

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,
vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2018071231

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 11, 2018, in Los Angeles.

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency). Claimant's mother represented claimant, who was not present for the hearing.¹ Claimant's mother was assisted by a certified interpreter, Diana Chuy del Omo.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on September 11, 2018.

ISSUE

Whether the Service Agency must fund claimant's mother's training at a week-long leadership program in Turlock, California.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 10; claimant's exhibits A through D.

¹Family titles are used to protect the privacy of claimant and his family.

Testimony: Celene Heman, Maureen Wilson, Edward Perez; claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a nine-year-old boy who is a consumer of FDLRC based on his qualifying diagnosis of Autism Disorder.

2. Claimant currently receives from FDLRC insurance copayments for Applied Behavior Analysis services, 90 minutes per week of social skills training, and 16 hours per month of respite services with accredited nursing, in accordance with claimant's Individual Program Plan (IPP). The most recent IPP meeting was held on October 4, 2017; claimant's mother did not sign the IPP for that date because, she testified, it did not include certain information she considers important. The IPP reflects that, in order to help claimant achieve goals in the category of community and social life, claimant's service coordinator at FDLRC would share information about resources available through the Koch-Young Resource Center (Koch-Young) and the Network of Care program. (See Factual Findings 7-14.) To assist claimant with educational goals, the service coordinator would attend Individualized Education Program meetings with claimant's school district and provide a referral for educational advocacy support, as necessary. A new IPP meeting was held on August 21, 2018, a few weeks before this hearing, to address claimant's mother's concerns about the IPP lacking certain information; the IPP from that meeting has not yet been finalized.

3. Claimant lives at home with his family. Claimant's mother receives 253 hours per month of In-Home Support Services (IHSS). Claimant receives speech therapy, a one-on-one aide, transportation, and extended school year programming through his school district.

4. On May 23, 2018, claimant's mother asked Celene Heman, claimant's service coordinator at FDLRC, for FDLRC to fund her attendance at the Gamaliel National

Leadership Training conference from July 29 to August 4, 2018, in Turlock, California. She also submitted a written request for funding, dated June 7, 2018, to Melinda Sullivan, FDLRC's Executive Director. She wrote that she expected the training would provide her:

with knowledge and skills that will be a great help to me to be able to navigate the different agencies that provide services related to special education and that way to obtain the services that my son needs to give him the opportunity for a more dignified human life. [¶] I also formally notify that if Lanterman Regional Center does not approve this training on time, I will pay my money and ask Lanterman for a refund of the total training expense.

(Ex. 2.)

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5. FDLRC refused the request. In a Notice of Proposed Action (NOPA) dated June 12, 2018, and an accompanying letter, Maureen S. Wilson, Director of Training and Development, wrote that Ms. Heman had consulted with her upon receiving the request, that Ms. Wilson had reviewed a flyer description of the conference and then contacted Melissa Salinas, the training organizer for Gamaliel, the organization conducting the conference.

- a. Ms. Wilson wrote that Ms. Salinas said "the conference purpose was to building [sic] a sustainable base of community leaders and to empower individuals running for local government." Ms. Wilson wrote that "It is also

important to note that this event is 299 miles from Los Angeles, seven (7) days long." (Ex. 1.)

- b. To address claimant's mother's desire "to learn more about how to advocate for your son in educational matters, I investigated other training opportunities to best meet your needs. I informed Celene that there were numerous workshops that would address your desire to learn more about advocacy to assist your son with his educational needs and I forwarded a link to some of those" (*Ibid.*)
- c. Ms. Wilson cited the Service Agency's training guidelines requiring that family members attend or exhaust local options before seeking funding for training elsewhere. The regional center "must also must [*sic*] take into consideration the cost effective process for providing for such support to achieve an outcome in the child's Individualized Program Plan. While funding for a parent to attend non-local training is considered, it is not cost effective when there are local options available." (*Ibid.*)
- d. Ms. Wilson cited, as authority for the funding denial, Welfare and Institutions Code sections 4685, subdivision (c)(3), 4646, subdivision (d), and 4512, subdivision (b).²

6. On July 18, 2018, claimant's mother submitted to FDLRC a Fair Hearing Request. This hearing ensued.

ADVOCACY TRAINING PROGRAMS

7. Ms. Heman testified that she customarily refers parents of children with

²Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

developmental disabilities to Koch-Young for information regarding advocacy training sessions in the community and at FDLRC. The Service Agency also provides an educational advocacy clinic for parents.

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8. Ms. Wilson testified by telephone, with no objection. She has been the Director of Training and Development at FDLRC for 28 years. Her duties include coordinating and designing training programs for staff, parents, and providers. She wrote the letter denying funding because the Gamaliel training program was not cost effective, it was not identified as addressing a goal included in claimant's IPP, and it did not address claimant's mother's desire to be trained to advocate for her son's special education services. After reviewing Gamaliel's literature and website and speaking with Ms. Salinas, Ms. Wilson concluded that the Turlock training did not relate to claimant's disability or to any IPP goal. Gamaliel is a faith-based organization that trains community leaders to support candidates for local government who will create jobs and address homelessness. Ms. Wilson testified that Ms. Salinas told her the Turlock training would not provide individual advocacy training for special education services.

9. Ms. Wilson referred to the Service Agency's "Client and Family Training and Development Guidelines," which she enclosed with the denial letter to claimant's mother. The guidelines address internal training to "build the capacity of clients and their families to live full, productive and satisfying lives in their own community," and to "enhance the family member's or client's ability to function in a leadership/partnership role, such as board, committee, council, etc." (Ex. 8.) The guidelines provide that external training to develop community leaders is offered only on prior authorization to family members who have "attended or exhausted local options and/or scholarship opportunities" and who

have demonstrated “active volunteer involvement with the Regional Center and/or financial commitment towards the training.” (*Ibid.*)

10. Ms. Wilson concluded that the Gamaliel program did not meet the requirements of the Service Agency’s guidelines. For leadership, she testified, the Service Agency has two levels of internal training: (1) Service Coordination and Advocacy Training (SCAT), for how to work with the regional center, access services at the resource center, work with the school district, and how to advocate; and (2) Lanterman Leadership Institute (LLI), for prospective support group leaders, regional center Board committee members, and regional center community representatives. Though LLI usually costs enrollees \$4,000 to \$5,000, all of this training is provided at no charge to parents of regional center consumers. LLI is offered biannually, involves staff, providers, parents, and clients, and is limited to 20 people.

11. Edward Perez, the Executive Director’s designee for this appeal, attempted to resolve this matter in an informal discussion with claimant’s mother after her request was denied. Mr. Perez has worked for FDLRC for 17 years; he was a regional manager for two years, a service coordinator for one year, and a family support specialist at Koch-Young. He testified that Koch-Young provides parents with resources and information, a library, and advocacy training, including IEP advocacy, Social Security Administration (SSA) advocacy, Los Angeles County advocacy, and IHSS advocacy training, peer support partner training (for parents to train parents of new consumers), and support group facilitator training (teaching parents how to effectively facilitate a support group).

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12. Mr. Perez spoke with claimant’s mother about available local programs and reviewed the training guidelines with her. Claimant’s mother said she was interested in advocating with the school district, SSA, and IHSS, and helping other parents advocate. She had developed an independent support group and told him that the Gamaliel training,

which she had attended at her own expense, provided information about advocacy and working with different systems.

13. Mr. Perez reviewed written materials describing Gamaliel's activities. Its "mission is to empower ordinary people to effectively participate in the political, environmental, social and economic decisions affecting their lives" (ex. 9), and "[t]o help local community leaders create independent, grassroots, and faith-based community organizations that enable ordinary people to participate in political, social, economic, and environmental decisions; to provide leadership training and research on social justice issues; and to facilitate mutual learning environments and working coalitions" (ex. 10).

14. Mr. Perez concluded that the denial should be upheld for the reasons set forth in the NOPA letter. The Service Agency offers advocacy trainings specifically targeted at IEP's. Peer support partner training also allows parents to help other parents advocate. There is no cost to parents of consumers for any of the Koch-Young trainings, and they are all conducted within the regional center's catchment area (the area the regional center serves). The Koch-Young trainings would be far more cost-effective than the Gamaliel training in Turlock, which is 299 miles from Los Angeles. Claimant's mother requested reimbursement for room and board and the cost of the training, totaling \$700.

15. Claimant's mother testified that she has attended local trainings. She introduced into evidence certificates from the Latino Strong Voice Families Integrated Community Collaborative reflecting her participation in a parent-to-parent training to navigate special needs systems, a parent-to-parent training related to regional centers and the Lanterman Developmental Disabilities Act (Lanterman Act), and a training program on IHSS and regional center services. She also offered certificates reflecting her involvement at an elementary school and for completing parent organizing workshops at the Aspire Pacific Academy. She testified that these programs did not teach her to identify the steps in the fair hearing process or to help her deal with the school district, IHSS, and the

regional center. Some of the program certificates, however, appear to contradict that assertion.

16. Claimant's mother did not offer evidence that she availed herself of the Koch-Young training, the SCAT, or the LLI, except to attend training offered by the Service Agency in "Navigating the Special Needs System." She offered evidence that a friend, whose child is a consumer at a different regional center, obtained funding for attending the Gamaliel program, but offered no evidence of that regional center's requirements for obtaining funding for external training or of what the parent had done to satisfy any such requirements.

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17. Claimant's mother has a 26-year-old daughter who, like claimant, has a developmental disability. Claimant's mother, who did not speak English and could not drive when her daughter was at school, was unable to help her daughter obtain services and supports. Now she speaks English and drives, and feels capable of helping her son, who needs her to advocate for him.

LEGAL CONCLUSIONS

1. Cause exists to deny claimant's appeal, as set forth in Factual Findings 1 through 16, and Legal Conclusions 2 through 8.

2. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant's mother requested a fair hearing to appeal the denial of funding for an advocacy training program she attended in Turlock, California. Jurisdiction in this case was thus established. (Factual Findings 1-6.)

3. The standard of proof in this case is the preponderance of the evidence because no other law or statute (including the Lanterman Act) requires otherwise. (Evid.

Code, § 115.) The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) When, on the other hand, a regional center seeks to change a service previously provided to a consumer, the regional center has the burden to demonstrate its decision is correct because the party asserting a new claim or proposing changes 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; Evid. Code, § 500.) In this case, claimant has the burden of proof.

4. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

5. Regional centers are responsible for conducting a planning process that results in an IPP. The IPP is developed by an interdisciplinary team and must include participation by the client or his or her representative. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the means selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

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6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§

4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to “find innovative and economical methods of achieving the objectives” of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or “generic resource.” Regional centers are required to “. . . identify and pursue all possible sources of funding. . . .” (§ 4659, subd. (a).) But if a service specified in a client’s IPP is not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1).)

7. Services and supports available to persons with developmental disabilities generally include advocacy assistance, including self-advocacy training, facilitation, and peer advocates. (§ 4512, subd. (b).) Regional centers must conduct “[a]dvocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.” (§ 4648, subd. (b)(1).) When a regional center’s advocacy efforts “prove ineffective,” the regional center, consumer, or consumer’s representative may request the area board to initiate action. (§ 4648, subd. (b)(2).) An area board shall have the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the legal, civil, and service rights of consumers in its area. (§ 46548, subd. (d)(1).)

8. In this case, no legal basis was established for requiring the Service Agency to fund claimant’s mother’s attendance at an advocacy training program provided by Gamaliel in Turlock or for requiring the Service Agency to fund her attendance at the training retroactively after she herself paid to attend the training. The Service Agency has fulfilled the mandates of the Lanterman Act regarding advocacy services by providing claimant’s mother with the information, resources, referrals, and free training programs necessary for her to become informed and to advocate for herself and her son. It provides numerous advocacy training programs, all at no cost to the parents of consumers.

Claimant's mother does not appear to have participated in any of those training programs. Her attendance at a training program far from the catchment area that entailed room and board expenses as well as program expenses was not cost-effective. Claimant's mother did not adequately establish any connection between the Gamaliel training program and claimant's IPP goals, and attendance at the Gamaliel training program was not identified in the IPP as part of any plan to help claimant achieve his goals. The Service Agency's client training guidelines, requiring parents to meet certain conditions before obtaining funding for external training, appear consistent with the Lanterman Act provisions discussed at Legal Conclusions 4 through 7. (Factual Findings 7-16.)

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ORDER

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN

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.