

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2023060189

DDS No. CS0006521

DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 24, 2023.

Ron Lopez, IDEA Specialist and Fair Hearing Specialist Designee, represented Westside Regional Center (WRC or Service Agency).

Claimant's mother (Mother) represented Claimant. Claimant was not present for the hearing. (Claimant and her family are not identified by name to protect their

privacy.) Josefina Romo from Integrated Community Collaborative was present to support Mother. A Spanish interpreter assisted Mother at the hearing.

The administrative law judge heard testimony and received documentary evidence. The record closed and the matter was submitted for decision at the close of the hearing on October 24, 2023.

ISSUE

Should the Service Agency approve funding for Claimant to receive floor time therapy?

EVIDENCE RELIED UPON

WRC's exhibits 1-15 and testimony of Jessica Haro, WRC's Autism and Behavioral Specialist and Mother.

Jurisdictional Matters

1. Claimant is a four-year-old consumer of the Service Agency who lives in the family home with her parents and two older brothers. Claimant's brothers are also supported by WRC. She receives services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act), based on her diagnosis of unspecified intellectual disability.

2. On March 2, 2023, Mother requested funding for DIR/floor time therapy (floor time). (Ex. 8). The administrative law judge takes official notice that DIR stands

for Developmental milestones, Individual differences, and Relationship-based interventions.

3. By letter and a Notice of Action (NOA) both dated March 28, 2023, WRC notified Mother that the request for floor time services was denied, for the reasons discussed below. (Ex. 5, pp. A37-A38.)

4. Mother's appeal of the NOA was received on May 30, 2023. The hearing was originally scheduled for August 15, 2023, and was continued pursuant to Claimant's request to October 24, 2023.

Background

5. During Claimant's Individual Program Plan (IPP) meeting on April 19, 2022, Mom reported that Claimant has limited social skills and does not like being in places whether there were a lot of people or noise. Claimant trembles when there are a lot of people around or she is uncomfortable. Claimant also cries excessively when she is frustrated, and she hits herself while sitting in her car seat because she does not like being in the car. Mother further reported that Claimant "constantly cries and this upsets her older brothers as her cries can be heard all around their home." (Ex. 6, p. A44.) Claimant is attached to Mother, only wants to be with her, and constantly looks for her. Mother must take Claimant to the bathroom with her because Claimant becomes upset if she does not see Mother.

6. In the community, Claimant panics when she is around adults and older children. She will only go to certain places if Mother is present.

7. Mother requested floor time services as opposed to Applied Behavioral Analysis (ABA) services for Claimant. ABA is therapy geared toward increasing helpful

behaviors and decreasing maladaptive behaviors in children with autism or intellectual disability. Mother expressed disinterest in ABA services because the services were not helpful for her older son. Claimant's service coordinator (SC) explained that she had consulted WRC's behavior specialist who explained that floor time is a generic resource that is covered by some insurance companies. Mother was directed to request floor time services through Claimant's private insurer and provide a denial letter from the insurer so that WRC could review the request.

8. WRC agreed to fund social skills and social recreational services for Claimant as appropriate. Claimant's SC emailed Mother lists of social skills and social recreational vendors.

9. Claimant's IPP Progress Report, approved May 5, 2023, indicates Claimant's April 2022 IPP was reviewed at an annual IPP meeting on February 15, 2023. Mother reported Claimant's maladaptive behaviors had increased in that her tantrums last five hours, and she attempts to bite, kick, and throw things at people. Claimant also pulls hair, cries, and screams, and she also threw a tablet computer, which hit her brother. Mother believes Claimant's behaviors have prevented Claimant from improving her social skills.

10. The IPP was amended to include one unit of social recreation services (music/singing) per month from March 1, 2023, to March 31, 2024. WRC also agreed to fund additional social recreation services (a dance class) for Claimant for two hours per week from April 1, 2023, to April 30, 2024.

Floor Time Services Request

11. Jessica Haro is WRC's Autism and Behavioral Specialist. She testified at the hearing and explained the basis for the denial of Mother's floor time services request.

12. Ms. Haro has worked in early intervention services field since 2008 with those who have developmental disabilities. She was certified as a behavior analyst in 2015.

13. Ms. Haro explained that ABA is treatment focused on reducing problem behaviors and skill acquisition for replacement behaviors. On the other hand, floor time services focus on relationship development and emotional connection. Although a consumer's behavior can change by participating in floor time services, the treatment is not focused on remediating maladaptive behavior.

14. Ms. Haro offered the opinion that ABA services are appropriate for Claimant instead of floor time services. She acknowledged neither she nor WRC has evaluated Claimant for the appropriateness of floor time services. Ms. Haro explained that based upon information she received from Claimant's SC regarding Claimant's maladaptive behaviors, Claimant's behavior will inhibit and render floor time services ineffectual. She believes Claimant's behavioral issues must be addressed before WRC will fund floor time services. Ms. Haro noted WRC has agreed to fund and Claimant is already receiving socialization skills and social recreation services.

15. Claimant has not provided any reports to WRC indicating floor time is a necessary service or support.

16. Ms. Haro is aware of ABA vendors whose staff speak Spanish. She offered to direct WRC to send a list of those agencies to Mother and assist Mother with contacting them to determine their availability to take on new clients.

17. Mother testified that she has observed many improvements in her daughter's behavior as a result of her socialization services. Mother explained that Claimant learns by playing.

18. Mother believes that floor time will benefit Claimant in that she will learn how to interact with others and acquire additional social skills.

19. Mother contends that she contacted several ABA agencies using a list provided by WRC. Some agencies did not return Mother's call, others told her their staff did not speak Spanish, and others informed her that there was wait list for services and they would not have any availability until early 2024.

20. Mother formally requested that WRC perform a floor time evaluation for Claimant. She waited months for a response from WRC, only to be denied. However, Mother's complaint regarding her request for a floor time evaluation was not raised in the underlying appeal and will not be addressed in this Decision.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding for floor time therapy. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding her request for funding for floor time therapy services.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Code, § 4501.) The Lanterman Act gives regional centers, such as WRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Code, § 4620, et seq.)

4. Services to meet the needs of a consumer is also referenced in Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and

healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. A consumer's needs and goals, and the services and supports to address them, are determined through the IPP process, described generally in Code section 4512, subdivision (b), which states in part:

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.

6. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in Code section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and school districts, and private entities such as insurance. (*Id.*, subdivision (a)(1) and (2).)

7. Code section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources.

8. This is reiterated in Code section 4648, subdivision (a)(8):

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

9. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in section 4659.

(Code, § 4646.4, subd. (a).)

10. WRC established a reasonable basis, supported by the evidence, for its determination floor time therapy was not the most effective service to address Claimant's needs. Mother testified that she believed floor time therapy services would help Claimant improve her social skills. Ms. Haro correctly noted that Claimant was already receiving social skills and social recreation skills. In addition, Ms. Haro's testimony that Claimant's behavior would prohibit the effective provision of floor time therapy was persuasive and credited. Moreover, even if floor time therapy services were deemed appropriate for Claimant, Claimant must use a generic resource to fund the services. Claimant did not prove that a generic resource had denied funding necessary floor time services.

11. Mother is an active and involved parent and advocate for Claimant. She and WRC should continue to work collaboratively for the benefit of Claimant. In this

instance, Mother did not submit sufficient evidence to support the conclusion WRC should have provided floor time therapy for Claimant. Claimant's appeal of the WRC denial of floor time therapy is therefore denied.

ORDER

Claimant's appeal of the Service Agency's decision to deny floor time therapy is denied.

DATE:

CARMEN D. SNUGGS-SPRAGGINS

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.