

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MARY B.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2012090544

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 5, 2012, in Santa Clarita, California.

Claimant Mary B. was present and was represented by her mother.

Stella Dorian, Contract Officer, represented North Los Angeles County Regional Center (NLACRC).

The record closed on November 5, 2012.

ISSUE

Whether NLACRC is required to pay for the College Internship Program (CIP) for Claimant.

FACTUAL FINDINGS

1. Claimant is a 23-year-old young woman. She lives in Santa Clarita with her parents. Claimant is eligible for regional center services based upon her diagnosis of Autism. Claimant was first diagnosed with Autism at the age of 14. Consistent with Autism, Claimant has difficulty with social interactions and transitions including understanding appropriate social boundaries, social communication and eye contact. Claimant also has deficits in daily living skills that are necessary for independent living. Claimant has a full scale IQ score of 116 which is within the above average range.

2. Claimant's most recent Individual Program Plan (IPP) was generated in meetings held on April 30, 2012 and October 15, 2012. The IPP identifies needs in the areas of independence, social skills training and academic support. The IPP contains two goals or desired outcomes for Claimant as follows:

[1] Mary [Claimant] will develop independent living skills so she can successfully live on her own having a successful college experience.

...

[2] Parents would like to see Mary alleviate symptoms of anxiety and develop positive self advocacy skills to seek out help she needs in order for her to achieving [*sic*] her educational goals.

3. Claimant participated in the College of the Canyons TLC program through the William S. Hart school district (TLC) until her special education eligibility terminated when she turned 22 years old. The TLC program was designed for students with high functioning Autism and Asperger's Syndrome, an autism spectrum disorder. The TLC program provided significant academic and social support to the program participants. Claimant obtained her high school diploma through the program in June of 2011 and completed some college courses during her participation in TLC. Claimant also completed an internship with a veterinary clinic while she was enrolled in the TLC program. Currently, Claimant is operating a dog sitting service from her parents' home.

4. Claimant wishes to continue her education and hopes to obtain a college degree in a field that will enable her to work with animals. Claimant wishes to leave home and attend college in Long Beach where her aunt and uncle live. She likes the area and the climate and would welcome the opportunity to move away from her parents. She saw her older sister go away to college, obtain a degree and a job as a teacher, and would like to have a similar academic experience. Claimant and her mother explored various programs and found the College Internship Program (CIP) in Long Beach to be the best fit and most desirable option for Claimant. Claimant testified at the administrative hearing and expressed her enthusiasm and excitement about the prospect of attending the CIP program and how

comfortable she felt there during her two visits. Claimant applied and has been accepted for admission in CIP pending appropriate funding.

5. CIP was founded by Michael P. McManmon, Ed.D., and serves students with learning differences, high functioning Autism and Asperger's Syndrome. CIP has six centers across the United States including those in Long Beach and Berkeley, California. The CIP center in Long Beach is the closest to Claimant's family residence. CIP is across the street from California State University, Long Beach and a short city bus ride from Long Beach City College and various vocational programs. CIP is vended by the Harbor Regional Center and is within the Harbor Regional Center catchment area. It is not within the catchment area of NLACRC.

6. CIP has three coordinated and integrated support components: a residential program which provides supported living services, a community integration program and a career skills training education/employment program (C-STEP). The three components focus on the needs of individuals such as Claimant who have high functioning Autism or Asperger's Syndrome and the cognitive ability to complete a college educational program and job training, but are hampered by challenges in confidence, social skills, organizational skills and delays in age level independence and daily living skills. Each participant is assessed at the commencement of the program to determine the level of support and his or her individual needs.

7. All CIP participants are enrolled in the residential program. The CIP program houses¹ the residential program participants in an apartment complex across the street from the CIP office. In the residential component, each participant has a shared apartment and a private room. Respondent desires her own room because she often has migraine headaches and generally has a need for some quiet space of her own, but is excited about having a roommate. This environment is the laboratory for instruction and supported living in that participants receive training on residential maintenance, cleaning, laundry, clothing care, personal hygiene and problem solving in a residential environment with peers. Residents in each apartment house cook and eat dinner together each week night. Participants are trained to get to work, school and other obligations on time. To the extent that participants need additional support, wake-up assistance is provided by staff. Students participate in wellness, nutrition, sensory integration and medication support programs.

8. The second component of CIP is a community integration program. This component includes both instruction and facilitated practice. CIP provides social thinking groups which meet twice a week in small groups to discuss and practice real life social situations with an instructor and relationship development classes to deal with sexuality, perspective taking, establishing friendships, and relationship dynamics. Participants also enroll in a "theory of mind" class to develop and enhance social interactions. The component includes 2 to 3 planned group activities per weekend.

¹ Claimant is responsible for paying rent on the apartment and the rent is not included in the CIP program charge for which Claimant seeks NLACRC funding.

9. The third component of CIP is the Community Skills Training Education/Employment (C-STEP) program, a career skills training, employment and academic support program. In this portion of the program, participants either attend college, a vocational program or are employed. Claimant plans to enroll in a college program. CIP provides tutoring, a supervised study hall, a career skills class, career counseling, job coaching, career skills assessment, transition planning and assistance with college enrollment and obtaining appropriate accommodations. Participants all have an individual plan, case reviews and planning sessions. If needed, meetings with parents and regional center service representatives are held for each participant.

10. The CIP program costs \$7,200 per month.

11. Claimant's Mother testified that the California Department of Rehabilitation has agreed to pay for Claimant's books and tuition at Long Beach Community College or California State University, Long Beach, if she attends the CIP program.

12. NLACRC denied Claimant's request to fund the CIP program on the grounds there were comparable services available that are more cost effective.

13. NLACRC proposed a plan based in the NLACRC catchment area. The NLARC proposal requires coordination of at least two programs from different providers and requires Claimant to travel to various points between Santa Clarita and the San Fernando Valley. NLARC proposes to provide residential services by PathPoint and a Tierra Del Sol Foundation community integration program known as NEXUS.

14. PathPoint has two residential options that NLACRC asserts would be appropriate for Claimant. The Programs are the Community Independent Living Program (CILP) located in Woodland Hills or the Supported Living Service (SLS) program which could be provided in the San Fernando Valley or Santa Clarita.

15. In the CILP program, participants live in apartments in a Woodland Hills apartment complex, share a bedroom and receive independent living skills training as a group. Program participants have a variety of disabilities and cognitive levels. Most participants are involved in a day program or a vocational program. The CILP program has nightly check-ins with staff and after-hours emergency on-call assistance. The CILP program costs \$1,000 per month.

16. In SLS, the alternative program, the consumer would have her own bedroom in an apartment and would receive support for up to 8 hours per day five days per week and 3 hours per weekend at a cost of \$4546 per month. This schedule most closely approximates the schedule of the CIP residential program. The SLS services could be provided in Santa Clarita or the San Fernando Valley depending upon Claimant's preference.

17. NLACRC also proposes that Claimant utilize the NEXUS program administered by the Tierra Del Sol Foundation as a community integration program and social skills program. The NEXUS program is not specific to the needs of consumers with high functioning autism and the participants are comprised of persons affected with a variety of disabilities with a spectrum of cognitive abilities. However, the same general philosophies, curriculum and methodology are used in both the NEXUS and CIP programs. The NEXUS program includes a “Discovery Phase” which provides participants with an opportunity for assessment and exploration of vocational and career interests. NEXUS is not affiliated with any college and is not close to any college campus. The NEXUS program costs \$1,900 per month.

18. Here, the parties agree that Claimant is in need of support to enable her to live independently and a community integration program focusing on her social skills and social communication. Each of the suggested programs provides assessment of the level of support and instruction needed and regular progress reports.

19. The NLARC plan cobbles together various programs to approximate some of the components of the CIP program, but misses some of the major potential benefits of CIP to Claimant. Most importantly, Claimant is an extremely intelligent young woman struggling with the manifestations of Autism on her social and adaptive skills. Her needs are somewhat unique in that she has a high cognitive level, but struggles with adaptive skills such as proper hygiene and self-care. In the CIP program, Claimant would receive services tailored to her needs and designed for persons afflicted with high functioning Autism.

20. The important differences in the CIP program and the PathPoint CILP program are that Claimant desires to have a college living experience which would not be offered by the PathPoint CILP program. She would like to have her own room in a shared living situation with peers which is also not available through CILP. Claimant visited CILP and although she thought the facilities were nice, was troubled by the prospect of sharing a bedroom, having no privacy, and not finding anyone there that was also attending college. Although the PathPoint SLS program would provide Claimant with her own room, and more individually tailored assistance and instruction than the CILP program, it also lacks the element of college life that Claimant desires.

21. The two most important differences in the CIP program and the NEXUS program for Claimant are that the NEXUS program is not on or near a college campus and is not specific to the needs of persons with high functioning autism and average or higher cognition such as Claimant.

22. NLACRC’s proposed programs would cost between \$2,900 and \$6,600 per month depending on whether Claimant used the PathPoint SLS program or PathPoint CILP program and are not comparable to the integrated CIP program at a monthly cost of \$7,200 for meeting Claimant’s needs.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq., (Lanterman Act) is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as NLACRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives. The statute defines services and supports for persons with developmental disabilities as 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. Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code §§ 4646, 4646.5, 4647, and 4648.)

3. The Legislature has recently enacted Welfare and Institution Code section 4648, subdivision (a)(6)(D), which requires regional centers to utilize the least costly vendor to provide services and supports to consumers. The statute provides:

“In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

[¶] . . . [¶]

“(a) Securing needed services and supports.

[¶] . . . [¶]

“(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548, subdivision (b) of Section 4701.6, or

subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

[¶] . . . [¶]

“(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports. . . .”

4. If competing programs are comparable and consistent with the consumer’s particular needs, Welfare and Institutions Code section 4648, subdivision (a)(6)(D), requires NLACRC to fund the least costly one. Here, the services are not comparable and only the CIP program is consistent with the consumer’s particular needs. Claimant has requested funding for the CIP program which provides an integrated program of support for independent living, community integration and support for attending college classes designed specifically for persons who fit a specific profile of high functioning Autism while the NLARC proposal is a combination of programs designed generically for the developmentally disabled. Claimant’s cognitive ability suggests that she is capable of independent living and obtaining a college degree, if provided appropriate intervention and support. Her needs will not be met by the more generic proposal made by NLACRC. In this instance the NLACRC proposal does not comport with Claimant’s needs or preferences and does not provide a comparable program despite its significant cost.

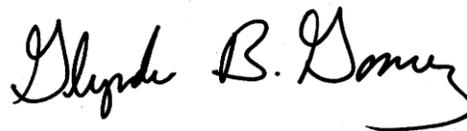
5. By reason of factual findings 1-22 and legal conclusions 1-4, Claimant’s appeal is granted.

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ORDER

1. Claimant's appeal is granted.
2. The North Los Angeles Regional Center shall fund the College Internship Program for Claimant.

DATED: February 8, 2013



Glynda B. Gomez
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.