

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TABITHA M.,

Claimant,

v.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2012080021

DECISION

Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on August 15, 2012, in Bakersfield, California.

Tabitha M. (Claimant) was represented by her parents. Susan Hernandez, Special Projects Manager, represented the Kern Regional Center (regional center).

Evidence was received and the matter was submitted for decision on August 15, 2012.

ISSUE

Did the service agency properly determine that the applied behavioral analysis (ABA) service currently provided for Claimant should be reduced?

FACTUAL FINDINGS

1. Claimant is a seven-year-old girl who is a regional center consumer based on a diagnoses of autism.

2. The regional center has been providing funding for claimant to receive 14 hours per week of ABA services. These services have been provided by the Center for Autism and Related Disorders (CARD).

3. On June 27, 2012, the service agency issued a Notice of Proposed Action (NOPA) in which it proposed to reduce Claimant's ABA hours to an amount not specified in the NOPA. The regional center indicated in the NOPA that it based its decision on Welfare and Institutions Code sections 4648, subdivision (a)(2). In a June 10, 2012 letter to claimant's parents, the regional center added Health and Safety Code section 1374.73 (Senate Bill 946) as support for its decision to reduce ABA services. Section 1374.73 provides that, effective July 1, 2012, health insurance plans shall provide coverage for ABA for individuals with autism. In addition to the above mentioned statutes, Ms. Hernandez asserted at the hearing that the regional center was also relying on Welfare and Institutions Code section 4686.2, subdivision (c)(2), which provides in pertinent part that "ABA is designed to be provided in multiple setting for no more than 40 hours per week, across all settings." Claimant filed her request for hearing on June 29, 2011.

4. Claimant is requesting that her ABA hours remain at 14 hours per week because of her severe behavioral problems, self injurious behavior, and her propensity to elope. Claimant's mother testified that claimant has made significant strides as result of her ABA service. She also testified that claimant does not receive ABA service through the school district. The regional center did not present evidence which rebutted the testimony of claimant's mother.

5. Claimant's father testified that the family's medical care insurance is provided by a self-insurance program offered by his employer. The statement in the regional center's June 10, 2012 letter to claimant's parents indicating that the family's health insurance is covered by Anthem Blue Cross is insufficient to rebut the testimony of claimant's father on this issue. Ms. Hernandez testified that if claimant's family is covered under a self-insurance program, such a program would be exempted from the requirements of Health and Safety Code section 1374.73 and the regional center's Purchase of Service Policy.

LEGAL CONCLUSIONS

1. In 1977, the California Legislature enacted the Lanterman Developmental Disabilities Services Act (the Lanterman Act) "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (See, *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.). Under the Lanterman Act, the State of California has accepted responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. The regional center failed to establish that claimant's ABA hours should be reduced. Claimant needs ABA services because of her significant behavioral problems. The regional center failed to present evidence that rebutted the testimony of claimant's parents that claimant does not receive ABA services at school. Therefore, the regional center may not reduce claimant's ABA hours based on Welfare and Institutions Code sections 4648, subdivision (a)(2), and 4686.2. Further, the regional center failed to present evidence that was sufficient to rebut the testimony of claimant's father that the family's health insurance coverage is provided by a self-insurance program through claimant's father's employer. Therefore, the regional center may not reduce claimant's ABA hours based on Health and Safety Code section 1374.73. The regional center did not present sufficient evidence to establish a basis to reduce claimant ABA service hours. Therefore, cause exists to overrule the determination of the regional center to reduce claimant's ABA service hours.

ORDER

The decision of the Kern Regional Center to reduce ABA services for claimant is overruled. Claimant's appeal is granted.

Dated: August 20, 2012

/s/

HUMBERTO FLORES
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.