

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

In the Matter of the Fair Hearing Request of:

Claimant

v.

Frank D. Lanterman Regional Center

OAH No. 2019051325

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 9, 2019, in Los Angeles, CA.

Claimant was represented by his mother.

The Frank D. Lanterman Regional Center (FLRC or Service Agency) was represented by Miriam Grajeda, Manager.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 9, 2019.

The proceeding was translated by an interpreter.

FACTUAL FINDINGS

SUMMARY

1. Claimant requested a full psychological evaluation. FLRC denied the request and Claimant appealed. Claimant contends that he requires a new full psychological evaluation to determine the cause of his behavioral regression. FLRC contends that a full psychological evaluation is not necessary and that Claimant needs a behavioral assessment and mental health evaluation which are available through generic resources. For the reasons set forth below, Claimant's appeal is denied.

Jurisdictional Matters

2. Claimant is a 12-year-old boy eligible for FLRC services pursuant to his diagnosis of Autism Spectrum Disorder (ASD). Claimant's mother also reports that he has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Rheumatoid Arthritis.

3. On March 19, 2019, Claimant requested a full psychological evaluation be performed to determine the causes of his behavioral regression and the appropriate treatment. After consideration and review, on April 15, 2019, FLRC issued a Notice of Proposed Action denying Claimant's request. On May 15, 2019, Claimant appealed the denial and this hearing ensued.

Background

4. Claimant was assessed by a Service Agency psychologist in 2009 when he was two years old. At that time, it was determined that Claimant was eligible for FLRC services pursuant to his diagnosis of Autism (now ASD). A subsequent

psychoeducational assessment performed by his local school district in 2016 was consistent with the FLRC assessment. A school district triennial psychoeducational assessment is in progress, but has been delayed.

5. In October of 2018, while a student in a local charter school, Claimant experienced dramatic regression. He went from being relatively social to non-verbal and refused to attend school. He also refused to participate in assessment and intervention attempts. Currently, Claimant receives home instruction from a District home instruction provider. Mother credibly testified that the instructor has informed her that Claimant will not interact with him and he is therefore unable to deliver any instruction. Claimant is involved in a due process proceeding with the school district with the objective of obtaining free appropriate public education (FAPE) in a Non-Public school setting.

6. Claimant last attended school in October of 2018 when he threatened to stab his behavior aide. He has also attempted to elope from the school, requiring police intervention. Currently, he stays home, refuses to leave the house and plays video games. He has ceased any outside interests and is entirely non-verbal. FLRC has provided Crisis Line intervention services which were discontinued when Medi-Cal funded Applied Behavioral Analysis (ABA) services commenced. In addition to ABA services, Claimant receives 100 hours per month of respite in lieu of an afterschool program, 30 hours of In-Home Support Services (IHSS) per month and mental health services. The mental health services will be discontinued until an appropriate provider can be located.

7. Claimant's service coordinator Celene Hemen met with the FLRC behavior planning team about Claimant's request. The team consisted of Jean Johnson, PhD, BCBA, autism specialist Lisa Pirechello and the service coordinator. The team

concluded that behavior intervention was the appropriate service and assessment for Claimant at that time. After discussion with Claimant's mother, Ms. Hemen also consulted with Dr. Mandy Moradi, FLRC's staff clinical psychologist. Dr. Moradi also concluded that an additional psychological assessment would not provide the information needed to assist Claimant. Instead, Dr. Moradi recommended follow up with mental health providers for psychiatric services possibly including medication and a behavioral assessment.

8. At hearing, Claimant's mother provided a copy of the school district's December 11, 2018, social emotional assessment (Ex. B) and a functional behavioral assessment (FBA) dated January 11, 2019, prepared by California Behavioral Treatment funded by Medi-Cal through LA Care Health Plan.

9. The Social Emotional Assessment used a variety of tools including a parent interview, a teacher interview, the Behavior Assessment System for Children-3 (BASC) rating scales completed by a parent and a teacher, the Conners' 3 Parent and Teacher Rating Scales and the Children's Depression Inventory-2, Parent and Teacher rating scales. The assessor was not able to interview Claimant, and Claimant did not complete any of the rating scales. The assessor was able to observe Claimant for approximately two hours at school on October 15, 2018, and 90 minutes on October 16, 2018. These were the last two days that Claimant attended school. According to the assessor, Claimant was reported by staff to have escalating and aggressive behaviors. He threatened a staff member and attempted to elope, requiring police intervention. The assessor recommended that Claimant receive Designated Instructional Services (DIS) in Educationally Related Intensive Counseling Services (ERICS) and an FBA. Claimant did not return to school or avail himself of the ERICS.

10. The FBA was completed in January of 2019. The FBA listed Claimant's medical diagnosis as ASD, Oppositional Defiant Disorder, moderate, ADHD (combined type) and Unspecified Anxiety Order. The FBA also noted that Claimant suffers from Obesity and Hypothyroidism. The FBA noted food selectivity and refusal, severe tantrum behavior, severe aggression, self-injurious behavior, elopement, vocal protest/non-compliance, and refusal to attend school, use any type of transportation or participate in therapy. Claimant's family and the behavior therapist set measurable goals and objectives. Claimant has been receiving behavioral therapy for approximately one month. Mother has seen slow progress over the month and hopes for more progress.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4501 provides that services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.

2. Welfare and Institutions Code section 4512, subdivision (b), provides that the determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. It further provides that 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 services 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.

3. Welfare and Institutions Code section 4646, subdivision (b), provides that the individual program plan is developed through a process of individualized needs determination.

4. Welfare and Institutions Code section 4659, subdivision (a)(1)-(2), provides that the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following: (1) 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 and federal supplemental security income and the state supplementary program. (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

5. Claimant requested a complete psychological assessment in hopes of determining the cause of Claimant's regression and maladaptive behaviors especially his refusal to attend school and his loss of verbal ability. FLRC rightly concluded that a psychological assessment was not the appropriate tool for Claimant's needs. Instead, a more targeted assessment of his behavior and his mental health was needed. Those assessments were available through generic resources such as Medi-Cal and the local school district. Claimant has now availed himself of those resources and has received assessments and services. Claimant failed to establish that FLRC must conduct a new psychological assessment.

However, given the changes in Claimant's generic services and his overall deterioration, an Individual Program Plan (IPP) meeting would be appropriate at this time to review the available services and resources to meet Claimant's needs.

ORDER

Claimant's appeal is denied.

DATE:

GLYNDA B. GOMEZ
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.