

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

KEVIN F.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER

Service Agency.

OAH No. 2012010056

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 20, 2012, in Alhambra. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by his mother, who was assisted by an interpreter.¹

Lilia Ortega, Supervisor, represented the Eastern Los Angeles Regional Center (ELARC or Service Agency).

ISSUE

May the Service Agency reduce funding for Claimant's adaptive skills training from 18 to six hours per month?

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 12-year-old male who is a consumer of ELARC based on his qualifying diagnosis of mild mental retardation.

¹ Initials and family titles are used to protect the privacy of Claimant and his family.

2. The Service Agency currently provides funding for Claimant to receive 18 hours per month of adaptive skills training (AST) from Future Transitions, Inc. (FTI).

3. By a Notice of Proposed Action dated November 8, 2011, the Service Agency notified Claimant's mother that it proposed to reduce Claimant's AST funding to six hours per month.

4. Claimant's mother submitted a Fair Hearing Request to the Service Agency on or about November 18, 2011, which appealed the proposed reduction in funding.

5. The Service Agency has continued to provide Claimant funding for the service in question while this matter has been pending. (Welf. & Inst. Code, § 4715, subd. (a).)²

Background Information

6. Claimant lives at home with his mother and two siblings.

7. He attends a middle school within his local school district, where he receives special education programming in a special day class, including adaptive physical education (APE), occupational therapy (OT), and speech/language therapy (SLT).

8. Overall, Claimant is in good general health. He does suffer from asthma and allergies, which can sometimes create moderate problems. He also has been diagnosed with Attention Deficit-Hyperactivity Disorder (ADHD) and Developmental Language Disorder. He can at times become so anxious as to suffer from heart palpitations. Claimant's mother also reports that her son has been diagnosed with autism, although the Service Agency's records do not reflect that he has been deemed eligible for services based on that condition.

Adaptive Skills Training

9. The Service Agency has been funding AST for Claimant from FTI since 2006. The Service Agency previously provided AST funding for 24 hours per month, but that amount was reduced to the current level of 18 hours per month for reasons not established.

10. During the process of creating Claimant's Individual Program Plans (IPPs), the parties agreed that the AST would cover three basic skill areas: toilet training, hygiene and grooming, and safety skills.

11. A progress report from FTI dated March 22, 2011 stated that in the area of toilet training Claimant was doing so well that he had mastered the skill. His mother requested that he begin receiving training in the area of money management to replace toilet

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

training, so that Claimant could learn how to count currency and make purchases in the community.

12. A progress report from FTI dated October 4, 2011 indicates that by then Claimant had begun receiving money management training and no longer received toilet training. It was not established that the Service Agency was ever consulted on or advised of this change in the program, other than receiving progress reports from FTI. The Service Agency contends that Claimant's AST training should be reduced by six hours to account for the fact that one-third of his training goals as formerly constituted have been achieved. Moreover, the Service Agency contends that the new goal of money management can be met by special education services at Claimant's school as part of his curriculum. No evidence was offered concerning what is available to Claimant at school regarding this skill.

13. The most recent progress report from FTI indicates that in the area of hygiene and grooming, Claimant continues to make gradual progress. It was further noted that Claimant requires constant practice and review in this area. Since Claimant is still a minor, the Service Agency contends that his mother can provide this training at home similar to what parents do with their children who do not have developmental disabilities. The Service Agency contends Claimant's AST funding should be reduced by another six hours.

14. As for safety skills, the Service Agency concedes that Claimant still requires training in this area. Therefore, the Service Agency agrees that six hours per month of funding for AST is still warranted to cover this area.

15. Claimant's mother contends that there should be no reduction in the AST funding. She has not had a good relationship with school authorities and she is dubious that Claimant can obtain money management skills training from his school district. She further believes that Claimant has not mastered hygiene and grooming skills and that her son still needs training in that area. She agrees with the Service Agency that Claimant still needs safety skills training.

DISCUSSION

Jurisdiction and Burden of Proof

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a hearing to appeal the Service Agency's proposed reduction of service funding. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.) A regional center seeking to reduce funding has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the

burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof for that reason. (Factual Findings 1-5.)

Adaptive Skills Training Funding

In light of the state's budget crisis, various cost containment measures have been added by the Legislature to the Lanterman Act. For example, section 4648.5, subdivision (c), expressly suspends funding for educational services that can be provided by schools. This amendment works in concert with section 4648, subdivision (a)(8), which prevents regional centers from supplanting the budgets of other public entities, such as school districts. In addition, section 4646.4, subdivision (a), requires regional centers to consider a family's responsibility for providing similar services to a minor child without disabilities in making decisions regarding funding for service and supports to minor consumers.

Services and supports cannot be blindly provided, indifferent to the results, and indefinite in time. For example, the Lanterman Act requires the parties to develop goals, as well as the services and supports necessary to achieve those goals, in the process of creating an IPP. A client's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (§ 4646.5, subd. (b).) The Lanterman Act directs service agencies to accomplish agreed-upon IPP goals in a cost-effective manner (§§ 4646, subd. (a), and 4648, subd. (a)(11)). It is therefore axiomatic that when a goal specified in an IPP has been met, there is no further purpose in providing funding to meet that goal. Since the IPP is supposed to be a collaborative process between a consumer, his family, and regional center staff, one of those parties may not unilaterally change a goal stated in an IPP or the reason for providing funding for it. Thus, it is not cost-effective for a regional center to expend funds on an IPP goal that has been met.

In this case, FTI reports that Claimant has mastered toilet training such that that skill was replaced by another. Claimant has met his goal of basic toilet training. It was not appropriate for Claimant's mother and FTI to replace a goal agreed upon during the IPP process (toilet training) with a new goal (money management) without consulting the Service Agency or including it in that decision-making process. Therefore, a reduction of funding for one-third of the FTI program is warranted. If Claimant's mother believes money management training is needed, she may request the same during the IPP process.

However, it was not established that Claimant has mastered or achieved his goal of hygiene and grooming. Recent reports from FTI indicate that he is making gradual progress toward that goal. Claimant's mother believes that he still needs help in that area and has not met his goal. It is reasonable to believe that even a typical teenager would need some additional level of training in this area as they navigate puberty. While parents of typical children may be able to do that on their own, it was not established that the parent of a developmentally disabled child can do so. More to the point, if FTI has not achieved this goal after years of utilizing the special training and expertise of its staff, there is no reason to believe that Claimant's mother can do so now. Therefore, a reduction of funding in this area is not warranted.

Since the parties agree that no reduction in funding for safety skills is warranted, cause was established only for a reduction of six hours of AST services, not 12 hours.

LEGAL CONCLUSION

Cause was established pursuant to sections 4648.5, subdivision (c), 4648, subdivision (a)(8), 4646.4, subdivision (a), 4646.5, subdivision (b), 4646.5, subdivision (a), 4646, subdivision (a), and 4648, subdivision (a)(11), to reduce funding for Claimant's AST provided by FTI from 18 hours to 12 hours per month, so that Claimant may continue to receive AST in the areas of hygiene and grooming and safety skills. (Factual Findings 1-15 and Discussion.)

ORDER

Claimant's appeal is denied, in part, and granted, in part, as follows. Claimant's funding for adaptive skills training from Future Transitions, Inc., may be reduced from 18 hours to 12 hours per month.

DATE: February 16, 2012

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the 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.