

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DDS No. CS0020535

OAH No. 2024120080

DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 6, 2025. The matter was submitted for decision at the conclusion of the hearing.

Claimant, was represented by his parents, who are his conservators. The names of claimant and his family members are omitted to protect their privacy and maintain the confidentiality of this proceeding.

Sonia Tostado, Director's Designee, represented Westside Regional Center (service agency).

ISSUE

May service agency terminate claimant's Floortime therapy?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency's Exhibits 1 through 20, the testimony of service agency employees Sonia Tostado and Jessica Haro, and the testimony of claimant's parents.

FACTUAL FINDINGS

1. Claimant is a 20-year-old young man who is a consumer of service agency under the eligibility category of autism. Claimant has Fragile X syndrome and has been diagnosed with an anxiety disorder for which he takes medication. He lives in the family home with his parents and younger sibling who is also a service agency consumer. Claimant currently attends a transition program through his local school district which includes supported employment for a few hours per day at a retail store.

2. In the spring of 2023, when claimant requested reauthorization for Floortime through August of 2023, service agency, reviewed claimant's services, progress reports, and Individual Program Plan (IPP). After review, the service agency provided claimant with a Notice of Action (NOA) terminating the funding for Floortime therapy. Claimant filed an appeal and requested a fair hearing. In July of 2023, to partly resolve the matter, the parties agreed to continue funding Floortime therapy and to allow a fade out of the service.

3. In July of 2024, claimant requested that Floortime therapy be reauthorized. Service agency denied the request and provided claimant an NOA on September 4, 2024. According to the NOA, the reason for termination of the service was "[t]he Clinical team at Westside Regional Center completed a comprehensive program review and determined that Floortime intervention is no longer effective in addressing the goals identified in [claimant's] IPP." Claimant filed a timely appeal and requested a hearing.

4. Claimant's March 20, 2024 IPP provides the following goals/desired outcomes:

[Outcome #1] [Claimant] will continue to live at home with his parents and develop a loving and understanding relationship with them.

[Outcome #2] [Claimant] will attend an appropriate program that enables him to continue to develop his academic skills.

[Outcome #3] [Claimant] will learn age appropriate social skills and social cues so that he can successfully interact with children and adults. He will have opportunities for social and recreational activities including settings with children without disabilities.

[Outcome #4] [Claimant] will have the benefits of medical treatment for optimal health, including medical care for issues related to his developmental disability.

5. The IPP provides that claimant is making “reasonable progress” on each of the goals. (Ex. 6, p. A38.)

6. Claimant receives in-home behavioral support services to support Outcome #3. Currently, his in-home behavioral support is Floortime therapy, which is provided by vendor SmartStart.

7. Claimant has received 54 hours per month of Floortime therapy funded by service agency since 2010. Claimant’s most recent Floortime therapy goals, as contained in his May 22, 2024 progress report, include: (1) expanding communication with family and peers; (2) eating new foods and proper use of utensils; (3) practicing good general workforce skills; and (4) learning time management. Each of the goals has several related measurable objectives. According to the progress report, claimant has continued to work and progress on each of the goals and has met several of his objectives. Prior progress reports (Exs. 15,16, 17, 18, and 19) show claimant has met some previous goals and made progress on objectives related to others.

8. At hearing, but not in the NOA, service agency representatives suggested that Applied Behavioral Analysis (ABA) would be more appropriate for a consumer of claimant’s age. Claimant’s parents provided credible testimony of claimant’s progress using Floortime therapy and the distress he suffered when he previously tried ABA. According to his parents, claimant became very anxious and felt rejected and demoralized by ABA. Claimant had difficulty with the data-driven nature of ABA and the lack of interaction with the therapist. Claimant was left feeling that he was “never good enough” because he did not meet the goals established by the ABA therapist and became very despondent. Claimant’s parents understand the workings and goals of ABA, and their other child has had a good experience with ABA. However, the constellation of claimant’s various disabilities made ABA therapy detrimental to his

mental health. Claimant's parents also are aware that Floortime therapy is generally used for young children and is rarely used for adults. Claimant's parents believe that he needs additional support and assistance for social and adaptive skills so that he can function in the world.

9. Jessica Haro is a Board Certified Behavioral Analyst (BCBA) who holds a Bachelor's degree in Applied Psychology and a Master's Degree in Education. She has extensive experience as a behaviorist and a social skills instructor. Ms. Haro, a consultant for service agency, testified in support of service agency's position. Ms. Haro testified that "she has not seen research" that supports the use of Floortime therapy for consumers over the age of 18. She stressed that ABA, unlike Floortime therapy, is a research-based therapy with proven effectiveness. Ms. Haro has never met claimant, but she has reviewed "his file" and all the progress reports of his Floortime therapy that are in evidence. She also was involved in the decision to discontinue claimant's Floortime therapy. According to Ms. Haro, at claimant's age, he should be focusing on job skills, adaptive skills, and independent living skills even if his plans do not include independent living. Ms. Haro believes Floortime therapy is not the appropriate service for such instruction at claimant's age.

10. Sonia Tostado, the Director's designee for the hearing, is also a social worker employed by service agency. Ms. Tostado holds a Bachelor's degree and Master's degrees in Public Health and School Psychology. She is also licensed as a school psychologist. According to Ms. Tostado, Floortime therapy, also known as the "Greenspan approach," is not appropriate for individuals after the age of 17. She also opined that the service that SmartStart renders to claimant is not traditional Floortime therapy and would be more properly characterized as adaptive skills training. According to Ms. Tostado, ABA, which is funded through health insurance, not

Floortime therapy, is the appropriate method to deliver adaptive skills training to consumers like claimant. Like Ms. Haro, Ms. Tostado has never met claimant, but has reviewed his IPP and progress reports.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4717.) Claimant's parents timely appealed service agency's NOA proposing to terminate claimant's Floortime therapy through SmartStart. Therefore, jurisdiction exists for this appeal. (Factual Findings 1-10.)

2. The standard of proof in this case 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.)

3. A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or proposing to make changes to the status quo generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Thus, service agency has the burden of proving by a preponderance of the evidence that it may terminate claimant's Floortime therapy.

4. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman

Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.) Welfare and Institutions Code (Code) section 4646 provides that an IPP shall be developed by an IPP team which includes the consumer and the consumer's family.

5. Pursuant to Code section 4640.7, subdivision (a), regional centers shall assist persons with developmental disabilities and their families in securing needed services and supports. Code section 4640.7, subdivision (b), specifies that such assistance includes service coordination, in which each consumer shall have a designated service coordinator who is responsible for providing or ensuring that needed services and supports are available to the consumer. Code section 4647, subdivision (a), provides that service coordination includes the collection and dissemination of information, as well as monitoring the implementation of an IPP to ascertain that objectives have been fulfilled and to assist in revising the IPP as necessary.

6. Claimant's Floortime therapy is a service funded by service agency in conformity with the Lanterman Act. (Code, § 4512, subd. (b).) Pursuant to Code sections 4501 and 4512, subdivision (b), service agency is required to determine the cost-effectiveness and appropriateness of each service and support contained in claimant's IPP.

7. In this case, claimant has utilized Floortime therapy for approximately 14 years with some success. The therapy is designed for individuals under the age of 17 and is not research-based. Claimant has not been successful with ABA therapy in the past because of the negative impacts of ABA on his mental health. The Floortime therapy that claimant has received focuses on adaptive skills including communication, feeding, and job readiness. Claimant's has a chronological age of 20 years old. His

developmental age equivalent and cognitive abilities were not established by the evidence, but the desired outcomes set forth in his IPP and the goals and objectives of Floortime therapy are targeted to obtain skills that one would expect a typically developing individual to have mastered before the age of 18. Claimant has made slow, but steady progress using Floortime therapy, and the service agency has failed to meet its burden of proof to establish that the service should be terminated at this juncture. Under the unique set of circumstances presented here, it is not unreasonable to continue claimant's Floortime therapy for six months, during which time, the service shall be tapered off and after which time the IPP team, including claimant, shall meet to discuss claimant's needs for adaptive skills training and Independent Living skills services.

ORDER

1. Claimant's appeal is granted.
2. Service agency shall continue funding claimant's Floortime therapy for six months and develop a plan to taper the service.
3. Within 90 days, an IPP meeting shall be held to address claimant's adaptive skills and independent living skills needs.

DATE:

GLYNDA B. GOMEZ
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 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.