

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PETITIONER,

vs.

KERN COUNTY REGIONAL CENTER,

Respondent.

OAH No. 2016020763

**DECISION**

The hearing in the above-captioned matter was held on March 7, 2016, in Bakersfield, California, by Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH). Petitioner was represented by his mother, V.G.K (Mom).<sup>1</sup> The Respondent, Kern Regional Center (KRC or Respondent) was represented by Mark Edward Meyer, LCSW.

The matter was consolidated for hearing along with a companion case, where the same Petitioner sought relief against KRC, on a different issue, in OAH case number 2016020773.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The factual findings that follow were established by a preponderance of the evidence, and based thereon, the following legal conclusions and orders are made.

**ISSUE PRESENTED**

The issue is whether KRC should provide funding so that Petitioner can attend My Gym on a regular basis.

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<sup>1</sup> Initials are used in the place of the family surname in the interests of privacy.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. Petitioner is a two-year-old boy (born February 28, 2014), who receives supports and services from KRC under the California Early Intervention Services Act, Government Code section 90000, et seq. due to the fact he has Down Syndrome.

2. On January 29, 2016, KRC issued a Notice of Proposed Action, which informed Petitioner's parents that KRC would not provide funding so that Petitioner could attend My Gym. Thereafter, on February 13, 2016, Mom filed a Fair Hearing Request, and this proceeding ensued. (Ex.s A2 and A3.) All jurisdictional requirements have been met.

### *Petitioner's Individualized Family Service Plan*

3. A review of Petitioner's Individualized Family Service Plan (IFSP) was completed in September 2015, when he was 17 months old.<sup>2</sup> (Ex. D.) It notes that he had been diagnosed with Down Syndrome and Global Delays. The IFSP catalogued Petitioner's development level, which was delayed across the board. Hence, gross motor skills were estimated at six to eight months, and fine motor skills at seven to nine months, or approximately one year delayed. Similar numbers were estimated for cognitive development, communication development, social-emotional development, and adaptive/self-help development. (*Id.*, p. 3.)

4. According to the IFSP, Petitioner was receiving "early intervention" and physical therapy, the former twice per week, one hour per session, and the later twice per week, for 30 minutes per session. (Ex. D, p. 5.)

5. Mom testified, and it was not refuted, that Petitioner receives speech therapy, occupational therapy, and physical therapy at this time, through a vendor called Terrio. The occupational and physical therapies are authorized by KRC until at least the end of April, though Mr. Meyer indicated that physical therapy is authorized until the end of June. However, the parents' health insurance will soon take over the provision of those latter therapies; it will not cover speech therapy.

6. At the time the IFSP was generated, Petitioner was demonstrating limited mobility and agility. He could sit for up to 10 minutes, and sometimes attempted to lift his head in supine, and was "emerging to crawl backward." (Ex. D, p. 3.) He was attempting to learn crawling forward, and was able to get from lying down to sitting. He could transfer a small item from one hand to the other, but it appears he had trouble grasping small objects. (*Id.*, p. 4-5.)

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<sup>2</sup> It appears from exhibit D that the initial IFSP was developed in April 2015.

7. There is a significant chance that Petitioner will, after age three, be able to obtain services from KRC under the aegis of the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq., but that is not due for determination until approximately November 2016.

### *My Gym Program*

8. My Gym has been a vendor of services for KRC. It is inferred that it had been vendored to provide social recreational services. However, the record indicates that it has not been paid by KRC for services in sometime.

9. Respondent provided a two page document taken from My Gym's webpage, titled "Why My Gym?" (Ex. C, p. 1.) The question is answered with the claim that "we are the experts in children's fitness." (*Id.*, p. 1.)

10. Exhibit C goes on to state:

My Gym has developed an extraordinary program and facility devised to help children 6 weeks through 13 years of age develop physically, cognitively and emotionally. We have hundreds of locations in more than 30 countries offering structured, age-appropriate, weekly classes that incorporate music, dance, relays, games, special rides, gymnastics, sports and more. Children have loads of fun as they gain strength, balance, coordination, agility and flexibility while developing social skills, confidence, and self-esteem.  
(P. 1.)

11. Petitioner's parents see the My Gym program as more than structured play time. They perceive that many of the activities are similar to what is being done in physical and occupational therapy. And, they believe that he should be exposed, as much as possible, to everyday children who do not suffer from a disability such as his. The parents' opinions are not supported, nor refuted, by the opinions of therapists. At the same time, there is no evidence that My Gym is staffed by either occupational or physical therapists

## LEGAL CONCLUSIONS

1. Federal law has established a program for discovering and treating those infants and toddlers who suffer from some disability, or risk of disability. Part C of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. section 1431, et. seq., is the federal statutory enactment, and it provides for funding to those states that choose to participate in the program. California is a participating state, and

provides such services under the California Early Intervention Services Act. Government Code section 95000 et seq. (the Act).

2. The California Legislature designed the Act to provide “appropriate early intervention services individually designed” for infants and toddlers who have disabilities, or are at risk for them, “to enhance their development and minimize the potential for developmental delays.” (Gov. Code, § 95001, subd. (a)(1).) The Legislature found that early intervention services maximize the ability of families to better provide for the special needs of their children. (Gov. Code, § 95001, subd. (a)(2).)

3. The Department of Developmental Services and the regional centers are responsible for providing appropriate services for eligible infants and toddlers, except those with solely visual, hearing, or severe orthopedic impairments. (Gov. Code, § 95014, subd. (b)(1).) If an infant or toddler is eligible for services under IDEA, regional centers are required to provide the services in conformity with the federal law. (*Id.*) The services must be provided by the regional centers as required in the child’s IFSP. (Gov. Code, §§ 95014, subd. (b) and 95020, subd. (d)(1).) The services provided shall be provided pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), commencing at section 4500 of the Welfare and Institutions Code. (Gov. Code, § 95004, subd. (a) & (b).)

4. There is no dispute that Petitioner is eligible for services from KRC pursuant to the Act based on Factual Finding 1 and Legal Conclusions 1 through 3.

5. Jurisdiction exists to conduct the hearing in this matter, and to render a decision thereon, pursuant to California Code of Regulations (CCR), title 17, sections 52172 and 52174,<sup>3</sup> based on Legal Conclusions 1 through 4 and Factual Finding numbers 1 and 2.

6. Title 20 of the United States Code, at section 1432, defines early intervention services generally as those provided under public supervision at no cost (with some exception) and designed to meet the developmental needs of disabled toddlers and infants in several possible areas. (20 U.S.C. § 1432 (4)(A) through (4)(C).) The services must be provided by qualified personnel. (20 U.S.C. § 1432 (4)(F).) Physical therapy and occupational therapy are recognized early intervention services. (20 U.S.C. § 1432 (E)(iv) and (E)(v).)

7. The services provided by My Gym are not the type of service recognized as early intervention services by the aforementioned federal law. The services are not provided by occupational or physical therapists or other qualified personnel.

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<sup>3</sup> All further citations to the CCR shall be to title 17 thereof.

8. The services provided by My Gym fall into the category of “social recreation” services. They were, in appropriate cases, available under the Lanterman Act until July 2009. In that year, as a response to the state’s budget crisis, the legislature suspended the regional centers’ authority to purchase several types of services, including social recreation services and nonmedical therapies, such as specialized recreation, and music, art, and dance therapies. (Welf. & Inst. Code, § 4648.5, subd. (a)(2) & (a)(4).)

9. Based on all the foregoing, the Petitioners claim must be denied.

### ORDER

The appeal of Petitioner is denied. Kern Regional Center shall not be required to fund services for Petitioner at My Gym.

March 14, 2016

DocuSigned by:  
*Joseph D. Montoya*  
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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings