asserts was imposed by DDS. SGPRC extended the cut-off date because of a

“miscommunication” with the Vendor in that many vendors were under the impression they could continue providing remote services based on the August 2020 Directive.

13. In addition to Vendor, Claimant’s service coordinator has contacted three other vendors to see whether they are able to provide Adaptive Skills Training in person to Claimant. Howard Chudler & Associates no longer provides Adaptive Skills Training. Connecting Dot to Dot placed Claimant on a waiting list but does not expect to have any openings until October 2023 or later. The third vendor, Roman Empire Living, has not responded to SGPRC’s inquiries.

14. Mother seeks to have the regional center continue to fund the once weekly session of remote Adaptive Skills Training until a vendor can be located to provide all approved Adaptive Skills Training hours to Claimant in person.

Informal Meeting/Fair Hearing Request

15. On April 10, 2023, Mother and Mr. Ibarra met for an informal meeting in an effort to resolve this matter. A Korean-language interpreter was present at Mother’s request. Mother explained that the remote training with Vendor is provided by an excellent adaptive skills therapist who has been working with Claimant for four years but is not available to conduct the training in-person. Adaptive Skills Training has been extremely helpful for Claimant and Mother deems it essential. She is concerned that Claimant will have a gap in service which would be detrimental to her progress if the remote session were terminated while the regional center attempts to find a vendor who can provide the hours in person. Mother is open to having Claimant work with a different vendor that can provide all the authorized Adaptive Skills Training hours in person. She is looking into obtaining Applied Behavior Analysis (ABA) services for

Claimant through LA. Care, her health insurance. However, ABA training is not the same as Adaptive Skills Training.

16. Following the informal meeting, SGPRC sent a letter to Mother dated April 19, 2023, and issued a Notice of Action which Mother received on April 26, 2023, extending the proposed termination date for remote service delivery of Adaptive Skills Training to April 30, 2023. Remote delivery of Adaptive Skills Training will continue to be funded for Claimant by SGPRC as aid-paid-pending while this appeal is pending.

17. Mother filed a timely Fair Hearing Request and this hearing ensued. All jurisdictional requirements have been met.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Code §§ 4700-4716.) Claimant timely requested a hearing to contest SGPRC's termination of remote delivery of Adaptive Skills Training under the Lanterman Act and therefore jurisdiction for this appeal was established.

Standard and Burden of Proof

2. Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it.

(*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) The burden is on SGPRC to demonstrate that the Service Agency's decision to terminate remote delivery of Adaptive Skills Training is supported by a preponderance of the evidence.

Analysis

3. In support of its termination of remote Adaptive Skills Training for Claimant, SGPRC relies on Code section 4512, subdivision (b), which 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 independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process.

4. SGPRC also relies on Code section 4639.6 which authorizes the DDS Director to issue directives to regional centers as deemed necessary to protect consumer rights, health, safety, or welfare.

5. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's Individual Program Plan (IPP). (Code § 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process.

(Code § 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (*Ibid.*)

6. Claimant's IPP was not provided at the hearing. However, SGPRC has approved and funded Adaptive Skills Training for Claimant, which indicates that it has been deemed to be a service which meets Claimant's needs and goals, as determined in her IPP.

7. The evidence presented establishes that at this time, no vendor is available to provide all the approved hours of Adaptive Skills Training to Claimant in person. If a service specified in a client's IPP is not provided by a generic agency, the regional center must fill the gap, or fund the service, in order to meet the goals set forth in the IPP (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.) In the instant case, we have an analogous situation in which no vendor is able to provide all the approved hours of Adaptive Skills Training to Claimant in person. In order to meet the goals set forth in the IPP, the regional center must fill the gap by funding remote delivery of this training until a vendor can be found that can provide the training to Claimant in person.

8. SGPRC failed to present sufficient evidence to establish that the DDS directives preclude it from funding remote hours until a vendor can be secured that can provide all approved hours in person. The December 2022 Directive states that Code section 4690.7 authorizes a provider of nonresidential services to utilize alternative services until December 31, 2022, if needed to meet a consumer's needs. However, upon the conclusion of alternative services, options presented to consumers

and service providers can include “certain traditional services delivered remotely.” (Ex. 6). In its Position Statement, SGPRC refers to Adaptive Skills Training as a traditional service.

9. The Service Agency failed to establish by a preponderance of the evidence that the December 2022 Directive, or any other directive, precludes remote delivery of Adaptive Skills Training to Claimant under the circumstances presented here. Since no vendor has yet been found that can provide all approved hours in person, and the training has been deemed necessary to meet Claimant’s needs, SGPRC shall continue funding the remote hours until a vendor is found.

ORDER

Claimant’s appeal is granted. San Gabriel Pomona Regional Center shall continue funding remote Adaptive Skills Training for Claimant with A Change of Trajectory until a vendor is found that can provide all approved hours of training to Claimant in person.

DATE:

LAURIE PEARLMAN
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.