

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MATTHEW C.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2013030526

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on April 30, 2013.

The Service Agency, Alta California Regional Center (ACRC), was represented by Maureen Paine, Supervising Counselor and Hearing Designee.

Claimant was represented by his mother who is also his conservator.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is ACRC required to fund adult day program services for claimant?

FACTUAL FINDINGS

1. Claimant is an 18-year-old young man eligible for ACRC services based on a diagnosis of Mild Mental Retardation. He has also been diagnosed with Autism, Amniotic Band Syndrome, Hypotonic Cerebral Palsy, Hypothyroidism, ADHD and Asthma. He will exhibit aggressive and self-injurious behaviors. Claimant lives in his family home with his parents and sister and has been receiving services from ACRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. As indicated in his current Individual Program Plan (IPP), dated October 11, 2012, claimant's long range goals are:

1. [Claimant] will live at home with his family.
2. [Claimant] maintain good health.
3. [Claimant] will receive an appropriate education.
4. [Claimant] will have his DME needs met.
5. [Claimant] will improve balance and coordination.

3. Claimant's educational placement has been in a Placer County Office of Education (PCOE), SDC (Special Day Class) at Del Oro High School. His district of residence is the Roseville Joint Union High School District (RJUHSD). Claimant's October 11, 2012 IPP provides that his ACRC Service Coordinator "will be available to assist with monitoring school progress and will pursue necessary steps to assure that [claimant] is appropriately placed, as requested by his family." The Service Coordinator will "attend [claimant's] IEP (Individualized Education Program) conferences as available, upon request by his family, and/or PCOE/Roseville High School District."

4. On March 6, 2013, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that ACRC was "denying your request to fund the Progressive Employment Concepts adult day program, or any other adult day program, for [claimant]." The reason for the action stated:

[Claimant] is eligible to receive appropriate educational and transitional services through his school district until he reaches age 22, and he is currently receiving those services. Until he turns 22, unless he obtains a high school diploma, it is the responsibility of Roseville High School District to fund appropriate educational and transition services for [claimant]. ACRC cannot fund such services when they are available but a consumer chooses not to access them. Once he reaches age 22, Matthew will be able to transition to an ACRC-funded adult day program where he can continue to work on personal goals and skills that are meaningful

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

to him. Until then, however, ACRC cannot supplant the budget of any agency which receives public funds to provide services to the public at no cost, such as school districts.

The planning team cannot at this time determine whether [claimant] qualifies for an exemption pursuant to Welfare and Institutions Code section 4648.55(d) because it cannot at this time be determined that the generic resource in this case, the school district, is unable to meet [claimant's] individual needs related to the difficulties he experiences when he is out of school on breaks (e.g., two-week winter and extended summer breaks). ACRC recommends you formally request [claimant's] school district provide an educational program which addresses those specific needs. In this connection, please note that by law, school districts may contract with regional center vendors to provide services to meet a consumer's needs.

Even if [claimant] did qualify for an exception pursuant to Welfare and Institutions Code section 4648.55(d), the planning team has not yet determined that Progressive Employment Concepts adult day program would be the appropriate service provider to meet [claimant's] needs.

5. Claimant filed a Fair Hearing Request, dated March 10, 2013, stating:

[Claimant] meets an exemption. [Claimant] was denied adult program services even though he will have a certificate of completion by June 8, 2013. He also has a Medicaid waiver which allows more leniency under the Lanterman Act. Want [claimant] to attend a daily year round community based individualized adult supported employment program and exit the education system.

6. Claimant's mother testified that for claimant to be successful, individuals working with him must understand the importance of focusing on reinforcing his positive behaviors rather than focusing on his maladaptive and self-injurious behaviors. She explained that being out in the community is where claimant "shines" and exhibits the least maladaptive behaviors and aggression. She contends that the educational system is lacking in two essential components claimant requires; consistency and community based programming.

7. Claimant's mother contends that claimant has difficulty and relapses into negative attention seeking and self-injurious behaviors when his routine changes. These changes include minimum school days, staff work days, and school vacation and summer breaks. She stated that the educational system can only offer a 200 days per year program which leaves 165 days each year unprogrammed. The 200 days would include minimum days,

early release days, and half days for extended school year. She also explained that “there is a constant change of aides, other students, and activities that disrupt [claimant] from having a consistent schedule causing him to relapse and is not sufficient to meet his needs.” She believes [claimant] “needs an individualized year-round program geared to address his specific needs in order to eliminate barriers that would cause him to regress into his maladaptive and self-injurious behaviors. Consistency is the key and without consistency [claimant] continues to regress.”

8. The second component that claimant’s mother contends is missing from the educational program offered claimant is that it is not community based. She contends that claimant is “most successful when he is out in the community. He has the fewest episodes of maladaptive behaviors when he is out with an aide doing Community Based Instruction or Workability. Again this is all done on a ratio of one to one or one to two, depending on the activity. [Claimant] needs to be in a program that is Community based and not facility based.”

9. Claimant’s mother testified that she attempted to locate a program that she believed would meet claimant’s needs and was only able to find one, Progressive Employment Concepts, that would take clients with behaviors and aggression that was community based. Claimant has been on their waiting list for two and one half years and is now at the top of the list. She is requesting that claimant exit the educational system and begin placement at Progressive Employment Concepts, funded by ACRC.

10. Tanya Nalley is an ACRC Supervising Counselor. She testified that the local education agency is responsible for providing a free and appropriate public education (FAPE) to qualified students between the ages of eighteen and twenty-two. The regional center is mandated to first utilize natural and generic resources to meet a consumer’s needs, prior to funding a service or support.

Ms. Nalley also testified that the 2011 enactment of section 4648.55, subdivision (a), would further prevent ACRC from funding this service for claimant.

Section 4648.55, subdivision (a), provides:

- (a) A regional center shall not purchase day program, vocational education, work services, independent living program, or mobility training and related transportation services for a consumer who is 18 to 22 years of age, inclusive, if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the individual program plan (IPP) planning team determines that the consumer’s needs cannot be met in the educational system or grants an exemption pursuant to subdivision (d). If the planning team determines that generic services can meet the consumer’s day, vocational education, work services, independent living, or

mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer's parent, legal guardian, or conservator, may attend the individualized education program (IEP) planning team meeting.

Subdivision (d) provides:

An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer's need. The consumer shall be informed of the exemption and the process for obtaining an exemption.

11. Ms. Nalley explained that claimant is eligible for special education and related services through age twenty-two. He has not received a diploma or certificate of completion, although it is anticipated by his parent that he will receive the latter in June, 2013. ACRC determined that there was no evidence supporting an exemption, as it was not demonstrated that RJUHSD/PCOE is unable to meet claimant's need.

Therefore, Ms. Nalley stated that ACRC was mandated to deny the request for placement at Progressive Employment Concepts. This decision was based upon the need for consumers to access generic resources and the education system is a generic resource. There was no evidence that the educational system can not meet claimant's needs. ACRC is prohibited from funding services which are available from generic agencies, such as school districts, when a consumer is eligible for such services but chooses not to pursue those services. ACRC may not supplant the budget of such generic agencies.

12. Denise Meaney is claimant's ACRC Service Coordinator. She testified that she participated in claimant's January 10, 2013 IEP meeting. The district made its then-current offer of FAPE, which was agreed to by claimant's parents. The IEP notes that claimant is participating in a certification of completion course of study, with an anticipated completion date of November 28, 2016. It was Ms. Meaney's understanding that the district's offer of placement for fall, 2013, was Secret Ravine School. An additional IEP meeting was held on April 4, 2013. Ms. Meaney did not participate in that meeting.

13. There was no evidence presented that claimant disagreed with the local education agency's offer of FAPE and/or appealed that offer.

14. Claimant's mother testified that she "didn't know about the appeal process."

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a) provides:

- (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 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.

3. Section 4646.4, subdivisions (a)(1) and (2) provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

4. Section 4659, subdivision (a)(1), provides:

(a) Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

5. Section 4648, subdivision (a)(8), 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.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

6. Under the Individuals with Disabilities Education Act (IDEA), students are entitled to special education and related services until age twenty-two if "enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular school diploma." (Educ. Code, § 56026 (c)(4).)

Therefore, the local education agency remains responsible for providing claimant's educational and related services. Claimant did not demonstrate that he has exhausted this resource and ACRC is required to pursue the generic resource before considering funding Claimant's needs. Claimant's service coordinator remains available to offer assistance with this process. She may attend future IEP meetings to assist claimant in obtaining appropriate educational and transition services. As claimant's circumstances change, ACRC shall continue to determine his need for regional center services and supports.

7. At this time, ACRC is prohibited from funding the requested day program. Claimant has not yet received a diploma or certificate of completion. It has not been

determined that his needs cannot be met in the educational system.

ORDER

The appeal of claimant Matthew C. seeking ACRC funding of a day program, at this time, is denied.

DATED: May 13, 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 the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)