

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2011031190

Derek C.,

Claimant,

v.

Harbor Regional Center,

Service Agency.

DECISION

Administrative Law Judge Elwood B. Hain, Jr., Office of Administrative Hearings, State of California, heard this matter in Torrance, California on October 4 and December 16, 2011.

Mark Woodsmall, Attorney at Law, represented Derek C., Claimant¹. Claimant was not present at the hearing.

Gigi Thompson, Manager Rights Assurance, represented Harbor Regional Center (Regional Center, Service Agency or HRC).

Oral and documentary evidence was received at the hearing. Both the Service Agency and Claimant marked their exhibits using numbers. All of Claimant's exhibits will begin with a "C" followed by the marked number to distinguish between the parties' exhibits. The record was left open for the parties to submit written closing arguments. Claimant's closing argument was received on January 9, 2012 and is marked as Exhibit C-19; and Service Agency's closing argument was submitted on the same date and marked as Exhibit 18. The matter was submitted for decision on January 9, 2012. The Administrative Law Judge makes the following issue statement, factual findings, legal conclusions and orders.

¹ The first letter of Claimant's last name is used to preserve Claimant's confidentiality.

ISSUE

Shall the Service Agency fund 48 hours per month of Community Participation Training (CPT) for Claimant provided by SEEK Education, Inc. (SEEK)?

FACTUAL FINDINGS

Claimant's Background

1. Claimant is an eighteen-year-old male who is eligible for Regional Center services based on his diagnosis of autism.
2. As a consequence of his autism, Claimant does not interact well socially. He does not make eye contact or respond appropriately to social cues. He is unaware of when he invades the personal space of others. He speaks softly, usually making a one word response when addressed. With prompting he will use a sentence. He does not initiate conversations; he requires prompting to interact with others. In social settings he frequently engages in self-stimulative behaviors such as talking to himself, singing or hand flapping. His attention span is limited. He has difficulty following directions; he usually needs them to be repeated. His responses to instructions are delayed. He tends to be unaware of safety hazards, such as cars in parking lots or driveways. He takes care of 90% of his personal needs, such as dressing, but needs reminders for some things, such as putting on socks or washing his hands. He prefers sedentary activities, such as surfing the internet or watching videos. He is overweight. He has a bathing routine that he is able to do with 80% independence, but needs limited prompting. He can brush his teeth without assistance, but needs prompting for all other hygiene needs. He can eat without assistance. He does not know how to use the locker room at the municipal swimming pool and fitness center. He lacks the skill to dress properly in the locker room or to put his belongings away safely.
3. Claimant lives in his parents' home with his mother and older sister, a student at the University of California, Berkeley, who is home only on college breaks. His parents are separated and his father no longer lives in the home. Claimant's ability to continue living there is not in jeopardy.
4. Claimant attends a transition program at Cerritos High School five days a week for approximately seven hours per day. Cerritos High School is part of the ABC Unified School District. His program consists mainly of learning skills in a classroom setting. Some of the skills he is working on are conversational exchange (asking and answering questions), writing a shopping list based on a meal plan he has been given, finding items in a grocery, improving his skill at reading the time, using a calculator to solve math problems such as adding food items and calculating sales tax or tip, and putting away grocery items in a simulated household situation. He also has

an assisted physical education course. The school program included some training in pedestrian safety in the past, but Claimant's current Individualized Education Program (IEP) does not show that as a current goal. Safety training was also not an itemized goal in last year's IEP.

5. Claimant receives thirty minutes of one-on-one training in an adaptive swimming class at the Cerritos municipal swimming and fitness center every week. The evidence did not reveal who funds the swimming class. In 2009 he began to take a 30-minute drum lesson once a week. His parents pay for the drum lessons.

6. Claimant's family receives twelve hours of respite services a month from HRC. It also receives 188 hours of In Home Support Services (IHSS) each month. Claimant's mother quit her job with a television station to be the provider of the IHSS. Claimant has previously attended camps as respite funded by the Regional Center. From May 2005 through February 2008, the Regional Center funded SEEK Education, Inc., to help Claimant develop skills he needed to reduce behavioral problems at home and in the community. These problems included aggression and a variety of self-stimulatory behaviors. From March 2008 through August 2009, Claimant was in a less intensive program at SEEK, also funded by the Regional Center. This program worked on the generalization of skills in community settings. The Regional Center terminated this program on August 31, 2009, under the new law that suspended regional center funding of socialization training. (See Welf. & Inst. Code § 4648.5, subd. (a).)

Community Participation Program

7. Claimant's mother became concerned that Claimant was losing skills he needed to access local community services. She also expressed concern that he was overweight and needed exercise because he had been diagnosed with a pre-diabetic condition. She asked SEEK to assess his needs. In February 2010, SEEK performed a five-hour assessment of Claimant and his family and wrote a detailed report of its conclusions (the SEEK assessment). In March 2010, SEEK placed Claimant in its Community Participation Training (CPT or SEEK program). Although it concluded, based on its assessment, that Claimant should have 48 hours of CPT per month, SEEK only works with him 24 hours a month, with two meetings per week. He would get more benefit from the program if he were trained at the more intensive rate as there would be less loss of skill between sessions. Claimant's parents pay for the 24-hour per month CPT program, but they cannot afford the more intensive program.

8. CPT's goals are to reduce Claimant's deficits in the areas of community-related self-help, safety awareness and community participation skills. The program aims to develop Claimant's skills through teaching strategies such as shaping, prompting, incidental teaching and chaining, and by using motivational opportunities to encourage Claimant to use his functional skills continuously

throughout the day. It also uses systematic generalization strategies to help Claimant use his skills with various people, stimuli, and distractions and in a variety of environments, with the objective of eventually transferring the skills he develops to his interactions with peers and the community. CPT trains Claimant in skills necessary for him to participate in community activities of his choice including, eventually, a sheltered work situation. SEEK assumes Claimant will, of necessity, live with relatives indefinitely. It wants to minimize the support he will need from his family but expects the family to continue working with him after the training ends so he will retain his skills. At the present, his mother is the only family member in daily contact with Claimant.

9. To progress toward these broader goals, SEEK has identified five community activities or “ultimate goals” for his training:

- a. Exercise independently at a fitness center at least two times a week and develop a regular exercise routine.
- b. Walk independently and safely to a local park at least twice a week, walk around the perimeter and walk home, crossing two streets with traffic lights as he goes to and from the park.
- c. Do volunteer work at his church at least once a week to develop job readiness skills so he will be able to receive Department of Rehabilitation services in the future.
- d. Buy food at the grocery at least once a week to develop planning, self-determination, money management and purchasing skills.
- e. Go to a local restaurant at least twice a week to place an order, pay and eat.

SEEK also trains Claimant’s mother twice a month so she can help train Claimant in his new skills. She is expected to work with him regularly to reinforce the skills he is learning in CPT. She is now well trained for this purpose.

A significant part of the SEEK program is a “fade out” protocol used for each individual skill. The protocol reduces SEEK’s contacts with Claimant as his command of each new skill grows. For example, the trainer will give fewer verbal prompts and stand farther away, finally observing from a distance. The total amount of time SEEK is to spend with Claimant per month will also gradually decline under the protocol.

10. SEEK has been working with Claimant for a year and a half and Claimant has made good progress on the first two goals. He has made less progress with the third one and has not begun work on the fourth and fifth goals. The fourth

and fifth goals will stress the decision making and communicative aspects of making purchases rather than the mathematical aspect.

11. On March 26, 2010, Claimant's mother sent an email to Karuna Tek, Claimant's HRC service coordinator, asking for the Regional Center to pay half of the cost of SEEK's community participation training. The Regional Center convened a previously scheduled annual Individual/Family Service Plan (IFSP) meeting with Claimant and his mother at their home on April 2, 2010. There was no agreement on the question of SEEK training. The Regional Center agreed that Claimant had needs in the areas SEEK addressed. It asserted that SEEK's services were educational in nature and the school district should provide them. Pablo Ibañez, the program manager who supervised Claimant's service coordinator, testified at hearing that he believed HRC's decision not to fund SEEK was made at the April 2010 IFSP meeting. HRC did not inform Claimant's mother that it intended to deny the services at the IFSP; and mother and HRC continued to discuss whether HRC would provide the services after the IFSP. Claimant's mother had not given HRC a copy of SEEK's assessment before or at the IFSP, and the Regional Center had not seen it. Nor had HRC made its own assessment of Claimant's needs for similar community integration services. The Regional Center did not issue a Notice of Proposed Action denying the service after the IFSP.

12. Shortly after the IFSP, Claimant's mother gave the Regional Center a copy of the SEEK assessment, which its staff reviewed. The Regional Center and Claimant's mother continued discussing the services for several months. In June 2010, the Regional Center suggested to Claimant's mother that it might be able to fund parent training to supplement the community participation training Claimant was receiving at school. It said this could be done either through SEEK or through the Regional Center's preferred provider, Family Behavioral Services (FBS). When it offered the parent training to her, the Regional Center had decided that a "parent model" of training was most appropriate for Claimant's needs, although it had not yet done an assessment of his needs. Claimant's mother agreed to have the Regional Center provide the parent training through SEEK. In July 2010, the Regional Center staff told her they had made a mistake in offering the parent training through SEEK; they could only provide it through FBS or either of two other companies. Claimant's mother rejected that offer.

HRC Assessments and Proposals

13. On September 13, 2010, the Regional Center determined that it needed to do an assessment of Claimant's needs. On September 20, 2010, it sent a purchase order to Family Behavioral Services (FBS), a firm that specializes in parent training and one of the Regional Center's preferred providers for behavioral assessments, to assess Claimant's needs. There is no evidence that it provided FBS with a copy of the SEEK assessment.

14. Rebecca Asdel, a behavioral specialist at HRC, observed SEEK working with Claimant on October 6, 2010, and wrote a report on her observations and recommendations. Ms. Asdel's report summarized the training she observed at Claimant's home and the fitness center, recommended that Claimant's mother receive more training so she can assist him better after his SEEK training ended, and recommended that Claimant be re-directed to home entertainment more age appropriate than Disney videos. Mr. Tek received the report on November 11, 2010, and sent a copy to Claimant's mother the same day.

15. FBS interviewed Claimant's mother, observed Claimant at school and in the home. It did not observe him being trained by SEEK. It submitted its assessment on January 6, 2011. HRC program manager Pablo Ibañez reviewed the assessment and returned it to FBS for changes. FBS revised its report and resubmitted it on January 24, 2011. The content of the original report is unknown. The revised report described Claimant and the activities observed by the FBS behavior analyst. It did not mention the SEEK assessment or any other assessment of Claimant's needs. It suggested that Claimant should be given safety training to eventually enable him to walk safely to school five blocks from his home. To attain that objective it recommended that Claimant and his mother receive 40 hours of in-home services to be provided over a four-month period in weekly visits lasting approximately two hours each. This recommendation was based on the interview with Claimant's mother and on watching Claimant cross the school parking lot under the eye of a teacher. Other than safety training, the assessment did not discuss the other areas covered in SEEK's plan for Claimant, including: (1) access to the local fitness center and use of the men's changing room; (2) the safe use of the fitness equipment; (3) his participation in the church internship; (4) meal planning and shopping; and (5) placing an order at a restaurant. The report contained no baseline of Claimant's existing skills. It did not evaluate Claimant's mother's level of skill to serve as his on-going trainer at the end of any formal intervention. It mentioned that the safety trainer should gradually decrease the support given Claimant until he was able to walk to school independently. It did not mention a structured fade out plan. The FBS assessment was completed 304 days after Claimant initially asked the Regional Center to fund the SEEK program. HRC's behavior analyst, Rebecca Asdel, testified at hearing that the FBS assessment failed to meet HRC's requirements for assessments because it did not include a consideration of Claimant's case history, previous assessments or standardized assessment measures. She said it was inadequate as a basis for developing a service plan for Claimant.

16. Despite the inadequacy of FBS's assessment, HRC proposed to act on it by funding 40 hours of safety training provided by FBS rather than funding the SEEK program sought by Claimant's mother. Under the proposal the focus of the effort would have been to teach Claimant's mother how to train Claimant. The Regional Center discussed this proposal with Claimant's mother in February 2011 and reiterated to her that she should look to the school district for the other services Claimant was receiving from SEEK. She rejected the HRC proposal. At the IFSP on

June 7, 2011, the Regional Center again offered to have FBS provide training to Claimant and his parents. Again Claimant's mother rejected the proposal. Claimant's service coordinator, Mr. Tek, testified that the assessment by FBS was too limited and would have to be expanded as FBS provided services to Claimant. He also testified that it was not in the Claimant's interest for his mother to agree to an incomplete proposal.

Claimant's Educational Program

17. Claimant is enrolled in a transition program at the ABC Unified School District. A transition program is an education program for students with exceptional needs to facilitate the movement of the pupil from school to post-school activities. The District has established goals for Claimant in the following areas: (1) recreation and leisure (group sports); (2) speech (the practical application of language for communication and practicing answers for scripted questions); (3) writing a shopping list from a meal plan given him; (4) speaking in phrases or sentences; (5) finding items on a list in a grocery store; (6) improve skill in telling time; (7) using a calculator to solve math problems such as costs of hypothetical restaurant meals; and (8) learning to put groceries in the proper place in a simulated household situation. The school transition program does not address the particular goals that SEEK is pursuing with Claimant.

18. The SEEK program is a community integration program, not an educational program. It differs from the transition program at Cerritos High School. The two programs do not overlap. The primary difference is that the SEEK program focuses on developing skills for the social interactions needed to integrate into the community while the school program focuses on knowledge needed for that purpose. For example, the school teaches Claimant how to use a calculator to total the items ordered at a restaurant, including the taxes and tip. SEEK works to help him check prices at home on the internet and then, once at the restaurant, to make correct choices and to speak up loudly and coherently enough to place an order. Also the school teaches some skills that would be useful in a workplace but does not put Claimant into a work environment outside the school setting with supervisors who are not teachers. SEEK works with Claimant in a supportive volunteer workplace, his own church, coaching him and, to a lesser extent, the supervisors. SEEK pays Claimant a small stipend for his volunteer work, then takes him to a restaurant or store to spend it. The goal is to help him grasp the concepts that work produces money and that money can buy him things he wants. Pedestrian safety is a major aspect of the SEEK program and was formerly part of Claimant's school curriculum. The school program relied on teaching Claimant to obey hand signals from the teacher. SEEK rejects that approach as impractical in real life, focusing instead on teaching Claimant appropriate patterns of conduct in recurring situations in his neighborhood, such as crossing streets and walking through parking lots. Both the school program and the SEEK program have a physical education component, but at school the sports are group sports, organized and supervised by teachers. SEEK works with Claimant in the type

of setting he will use after he leaves school, the municipal fitness center, teaching him to use the exercise equipment and the locker room. The school has no training for Claimant's parents; SEEK includes that training in order to help Claimant retain his skills. Finally, SEEK has a fade out protocol to help Claimant gradually grow more self-reliant in his new skills. The school program has no fade out protocol.

19. HRC's policy is that the service coordinator's role with respect to an IEP is to coach the parent of the claimant before the meeting and to help set goals, but not to speak at the meeting. No Regional Center representative attended the March 2010 meeting that developed Claimant's IEP for the following year. At that meeting his mother did not ask the school district to fund SEEK's services to Claimant. No Regional Center representative attended the meeting or advised Claimant's mother in preparation for it. At Claimant's June 7, 2011, IEP, his mother made an effort to secure some help from the district in addressing the goals sought by SEEK or in funding SEEK's work, but was unsuccessful. The Regional Center service coordinator assigned to Claimant did not coach Claimant's mother or help her set goals before the meeting. He attended the IEP but made no effort to help prepare Claimant's mother to present Claimant's goals. The Regional Center's program manager had a good relationship with the school district's special education staff but never utilized it to help Claimant gain funding of the SEEK program by the school district. At various times between the 2010 IEP and the 2011 IEP, the Regional Center's program manager offered to exercise his influence on Claimant's behalf but Claimant's mother did not accept the offer. The Regional Center also suggested to Claimant's mother that it could refer her to its special education attorney consultant for advice on how she could best advocate for services from the school district, but she did not accept the suggestion.

20. There is no evidence that the ABC Unified School District has budgeted any funds for the services Claimant receives from SEEK.

Additional Findings

21. Claimant's family has medical insurance that covers Claimant. The evidence did not show that the insurance policy covers the type of services Claimant receives from SEEK.

22. There is no evidence that any organization other than SEEK Education, Inc., is qualified and available to provide Claimant with all of the services SEEK provides to Claimant.

23. Between March 1, 2010, and July 31, 2011, Claimant's family incurred costs in the amount of \$13,094.45 for SEEK's services. The family continued to incur additional costs every month from August 2011 to date but no evidence was submitted establishing the amount.

24. SEEK Education, Inc. is not presently vendored to provide services to Harbor Regional Center. It has been vendored to do so in the past but there is no evidence of the type of services it provided. SEEK is presently vendored to provide services to the East Los Angeles Regional Center. HRC did not establish that the Lanterman Act precludes it from purchasing the CPT program from SEEK.

25. The Service Agency sent Claimant's parents a letter dated February 18, 2011, informing them that the Service Agency would not fund the SEEK CPT for Claimant. The reasons given for the decision were that the Regional Center is obliged to have its clients utilize other public services before funding any service for them and that the transition program offered at Claimant's public high school was designed to teach the skills Claimant was acquiring through SEEK. The agency offered to fund one of its preferred providers, Family Behavioral Services, to teach Claimant's mother the skills she needed to assist Claimant develop his skills better. The FBS services offered to Claimant do not include most of the services that SEEK provides to Claimant.

26. Claimant's parents submitted a Request for Fair Hearing dated March 12, 2011, for the services denied in the February 18, 2011, letter and this hearing ensued.

LEGAL CONCLUSIONS

Applicable Law

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act), codified under Welfare and Institutions Code² section 4500 et seq., acknowledges the state's responsibility to provide services and supports for individuals with developmental disabilities. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The legislature intended that regional centers "assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." (§ 4640.7(a).)

2. The standard of proof in this matter is a preponderance of the evidence. Claimant, who is seeking services and reimbursement, bears the burden of proof in this matter. (Evid. Code, §§ 115 and 500.)

3. The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§§ 4620 et seq.) Regional centers are responsible for developing and implementing

² All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647 and 4648.) The statute also places responsibility on regional centers for conducting appropriate and timely assessments. (§§ 4642 and 4643.)

4. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) It is clear that the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

5. A regional center is required to secure services and supports that meet the individual needs and preferences of consumers (§§ 4501 and 4646, subd. (a)); support their integration into the mainstream life of the community (§§ 4501 and 4646, subd. (a)); "foster the developmental potential of the person" (§ 4502, subd. (a)); and "maximize opportunities and choices for living, working, learning and recreating in the community." (§ 4640.7, subd. (a).)

6. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subs. (a) & (b), and 4648, subs. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the *client's participation in the community*. (§§. 4646.5, subd. (2); 4648, subs. (a)(1) & (a)(2).)

7. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). "The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan." (§ 4646, subd. (b).) Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a fair hearing may establish such terms. (See § 4710.5, subd. (a).)

8. "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the Regional Center or obtained from generic agencies shall be made by agreement between the Regional Center representative and the consumer or, where

appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.” (§ 4646, subd. (d).)

9. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) The planning process includes the gathering of information about the consumer and “conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals” (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer’s needs, it is plain that assessments must be made so that services can be properly provided.

10. An IPP must be regularly reviewed, and reevaluated, to assure that services are being provided, that goals are being met in a timely way, and that the consumers are satisfied with the services. Further, the IPP must be regularly reviewed so that a consumer’s needs may be reevaluated. (§ 4646.5, subs. (a)(6) & (b).) This is consonant with the requirement that IPP development be based on information gathering and assessment to determine goals, needs, capabilities, preferences, barriers, concerns, or problems. (§ 4646.5, subd. (a)(2).)

11. Section 4512, subdivision (b), of the Lanterman Act states in part:

‘Services and supports for person with developmental disabilities’ means specialized service and supports or special adaptations of generic services and support 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. . . . The determination of which services and supports are necessary 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’s family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy, . . . education, . . . recreation, . . . *community integration services*, . . . *community support*, . . . daily living skills, . . . respite, . . . technical and financial assistance (Italics added.)

SEEK's Community Participation Training Program

12. The CPT provided to Claimant by SEEK Education, Inc., is designed to maximize Claimant's opportunity and choices for living, working, learning, and recreating in the community. Claimant needed services to address his loss of skills necessary to access his community. In the time Claimant has participated in the Community Participation Training, his skills have improved in the three areas it has addressed. The Community Participation Training is meeting his needs in those areas. (Factual Findings 7-11.)

13. Welfare and Institutions Code section 4648.5, subdivision (a) suspends the ability of regional centers ability to fund socialization recreation activities. This rule is inapplicable to the services sought by Claimant. The Community Participation Training he receives from SEEK is a community integration service. It is designed to prepare Claimant to be able to access the resources of his community with greater independence and safety than would otherwise be possible. (Factual Findings 7-11.)

14. Section 4659, subdivision (a), requires the regional center to "identify and pursue" all possible sources of funding for consumers receiving regional center services. It must identify each potential source and, if it is promising, pursue the funding. There is no authority in the code for the Regional Center to delegate that function to its clients or their families. The Regional Center cannot discharge this obligation by hypothesizing that funding might be available from another source. If the planning team determines that generic services can meet the consumer's vocational education or independent living needs, the regional center must assist the consumer in accessing those services. (§ 4648.55.) The evidence did not show that generic sources actually existed for services of the kind Claimant needs.

15. The Lanterman Act prohibits the Regional Center from funding services that are available from generic sources, including school districts. (§ 4659, subd. (a)(1).) The evidence did not show that generic sources actually existed for services of the kind Claimant needs. Claimant's mother attempted to obtain the services from the school district and was not successful. More importantly, the CPT services are community integration services and community support services, which are services that the regional center may fund pursuant to section 4512, subdivision (b). They are not the same as the services offered or available to Claimant pursuant to the school district's transition program. On the record in this matter, Welfare and Institutions Code section 4659, subdivision (a)(1) does not prohibit the Regional Center from funding the services offered by SEEK. (Factual Findings 7-20.)

16. Section 4648 subdivision (a)(8) provides that "[r]egional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." There evidence did not show that any such agency has budgeted funds for the kind of services Claimant seeks. Provision of the services by the

Regional Center will not supplant any part of the budget of another agency. (See Factual Findings 7 through 20.)

17. Section 4648.55 subdivision (a) prohibits a regional center from purchasing “day program, vocational education, work services, independent living program, or mobility training and related transportation services” for a consumer who is 18 to 22 years of age, who is eligible for special education and related education services and who has not received a diploma or certificate of completion. The services Claimant seeks do not fall within those categories as they are community integration services. Section 4648.55 subdivision (a) does not preclude the Regional Center from purchasing the services offered by SEEK to Claimant.

18. The Lanterman Act prohibits the Regional Center from funding services that are available from generic sources, including medical insurance or a health care service plan. (§ 4659, subs. (a)(2) and (c).) There is no evidence that Claimant’s family’s medical insurance or other medical plan is in fact a source for payment of the services Claimant seeks. (See Factual Finding 22.) On the record in this matter, section 4659, subdivisions (a)(2), (c) and (d) do not prohibit the Regional Center from funding the services offered by SEEK.

19. Claimant has established that he is entitled to Regional Center funding of the services offered by SEEK. The Regional Center is obligated to provide and to fund SEEK’s Community Participation Training for Claimant.

20. The Lanterman Act authorizes the Regional Center to purchase services from service providers either by vendorizing them or by issuing vouchers. (§ 4648, subs. (a)(3) and (a)(4).) HRC did not establish that the Lanterman Act precludes it from purchasing a program from SEEK.

Reimbursement

21. Claimant introduced evidence of the cost of CPT to Claimant’s mother and is seeking reimbursement of the costs Claimant has expended in the past months for SEEK’s services. The Lanterman Act does not specifically authorize the type of retroactive reimbursement sought by Claimant’s family. In fact, section 4648, subdivision (a)(3)(B), provides that a regional center may only reimburse an individual or agency for services and supports provided without a specific agreement in place if that person or agency is otherwise vendored with the regional center or has a contract in place, and the services or supports were supplied on an emergency basis consistent with a prior vendorization or contract. (See also, Cal. Code Regs., tit. 17, § 50612, subd. (b).) Claimant’s mother does not meet this narrow exception. Thus, these statutes detailing the IPP process indicate that a person or agency is generally not entitled to retroactive reimbursement for services provided without prior vendorization or contractual approval of the regional center.

22. Yet, the lack of specific statutory or regulatory authorization is not necessarily dispositive of the issue. If the Lanterman Act is to be applied as the Legislature intended, reimbursement may be available in particular cases where equity requires it. Thus, based on the above-described general principles articulated in the *Association for Retarded Citizens* case, some fair hearing cases previously decided by the Office of Administrative Hearings (OAH) have ordered reimbursement when the principles of equity apply, or when if not granted, the purposes of the Lanterman Act would be thwarted.³

23. In this case, the equities do not require reimbursement to Claimant's family and the purposes of the Lanterman Act would not be thwarted if there is no reimbursement. Claimant first asked the Service Agency to fund SEEK's services on March 26, 2010. Although the program manager stated that the Regional Center had declined to fund the services at the April 2010 IFSP under the premise that generic sources were available to Claimant, Claimant was not aware that the Regional Center had denied the service at that time. Neither had Claimant yet provided a copy of SEEK's assessment to the regional center before or during the 2010 IFSP. Once Regional Center did receive the assessment, it decided to propose a parent training oriented program with SEEK, which Claimant's mother initially accepted, and then later rejected, when Regional Center proposed another vendor. Thereafter, the Regional Center took additional steps to determine Claimant's needs. The evidence does not support reimbursement in this matter. Regional Center did not unreasonably delay the process; rather, Claimant's mother decided of her own volition to fund SEEK's services. The evidence does not establish that Claimant or his family is entitled to reimbursement. (Factual Finding 11-16.)

24. Pursuant to sections 4512, 4646, 4646.5, 4647, 4648, and the case of *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, Claimant did not establish cause for his family to be retroactively reimbursed for costs incurred for SEEK's CPT services provided to him beginning in or about March 2010. (Factual Findings 11-16.)

Vendorization of SEEK

25. Section 4648, subdivision (a)(3), provides that a regional center may purchase services pursuant to vendorization or contract. Subdivision (a)(3)(A) provides that vendorization or contracting is the process of identifying, selecting, or utilizing vendors or contractors, based on qualifications and other factors. The Department of Developmental Services has enacted regulations governing the establishment of persons or firms as vendors. (See California Code of Regulations (CCR), title 17, §54300, et. seq.)⁴ Other regulations control the purchase of services

³ Prior OAH decisions are only advisory; they are not binding precedent.

⁴ All further citations to the California Code of Regulations shall be to title 17.

by contract. (*See, e.g.*, CCR § 50607.) All of these provisions plainly exist to not only control costs, but to assure the quality of services.

26. As provided in Factual Finding 24, SEEK was previously a vendor of HRC and is now a vendor of ELARC. HRC did not establish that the Lanterman Act precludes it from purchasing a program from another regional center's vendor as a courtesy vendor.

ORDER

1. Harbor Regional Center shall fund 48 hours per month of Community Participation Training by SEEK Education, Inc.

2. Harbor Regional Center shall not be required to reimburse Claimant or his family retroactively for costs of Community Participation Training provided by SEEK Education, Inc., to Claimant from the date SEEK began providing the services to the effective date of this Decision.

DATED: _____

ELWOOD B. HAIN, JR.
Administrative Law Judge pro tem
Office of Administrative Hearings

NOTICE

Under the Lanterman Developmental Disabilities Services Act, this is a 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.