

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

In the Matter of:

CLAIMANT

vs.

NORTH BAY REGIONAL CENTER, Service Agency.

DDS No. CS0019405

OAH No. 2024080668

DECISION

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on October 4, 2024, by videoconference.

Claimant's mother appeared for claimant, who was not present.

Director of Client Services Beth DeWitt represented service agency North Bay Regional Center.

The record closed and the matter was submitted for decision on October 4, 2024.

ISSUE

Did North Bay Regional Center (NBRC) improperly deny claimant's request for reimbursement of costs for claimant's attendance at Kumon's math and reading programs?

FACTUAL FINDINGS

Introduction

1. Claimant is a six-year-old NBRC consumer who has Prader-Willi Syndrome, a condition that is closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability. Claimant lives with her parents and two siblings.

2. Claimant and NBRC are parties to a Person-Centered Individual Program Plan (IPP) dated March 22, 2024. Pursuant to the IPP, NBRC funds claimant's respite, diaper supplies, and day care services. NBRC also provides reimbursement for social recreational activities, including for dance classes, camping, equestrian therapy, and a specialized therapeutic program claimant attended in Denver, Colorado.

3. Claimant's mother states that, during the IPP meeting, she had discussed with Kellyn Morris, NBRC's service coordinator, the parents' desire to place claimant in a tutoring program. Morris did not testify at hearing, but there is no indication that such a request was relayed to NBRC until April 19, 2024, when claimant's mother emailed Morris requesting reimbursement for claimant's attendance at Kumon. Claimant's mother stated in the email that claimant would benefit socially and recreationally from attending Kumon because she was learning skills that would allow

her “to communicate and interact with people around her,” as well as to keep claimant “on-track academically.”

4. Kumon provides reading and math tutoring and educational services to students. Kumon will complete an assessment of the student to determine where the student stands academically. Based on that assessment, Kumon will provide the student an individualized lesson plan. Students go to a Kumon location twice a week, each time for a half hour, where Kumon will provide individualized reading and math worksheets to the student to complete individually.

5. On May 20, 2024, NBRC issued a Notice of Action, denying claimant’s request for reimbursement. NBRC stated that regional centers cannot fund educational needs and services.

Claimant filed a timely appeal.

NBRC’s Reimbursement Request Process

6. Claudia Calderon, a case management supervisor at NBRC, testified about NBRC’s review of claimant’s request. Pursuant to NBRC’s “Purchase of Service Policy” and “Social Recreational Activities Reimbursement Procedure,” Morris shared the request with Calderon. Calderon researched Kumon, including reviewing its website and reaching out to the company for more information. After completing her research, Calderon consulted with her supervisor, Kelly Weber. Reviewing the request in connection with the Welfare and Institutions Code and NBRC’s policies and procedures, they determined that Kumon was not a reimbursable expense.

7. Weber, NBRC’s Associate Director for Client Services, testified consistently with Calderon. Weber, however, admitted that, before January 1, 2024,

NBRC did fund certain educational services, stating that the law at the time allowed some educational services to be considered as a social recreational service.

NBRC's Position

8. NBRC contends that it is statutorily prohibited from funding Kumon's services because they are educational services and not social recreational services. The primary statutory authority relied upon by NBRC is Welfare and Institutions Code section 4688.22.¹

9. Section 4688.22 went into effect on July 10, 2023, and was amended on July 2, 2024. Section 4688.22 requires a regional center to support and fund "social recreation services, camping services, and nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music." Section 4688.22 also requires regional centers to develop purchase of service policies and related procedures that will "reduce administrative barriers to the utilization of these services by consumers to the fullest possible extent."

Section 4688.22 provides the following guidance to regional centers concerning the purchase of social recreational services, camping services, and nonmedical therapies:

(b) The regional centers shall use the following principles when purchasing social recreation services, camping services, and nonmedical therapies:

¹ All statutory references are to the Welfare and Institutions Code.

(1) Consumers shall receive services and supports in settings that are typical of those in which persons without disabilities engage in social recreation, camping, or nonmedical therapies.

(2) The services described in this section shall promote community inclusion by providing opportunities to build ongoing relationships through or around shared interests or activities, and shall include both of the following:

(A) Activities that directly support a consumer's ability to participate in typical social recreation or other community activities without paid support present.

(B) Activities that may identify or develop specific interests or skills, enable the consumer to engage with others around shared affinities or goals, or otherwise build informal social networks that reduce isolation, strengthen community ties, assist the consumer in advancing their own interests and well-being, and can be a source of voluntary natural supports.

(3) (A) Regional center purchase-of-service policies and related procedures shall promote access to the services described in this section for consumers who are children, for consumers who experience disparities in the receipt of regional center services, and for consumers or

their representatives who are unable to afford paying for services upfront and awaiting reimbursement.

(B) Regional center purchase-of-service policies and procedures shall refer consumers and their families to existing opportunities for social recreation services and camping services by funding those services directly along with the supports they may need to access them.

(4) Regional center purchase-of-service policies and procedures related to services described in this section shall not do any of the following:

(A) Restrict funding of the services described in this section to only those that are specialized or directed toward the alleviation of a developmental disability within the meaning of subdivision (b) of Section 4512.

(B) Require the services described in this section to meet both a recreational and socialization need, or prohibit the purchase of one-on-one services, including private lessons.

(C) In order to further the legislative intent of making such services widely available to consumers, generally prohibit or disfavor purchase of these services.

10. In addition, NBRC referred to its "Social Recreational, camping and non-medical therapies Policy." Approved by the Department of Developmental Services, the policy provides that, to be eligible for such services, an individual needs to be over the age of 3 and be eligible to receive NBRC services; that the requested services must be included in the IPP and relate to an identified goal and/or eligibility diagnosis; and that the requested services must be "integrated or lead to integration or inclusion in activities that are attended by people of all abilities and backgrounds." NBRC contends that Kumon does not meet NBRC's eligibility criteria for funding.

11. Finally, NBRC points out that claimant's IPP does not include any discussion of educational services in the "Social, Leisure & Community Integration" section of the IPP. The IPP states that claimant's parents were "interested in information about social/recreational reimbursement requests (and becoming vendored for reimbursements) to be able to provide [claimant] with opportunities to practice and develop her social skills and interact with peers in her community."

Claimant's Position

12. Claimant's parents agree that the Welfare and Institutions Code does not specifically provide for reimbursement of an educational service as a social recreational service, camping service, or nonmedical therapy. Claimant's parents instead contend that there is nothing in the Lanterman Developmental Disabilities Services Act (Lanterman Act) that specifically prohibits NBRC from reimbursing consumers for an education program such as Kumon as a social or recreational service.

13. Claimant's parents also point to sections 4501, 4502, and 4512, subdivision (b), in support of their argument that the Lanterman Act allows regional centers to reimburse for Kumon's services. Claimant's parents argue that the

Lanterman Act promotes inclusion and independence, and provides that, under section 4501, "consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation."

14. Claimant's mother testified that, although claimant has an individualized education plan and receives several interventions, including occupational therapy, physical therapy, and speech therapy, the services provided by Kumon allow claimant to work on her fine motor, spatial, processing, coordination, and speech and articulation skills. These are skills which, claimant's mother argued, claimant's doctor wanted claimant to continue working on. Claimant's parents selected Kumon because they were looking to "fill in gaps" in services for claimant and determined that Kumon would give claimant the opportunity to foster and build on skills that are important to claimant's ability to interact with others, to meaningfully participate in activities, and to her future success.

15. Claimant's mother also testified to discrepancies in the IPP that she was not able to change because NBRC's IPP process is unclear. At the IPP meeting on March 22, 2024, claimant's mother signed an "Approval of the Individual Program Plan" form, not knowing that the form also served as a record for changes or concerns with the IPP. Claimant's mother thought NBRC would provide a draft IPP for review prior to its implementation.

The IPP was finalized April 12, 2024. Claimant's mother contacted Morris after reviewing the IPP, but claimant's mother did not submit the "Approval of the Individual Program Plan" form recording those discrepancies.

16. Claimant's parents are in the process of applying for the Self-Determination Program. They were advised not to replace the IPP in the meantime. The IPP has not been amended.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (§ 4500 et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) Regional centers have the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).)

2. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

3. Regional centers must establish and follow an internal process when developing, reviewing, and modifying an IPP. (§ 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 purchase of service policies. (§ 4646.4, subd. (a)(1).) They must also identify and not supplant generic resources and supports,

as well as other public and private funding sources. (§ 4646.4, subd. (a)(2)–(3).) A family is responsible for funding services and supports they would have provided a minor child without disabilities. (§ 4646.4, subd. (a)(4).) Regional centers consider the consumer’s need for services, barriers to service access, and other information. (§ 4646.4, subd. (a)(5).) Regional centers are “payers of last resort,” meaning they cannot pay for services available through other state and federal programs. (§§ 4659.10, 4659, subd. (a).)

4. “Services and supports” 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 an independent, productive, and normal life.” (§ 4512, subd (b).) Services and supports for persons with developmental disabilities are not expanded, and no new or different service or support is authorized, “unless that service or support is contained in the consumer’s individual program plan.” (*Ibid.*)

5. In an appeal regarding regional center services, the administrative law judge is empowered to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act].” (§ 4706, subd. (a).)

6. The legislature places “a high priority on promoting the full inclusion and independence of individuals with developmental disabilities, including through opportunities for recreation.” (§ 4688.22, subd. (a)(1).) As such, the legislature includes “social recreation services, camping services, and nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music,” as “among the services and supports within the meaning of subdivision (b) of Section 4512” and provides that

these services “be made widely available to consumers, not only for socialization, but to lead the lives that they want in the community.” (§ 4688.22, subd. (a)(2).)

Regional centers cannot restrict social recreational, camping, and nonmedical therapy funding to those services “that are specialized or directed toward the alleviation of a developmental disability within the meaning of subdivision (b) of Section 4512,” cannot require that services “meet both a recreational and socialization need, or prohibit the purchase of one-on-one services, including private lessons,” and cannot “generally prohibit or disfavor purchase of these services.” (§ 4688.22, subd. (b)(4)(A)–(C).)

7. Claimant’s attendance at Kumon does not qualify for regional center funding. Claimant has not adequately shown that Kumon was a requested service or support, or that the request was “contained” in claimant’s IPP. Claimant has also not shown that Kumon gives claimant “opportunities to practice and develop her social skills and interact with peers in her community,” as stated in her IPP. Importantly, there is no evidence that Kumon provides peer socialization or recreational activities that would qualify as a social recreational service.

Although claimant may be correct that the Lanterman Act does not specifically prohibit the reimbursement of an educational service as a social recreational service, camping service, or nonmedical therapy, section 4688.22, subdivision (b)(2), does require that these services “promote community inclusion by providing opportunities to build ongoing relationships through or around shared interests or activities.” Claimant has not demonstrated that Kumon either “promote[s] community inclusion” or provides “opportunities to build ongoing relationships through or around shared interests or activities.”

Ultimately, Kumon is an educational service. And because Kumon is not a specialized service and support or a special adaptation of a generic service and support that is "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," claimant's attendance at Kumon must fall within parental responsibility. (§§ 4512, subd (b), 4646.4, subd. (a)(4).) NBRC properly denied the request for reimbursement.

ORDER

Claimant's appeal is denied.

DATE:

MARIO M. CHOI

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 pursuant to subdivision (b) of Welfare and Institutions Code section 4713 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.

