

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013080200

P.C.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on September 19, 2013, in Alhambra, California. P.C. (Claimant) was present and represented himself.¹ Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by its Fair Hearing Coordinator, Judy Castaneda.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 19, 2013.

ISSUE

Should ELARC be required to re-authorize funding for Claimant's driving school?

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¹ Claimant's last name and the names of his family members are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 41-year-old male client of the Service Agency, diagnosed with Mild Mental Retardation and Schizophrenia, paranoid type. He lives at home with his parents. (Ex. 4.)

2. Claimant is proficient in his self-help skills and is able to use public transportation. When he took classes at a community college, he took the bus to and from school. (Ex. 4.)

3. On July 1, 2011, ELARC began funding driver training through California Driving School, Inc. (CDS) for Claimant. ELARC authorized the funding for three months, until September 30, 2011. During those three months, Claimant passed the written test to obtain his permit, and scheduled his first driving test in October. (Ex. 5; Testimony of Mark Jia.)

4. Claimant requested continued funding of the driver training, and ELARC agreed to fund three additional months. ELARC authorized the funding for three months, from October 1 through December 31, 2011. During those three months, Claimant failed the driving test twice (in October and December 2011). (Ex. 5; Testimony of Mark Jia.)

5. Claimant again requested continued funding of the driver training, and ELARC agreed to fund three additional months. ELARC authorized the funding for three months, from January 1 through March 31, 2012. During those three months, Claimant failed the driving test again (in February 2012). At that point, he had already been receiving driving training for nine months. (Ex. 5; Testimony of Mark Jia.)

6. Claimant again requested continued funding of the driver training, and ELARC agreed to fund three additional months. ELARC authorized the funding for three months, from April 1 through June 30, 2012. However, in doing so, ELARC asked Claimant to sign a form, which he did, acknowledging:

Your driver training will be re-authorized for another three months from 04/01/2012 to 06/30/2012. This is the last re-authorization. You agree that you will not request any extension of the services after the re-authorization expires on 06/30/2012. You will explore natural support to improve your driving skills.

(Ex. 7.)

7(a). On June 25, 2012, Claimant requested one more month of driver training and promised that he would never request it again. ELARC agreed to fund the additional month and authorized the funding from July 1 through July 31, 2012.

However, in doing so, ELARC asked Claimant to sign a form, which he did, acknowledging:

Your driver training will be re-authorized for another month months from 07/01/2012 to 07/31/2012. This is the last month you need. You agree that you will not request any extension of the services. If you need more chance to practice driving, you will explore natural support to improve your driving skills.

(Ex. 7.)

7(b). During July 2012, Claimant failed the driving test two more times (on July 11, 2012, and July 24, 2012). (Ex. 5; Testimony of Mark Jia.)

8(a). At the end of July 2012, Claimant requested one more month of driver training and promised that he would not request it again but would instead use natural supports. ELARC agreed to fund the additional month and authorized the funding from August 1 through August 31, 2012. However, in doing so, ELARC asked Claimant to sign a form, which he did, acknowledging:

Your driver training will be re-authorized for another month months from 08/01/2012 to 08/31/2012. This is the last re-authorization. You agreed that you will not request any extension of the services after the re-authorization expires on 08/31/2012. You will explore natural support to improve your driving skills.

(Ex. 7.)

8(b). During August 2012, Claimant failed the driving test one more time (on August 21, 2012). (Ex. 5; Testimony of Mark Jia.)

9(a). In September 2012, Claimant requested one more month of driver training, promising that this was the last request. Since he had already signed three agreements promising not to request re-authorization, he was asked to write a letter to his service coordinator's Unit Supervisor to receive re-authorization. On September 18, 2012, Claimant wrote a letter stating:

[I] failed my driving test several times. But I still want you to give me one more chance in the month of October to learn and practice my driving. I got my driving permit again.

I only need one more month in October 2012. This is my last month. I understand that I told you the same words several times before. But I promise you this is my real last time. If I

failed again, I will not ask any funding from ELARC. I will find my own way to learn and practice driving.

I will greatly appreciate if you could be kind enough to consider my real last request.

(Ex. 7.)

9(b). ELARC agreed to fund the additional month and authorized the funding from October 1 through October 31, 2012. Claimant did not pass his driving test. (Testimony of Mark Jia.)

10. After October 2012, Claimant's brother helped him with his driving practice. However, On July 23, 2013, Claimant again requested regional center funding of driver training because his brother had moved away. (Testimony of Mark Jia.)

11. In a Notice of Proposed Action dated July 26, 2013, ELARC informed Claimant that it was denying Claimant's "request to extend funding again for driving school." (Ex. 1.) The stated reason for ELARC's action was:

[ELARC] has extended the funding for driving school four times at the total of 15 months for you from 07/01/2011 to 10/31/2012. You failed your driving test 7 times . . . You signed . . . a form 3 times and agree[d] that you would explore natural support to improve your driving skills if you failed your driving test again. We have made 4 exceptions for you and extended the authorization 4 times. But you failed your driving test again in October 2012. You informed ELARC then that your brother was working with you for your driving Your brother is moving out and he can no longer help you. ELARC is no longer able to extend the services due to safety consideration.

(Ex. 1.)

12. Claimant filed a Fair Hearing Request, noting that the reason for requesting a fair hearing was because he "want[ed] more driving practice." (Ex. 2)

13. At the fair hearing, the Service Agency noted that it had funded 15 months total of driving school for Claimant, at a cost of \$24,000. Claimant had failed the driving test seven times. The Service Agency pointed out that that, given his failure rate it is not safe for him to have a driver's license. The Service Agency argued that the driving school service was not effective for him and was not a responsible or cost-effective use of public funds.

14. Claimant testified that he is "just asking for one chance to prove" that he can obtain his license and "will never ask again." He insisted that he is a safe

driver and that he has to prove to himself and to everyone that he “can do this.” He noted that everything he has achieved, he has had to work hard to earn. Claimant pointed out that his parents are older and cannot help him. He hopes to get married some day and wants to be able to drive his family around. (Testimony of Claimant.)

LEGAL CONCLUSIONS

1. Claimant’s appeal of the Service Agency’s denial of re-authorized funding for driving school is denied. (Factual Findings 1 through 14; Legal Conclusions 2 through 8.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See Evidence Code sections 115 and 500.) Thus, in proposing re-authorization of previously discontinued funding for driving school, Claimant bears the burden of proving by a preponderance of the evidence that the change is necessary and that the services are necessary to meet his needs. Claimant has failed to meet his burden.

3. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he 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 or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. (Emphasis added.)

4. Welfare and Institutions Code section 4646 provides, in part:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and

choices of the consumer, and reflect the cost-effective use of public resources. (Emphasis added.)

5. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals .

6. Welfare and Institutions Code section 4648 provides, in part:

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.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made. (Emphasis added.)

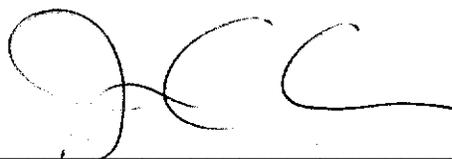
7. In this case, the Service Agency had previously agreed to fund the driving school to help Claimant achieve his goal of obtaining his driver's license. However, after 15 months and \$24,000 in funding, this service was discontinued. It is clear that the driving school was not been effective at meeting Claimant's goal of licensure. Additionally, re-authorizing funding would not be a cost-effective use of public resources. Moreover, given the seven failed tests, the Service Agency's concern regarding safety, even if Claimant does obtain licensure, is well-founded. Consequently, the Service Agency has established a basis for denial of re-authorized funding of Claimant's driving school.

8. Claimant has failed to prove by a preponderance of the evidence that re-authorized funding of driving school is warranted at this time.

ORDER

Eastern Los Angeles Regional Center's denial of re-authorized funding of driving school for Claimant is upheld. Claimant's appeal is denied.

DATED: September 25, 2013



JULIE CABOS-OWEN
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 within 90 days.