

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Aaron B.,

Claimant,

and

Inland Regional Center,

Service Agency.

OAH No. L2006010334

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 21, 2006, in San Bernardino, California.

Claimant's maternal grandmother and guardian, Penny T., represented Claimant, with the assistance of Eliza Tejada-Bowser.

Vince Tom, Consumer Service Representative, represented Service Agency.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Service Agency properly assessed Claimant as requiring services at Level 2 under the Alternative Residential Module (ARM) for the purpose of setting an Adoption Assistance Program (AAP) Rate.

FACTUAL FINDINGS

1. Claimant, a boy born on June 14, 1999, is a Service Agency consumer with qualifying diagnoses of autism and mild mental retardation.

2. Claimant resides with his maternal grandparents, who are his guardians. His mother apparently suffers from mental health problems and does not have contact with him. His grandparents are in the process of adopting him.

3. He suffers from severe asthma, severe acid reflux, and Recurrent Respiratory Papillomatosis. The latter condition, is severe, involves life-threatening, recurring, tumors in the larynx, and requires surgical removal every ten to twelve weeks to prevent total blockage of the airway. In October 2005, he was diagnosed with ataxia, a progressive neurological illness that impacts muscular coordination. Multiple physicians follow Claimant's various medical conditions, including his pediatrician, Rainilda Valencia, M.D (Valencia). He regularly receives 13 medications.

4. Claimant has significant gross and fine motor impairment. He has trouble with balance and coordination. He has significant difficulty in rising from the floor and uses his hands on furniture to help himself. He is unstable when using stairs. A study by the California Department of Education Diagnostic Center of Southern California conducted during the week of September 19, 2005 (Diagnostic Center Study) concluded that his motor skills fell below the three year level of development.

5. Claimant has sensory integration deficits. He tends to avoid certain vestibular, tactile, auditory and visual stimuli. His auditory avoidance impacts his attention and he may at times overreact to sounds. On the other hand, Claimant may be harmed by substances he seeks to sense through his mouth, such as balloons, which problem is compounded by his high tolerance for pain.

6. He requires assistance in daily living tasks. He needs assistance with feeding, toileting, dressing, combing his hair, and bathing. He can feed himself with a spoon and fork with some spillage. He is toilet-trained, but needs help with wiping. He needs some assistance with hygiene tasks such as washing and combing his hair. He can brush his teeth. He requires total assistance with bathing and dressing, although he cooperates with both.

7. The Diagnostic Center Study concluded that Claimant's language skills are reduced and atypical. He exhibits significant difficulties with language formulation, particularly in unstructured language situations such as informal conversation and in tasks without prompts or other supports. Processing of auditory information is slow, and he often repeats what he hears.

8. As is typical in children with autism, Claimant has socialization deficits. He screams and cries in public and his guardians are unable to take him most public places. The Diagnostic Center Study concluded he has deficits in social interaction skills and verbal and non-verbal communication skills.

9. On a daily basis, Claimant engages in aggressive and self-injurious behavior, such as hitting, kicking, head-banging, and throwing objects. Cynthia La Brie Norall, Ph.D. (Norall), has observed Claimant on multiple occasions over the past few months in connection with evaluations for appropriate educational services. She wrote in a February 17, 2006 letter: "Aaron presents with significant behavioral issues such as kicking, hitting, biting, and in general very aggressive behaviors that have resulted in restraints. These continue currently as I was in the home yesterday, February 16th. Though the function of the behavior is often attention seeking or task avoidance, the behaviors have occurred. I myself have needed to restrain Aaron. He has kicked, hit and tried to bite me. I have followed [Applied Behavioral Analysis] principles appropriate for working with a child with autism and I can assure you that the behaviors, at this time, are considered significant both educationally and from a behavioral standpoint." A behavioral management plan under the supervision of Dr. Norall had been implemented the week before the hearing.

10. Claimant's guardians monitor him 24 hours each day for his safety. They watch for signs of respiratory distress and choking and for accidents related to poor physical coordination. Claimant seems unaware of potential hazards in his environment and his guardians must look out for him.

11. Claimant attended a general education Kindergarten classroom in Vanguard Preparatory School, in the Apple Valley Unified School District (District), from August 22, 2005 until January 2006. He received assistance from a full-time, one-on-one aide. He was also approved to receive speech services, adaptive physical education, physical therapy, and occupational therapy. He was suspended on August 23, 2005 for slapping his aide in the arm. His guardian maintains this was not the best educational setting for him, as staff failed to meet his needs or accommodate his disability. He left the school after an incident in which he was restrained by staff. The District is now providing instruction and behavior services in the home. His guardians, with the assistance of Service Agency, continue to seek appropriate educational services for Claimant.

12. The restraint incident traumatized Claimant and led to the filing of a complaint with local police. In the opinion of his pediatrician, Dr. Valencia, Claimant has regressed in many areas after the incident. He now has decreased eye contact, is unable to focus, has nightmares, his speech has regressed, and his aggressive behaviors have increased.

13. The San Bernardino County Department of Children and Family Services (DCFS) will provide funds under the AAP to assist with the anticipated costs of adopting a child with Claimant's special needs. As part of the process, DCFS requested a "Rate Letter for the Adoption Assistance Program" (Rate Letter), a letter used to determine the level of funding to be provided regional center consumers. On September 29, 2005, Service Agency provided

DCFS with a Rate Letter stating that “Based upon a review of the adoptive child’s needs, the child would require placement into a facility which is vendored at an ARM level 2, 0/0.” Service Agency acknowledged that Claimant would not actually be placed in a facility, but noted its understanding that the rating would be used to provide financial assistance to the adoptive parents.

14. At the hearing, Service Agency personnel explained that the level 2 rating was derived by evaluating Claimant’s needs and matching them with the community care facility most likely to be able to meet those needs.

15. Claimant’s guardians object to the level 2 rating and argue that Claimant’s needs warrant a higher level of care than that which would be provided at a level 2 facility. They seek a level 4 designation.

LEGAL CONCLUSIONS

1. The Department of Social Services (DSS) has promulgated AAP regulations as part of its Adoption Program Regulations. (Cal. Code Regs., title 22, §35325 et seq.) The purpose of AAP is to remove or reduce barriers to the adoption of children who otherwise would remain in long-term foster care. (Cal. Code Regs., tit. 22, §35325). The actual amount of the incentive payment is negotiated between the responsible public agency, DCFS in this case, and the adoptive parents in accordance with a process established by DSS. (Cal. Code Regs., tit. 22, §35333).

2. DCFS is required to determine the maximum AAP benefit for which a child is eligible, a sum equal to the difference between the state-approved foster care maintenance payment, plus any applicable special care supplements, that a child would have received if he/she had remained in foster care, less any income received by or on behalf of the child. (Cal. Code Regs., tit. 22, §35333, subd. (c).) If the foster child is also a regional center consumer, then “the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services. . . .” (Cal. Code Regs., tit. 22, §35333, subd. (c)(1)(C).)

3. The Department of Developmental Services (DDS) facility rates referred to in the cited regulation are found at California Code of Regulations, title 17, section 56001 et seq. Levels 3 and 4 facilities are intended to serve consumers with greater service needs. (Cal. Code Regs., tit. 17, §56013.) Level 3 facilities are those designed to serve consumers with: “[A] Significant deficits in self-help skills; and/or (B) Some limitations in physical coordination and mobility; and/or (C) Disruptive or self-injurious behavior.” (Cal. Code Regs., tit. 17, §56013, subd. (c).) Level 4 facilities are those designed to serve consumers with: “[A] Severe deficits in self-help skills; and/or (B) Severe impairment in physical coordination and mobility; and/or (C) Severely disruptive or self-injurious behavior.” (Cal. Code Regs., tit. 17, §56013, subd.

(d.)

4. Claimant's needs are more in line with the services provided at a Level 3 facility, by reason of factual finding numbers 1 through 12. Thus, his deficits in self-help skills are significant; he has limitations in physical coordination and mobility; and he engages in disruptive and self-injurious behavior, which Dr. Norell characterized as "significant."

5. Claimant's deficits and impairments have not reached the "severe" level. He assists with some self-help tasks. Despite his motor skills deficits, he is ambulatory and may benefit from occupational and physical therapy. His disruptive and self-injurious behaviors can be redirected with appropriate intervention and he just started a new behavioral management program. In these circumstances, Level 4 service designation is not warranted.

6. Accordingly, Claimant requires services at the Level 3 rate under the ARM for the purpose of setting an AAP Rate.

ORDER

1. Claimant's appeal is sustained in part and denied in part, as set forth in this Decision.

2. Service Agency shall issue a new Rate Letter designating Claimant as requiring services at Level 3 under the ARM.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound

by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.