

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

In the Matter of the Appeal of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER

OAH No. 2023090215

DECISION

Sean Gavin, a Hearing Officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 30, 2023, from Sacramento, California.

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

Claimant's mother and authorized representative represented claimant.

Evidence was received, the record closed, and the parties submitted the matter for decision on October 30, 2023.

ISSUE

Shall VMRC be required to continue funding claimant's Behavior Intervention Services (BIS)?

FACTUAL FINDINGS

Background

1. Claimant is a seven-year-old VMRC consumer based on his qualifying diagnosis of intellectual disability resulting in a substantial handicap. He lives at home with his parents and older brother. He attends school in the Stockton City Unified School District, where he is in second grade. VMRC funds claimant's BIS through Genesis Behavior Center, Inc. (Genesis).

June 2023 Genesis Report

2. On June 23, 2023, Genesis staff prepared a report summarizing claimant's services and progress from July 2022 through June 2023. In a section titled "Reason for Referral," the Genesis report noted:

[Claimant] was referred to Genesis Behavior Center, Inc., by Valley Mountain Regional Center (VMRC) with a POS [purchase of services] of January 2, 2021 – June 30, 2021 for intensive direct 1:1 intervention skills training to strengthen basic foundational skills with a focus on the principles of Applied Behavior Analysis (ABA). Skills deficits and maladaptive behaving to be targeted via IBT (Intensive

Behavioral Treatment) is detailed below. New POS July 1, 2023 – June 30, 2024.

3. The report identified 25 treatment goals across multiple categories, including receptive communication, expressive communication, pragmatic communication, and self-help/daily living skills. The report also included, in a section titled "Behavioral Recommendations," the note: "Genesis Behavior Center, Inc.'s recommendations at this time include developing behavior management strategies to help [claimant's] family manage his maladaptive behaviors more effectively in addition to skills acquisition goals as outlined above." Below that note, the report included seven behavioral recommendations.

4. Finally, Genesis's June 2023 report included a section titled "Service Recommendation." That section noted: "It is recommended that due to his identified needs across several domains, his age, his diagnosis, and his maladaptive behaving, that [claimant] receive 15 hours per week of IBT services, in center, where he has access to peers and opportunities for generalization of skills acquired."

VMRC's Review of Genesis's June 2023 Report and Notice of Action

5. After VMRC received Genesis's June 2023 report, Val Harris, a Board-Certified Behavior Analyst (BCBA) for VMRC, reviewed it, along with claimant's file. Ms. Harris concluded claimant's skill deficits identified in the report were primarily related to language and communication. Ms. Harris believed those skill deficits could and should be addressed via claimant's Individual Education Plan (IEP) from his school district. Specifically, she believed claimant's goals, as described in Genesis's report, would be more appropriately addressed through a language specialist, not a behavior service.

6. Ms. Harris shared her opinions with claimant's service coordinator through VMRC. As a result, VMRC staff contacted Genesis to share Ms. Harris's opinions and seeks Genesis's response. A Genesis representative replied that Genesis agreed with Ms. Harris's opinion and, on that basis, intended to discontinue claimant's BIS effective September 30, 2023.

7. On August 28, 2023, VMRC issued claimant a Notice of Action (NOA) in which it proposed to terminate funding for claimant's BIS. VMRC identified the reason as follows:

VMRC's Board Certified Behavior Analyst reviewed the case and the report from the BIS provider. They noted that the goals being worked on were primarily addressing language which is more appropriately addressed through a speech language specialist and not a behavior service. Family is advised to pursue those services through the school district as the school district has the responsibility for providing such services. It is also noted that the BIS provider has informed the regional center that their professional opinion is that the services need to fade as they have provided all of the services that they can and they intend to no longer provide services after September 30, 2023.

Informal Meeting and Genesis's September 2023 Revised Report

8. After receiving the NOA, claimant's mother requested a hearing and an informal meeting. At the informal meeting, held September 7, 2023, claimant's mother informed VMRC that she had called Genesis to discuss its June 2023 report. According

to claimant's mother, Genesis told her it would still work with claimant if she wanted the services to continue.

9. After the informal meeting, Emaley Escalera, VMRC's children's program manager, contacted Genesis to clarify its position. The Genesis representative reported to Ms. Escalera that it believed claimant would no longer benefit from ongoing services through Genesis. Ms. Escalera asked the representative if Genesis would put its position in writing.

10. On September 7, 2023, Genesis issued a revised report. The revised report identified the same 25 treatment goals across the same categories. In the Behavioral Recommendations section, the revised report stated: "[Claimant] is demonstrating improvement; however, he continues to demonstrate skill deficits consistent with his diagnosis outlined above. [Claimant] no longer demonstrates maladaptive behaviors." In the Service Recommendation section, the revised report noted: "It is recommended that [claimant] no longer clinically benefits from BIS services. [Claimant] no longer demonstrates maladaptive behaviors. However, due to his skills deficits consistent with his diagnosis, his learner profile and his response to intervention, [claimant] can benefit from ABA service." On that basis, the revised report identified the expiration date of claimant's BIS as September 30, 2023.

Claimant's Evidence

11. Claimant's mother testified at hearing. She received Genesis's June 2023 report shortly after it was issued. She expected claimant would continue to receive BIS through Genesis, which she believes he still needs. In late August 2023, she received VMRC's NOA. That was the first time she learned VMRC intended to end funding for

claimant's BIS. She objected because Genesis's June 2023 report noted he still needed 15 hours per week of BIS based, in part, on his maladaptive behavior.

12. Claimant's mother acknowledged she does not have evidence to dispute Ms. Harris's opinion or Genesis's September 2023 report. However, she believes ending claimant's BIS would be detrimental for him. She lives with claimant and sees several of his maladaptive behaviors continue. She believes addressing those behaviors is no longer listed as a goal in Genesis's September 2023 report because, according to VMRC and Genesis, claimant's "communication is antecedent for those behaviors."

13. Claimant's mother submitted his most recent IEP at hearing. The IEP, dated May 4, 2023, identified "areas of need" for claimant and specified how the District proposed to address those areas. As relevant to this matter, the areas of need included "behavior/self regulation," "self-regulation," and "communication."

Analysis

14. VMRC contends it should not be required to continue funding claimant's BIS because, as stated in its September 2023 report, Genesis believes "[claimant] no longer clinically benefits from BIS services." Additionally, the primary skills that need to be addressed, namely language and communication skills, can be provided through the school district. The law supports VMRC's position.

15. Specifically, when a regional center develops an individual program plan (IPP) for a client, it must follow "a process of individualized needs determination." (Welf. & Inst. Code, § 4646, subd. (b).) Among other things, the process of developing an IPP must ensure "utilization of generic resources and supports if appropriate." (*Id.* at § 4646.4, subd. (a)(2).) That is because "regional center funds shall not be used to

supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” (*Id.* at § 4648, subd. (a)(8).) Instead, the process of developing an IPP must ensure “utilization of other services and sources of funding,” such as “governmental or other entities or programs required to provide or pay the cost of providing services, including . . . school districts.” (*Id.* at §§ 4646.4, subd. (a)(3)(A), 4659, subd. (a)(1).) To achieve those purposes, the regional center is required to gather information and assessments from a variety of sources, including service providers. (*Id.* at § 4646.5, subd. (a)(1).)

16. Here, VMRC gathered information and an assessment about claimant’s BIS from Genesis. Based on Genesis’s June 2023 report, VMRC determined his skill deficits were primarily related to language and communication. VMRC further determined claimant’s school district could address those skill deficits through his IEP. As reflected in its September 2023 revised report, Genesis agreed and stated its intention to discontinue services effective September 30, 2023.

17. Claimant’s mother credibly explained her genuine frustration with the process and her belief that claimant would benefit from ongoing BIS. However, there was insufficient evidence at hearing to support her position that VMRC must continue to fund claimant’s BIS. Therefore, there is no legal basis to grant claimant’s appeal.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. VMRC has the burden of proving it is no longer required to fund claimant’s BIS. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has “a built-in bias in favor of the status quo,” and the party seeking to change the

status quo has the burden “to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing”).) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard required VMRC 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, VMRC must prove it is more likely than not that it is no longer required to fund claimant’s BIS. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “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 [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations].” (*Assoc. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Assoc. for Retarded Citizens v. Dept. of Developmental Services, supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or his representative. The regional center must gather information and

assessments from a variety of sources, including providers of services or supports. (Welf. & Inst. Code, § 4646.5, subd. (a)(1).)

4. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer's developmental needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subds. (a) & (b), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (*Id.* at § 4648, subd. (a)(1).)

5. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP but must do so cost-effectively. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) They must "identify and pursue all possible sources of funding for consumers receiving regional center services," including "governmental or other entities or programs required to provide or pay the cost of providing services, including . . . school districts." (*Id.* at §§ 4646.4, subd. (a)(3)(A), 4659, subd. (a)(1).) "Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (*Id.* at § 4648, subd. (a)(8).)

Conclusion

6. VMRC met its burden of proving it is not required to continue funding claimant's BIS. According to information and an assessment from the service provider, VMRC determined claimant's goals and objectives can be addressed from the generic

resource of the school district, which is legally required to provide or pay the cost of providing the language and communication services claimant needs. VMRC is not lawfully permitted to supplant the school district's budget to fund those services through a third-party service provider.

ORDER

Claimant's appeal from Valley Mountain Regional Center's August 28, 2023, Notice of Action proposing to terminate claimant's Behavior Intervention Services is DENIED. Valley Mountain Regional Center may terminate funding for claimant's Behavior Intervention Services effective November 30, 2023.

DATE: November 7, 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.