

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

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

DDS No. CS0013710

OAH No. 2024030938

DECISION

Sean Gavin, a hearing officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 6, 2024, from Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's mother and father represented claimant.

Evidence was received, the record closed, and the parties submitted the matter for written decision on June 6, 2024.

ISSUE

Is ACRC required to fund adult day program services for claimant?

FACTUAL FINDINGS

Background

1. Claimant is a 21-year-old ACRC consumer based on her qualifying diagnoses of cerebral palsy and a “fifth category” disabling condition closely related to intellectual disability or requiring similar treatment, namely borderline intellectual functioning with unknown etiology. Her conditions cause disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, and capacity for independent living. She has received services and supports through ACRC since June 2019.

Claimant’s Request for Services and ACRC’s Notice of Action

2. On an unspecified date, claimant’s parents asked ACRC to fund adult day program services for claimant. On March 14, 2024, ACRC sent a Notice of Action (NOA) denying the request. As explained in the NOA, ACRC denied the request because:

Regional centers cannot purchase services which it is the responsibility of generic resources, such as school districts, to provide, and cannot consider funding services until all other potential funding sources have been exhausted. As an individual with exceptional needs, you continue to be eligible for special education and related services, including

transition services, until you reach age 22, because you have not received a regular high school diploma. Your certificate of completion does not terminate the school district's responsibility to provide you services. ACRC is unable to purchase adult day program services for you until your school district has been exhausted as a generic resource for providing transition services to meet your needs.

3. On March 20, 2024, claimant's parents appealed the denial. They explained:

We do not believe that the denial of Alta funding is warranted because [Welfare and Institutions] code section 4648.55 of the Lanterman Act excludes denial of funding for 18-22 year old consumers with a high school diploma OR a certificate of completion, and who are eligible for special education and related educational services. Hence, as related educational services are being funded for those 18-22 year old consumers with a diploma, then the same should apply to those with a certificate of completion in this case. Alta also cites that all resources must be exhausted and that they have not been in this case, since the school district has special needs student funding responsibility through age 22, and is still a viable option. We assert that the school is not a viable option in that [claimant] cannot be kept safe in the current school environment due to a history of domestic violence from a peer classmate. The

school has offered to place her back into this same classroom setting with the aggressor peer, per the most recent IEP [Individual Education Program] (available for reference). The school district's department of special education further offered to move [claimant] to a different high school, though we don't believe that she should be made to move to a different school as she was not the aggressor in the domestic violence situations, and to do so would be punitive for [claimant]. Therefore, we ask that Alta fund an independent living/transitional skills day program for her.

ACRC's Evidence at Hearing

4. Aida Fuchs has worked for ACRC for approximately 19 years, most recently as a service coordinator. She manages cases to help consumers achieve the goals identified in their Individual Program Plans (IPPs). Along with claimant and her parents, Ms. Fuchs participated in creating claimant's January 2023 IPP. One of the stated goals in the 2023 IPP was for claimant "to have a free and appropriate education with all necessary supports, through 2/29/2024." To achieve this goal, the identified supports and services included, in relevant part:

Roseville Joint Union High School District to provide education services with an updated IEP with Oakmont High School which will meet the needs and supports for [claimant's] educational planning, through 2/29/2024.

Roseville Joint Union High School District to work collaboratively with [claimant] and her parents in ensuring all services for education and the IEP are continued through the school year.

5. Ms. Fuchs also participated in creating claimant's January 2024 IPP, once again with claimant and her parents. One of the stated goals in the 2024 IPP was for claimant "to have a free and appropriate education with all necessary supports, through 2/28/2025." To achieve this goal, the identified supports and services included, in relevant part:

Roseville Joint Union High School District to provide education services with an updated IEP with Oakmont High School which will meet the needs and supports for [claimant's] educational planning, through 1/29/2025.

Roseville Joint Union High School District to work collaboratively with [claimant] and her parents in ensuring all services for education and the IEP are continued through the school year.

6. At hearing, Ms. Fuchs acknowledged she knew claimant requested ACRC to fund an adult day program called Dreamcatchers in early 2024. The request followed a November 2023 incident at claimant's high school in which her ex-boyfriend menaced her by approaching her with clenched fists and verbally threatening her. As a result of that incident, claimant ultimately withdrew from Oakmont High School in April 2024.

7. De Layna Eskridge-Brown has worked for ACRC for approximately 20 years, most recently as a client services manager. At hearing, she acknowledged claimant received a Certificate of Completion from Granite Bay High School, which is within the Roseville Joint Union High School District, in May 2021. Ms. Eskridge-Brown explained a Certificate of Completion differs from a diploma insofar as an individual with a Certificate of Completion is still eligible to receive services from the school district until they turn 22. She explained that is why claimant's 2023 and 2024 IPPs still included services and supports provided by the Roseville Joint Union High School District.

8. Ms. Eskridge-Brown reviewed ACRC's NOA and was familiar with the process ACRC followed when making its determination. She explained when ACRC determined it could not fund claimant's request for an adult day program while she was still eligible for services through the Roseville Joint Union High School District, it relied on Welfare and Institutions Code sections 4646.4 and 4648, subdivision (a)(8). Generally, those sections require regional centers to ensure consumers have exhausted all generic resources, such as school districts, before the regional centers can fund supports or services. ACRC did not rely on Welfare and Institutions Code section 4648.55 in making its decision. All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

Claimant's Evidence at Hearing

9. Claimant's parents testified at hearing. They believe section 4648.55 applies in this matter and authorizes ACRC to fund claimant's adult day program because she has a Certificate of Completion. They withdrew claimant from Oakmont High School because they did not believe the school district could keep her safe from her ex-boyfriend. The school district offered to enroll claimant in a different classroom

at a different campus, but claimant declined because she disliked that the students in the alternative classroom were lower functioning than her and often required wheelchairs or other assistive devices. She does not want to return to a high school setting because most of the students in her class were non-verbal and had difficulties that disrupted her studies. She and her parents believe changing schools within the same school district would not address her concerns.

10. Furthermore, claimant has attended Dreamcatchers since early 2024 and loves it. Claimant and her parents believe they have done everything they can to find a safe space for claimant, and they believe Dreamcatchers is that space. They want her to continue to attend, and they would like ACRC to fund her attendance. Claimant's parents submitted several documents that they believe support their request for ACRC to fund an adult day program for claimant.

Analysis

11. One issue in this case is a dispute about the applicability of section 4648.55. Subdivision (a) of that section provides:

Except as provided in subdivision (d), a regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the individual program plan (IPP) planning team determines that the consumer's needs cannot be met in the

educational system or grants an exemption pursuant to subdivision (d). If the planning team determines that generic services can meet the consumer's day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator, may attend the individualized education program (IEP) planning team meeting.

12. Section 4648.55 therefore addresses circumstances under which regional centers may *not* fund certain services. Specifically, regional centers cannot fund day program services for consumers aged 18-22 who are eligible for special education and have not received a diploma or certificate of completion. Claimant reads this to mean regional centers *can* fund adult day program services for consumers who have received a diploma or certificate of completion. Based on that interpretation, claimant reasons that, because she received her Certificate of Completion in May 2021, ACRC is not prohibited from funding an adult day program for her under section 4648.55.

13. Claimant is correct that section 4648.55 does not prohibit ACRC from funding her adult day program. However, as Ms. Eskridge-Brown credibly explained at hearing and as the NOA shows, ACRC did not rely on section 4648.55 when it declined

claimant's request. Rather, it relied on sections 4646.4 and 4648, subdivision (a)(8). Those sections require regional centers to ensure consumers utilize and exhaust all generic resources, such as school districts, before funding services or supports.

14. In this case, ACRC appropriately denied claimant's request to fund an adult day program because she is still eligible to receive special education services from her school district. Contrary to claimant's assertion, her Certificate of Completion does not make her ineligible to receive those services from her school district. Indeed, after receiving the Certificate of Completion in May 2021, she continued to receive school district services until April 2024, when she voluntarily withdrew.

15. Finally, claimant's argument that she can no longer safely attend school in the Roseville Joint Union High School District is rejected. Although forcing her to attend school in the same classroom with her ex-boyfriend who threatened her may have been unsafe, her parents acknowledged the school district offered to enroll her in a completely different school. She declined that offer because she preferred attending Dreamcatchers. That preference was not based on claimant's safety. Claimant did not prove it would be inappropriate for her to continue attending school in a different setting within the Roseville Joint Union High School District.

16. Claimant's evidence and arguments have been considered in their entirety. Because claimant is still eligible to receive special education services through her local school district, she has not exhausted her generic resources. For that reason, ACRC properly denied her request to fund an adult day program.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof is on the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that ACRC is required to fund her attendance at an adult day program. (Evid. Code, § 115.) Claimant did not meet her burden.

Applicable Statutes and Regulations

2. Under the Lanterman Act (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." (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 must conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (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 her

representatives. The regional center must gather information and assessments from a variety of sources, including providers of services or supports. (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. (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. (Code, § 4648, subd. (a)(1).)

5. When a regional center develops an IPP for a client, it must follow "a process of individualized needs determination." (Code, § 4646, subd. (b).) Among other things, the process of developing an IPP must ensure "utilization of generic resources and supports if appropriate." (Code, § 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." (Code, § 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." (Code, §§ 4646.4, subd. (a)(3)(A), 4659, subd. (a)(1).)

6. Claimant's school district is a public agency with a legal responsibility to serve all members of the public. It receives public funds to provide those services. As a result, ACRC cannot fund services that the school district is obligated to provide.

Conclusion

7. As explained above, ACRC cannot fund claimant's adult day program services unless and until she has exhausted all generic resources, such as those offered through her local school district. Because she has not exhausted those generic resources, she did not meet her burden to prove ACRC must fund her request for adult day program services. The law therefore requires that claimant's appeal be denied.

ORDER

Claimant's appeal from Alta California Regional Center's March 14, 2024, Notice of Action proposing to deny claimant's request to fund an adult day program is DENIED.

DATE: June 19, 2024

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.