

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MONICA W.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012040190

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Alhambra on June 8, 2012. Eastern Los Angeles Regional Center was represented by Rhoda Tong, Supervisor, Community Residential Services. Claimant Monica W. was represented by Matthew M. Pope, Attorney at Law.

Eastern Los Angeles Regional Center presented Exhibits 1 – 11 and the argument of the representative. Claimant Monica W. presented Exhibits A – I and the testimony of her mother; Lorena Martinez, Program Director, Easter Seals Southern California; and Diane Baker, Behavioral Specialist, Howard J. Chudler & Associates, Inc. The parties' exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

Documentary and oral evidence having been received, the Administrative Law Judge submitted this matter for decision on June 8, 2012, and finds as follows:

ISSUE

The issue presented for decision is whether claimant Monica W. should continue to receive community integration services from Easter Seals Southern California.

FACTUAL FINDINGS

1. Claimant Monica W. was born on December 16, 1986, and is 25 years old. She lives with her mother, grandmother, and uncle in the family home in Los Angeles. Her mother works full-time and is claimant's conservator.

2. Claimant has been diagnosed with severe mental retardation and autism disorder. Based on her developmental delays and/or disabilities, claimant is eligible for and receives the following services from the Eastern Los Angeles Regional Center (Service Agency): 30 hours per month of respite; day programming at New Day in Montebello (New Day); adult day care at Merci School; transportation; a one-to-one aide at her day program; 10 hours per month of behavioral modification from Howard J. Chudler & Associates, Inc., of Glendora (Chudler); and community integration training at Easter Seals Southern California (Easter Seals). In addition, claimant receives 265 hours per month of In-Home Supportive Services and Supplemental Security Income.

3. (A) On March 15, 2012, the Service Agency issued a Notice of Proposed Action, proposing to terminate the community integration training program provided by Easter Seals. The Service Agency indicated, in pertinent part, that the community integration service was duplicative of services that claimant was receiving in her day program at New Day.¹

(B) On or about March 26, 2012, claimant's mother filed a timely Fair Hearing Request, disagreeing with the termination of the community integration training and requesting a fair hearing. Subsequently, claimant filed a Waiver of Time.

Claimant

4. Claimant is active young woman. She is ambulatory and needs constant supervision for her own safety. In the community, her mother transports claimant sit in a stroller with a belt or strap because her daughter tends to wander away. Claimant can eat with utensils but is not toilet trained or able to perform her own personal care chores or assist in self-help tasks. She needs assistance in bathing, dressing, and eating. She tends to take food from other persons' plates. She tends to eat too rapidly, over-fill her mouth, and choke on her food. Claimant is non-verbal

¹ According to the Notice of Proposed Action, the Service Agency also sought to terminate or suspend the community integration training program as a social recreation service. However, at the outset of the fair hearing, the Service Agency representative stipulated that the sole reason for the proposed termination of the service was that it duplicated service at claimant's day program and it was not cost effective for the Service Agency to provide or fund for duplicative services for a consumer.

but communicates her needs by limited gestures and eye gazes. She has had behavioral issues for a number of years.

5. In February 2007, when she was still attending school, claimant had a triennial evaluation to determine the appropriateness of her educational programming. Her school district found claimant had significantly below average cognitive functioning, low adaptive and social functioning, and severely delayed adaptive and self-help skills. She exhibited deficits in her adaptive behavior, had a very short attention span, and needed physical and verbal prompts and redirection. When upset, claimant tended to gnaw on her hands.

6. Claimant continues to engage in maladaptive behaviors on a daily basis. Her mother and family find it difficult to control or to change her behaviors or to take her in the community for outings. When she goes shopping with her mother, claimant will pull on people and take down items from store shelves. Recently, at a restaurant, claimant knocked down condiments onto the floor. In the car, claimant tries to wiggle out of her seat belt and throw her shoes out through the windows of the vehicle. She gets frustrated when she does not get what she wants and engages in tantrum behaviors.

7. Outside the home, claimant does not understand or engage in appropriate behavior. At her day program at New Day, she continues to rub her private parts against a bean bag chair. At the adult day care program at Merci, claimant has a one-to-one aide and continues to toss and throw her shoes, throw items from tables, flip or push over chairs, climb on top of tables and chairs, and grab other persons' food, clothes, and hair,

Claimant's Services

8. Claimant attends the New Day day program from Monday through Friday for six hours each day from 8:45 a.m. until 2:45 p.m. Every weekday, she then attends the adult day care program at Merci School from 3:15 p.m. until 6:00 p.m. She receives transportation to and from home to her day program and adult day care program.

9. (A) It was not established what specific services or activities are provided to claimant at the New Day day program or at the Merci adult day care program. Her Individual Program Plan (IPP) dated January 23, 2012, discusses behavioral problems at both programs. At New Day, she needs a lot of supervision due to her behaviors and disabilities and cannot be left alone due to lack of awareness of dangers. The staffing ratio at New Day is one supervisor for every four consumers. At Merci adult day care program, claimant receives the services of a one-to-one aide and her maladaptive behaviors there include throwing her shoes and grabbing others' hair.

(B) According to a January 23, 2012 Progress Report, claimant has five objectives or goals in independent living skills at New Day: promote greater awareness of safety skills, keep hands to herself when in the community, keep hands out of her mouth, keep her socks and shoes on, and wipe her face as needed. According to her annual Individual Service Plan dated December 24, 2011, claimant has two other goals at New Day: maintain her current weight by walking and eating appropriately; and increase her social skills by keeping her hands to herself, using her own activity materials, staying focused on instructions, and not hitting, kicking, or pulling staff or peers.

(C) At the Merci adult day care program, claimant's goals include working on her social interaction skills, keeping on her shoes, and washing her hands when appropriate. Another of claimant's goals at Merci is to be able to go out in the community with direction and verbal directions.

10. On Saturdays, claimant participates in community integration training at Easter Seals on Saturdays from 9:30 a.m. until 1:30 p.m. After being picked up at home, claimant is transported to Out of the Closet, a non-profit thrift store in Pasadena, or to public libraries in Alhambra and Los Angeles. At the thrift store, claimant participates in volunteer activities, such as dusting shelves, organizing items, and hanging clothes, for one hour and forty-five minutes. At the public library, she learns to sit and talk quietly. Thereafter, she has lunch at a MacDonald's restaurant for one hour. At the restaurant, she learns how to stand in line, pay for her meal with coupons, and interact with others. She needs assistance from Easter Seals staff with cutting her food into smaller pieces, eating, and performing personal hygiene tasks. She has not yet learned how to order meals from the picture menus. After lunch, claimant returns home.

11. At the Easter Seals program, claimant receives one-to-one assistance from a staff member, who teaches her safety skills, including sitting in a vehicle with the seat belt fastened. Claimant throws items from the vehicle less frequently now and is able to walk in the community without use of a stroller. Easter Seals staff instructs and directs claimant with gestures, physical prompts, and hand-over-hand directions. Since the passage of the Trailer Bill in 2009 limiting the provision of social recreational services, the Easter Seals program has implemented a community volunteering component into its community integration training program.

12. Claimant began attending the community integration training at Easter Seals since April 2005. As set forth in the Annual Review of Progress for the period ending in December 2006, claimant accessed local community resources such as the library and participated in recreational activities such as bowling. Her long range goals were: to increase her self-help skills, including washing her hands with assistance and gradually decreasing her use of a stroller; to "work on her community access skills," such participating in recreational activities and going to the library; and to increase her safety skills, such as sitting safely in her seat while riding in a vehicle.

As set forth in the more recent Semi-Annual Review of Progress dated June 17, 2011, claimant's long range goals at the Easter Seals program were as follows: increasing her safety skills, including decreasing incidents of lying on the ground; working on her interaction skills, including keeping her hands to herself; increase her self-help skills, including keeping her socks and shoes on while being transported; and volunteering in community work. Since 2005, claimant has made some progress towards her goals at the Easter Seals program

13. (A) In or about February 2012, claimant and her mother began receiving behavioral modification services from Chudler. The purpose of the behavioral service is to address claimant's challenging behaviors and to provide her mother with the methods and techniques to help deal with and improve her daughter's behaviors at home and in the community. The behavioral services are authorized through May 2012 and to be reviewed by the Service Agency every four months.

(B) In an Initial Evaluation, a Chudler behavior specialist reported that the main concern of claimant's mother was her daughter's tantrum-like behaviors, including grabbing and pinching other persons, throwing objects and shoes from vehicles, and eloping. Claimant had been engaging in her behaviors for years but they seemed to be escalating. She had incidents of tantrum-like behaviors eight to 10 times per day. The Chudler behavior specialist found that claimant engaged in these behaviors due to frustration, tasks avoidance, boredom, and improper attention-seeking and made several recommendations to the mother and Service Agency.

14. (A) In a Progress Report dated April 10, 2012, Chudler Behavior Specialist Diane Baker noted having provided services to claimant and her mother in their home and observed claimant at her day and adult day care programs. At home, claimant does well completing routine activities of daily living with one-to-one assistance but her mother finds it difficult to engage her daughter in other activities due to poor attention and limited interest. Claimant appears to act more appropriately when participating in activities, such as taking walks or rides in a car, but becomes over-stimulated when in the community. The behavior specialist found that claimant's tantrum-like behaviors, which occur more frequently on the weekends when she is home, presented more as non-compliance or resistive behaviors. Claimant had made progress towards behavioral goals. The behavior specialist has established a trusting, mentoring relationship with claimant and her mother has attempted to give directions in a simple and calm manner with use of prompts. The behavior specialist recommended that behavior services continue for four more months at eight hours per month.

(B) The Chudler behavior specialist also found that the New Day day program and Merci adult day care program provide claimant with skill-building services in safety, personal boundaries, self-help, adaptive skills, fine and gross motor tasks, and task planning. The behavior specialist recommended that the day and

adult day care programs both use consistent behavioral strategies and actions and she has offered to provide suggestions to the programs.

15. Claimant's mother works full-time and has a varied work schedule. She has not had the opportunity to observe her daughter while she participates in the Easter Seals community integration training program but her daughter enjoys and looks forward to the program every Saturday. Her mother continues to use a stroller when taking claimant in the community. Claimant's uncle watches and supervises her at home but does not take her on outings in the community.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request for continuation of the community integration training services at Easter Seals Southern California, based on Findings 1 – 15 above.

2. Under the Lanterman Developmental Disabilities Services Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)²

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports 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. (§ 4512, subd. (b).) Services and supports may include training, education, recreation, behavior training, camping, daily living skills, community integration services, social skills training, personal care, and day care. (*Ibid.*)

² Further statutory references are to the Welfare and Institutions Code unless indicated otherwise.

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that the regional 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 funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. In addition, regional centers must take into account the consumer's need for extraordinary care, services, and supports and supervision.

3. Discussion--In this fair hearing appeal, the Service Agency has proposed to terminate claimant's community integration services at Easter Seals on the grounds that the services are duplicative of services she receives in her day program at New Day and are therefore not cost effective. The evidence did not demonstrate, however, that the services are duplicative. Claimant participates in volunteer work at a thrift store and library and has lunch at a fast-food restaurant while attending the Easter Seals' Saturday program. No evidence was presented to show what activities or services are provided to claimant in her day program at New Day.

The Service Agency further contends that the services are duplicative because claimant has the same or similar goals at the Easter Seals and New Day programs, including improving her skills in safety awareness, social interaction, and self-help. This contention was not persuasive either, for claimant has been diagnosed with severe mental retardation and autism and presents with behavioral challenges. Due to her disabilities, it would appear that she would be expected to have very limited and similar goals in her various programs that focus on her deficits in several life areas.

In any case, claimant has made some progress in her behaviors at the Easter Seals. She is less prone to throw items while riding in a vehicle and walks without use of a stroller. She enjoys attending the Easter Seals program. What appears to be more important in evaluating claimant's programming and services is the observation of the Chudler behavior that claimant's providers are utilizing

different behavioral methodologies to improve claimant's skills and behaviors. The behavior specialist has offered to make suggestions to the programs so that they can implement consistent behavioral strategies for claimant in order to help improve her behaviors. Moreover, claimant's mother needs to devote some time on Saturdays to observe her daughter at the Easter Seals program so that she can observe and learn how the staff there is able to encourage claimant to perform volunteer work, eat in a restaurant, and walk without use of a stroller. To improve claimant's behaviors will not only require both consistent and coordinated behavioral strategies in all of her programs but also time and effort in diligently implementing behavioral recommendations at home and in the community with her family.

Accordingly, claimant's services at the Easter Seals community integration training program shall continue for another year. At the end of one year, the Service Agency may confer with claimant's mother and her service providers to evaluate the need and efficacy of the community integration training service for claimant.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Monica W. from the determination of the East Los Angeles Regional Center to terminate community integration training services at Easter Seals Southern California is granted. Claimant Monica W. shall continue to receive community integration training services at Easter Seals Southern California for four hours each Saturday for another year.

Dated: June 22, 2012

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.