

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013030001

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Torrance, California on April 5, 2013. Mother and Father represented Claimant. Gigi Thompson, Manager Rights Assurance, represented Harbor Regional Center (HRC).

The matter was submitted for decision on April 5, 2013. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

The sole issue presented is whether HRC should fund a one-to-one aide for Claimant when such an aide is a precondition for Claimant's enrollment in summer camp.

FACTUAL FINDINGS

1. Claimant is a 15-year-old consumer of HRC based on his qualifying diagnosis of Autism. He resides with his parents and sibling, and he is currently enrolled in a speech and language non-public school.

2. On January 13, 2013, Claimant's parents requested HRC to fund a one-to-one aide required for Claimant to attend summer camp at Jay Nolan Community Services commencing in July 2013. By letter dated January 29, 2013, HRC notified Claimant's parents that their request was denied stating the following:

. . . we support your decision to seek a summer camp experience for your son. All children, whether developmentally disabled or not benefit from enrichment opportunities. . . . However, following the Lanterman Act changes proposed July 2009 (trailer Bill AB45), regional centers are no longer permitted to purchase camp and social recreational services. Particularly in this case, the purpose of the 1:1 aide would be to support [Claimant] . . . in a recreational activity. We have also reviewed this request to see if it might qualify as an exception however, we have determined that your service request is not an exception to the policies and procedures of HRC.”

(Ex. 3.)

3. On February 14, 2013, Claimant’s parents filed a Fair Hearing Request appealing HRC’s denial. Thereafter, these proceedings ensued.

4. Claimant’s history of severe behavioral challenges is documented in Claimant’s August 11, 2011 Individual/Family Service Plan (IFSP) (Ex. 4) and November 8, 2012 Annual Review Update (Ex. 17), with the following language appearing in both documents:

[Claimant] is non[-]compliant, hyperactive, tantrums and is very aggressive as he punches, kicks, screams or cries, bites, pinches and scratches family members, grabs mother and sister’s breast. He attempts to destroy property when upset (sliding glass doors, and walls, doors, windows etc.). Aggressive episodes can last for several minutes at a time. Behaviors have increased in intensity and duration over the past year. He requires restraint when necessary to prevent further injury or property damage. Parents have bruises on their body a[s] a result of . . . [Claimant’s] aggression. The antecedent to his behaviors are anxiety, frustration at not being able to verbally express himself as well as he would like, not getting his way, having requests or demands placed upon him, not enough advanced noticed [*sic*], transitions, or having his belongings touched (he tends to hoard objects such as pebbles, crayons, markers and coins, etc.) [Claimant] . . . requires careful supervision to prevent him from getting into trouble as he is very impulsive and lacks safety awareness. He likes to play with or hover over the stove burner or grabs knives. He repeatedly tries to climb onto the railing on the second story balcony to play with the tree leaves. He will cross the street without looking. He is difficult to control in the community when he becomes upset and has been walking away. In the past couple of years, [Claimant’s] . . . over all anxiety has also increased. Mother reports that [Claimant] . . . also has phobias of things such as rain, bees and flies. Mother indicated [Claimant] . . . is increasingly exhibiting “risk taking behaviors[,]” he displays eloping behavior and parents have been proactive in changing locks.

(Ex. 4 at p. 3; Ex. 17 at p. 6.)

5. Claimant's 2012 Annual Review additionally contains the following enumeration under the section "CHALLENGING BEHAVIORS (CDER)":

Disruptive Social Behavior

Disruptive behavior interferes with social participation almost every day (MW Qualifier)

Aggressive Social Behavior

Physical aggression resulting in injury occurred more than one time within the past 12 months (MW Qualifier)

Self-Injurious Behavior

Self-injurious behavior occurs, but no apparent injury occurs (MW Qualifier)

Destruction of Property

Has caused major damage (requiring replacement and/or substantial repair of object) more than once

Running or Wandering Away

Running/wandering away occurs or is attempted at least once a month, but not every week (MW Qualifier)

Emotional Outbursts

Outbursts occur at least one a week and usually require intervention (MW Qualifier)

(Ex. 17 at p. 6.)

6. During the summers of 2010, 2011, and 2012, Claimant attended camp at Jay Nolan Community Services, which its publication describes as follows:

Every summer Jay Nolan Camp takes children with and without developmental disabilities to Teresita Pines, a residential camp in Wrightwood, California. For five days and six nights, children age 8-15 live, eat, sleep, learn and play together in the out of doors. The camp is fully inclusive, which means, no matter what a camper's disability, they are part of all camp activities. Campers find gifts and capacity in all their peers as they participate in Rock Climbing, Archery, Swimming, Sports and Games, Outdoor Theatre, and Arts and Crafts. Evening activities include a talent show, an all camp dance, bonfire programs, sing-a-longs, and memories to last a lifetime.

(Ex. 9.)

7. The hearing testimony of Melissa Smith, Camp Director at Jay Nolan, establishes that Jay Nolan camp is not accredited as a special needs camp because typical campers outnumber campers with developmental disabilities. According to Smith's testimony, the mix of typical campers and campers with developmental disabilities is mutually beneficial to each group of campers because the camp environment fosters a willingness to participate with peers regardless of disability, compassion and patience for others, and opportunities to build social skills to enable independence. Smith testified that Jay Nolan camp is designed to accommodate and serve individuals with developmental disabilities because "lessons are adapted to the group to cater to the audience at that moment." The entire staff of camp counselors works as a team to respond in the best way possible to the needs of individual campers. One-to-one aides assigned to campers with autism are oriented to the camp's policies and procedures for inclusion and are trained to minimize incidences leading to known challenging behaviors. Last summer, 76 campers were in attendance, and 35 percent of those campers had a diagnosis of Autism, Cerebral Palsy or Down Syndrome. Four campers with developmental disabilities had a one-to-one aide.

8. Claimant's parents, at their own expense, wish to enroll Claimant in Jay Nolan's upcoming summer 2013 camp. They believe that camping at Jay Nolan has benefited Claimant. In a March 26, 2013 letter to HRC, Claimant's parents provide "a summary of what [Claimant] has gained by attending the Jay Nolan Summer Program for the last 2 years." According to the parents' letter, "this camp addresses [Claimant's] . . . deficits/ongoing needs to improve his communication skills, self-control, social skills and ability to form friendships and interaction in the community and new settings." In the letter, Claimant's parents additionally identify the following "gains," which "can be better maintained and further enhanced if our request for a dedicated 1:1 aide is funded"

Educational and social setting where exposure to fellow campers with and without special needs boost his self esteem

Increased ability to complete and accomplish certain tasks

Enhanced ability to be more independent outside a school setting

Improved ability to initiate, interpret and respond to the verbal and non-verbal social cues used in outside environments to avoid unexpected behaviors

Increased ability to identify and develop shared interests and hobbies

Improved self-awareness and ability to advocate for themselves and with the aid of an adult

(Ex. 14.)

9. Jay Nolan has notified parents that Claimant is unable to attend its camp without a one-to-one aide for the reasons articulated in a March 21, 2013 letter from Smith to HRC as follows:

a. Jay Nolan Camp is set in the wilderness environment at 6000 feet elevation. There is no part of the camp site that is flat. Dirt trails wind up and down through the camp site to get Campers from place to place. While the trails are maintained, there are dirt and rocks, and roots from trees. Wood planked stairs are built into hillsides to access three different levels of the campground terraced into the hillside. In 2012, [Claimant] . . . ran away from his cabin group several times throughout the week. Each time, a Counselor would need to follow and redirect [Claimant] . . . to ensure his safety. This took away from the cabin group ratio, leaving only one Counselor to supervise the nine other Campers (2-3 campers with developmental disabilities) in [Claimant's] . . . group. This behavior was new to us in the Camp setting.

b. If [Claimant] . . . is unresponsive to prompts or redirection, he may enter areas that have no trails. While the maintained part of the camp ground is safe, if he were to find himself in undeveloped wilderness, he may get lost, find poison oak or wild animals, or fall and injure himself in unstable terrain. An Individual Counselor would be able to provide focused supervision to minimize the risk of [Claimant] . . . running away, and especially keep him out of areas that may be dangerous.

c. Our Camp program is fast paced and filled with activities. In 2012, [Claimant] . . . was much more resistant to participating in activities. When he did not want to participate, he threw much larger tantrums than he had in his past experiences at Camp. He hit, kicked, and attempted to bite our staff. When I consider the need for individual support for a Camper, I have to consider the safety of all camp participants and the work environment for staff.

d. Our cabin groups are divided by age and gender. In 2012, [Claimant] . . . moved from a junior cabin to the oldest boy's cabin. The gap between his abilities and his peers was much wider than it had been in previous years. It's typical for boys this age to become interested in girls; however, [Claimant] . . . has not learned how to deal with his impulses. In 2012, he made an unwanted advance on a female camper. When his Counselors addressed the incident, [Claimant] . . . continued to try to kiss the female camper. When he needed to be physically removed from the camper, he hit his Counselor and kicked him in the shins. If the female camper had been more direct in trying to get him to stop, that aggression could have been taken out on her. The decision was made in that moment that an Individual Counselor would be necessary for

[Claimant] . . . to continue to participate in our Camp program. He requires constant supervision not only for his safety, but the safety of others.

e. In 2012, [Claimant] . . . had toileting accidents that had not been present in previous sessions. He also required more assistance in changing clothes in a time frame that did not delay the rest of his cabin group. When I met with his parents to begin the process of getting [Claimant] . . . an Individual Counselor, they stated [Claimant] . . . will hold his bowels until he's in discomfort. All of these daily needs can be addressed by an Individual Counselor without holding up [Claimant's] . . . Cabin group from activities or taking away from the supervision ratio.

f. In 2012, [Claimant] . . . was less capable of expressing his wants and needs. He doesn't like the word, "no" and has increased sensory sensitivities to light and sound. His aversion to flying objects has increased. We are in an outdoor environment, so birds and bugs are present. When two Counselors are supervising 10 Campers, they cannot possibly be tuned into the smaller triggers that may set [Claimant] . . . off. [Claimant's] parents state that [Claimant] . . . responds to choices and positive attitudes. He doesn't respond well to being told what to do and he needs choices. A Counselor assigned to [Claimant's] . . . individual support needs will be able to carefully monitor [Claimant's] environment, the tone and volume of their voice, will be able to frame directions in a way [Claimant] will respond positively to, and be able to negotiate with [Claimant] . . . in challenging moments without the responsibility of supervision of nine other Campers.

g. We have fifteen minutes between activities during the day, which is enough transition time for most campers. In 2012, [Claimant] . . . would stay behind at the activities he didn't want to leave for thirty minutes or more. [Claimant] . . . requires schedules and reminders of the schedule to keep him moving seamlessly throughout the day. In 2012, [Claimant's] . . . Counselor offered him his own schedule to refer to when he would begin asking what's next. This response was insufficient to address [Claimant's] questions and challenges with transitions. An Individual counselor will be able to provide [Claimant] . . . constant attention and support to keep him on task, and prepared for his next activity.

(Ex. 10.)

10. Smith's hearing testimony was consistent with her March 21, 2013 letter. Smith additionally testified that a "one-to-one aide is not restrictive; it would allow [Claimant] to experience camp on his own terms." Smith elaborated that in moments of Claimant's upset an aide knowledgeable about Claimant's individual circumstances would be able "to work with him to bring him back down" or redirect him to make appropriate choices. For example, in the hypothetical situation of a dance in which Claimant does not

want to participate, an aide could take Claimant outside on the deck away from the activity. If relocating Claimant to the deck area insufficiently addresses the situation, the aide assisted by a supervisor could help Claimant find a quiet spot or take a walk until he is able to re-integrate back into the dance.

11. At the hearing Claimant's father testified that he has in good faith investigated other camps for Claimant and that he has encountered difficulty placing a teenager. Father testified that Jay Nolan was recommended to him because it is one of few camps enrolling autistic children with aggressive behaviors. Father testified that Claimant's behavior is "not a static thing." Claimant is "a tough kid; sometimes he does better, sometimes he does worse." Father testified that Claimant "has the behavior of an autistic kid," that Claimant's "behaviors are managed, but not eliminated," and that Claimant's autism is "not cured." According to father's testimony, which is corroborated by Claimant's November 5, 2012 Individualized Education Program (Ex. 16), Claimant's behaviors in his classroom are "a lot better" with the intensive support of aides to keep Claimant "in check."

12. It is established that a one-to-one aide will facilitate Claimant's participation in summer camp at Jay Nolan Community Center.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), developmentally disabled persons in California have a statutory right to treatment and habilitation services and supports at state expense. (Welf. & Inst. Code, §§ 4502, 4620, 4646-4648; *Association for Retarded Citizens—California v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (Welf. & Inst. Code, § 4501.)

2. Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing individual program plans for consumers, for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. Services and supports for persons with developmental disabilities are defined as "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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the

consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Services and supports for persons with developmental disabilities may include, among other things, facilitation and peer advocates. (Welf. & Inst. Code, § 4512, subd. (b).) Under the Lanterman Act, "[f]acilitation . . . means the use of . . . personal assistance by an individual . . . that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that effect his or her life." (Welf. & Inst. Code, § 4512, subd. (g).)

5. "In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family." (Welf. & Inst. Code, § 4648, subd. (a) (3).)

6. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of proving by a preponderance of evidence his entitlement to the services and supports. (Evid. Code, §§ 115 and 500.) Claimant has met his burden.

7. Claimant's parents intend to enroll Claimant in summer camp at Jay Nolan Community Services at their own expense. Claimant's parents, therefore, request no funding from HRC for "camping services and associated travel expenses" in contravention of Welfare and Institutions Code section 4648.5, subdivision (a)(1), which suspends regional centers' authority to fund such services. Rather, Claimant's parents request is for a "support" in the form of a one-to-one aide to facilitate Claimant's participation in what appears to be, after a diligent search, the only camp willing and available to meet Claimant's individual needs. The preponderance of the evidence establishes that, with the facilitation of a one-to-one aide, Claimant's challenging behaviors are manageable to enable his participation in mainstream activities intended to foster his independence and productivity. Such success has been achieved as Claimant participates in the mainstream activity of education, and the preponderance of the evidence suggests a likely similar success in the mainstream activity of camping.

8. Cause exists pursuant to Welfare and Institutions Code section 4512 for Harbor Regional Center to fund a one-to-one aide for Claimant during his enrollment in camp at Jay Nolan Community Services during summer 2013, by reason of Factual Finding 12 and Legal Conclusions 1 through 7, inclusive.

ORDER

1. Claimant's appeal is granted.
2. Harbor Regional Center shall fund a one-to-one aide for Claimant to facilitate his participation in camp at Jay Nolan Community Center during summer 2013.

Dated: May 1, 2013



JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.