

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SIMON Y.

Claimant,

vs.

**EASTERN LOS ANGELES REGIONAL
CENTER,**

Service Agency.

OAH Case No. 2011120132

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Eastern Los Angeles Regional Center, in Alhambra, on February 17, 2012.

Simon Y. (Claimant) was represented by Anna Y. (mother).¹

Judy Castaneda, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC or the service agency).

Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on February 17, 2012.

ISSUE

The following issue is to be decided by the ALJ:

Shall the service agency be allowed to discontinue funding for Claimant's gym program (Payke Gymnastics or Payke)?

¹ Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

FACTUAL FINDINGS

1. Claimant is a 16 year-old young man who is a consumer of the service agency by reason of his diagnoses of autism and mental retardation. Besides the gym program at issue, the service agency also funds 40 hours per month of adaptive skills training, music therapy at a rate of one hour per week, and personal assistant services at a rate of 75 hours per month.

2. Claimant filed his fair hearing request on October 8, 2011.

3. The service agency currently funds Claimant's gym program at Payke's David Rabb's facility, on a one-to-one basis, one time per week. These lessons are properly classified as social/recreational activity or nonmedical therapy. The service agency contends that, pursuant to Welfare and Institutions Code section 4648.5, the service agency may no longer fund social/recreational services, such as gymnastics. While Mother and Claimant's coach at Payke testified that they believe Claimant's program is "therapy," it was not establish that either have any medical training.

4. Welfare and Institutions Code section 4648.5, states:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

- (1) Camping services and associated travel expenses.
- (2) Social recreation activities, except for those activities vendored as community-based day programs.
- (3) Educational services for children three to 17, inclusive, years of age.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the

consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

5. Claimant has made progress at Payke's facility. He is more aware of his surroundings and does not bump into people as much as prior to Payke. However, Claimant did not establish that Payke's gym time is the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of his developmental disability, or that the gym time is necessary to enable him to remain in his home and no alternative service is available to meet his needs. Claimant's developmental disabilities are autism and mental retardation, not physical deficits which would be addressed by occupational or physical therapy. As such, Claimant did not establish an exemption to the general rule stated in Welfare and Institutions Code section 4648.5, subdivisions (a)(2) and (4).

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welfare and Institutions Code sections 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, the service agency had the burden of establishing that funding for gym time should be discontinued.

3. Welfare and Institutions Code section 4648.5 (new law) was recently enacted by the State Legislature. The Legislature decides, in part, how the State will spend its limited resources. Subdivisions (a)(2) and (4) clearly state that social/recreational programs, and/or nonmedical therapies may no longer be funded by the regional center, unless the consumer can establish that an exemption exists because of "extraordinary circumstances," which are defined as "when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." Claimant did not establish that an exemption applies and therefore the new law prohibits continued funding of the Claimant's gym program. (Factual Findings 1-5.)

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

ORDER

Claimant Simon Y.'s appeal of the Eastern Los Angeles Regional Center's decision to discontinue funding for Payke's Gymnastics is denied. Eastern Los Angeles Regional Center may discontinue funding gym time for Claimant.

IT IS SO ORDERED.

DATED: April ____, 2012.

CHRIS RUIZ
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.