

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

OAH No. 2014050905

v.

KERN REGIONAL CENTER,

Service Agency.

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 21, 2014, in Ridgecrest, California.

Michael Bowers, Program Manager, represented Kern Regional Center (KRC or Service Agency). Claimant's mother (Mother) and father (Father) (collectively, Parents), represented Claimant¹ who was present at the hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on July 21, 2014.

ISSUE

Did KRC improperly deny Claimant's request for funding of Claimant's full-time attendance at California Psychiatric Center's summer program?

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¹ Claimant is referred to by party title to preserve Claimant's privacy.

FINDINGS OF FACT

1. Claimant is a seven-year-old boy who resides with Parents. He has been diagnosed with autism and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.²

2. When Claimant was four and one-half years old, the Service Agency began providing him with one-on-one in-home Applied Behavior Analysis (ABA) services through California Psychcare, Inc. (CPC). Claimant currently receives six hours of ABA in-home services per week.

3. When he was two-years-old, Claimant began attending Heritage Montessori School (Heritage). Throughout the years at Heritage, Claimant exhibited significant socialization issues. Specifically, Claimant did not initiate play with his peers and generally spent his most of his free or play time alone. Parents expressed their concerns to the Service Agency about Claimant's socialization issues. In response, when Claimant was approximately five-years-old, the Service Agency, through CPC, began funding afterschool care for Claimant to help him build his socialization skills, and to provide him with homework support. In its internal authorization forms, the Service Agency referenced CPC's afterschool services as "socialization training."

4. According to a written outline entitled *California Psychcare, Inc. Program Design*, which set forth the program design for CPC's afterschool program, CPC distinguished its afterschool program from that of educational and behavioral agencies. Specifically, the outline stated, among other things, that CPC provided a service that "target[ed] social interaction behaviors in natural settings," and noted that relatively few educational and behavioral programs worked on applied social skills training. The outline also stated that CPC provided structured recreational activities that provided individuals with developmental disabilities opportunities to increase their skills to integrate socially and recreationally with their typically-developing peers. Additionally, the outline indicated that CPC employees were trained and supervised by board certified behavior analysts (BCBA) to ensure quality of service. The outline stated that CPC provided one staff member for every five students.

5. When Claimant was in the pre-kindergarten class at Heritage, he attended the summer school program there. In August 2013, Claimant began attending the elementary program at Heritage, which offered no summer program. Parents became concerned Claimant would regress socially, given the absence of afterschool care during the summer, so they requested the Service Agency to fund Claimant's attendance in CPC's summer program for summer 2014.

² All statutory references are to the Welfare and Institutions Code.

6. No one from CPC testified at hearing, however Parents individually testified concerning their experiences with CPC's summer program, as Claimant currently attends the program on a part time basis.³ Both testified that CPC's summer program is similar to the afterschool program, except it provides services for the entire day, and, because school is out of session, there is no homework support service. In addition, the summer program has approximately six students, while the afterschool program has two or three students. The summer program also offers more planned activities (e.g., art projects) and guided play (e.g., water play) in a group setting. While CPC staff members have had behavioral training, the bulk of the afterschool and summer programs revolve around a socialization component as opposed to a behavioral component. Neither the afterschool nor the summer programs provide one-on-one ABA training.

7. On April 24, 2014, the Service Agency's autism team met to discuss Parents' request. The team decided that if Parents wanted Claimant to attend CPC's summer program on a full-time basis (40 hours per week), he would be unable to receive in-home ABA services. The team based its decision on Welfare and Institutions Code section 4686.2, subdivision (d)(2), prohibiting clients from receiving more than 40 hours per week of intensive behavioral intervention, and advised Parents of the same in its Notice of Proposed Action on May 12, 2014.

8. Michael Bowers testified at hearing. Mr. Bowers has been a program manager for KRC for 14 years, and prior, was a program manager for the North Los Angeles County Regional Center. Mr. Bowers provided more explanation concerning the Service Agency's position that Claimant was not entitled to attend CPC's summer program on a full-time basis. Specifically, Mr. Bowers explained that, based on the *California Psychcare, Inc. Program Design*, the Service Agency considered CPC's program as a specialized one designed to provide behavioral intervention, given the small teacher to student ratio, as opposed to a higher ratio typically found in daycare or summer programs, and the specialized training and supervision of the employees by a BCBA. As such, Claimant's participation in the summer program on a full-time basis, in addition to his one-on-one in-home ABA services, would exceed the statutorily maximum limit of intensive behavioral intervention.

LEGAL CONCLUSIONS

Claimant's appeal shall be granted as set forth in more detail below:

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the Individualized Program Plan (IPP). Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

³ More information concerning Claimant's attendance at CPC's summer program will be discussed in detail below.

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law, each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), states in part:

“Services and supports for persons with developmental disabilities” means 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training . . .

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or

his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.”

7. Section 4686.2, subdivision (d)(2), provides that “intensive behavioral intervention,” which it defines as “any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings,” cannot be provided for more than 40 hours per week, across all settings, depending on the individual's needs and progress. Such services can be delivered in a one-to-one ratio or small group format, as appropriate.

8. Here, Claimant met his burden of demonstrating that KRC improperly denied his request for funding of his full-time attendance at CPC’s summer program. The evidence established that the Service Agency determined CPC’s summer program was a specialized program, according to the testimony of Mr. Bowers, because it believed the program included a significant behavioral component, based on certain information set forth in the document entitled *California Psychcare, Inc. Program Design*, which outlined its program design for CPC’s afterschool program. The Service Agency presented no documents purporting to outline CPC’s summer program design. Notwithstanding this, it deemed the summer program as one primarily focused on behavioral intervention, given the small teacher to student ratio, and the specialized training and supervision of the employees by a BCBA, as discussed in the afterschool program design outline. As such, the Service Agency concluded Claimant’s attendance at the summer program would cause him to exceed the 40 hour weekly statutory limit of intensive behavioral intervention, pursuant to Section 4686.2, subdivision (d)(2), in light of the provision of six hours of weekly ABA services he was currently receiving in his home.

9. However, the Service Agency presented no testimony from any CPC representative establishing that behavior intervention was the primary focus of the summer program. The only credible testimony concerning the execution of the program came from Parents, who individually explained, based on their personal observation, the CPC summer program was, in essence, an extension of the afterschool program, which focused primarily on social skill development, rather than on intensive behavioral intervention. Specifically, the program offered planned social activities and guided play, such as art projects and water play in a group setting. Additionally, notwithstanding its reliance on the afterschool program design when determining the primary focus of the summer program, the Service Agency, pursuant to its internal authorization forms, referenced CPC’s afterschool services as “socialization training” and not intensive behavioral intervention as it now purports.

10. Given the above, the Service Agency improperly denied Claimant’s request for funding of Claimant’s full-time attendance at CPC’s summer program.

ORDER

Claimant's appeal is granted.

Date: August 4, 2014

CARLA L. GARRETT
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.