BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: **IVAN M.**, Claimant, vs. **EASTERN LOS ANGELES REGIONAL CENTER,** Service Agency.	OAH Case No. 2005090375

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 12, 2006, in Alhambra.

Claimant was represented by Victoria Baca, Executive Director, Foundation for Mexican American Services, Inc. [1] The Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Antonio Flores, ELARC Supervisor (Whittier Office).

The parties made opening statements, presented testimonial and documentary evidence, and gave closing arguments. The record was closed and the matter submitted for decision at the conclusion of the hearing.

ISSUE

The parties agreed the following issue is to be determined: Shall the Service Agency provide funding for Claimant to receive 1.50 hours per week of occupational therapy and 2.00 hours per week of speech/language therapy during school breaks greater than one week?

EVIDENCE RELIED UPON

Documentary: Service Agency exhibits 1-5; Claimant exhibits A-K.

Testimonial: Claimant's mother.

[1] Claimant and his family are referred to in a manner intended to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a six-year-old boy who is an ELARC consumer by virtue of his diagnosis of autism (moderate impact).

2. By or before July 2005, Claimant's mother requested the Service Agency to provide funding for Claimant to receive occupational therapy (OT) and speech/language therapy (SLT) during summer break at the same intensity provided by Claimant's school district when school is in session, in order to prevent regression of those skills. At Claimant's August 2005 Individual Program Plan (IPP) conference, the parties discussed the funding of such services during Claimant's "school breaks . . . ."

3. By a Notice of Proposed Action dated August 8, 2005 (issued before the 2005 IPP conference), the Service Agency denied the service request. The Service Agency opined that no OT was necessary because Claimant received so little at school as to minimize the likelihood of regression, and that a home program operated by Claimant's parents would be sufficient to maintain his fine motor skills in any event. The Service Agency opined that only one hour per week of SLT was necessary to ensure maintenance of those skills.

4. On September 12, 2005, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, which requested a hearing to appeal the Service Agency's denial of the service request. The requested relief was OT and SLT "for Ivan's summer break." The parties agreed during the hearing to expand the issue to such services during school breaks longer than one week.

5. The hearing for this matter was originally scheduled for December 7, 2005. The hearing was thereafter twice continued at the request of Claimant's mother due to her own medical difficulties (including surgery). Claimant's authorized representative signed a written waiver of the statutory time limits for starting the hearing and receiving a decision.

6. Claimant is described in his most recent IPP as a happy and loving child, who is helpful at home, intelligent and displays great potential. He lives with his parents and maternal grandparents. Claimant is in the first grade and receives special education services provided by the Los Angeles Unified School District (LAUSD), including OT and SLT.

7. As a result of Claimant's IPP conference held in August of 2004, the parties acknowledged that, each week when school was in session, the LAUSD provided Claimant with 80 minutes of OT and two hours of SLT. The Service Agency agreed to provide an unspecified amount of OT and SLT during "school breaks" from July 2004 through July 2005.

8. As a result of Claimant's IPP conference held in August of 2005, the parties acknowledged that the LAUSD still provided Claimant with the same OT and SLT services as before. The Service Agency agreed to provide one hour of SLT during "school breaks only" from July 2005 through June 2006. The Service Agency thereafter funded Claimant to

receive one hour per week of SLT during his 2005 summer break from school.[2] That service was provided by the Pasadena Child Development Association (PCDA), which is the provider of SLT to Claimant at school as part of his special education program.

9. The LAUSD does not provide Claimant with any OT or SLT services during school breaks.

10. It was established by a preponderance of the evidence that Claimant requires OT and SLT during school breaks lasting longer than one week (also referred to herein as "inter-session"), because in the past he has regressed in his speech/language and fine motor skills when he has gone without those services for that long. Claimant's mother testified to that fact; her testimony was corroborated by a PCDA report dated June 2, 2005 (exhibit I). Moreover, the Service Agency previously agreed in 2004 and 2005 to provide some of the requested services during "school breaks," presumably to prevent regression.

11. The Service Agency's proposed decision to not fund OT during school breaks was based on incomplete data. Service Agency consultant Angela Espinoza, OTR/L, based her opinion that no inter-session OT was necessary on the erroneous assumption that Claimant was only receiving 20 minutes per week of OT at school. In fact, when Ms. Espinoza rendered her opinion in July 2005, Claimant was receiving 80 minutes of combined OT per week at school, broken down as follows: 60 minutes of OT in a therapy room (provided by Jennifer Sato, MA, OTR/L) and 20 minutes of OT in his classroom (provided by Yolanda Duque, OTR/L). After Ms. Espinoza rendered her opinion, the LAUSD increased Claimant's classroom OT to 30 minutes, meaning Claimant now receives 90 minutes of combined OT per week at school.

12. The Service Agency's proposed decision to only fund one hour of SLT per week during school breaks was based on an opinion rendered by ELARC SLT consultant Brittany Berg, M.S. It was not established why Ms. Berg opined that only one hour of SLT per week was necessary during school breaks, in light of the fact that the LAUSD was providing two hours of SLT per week at school. For example, during the 2004 and 2005 IPP conferences, the parties acknowledged that the LAUSD was providing two hours per week of SLT. Without any reason given for approving only one hour per week of SLT, Ms. Berg's opinion was not persuasive. Since Claimant currently receives two hours per week of SLT at school, there is no reason apparent for requiring any lesser amount during school breaks longer than one week.

[2] In light of the fact that the Notice of Proposed Action had already been issued by the Service Agency before the 2005 IPP conference, it is apparent that the 2005 IPP does not reflect an agreement of Claimant's family to only accept one hour of SLT for school breaks in lieu of the services being requested in this case.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)[3] An administrative hearing is available to a consumer under the Lanterman Act to appeal a regional center's denial of a service request. (§§ 4700-4716.) Claimant properly appealed from the Service Agency's denial of his service request and thus jurisdiction was established. (Factual Findings 1-5.)

2. Where one seeks eligibility for government benefits or services, the burden of proof is on him. (*See*, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in such cases requires proof by a preponderance of the evidence, because no other law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Since Claimant is requesting a service that the Service Agency has not before agreed to provide (both OT and SLT at particular amounts during school breaks), Claimant has the burden of establishing entitlement to that service by a preponderance of the evidence. (Factual Findings 1-5.)

3. The Lanterman Act specifically defines appropriate services and supports for persons with developmental disabilities to include "occupational . . . and speech therapy . . . ." (§ 4512, subd. (b).)

4. The Lanterman Act requires regional centers to provide consumers with those services and supports that will allow them to integrate "into the mainstream life of the community." (§ 4501.) Services and supports are to be "directed toward the achievement of the most independent, productive and normal lives possible." (§ 4502.) Regional centers are required to work with consumers and their families to secure "those services and supports which maximize opportunities and choices for living, working, *learning* and recreating in the community." (§ 4640.7, subd. (a), emphasis added.) Thus, the Lanterman Act contemplates the provision of necessary services that relate to maximizing a consumer's ability to learn, which includes a school setting.

5. In order to meet the mandate of providing services in a cost-effective manner, regional centers must consider the availability of generic resources to fund necessary services. In fact, regional centers are precluded from using funds to provide services and supports if doing so would supplant the budget of any other agency that has a legal responsibility to serve all members of the general public that is receiving public funds for providing that service. (§ 4648, subd. (a)(8).) Examples of generic resources are Medi-Cal, Medicare, school districts, other agencies and insurance. (§ 4659, subd. (a).) The LAUSD is thus considered a generic resource.

6A. Claimant established by a preponderance of the evidence entitlement to the services being requested. (Factual Findings 1-12.)

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[3] All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

6B. Claimant currently requires 1.50 hours of OT and 2.0 hours of SLT per week at school. His skills in those areas have regressed when he is not provided those services during school breaks longer than one week. The Service Agency's opinions were not persuasive regarding why no inter-session OT services and only one hour of SLT services would be appropriate during school breaks. The provision of the requested services during school breaks will prevent Claimant's regression in those skills, which in turn will allow Claimant to maximize his opportunities to learn in his community (at school). Since the LAUSD does not provide OT or SLT during school breaks, requiring the Service Agency to fund such services will not require the Service Agency to supplant the budget of another agency or a generic resource. Moreover, preventing regression of skills as a result of school breaks is a cost-effective way of ensuring that services provided to Claimant by another agency will not be later wasted, which could potentially require even greater funding by the Service Agency.

6C. As demonstrated by the changes in Claimant's special education services that occurred not long after his 2005 IPP conference, this decision is effective only through the end of Claimant's 2006 summer break from school. By that time, the parties will have begun the process of constructing Claimant's 2006 IPP. His circumstances regarding OT and SLT at school may be different at that time.

ORDER

Claimant Ivan M.'s appeal of the Eastern Los Angeles Regional Center's denial of his service request is GRANTED. The Service Agency shall provide funding for Claimant to receive 1.50 hours per week of occupational therapy and 2.00 hours per week of speech/language therapy during school breaks greater than one week. This order is effective through the end of Claimant's 2006 summer break from school. The parties shall meet and confer during Claimant's 2006 IPP conference process regarding these services thereafter.

DATED: April 25, 2006

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ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. This decision may be appealed to a court of competent jurisdiction within 90 days of receipt of notice of this decision.