

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

D.N.,

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2012021179

DECISION

Amy C. Yerkey, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 22, 2012, in Los Angeles, California.

Sharona N., Claimant's mother, represented D.N. (Claimant).¹

Marc Baca, Appeals Coordinator, represented the Frank D. Lanterman Regional Center (FDLRC or Service Agency or Regional Center).

The parties submitted the matter for decision on March 22, 2012.

ISSUE

The question in this matter is whether FDLRC should reimburse Claimant for a social skills program which is not vendored by the Service Agency, one time per week, at the cost of \$80 per session. Claimant seeks reimbursement for services provided since September 2011 through the present, and on a going forward basis.

¹ Initials have been used to protect Claimant's privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-11.

Testimonial: Tamar Meguerian, Service Coordinator; Sam Suzuki, Regional Manager; Karen Ingram, Director of Community Services; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a six-year-old male who is eligible for regional center services based on an autism diagnosis.

2. Claimant's autism diagnosis involves social skills deficits, and thus his IPP included a provision that FDLRC would fund for a social skills program. (See Exh. 6.) Claimant's mother tried placing Claimant in a vendored-program; however, the programs were either not appropriate or conflicted with Claimant's schedule. Thus, Claimant's mother chose a program which was not vendored by the Regional Center, through Cheerful Helpers. Claimant's family funded this program.

3. In December 2011, Claimant's mother requested that FDLRC reimburse her for the Cheerful Helpers social skills program. By letter dated February 17, 2012, FDLRC denied Claimant's request. The stated reason for this decision was because Cheerful Helpers is not a vendored program. FDLRC cited its Purchase of Service Policy Statement, and California Code of Regulations, title 17, section 50602, subdivision (r). At hearing, FDLRC also cited section 4646.4 in support of its decision.

3. Claimant timely filed a fair hearing request.

4. Claimant's most recent Individualized Program Plan (IPP), dated September 20, 2011, contained the following desired outcome: "[Claimant] will be able [to] socialize appropriately with his peers and participate in social and recreational activities." To meet this goal, FDLRC agreed in an IPP amendment, dated November 2011, that it would fund for social skills group training, one time per week, through Leaps and Bounds, from December 1, 2011, through February 29, 2012.

5. FDLRC presented testimony from three witnesses at the hearing. Tamar Meguerian, FDLRC Service Coordinator, explained that the regional center is willing to fund for Claimant to attend a social skills program, so long as the program is vendored by FDLRC. Meguerian stated that she offered Claimant's mother the option of three different social skills programs which are vendored. She also contacted Cheerful Helpers to inquire whether they wanted to become a vendored program, and she was informed that they did not wish to become vendored. Karen Ingram, FDLRC Director of Community Services, also reached out to Cheerful Helpers. She spoke with Cheerful Helpers' director, to find out if they wanted to become vendored for Claimant's program, and received the same response:

no. Sam Suzuki, FDLRC Regional Manager, expressed concern about the Cheerful Helper's program because it did not provide measureable goals, which he contends are required. In addition, Suzuki stated that parent participation is necessary. Suzuki opined that Cheerful Helpers did not provide adequate assessments of Claimant's progress. According to Suzuki, the regional center has reviewed Cheerful Helper's progress reports regarding Claimant, and he opined they are too generic.

6. Claimant's mother testified at the hearing. As established by her testimony and the documentary evidence, Claimant has previously attended many programs at Cheerful Helpers, some of which were funded by the regional center. Claimant's mother explained that Cheerful Helpers is an excellent match for Claimant. It is the only agency in Los Angeles that works with the entire family, and it requires heavy parent participation. Cheerful Helpers is well-established, it has been in operation since 1958. Claimant started going to Cheerful Helpers when he was two years old. Claimant's parents did extensive research when selecting an appropriate program for him. Claimant's core deficit with autism is his social skills, and he has problems with generalization. Claimant's parents provide him with an aide at school to assist him, and this same person runs the social skills group at Cheerful Helpers. Thus, the aide is able to help Claimant generalize the social skills that he learns at Cheerful Helpers in natural settings, which is a unique and fortunate opportunity for Claimant.

7. Claimant's mother contacted the other social skills programs which the regional center suggested. She brought Claimant to "Leaps and Bounds" and was extremely disappointed with the experience. They placed Claimant into a group with other children who were well below Claimant's functioning level, and did not seem to understand his needs. Although Leaps and Bounds offered to place Claimant into a different group, it conflicted with Claimant's schedule. Claimant's mother contended that the other programs also had scheduling conflicts. Claimant's parents prefer Cheerful Helpers because it works for Claimant. They have seen great progress since Claimant has attended their programs. During cross-examination, Claimant's mother answered questions about the staff ratios, parent participation, qualifications of the Cheerful Helpers' staff (they all have Master's degrees), and the prior programs that Claimant has attended there. In his current program, Claimant is placed with three to six other children that are high-functioning and have similar skills deficits to Claimant. Cheerful Helpers works with Claimant on concepts such as flexible thinking; e.g., playing what others want, and empathy. Claimant's mother noted that Cheerful Helpers has written assessments for Claimant's Individual Education Plan. Thus, Cheerful Helpers appears to meet the criteria articulated by the regional center, such as requiring parent participation, and providing assessments.

8. The cost of Cheerful Helpers versus other programs is not an issue here. Cheerful Helpers charges Claimant's parents \$80 per session. Claimant has attended one session per week since September 2011.

9. Claimant's family began funding the Cheerful Helpers social skills program at issue in September 2011. FDLRC authorized funding in November 2011, to begin in

December 2011. Claimant's parents did not request reimbursement until December 2011. Thus, an award of reimbursement will only date back to December 2011. Accordingly, Claimant's parents have expended \$80 per week, for approximately 20 weeks from December 2011 through the present, for a total of \$1,600.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal of regional center's denial of reimbursement for Claimant's social skills services, as set forth in factual findings 1 through 9, and legal conclusions 2 through 9.

2. Where Claimant seeks a government benefit or service, he bears the burden of proof. Claimant seeks reimbursement for social skills services, and thus he bears the burden to show that FDLRC's decision to deny funding for Cheerful Helpers is improper. Claimant has met this burden, as explained below.

3. The Lanterman Act, incorporated under Welfare and Institutions Code² 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.)

4. The Lanterman Act requires flexibility to meet unusual or unique circumstances. Section 4648, subdivision (a)(2), states that services and supports must "be flexible and individually tailored to the consumer and, where appropriate, his or her family." In addition, the Lanterman Act recognizes the need for flexibility, and respect of cultural differences, by requiring regional centers to provide services that are "flexible and creative in meeting the unique and individual needs of families as they evolve over time" and are "designed to meet the cultural preferences, values, and lifestyles of families." (Welf. & Inst. Code, § 4685, subd. (b).)

5. In order to achieve the stated goals of a consumer's IPP, regional centers are authorized to fund services either through vendorization or by entering into contracts with service providers. Section 4648, subdivision (a) provides, in pertinent part:

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

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

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.

¶ . . . ¶

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

¶ . . . ¶

(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:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification. . . .

Thus, section 4648, subdivision (a), clearly authorizes regional centers to fund a service either through the vendorization process or by contracting with a service provider. Because section 4648 distinguishes between vendorization and contracting, it is evident that a service may be funded by contract even when the service provider is not vendored with a regional center. The fact that the specific program at Cheerful Helpers is not vendored with a regional center does not prohibit FDLRC from funding Cheerful Helper's social skills services to Claimant.

6. Applying those provisions here, Claimant's appeal must be granted. It is well established that Cheerful Helpers services are invaluable; currently no comparable social skills program is available that fits within Claimant's schedule. Thus, Claimant's social skills program at Cheerful Helpers is necessary to meet his IPP goals. Moreover, Cheerful Helpers meets the criteria set forth in Section 4648, subdivision (a)(6)(A)-(C): it is able to, and has, delivered quality services to accomplish Claimant's goal of appropriate socialization. Notably, Claimant's school aide is also the social skills program administrator at Cheerful Helpers. Thus, she is able to assist Claimant in generalizing the skills he learns through the program into natural settings, such as school. Further, Cheerful Helpers is a well-established and accredited program. It has been in operation for more than 50 years, and its staff are educated beyond college-level.

7. Regional Center's "General Purchase of Services Policy Statement" does not conflict with this conclusion. Under the section entitled "Selecting a Service Provider," it states that "[s]ervices and supports may be purchased only from providers who are vendored or otherwise authorized by the Department of Developmental Services (DDS) to provide such services and supports." It also requires that the provider "[a]dhere to the quality of care standards set forth by the regional center, DDS, the Welfare & Institutions Code and the California Code of Regulations for the service or support provided." The evidence showed that Cheerful Helpers social skills program complies, in substance, with these requirements. Moreover, Cheerful Helpers has previously been vendored to provide other regional center services. To the extent that the social skills program attended by Claimant does not meet every vendorization requirement, the Lanterman Act does not require it to do so. The regional center has not cited any law inapposite to this conclusion.³

Section 4646.4, cited by the Service Agency at the hearing, provides that a consumer's IPP must conform to a regional center's purchase of service policies. FDLRC's

³ California Code of Regulations, title 17, section 50602, subdivision (r), cited in Service Agency's denial letter, provides the definition of "Unique Consumer Identifier." Presumably, Service Agency meant to reference subdivision (t), which provides the definition of "vendored." Regardless, neither section requires vendorization as a prerequisite to receiving payment from a regional center for providing services.

service purchase policy provides that a service may be purchased from a provider who is vendored or otherwise authorized. The evidence did not show that Cheerful Helpers failed to meet the “otherwise authorized” provision.

8. With regard to reimbursement, the Lanterman Act does not specifically authorize retroactive reimbursement of service costs to families in the fair hearing context. Nevertheless, general equity principles may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services*, (1985) 38 Cal. 3d 384.)

9. In this case, equitable considerations require that FDLRC reimburse Claimant’s parents the \$1,600 that they expended to privately fund social skills through Cheerful Helpers from December 2011 through the present. Claimant has demonstrated a need for social skills services, as indicated in his IPP. Although FDLRC provided information about vendored programs, none were compatible. Having failed to fund for a necessary service, equitable considerations require that FDLRC must now reimburse Claimant’s parents.

ORDER

Claimant’s appeal is granted. Frank D. Lanterman Regional Center must reimburse Claimant’s parents in the amount of \$1,600 for social skills services provided to Claimant from Cheerful Helpers from December 2011 through the present. In addition, FDLRC must fund Cheerful Helpers social skills program going forward in accordance with Claimant’s IPP; i.e., provided that Claimant needs the service and it is written into his IPP.

DATED: April 3, 2012

AMY C. YERKEY
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.