

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

In the Matter of:

**JESSICA M.**

Claimant,

vs.

**FRANK D. LANTERMAN REGIONAL  
CENTER,**

Service Agency.

Case No. L 2006040700

**DECISION DENYING  
CLAIMANT'S APPEAL**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 23, 2006, in Los Angeles.

Claimant was represented by her mother and father.<sup>1</sup>

Marc Baca, Appeals Coordinator, represented the Frank D. Lanterman Regional Center (Service Agency or FDLRC).

Documentary and testimonial evidence was received and argument made. The record was closed and the matter submitted for decision on October 23, 2006.

ISSUE

Shall the Service Agency reimburse Claimant's parents \$199 after they enroll Claimant in a one-year membership at an athletic club?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-8 and Claimant's exhibits A-F.

Testimonial: Terry McVerry, FDLRC Service Coordinator; Montrel Futch, FDLRC Regional Manager; Claimant's father; and Claimant's mother.

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<sup>1</sup> Claimant's last name is omitted and family titles are used to protect the privacy of Claimant and her family.

## FACTUAL FINDINGS

1. Claimant is a 21 year-old female who is a consumer of the FDLRC by reason of her diagnosis of Down's Syndrome.

2. In at least January of 2005, and perhaps earlier, Claimant's mother requested that the Service Agency provide funding for Claimant to join Bally's Gym. The parties thereafter discussed the service request and researched available options. Claimant's family later determined that it would be more cost-effective to purchase a one-year membership for Claimant through her mother (who is already a member) and for the Service Agency to simply reimburse the family the cost of \$199. The Service Agency ultimately denied the request, by a letter dated March 28, 2006.

3. On April 18, 2006, her mother submitted a Fair Hearing Request on behalf of Claimant, appealing the Service Agency's denial and requesting the hearing that ensued.

4. Claimant lives at home with her family. She graduated from high school in 2003. For a while she worked part-time at a grocery store. She is currently unemployed. Claimant's parents have a limited conservatorship over her.

5. Claimant has diabetes, hyperthyroidism, and Celiac Disease. Celiac Disease affects the consumption of gluten, which is found in starches, such as rice, wheat and grains. Because of her diabetes, Claimant must consume starch. However, Claimant's consumption of gluten causes digestive problems and an allergic-like reaction. For that reason, Claimant must consume starches that are gluten-free.

6. It was not established that Celiac Disease is related to or caused by Down's Syndrome.

7. Because of her diabetes and hyperthyroidism, Claimant has experienced significant weight gain over the past year. Her internist recommends that she participate in a structured exercise program to control her weight and maintain her blood glucose level.

8. Based on Claimant's health needs, Claimant's family requested the funding for Claimant to become a member at a local athletic club, Bally's Gym. Claimant's mother is now a member there and believes that it would only cost \$199 for a one-year membership for Claimant. The family believes a membership at Bally's Gym would best promote Claimant's exercise needs, in that the club is close to the family home and it has convenient hours, especially if Claimant becomes employed again.

9. The parties agreed during the process of executing Claimant's most recent Individual Program Plan (IPP), dated January 31, 2004, that a priority goal for Claimant is to increase her physical activity. However, the parties did not agree on the way to meet that goal.

10. Membership at Bally's Gym is not a specialized support or service intended for those with developmental disabilities. The facility is open to the public and does not have any programs designed for those with developmental disabilities. Claimant's father testified that his daughter is sufficiently independent to be able to access the athletic club on her own, once she was given an exercise plan and shown how to use the equipment.

11. It was not established that Claimant would be unable to fund a membership at Bally's Gym from her federal supplemental security income (SSI) benefits of \$836 per month. Although Claimant's family contends that her typical monthly expenses far exceed her SSI benefits, it was not established that such is the situation. The largest expense claimed is an estimated \$650 per month for food, mostly attributed to Claimant's gluten-free diet. While it was established that a gluten-free diet is substantially more costly than a normal diet, the weight of the evidence did not establish that \$650 is actually spent per month for Claimant's food. The estimated cost of Claimant's other basic necessities amounts to far less than Claimant's monthly SSI benefits. Most of Claimant's other estimated monthly costs are discretionary, within which a proportionate share of a one-year Bally's Gym membership (approximately \$16.50 per month) would be affordable.

### LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary service agency decision. (§§ 4700-4716.) Claimant properly requested a hearing and thus jurisdiction was established. (Factual Findings 1-3.)

2. Where an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case requires proof by a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise. Since Claimant is requesting a service the FDLRC has not before agreed to provide, Claimant has the burden of establishing entitlement to that service by a preponderance of the evidence. (Factual Findings 1-3.)

3A. Regional Center funds are designated to address developmental disabilities and allow people to compensate for deficits and lead as normal a life as possible. For example, section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . ."

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

3B. In this case, the membership at Bally’s Gym is not a specialized service directed toward alleviating a developmental disability. It is a gym membership available to the general public. Moreover, Claimant’s need for exercise is related solely to her diabetes and hyperthyroidism. None of these conditions was proven to be related to or caused by Down’s Syndrome. Thus, the service requested in this matter is not one directed toward alleviating Claimant’s developmental disability, but rather a service related to her overall health. There is no dispute that Claimant can access the gym on her own. Under these circumstances, it was not established that an athletic club membership for the reason asserted by Claimant is a service or support that qualifies for funding under the Lanterman Act. (Factual Findings 4-10.)

4A. A regional center is entitled to look to generic resources to fund a service request. More specifically, section 4659, subdivision (a), mandates that a “regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services . . . includ[ing], but not be limited to, . . . [g]overnmental 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. . . .”

4B. In this case, it was not established that Claimant would be unable to pay for the Bally's Gym membership from her monthly SSI benefits. Since the FDLRC is entitled to look toward Claimant’s SSI benefits to fund this service request, it is not required to provide the funding itself under these circumstances. (Factual Findings 4-11.)

5. Claimant’s family cited section 4648 as legal support for the service request in this case. While section 4648 clearly evidences the intent of the Legislature for a consumer’s personal choices to be considered in securing services and supports, the requested service or support must still qualify for regional center funding under the Lanterman Act. The issue here is not solely whether a consumer desires a particular service, but whether the desired service qualifies for funding under the Lanterman Act. As concluded above, Claimant’s service request does not qualify; even if it did, the FDLRC would be entitled to first look to Claimant’s available SSI benefits to fund the service.

6. Based on the above, Claimant did not meet her burden of proving by a preponderance of the evidence that she is entitled to the requested regional center service funding. (Factual Findings 1-11; Legal Conclusions 1-5.)

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ORDER

Claimant JESSICA M.'s appeal of the FRANK D. LANTERMAN REGIONAL CENTER's proposed decision is denied. The Service Agency shall not reimburse Claimant's parents for the cost of a one-year membership for Claimant at Bally's Gym.

DATED: November 2, 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.**