

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

G. H.,

Petitioner,

vs.

WESTSIDE REGIONAL CENTER,

Respondent.

OAH No. 2013090702

California Early Intervention Services
Act (Gov. Code, § 95000 et seq.)

DECISION ON PETITIONER'S
APPEAL

This matter was heard by David Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 14, 2013, in Culver City.

Petitioner was represented by J.A.K., his mother.¹ Erin Fox, Attorney at Law and Fair Hearing Consultant, represented the Westside Regional Center (Respondent or WRC).

The parties presented the testimonial and documentary evidence described below and gave closing arguments. The record was closed and the matter was submitted for decision on October 14, 2013.

ISSUE

Should the Respondent provide a center based program for Petitioner?

EVIDENCE RELIED UPON

Documentary: Respondent's exhibits 1-15.

Testimonial: Cristina Azantian and Erin Fox, WRC; J.A.K. (Petitioner's mother).

¹ Petitioner's name and the names of his family members are omitted to protect their privacy.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Petitioner is a two-year, five-month-old boy who was found eligible for services from WRC's Early Start program² due to speech and language developmental delays.

2. By a letter dated August 17, 2013 (Ex. 11), WRC notified Petitioner's mother that her request for WRC to provide funding for Petitioner to attend a center based program was denied.

3. Petitioner's mother submitted to WRC a written appeal titled Due Process Hearing Request (Exhibit 14). This hearing was the result of the appeal.

Facts Related to Petitioner's Service Request

4. Petitioner's mother referred Petitioner to WRC for evaluation for eligibility for the Early Start program in December 2012 due to concerns about delayed language development. WRC performed a speech and language evaluation (Exhibit 3), at which time Petitioner was age 19 months. According to the evaluation, Petitioner's auditory comprehension skills were equivalent to age 11 months and his expressive communication skills age equivalence was 8 months. His speech and language skills were described as moderately to severely delayed and it was recommended that he receive speech and language therapy.

5. A developmental evaluation was also performed in December 2012. Again, for comparison purposes, Petitioner was age 19 months. Among the tests administered were the Bayley Scales of Infant Development III (Bayley-III) and the Developmental Assessment for Young Children (DAYC), which yielded the following results:

<u>Subtest</u>	<u>Composite or Standard Score</u>	<u>Qualitative Description</u>	<u>Age Equivalency</u>
Cognitive	95	Average	18 months
Language	68	Extremely Low	9 months
Fine Motor + Gross Motor	91	Average	17 months 18 months
Social- Emotional	112	Above Average	23 months

² "Early Start" is another name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), described more specifically in Legal Conclusions 1-5, below.

Adaptive 112 Above Average 26 months

(At the hearing, the parties agreed that the age equivalencies for expressive language and receptive language in the report had been switched and the correct age equivalencies are expressive language, 9 months, and receptive language, 15 months.) The assessment recommended speech and language therapy for Petitioner.

6. Petitioner was found eligible for Early Start services, with the understanding that a further developmental evaluation would be scheduled by November 2013. (Ex. 5.) On January 17, 2013, WRC conducted an Individualized Family Service Plan (IFSP) meeting with Petitioner’s mother, at which time WRC agreed to provide individual speech therapy in a clinic setting two sessions per week, one hour each.

7. Speech and language therapy services by the Los Angeles Speech & Language Therapy Center began in February. The first progress report, dated March 7, 2013 (Exhibit 7), includes his mother’s concerns that Petitioner gets frustrated when he is not understood, tantrums occasionally, and has difficulty engaging appropriately with other children his age. It is also reported that Petitioner is making steady progress towards his speech and language goals, and his receptive and expressive identification of age-appropriate nouns and verbs is emerging. The therapy center recommends that services continue at the same level. The report also recommends a Mommy and Me intervention program, given the mother’s concerns and desires to learn more strategies for use in the home.

8. Based on these concerns and reports of toe walking, WRC had an occupational therapy evaluation performed on April 2, 2013. (Ex. 8.) The report indicates that the Bayley-III was used again with the following subtest results. Petitioner was 23 months old at the time.

<u>Subtest</u>	<u>Age Equivalency</u>
Cognitive	26 months
Receptive Communication	19 months
Expressive Communication	27 months
Fine Motor	22 months
Gross Motor	17 months

The report noted that Petitioner had poor ability to organize and use sensory information to follow directions or engage in functional play for his age level, and repeated mother’s concerns about transitions and poor attention span. Occupational therapy one time per week was recommended.

9. WRC approved one session per week of occupational therapy, beginning July 1, 2013.

10. In a second speech and language therapy progress report dated August 5, 2013 (Exhibit 10), it is again noted that mother has concerns about Petitioner when he is not understood, he tantrums occasionally, and he has difficulty engaging appropriately with other children his age. It is also reported that Petitioner is making steady progress towards his speech and language goals, and continued therapy is recommended.

11. Mother reported to Petitioner's service coordinator new concerns about toe walking, overreaction to loud sounds, and Petitioner not wanting to touch some things. After a further occupational therapy assessment, WRC agreed to increase occupational therapy sessions to two times per week. Mother is working with the occupational therapist to schedule the added session.

12. Mother obtained two letters in support of her request for a center based program, both received by WRC on September 9, 2013. The first is from speech therapist Sheeva Abolhassani (Abolhassani) and is dated August 7, 2013. (Ex. 12.) Petitioner began his speech therapy with a therapist named Belinda and, in the summer, his care was transferred to Abolhassani. Abolhassani reports that, at times, Petitioner will tantrum when asked to share or if attention is placed on him, that during tantrums he may cry, hit, or throw himself on the floor or onto others. She recommends a Mommy and Me class to improve language output and provide an opportunity to interact with children of the same age.

13. Mother explained that what was referred to as a Mommy and Me class is actually a center based program also provided by the Los Angeles Speech & Language Therapy Center. She has observed the program. The class is three hours per day and includes numerous activities she believes would be beneficial for Petitioner.

14. Occupational therapy has been provided by Sarah Titlow (Titlow). Her undated letter (Ex. 13) lists various challenges and behaviors being addressed in his sessions. Titlow adds that Petitioner has poor self regulation limiting his ability to engage in social play, has tantrums when transitioning between activities, has poor organizing of behavior demonstrated by over escalation, throwing his body on the floor and screaming, and poor ability to calm himself. She writes that Petitioner would benefit from a center based program in conjunction with the services he already receives, emphasizing it would be a suitable learning environment, facilitate social routines and interaction, and provide structure, peer modeling, and motivation.

15. Mother expressed reasonable concerns for her son to progress normally and be ready for success in preschool and beyond. She was hesitant to consider school district services when Petitioner reaches age three for fear of him being "labeled" and not getting adequate educational opportunities. When she observed Petitioner acting differently between his individual sessions of occupational therapy and when other children were present, the occupational therapist informed her that a

center based program would help him socially. She is pleased with the occupational therapy and speech therapy provided by WRC.

16. In the letter denying her request for the center based program, WRC stated the present services are addressing Petitioner's developmental needs and suggested a behavior support program. This program is designed to give parents strategies for dealing with challenging behaviors. Parents and a behavior services vendor meet once per week for seven or eight weeks after which further recommendations can be given. Mother explained that the timing of the meetings would be difficult and that she believes that it would be better for services to be provided directly to Petitioner. Mother also has explored Mommy and Me classes provided by community organizations, and stated she cannot afford them and that single events planned for parents and children have been too far for her and Petitioner to attend.

17. Cristina Azantian is an occupational therapist who has worked for WRC for 17 years. She was part of the eligibility team that approved Petitioner's services and has reviewed his progress reports and other relevant documents. It is her understanding that WRC denied the request for a center based program because Petitioner's assessments and evaluations demonstrated that Petitioner had delays in his language and physical development, which would be addressed in speech and language therapy and occupational therapy. Petitioner had been assessed with the Bayley- III and the DAYC, and the test outcomes support the services now being provided to address gross motor delays and speech and language delays. Because Petitioner was developing normally in all other domains, and scored at least average in his cognitive and social-emotional development, WRC felt that a center based program was not required to address any condition for which Early Intervention services were required. WRC was willing, and remains willing, to provide a developmental assessment in November 2013, to assess whether Petitioner needs any other services.

LEGAL CONCLUSIONS

1. Jurisdiction for this case is governed by the Individuals with Disabilities Education Act (IDEA), which is federal law (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), which is state law that supplements the IDEA. Each act is accompanied by pertinent regulations. Thus, both federal and state laws apply to this case. Under these laws, Petitioner presented a hearing request, and therefore jurisdiction for this case was established. (Factual Findings 1-3.)

2. When a person seeks to establish that he is entitled to government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; see also, 34 C.F.R. § 303.425(b) (1999).) Petitioner's mother therefore bears the burden of proof in this

case, since she is requesting relief which WRC has not agreed to provide, i.e. funding for center based program. (Factual Findings 11-15.)

3. The California Legislature has found that early intervention services represent an investment of resources, “in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization.” (Gov. Code, § 95001, subd. (a)(2).) Importantly, the Legislature has recognized that time is of the essence and that “[t]he earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities.” (*Ibid.*)

4. Eligibility for Early Start services is governed by Government Code section 95014. Eligibility was established under subdivision (a)(1) because Petitioner was found to have a “significant difference” between his level of functioning in the area of communication skills and the expected level for someone of his age. As it relates to Petitioner, the statute defines “significant difference” as a “33-percent delay in one developmental area before 24 months of age.”

5. Petitioner was found eligible for Early Start services when his communication skills were measured at a level of a 33-percent delay or more. Speech and language therapy services were provided. Later, his gross motor skills were also measured at a level of a 33-percent delay or more, and occupational therapy services were provided.

6. Early intervention services are defined as those services “designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant or toddler’s development.” (20 U.S.C. § 1432(4)(A); Cal. Code Regs., tit. 17, § 52000, subd. (b)(12).) Pursuant to Government Code section 95004, subdivision (a), the provisions of the Lanterman Developmental Disabilities Services Act (Lanterman Act) found in Welfare and Institutions Code sections 4500 through 4846, also apply to the Early Start program. Welfare and Institutions Code section 4512, subdivision (b), specifically defines “services and supports” for persons covered by the Lanterman Act to include speech therapy and occupational therapy. Therefore, the provision of speech therapy and occupational therapy are required when those services are designed to meet the developmental needs of a child under Early Start. In this case, there is no dispute that speech therapy and occupational therapy were necessary to meet Petitioner’s developmental needs. (Factual Findings 4-10.)

7. In this case, it was not established that Petitioner was in need of a center based program to address needs that were not otherwise being met by WRC under the Early Start program. There was no evidence that Petitioner’s gross motor needs and speech and language needs were not being met by virtue of the occupational therapy and speech therapy funded by WRC. Although several people indicated that Petitioner would benefit from a center based program, no one expressed

the opinion that the occupational therapy and speech therapy already being funded were insufficient to meet Petitioner's needs as related to his developmental delays. To the contrary, the progress reports noted improvement as a result of those services and mother is pleased with the services. (Factual Findings 7, 10 and 15.)

8. Further, no assessments identified any significant delay, as that phrase is defined in the statute, in Petitioner's cognitive, adaptive or social-emotional skills. As applied to these circumstances, the Early Start program has very specific goals—to identify if a child has a developmental delay in a skill area and, if so, to provide the services necessary to address that deficit. The regional center is not required to provide the best service available. It is sufficient if the services address the identified developmental needs. As there was no evidence that the occupational therapy and speech therapy Petitioner presently receives are inadequate, there is no reason or basis to add a center based program. While it may be true that Petitioner would obtain a benefit from such a program, that alone is not a sufficient basis on which to find that WRC must provide funding. This is the type of situation in which any parent desiring a more social experience for their child, including the ability to interact with peers, might enroll their toddler in a community program available to all in the community. It is not a regional center responsibility to do so under Petitioner's circumstances. (See Welf. and Inst. Code, § 4646.4, subd. (a)(4), for consideration of a family's responsibility to provide similar services for any minor child, with or without disabilities.) Further, WRC's offer of behavior support training at no cost appears designed to meet many of mother's concerns, albeit with training for her and not with services provided directly to Petitioner.

ORDER

Petitioner's appeal of WRC's decision to deny funding for a center based program is denied.

DATED: October 17, 2013.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings