

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2015061187

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 19, 2015, in Los Angeles.

Julie A. Ocheltree, Attorney at Law, Enright & Ocheltree, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Claimant's mother, his authorized representative, represented claimant, who was present.¹

Oral and documentary evidence was received. The record was closed at the conclusion of the hearing but was subsequently reopened to allow the parties to submit documentation to show whether there is pending in the superior court a petition filed by claimant to enforce a decision, issued on March 24, 2015, in a prior OAH case, Case Number 2014120261. Claimant filed documents on September 23, 2015; they were marked and admitted collectively as Ex. F. The Service Agency filed documents on September 25, 2015; they were marked and admitted collectively as Ex. 12.

The record was closed and the matter was submitted for decision on September 25, 2015.

¹ Names are not used in order to protect the privacy of claimant and his family.

ISSUE

Whether the Service Agency must provide claimant with an appropriate individual counseling service and supplemental parent training provider, as ordered by the ALJ in a Decision issued on March 25, 2015, in OAH Case Number 2014120261.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-12; claimant's exhibits A-F.

Testimony: Da Vonna D. Jenkins; Margaret DeLage; claimant's mother.

FACTUAL FINDINGS

1. Claimant is a twenty-one-year-old man. He is an eligible consumer of FDLRC based on his diagnosis of autism.

2. In a fair hearing held in a prior matter on March 20, 2015, claimant asserted that, since August 2014, he has requested that the Service Agency fund individual psychological counseling with supplemental parent training, as provided in claimant's Individual Program Plan. Claimant specifically sought funding for services to be provided by C. Enjey Lin, Ph.D., a licensed clinical psychologist and board-certified behavior analyst. The Service Agency, by letter dated November 5, 2014, had denied claimant's funding request on the ground that Dr. Lin's rate exceeded the amount the Service Agency could fund. In a Decision issued after that hearing, on March 25, 2015 (March 2015 Decision), the ALJ ordered that the Service Agency

approve a cost-effective rate of pay, greater than the [Schedule of Maximum Allowances] rate for individual psychotherapy and supplemental parent training, to engage a therapist who will provide claimant with counseling appropriate to ameliorate the effects of his qualifying disability. In an IPP meeting to be held as soon as reasonably possible, claimant's planning team shall meet to decide on an appropriate provider, under [Welfare and Institutions Code] section 4648, subdivision (a)(6), and shall decide on an appropriate provider no later than 30 days from the effective date of this Decision. (Ex. B.)

3. Since the March 2015 Decision issued, the Service Agency has not funded psychotherapy or counseling services and supports for claimant.

4. Claimant filed a request for this fair hearing on June 30, 2015, to enforce the March 2015 Decision. Claimant presented evidence to support his contention that the Service Agency violated the March 2015 Decision by failing to hold a proper IPP meeting and by failing to refer claimant to a qualified service provider. The Service Agency presented

evidence to support its contention that it has complied with the March 2015 Decision, that an IPP was indeed held, and that the Service Agency referred claimant to several potential service providers.

5. On July 7, 2015, one week after filing his request for fair hearing, claimant also filed in the Superior Court of the State of California, County of Los Angeles, a petition to enforce the March 2015 Decision, in Case No. BS156213. The matter is still pending in the Superior Court.

6. The same relief is requested in both claimant's fair hearing request and his enforcement petition in the Superior Court.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)²

2. Under the Lanterman Act, there is no procedure for post-decision orders after a fair hearing conducted under section 4712. Instead, the Lanterman Act makes clear that the decision of the hearing officer is "final," and that either party may appeal the decision to a court of competent jurisdiction within 90 days of receiving notice of the final decision. (§ 4712.5.) Accordingly, the Lanterman Act reflects that once the Decision has been rendered, the Office of Administrative Hearings is divested of jurisdiction to further consider the matter.

3. OAH lacks the power to issue any orders regarding enforcement of a final administrative decision. Section 4715, subdivision (c), states that "either party may seek a stay of enforcement [of the final administrative decision] from any court of competent jurisdiction," reflecting that only the superior court may issue orders relating to the enforcement of the final administrative decision.

4. In his fair hearing request, as well as in the currently-pending petition he filed in the Superior Court, claimant seeks an order enforcing the March 2015 Decision. OAH lacks jurisdiction in this matter, for reasons set forth at Legal Conclusions 1 through 3.

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

