

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

OAH No. 2012020429

KALEEA 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 July 10, 2012, in Alhambra, California. Kaleea C. (Claimant) was represented by her mother, Yvonne P.¹ Eastern Los Angeles Regional Center (Service Agency or ELARC) was represented by Jesse Valdez.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on July 10, 2012.

ISSUE

Should Claimant's use of the 16 hours per week/80 hours per month of socialization training hours funded by ELARC be restricted to after school hours or should Claimant be able to use the 80 hours per month on a cumulative basis during the hours chosen by her parents?

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¹ Claimant's and her mother's surnames are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 12-year-old female client of the Service Agency who lives part-time with each of her parents, who share custody. She has been diagnosed with Mild Mental Retardation. (Agency Exhibit 2.)

2. Claimant attends a special day class in a public school, five times per week during the school year. She is currently attending summer school five days per week, from 8:00 a.m. until 12:20 p.m. (until July 27, 2012). (Exhibit 2; Testimonies of Yvonne P. and Delia Valenzuela.)

3(a). Since 2006, Claimant has been receiving services provided by Ability First. These services have been categorized differently at different points of time. (Exhibit 2.)

3(b). In 2010, Claimant's services through Ability First were categorized as a "day program, five times per week," and as "after school day care." Transportation from Claimant's school to Ability First, five days per week, was funded by the Service Agency. (Exhibit 2.)

3(c). Claimant's October 2010 Individual Program Plan (IPP) noted:

On days that she is with her mother, [Claimant] attends after school day care at Ability First in Pasadena usually from 2:30 – 5:00 p.m. Monday – Friday. The program is not utilized when she is with her father. Transportation is provided from school to Ability First by U.S. Transit.

[¶] . . . [¶]

When she is with her mother, she reportedly is encouraged to participate in outdoor activities such as going to the park, the beach or to the zoo, on occasion. When with her father and his family they take part in activities such as shopping and family outings. Her father recently took her camping where [Claimant] shared a tent with her cousin and good friend Bianca. (Exhibit 2.)

3(d). In 2011, Claimant's purchase of service authorization categorized the Ability First services as a "socialization training program" and noted that it was 16 hours per week. (Exhibit 2.)

3(e). However, in Claimant's 2012 purchase of service authorization, the Service Agency specifically noted the following hours for use of Ability First

socialization training services: “3 hrs/day M-T-Th-F and 4 hrs/day on Wed. after school hours only.” (Exhibit 2.)

3(f). Claimant’s 2012 IPP stated:

On days that she is with her mother, [Claimant] attends after school socialization program at Ability First located in Pasadena. The program is not utilized when she is with her father. Magic carpet shuttle now provides transportation from school to Ability First. (Exhibit 2.)

3(g). Claimant’s 2012 IPP also noted:

[Claimant] is also currently enrolled in a socialization program after school. She is attending Ability First [in Pasadena]. [Claimant] is transported from school to Ability First by Magic Carpet Shuttle, funded by ELARC. ELARC currently funds for socialization training program five times a week for a total of 16 hours per week. The hours are broken down as follows[:]
Three hours a day (four days a week) and 4 hours on Wednesdays due to her short school day. (Exhibit 2.)

4. On January 18, 2012, ELARC sent Claimant a Notice of Proposed Action (NOPA), stating that it would only fund for socialization training program for “after school hours, between 2:30 – 6:00 p.m. The total amount of hours to be funded is 16 hours per week.” The stated reason was as follows:

Regional Center currently funds socialization training during after school hours only. Regional center will not pay for additional socialization training hours requested during school breaks since those hours (7:30 a.m.-2:30 p.m.) would fall under what is typically accepted as day care. (Exhibit 1.)

5. On January 26, 2012, Claimant’s mother filed a Fair Hearing Request. (Exhibit 1.)

6. At the fair hearing, Lee Strollo (Strollo), Supervisor of the Family Services Unit testified credibly on behalf of the Service Agency. His testimony established the following:

(a). In funding Claimant’s socialization program, ELARC considered it an “after school program.” Consequently, ELARC committed to funding the service during certain hours of the day. (Testimony of Strollo.)

(b). Based on a discussion of Claimant's needs, the parties to the IPP determined that 16 hours per week of socialization training was appropriate to meet her level of need. Although the one-page summary of services, entitled Service Provision Agreement, dated January 11, 2012, lists "Socialization Training Program" provided by "Ability First" for "80 hours per month," the body of the 2010 and 2012 IPPs specified the intended hours of use. (Testimony of Strollo.)

(c). Because prior purchase of service authorizations had failed to specify the hours per day during which provision of services were authorized, ELARC discovered that this ambiguity was being "manipulated," and that non-used hours were being accumulated and used in larger blocks at later times. This did not comport with the IPPs, which specified that the service was intended as an "after school program." The hours were never meant to "carry over," but instead would be "lost if not used." In 2012, ELARC corrected the purchase of service authorization to ensure that it was "in line with the IPP." (Testimony of Strollo.)

(d). Although Claimant's father does not consistently send her to Ability First when she is with him, he has informed ELARC that he provides a level of natural support that helps with Claimant's socialization skills. He has many relatives actively involved with Claimant, and he takes Claimant on outings, play dates and activities. (Testimony of Strollo.)

7. Claimant's mother testified credibly at the Fair Hearing. She noted that she is dissatisfied with ELARC's hours restriction. Her testimony established the following:

(a). Although she and her ex-husband collaborated when they agreed to the funding of Ability First in 2006, Claimant's father began deciding not to send her to Ability First on the days she is with him. Nevertheless, he does send Claimant to Ability First when she is involved in practices for performances such as drill team, cheerleading or pageants.

(b). Claimant does engage in other socializing outside Ability First, but given her diagnosis, she needs structure and routine. She goes to school and then Ability First after school. However, during winter, summer and spring breaks, she still needs structure so she attends Ability First during those breaks as well.

(c). Claimant's mother would like to send Claimant to Ability First during the daytime when she is not attending school. She does not believe it is just an after school program, but can be used during day hours when Claimant can stay longer and when Ability First provides full-day activities.

(d). She believes that Ability First's socialization program has helped Claimant "tremendously" with activities such as cheerleading and the holiday

pageant. Additionally, Ability First provides swimming lessons which ELARC previously funded, but for which Claimant's parents are now paying.

8. Delia Valenzuela, Program Supervisor at Ability First, testified credibly at the Fair Hearing. Her testimony established the following:

(a). Although Ability First activities are fun, they are intended to provide clients with opportunities to work toward the goals of socialization, independent living skills and safety awareness. While parents can provide their children with socialization opportunities, Ability First provides socialization opportunities on a structured basis with staff working toward client goals.

(b). Claimant attends the Ability First after school program and the extended day program. Services during the extended day program are the same as the services provided in the after school program except that the day program provides clients more opportunities to be in the community.

(c). Parents have the option of seeking scholarships to help with funding.

9. Valenzuela opined that when Claimant attends consistently, she shows signs of improvement and that without structure throughout her day, Claimant shows signs of regression. According to Valenzuela, "it would be beneficial to provide a program for the entirety of [Claimant's] day instead of a partial day" because their program is based on a full-day program to meet goals.

LEGAL CONCLUSIONS

1. Cause exists to deny, in part, Claimant's appeal of the Service Agency's proposed hours restriction for her socialization training. (Factual Findings 1 through 9.)

2(a). 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, Evid. Code, §§ 115 and 500.)

2(b). The Service Agency established that it had initially funded Claimant's socialization training program as an after school program which Claimant used "usually from 2:30 – 5:00 p.m. Monday – Friday" and to which the Service Agency provided after school transportation. Although Claimant's parents and Ability First had been banking unused service hours and using them to fund full-day program hours during school breaks, this was not the intended use of the after school socialization program, and when ELARC discovered this practice, it sought to provide more written specification in the IPP and the purchase of service authorization. In seeking to require ELARC to allow the banking and later use of socialization training hours, Claimant bears the burden of proving by a preponderance

of the evidence that the change in the intended use of the program hours is necessary. Claimant has not met her burden of proof that she should be able to use the 80 hours per month on a cumulative basis during the hours chosen by her parents. She has met her burden of proof that, during school breaks, she should be able to use her three hours per day (four days per week) and four hours per day (one day per week), Monday through Friday, at any time of the day, without restriction to use “after school.”

3. A service agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (Welf. & Inst. Code, § 4502, subd. (a).); and “maximize opportunities and choices for living, working, learning and recreating in the community” (Welf. & Inst. Code, § 4640.7, subd. (a).).

4. A service agency “shall give highest preference to those services and supports . . . that allow all consumers to interact with persons without disabilities in positive, meaningful ways.” (Welf. & Inst. Code, § 4648, subd. (a)(1).)

5. Pursuant to Welfare and Institutions Code section 4512, subdivision (b), the “services and supports” which may be provided to a consumer include “training, education, . . . behavior training and behavior modification programs, . . . [and] social skills training”

6(a). 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.

6(b). Welfare and Institutions Code section 4646 provides, in part:

(a) 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.

6(c). 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.

[¶] . . . [¶]

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services. (Emphasis added.)

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6(d). Welfare and Institutions Code section 4648, subdivision (a)(1), 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.

(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. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(b) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

8. Welfare and Institutions Code section 4685, subdivision (c)(6) provides:

When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

9(b). In the matter at hand, the determination to fund 16 hours per week of socialization training was made after a discussion of Claimant's needs and the level of services appropriate to meet her level of need. The Service Agency funded Claimant's socialization training program as an after school program. As set forth in the 2010 IPP, it was ELARC's understanding that Claimant attended Ability First "usually from 2:30 – 5:00 p.m. Monday – Friday." To further indicate its intent that the hours were to be used immediately after school, the Service Agency funded after school transportation to the socialization program. Claimant's and Ability First's banking of hours for later use without ELARC's knowledge contravened the intended use of the socialization training program hours.

9(b). At the fair hearing, both Claimant's mother and the Ability First representative stressed the need for structure and consistency in order for Claimant to progress toward her goals. This argument actually supports ELARC's position that the socialization training should be provided consistently, Monday through Friday. The argument for structure and consistency does not support Claimant's absence from the program and using "banked" service hours intermittently or to later attend the full-day program. Valenzuela's opinion that "without structure throughout her day, Claimant shows signs of regression" suggests that Claimant's absence would result in her loss of skills and progression. However, Claimant did not establish that attending the full-day program after her absence better served her needs or that it allowed her to

ORDER

1. Eastern Los Angeles Regional Center's restriction of Claimant's socialization training program hours to three hours per day, for four days, and four hours per day, for one day, Monday through Friday, is upheld. Claimant's appeal of this restriction on banking hours is denied.

2. During the school year, when ELARC is providing after school transportation to Ability First, Claimant must use attend the socialization training program after school. During school breaks, Claimant shall be allowed to use her three hours per day (four days per week) and four hours per day (one day per week), Monday through Friday, at any time of the day, without restriction to use during "after school" hours.

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Any appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision.

DATED: July 23, 2012

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings