

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M.T.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH CASE No. 2012070372

DECISION

Administrative Law Judge Deena Ghaly of the Office of Administrative Hearings heard this matter on August 20, 2012, in Torrance, California.

Claimant's father and conservator, Steve T. represented Michelle T (Claimant)¹.

Gigi Thompson, Manager of Rights Assurance, represented the Harbor Regional Center (HRC).

Oral and documentary evidence was received and the matter was submitted for decision on the hearing day.

ISSUE

Should Service Agency fund Claimant's attendance in the Independent Living Skills program offered by Cypress College?

¹ Claimant and her father are identified by first names and last initial to protect their privacy.

FACTUAL FINDINGS

I. JURISDICTIONAL FACTS AND PARTIES' CONTENTIONS

1. After Complainant completed high school and an adult transitional program, HRC referred her to the Cole Norwalk Day Program (Cole Norwalk), a program that provides vocational training, partial work inclusion, and independent living skills for disabled adults and is located within HRC's catchment area. Claimant and her family prefer that she attend the independent living skills lab at Cypress College (Cypress College), which is outside HRC's catchment area. HRC does not agree to fund the Cypress College program. Claimant timely filed a Fair Hearing Request seeking review of HRC's determination and this hearing ensued.

2. HRC contends that Cole Norwalk is the better program for Claimant because it is within its catchment area, it is considered an inclusive versus a segregated program, and it teaches work-related skills and helps its participants obtain gainful employment. Claimant contends that Cypress College is an established supportive and closely supervised program that would help transition Claimant to the next stage in her life under circumstances best suited to maximizing her opportunities for success. Cypress College would also provide an opportunity for Claimant to experience college life and possibly partake in college classes and activities.

II. CLAIMANT'S BACKGROUND

3. Claimant is a 22-year-old Service Agency consumer, with a diagnosis of autism. She resides with her parents in the City of Cerritos.

4. Claimant is generally well-behaved and cooperative; however, she can become angry when she does not get her way. With respect to adaptive living skills, Claimant is fully ambulatory and can independently execute self-care. Her receptive

language skills are somewhat stronger than her expressive abilities. At home, she helps wash dishes, picks up her clothes, folds clothes out of the dryer, makes her bed and can bake cookies and use the microwave. She understands street signs, finds streets on a map, and can order meals at fast food restaurants. Claimant needs routine and structure. Without them, she becomes more prone to angry outbursts. Because she does not understand the dangers of approaching strangers and because she has a habit of touching objects on a hot stove, Claimant cannot be left unsupervised.

5. Claimant can read at a 4th grade level with limited comprehension. Her rote arithmetic skills are strong. She can add, subtract and multiply numbers without a calculator. She can correctly count out change up to \$50.

6. Claimant has numerous interests and hobbies. She can write in Japanese, she creates her own anime and other art and is noted to be very creative, she ice skates and she can use a computer. Claimant has some work experience, having worked at a café at her school and the Cerritos library. She is competent and conscientious when she has worked but is reluctant to take on assignments. Notwithstanding, Claimant has expressed interest in working at either a bakery or a library.

7. Claimant has been found eligible and has been enrolled in special education since she was three. Approximately four years ago, Claimant graduated from Cerritos High School, where she was enrolled in a special day class. After high school, Claimant entered a four-year transition program at the ABC School District, which she completed in July 2012.

III. CLAIMANT'S NEEDS

8. Claimant's most recent individual family service plan (IFSP), written after a meeting on June 29, 2012, notes that her hopes and dreams for the future are to "finish

school and learn a skill that best fits her abilities so she can support herself and be [as] independent as possible.”

9. Claimant’s Transition Program teacher is Marci Levins (Levins). Levins has known Claimant since she was in high school and attended Levins’ camping excursions. She has been Claimant’s primary teacher for the last four years. Levin credibly testified about Complainant’s need for security and sense of familiarity in order to succeed. Levins routinely took her students, including Claimant, to visit Cypress College among other programs. Additionally, some of Levins’ former students and former colleagues of Claimant at the Transition Program currently attend the ILS Lab at Cypress College. Thus, Claimant has some familiarity with the Cypress College campus and knows some of the students at its ILS Lab.

IV. PROGRAMS AVAILABLE TO CLAIMANT

10. Cypress College is housed on a community college campus and relies on the college facilities and experience to teach independent living skills and provide its students with exposure to college-level academics and the cultural and community life of a college campus. Most instruction takes place on site, typically from 9:00 a.m. to 2:30 p.m., and focuses on development of practical living skills, functional communication, community integration, mobility training, and vocational preparation. Levins, who is both very familiar with the Cypress College program and with Claimant, credibly testified that Cypress College is well-suited for both Claimant’s need for security and familiarity and for her burgeoning interests and intellectual development and aspirations.

11. The ILS Lab facility is not remote in place from the rest of the campus. While students at the ILS Lab do not attend classes outside the program, ILS faculty use the campus and integrated community for learning opportunities in conjunction with

classroom teaching. Job counseling and training is part of the curriculum. Students who excel at the ILS Lab can “graduate” to a more advanced program that allows them to access classes and activities throughout the campus.

12. Inclusion centers such as Cole Norwalk typically divide teaching time between work assignments and independent living skills. Among the activities offered are opportunities for the consumers to form clubs such as cooking clubs, art clubs and music clubs, to pursue their interests. Inclusion programs closely monitor the consumers with a staff-client ratio of one to three. The Cole Norwalk facility is not yet operational but is anticipated to open soon.

13. Cypress College is run by the North Orange County Community College District, and is a vendored by the Regional Center of Orange County. It is, however, just a few miles away from HRC and closer to Claimant’s home than is the Cole Norwalk facility. Nothing in the record indicates the Cypress College program costs more than that offered by Cole Norwalk.

14. The professional most familiar with Claimant, Levins, opined that she will benefit much more from the ILS Lab at Cypress than an inclusion program such as Cole-Norwalk because Claimant is already familiar with Cypress and wants to attend it, it has the requisite structure that she needs to succeed and it has the college experience and environment. In that regard, Cypress College is unique within the universe of independent living skills programs available for developmentally disabled young adults such as Claimant. Moreover, an inclusion program such as Cole Norwalk, which typically serves consumers with a range of extent of disability from severe to moderate, may cause Claimant to regress since she would be among the most high-functioning of the participants

15. HRC is basing its position regarding Claimant’s placement at Cole Norwalk

on what its professionals gleaned largely from the June 2012 IFSP and its own general philosophy and practices. Claimant's father's uncontroverted testimony was that, for the last few years, Claimant's service coordinator, Ed Swan, prepared the IFSP's without interviewing Claimant.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section² 4500 et seq., 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.)

2. Section 4512, subdivision (b), defines the services and supports that may be funded through the regional service centers: "The determination of which services and supports are necessary for each consumer 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 plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option. ..."

3. The services and supports available to a consumer include those directed "toward the achievement and maintenance of independent, productive, normal lives," and, specifically include community integration services, daily living skills training, and social skills training. (§ 4512, subd (b).)

² Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

4. In repeating the mandate throughout its provisions, the Lanterman Act stresses that the preferences, wishes and unique needs of claimants and their families must play a central role in determining which services will be provided: "A consumer of services and support, and where appropriate, his or her parents, legal guardian, or conservator, shall have a leadership role in service design." (§ 4501.) "The right of individuals with developmental disabilities to make choices in their own lives requires that all...regional centers shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator." (§ 4502.1.) "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." (§ 4648, subd. (a)(1). "Services and supports shall be flexible and individually tailored to the consumer". (Ibid, subd. (a)(2).)

5. Regional centers are required to meet the individual wishes and needs of claimants by identifying, establishing relationships with, and utilizing a broad array of service providers. "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." (§ 4501) "A regional center may, pursuant to vendorization³ or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and

³ "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. (§4648, subd. (a)(3)(A).) Lanterman Act.

consumer...determine will best accomplish all or any part of that consumer's program plan." (§ 4648, subd. (a) (3).)

6. The evidence presented at the hearing established that the Cypress College independent living skills services program is the proper choice for Claimant. The structure provided by the program is suited to her temperament. The resources available at Cypress College will provide Claimant with the opportunity to explore her interests and capacities. The vocational component of the program is no less likely to assist Claimant in successfully obtaining and maintain gainful employment than the inclusion center. The opportunities for Claimant to graduate to the more challenging aspects of the Cypress College program may motivate her to reach for greater achievement. No objection was raised on the grounds of cost; the Cypress College program will not be costlier than that offered at Cole Norwalk or at any another similarly-vendored independent living skills service provider. Thus, the Cypress College program is the best alternative to meet Claimant's identified needs and aspirations, is cost-effective, and its selection recognizes the consumer's preferences, as required by the

7. HRC's objections are insufficient to warrant a contrary result. While the Cypress College program is indeed located outside its catchment area, there is no specific prohibition in the Lanterman Act against providing services just outside the catchment area. Although preferring to contract with its own vendors, HRC has not identified any problems with Cypress College as a vendor.

8. Accordingly, by reason of factual finding numbers 1 through 15 and legal conclusion numbers 1 through 7, HRC shall fund the independent living skills program provided by Cypress College.

ORDER

Claimant's appeal is granted, and HRC shall fund the independent living skills services offered by Cypress College.

Dated: September 4, 2012

/s/

DEENA GHALY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.