

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

EASTERN LOS ANGELES COUNTY REGIONAL CENTER

DDS Case No. CS0018685

OAH Case No. 2024070174

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on August 12, 2024 in Alhambra and on August 26, 2024 by videoconference. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant was not present, but was represented by his parents.

Jorge Morales, Fair Hearing Manager, represented Eastern Los Angeles Regional Center (ELARC or service agency).

ISSUES

Must service agency fund claimant's private preschool tuition?

EVIDENCE RELIED ON

Service agency exhibits 1 through 13, and claimant exhibits A through K; testimony of Service Coordinator Elizabeth Fuster and claimant's parents.

FACTUAL FINDINGS

Parties and Jurisdiction

1. This matter is an appeal of ELARC's May 15, 2024 Notice of Action (NOA) denying claimant's request for "private school funding using your self-determination budget" at Arcadia Playschool. (Ex. 2.) The Notice of Action did not address funding of Arcadia Playschool tuition and fees as a daycare or childcare alternative. At hearing, claimant sought to expand the issue to include daycare or childcare offered by Arcadia Playschool. ELARC objected to the expansion of the issue for hearing. The ALJ declines to expand the hearing issue beyond that outlined in the NOA which sets forth the action from which claimant appealed. The ALJ acknowledges that claimant's service coordinator and parents used the term "daycare" and "preschool" interchangeably in a few emails referring to Arcadia Playschool commencing on or about April 30, 2024 and that this imprecise use of language resulted in confusion and miscommunication between the parties. However, ELARC's NOA does not address denial of daycare or childcare services and therefore, such services are beyond the scope of this hearing. In short, claimant's concerns related to childcare or daycare should be discussed at an

Individual Program Plan (IPP) team meeting or the subject of a separate NOA because the issue is not addressed in the proposed decision. Claimant is not precluded by this proposed decision from raising the issue of daycare or childcare funding in a separate appeal.

2. Claimant is a 3-year, 8 month-old boy who is eligible for ELARC's services under the Lanterman Act based on his qualifying diagnosis of Autism Spectrum Disorder. Claimant lives in the family home with his parents and an older sibling who is also a regional center consumer.

3. Claimant's Individual Program Plan (IPP) dated February 9, 2024 contains desired outcomes and related services and supports. Outcome number 4 of the IPP states that claimant "will receive appropriate education that will meet his education goals through 01/31/25." According to the IPP, claimant and his family are responsible for his daily attendance and cooperation with his school program, attending and participating in Individual Education Program (IEP) meetings and notifying ELARC of such meetings. The IPP provides that claimant's local school district will complete assessments and schedule IEP meeting to determine his eligibility for special education services. The ELARC service coordinator is responsible for attending IEP meetings when available and monitoring progress annually.

4. Claimant is in the process of enrolling in the Self-Determination Program (SDP). His IPP was developed on February 9, 2024. The SDP process includes creating an annual budget for services and supports funded by service agency. Claimant is in the process of developing a budget and spending plan for the SDP.

5. Claimant transitioned from Early Start Services provided pursuant to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431, et. seq.) and

California Early Intervention Services Act (Government Code § 95000, et. seq.) to school district special educational services provided under IDEA and state law on his third birthday. The local school district assessed claimant and subsequently held an IEP meeting on March 28, 2024. Claimant, his parents, representatives from the school district and claimant's service coordinator were present. The school district is responsible for making an offer of a free appropriate public education (FAPE) to Claimant pursuant to IDEA and state law.

6. The school district's offer of FAPE was for related services only. Claimant's local school district did not offer him placement in a preschool class. According to the school district, it does not offer general education preschool classes and its special education pre-school program was not the least restrictive environment for claimant. Instead, the offer of FAPE was delivery of related services including occupational therapy, physical therapy and speech and language services on the campus of a local elementary school. Claimant's parents placed him in the Arcadia Playschool, a private program, in February of 2024, before the IEP meeting. According to Claimant's parents, the school district denied their request to fund his placement at Arcadia Playschool and they have not appealed the denial or any aspect of the FAPE.

7. When the school district refused to fund placement of claimant at Arcadia Playschool, his parents turned to ELARC for funding. Claimant's parents initially sought funding as a school placement addressing claimant's specialized and unique needs. Later, the request was characterized by claimant as funding of the placement as a daycare or childcare alternative. Parents acknowledged that the tuition for their selected placement is much higher than local daycare and childcare facilities closer to their home. According to claimant's parents, Arcadia Playschool was the closest

program that they found which addressed claimant's needs and that agreed to enroll him because of his developmental disability.

8. Claimants parents are both employed. They work remotely and on hybrid schedules which allow them some flexibility for his needs and those of his sibling who is also developmentally disabled. Claimant's parents would like for him to be cared for and to receive enrichment and stimulation while they work.

9. Parents' income is in excess of 400 percent of the federal poverty guidelines. However, they do have extraordinary expenses related to having two consumers in the home including payment of tuition, medical expenses, enrichment opportunities, special diets and supplements. Claimant's parents have continued to incur debt in excess of their income to secure resources for claimant and his sibling.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As claimant is requesting something service agency has not before agreed to do, claimant bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

2. The standard of proof is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Jurisdiction

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant's representatives, on behalf of claimant, timely requested a fair hearing and jurisdiction for this case was established.

4. An administrative fair hearing to determine the rights and obligations of the parties under the Lanterman Act to appeal a contrary regional center decision is governed by Code sections 4700 through 4714.

5. Code section 4710 delineates two types of notifications that a regional center is required to provide a consumer regarding a decision or action from which a request for a fair hearing can result. In subdivision (a) of section 4710, a regional center is required to provide a notification when it proposes to "reduce, terminate, or change services set forth in an individual program plan [IPP]" or when a consumer is determined to be no longer eligible for services. In subdivision (b) of section 4710, a regional center is required to provide a notification when it decides "to deny the initiation of a service or support requested for inclusion in the [IPP]."

The Self-Determination Program

6. Code section 4685.8 governs regional center consumers participating in the SDP. The purpose of the SDP is to provide participants and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPPs. (§ 4685.8, subd. (a).)

7. “Self-determination” is defined as a voluntary delivery system consisting of a comprehensive mix of services and supports, selected, and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. (§ 4685.8, subd. (c)(6).)

Regional Center Services and Responsibilities

8. In enacting the Lanterman Act, the legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with developmental disabilities. (§ 4620, et seq.) Service agencies determine eligibility and provide funding for services and supports to persons with developmental disabilities under the Lanterman Act, among other entitlement programs. (§ 4500 et seq.)

9. The “services and supports” provided to a consumer include specialized services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).) The services and supports necessary for each consumer are determined through the IPP process. (§§ 4512, subd. (b), 4646.)

10. When purchasing services and supports for a consumer, a regional center shall ensure the following: (1) conformance with the regional center's purchase of service policies, as approved by the Department of Developmental Services pursuant to section 4434, subdivision (d); (2) use of generic services and supports when appropriate; (3) use of other services and sources of funding as contained in section 4659; and (4) consideration of a family's responsibility for providing similar services and supports for a minor child without disabilities. (§ 4646.4, subd. (a).)

11. Section 4659, subdivision (a), provides in pertinent part:

[T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including . . . school districts

12. If a generic agency fails or refuses to provide a regional center consumer with those supports and services which are needed to maximize the consumer's potential for integration into the community, the Lanterman Act requires the regional centers to fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390).)

13. Section 4646, subdivision (d), provides:

[IPPs] shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

14. Section 4646.4 provides:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports if appropriate [. . .]

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(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of 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. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(5) Commencing October 1, 2022, consideration of information obtained from the consumer and, if appropriate, the parents, legal guardian, conservator, or authorized representative about the consumer's need for the services, barriers to service access, and other information.

15. Section 4646.5 describes the planning process for IPPs and provides that IPPs shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years.

16. Section 4648, subdivision (a)(8), states that a service agency's 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.

17. Section 4620.3, subdivision (a) provides the authority for the development of regional center purchase of service policies. Purchase of service policies may establish criteria determining the type, scope, amount, duration, location, and intensity of services and supports purchased by regional centers for consumers and their families. (§ 4620.3, subdivision (e).)

Analysis

18. Claimant is not entitled to funding for private preschool tuition. He has received an offer of FAPE from his local school district designed to meet his unique needs pursuant to his IEP. Claimant's parents agreed to the FAPE offered in his IEP and he has not appealed any aspect of the IEP. After his transition to school district educational services upon exit from the Early Start Program, the local school district became the generic resource with primary responsibility for his educational needs and services. The FAPE provided by the school district conforms to desired outcome number 4 of claimant's IPP. There is no identified or assessed need for a preschool class for claimant and therefore, no gap in service that requires ELARC to step in and fund private preschool for claimant. Preschool tuition is the type of expense that is generally the responsibility of parents of a minor child. Additionally, there was no evidence that Arcadia Playschool provides the type of specialized services and supports contemplated by the Lanterman Act. To the extent that claimant may need specialized supports or services to enable him to participate in the preschool class or desires access to social recreation or community integration programs, those concerns should be addressed to the IPP and IEP teams for consideration. Similarly, requests for daycare and childcare should be presented to the IPP team and considered as part of the collaborative process. For the reasons set forth above, claimant's request for funding of tuition for private preschool at Arcadia Playschool is denied.

ORDER

Claimant's appeal of Service Agency's denial of funding for Arcadia Playschool preschool tuition is denied.

DATE:

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024070174

Vs.

DECISION BY THE DIRECTOR

Eastern Los Angeles Regional Center,

Respondent.

ORDER OF DECISION

On August 30, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day September 18, 2024.

Original signed by:

Pete Cervinka, Acting Director