

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LAUREN Y.,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2012040797

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 18, 2012, in Pomona, California.

Fair Hearings Coordinator Daniela Martinez represented the service agency, San Gabriel/Pomona Regional Center (Service Agency or SGPRC). Claimant Lauren Y. (Claimant) was represented by her mother (Mother). Claimant did not attend the hearing.

Testimony and documentary evidence were received, the record was closed, and the matter was submitted for decision on June 18, 2012.

ISSUE

Whether the Service Agency must fund a family retreat at Jami and Friends for Claimant and her family.

FACTUAL FINDINGS

1. Claimant contends that she and her family will benefit from the retreat because it would provide them with rest and an opportunity to be together as a family. The service agency contends that it is prohibited from funding such social recreational activities by Welfare and Institutions Code sections 4648.5 and 4546.4, subdivision (a). For the reasons set forth below, Claimant's appeal is denied.

2. Claimant is a four year, ten month old girl, born August 8, 2007. She is eligible for regional center services based on her diagnosis of Autism. She lives in Rowland Heights with her parents, grandparents and older sister who is also a regional center consumer.

3. Claimant's individual program plan (IPP), dated February 23, 2011, provides for 12 hours per month of respite, 57 hours per month of Discrete Trial Training (DTT) and 12 hours of supervision per month for the DTT. The Service Agency also provided funding for Claimant's parents to attend an Autism conference in February 2012.

4. Claimant has behavior problems including tantrums, throwing objects and refusal to follow directions. She has limited speech which is generally only partially intelligible to listeners. She requires constant supervision because she does not understand danger.

5. Claimant's care has been stressful to her parents. Claimant's family lives in the home of her grandparents. Her parents are not afforded much privacy in the home and have little opportunity to practice DTT skills with Claimant.

6. Claimant requested that the Service Agency provide \$1,200 dollars in funding for her family to attend a week long retreat from July 18, 2012, to July 22, 2012, at Jami and Friends. The retreat is described in promotional literature as:

“a week of joy, relaxation and respite for the entire family. Participating families have varied backgrounds and all types of disabilities (visible and invisible). Activities are age and ability appropriate (including typical children). Parents enjoy worship, workshops and other special activities.”

7. On March 19, 2012, the Service Agency sent Claimant a letter denying the request. According to the denial letter, Claimant's request was denied based upon sections 4648.5 and 4646.4, subdivision (a), of the Welfare and Institutions Code. The denial letter provided that the Service Agency's authority to purchase the following services had been suspended: (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; and (4) nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

8. The March 19, 2012 letter also stated that “The service you requested is an activity available for the whole family at the cost of \$1,200.00. This activity would be considered a social recreation activity. This request is considered a typical family's responsibility in providing similar services and supports for a minor child without disabilities.”

LEGAL CONCLUSIONS

1. The burden of proof is on the Claimant as the party seeking to change the status quo, in this case, to obtain services not previously funded. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

2. The Lanterman Developmental Disabilities Services Act¹ (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are charged with providing developmentally disabled persons with access to the facilities and services best suited to them throughout their lifetime and with determining the manner in which those services are to be rendered. (*Id.* at p. 389; Welf. & Inst. Code, § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 390.)

4. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

¹ Welfare and Institutions Code section 4500 et seq.

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.

5. Welfare and Institutions Code section 4646.4, subdivision (a), provides:

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:

[¶] . . . [¶]

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

[¶] . . . [¶]

(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.

6. Welfare and Institutions Code section 4646, subdivision (d), provides in relevant part that:

Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

7. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

8. Welfare and institutions Code section 4648.5, provides in pertinent part that:

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:

(a)(1) Camping services and associated travel expenses.

(a)(2) Social recreation activities, except for those activities vendored as community-based day programs.

(a)(3) Educational services for children three to 17, inclusive, years of age.

(a)(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶] . . . [¶]

(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.

(Welf. & Inst. Code § 4648.5.)

9. Here, the evidence showed that the retreat is not a “specialized service” within the meaning of Welfare and Institutions Code section 4512, subdivision (b). Although the retreat facility accepts disabled participants, it is the same program that is available to the general public. (See Welf. & Inst. Code, § 4512, subd. (b).)

10. The evidence also showed that the retreat is the type of social or recreational activity that is the family’s responsibility to provide. (See Welf. & Inst. Code, § 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

11. The retreat falls within the category of social recreation activities contemplated by Welfare and Institutions Code section 4648.5(a)(2), and the Service Agency is prohibited from funding such services. The evidence did not establish that Claimant was entitled to an exemption. The retreat is not a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimant’s developmental disability and is not necessary to enable Claimant to remain in her home. (See Welf. & Inst. Code, § 4648.5, subd.(a) & (c).)

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12. In sum, the Service Agency's decision no to fund the retreat was appropriate. (Factual Findings 1-8; Legal Conclusions 1-11.)

ORDER

Claimants' appeal is denied. The Service Agency's denial of funding for the retreat was appropriate.

DATED: June ___ 2012

GLYNDA B. GOMEZ
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.