

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

In the Matter of the Appeal of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER

DDS Case No. CS0009495

OAH No. 2023090283

DECISION

Jessica Wall, a Hearing Officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 4, 2023, from Sacramento, California.

Rachele Berglund, Attorney at Herr Pedersen & Berglund LLP, represented Valley Mountain Regional Center (VMRC).

Colleen Yoder, Attorney with Disability Rights California, represented claimant, who was not present.

Evidence was received and the record was held open for claimant to submit additional exhibits related to her instructors' training and credentials in music therapy

and briefing on Welfare and Institutions Code section 4646.4, subdivision (a), and for VMRC to object and respond. On December 12, 2023, claimant submitted a document about VMRC's expenditures by ethnicity and race, marked as Exhibit V; a curriculum vitae for Eve Soto, marked as Exhibit W; and a supplemental brief, marked as Exhibit X. On December 15, 2023, VMRC submitted an objection and reply to Exhibit X, marked as Exhibit 23; an objection to Exhibit W, marked as Exhibit 24; and receipts from claimant's music lessons, marked as Exhibit 25.

Exhibits X, 23, and 24 are admitted as argument. Exhibits W and 25 are admitted as administrative hearsay. Exhibit V is excluded because it did not relate to arguments offered at or before the hearing and exceeded the scope of evidence authorized for submission after the hearing. On December 15, 2023, the record closed, and the matter submitted for decision.

ISSUE

Should VMRC be required to continue funding claimant's private voice lessons and fund claimant's private piano lessons?

FACTUAL FINDINGS

1. Claimant is a 14-year-old girl who receives VMRC services based on her qualifying disabilities of cerebral palsy and autism spectrum disorder (ASD). She lives with her mother, father, and older brother in Stockton, California.

The 2022 Appeal

2. During California's 2009 fiscal emergency, state lawmakers prohibited regional centers from using public funds for "[s]ocial recreation activities," other than day programs, and "[n]onmedical therapies, including, but not limited to, specialized recreation, art, dance, and music." (Welf. & Inst. Code, § 4648.5, subd. (a).) That prohibition expired on June 30, 2021. (*Ibid.*)

3. In November 2021, claimant's mother emailed claimant's service coordinator about having VMRC fund claimant's recreational activities, which she described as "voice lessons, piano and choir lessons." When asked for more detail about the lessons in February 2022, claimant's mother provided the following description of claimant's voice lessons:

The vocal lessons help her to interact with children her age. The group lessons are all girls and they get to sing and communicate with each other. They get to comment and encourage and motivate each other. After singing, each girl will advise the singer on how they did. What technique they used during singing. It really helps with social skills. It also helps with behaviors as it teaches, discipline, taking turns, acting their age and very structured [*sic*]. The teachers make it exciting and engaging to where it keeps their and [*sic*] attention. As we know that [claimant] is delayed in her speech and communication. With these classes it helps her to learn how to respond timely and appropriately. Even though it is zoom, it teaches them how to be confident.

Music and singing is a therapy to her. Her teacher reinforces rules and engages them by singing together.

For claimant's piano lessons, her mother wrote:

[P]iano lessons helps [s/c] [claimant] with her diagnosis of Autism and Cerebral Palsy [s/c], as it decreases anxiety, and increases in memory, verbal communication and a feeling of independence. It helps by improving her cognition and creates strong brain activity. It helps with attention, speech and language.

4. VMRC funded the music lessons from February through May 2022, when claimant's 2022 Individual Program Plan (IPP) meeting took place. In August 2022, claimant's service coordinator notified claimant's mother that VMRC was not able to fund claimant's private music lessons:

VMRC believes that a social recreation activity is one that is held within the community and allows children to engage with other children socially. Although activities were previously approved, we received a denial for lessons to continue and be covered under social recreation.

5. On August 19, 2022, VMRC sent claimant a Notice of Proposed Action (2022 NOPA), reflecting that it had denied claimant's request to fund "1:1 online music lessons as a social recreational service." The 2022 NOPA stated, in relevant part:

[T]he component that makes social recreation an allowable support service is the socialization aspect and the service

should work towards building and maintaining social and relational skills. The regional center does not see a 1:1 paid professional relationship with an instructor as a service that provides for socialization opportunity and skill building. [...] While there is every reason to believe that these music lessons are effective in teaching an individual music, there is a lack of evidence that a provider of 1:1 musical lessons/instruction is an effective service to meet the need for improvement of socialization skills. While there is likely to be some social interaction, the majority of the time being paid for and the emphasis of the lessons is instructional in nature. [...]

6. Claimant's parents appealed the denial and took part in an informal meeting and mediation. On October 17, 2022, claimant and VMRC reached a Partial Mediation Agreement. Their agreement stated, in relevant part:

While individual vocal lessons do not meet the regional center's definition of a social recreation service as indicated in VMRC's Department of Developmental Services (DDS) approved service standard, it is agreed that the individual vocal lessons currently are supplemental to the group lessons as they provide [claimant] with the ability and confidence to participate and engage with peers in group vocal lessons. [...] VMRC agrees to fund the individual lessons for no more than 3 months after the IPP meeting, through August of 2023. By that time the individual vocal

lessons should be phased out and eliminated as either having met the objective because they are no longer necessary to participate in the group lessons or as being ineffective for meeting the objective.

7. The Partial Mediation Agreement did not address the issue of whether VMRC would fund claimant's private piano lessons. That issue was set for a fair hearing. On December 16, 2022, claimant's mother withdrew the hearing request.

8. Based on the Partial Mediation Agreement, VMRC approved claimant's individual vocal lessons for \$70 per month and her group lessons for \$460 every eight weeks. However, VMRC made an error in the purchase request and funded the eight-week package every month. This resulted in claimant receiving an overpayment totaling approximately \$2,000 between December 2022 and August 2023. Claimant's parents did not notify VMRC about the error. VMRC will not seek to recoup the overpayment because it was responsible for the error.

The 2023 Individual Program Plan

9. On June 27, 2023, claimant's mother spoke with VMRC staff to complete claimant's 2023 IPP. For "Social Recreation," claimant's goal was to "participate in age-appropriate social recreational activities to increase her socialization skills." The IPP reflects claimant's only interest was music. Claimant's mother expressed that "music provides a platform for social interaction that could potentially enable her to connect more easily with others" and that her private lessons were tailored to her individual needs. The IPP specified that claimant's parents would explore and exhaust generic resources for social opportunities and community integration activities. It went on to state that claimant's chosen social recreational activity "must be in a group setting."

Her family was responsible for funding social recreational activities beyond what VMRC approved.

10. The 2023 IPP did not specify how much funding VMRC would provide for claimant's social recreation activities, stating it was "TBD." Her parents were to notify VMRC when they chose an activity that met her social recreation needs and complied with the regulatory requirements. Once VMRC approved the requested activity, claimant's parents would receive reimbursement. Claimant's mother signed the 2023 IPP on June 30, 2023. She checked the box that she agreed with its contents.

The 2023 Appeal

11. During August 2023, claimant's parents requested VMRC continue to fund claimant's private voice lessons and resume funding her private piano lessons as social recreation activities. VMRC issued a NOPA denying the request on August 30, 2023 (2023 NOPA). The 2023 NOPA reflects that claimant is a participant in the Medicaid Home and Community Based Services (HCBS) Waiver. As explained in the 2023 NOPA, VMRC denied the funding request because:

The lessons are requested as a social recreation service. The regional center is required by law to fund services in accordance with their [DDS-]approved service standards. VMRC's [DDS-]approved service standard defines social recreation services as services that allow the individual to socialize with friends and peers and indicate the expected outcome of this is to promote social growth. Because of this, individual vocal and piano lessons do not meet the criteria as they do not include social interaction with friends

and peers. The goal of vocal and piano lessons is to gain musical skills and not the acquisition of social skills. The requested services also do not meet the definition of a developmental disability support or service. VMRC is also considering [OAH] rulings including those in case numbers 2021120814, 2022090114, and 2020050491.

In support of the denial, the 2023 NOPA cited Welfare and Institutions Code sections 4512, subdivision (b); 4646, subdivisions (a) and (b); and 4646.4, subdivisions (a)(1) and (4). The 2023 NOPA also cited VMRC's Social Recreation Service Standard.

12. On September 8, 2023, claimant's mother sent VMRC a Fair Hearing Request appealing the 2023 NOPA. In it, she stated the reason for appealing as, "The RC as of 8/31/2023 is no longer funding group vocal, individual vocal and piano lessons for my daughter."

13. On September 22, 2023, claimant's parents and VMRC staff met for an informal meeting. VMRC maintained the same reason for denying funding as it had in 2022: its service standard for social recreation services "requires the service to occur in group settings because the purpose of the service is to provide social interaction with peers."

Similarly, claimant's parents maintained the same position they had in 2022. They informed VMRC that they enrolled claimant in a second group for voice lessons. VMRC offered to fund the two group voice lessons, as they occurred in group settings. VMRC would not fund the private lessons, as they were "solely music lessons," and thus "not developmental disability support services." Finally, VMRC cited a fourth recent appeal before the OAH. Like the three appeals VMRC cited in the 2023 NOPA,

the appeal affirmed private music lessons were not specialized services directed toward the alleviation of a developmental disability, and thus were a family's responsibility to fund.

VMRC's Evidence

14. Terri Miniaci has worked for VMRC for over 20 years. She has served as a Program Manager since March 2022. Ms. Miniaci testified about how VMRC determined that it could not fund private music lessons as a social recreation service.

15. When claimant's service coordinator asked VMRC to fund the lessons, Ms. Miniaci took the request to the Purchase of Service (POS) committee. The POS committee is comprised of program managers and a compliance officer. They discuss service requests and whether VMRC may fund them under existing law. Here, the committee originally approved the request to fund claimant's music lessons. The prohibition on funding social recreation had recently lifted, and VMRC was excited about the opportunity to fund these activities again. At first, VMRC construed "social recreation" broadly. As VMRC got more information, however, it determined it could no longer fund claimant's private music lessons as social recreation. This was because the lessons consisted of one-on-one paid music instruction with an adult, rather than peer interaction. VMRC initially stopped funding claimant's private lessons in June 2022.

16. That summer, VMRC submitted its service standard for "Social/Recreation and Camp Services" to DDS for approval. The service standard is part of VMRC's POS policies. It defines "social/recreation" services as "those supports and services that allow the person to socialize with friends and spend structured or unstructured time engaged in recreational activities." The standard states VMRC "will consider the

family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting." DDS approved the service standard in a letter dated August 31, 2022.

17. In the 2022 appeal, VMRC agreed to fund claimant's private voice lessons temporarily, as a condition of mediation. The funding was to stop by August 2023. Private piano lessons were not included in the mediation agreement, and VMRC stopped funding them in June 2022. VMRC never waived its position that private music lessons do not qualify as social recreation.

18. Claimant's 2023 IPP included language consistent with VMRC's POS policies, requiring social recreation activities to take place in groups. While the IPP provides that claimant's parents will notify VMRC "when music classes need to be renewed," it includes no mention of funding private lessons.

19. Jason Toepel has worked at VMRC for over seven years. He currently serves as VMRC's Compliance Manager. He testified about VMRC's efforts to comply with state and federal regulations, and how that applies here. Mr. Toepel explained that VMRC does not fund all services requested by consumers and their families. Rather, regional centers like VMRC may only fund specialized services and supports or special adaptations of generic services and supports. Parents must pay for services and supports that they would ordinarily pay for a minor child without disabilities.

20. Here, claimant's parents did not provide VMRC with evidence that her private music lessons were different than those offered to children without disabilities. Her private classes were a paid, time-limited interaction with an adult instructor and did not involve interacting with her peers. Moreover, the lessons sought to teach

claimant music skills rather than social skills. There was no evidence that the private lessons constituted a nonmedical therapy, such as music therapy, or specialized service to treat claimant's developmental disability. This meant claimant's parents were responsible for funding her private music lessons, as other parents do for their minor children without disabilities.

21. VMRC asserted that claimant's relationship with her private instructors does not constitute a "social relationship" for social recreation funding. VMRC relied on the Encyclopedia of Behavioral Medicine, which defined the term as "connections that exist between people who have recurring interactions that are perceived by the participants to have personal meaning." The definition goes on to explain that a social relationship exists "between family members, friends, neighbors, coworkers, and other associates but excludes social contacts and interactions that are fleeting, incidental, or perceived to have limited significance (e.g., time-limited interactions with service providers or retail employees)."

22. VMRC also offered a document related to the HCBS waiver program. Through this program, states may provide services to individuals so they can remain in their homes or communities rather than in institutions. In January 2019, the Centers for Medicare & Medicaid Services (CMS) issued "Instructions, Technical Guide and Review Criteria regarding Application for a § 1915(c) Home and Community-Based Waiver" (CMS Guide). The portion of the CMS Guide pertinent here states, in relevant part, that "[s]ervices that are diversional/recreational in nature fall outside the scope of § 1915(c) of the Act." VMRC interprets this as limiting its ability to fund purely recreational services, those that lack a social component, and those that are unrelated to the consumer's disability. Mr. Toepel explained that VMRC must align itself with federal guidance for individuals in the HCBS waiver program.

23. Mr. Toepel was familiar with the recent updates to the Lanterman Developmental Disabilities Services Act (Lanterman Act). Welfare and Institutions Code section 4688.22, subdivision (b), sets three new prohibitions. As of this year, a regional center cannot require a consumer to (1) exhaust services under the In-Home Supportive Services program before funding social recreation services, camping services, and nonmedical therapies; (2) exchange respite hours for these services; or (3) pay a copayment for these services.

DDS sent the regional centers a directive related to the statutory update on November 3, 2023. The directive requires regional centers to review and revise their POS policies, as needed, to comply with the update by January 2, 2024. The directive adds that regional centers should prioritize increasing access to qualifying services for children, non-English speakers, and communities of color. VMRC is currently performing community outreach and will submit the necessary documents to DDS by the deadline. However, because VMRC's service standard for social recreation services does not involve the three new prohibitions, Mr. Toepel anticipates VMRC will resubmit its existing POS policies to DDS for reapproval. He explained the updates do not change the definition of what constitutes a social recreation service.

Claimant's Evidence

24. Claimant's mother and father testified at the hearing. They explained that claimant's biggest deficits are her behavior and social skills. She struggles to communicate with others and is very shy. She may require things to be repeated or rephrased to understand. Claimant requires extra support and additional time to process things before speaking. She is selective in her interests. At present, music is the only thing that interests her.

25. Claimant's parents began paying for claimant to take private music lessons in January 2020, believing her interest in music could help strengthen her social skills. They were pleased with the increased confidence claimant demonstrated after starting lessons. During the 2019–2020 school year, claimant played piano for her fourth-grade teacher during their online one-on-one tutoring. At the end of the 2020–2021 school year, claimant played piano for her entire fifth-grade class over Zoom. Each teacher wrote a letter about the passion for music claimant demonstrated through playing piano.

26. After VMRC began funding claimant's music lessons in February 2022, her parents selected new instructors. Eve Soto is claimant's current voice instructor. Their lessons occur remotely over videoconference because Ms. Soto lives in New York. Ms. Soto has been a music teacher for over 20 years. Her training and experience working with children with disabilities consisted of two years of working as a teacher for United Cerebral Palsy (UCP) over 30 years ago. Since then, her work has focused on vocal programs for churches and schools. She has coached a Grammy award-winning singer and other individuals in the entertainment industry. From December 2022 through August 2023, claimant's group lessons with Ms. Soto cost \$57.50 per week and an unknown number of private lessons cost \$70 per month.

Zev Haber is claimant's current piano instructor. Their lessons occur remotely over videoconference because Mr. Haber lives in New York. Claimant's father testified that Mr. Haber has 20 years of experience and has won awards. No evidence was provided about whether Mr. Haber has training and experience serving children with disabilities. During 2022, Mr. Haber charged \$60 for each weekly lesson.

27. Claimant's mother sits in on claimant's music lessons. She is pleased with the quality of instruction Ms. Soto and Mr. Haber provide. She thinks claimant benefits

from having one-on-one support because she can learn the music at her own pace. Claimant is currently in two different group lessons with Ms. Soto, which vary in size between two to five students. Claimant's mother does not believe that group lessons alone can meet claimant's needs. She explained claimant struggles to speak in big groups, which she defines as one or more students in the lesson with claimant. Claimant's parents felt private lessons give claimant confidence, which in turn increases her ability to interact socially outside the lessons. Claimant's position is that any activity involving two people is "social" by definition.

28. Claimant enjoys the lessons and her musical skill and ability have improved. Since beginning music lessons, claimant has expanded her social interactions. Before taking music lessons, claimant would not talk with others. Now she can talk about her music and make friends. She is now a member of her school's mariachi band, where she plays guitar and sings. She has made two friends in mariachi band. Claimant's mariachi teacher wrote a letter, describing how claimant "actively participates in all class activities as well as collaborating with her classmates either in presentations or conversations."

29. Claimant also participates with her father in her church's worship band, where she plays piano and sings. She receives the setlist from her worship leader two months in advance and practices those songs with Ms. Soto in their private lessons. Claimant's church youth leader wrote a letter documenting the growth claimant has shown over the past three years. Her church worship leader wrote a letter about the improvement in claimant's music skills since she began private lessons.

30. The worship band meets for an hour a week, of which 45 minutes is spent playing music. Claimant's father explained this is not enough time for claimant. She struggles to learn the music both in groups and independently. Her independent

practice is limited to 20 to 30 minutes a week because she is busy with her eighth-grade homework.

31. Neither the mariachi band nor the worship band has a policy requiring members to be enrolled in private lessons. Nevertheless, claimant's parents feel she will be unable to participate in the two bands unless she receives private lessons to help her build confidence and practice in advance.

32. Claimant's father recalled an interaction that claimant had with her pediatrician, Tia Curry, M.D. Dr. Curry asked about the musical decals on claimant's shoes. This sparked a conversation with claimant, who was ordinarily reserved during appointments. Claimant's parents told Dr. Curry about claimant's private lessons, so Dr. Curry wrote a note supporting the lessons, along with a prescription for one-on-one vocal and piano lessons.

33. Both claimant and her older brother receive services from VMRC. Accordingly, claimant's parents are unfamiliar with what services and supports they would be required to provide a minor child without disabilities.

34. Claimant's mother agreed she read the 2023 IPP before signing it. She testified that the Senior Service Coordinator at the 2023 IPP meeting verbally assured her at that meeting that VMRC would continue to fund claimant's private lessons, in spite of what the IPP said. The Senior Service Coordinator did not testify to corroborate that statement.

Post-Hearing Briefing

35. In her post-hearing brief, claimant argued that VMRC did not argue that its denial was based on parental responsibility until the hearing. (See Welf. & Inst.

Code, § 4646.4, subd. (a)(4).) The brief contended VMRC's argument that parents have a responsibility to fund services and supports they would be required to pay for a child without a disability constitutes an illegal attempt to shift costs to claimant's parents. In support, she cited *Clemente v. Amundson* (1998) 60 Cal.App.4th 1094, which determined regional centers cannot charge consumers a copayment for respite services. Because she believes that private music lessons qualify as social recreation services, she argued that a consumer's family cannot be required to pay for them. (See Welf. & Inst. Code, § 4688.22, subd. (b)(3).)

36. Claimant further argued in her post-hearing brief that VMRC should fund her private music lessons because she is Asian American, and people of color have historically received lower total authorized services. Claimant did not provide evidence that VMRC funds private music lessons as social recreation for consumers of any racial or ethnic background. Similarly, she did not provide evidence that she receives less-than-average funding for a child in her age bracket.

37. In its reply brief, VMRC documented the multiple instances it cited to the parental responsibility provision of Welfare and Institutions Code section 4646.4, subdivision (a). Both the 2022 and 2023 NOPAs rely on the subdivision as a basis for denial. The service standard for social recreation also mentions a family's responsibility to fund services and supports similar to those provided to children without disabilities. In sum, VMRC disagreed that there was any surprise to claimant about the fact that parents are responsible for funding childrearing expenses unrelated to a minor's developmental disability.

38. Moreover, VMRC argued that parental responsibility was not the sole reason for refusing to fund claimant's private music lessons. VMRC's basis for denial was that the private lessons did not comply with the Lanterman Act's requirements

because they were purely recreational and did not involve socializing with peers. The reply brief asserted that the lessons mirror those provided to children without disabilities, in that they offer additional time to practice and learn music before participating in group music activities. As such, they are not a specialized service or special adaption for claimant's disability and thus are not covered by the Lanterman Act.

Analysis

BURDEN OF PROOF

39. Claimant argued that VMRC bears the burden of proof for both private piano lessons and private voice lessons because the lessons were services VMRC discontinued. VMRC contended that it stopped funding private piano lessons last year, and thus these lessons are a new service upon which claimant has the burden of proof. VMRC's argument was more persuasive.

40. The evidence shows that claimant appealed the denial of funding for both private piano and private voice lessons in 2022. After mediation, the parties agreed VMRC would continue funding the private voice lessons temporarily, despite those lessons not meeting VMRC's definition of "social recreation." They agreed the funding would stop in August 2023. Thus, although claimant previously agreed to phase out the funding, VMRC was currently funding those lessons until her 2023 appeal. Accordingly, VMRC bears the burden of proof as to the discontinuation of funding for claimant's private voice lessons.

41. The parties did not reach an agreement on funding claimant's private piano lessons in 2022. VMRC's funding for claimant's private piano lessons ended that year. Claimant chose not to contest the funding discontinuation at a fair hearing. To

the extent claimant argued VMRC's accidental overpayment constituted continued funding of her private piano lessons, that argument is unconvincing. Because VMRC was not funding claimant's private piano lessons at the time of her 2023 appeal, she bears the burden of proof that VMRC should begin funding private piano lessons.

FUNDING FOR SOCIAL RECREATIONAL SERVICES

42. VMRC contends that its decision to stop funding private voice lessons and deny funding for private piano lessons is required by law. For the reasons discussed below, that argument is persuasive.

43. The Lanterman Act provides that "[s]ervices and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) To effectuate this goal, the legislature authorized regional centers to fund "services and supports for persons with developmental disabilities." (Welf. & Inst. Code, § 4512, subd. (b).) This phrase is defined as "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." (*Ibid.*)

44. Claimant seeks funding for private voice and piano lessons because these lessons give her additional time to learn music, which in turn makes her more confident when she plays with others. Claimant's parents did not provide documentation about the structure of her lessons or the degree of social interaction. Similarly, they did not provide evidence that Ms. Soto or Mr. Haber have licenses,

accreditations, or professional certifications to instruct children with developmental disabilities. In sum, they did not distinguish how claimant's private lessons are different than lessons offered to children without disabilities. All private music lessons are tailored to the student's speed and ability. This is not a characteristic that renders them a specialized service or support, or a special adaptation of a generic support or service, directed toward alleviating claimant's disability.

45. When funding services and supports, regional centers must conform to their DDS-approved POS policies and consider a parent's responsibility to provide similar services for a minor child without a disability. (Welf. & Inst. Code, § 4646.4, subds. (a)(1), (4).) VMRC's DDS-approved service standard for social recreation defines those activities as allowing a consumer to "socialize with friends and spend structured or unstructured time engaged in recreational activities." This requirement was incorporated into the 2023 IPP, which claimant's mother signed in agreement, stating that claimant's social recreation activities must be in groups. There is no evidence that VMRC's social recreation policy is no longer DDS-approved or was invalidated by statutory changes at the time of the 2023 NOPA.

46. Claimant's argument that any activity involving claimant and one other person constitutes a "social" activity is not persuasive. As explained at the hearing, claimant's private music lessons are paid, time-limited interactions with an adult during which she practices songs for her church's worship band. These lessons focus on learning music, not gaining social skills. The record further shows how successful group music activities have been in helping claimant develop peer interaction skills, as documented in claimant's mother's February 2022 email about group voice lessons and the hearing testimony about the friends claimant made in her school mariachi band.

47. Claimant's parents love her dearly, and they want her to have access to any resource that could improve her quality of life. By all indications, their efforts to immerse claimant in musical activities have built her confidence, as well as her musical proficiency. The record shows VMRC has tried to work with claimant's family to provide qualifying services, offering to fund multiple group music lessons to help claimant gain social skills while pursuing her passion. As for the private music lessons, claimant may choose to continue engaging in this form of recreation by using a funding source other than VMRC.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute requires otherwise. (See Evid. Code, § 115.)

2. In seeking funding for private piano lessons, claimant bears the burden of proving the funding is required. In discontinuing funding for claimant's private voice lessons, VMRC bears the burden of showing funding is not required. Each side must carry their burden by a preponderance of the evidence.

Applicable Law and Regulations

3. Regional centers must ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPP. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).) In securing services for its consumers, regional centers must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

4. When selecting services and supports, the regional center and consumer must consider factors including the provider's success in achieving IPP objectives; the provider's license, accreditation, or professional certification; the cost of providing services or supports of comparable quality by different providers; and the consumer's choice of provider. (Welf. & Inst. Code, § 4648, subd. (a)(6).) Generally, the "least costly available provider of comparable service" must be selected unless it would be more restrictive or less integrated than the existing provider. (Welf. & Inst. Code, § 4648, subd. (a)(6)(D).)

5. Regional centers must establish and follow an internal process when developing, reviewing, and modifying an IPP. (Welf. & Inst. Code, § 4646.4, subd. (a).) The process must adhere to state and federal laws and regulations. (*Ibid.*) Purchases must conform with the regional center's DDS-approved POS policies. (*Id.* at subd. (a)(1).) They must also use generic resources and supports, as well as other public and private funding sources. (*Id.* at subd. (a)(2)–(3).) A family is responsible for funding services and supports they would have provided a minor child without disabilities. (*Id.* at subd. (a)(4).) Finally, regional centers consider the consumer's need for services, barriers to service access, and other information. (*Id.* at subd. (a)(5).) Regional centers are "payers of last resort," meaning they cannot pay for services available through other state and federal programs. (Welf. & Inst. Code, §§ 4659.10, 4659, subd. (a).)

6. Welfare and Institutions Code section 4512, subdivision (b), defines “[s]ervices and supports for persons with developmental disabilities” as meaning:

[S]pecialized 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.

The subdivision further guides that the determination of services and supports “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.”

7. As discussed above, claimant’s private music lessons do not qualify for regional center funding. Her private voice and piano lessons are not specialized services and supports or special adaptations of generic services and supports, different from those offered to children without disabilities. Moreover, these paid, time-limited interactions with an adult instructor are not peer socialization activities that qualify as social recreation. Accordingly, claimant’s private music lessons fall squarely within parental responsibility. VMRC properly denied the request to continue funding private voice lessons and start funding private piano lessons.

ORDER

Claimant's appeal is DENIED.

DATE: December 19, 2023

JESSICA WALL

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.