

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KEVIN G.

Claimant,

OAH Case No. 2012030973

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Respondent.

DECISION

Administrative Law Judge (ALJ) Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on May 18, 2012, in Los Angeles, California.

Ana Hernandez represented her son, Kevin G.¹ (Claimant). Claimant was present at the hearing.

Paola Gazzaneo provided interpreter services for Claimant's mother during the hearing.

Johanna Arias-Bhatia, Fair Hearing and Government Affairs Manager, represented South Central Los Angeles Regional Center (SCLARC or Service Agency or regional center).

The matter was submitted for decision on May 18, 2012.

ISSUE

The question to be decided is whether SCLARC should continue to fund swimming lessons for Claimant.

¹ Initials have been used to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a nine-year-old boy who qualifies for regional center services based on an autism diagnosis.
2. On January 26, 2012, the Service Agency served Claimant with a Notice of Proposed Action (NOPA), seeking to terminate its funding of his swimming lessons. The stated reason for the decision was due to Welfare and Institutions Code² Section 4648.5, which suspends the Service Agency's ability to purchase social recreation activities. Claimant timely filed a fair hearing request.
3. Claimant's most recent Individual Program Plan (IPP), dated November 15, 2011, contains the desired outcome that Claimant will "receive swimming classes 12 sessions per month at YMCA . . . to enhance his socialization skills." The plan for SCLARC supports states that SCLARC will fund swimming lessons two times per week.
4. Maria Ramos (Ramos), Service Coordinator, testified at the hearing. She has been Claimant's service coordinator since 2010. SCLARC has funded swimming lessons at the YMCA since February 2007. SCLARC funded swimming lessons to address Claimant's social skills deficits. In 2009, SCLARC proposed to terminate funding of Claimant's swimming lessons, but after a fair hearing, the regional center was ordered to continue funding.³ When the parties met for Claimant's IPP in November 2011, Ramos informed Claimant's mother that SCLARC had intended to continue funding for swimming lessons. Claimant's mother told Ramos that the location where Claimant took lessons was closing, and she inquired about an alternative location. When Ramos checked with her supervisor about switching locations, she learned that SCLARC again sought to terminate funding of swimming lessons. Thereafter, SCLARC issued the NOPA and provided generic referrals to Claimant's mother, including programs for children with disabilities. Ramos contended that SCLARC considers swimming to be a social skills program, or a social recreation activity and a non-medical therapy. Although Ramos testified that SCLARC considered whether Claimant met the exemption provided in Section 4648.5, there was no evidence presented to support this assertion. In fact, Ramos acknowledged that she did not discuss terminating this service at Claimant's IPP.
5. Claimant's mother testified at the hearing. She corroborated that SCLARC did not discuss termination of Claimant's swimming lessons during his November 2011 IPP meeting; rather, SCLARC led her to believe that they would continue. Claimant's mother wants Claimant to learn to swim so that he is not in danger of an accident or other harm. He

² All further references shall be to the Welfare and Institutions Code.

³ OAH Decision No. 2009070481.

cannot assess danger, and he has to be taken care of constantly. He needs individual attention, and he currently has a one-on-one instructor. He also needs behavioral modification and socialization. He was receiving behavioral skills services; however, they ended and regional center has not provided any additional services despite her requests. Claimant is not receiving any other behavioral services from regional center. Claimant's mother also explained that Claimant does not participate in group activities in the same manner as non-disabled children. She would enroll him in football, but his behavior is not good. For example, if he is around other children, he will cry. Claimant currently receives 16 hours respite per month. Claimant's mother has also requested additional respite, but SCLARC denied her request.

6. The ALJ observed Claimant at the hearing. Claimant had difficulty sitting still and interrupted the proceeding on numerous occasions. He appeared to have behavioral issues.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal, as set forth in Factual Findings 1-6, and Legal Conclusions 2-6.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500, et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[t]he determination of which services and supports are necessary for each consumer 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, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives.

5. Welfare and Institutions Code section 4648.5 states in pertinent part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] 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, except for those activities vendored as community-based day programs.

[¶] . . . [¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(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.

6. Given the forgoing, Claimant's appeal must be granted. To qualify for the statutory exemption, swimming lessons must serve as a primary or critical means for ameliorating the physical, cognitive or psychosocial effects of Claimant's developmental disability, or be necessary to enable Claimant to remain in his home. The evidence showed that swimming lessons are the only service that he receives from SCLARC,⁴ and thus they are the primary means of ameliorating the psychosocial effects of Claimant's disability. Claimant's disability has prevented him from participating in physical and social activities, such as group sports. Swimming lessons are Claimant's primary source of socialization; and they have additional benefits. Accordingly, an exemption pursuant to Welfare and Institutions Code section 4648.5, subdivision (c) is warranted. Moreover, SCLARC failed to comply with the IPP procedures set forth in the Lanterman Act, as enumerated in the prior administrative decision (See f.n. 3.) SCLARC failed to discuss whether funding for swimming lessons should be terminated at Claimant's IPP meeting. Instead, it unilaterally decided to terminate this service without input from Claimant's family. No evidence was presented at the hearing to establish that Claimant's needs have changed, or that he will no

⁴ Although the regional center also provides respite to Claimant's family, that is not a service which directly assists Claimant.

longer benefit from continued participation in the YMCA swim classes. For these reasons, Claimant's appeal is granted.

ORDER

Claimant's appeal is granted. The Service Agency may not terminate its funding of swimming lessons for Claimant.

SCLARC is ordered to conduct a behavioral assessment within 30 days to determine what, if any, additional services regional center should provide to Claimant to address his behavioral issues. When other alternative services are in place, and in accordance with the proper IPP procedures, SCLARC may revisit the issue of whether it may suspend funding of swimming lessons.

Dated: May 23, 2012

AMY C. YERKEY
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.