

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ZAYD H.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2012031030

In the Matter of:

RASHID H.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2012031036

DECISION

These consolidated matters were heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on May 21, 2012, in Bakersfield, California.¹ Zayd H. and Rashid H. (collectively Claimants) were represented by their mother, Hanan H.² Kern Regional Center (KRC or Service Agency) was represented by its Associate Director, Jeffrey F. Popkin, LCSW, ACSW, C-ASWCM.

Oral and documentary evidence was received. The record was closed, and the matters were submitted for decision on May 21, 2012.

¹ The matters were consolidated for hearing and decision.

² Claimants' and their mother's last initial is used in lieu of their surname in order to protect their privacy.

ISSUE

Is the Service Agency required to continue funding Claimants' taekwondo lessons?

FACTUAL FINDINGS

1. Claimants are 13-year-old siblings, born August 7, 1998. They are regional center clients pursuant to their diagnoses of Moderate Mental Retardation. They have no other qualifying diagnoses. (Service Agency Exhibit 10.)³

2. Claimants attend eighth grade at a public junior high school. As of August 2011, both were still working on their toileting and continued to have communication delays. Zayd H. continued to have emotional outbursts and disruptive social behaviors, and Rashid H. continued to have disruptive behaviors and safety awareness needs. (Service Agency Exhibit 9.)

3. For six years, KRC has funded Claimants' taekwondo lessons from A.T.A. Taekwondo for Life, Inc. (Claimants' Exhibit A; Service Agency Exhibit 7.)

4. KRC vendored A.T.A. Taekwondo for Life as a "sports club," under service code 008. The description of that service classification/code specifies that "the vendor provides intermittent or regularly scheduled temporary non-medical care in a community recreational setting with equipment and/or instruction to maintain and/or enhance a person's physical health through exercise." (Service Agency Exhibit 7.)

5. The services through A.T.A. Taekwondo for Life are specialized recreation, for which funding was suspended by operation of law. (See Legal Conclusion 3.)

6. On March 14, 2012, KRC sent Claimants' mother a Notice of Proposed Action (NOPA), stating that it proposed to deny continued funding for A.T.A. Taekwondo for Life. Citing Welfare and Institutions Code section 4648.5, subdivision (a)(6), the NOPA's stated reason for denial of continued funding was that there was no evidence that A.T.A. Taekwondo for Life is "a primary or critical means for ameliorating eligible condition, physical, cognitive or psycho-social effects." (Service Agency Exhibit 5.)

³ Although these cases were consolidated for hearing, the Service Agency submitted separate exhibits for each case. However, the exhibit titles and dates for Service Agency Exhibits 1 through 11 were identical, and the content was virtually identical in many respects, except for the following: although the Service Agency's Exhibit 12 for both Claimants was a Medical Evaluation by Dr. Chun, the dates and content were not identical; and the Service Agency's exhibits for Rashid H. contained an Exhibit 13. This Decision will cite to the exhibits by their shared number, unless differentiation is required, in which case the exhibit will be cited as "Z.H. Exhibit _" or R.H. Exhibit _."

7. On March 18, 2012, Claimants' mother submitted Fair Hearing Requests on Claimants' behalf. (Service Agency Exhibit 3.)

8. At the fair hearing, Claimants' mother revealed that her sons also have a physical disability in that they were born with their arms, hands and feet turned inward. She believes that her sons qualify for an exemption to the statutory suspension of funding. According to Claimants' mother, taekwondo training has been beneficial for her sons and has helped their mental and physical disabilities. Taekwondo has increased her sons' self-confidence, concentration, ability to following instruction and memorization. It has also helped improve their behavior, and they are tantruming less than before. She believes that, if they no longer participate in taekwondo, they will regress. (Testimony of Hanan H.; Claimants' Exhibit A.)

9. Claimants submitted the following letters in support of their case:

(a). Two Letters from Bharati Shah, M.D. (one for each Claimant), noting:

[Claimants] cannot supinate [their] forearms completely so [their] forearms remain partially pronated and [their] hands remain partially fisted. [Their] feet are turning in and [they] have to wear inserts. . . . [Taekwondo] would help some with [their] disability as it provides some physical therapy. (Claimants' Exhibits B and C.)

(b). A letter from Lorraine Reza, B.A., with Holdsambeck & Associates, Inc., who provides in-home social skill training for Claimants; the letter noted that, since Claimants are "timid" and do not maintain eye contact or assert themselves "it is important for them to practice these skills in different environments, such as their taekwondo class. They benefit from this class because it helps them with putting into practice the social interaction skills learned in session" (Claimants' Exhibit D.)

(c). A letter from Ronald E. Kidd, Jr., Chief Instructor at Taekwondo for Life, stating that Claimants have been able to develop their physical skills, improve their ability to socialize, and increase their attention span; Mr. Kidd opined that discontinuing taekwondo would be detrimental to their progress. (Claimants' Exhibit E.)

(d). A letter from Glenn Stanley, a taekwondo instructor, noting that Claimants had moved from one-on-one instruction to being able to work in a class setting and that their self-confidence has grown. (Claimants' Exhibit F.)

(e). A letter from taekwondo instructor Steven Marquez, stating that he witnessed drastic improvement in Claimants' physical and mental well-being. (Claimants' Exhibit G.)

10. The evidence did not establish that Claimants taekwondo sessions are the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimants' qualifying disability (Moderate Mental Retardation).⁴

11. The evidence did not establish that Claimants' taekwondo sessions are necessary to enable them to remain in their home and that no alternative service is available to meet their needs.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimants' appeals of the Service Agency's denial of continued funding for Claimants' sports club activities at A.T.A. Taekwondo for Life. (Factual Findings 1 through 11.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.) In proposing to discontinue Claimants' previously-funded services, KRC bears the burden of proving by a preponderance of the evidence that the change in services is necessary. The Service Agency has met its burden of proof.

3. Welfare and Institutions Code section 4648.5 provides:

(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:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

⁴ Claimants' physical disability is not a qualifying condition for which they are receiving services. Claimants do not suffer from cerebral palsy.

(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.

4. In the case at hand, the Service Agency's authority to fund Claimants' taekwondo, which is specialized recreation, has been suspended by statute. (Welf. & Inst. Code, § 4648.5, subd. (a)(4).)

5(a). The statute provides for an exemption on an individual basis when the regional center determines that specifically enumerated extraordinary circumstances exist. (Welf. & Inst. Code, § 4648.5, subd. (c).) The Service Agency determined that there was no evidence that such extraordinary circumstances exist, and thus did not grant the exemption.

5(b). Since Claimants seek to establish their eligibility for granting the exemption, they have the burden to demonstrate that the Service Agency's determination is incorrect and that they are entitled to the exemption. Claimants have not met their burden.

5(c). Claimants' taekwondo lessons have helped improve their concentration and their ability to following instruction and have given them another forum to practice social skills. However, Claimants did not establish that the taekwondo sessions are a "primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of" Claimants' Moderate Mental Retardation or that the taekwondo lessons are "necessary to enable [Claimants] to remain in [their] home and no alternative service is available to meet [their] needs." Consequently, Claimants did not establish that they are entitled to the statutory exemption set forth in Welfare and Institutions Code section 4648.5, subdivision (c).

6. Given the foregoing, the Service Agency's proposed denial of continued funding for Claimants' taekwondo lessons was appropriate.

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ORDER

Kern Regional Center's denial of continued funding for Claimants' taekwondo lessons at A.T.A. Taekwondo for Life, Inc., is upheld. Claimants' appeals are denied.

DATED: May 24, 2012

JULIE CABOS-OWEN
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.