

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CALVIN M,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011120094

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino California on January 5, 2012.

The Inland Regional Center (agency) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his mother (mother).

Oral and documentary evidence was received and the matter was submitted on January 5, 2012.

ISSUE

Should the agency be required to fund the Ability First Socialization Program for claimant?

FACTUAL FINDINGS

1. Claimant, who will turn 17 years old in January of 2012, qualifies for agency services based on a diagnosis of moderate mental retardation.

2. Claimant is receiving special education services through the school district. Additionally, claimant is receiving 48 hours per month of routine respite, 26 hours per month of Applied Behavioral Analysis (ABA) services from California Psychcare (22 hours per month of direct services and 4 hours per month of supervision), which are funded by IRC, and 30 hours per month of In Home Supportive Services (IHSS) funded by the County. (Exh. 4)

3. On claimant's behalf, mother has requested that the agency fund the Ability First Socialization Program (Ability First) for claimant.

4. By letter, dated November 15, 2011, the agency informed mother that based on Welfare and Institutions Code section 4648.5, her request for social recreation services through Ability First was denied.

5. Mother/claimant timely appealed the denial of services by filing a Fair Hearing Request, and the instant hearing ensued.

6. By letter, dated December 12, 2011, and at the outset of the present hearing, the agency agreed to fund 30 hours per month of adaptive skills training with Ability First. (Exh. 4)

7. During the instant hearing mother testified that the underlying reason she was requesting a program at Ability First was so that she could have as much child care/supervision, as possible and that 30 hours per month of Ability First training was not sufficient to meet her child care needs.

8. The agency's offer of 30 hours per month of adaptive skills training through Ability First is fair and reasonable and directly addresses the issue raised by mother in the Fair Hearing Notice (mother requested services; albeit social recreation services, through Ability First). Since the agency has granted claimant's service request the issue raised in the instant proceedings is moot.

LEGAL CONCLUSION

1. Welfare and Institutions Code section 4648.5 provides, in pertinent part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(2) Social recreation activities. . .

* * *

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

Evaluation

2. In the present instance, the agency is prohibited by Welfare and Institutions Code section 4648.5, subdivision (a)(2), from providing claimant with any social recreation services whatsoever and, claimant does not qualify for an exemption from the prohibition pursuant to Welfare and Institutions Code section 4648.5, subdivision (c). However, the agency is allowed to provide adaptive skills training and has offered to fund the training through mother's preferred provider; Ability First. Consequently, the agency has offered to provide the functional equivalent of the services requested by claimant and if mother so elects, said services shall be funded by the agency.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

If mother/claimant so elects, the agency shall fund 30 hours per month of adaptive skills training through Ability First.

DATED: January 17, 2012.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.