BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ERNESTO DE LA TORRE, Claimant, v. HARBOR REGIONAL CENTER, Service Agency.	OAH Case No. 2010110461

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on August 8, 2011, in Torrance, California.

Ernesto D.[1] (Claimant) was not present at hearing; he was represented by his mother, Martha D. (Mother). Program Manager Hiram Bond represented the Harbor Regional Center (Service Agency).

Paola Gazzaneo, an interpreter, provided Spanish-English interpreter services for Mother throughout the hearing.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on August 8, 2011.

ISSUE

Should the Service Agency be required to fund a one-to-one aide for Claimant during his attendance at the Social Vocational Services (SVS) Norwalk therapeutic day program?

[1] The surnames of Claimant and his family have been omitted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 23-year-old male who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.[2] He has diagnoses of severe intellectual disability, epilepsy, and cerebral palsy.

2. Claimant resides with his parents and three younger siblings. He is non-ambulatory and wheelchair dependent. He is non-verbal and communicates through facial expressions, vocalizations, and non-verbal gestures. He screams or cries when he is upset. He is dependent on others for the completion of all self-care tasks including bathing, grooming, toileting, dressing, and eating. He is bowel and bladder incontinent and wears diapers at all times. He suffers from seizures on a daily basis. The seizures are mild and last approximately 30 to 60 seconds. Claimant has limited hearing ability and is legally blind. He demonstrates very little safety awareness and therefore requires constant supervision.

3. As of September 28, 2010, Claimant has been attending the SVS therapeutic day program, Monday through Friday, from 8:00 a.m. to noon. The therapeutic program is a facility based program. The Service Agency funds the program and the transportation to and from the program. There are 27 people enrolled in the program and the client-to-staff ratio is 3 to 1. There are 14 core staff members, comprising of five activity coordinators, five direct service personnel, three float staff, and one activity leader. There is also a licensed vocational nurse on staff from 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. SVS is also in the process of hiring a physical therapy assistant, who will assist clients to get out of their wheelchair. SVS also has consultants, which may include an occupational therapist, behaviorist, physical therapist, recreational therapist, registered nurse, and/or horticultural therapist, that provide 40 hours of services per week. Clients are never left alone and constant supervision is provided.

4. At the program, Claimant is in a group with four others. Claimant's group has two staff members assigned, and often has a floater staff assigned. Angela Rodriguez (Rodriguez), associate director of regional administration at SVS, opined that Claimant is not in need of a one-to-one aide, and explained that the staff has never approached her requesting a one-to-one aide for Claimant. Claimant's medical needs have been evaluated by the program. If Claimant has an urgent medical need, such as a seizure, he can receive help from the licensed vocational nurse, the CPR- and first-aide-trained staff, or 9-1-1. The program has clients that suffer 20 seizures per day.

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[2] All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

5. Rodriguez opined that Claimant has shown progress in some of his goals, and has participated in hand-over-hand assistance. Mother did not feel that Claimant is progressing, but was not aware of the breadth of Claimant's activities, nor did she feel that that certain services are being implemented.

6. Claimant requested the Service Agency to fund a one-to-one aide during the time he attends the SVS day program.

7. On October 8, 2010, the Service Agency denied Claimant's request.

8. Claimant timely appealed the decision.

9. Mother did not demonstrate the need for a one-to-one aide for Claimant during his time at the SVS day program. She expressed general dissatisfaction that the program was not meeting Claimant's needs; however, she did not show that additional assistance, in the form of a one-to-one aide, was needed for Claimant. Mother did not report any specific or unusual problems that would require a one-to-one aide. At hearing, Mother expressed concern that Claimant would sometimes come home with a wet diaper or with food on his clothing. Rodriguez explained that sometimes clients urinate on the bus since snack is provided only one-half hour before the clients get on the bus; however, clients are checked at least every hour. Rodriguez further explained that concerns such as these can be addressed by the staff. For example, Claimant's diaper can be changed more frequently, and his wheelchair can be cleaned more thoroughly.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. Section 4512, subdivision (b), states in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. 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 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. In this case, Claimant did not establish that he needs a one-to-one aide during his attendance at the SVS day program. Rather, it appeared that enhanced communication between Mother and the program providers would help ensure that Claimant's needs are met. Mother is encouraged to communicate her concerns to the program.

ORDER

Claimant's appeal is denied, and the Service Agency is not required to fund a one-to-one aide for Claimant during his attendance at the SVS Norwalk day program.

DATED: August 19, 2011

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JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days