

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2015060825

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Alhambra, California on July 30, 2015.

Claimant's mother represented claimant. Claimant's aunt was also present on claimant's behalf.¹

Judy Perez, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC).

Patricia Sanchez Rogers, Hanna Interpreting Services, LLC, provided Spanish interpreter services throughout the hearing.

The matter was submitted on July 30, 2015.

ISSUES

1. May ELARC stop paying for claimant's 18 hours per month of Adaptive Skills Training that focuses on toilet training as of August 31, 2015?

2. If the Adaptive Skills Training should continue, shall ELARC pay for 24 hours per month of training, instead of 18 hours per month?

¹ The names of claimant and his family members are omitted to protect their privacy.

EVIDENCE RELIED UPON

Documents: ELARC Exhibits 1 through 8. (Claimant presented no documents.)

Testimony: ELARC Service Coordinator Maribel Garcia; ELARC Unit Supervisor Arturo De La Torre; claimant's mother; and claimant's aunt.

FACTUAL FINDINGS

1. Claimant is a 15-year-old male who has been diagnosed with severe intellectual disability, autistic disorder, and developmental coordination disorder, among other conditions. Based on his diagnoses, claimant is eligible for and receives services from ELARC under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.) Since 2009, those services have included, among other things, funding for Adaptive Skills Training. The primary focus of the Adaptive Skills Training has been toilet training. Future Transitions, Inc. has been the vendor providing the training.

2. Between 2009 and 2014, ELARC paid for 24 hours per month of toilet training for claimant. At some point before August 2014, ELARC reduced this amount to 18 hours per month, based on claimant's limited progress after many years of training. Claimant's mother questioned the reduction in hours in August 2014, but did not submit a Fair Hearing Request at that time.

3. On April 21, 2015, ELARC, claimant's mother, and claimant's grandmother had a conference about claimant's Individual Program Plan (IPP) for this year.² During the meeting, claimant's mother asked that ELARC resume paying for 24 hours per month of Adaptive Skills Training from Future Transitions. ELARC Service Coordinator Maribel Garcia told claimant's mother that there was no justification in the Future Transitions progress reports for increasing the hours, but that she would discuss the request with her supervisor.

4. Based on the conference, Garcia completed a handwritten "Service Provision Agreement," listing the services that claimant would receive from ELARC. The Service Provision Agreement stated that ELARC would fund 18 hours per month of Adaptive Skills Training from Future Transitions between April 2015 and March 2016. (Ex. 3.) The Service Provision Agreement became part of claimant's IPP, which Garcia signed on April 21, 2015, and which her supervisor, Arturo De La Torre, approved on May 13, 2015. Claimant's mother initialed an IPP signature page indicating that she did not agree with ELARC's decision to provide 18 hours per month of Adaptive Skills Training, and wished to appeal that issue.

² An IPP sets forth the services and supports that will be provided to a consumer under the Lanterman Act. (See Welf. & Inst. Code, §§ 4512, subd. (b), 4646.)

5. But on May 12, 2015, one day before De La Torre approved the IPP, ELARC issued a Notice of Proposed Action that proposed not only to deny an increase in Adaptive Skills Training hours, but to terminate the training entirely as of August 31, 2015. According to the Notice of Proposed Action, claimant showed no significant improvement in toilet training despite close to six years of training. The Notice of Proposed Action also stated that the Adaptive Skills Training duplicated assistance and training that claimant received from his school. Claimant's IPP does not reference the Notice of Proposed Action, although the IPP was approved one day later.

6. On May 29, 2015, claimant's mother submitted a Fair Hearing Request on claimant's behalf.

7. In support of its proposal to terminate the training, ELARC submitted progress reports of Future Transitions from 2009 through 2015. The reports almost all state that claimant is making "gradual" or "steady" progress in toilet training, but the actual descriptions of how claimant is performing indicate that the progress is limited. The most recent progress report from February 2015 indicates that claimant's toileting accidents have decreased, but that he still requires significant assistance in toileting tasks.

8. ELARC also asserted that Adaptive Skills Training such as toilet training is supposed to be a time-limited service, not a permanent one. De La Torre testified that such training is designed to teach a skill, and then be phased out and discontinued. It can also include a caregiver education component, meaning that a consumer's caregivers can learn the training elements and continue them as necessary after the funded training period ends. Regarding claimant, De La Torre testified that he does not see sufficient evidence of progress over a six-year period to justify continuation of the training beyond August 31, 2015.

9. In addition, ELARC submitted claimant's Individualized Educational Programs (IEPs) for the last two years, in support of the assertion that the Adaptive Skills Training duplicated assistance and training that claimant received from his school. But nothing in those IEPs suggests that the Adaptive Skills Training is duplicative. The IEPs state that school staff assist claimant with feeding and toileting, but there was no evidence that this assistance amounts to training of the type that Future Transitions provides to claimant.

10. In support of claimant's position, claimant's mother and aunt testified that claimant is making progress with toilet training, albeit slowly. They consider Future Transitions' training to be valuable, and an important component in claimant achieving more independence in his activities of daily living. Notably, neither claimant's mother nor aunt testified that claimant has regressed in toilet training since ELARC reduced the number of training hours from 24 hours per month to 18 hours per month.

LEGAL CONCLUSIONS

1. Disputes about the rights of disabled persons to receive services under the Lanterman Act must be decided under the fair hearing and appeal procedures in the Act. (Welf. & Inst. Code, § 4706, subd. (a).) Here, the dispute is about how much funding, if any, claimant should continue to receive for Adaptive Skills Training, particularly toilet training. ELARC contends that it should be allowed to stop paying for that training entirely as of August 31, 2015. Since ELARC has paid for the training for many years, ELARC has the burden of proving that the training should now end. (See Evid. Code, § 500; *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) ELARC's burden of proof on this issue is proof by a preponderance of the evidence. (Evid. Code, § 115 [preponderance of evidence standard applies unless law or statute provides otherwise].)

2. Claimant, on the other hand, asserts that ELARC should pay for 24 hours per month of Adaptive Skills Training, instead of 18 hours per month. Since claimant currently receives funding for 18 hours per month of training, claimant has the burden of proving that he should be granted an increase. (See Evid. Code, § 500; *Lindsay v. San Diego County Retirement Bd.*, *supra*, 231 Cal.App.2d at p. 161.) Like ELARC's burden of proof regarding termination of the training, claimant's burden of proof on his request to increase the training is proof by a preponderance of the evidence. (Evid. Code, § 115.)

3. Addressing claimant's issue first, claimant did not prove by a preponderance of the evidence that an increase in Adaptive Skills Training is warranted. Claimant has been receiving toilet training since 2009, and ELARC's representative testified persuasively that the training should eventually be phased out and discontinued. ELARC's reduction of claimant's training from 24 hours per month to 18 hours per month was a reasonable step in phasing out the training. Furthermore, it was not shown that claimant's toileting skills have regressed since claimant's Adaptive Skills Training was reduced from 24 hours per month to 18 hours per month in 2014. Rather, claimant's mother and aunt both testified that claimant continues to show slow improvement in his toileting skills, notwithstanding the reduction in hours.

4. Turning next to ELARC's issue, ELARC did not prove by a preponderance of the evidence that it should be allowed to stop paying for claimant's Adaptive Skills Training as of August 31, 2015. First, ELARC's proposal to terminate the training on that date is inconsistent with claimant's IPP. The IPP provides for continuation of claimant's training at 18 hours per month through March 2016. ELARC Service Coordinator Garcia signed the IPP on April 21, 2015, after discussion of that specific number of hours with claimant's mother and grandmother. ELARC then changed its position, and notified claimant on May 12, 2015, that ELARC proposed to terminate the training. But a day later, ELARC supervisor De La Torre approved the IPP, which still said that claimant would receive 18 hours per month of Adaptive Skills training through March 2016. Given these inconsistent positions, ELARC should not be permitted to depart from the IPP to claimant's detriment.

5. Second, ELARC's argument that claimant's Adaptive Skills Training duplicates services provided by claimant's school is unpersuasive. The evidence presented at the hearing shows that claimant receives assistance with toileting while at school, but there is no evidence of any duplicative training. Therefore, there is no basis for terminating the Adaptive Skills Training on the grounds of duplication of services.

6. Nothing in the foregoing requires ELARC to continue claimant's Adaptive Skills Training for toileting issues indefinitely. Nonetheless, ELARC may not terminate the training as of August 31, 2015, given the considerations described in Legal Conclusions 4 and 5 above.

ORDER

Claimant's request to increase ELARC's funding for Adaptive Skills Training for toileting issues from 18 hours per month to 24 hours per month is denied.

ELARC's request to terminate all funding for Adaptive Skills Training for toileting issues as of August 31, 2015 is denied.

DATE: August 13, 2015

/s/

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.