

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2013100490

DECISION

A fair hearing was held on January 24, 2014, before Karen J. Brandt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Chico, California.

Phyllis Raudman, Attorney at Law, represented Far Northern Regional Center (FNRC).

Virginia L. Gingery, Attorney at Law, represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on January 24, 2014.

ISSUE

Should FNRC be required to fund ongoing training to maintain the crisis management training certification of Allevery HR & Payroll, the employer of record for claimant?

FACTUAL FINDINGS

1. Claimant was born in 1993. He is currently 20 years old. Claimant is eligible for services and supports from FNRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., based upon a diagnosis of autism. Claimant lives at home with his parents.

Request for Crisis Management Training and FNRC's Denial

2. Allevity HR & Payroll (Allevity) is currently providing employer of record services for claimant. Claimant's parents requested that FNRC fund ongoing training to maintain Allevity's certification to provide crisis management training to claimant's personal assistants and family members.

3. On October 3, 2013, FNRC issued a Notice of Proposed Action (NOPA) denying this request. The reasons set forth in the NOPA for FNRC's denial were:

(1) The request is too broad for FNRC to determine the cost-effectiveness, or quality of the provider chosen. (2) FNRC already funded crisis management training for employees and it is not cost-effective [to] start over with another provider or methodology.

Prior Requests for Crisis Management Training

4. Claimant's parents have requested crisis management training in the past, and have appealed to OAH from earlier denials by FNRC.

5. Kopec Decision. On June 17, 2009, after conducting a fair hearing, Administrative Law Judge Judith Kopec issued a decision in OAH Nos. 2009040887, 2009040888, 2009050784 and 2009050791 (Kopec Decision). As set forth in the Kopec Decision, one of the issues for resolution was whether FNRC was "required to fund training services for the management of assaultive behavior for family and staff through Crisis Prevention Institute [CPI], or alternative training for parents to address claimant's assaultive behaviors in his home?" In Finding 19, ALJ Kopec found that:

Claimant has established that his family and service providers require training in responding to his assaultive behavior in order to alleviate his developmental disability, assist in his habilitation and rehabilitation, and achieve and maintain an independent, productive and normal life. The training is an effective method to meet his behavior objective and other IPP goals. However, claimant has not established that training from CPI is appropriate to serve his needs.

Included in the Kopec Decision is the following order regarding crisis management training:

Regional center shall fund training services for claimant's family members who provide direct care to him and his home service providers in effective and appropriate methods to

respond to the specific types of aggressive behavior that claimant exhibits.

6. Hollingshead Decision. On March 9, 2012, after conducting a fair hearing, Administrative Law Judge Susan H. Hollingshead issued a decision in OAH Nos. 201110183, 2011120044, 2011120567, 2012010095, and 2012020327 (Hollingshead Decision). One of the issues ALJ Hollingshead addressed in her decision was:

What is the correct determination of “total cost to FNRC of providing crisis management training through PCM” (Professional Crisis Management) for purposes of discharging FNRC’s obligation to provide training as ordered in the September 29, 2011, Decision on the bifurcated issues previously heard?

As set forth in the Hollingshead Decision, FNRC and claimant’s parents disagreed “as to the provider of the required crisis management services.” (Hollingshead Decision, Finding 120.) Although FNRC had sought to arrange for training by PCM, claimant’s parents “pursued crisis management training on their own, arranged and completed training with CPI on October 15 and 16, 2009, and sought reimbursement for costs incurred in the amount of \$9,449.55.”

The Hollingshead Decision noted that a prior decision issued by ALJ Hollingshead on September 29, 2011, determined that claimant was:

... entitled to provision of crisis management training services. None of the evidence considered established that he is entitled to reimbursement for the training provided, without FNRC authorization, by CPI. Because there was no argument made that the training provided by CPI was inappropriate to meet claimant’s needs, FNRC may meet its obligation to fund crisis management services by reimbursing claimant in an amount equal to the total cost to FNRC of providing this training through PCM, which parents may choose to use to offset their obligation for the CPI training costs. FNRC’s obligation to fund this service would then be fulfilled.

In Finding 124 of the Hollingshead Decision, ALJ Hollingshead found that:

Claimant’s parents objected to the amount reimbursed alleging, among other things, that training should have been provided separately to claimant’s family, and should have included a component for certified training for future care providers.

The contention that the training needed to be separate is without merit. In addition, training for future care providers was never part of the Order. However, it is more cost effective for FNRC to cover that cost in this training rather than to be responsible for training claimant's future staff individually.

Therefore an equitable reimbursement would be payment for the Basic Practitioner and Instructor Certification Course trainings at \$2,400, plus a two-day apportionment of expenses (also shared by others) in the amount of \$734.86. The total due for reimbursement is \$3,134.86.

FNRC's Response to the Current Request for Crisis Management Training

7. In September 2013, Larry Withers, FNRC's Case Management Supervisor, met with claimant's parents to discuss an Individual Program Plan (IPP) for claimant. During these discussions, claimant's parents asked FNRC to fund crisis management training. Mr. Withers prepared the NOPA described in Finding 3 above. At hearing, Mr. Withers testified that he determined that there was a need for crisis management services based upon claimant's developmental disability of autism, but because the request for training from claimant's parents was "too broad," he determined that the requested services were not "cost effective." According to Mr. Withers, because FNRC had funded crisis management training in the past, it was not "cost effective to start over with another provider."

8. Diana Anderson is FNRC's Associate Director of Community Services. At hearing, Ms. Anderson testified that, at the time claimant's parents made the current request for crisis management training and the NOPA was issued denying their request, she believed that Allevery had crisis management training and had a certified instructor on its staff. In or about January 8, 2014, she learned from Kevin Ahlswede, the owner of Allevery, that Allevery no longer had a certified crisis management instructor in its employ. Mr. Ahlswede told Ms. Anderson that Allevery had not maintained its crisis management training certification due to its costs and continuing training requirements.

9. After speaking to Mr. Ahlswede, Ms. Anderson contacted CPI. CPI informed Ms. Anderson that, given the liability issues, it would not train parents directly in crisis management. CPI would, however, train employees of agencies that acted as employers of record, and that had their own liability and workers' compensation insurance coverage. These trained employees would, in turn, train parents and other individuals who directly provide services to regional center consumers.

10. At hearing, although Ms. Anderson raised some concerns about CPI's protocols and the fact that FNRC generally had not funded crisis management training for its vendors in the past, FNRC stipulated to CPI providing crisis management instructor training to an Allevery employee, who would, in turn, instruct claimant's parents and personal

assistants in crisis management. In addition, FNRC agreed that it would pay the following costs to fund CPI's crisis management instructor training for an Allevery employee and for Allevery to maintain its crisis management training certification: (1) \$2,285 for an Allevery employee to attend a four-day instructor training program; (2) \$150 for an annual membership fee to CPI; (3) \$950 per year for annual renewal training; (4) \$200 per year for materials; (5) travel and per diem costs for the Allevery employee who attends the training; and (6) reimbursement of the employee's hourly rate while he or she is traveling for and attending the training. As a condition to this funding, FNRC stated that Allevery, in order to maintain its crisis management training certification, would have to agree that the trained employee would provide at least two staff trainings per year with at least 18 hours of staff training annually.

11. Although FNRC expressed a willingness to enter into an agreement with Allevery for it to obtain and maintain ongoing crisis management training certification through CPI, FNRC raised concerns that crisis management training should not be instituted unless and until there was a parallel treatment plan put in place to address claimant's behavioral issues. According to FNRC, when crisis management training was first offered for claimant, FNRC was funding Applied Behavior Analysis (ABA) treatment for claimant. When the law was changed, FNRC ceased to fund ABA treatment for claimant. FNRC asserted that it should not be required to fund crisis management training unless and until claimant also receives behavioral therapy to address his aggressive conduct that gives rise to the need for crisis management.

2013 Functional Assessment of Claimant's Behaviors

12. Laura Inwood-Romano is a licensed Marriage and Family Therapist. She has completed all the classes and supervision required to become a board-certified behavior analyst (BCBA), and is waiting to take the test. She is currently in private practice. In the past, she worked as a personal assistant for claimant. She is not currently working with claimant and has not worked with him for about four years. In or about July 2013, she conducted a functional assessment of claimant's behaviors at the request of claimant's parents, and issued a functional assessment report, which was received by FNRC on September 25, 2013. As set forth in her functional assessment report, based upon information reported by claimant's parents and personal assistants, Ms. Inwood-Romano found that claimant:

...can display aggression towards others. He has injured his mother, father, Personal Assistants, school peers, and children in the community. He will display a range of aggressive acts during an episode including hitting, kicking, slapping, scratching, punching, pushing, squeezing, and biting. These episodes can range in intensity from one hit to a full attacking including any or all behaviors listed above. The episodes also range in duration from a few seconds to 1.5 hours. This behavior is reported to occur approximately one time each

month, although it is assumed to be prevented through recognition of precursor behaviors up to every day. This evaluator witnessed videos and photographs of sustained aggression towards both his mother and his father during the evaluation process, and has witnessed injuries to family members first hand.

In her report, Ms. Inwood-Romano also described claimant's self-injurious behaviors, his property destruction, and his engagement in "dangerous eloping behaviors."

In her report, Ms. Inwood-Romano recommended that claimant receive "up to 30 hours per month of behavior intervention services." She also recommended "CPI training for all personal assistants, as this crisis management approach is currently being used by care providers in the home, and by personnel in the school."

13. At hearing, Ms. Inwood-Romano recommended that CPI's crisis management training be provided for claimant's personal assistants given claimant's aggression, property destruction, and self-injury. According to Ms. Inwood-Romano, CPI's crisis management training was most appropriate because most of claimant's personal assistants already had CPI training, and because CPI training has an autism-specific component to address issues relating to individuals with autism. Ms. Inwood-Romano described CPI's crisis management training as a "prevention tool" to potentially prevent an escalation of aggressive behaviors.

14. Ms. Inwood-Romano testified that she performed the functional assessment at the request of claimant's parents. Her assessment report was submitted to their insurance carrier to request that the carrier fund behavioral services for claimant. The carrier denied the request, finding that the services were not "medically necessary." In light of this denial and in the absence of behavioral services, Ms. Inwood-Romano has agreed to provide claimant therapy to address his obsessive compulsive disorder (OCD). According to Ms. Inwood-Romano, claimant's OCD appears to trigger most of his aggressive behaviors. She believes that the OCD therapy she will provide claimant will address his violent behaviors in the absence of behavioral services.

15. Ms. Inwood-Romano opined that it was necessary for claimant's personal assistants to have crisis management training to address claimant's aggressive behaviors. She believed that crisis management training would be beneficial and should be provided to claimant's personal assistants even though claimant is not currently receiving behavioral services.

Discussion

16. Both Mr. Withers and Ms. Inwood-Romano testified that there was a need for crisis management training for the individuals who work with claimant. At hearing, FNRC stipulated that CPI could be the provider of that training. FNRC also stipulated that, as set forth in Finding 10, it would provide funding for an employee from Allevity to obtain CPI

training and become a certified instructor, and for Allevery to maintain its certification on an ongoing basis as a provider of CPI crisis management training, so long as Allevery agreed to provide at least two staff trainings per year with at least 18 hours of staff training annually so that it could maintain its certification. These stipulations addressed the reasons for the denial of claimant's request for crisis management training stated in the NOPA.

17. Although FNRC raised concerns about crisis management training being provided in the absence of behavioral services, the issue of whether claimant should be receiving such behavioral services was not an issue for determination in this proceeding. Ms. Inwood-Romano's opinion that crisis management training was necessary in light of claimant's aggressive and self-injurious behaviors and property destruction, and that such training would be beneficial and should be provided even though claimant is not currently receiving behavioral services was persuasive. In sum, claimant established that his request for funding for crisis management training should be granted as set forth in Finding 10.

LEGAL CONCLUSIONS

1. In accordance with the Lanterman Act, regional centers fund services and supports for eligible persons with developmental disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Ins. Code, § 4501.¹) The Lanterman Act describes "services and supports for persons with developmental disabilities" to mean "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, and normal lives." (§ 4512, subd. (b).) Services and supports include "emergency and crisis intervention." (*Ibid.*)

2. The evidence established that claimant's request for FNRC to fund crisis management training should be granted to the extent stated in Finding 10.

ORDER

Claimant's request that Far Northern Regional Center fund crisis management training is GRANTED as follows: Far Northern Regional Center shall provide funding for an employee of Allevery HR & Payroll to obtain crisis management instructor training from Crisis Prevention Institute and for Allevery to maintain its crisis management training certification as follows: (1) \$2,285 for an Allevery employee to attend a four-day CPI instructor training program; (2) \$150 for an annual membership fee to CPI; (3) \$950 per year for annual renewal training; (4) \$200 per year for materials; (5) travel and per diem costs for

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the Allevity employee who attends the training; and (6) reimbursement to Allevity for the time its employee spends traveling to and from the training and while attending the training at the hourly rate Allevity is paying the employee for his or her services. As a condition to this funding, Allevity shall agree to take all actions necessary to maintain its CPI crisis management training certification, including providing at least two staff trainings per year with at least 18 hours of staff training annually.

DATED: February 3, 2014

KAREN J. BRANDT
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).)