

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for Equestrian Therapy, Drama
Lessons, Voice Lessons, and Dance
Lessons:

OAH No. 2016110049

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 26, 2017.

Claimant's representative did not appear. At 11:17 p.m., the night before this hearing, claimant's representative sent in e-mail stating that he "will not make it tomorrow for the hearing. I do not want to reschedule. I'm in the process of obtaining the chair for [claimant] and I will just wait to see the outcome." (Exhibit A.)

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

IRC established that satisfactory service had been effectuated on claimant. Claimant's representative's e-mail advised that he did not want to reschedule, which was interpreted to mean he was not requesting a continuance. Even if he had, the e-mail did not establish good cause for his failure to appear. IRC elected to proceed with a prove-

up hearing. The record was open, evidence was received, and the matter was submitted on April 26, 2017.

ISSUES

1. Should IRC fund claimant's request for Equestrian Therapy?
2. Should IRC fund claimant's request for Drama Lessons, Voice Lessons, and Dance Lessons?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On September 29, 2016, IRC notified claimant that his requests that IRC fund equestrian therapy, drama lessons, voice lessons, and dance lessons were denied.

On October 12, 2016, claimant requested a fair hearing. Claimant was thereafter given notice of this hearing.

EVIDENCE PRESENTED AT HEARING

2. Claimant is an almost 17-year-old male who qualified for regional center services on the basis of a diagnosis of autism spectrum disorder. He also has a chronic medical condition of speech disturbance, although he is verbal and speaks in complete, understandable sentences.

3. Claimant's Individual Program Plan identified his abilities and needs. Claimant is very active, participates in karate and horseback riding, is ambulatory, and has challenges with communicating. He attends school, is also partially homeschooled, and attends a homeschool enrichment program. To help with communication skills, his parents pay for drama and voice lessons which they have requested that IRC fund. Claimant also participates in music lessons, horseback riding, and dance lessons that his parents would like IRC to fund because his parents want him to be around other

children as much as possible so that his social behaviors will improve. The personal/emotional growth section documented that claimant displays socially inappropriate behaviors several times per day including emotional outbursts, meltdowns, and impatience.

4. Documentation from the homeschool enrichment program indicated that it provides numerous classes for children 5 to 17 years of age, including drama, dance, voice, and horseback riding lessons. Although IRC pointed to numerous courses that were provided for children "ages 13 and up," and other ages "and up," the language at the beginning of the class schedule indicated that the programs were offered only for "children in kindergarten through high school (ages five-17)," making it unclear whether claimant, who turns 18 in a few days, would be allowed to participate in those programs. However, claimant bore the burden of proof and offered no evidence at this hearing refuting IRC's position that he could take those classes.

5. Documentation from the San Bernardino Center for Individual Development, "a regional recreational center that focuses on providing recreation programs for people of all ages with physical, developmental and mental disabilities," identified the various programs offered.

6. IRC's purchase of service policy indicated that families are counted on to carry out the same responsibilities for their family members with disability as they do for other family members. IRC can purchase occupational/physical therapy for consumers who have a demonstrated need and who do not qualify for services through generic resources.

7. Keniece Tillman, an IRC Program Manager who supervises the unit that oversees claimant, testified that IRC denied the request because claimant failed to provide evidence that the requested services would alleviate or ameliorate his autistic spectrum disorder, the requested services were not medically necessary or

recommended; and the requested services were his parents' responsibility to provide. There were no exemptions that would allow IRC to fund the requested services

8. Tiffany Pineda, an IRC Consumer Services Coordinator who handles claimant's case, testified about the services and supports he receives. She noted that the requested services are services that all parents commonly fund and that IRC must consider generic resources when making funding determinations. Ms. Pineda testified about the documents introduced explaining that they showed that the services requested by claimant are offered by other generic resources in the community. She explained that if claimant believed that the requested services were medically necessary, he could request them through his insurer. Ms. Pineda testified that owing to the availability of generic resources in the community and prohibitions against IRC purchasing the requested services, the requests were denied.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of

children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (b), defines “services and supports” as:

[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 independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The

determination 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. . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

5. Welfare and Institutions Code section 4646, subdivision (a), provides in part:

It is the intent of the Legislature to ensure that the [IPP] and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provisions of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6. Welfare and Institutions Code section 4646.4 requires the regional center to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

7. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer's individual program plan.

[¶] . . . [¶]

(8) Regional Center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

[¶] . . . [¶]

(16) Notwithstanding any other law or regulation, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically

proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice.

8. Welfare and Institutions Code section 4648.5 suspended the regional centers' authority to purchase various services including nonmedical therapies, which included but were not limited to, specialized recreation, art, dance, and music.

9. Welfare and Institutions Code section 4659 requires the regional center to identify and pursue all possible sources of funding including, but not limited to, governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, federal supplemental security income and the state supplementary program, and private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. Subject to certain limitations, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. This section "shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay."

EVALUATION

10. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating his need for the requested services, equestrian therapy, drama,

voice and dance lessons. Claimant failed to meet that burden. He did not provide evidence that the requested services were not a family responsibility, that there were not generic resources available to him, and he provided no evidence that the requested services would ameliorate or alleviate his developmental disability.

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ORDER

Claimant's appeal from the Inland Regional Center's determination that it will not fund equestrian therapy, drama, voice, and dance lessons is denied. Inland Regional Center shall not fund those requested services.

DATED: May 10, 2017

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.