

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JORDAN C.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH NO. 2012070875

DECISION

Administrative Law Judge Humberto Flores, Office of Administrative Hearings, heard this matter in Los Angeles, California, on September 12, 2012.

Judy Castaneda, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (regional center or service agency).

Jordan C. (claimant) was represented by Matthew Pope, Attorney at Law.

Evidence was received and the record was left open until September 19, 2012, to allow the parties to submit documentary evidence on the side effects of the prescription drug "Risperdal." Claimant timely submitted his documentation, which was marked and admitted as exhibit B. The regional center timely submitted a letter from Dr. Alexander Beebee, a psychiatrist, which was marked and admitted as exhibit 13. The matter was submitted for decision on September 19, 2012. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order.

ISSUE

The sole issue to be determined in this matter is whether the regional center is obligated to fund the cost of claimant's swimming lessons provided by the Rose Bowl Aquatics Center in Pasadena.

FACTUAL FINDINGS

1. Claimant is a 20-year-old consumer of regional center services based on a diagnosis of Autism. His level of Autism is considered severe.
2. Claimant had been taking swimming lessons four times a week at the Rose Bowl Aquatic Center from 2005 through 2010. On August 17, 2010, the undersigned issued a decision affirming the Notice of Proposed Action wherein the regional center terminated funding for said swimming lessons.
3. On April 24, 2012, claimant requested the regional center to reinstitute funding for the swimming lessons one hour per lesson two times per week.
4. On June 21, 2012, the regional center notified claimant in a Notice of Proposed Action that it denied claimant's request to reinstitute funding for swimming lessons as a result of a change in California law. Specifically, the regional center cited Welfare and Institutions Code sections 4512, 4648.5, 4646, subdivision (d), and 4646.4, subdivision (a), as support for its decision to deny funding for claimant's swimming lessons.
5. Claimant timely filed a Request for Fair Hearing.
6. The regional center contends that the swimming lessons are social or recreational and contends that claimant's request should be denied as directed by Welfare and Institutions Code section 4648.5, subdivision (a).
7. Claimant is 20 years old. He was prescribed Risperdal from the age of four to 20. One of the side affects of Risperdal is weight gain. In 2010, when claimant was

taking swimming lessons he weighed approximately 230 pounds. Since he stopped his swimming lessons claimant has gained 58 pounds and now weighs 288 pounds.

Claimant also suffers from a foot condition in which certain bones in his feet are fused causing pain when he engages in weight bearing exercise. Claimant's mother testified that claimant is unable to ride a bicycle by himself so she attempts to ride a tandem bicycle with claimant but he simply rides along but does not pedal. As a result he does not get sufficient exercise through this activity. The swimming program helped claimant because it is a non-weight bearing exercise program. Claimant mother also testified that he needs a swimming program with one-to-one instruction that is offered at the Rose Bowl Aquatic Center otherwise he simply stands in the water.

LEGAL CONCLUSIONS

1. In 1977, the California Legislature enacted the Lanterman Developmental Disabilities Act (the Lanterman Act) "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (See, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. Under the Lanterman Act, the "State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (Welf. & Inst. Code, § 4501.)

3. Notwithstanding the responsibilities imposed on regional centers to ensure that California's developmentally disabled population receives the services and supports required under the Lanterman Act, due to the current fiscal and economic crisis in California, the Legislature passed Welfare and Institutions Code section 4648.5, which, effective July 1, 2009, suspended the authority of regional centers to purchase certain

services pending implementation of more permanent budgetary solutions. The targeted services are: 1. Camping services and associated travel expenses; 2. Social recreation activities, except for those activities vendored as community-based day programs; 3. Educational services for children three to 17, inclusive, years of age; and 4. Non-medical therapies, including, but not limited to, specialized recreation, art, dance and music. (Welf. & Inst. Code, § 4648.5, subd. (a).) The new statute also provides:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychological effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

(Welf. & Inst. Code, § 4648.5, subd. (c).)

4. In this case, the regional center established that the swimming lessons are subject to suspension under Welfare and Institutions Code section 4648.5, subdivision (a)(2). However, claimant gained 58 pounds since his swimming lessons were terminated two years ago. This fact proved that the termination of swimming lessons negatively affected his health. Further, claimant established that the swimming program is a "critical means for ameliorating the physical, cognitive, or psychological effects of [claimant's] developmental disability." Therefore, claimant qualifies for an exemption. As a result, he should receive funding for swimming lessons.

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ORDER

The decision of the Eastern Los Angeles Regional Center denying funding for swimming lessons provided by the Rose Bowl Aquatics Center is overruled. Claimant's appeal is granted. The Eastern Los Angeles Regional Center shall provide funding for claimant to receive two hours of one-to-one swimming lessons per week at the Rose Bowl Aquatics Center in Pasadena

DATED: October 8, 2012



HUMBERTO FLORES

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 90 days.