

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A.M.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2013010082

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 25, 2013, in Los Angeles, California.

A.M.¹ (claimant) was present; he left the hearing room when the hearing commenced. He was represented by A.R., who is his mother and conservator. Claimant's mother used the services of Elizabeth Camacho-Leon, a qualified interpreter.

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 25, 2013.

¹ Initials are used to protect the privacy of claimant and his family.

ISSUE

Whether the Service Agency must fund services for claimant at El Arca Adult Development Center (El Arca).

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-9.

Testimony: Jennifer Carter, Arlene Jackson, A.R.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 22-year-old conserved male who is a consumer of SCLARC based on his qualifying diagnoses of profound intellectual disability and Down Syndrome.

2. At or shortly after claimant's annual consumer contact meeting in October 2012, claimant's mother requested that the Service Agency fund services for claimant at El Arca.

3. SCLARC informed claimant by a Notice of Proposed Action (NOPA) letter dated December 7, 2012, of its denial of claimant's request for funding for services at El Arca. The Service Agency wrote that El Arca is outside of its vendor catchment area and that "[t]here are vendors in SCLARC's catchment area that are able to provide the same service you are requesting." (Ex. 1.) The Service Agency also based its denial on Welfare and Institutions Code sections 4512, subdivision (b), and 4646, subdivision (a).²

4. On January 2, 2013, claimant filed a Fair Hearing Request appealing the denial of funding.

Claimant's Request for Services at El Arca

5. Claimant lives at home with his mother and brother in Huntington Park. He is non-verbal, using gestures and grunts to communicate. He eats with his fingers and a plastic spoon and is unable to help with his daily personal care. He engages in disruptive and aggressive behaviors, lacks safety awareness, and will run or wander away if the front gate of his home is unlocked. Claimant attended school at the Perez Special Education Center in the

² All further statutory references are to the California Welfare and Institutions Code unless otherwise stated.

Los Angeles Unified School District; he exited the school on December 14, 2012, due to his age, as reflected in his final Individualized Education Plan dated December 10, 2012. (Ex. 6.)

6. SCLARC currently provides funding for in-home respite services for claimant, according to claimant's most recent Individual Program Plan (IPP), dated October 14, 2011 (Ex. 7.)

7. Jennifer Carter, claimant's service coordinator at SCLARC for the past four years, testified that claimant's school district referred claimant's mother to El Arca, but that El Arca is outside the Service Agency's catchment area. Carter testified that she spoke to claimant's mother about her concerns about an appropriate program in May 2012, and wrote to claimant's mother with some suggested providers within the Service Agency's catchment area (Ex. 4). She testified that there are numerous other appropriate local providers for claimant, including vendors that could help monitor his behaviors. She testified that claimant's mother said she liked El Arca because it has an arts component, which claimant enjoys, and a security guard who could prevent claimant from wandering away. Carter testified that she sent the matter to a clinical consultant to review, because of claimant's challenging behaviors, and that the consultant recommended that claimant attend a behavioral day program. El Arca is not a behavioral day program. After May 2012, claimant's mother asked the Service Agency to fund El Arca, and a one-on-one aide for claimant. Carter called El Arca staff, who said that a one-on-one aide is not necessary for claimant.

8. Arlene Jackson, the program manager who supervises Carter, testified that when Carter conveyed claimant's mother's request for funding for a vendor outside of the Service Agency's catchment area, she investigated to see whether some exception would apply to warrant the funding. She found that El Arca's primarily provides an adult day health program for medically fragile adults; claimant is not medically fragile. Carter told Jackson that claimant's mother had rejected the programs Carter had suggested within the catchment area because she was afraid claimant would wander away. Jackson asked Carter to consult with a behaviorist regarding an appropriate program that would address claimant's wandering and his safety in the community; eventually, claimant could transfer from a behavioral program to a less restrictive program, including an arts and crafts program, as claimant apparently desires, if his wandering is controlled. There are programs in the Service Agency's catchment area that can meet claimant's needs and desires. Moreover, there are some behavioral programs that offer arts and crafts activities within the catchment area.

9. Claimant's mother testified that she wants claimant to progress, though he develops quite slowly. She testified that claimant enjoyed his tour of El Arca, and evinced an interest in the arts, dance, and sports activities there. She testified that staff at El Arca told her that claimant does need a one-on-one aide. Claimant's mother visited two behavioral centers recommended by Carter. Claimant started crying at one of them when he saw someone lying on the floor screaming; at another, residents seemed to be permitted out on the street, which would present a danger for claimant. Claimant's mother is looking for a center that will be safe for claimant and that will allow him to develop.

DISCUSSION

Jurisdiction and Burden of Proof

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of funding for services for claimant at El Arca. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to Service Agency funding for services at El Arca. (Evid. Code, § 115.)

Vendor Services Outside the Service Agency’s Catchment Area

3. The State of California has accepted responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (§ 4501.) The overriding policy statement found in the Lanterman Act is that the regional centers must do everything reasonable to allow the developmentally disabled to be integrated into the community and become as independent as possible. And, “it is the intent of the legislature that regional centers provide or secure family support services that do all of the following: (1) Respect and support the decision making authority of the family. (2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.” (§ 4685, subd. (b)(1) and (2).)

4. Consumers of regional center services have the right to make choices in all areas of their lives, including their living arrangements and where and with whom they will live. (§§ 4501 and 4502, subd. (j).)

5. The choice of services and supports must be made on the basis of, among other things, “the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (§ 4512, subd. (b); see also § 4646, subd. (a).)

6. Regional centers are established as “fixed points of contact” to enable the state to carry out its duties to the developmentally disabled and to allow those persons access to the services and supports best suited to their individual needs throughout their lifetimes. (§ 4620, subd. (a).) Contracts between the Department of Developmental Services and regional centers must specify the service, or “catchment” area. (§ 4640, subd. (a).) A regional center’s catchment area is “the geographical area within which a regional center provides services specified in its contract with the [State Department of Developmental Services] as required by Welfare and Institutions Code Section 4640.” (Cal. Code Regs., tit. 17, § 50501, subd. (18).)

7. In general, the geographic boundaries of each regional center's catchment area should be respected in order to effectuate the legislative scheme. But in the individual case, circumstances may justify that an exception be made.

8. Here, claimant has not established circumstances justifying an exception. Claimant's mother argues that El Arca's arts activities and security guard meet claimant's needs and that the behavioral programs she visited in the Service Agency's catchment area are unsatisfactory. No evidence indicates that claimant has needs for which only El Arca is capable of providing services; indeed, there is some evidence that El Arca cannot address some of claimant's needs, particularly as regards his behaviors. Nor does the evidence show, despite claimant's mother's dissatisfaction with the few vendors she visited in the Service Agency's catchment area, that claimant's needs would be unmet if the Service Agency funds an appropriate vendor in its catchment area.

LEGAL CONCLUSION

Under sections 4501, 4502, 4512, 4620, 4643.5, subdivision (c), 4646, and 4685, subdivision (b), and California Code of Regulations, title 17, section 50501, subd. (18), claimant did not meet his burden of establishing that the Service Agency must fund services for claimant at El Arca. (Factual Findings 1-9 and Discussion.)

ORDER

Claimant's appeal is denied.

DATE: February 4, 2013



HOWARD W. COHEN
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.