

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

In the Matter of the Appeal of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER

OAH No. 2023070449

DECISION

Sean Gavin, a Hearing Officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 29, 2023, from Sacramento, California.

Jason Toepel, compliance manager, represented Valley Mountain Regional Center (VMRC).

Claimant's mother and authorized representative represented claimant, assisted by Spanish language interpreter Brenda Tamez.

Evidence was received, the record closed, and the parties submitted the matter for decision on August 29, 2023.

ISSUE

Should VMRC be required to fund claimant's private piano lessons?

FACTUAL FINDINGS

1. Claimant is a 17 year old VMRC consumer based on his qualifying diagnosis of intellectual disability resulting in a substantial handicap. On an unspecified date, claimant's mother requested VMRC to provide funding for claimant's private piano lessons. On September 23, 2022, VMRC sent a Notice of Action (NOA) denying the funding request.

2. As explained in the NOA, VMRC denied the funding request because:

Piano lessons are being requested as a social recreation activity.

Regulations require the regional center to fund services in accordance with their department approved service standards. VMRC's department approved service standard on social recreation indicates that the purpose and intended outcome of social recreation services is to promote social growth and development. It also defines social recreation services in part as services that allow an individual to socialize with friends or peers. The piano lessons that are being requested are 1 on 1 lessons. 1 on 1 lessons do not meet the regional center's service standard definition, purpose, or intended outcome of social recreation as it does provide opportunity to socialize with friends and peers or to promote social growth and development. Piano lessons do not meet the regulatory definition of a developmental disability support or service.

3. On July 12, 2023, claimant's mother sent VMRC a Fair Hearing Request appealing the denial of funding. In it, she stated the reason for requesting a fair hearing was:

[Claimant] is currently receiving the one to one piano class and the cost is being covered by his parents. We do not agree that only group service was authorized because my son has many fine motor and focus needs and we consider that in a group it will not benefit him because he will not advance and that will make him enter into behaviors of frustration and stress and he will not like the class anymore. [Claimant] attends one-on-one classes and he is very happy to take his class. It is a dream of his. That class has helped him reduce his stress and nerves. When he is nervous the class helps him to relax.

Claimant's Evidence

4. Claimant's mother and father testified at hearing. They explained claimant has taken private piano lessons for approximately 18 months. He enjoys the lessons and his musical skill and ability are improving. Claimant had two recent fainting episodes and has been more nervous and anxious since then. Playing the piano helps calm him. He has not yet played music with others, but his parents hope his ongoing lessons will eventually help him be ready to socialize with his peers by playing music together. In addition, claimant's physical therapist told claimant's mother that piano classes will help him develop his fine motor skills.

5. Claimant's piano lessons have been private with the instructor because claimant's parents believe he will not succeed in group lessons. During group lessons in other subjects, claimant moved around a lot, was easily distracted, and needed redirection. In addition, claimant's piano instructor does not offer group lessons. Claimant's mother has searched for other local instructors, but none of them offer group lessons either.

VMRC's Evidence

6. Dave Vodden has worked for VMRC for approximately 25 years. Since 2015, he has been the Program Manager for the Transition Unit at VMRC. At hearing, Mr. Vodden explained VMRC can only approve funding for services or supports that are designed to address or improve a claimant's developmental disability. Music lessons do not meet that requirement.

7. Mr. Vodden also explained that piano lessons do not meet VMRC's Service Standard for Social/Recreational and Camp Services, which has been approved by the Department of Social Services. Specifically, VMRC can approve funding for social/recreational services that meet a claimant's need to socialize with "a wide circle of friends and acquaintances, including people without disabilities." Private piano lessons do not satisfy that need because they do not provide an opportunity to socialize with peers.

Analysis

8. VMRC contends that claimant's funding request must be denied. For the reasons discussed below, VMRC's position is supported by the law.

9. First, regional centers can only fund either “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 an independent, productive, and normal life.” (Welf. & Inst. Code, § 4512, subd. (b).) Claimant wants to continue taking piano lessons because they help calm him and help improve his fine motor skills. These goals do not satisfy the requirements of section 4512, subdivision (b). There was no evidence that piano lessons are a specialized service or support, or a special adaptation of a generic support or service, directed toward alleviating claimant’s intellectual disability.

10. Second, VMRC can fund services that are meant to help claimant achieve social, personal, physical, or economic habilitation or rehabilitation, or independence, productivity, or normalcy. (Welf. & Inst. Code, § 4512, subd. (b).) However, as Mr. Vodden explained, private piano lessons do not provide claimant a chance to socialize with his friends or peers. Although claimant’s increased musical skill might someday help him play music with others, he has not yet done so, and his parents do not believe he is ready.

11. For the reasons stated above, claimant did not prove that VMRC is authorized to fund his private piano lessons. Therefore, the law requires that claimant’s request must be denied.

LEGAL CONCLUSIONS

1. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to the funding sought. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not that he is entitled to the funding requested. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

2. Under Welfare and Institutions Code section 4500 et seq., known as the Lanterman Developmental Disabilities Services Act, "'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, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).)

3. As discussed above, under Welfare and Institutions Code section 4512, subdivision (b), claimant's request for private piano lessons does not qualify for regional center funding because: (1) music lessons are not a special adaptation of a generic support or service directed toward alleviating claimant's intellectual disability; and (2) private piano lessons, as opposed to group lessons, are not a special

adaptation of a generic support or service directed toward claimant's social, personal, physical, or economic habilitation or rehabilitation, or toward claimant achieving and maintaining his independence, productivity, or normalcy. Thus, VMRC properly denied claimant's funding request.

ORDER

Claimant's mother's appeal of the denial of her request to fund the cost of claimant's private piano lessons is DENIED.

DATE: September 8, 2023

SEAN GAVIN

Hearing Officer

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 Section 4713 of the Welfare and Institutions Code 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.