

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EMMA A.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2012120099

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on March 21 and 22, 2013.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant was represented by her parents.

Oral and documentary evidence was received. Submission of this matter was deferred pending receipt of closing briefs. Service Agency's Closing Brief was submitted on April 5, 2013, and marked as Exhibit 13. No further submissions were received from claimant. The record was closed and the matter submitted for decision on April 5, 2013.

ISSUES

Is ACRC required to provide and/or fund equestrian services for claimant?

FACTUAL FINDINGS

1. Claimant is an 8-year-old girl who is eligible for ACRC services based on a diagnosis of cerebral palsy. She receives services and supports pursuant to the Lanterman

Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. One of the services ACRC funded for claimant was equestrian therapy services provided by Ride To Walk (RTW).² In May, 2009, she began receiving weekly therapeutic horseback riding services from RTW. After these services began, section 4648.5 was added to the Lanterman Act prohibiting the purchase of certain types of services for consumers.

Section 4648.5 provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' 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.

(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

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

² Ride To Walk is also referred to as Ride to Walk.

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.

3. ACRC notified claimant that it had determined that her RTW services fit within the suspended services included in section 4648.5. Having also determined that claimant did not qualify for an exemption permitting the purchase of this service, ACRC proposed termination of funding.

4. Claimant's parents objected to this determination and a Fair Hearing to address this issue was conducted on January 20, 2010, before Administrative Law Judge Karen J. Brandt.³

Judge Brandt's findings include the following:

Ride To Walk's "Mission Statement" describes the horseback riding services that it provides as "innovative recreational activities that are therapeutic in nature and adapted to the individual's needs and disabilities" Given this description, the services claimant is receiving from Ride To Walk constitute nonmedical specialized recreation therapy as set forth in section 4648.5, subdivision (a)(4). Consequently, pursuant to section 4648.5, subdivision (a), ACRC must suspend the therapeutic horseback riding services claimant is receiving from Ride To Walk unless she qualifies for an exemption under section 4648.5, subdivision (c).

¶. . . ¶

When all the evidence is weighed and balanced, it establishes that the therapeutic horseback riding services that claimant is receiving from Ride to Walk are a primary and critical means for ameliorating the physical effects of her cerebral palsy. Claimant therefore qualifies for an exemption under section 4648.5, subdivision (c). Consequently, her therapeutic horseback riding services should not be suspended under section 4648.5.

5. As a result of this decision, ACRC continued to fund RTW services for claimant through November, 2012.

6. On November 20, 2012, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "ACRC has terminated funding for equestrian therapy services for [claimant] from Ride to Walk."

³ OAH Case No. 2009091276.

7. The NOPA advised claimant that the reason for this decision was as follows:

Pursuant to an emergency devendorization, Ride to Walk may no longer provide services to any ACRC clients effective November 14, 2012. [Claimant's] family is encouraged to schedule a planning team meeting as soon as possible to discuss whether [claimant] will require continued equestrian therapy services.

8. The stated authority for this action included:

Welfare and Institutions Code section 4648.1(d): A regional center may terminate payments for services, and may terminate its contract or authorization for the purchase of consumer services if it determines that the provider has not complied with the provisions of its contract or authorization with the regional center or with applicable state laws and regulations. When terminating payments for services or its contract or authorization for the purchase of consumer services, a regional center shall make reasonable efforts to avoid unnecessary disruptions of consumer services.

Title 17, California Code of Regulations, Section 54370(a) and (b)(1) and (7)⁴. Termination of Vendorization for Noncompliance.

(a) The vendoring regional center shall be responsible for ensuring that vendors within its service catchment area comply with the vendorization requirements. Except as specified in Section 54372 of these regulations, the regional center shall take the actions as appropriate for the violations specified in (b) and (c) below.

(b) Vendorization shall be terminated at the end of the first working day after written notification is received from the vendoring regional center if any of the following conditions exist:

(1) If the vendor is serving consumers without a current license, credential, registration, accreditation, certificate, degree or permit that is required for the performance or operation of the service;

(3) The vendor has refused to make available any books and records pertaining to the vendored service, including those of the management organization, for audit, inspection or reproduction by

⁴ Section (b)(3) was included as stated authority though omitted from the citation.

regional center, Department or authorized agency representative staff;

(7) The regional center has determined that continued utilization of the vendor threatens the health and safety of the consumer(s).

9. Claimant filed a Fair Hearing Request, dated November 27, 2012, appealing that decision stating:

[Claimant] should not lose her services due to any vendor related certification issues. RTW is having financial difficulty to pay for the PATH⁵ membership fees.

[Claimant's] equestrian therapy services should continue while RTW is fundraising for the membership fees; Or ACRC can reimburse the parents and parents can obtain private lessons/therapy for [claimant].

10. By letter dated April 11, 2011, ACRC informed claimant's parents of the following:

After a hearing on your appeal, the administrative court ruled in your favor, finding that the therapeutic horseback riding provided by Ride to Walk was in fact a primary and critical means for ameliorating the physical effects of [claimant's] cerebral palsy. As such, the Ride to Walk purchase has remained in effect since that time. As a part of regional center determination of need and allocation of resources, and pursuant to the legal requirements under the Lanterman Act for ACRC to monitor service effectiveness, ACRC requires ongoing assessment for all regional center funded services identified in the Individual Program Plan. For this reason, ACRC is required to complete an assessment to determine whether Ride to Walk services are meeting [claimant's] assessed need identifying therapeutic horseback riding as the primary means to ameliorate the physical effects of [claimant's] disability, and whether this service continues to qualify for an exemption under Section 4648.5(c). Therefore, ACRC will fund an independent assessment by a physical therapist to review [claimant's] past progress at Ride to Walk and establish a baseline to clearly identify what is needed to ameliorate the effects of [claimant's] cerebral palsy.

⁵ Professional Association of Therapeutic Horsemanship International.

Please be assured that we want to partner with you in meeting [claimant's] needs and at the same time assure compliance with our statutory requirements. [Claimant's] services will, of course, remain in place during this assessment process, after which time we will discuss [claimant's] services with Ride to Walk.

11. Claimant's Individual Program Plan (IPP) dated June 7, 2011, noted that "annually ACRC and Planning Team will assess "exemptions" status through an assessment of services and progress made. It was later noted that "Ride to Walk will continue as a service until the assessment can be done."

12. ACRC had difficulty obtaining a qualified evaluator to reassess claimant's exemption status. The regional center intended to use Deborah Van Buren to perform these assessments.

13. Deborah Van Buren, OTR-L, is a Licensed Occupational Therapist with extensive background in equestrian services. She was first vendored with the regional center in 2002 to work with the zero to three-year-old population. She testified that she was approached by ACRC in the spring of 2011 seeking her assistance with assessing the services and progress of claimant and the remaining clients receiving RTW services. After a lengthy process she was vendorized to perform that service for consumers over age three.

14. On her first RTW site visit, Ms. Van Buren testified that it "seemed safe and looked like an accredited program." That caused her to seek information about RTW on the PATH website and she discovered that it was not listed as a member nor shown to be accredited by PATH. She communicated this information to Helen Thomas, ACRC Community Services Specialist.

15. Ms. Van Buren testified that there was "confusion" in how she should interpret what she was seeing in the program and whether it was providing a primary or critical means for ameliorating claimant's developmental disability.

Minutes from a February 14, 2012, meeting to discuss the "procedures drafted as guidelines for utilization of Ms. Van Buren's services", state that ACRC determined "we will hold off on proceeding with Deborah Van Buren's utilization until after we obtained [sic] pertinent information regarding RTW."

16. Helen Thomas is an ACRC Community Services Specialist whose responsibilities include vendorization of service providers. After receiving information from Ms. Van Buren, she reviewed records and determined that accreditation with NAHRA was a requirement for RTW's vendorization. For its initial vendorization in 2002, RTW was required to provide its "certification for North American Riding for the Handicapped Association."

17. Ms. Thomas testified that ACRC funded claimant's RTW services under Service Code 106—Specialized Recreation Therapy, which contained the following service description:

A regional center shall classify a vendor as a Specialized Recreation Therapy Provider if the vendor provides therapy and/or training to consumers and their families; as necessary for the consumer to achieve an IPP objective. Specialized Recreation Therapy is designed to maximize and strengthen family and consumer interaction and skills. Specialized recreation includes, but is not limited to: equestrian therapy, movement therapy and therapeutic play. Vendors shall be credentialed and or licensed as required by the State of California to practice in the field of therapy being offered. By December 31, 2001, Equestrian Therapy providers shall also possess a current program accreditation and instructor certification with the North American Riding for the Handicapped Association (NARHA).⁶

18. In light of the requirements of Service Code 106 and the Title 17 regulations, Ms. Thomas testified that, beginning in May 2012, she made a formal request for information from RTW. It was determined that RTW was no longer a member of PATH, nor accredited with that organization but did employ a PATH certified instructor.

19. By letter dated June 1, 2012, Ms. Thomas requested submission of stated documentation “no less than 30 business days after receipt of this letter.” The requested information was not provided.

20. There was extensive testimony at hearing regarding the RTW devendorization process. From May through December, 2012, there was a series of letters and phone contacts between the parties. There were allegations of arbitrary changes being made to the vendorization requirements, and failure to provide required documents within specified timelines. Both parties alleged instances where the other party failed to respond to various inquiries.

21. Dr. Kristine Corn, PT, MSPT, DPT, is the founder and Executive Director of Ride To Walk. She testified that prior to the statutory changes in 2009, all of RTW’s clients were funded by ACRC. After that time, the approximately eighty clients reduced to approximately forty with only four receiving continued ACRC funding after prevailing in the Fair Hearing Process. The remaining clients became privately funded.

Dr. Corn explained that she allowed PATH membership to lapse because she could not afford the costs involved after the lost funding. Not only were membership fees required but additional expenses were incurred, such as paying a higher insurance premium when purchasing liability premiums through PATH’s required carrier.

22. Dr. Corn testified that she was made aware in approximately June 2012, of ACRC’s requirement that RTW provide PATH “membership” and PATH “accreditation”.

⁶ NAHRA is now PATH.

While membership simply required payment of fees, accreditation requires that “a center must be a Professional Association of Therapeutic Horsemanship International center in good standing for at least one full year before it is eligible to apply for accreditation.” Therefore, there was no way for RTW to satisfy the later requirement at that time. She believed that ACRC’s intent to devendorize RTW was “a done deal”.

23. On November 7, 2012, ACRC’s Resource Development And Administration Committee (RDAA) decided to proceed with devendorization and sent a letter via certified mail to RTW, notifying that its vendorization would be terminated on an emergency basis one day after receipt of the letter for non compliance with applicable law and regulations. Specifically, ACRC found that RTW did not have the appropriate accreditation required for provision of Specialized Recreation Therapy pursuant to Service Code 106.

The November 7, 2012 letter advised RTW, “If you want to appeal this decision, please review “CCR Title 17 Regulations Section 54380 Vendorization Appeal” for information on the appeal process.”

24. This letter was received by RTW on November 13, 2012. RTW did not request a stay or appeal the termination of vendorization. ACRC terminated the vendorization of RTW effective the end of the day on November 14, 2012, one day after receipt of the letter.

25. Ms. Thomas testified that she was not authorized to share information regarding RTW’s devendorization with case management staff until November 15, 2012.

26. On or about November 16, 2012, claimant’s ACRC Supervising counselor, Tanya Nalley was advised that RTW had been devendorized effective November 14, 2012.

27. On November 19, 2012, Ms. Nalley responded to a phone message from claimant’s mother with the following email:

Hi Shirley, I got your voice mail today. It is true; I learned late Friday that Ride to Walk is no longer contracted with us. I apologize there was no notice as this was an emergency decision. I will be sending you out a notice, but I was hoping to talk with you about the change and how this impacts [claimant] and what her current needs are. Angela is on vacation this week but I am here. Please let me know when you can talk so we can set aside some side [sic-time] to discuss this together.

28. On November 20, 2012, Ms. Nalley and claimant’s mother discussed the termination of RTW services by telephone and agreed to a Planning Team Meeting to discuss services. Ms. Nalley read the following statement:

ACRC determined that Ride To Walk “is serving consumers without a current license, credential, registration, accreditation,

certificate, degree or permit that is required for the performance or operation of the service” and as such was subject to emergency devendorization pursuant to California Code of Regulations, Title 17, Section 54370(b)(1).

29. Angela Dixon is claimant’s ACRC Service Coordinator. She testified that upon returning from vacation, she was informed on November 26, 2012, that RTW had been devendorized for failing to meet vendorization criteria and was no longer providing services to claimant or any of ACRC consumer’s. Upon receiving claimant’s Fair Hearing Request on November 27, 2012, she made a referral to ACRC’s Best Practices Committee to address claimant’s RTW services.

30. A Planning Team meeting was held on November 28, 2012, after which ACRC took a “15-day time out to review its ability to fund continued equestrian services for claimant as aid paid pending. This issue was referred to the Best Practices Committee which was scheduled to meet on December 4, 2012.

31. The Best Practices Committee met on December 4, 2012, and determined that a vendored provider must “be both members of PATH and have the correct certifications to meet the criteria of providing Equestrian Assisted Therapy not just Equestrian Assisted Activities.”

As a result of this Best Practices Committee meeting, Ms. Thomas “agreed to investigate whether ACRC could locate any other equestrian services vendors with appropriate accreditation to provide services to claimant as aid paid pending.”⁷

32. Ms. Dixon acknowledged that claimant was entitled to aid paid pending; however, the regional center was not aware of any accredited providers. Saddle Pals, in Grass Valley, was discussed as a possible provider but was not offered to the parents. Ms. Dixon stated that they only provide services on Monday and team members believed that claimant’s parents indicated they would not be interested because of the driving distance and disruption to the school day. She testified that ACRC Community Services and Supports would be responsible for locating alternative providers.

33. There was no evidence presented that claimant no longer requires equestrian services and the service remains in her IPP

34. None of ACRC’s equestrian services vendors were found to be accredited so it was determined that none were appropriate to provide services to claimant. It was also

⁷ Under Welfare and Institutions Code section 4715, a claimant is entitled to continued provision of services if he or she files a timely request for hearing, that is, within 10 days of notice that a service will be discontinued. Claimant’s request was timely filed and claimant alleges that services were not continued in accordance with the Individual Program Plan (IPP). This is commonly referred to as “Aid Paid Pending.”

determined by the Best Practices Committee that ACRC could only reimburse claimant's family for services provided under purchase reimbursement that met the same standards as those provided from a vendored service provider.

Ms. Thomas testified that ACRC subsequently "closed out" the remaining vendorizations because none of the vendors were accredited and none had served regional center clients for at least two years.

35. ACRC continued to fund claimant's equestrian therapy services through November 13, 2012.

36. Claimant's mother testified to the parents' frustrations with ACRC's vendorization requirements and opined that ACRC was attempting to circumvent the equestrian therapy awarded in 2010. She presented information that PATH is a voluntary, non-regulatory agency and questioned the requirement for membership/accreditation being a requisite for an appropriate equestrian therapy program. She also questioned the "emergency" basis for the devendorization.

She also opined that ACRC did not act reasonably and "did not do everything it could to minimize the disruption in [claimant's] services." Claimant went to her scheduled session on November 17, 2012, as was told by RTW that ACRC had informed them that it would no longer be funding that service. Her mother knew of no efforts made to find an alternative provider prior to the disruption of service and had not been made aware of the cessation by the regional center.

37. The parents informed Dr. Corn that they would be willing to fundraise the PATH membership fees with the assistance of their friends and church, and would commit to raising those funds on an annual basis.

38. Dr. Corn asked ACRC about the possibility of revendorization after certification and accreditation from PATH and received the following response included in a December 5, 2012 letter:

The regional center cannot grant a revendorization on a suspended service. Equine Assisted Activity or Therapy is a suspended service per Welfare and Institutions (W & I) Code, Section 4648.5 (a)(4) which states:

"Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's authority to purchase the following services shall be suspended...

Nonmedical therapies including, but not limited to, specialized recreation therapy, art, dance and music."

This service has been suspended since 2009 and the regional center will not be making any future referrals therefore, ACRC will not extend vendorization or revendorization of any such service.

(Italics in original.)

39. ACRC did not offer any explanation of how consumers meeting the exemption pursuant to section 4648.5, subdivision (c) would be served.

40. ACRC contends that claimant has no standing to challenge RTW's devendorization nor does this court have jurisdiction over the legality of the devendorization. Any concerns with devendorization must be raised by the vendor in an appeal pursuant to California Code of Regulations, Title 17, section 54380. This court has jurisdiction to resolve conflicts between the service agency and the consumer.⁸

LEGAL CONCLUSIONS

1. Regional centers are governed by the provisions of Welfare and Institutions Code section 4500 et seq. (Lanterman Act).

2. Section 4648, subdivision (a), specifies:

In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

3. Claimant has been found to "need" equestrian services as documented in her IPP and mandated by the decision in OAH Case No. 2009091276, which found that she met the criteria for an exemption pursuant to section 4648.5, subdivision (c). There was no evidence presented that this service is no longer needed and claimant does not stop requiring the service because a vendor is no longer available.

4. Whether RTW's devendorization was proper is outside the jurisdiction of this court. However, ACRC's decision to devendorize RTW and to "close out" the vendorizations of the remaining equestrian services providers after finding that none are PATH accredited effectively prevents access to that service by claimant or any other ACRC consumers, now or in the future, who may be entitled to such service by meeting exemption criteria. The position stated in the December 5, 2012, letter to Dr. Corn that "ACRC will not extend vendorization or revendorization of any such service" further supports the lack of access to that service.

⁸ Section 4705(a).

There was no evidence presented to explain how the regional center intends to provide this service to consumers meeting exemption criteria. The intent of the legislature is to have the service available to consumers who meet the exemption or the service would have been suspended without the availability of an exemption.

ACRC is required to establish a resource. It cannot disallow vendorization and revendorization when there are consumers with established need and potential consumers with future needs meeting exemption criteria.

5. Section 4648.1, subdivision (d) provides that when terminating payments for services or its contract or authorization for the purchase of consumer services, a regional center shall make reasonable efforts to avoid unnecessary disruptions of consumer services. The term “reasonable efforts” is not defined in the Lanterman Act. At a minimum it must mean “some” effort. In this case the regional center began looking for alternative providers after RTW was already devendorized and the consumer was without services. That “effort” came after the disruption had already occurred and, as such, would not demonstrate a reasonable effort to avoid the disruption. This is especially true since the regional center was aware of its concerns with RTW for several months.

6. ACRC shall immediately take all necessary actions to provide or fund claimant’s equestrian therapy services. These actions may include, but not be limited to, vendorizing or contracting with a qualified provider, considering service code alternatives or revendorization.

ORDER

The appeal of claimant Emma A. is granted. ACRC is required to take any action required to immediately provide or fund claimant’s equestrian services.

DATED: April 17, 2013

SUSAN H. HOLLINGSHEAD
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 this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)