

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PERRY N.

Claimants,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012100975

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 15, 2012 in Alhambra, California.

Gerard Torres, Supervisor, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

Claimant Perry N. (Claimant) was represented by his Mother who was also his authorized representative.

Evidence was received, the record was closed, and the matter was submitted for decision on November 15, 2012.

ISSUE

Whether ELARC may terminate or reduce Claimant's adaptive skills training for college support provided by Community Advocates for People's Choice (CAPC) for the period of August 2012 to February 28, 2013.

FACTUAL FINDINGS

1. Claimant is a 23 year old young man eligible for regional center services under the eligibility category of Autism.

2. Claimant is attending Cerritos College and is enrolled in a program to obtain a certificate as a Micro Computer Specialist. He has completed half of the courses required for the certificate. Claimant finds the classes to be very challenging. Vendor CAPC provides adaptive skills training as college support for Claimant. CAPC also provides independent living skills training to Claimant, but only the adaptive living skills training is at issue in this matter.

3. Claimant's Individual Program Plan (IPP) dated November 29, 2011 provides the following desired outcomes:

(1) Perry will continue to reside with his family at this time. He would like to live on his own in the future.

(2) Perry will communicate his living needs with parents, program staff and the ELARC Service Coordinator.

(3) Perry will obtain a certificate to become a Micro Computer Specialist.

(4) Perry will maintain optimal health.

(5) Perry will improve his self-help skills.

(6) Perry will improve his adaptive skills.

(7) Perry will improve his safety skills at home and in the community.

(8) Perry will improve his socialization skills.

4. Claimant's IPP service grid indicates that he is to receive adaptive skills training for college support based upon his school schedule. Until August of 2012, Claimant received 80 hours per month of adaptive living skills training to support him in his college program based upon the number of courses he was enrolled in and the hours of class instruction. Claimant enrolled in fewer classes for the period commencing August 2012 and consequently needed fewer hours (61 hours) each month to support his college program.

5. ELARC has advocated for Claimant to change the service he uses for college support from adaptive skills training to a personal assistant at a lower cost. Claimant was not amenable to changing the service because he and his family believe that adaptive skills training has been the most appropriate service. His adaptive skills

trainer worked with him to help him integrate into the college classroom, use appropriate conversational techniques to participate in formal and informal discussions, maintain appropriate behaviors during class, focus on the curriculum, and communicate with classmates in the college community.

6. There has been some tension between ELARC and CAPC because CAPC has not provided documentation requested by ELARC representatives in a timely manner. Additionally, Claimant requested a new service coordinator and that his case be handled from a different ELARC branch office because of the tension and his dissatisfaction.

7. Adaptive skills training and completion of the Cerritos microcomputer specialist certification program are central to Claimant's IPP.

8. There was no evidence that Claimant no longer needs the adaptive skills training. Instead, the evidence established that CAPC and Claimant did not provide Claimant's class schedule to ELARC within a reasonable time and ELARC therefore, terminated the service. Claimant needs 61 hours of adaptive living skills training per month to support him in his college program.

9. Claimant has received CAPC adaptive skills services for three years based upon his class schedule. As of August 2012, Claimant received 80 hours of adaptive skills training per month. CAPC received a new authorization every six months. Occasionally, the authorizations were not timely, but CAPC continued providing services so the consumer would have continuity of service. This pattern of late documentation by CAPC and late authorizations by ELARC continued until October 2, 2012, when ELARC notified Claimant, and provided a Notice of Proposed Action, that his adaptive skills training had not been authorized for the period of August 2012 to February 28, 2013, and was terminated.

10. Subsequently, CAPC and Claimant provided documentation of Claimant's class schedule and ELARC authorized 55 hours per month of adaptive skills training retroactive to September 10, 2012, based upon Claimant's class schedule. Claimant and CAPC have requested 61 hours per month based upon Claimant's class schedule and payment for the services that were rendered to Claimant before the NOPA was issued.

11. CAPC provided 40 hours of adaptive skills training for Claimant in the month of August 2012, 70 hours in September of 2012 and 61 hours in the month of October of 2012 before Claimant and CAPC were notified that ELARC no longer approved of the service and terminated Claimant's adaptive living skills training.

12. The evidence established that the adaptive skills training were essential for Claimant's participation in college life and his ability to finish the Micro Computer Specialist certification program. There was no evidence to support ELARC's elimination or reduction of the adaptive skills service hours to a level below the requested 61 hours per month.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act¹ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: 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.

2. To comply with the Lanterman Act, a regional center must provide services and supports that enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are 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. (Welf. & Inst. Code, § 4512, subd. (b).)

3. As set forth in Welfare and Institutions Code section 4646, subdivision (a), it is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

4. Welfare and Institutions Code section 4646, subdivision (d), provides that an IPP shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumers individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or where appropriate the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

¹ Welfare and Institutions Code section 4500, et. seq.

5. Welfare and Institutions Code section 4646.5, subdivision (a), provides that the IPP shall include gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities and a preparation of a statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs.

6. Welfare and Institutions Code section 4648, subdivision (a)(1), provides that in order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to securing needed services and supports. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons in the community, and that that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

7. California Code of Regulations, Title 17, section 50612, provides that a purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. The authorization shall be in advance of the provision of service. A retroactive authorization may be allowed for an emergency, when authorized regional center personnel are not available, and where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service, and if the service was necessary and appropriate.

8. Here, Claimant is learning adaptive skills in the context of attending a college program. The service has been effective in keeping Claimant engaged and helping him to progress through the curriculum while learning age level appropriate skills to interact with others in a college setting and methods to remain productive and engaged in this aspect of Claimant's vocational life. The adaptive skills training address portions of objectives 3, 5, 6, 7 and 8 of the IPP. Claimant established that he has needed a minimum of 61 hours of adaptive skills training to support him in his college program since August of 2012. ELARC did not establish by a preponderance of the evidence, that Claimant needed less than the 61 hours of adaptive training skills during that period. (Factual Findings 1-12 and Legal Conclusions 1-7)

ORDER

1. Claimants' appeal is granted.
2. The Eastern Los Angeles Regional Center is to fund 61 hours per month of adaptive skills training for Claimant for the period of August 1, 2012 to February 28, 2013.

DATED: February 12, 2013


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)