

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2014120365

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter in Alhambra, California, on February 18, 2015.

Claimant's mother represented Claimant.¹

Judy Perez, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC or Service Agency or regional center).

The matter was submitted on February 18, 2015.

ISSUE

Whether Claimant is entitled to reimbursement for tutoring services through the self-determination program.

¹ Claimant and his family will be referred to by title only to protect their privacy.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-4; Claimant's exhibits A-P.

Testimony: Elizabeth Harrell; David Castaneda; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 22 year-old man who is a consumer of ELARC based on his qualifying diagnosis of autism.

2. In June 2014, Claimant's mother requested reimbursement for two tutors in the amount of \$1,015. In a Notice of Proposed Action dated October 15, 2014, ELARC denied the request. The stated reason for the denial was as follows: "[T]he Regional Center is not responsible for paying [for] services outside of vendorization. Any services rendered by the provider prior to the Employee of Record vendorization is the financial responsibility of the family." Claimant timely appealed the denial and this hearing ensued.

3. Claimant has participated in the self determination project since in 1998. As stated in Claimant's most recent Individual Program Plan (IPP), ELARC agreed to fund a social recreation tutor for Claimant. (Exhibit 2 at p. 4.) There is no dispute over the necessity of the service, or ELARC's agreement to fund the service.

4. For approximately 14 years, ELARC operated the self determination project by permitting Claimant's family to select providers, and then reimbursing Claimant's family for their expenditures to employ those providers. In 2012, ELARC changed its policy. The dispute in this matter is whether ELARC properly informed Claimant and his family of the changes.

5. In January 2012, ELARC held a meeting to discuss the changes with parents of consumers who participated in the self determination project. Claimant's mother attended the meeting. At the meeting, parents were informed that ELARC was now requiring that parents who hire staff must do so through an agency called an "employer of record." This change arose from a concern regarding the legal responsibilities associated with being an employer, such as taxes and workers compensation.

6. ELARC thereafter sent parents a letter in February 2012 which summarized the changes. (Exhibit 4.) The letter states that "ELARC is now requiring that all Self Determination participants who hire staff to provide direct services use the services of an Employer of Record agency." (*Id.*) The letter does not state a deadline for this change, but rather that "ELARC will be setting up a follow up session to the January 31, 2012 meeting at which you will have the opportunity to obtain full information about the employer of record providers in order to make an informed choice. The date of that session has not been

determined yet. Meanwhile, please contact your Service Coordinator with any questions.” (*Id.* at p.2.) Reimbursement is not addressed anywhere in the letter.

7. Claimant’s mother explained that she has followed the same policy for reimbursement for the past 16 years. She is a vendor and often writes checks to pay for services. Claimant’s mother submitted numerous examples of reimbursement from the regional center for services that she paid for through May 2012. (Exhibits A – O.) Until June 2014, she never had a problem getting reimbursed from the regional center. She acknowledged that she attended the meeting in 2012, and she understood that ELARC wanted parents to use an employer of record. She maintained that the reimbursement policy was not addressed during the meeting or anytime thereafter; and that she was not notified of the reimbursement policy change until the denial in June 2014.

8. Claimant’s mother also noted that it took a long time to hire service providers through an employer of record. If she had not directly hired a service provider for Claimant, he would have gone without necessary services while this process was pending.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to reimbursement for services. (Evid. Code, § 115.) Claimant has met this burden.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act), incorporated under Welfare and Institutions Code section 4500 et seq., acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that “[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.” (Welf. & Inst. Code, § 4512, subd. (b).)

4. Here, Claimant has established that ELARC did not adequately inform his family of the changes to its reimbursement procedure. In Claimant’s IPP, ELARC agreed to provide funding for Claimant to receive a social recreation tutor. The evidence showed that ELARC failed to properly inform the families in the self determination program that the reimbursement would cease when it required the change to an employer of record. In

addition, the evidence showed that the transition to an employer of record was not a fixed date. Saliently, Claimant would have had a gap in services if Claimant's mother had not hired and paid for the services herself.

ORDER

Claimant's appeal is granted. Eastern Los Angeles Regional Center shall reimburse Claimant's mother in the amount of \$1,015 within 30 days of the date of this order.

Dated: March 3, 2015

/s/
AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.