

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2012040985

MICHAEL W.,

Claimant,

and

THE SAN DIEGO REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California, on May 9, 2012.

Carol W., claimant's mother, represented claimant, who was not present for the fair hearing.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Oral and documentary evidence was received and the matter was submitted on May 9, 2012.

ISSUE

Should the service agency fund services for claimant until his school district assumes that responsibility?

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 22, 2012, claimant's mother filed a fair hearing request seeking to have SDRC continue funding her son's services until his school district begins providing them to him.

Evidence Introduced at Hearing

2. Claimant recently turned three years old and transitioned out of the Early Start program. He remains eligible for regional center services because of his mental retardation diagnosis and Down syndrome diagnosis. The primary service claimant receives which was at issue in this hearing was his speech and language service.

3. Although the Early Start goal is to have individuals assessed by their school district prior to their transition out of Early Start, claimant will not be assessed by his school district until May 17, 2012, a time after turning three because his school district has been overwhelmed with assessment requests and simply lacks the manpower to get all of them completed before individuals turn three. No evidence was introduced that the school district has refused to provide services to claimant. Claimant's Individual Education Plan (IEP) will not take place until May 31, 2012.¹ The school district will not offer services to claimant until after the IEP meeting. Accordingly, he will not receive speech and language services until at least June 2012 although the school district has agreed to provide "compensatory related services" to make up for any services that claimant may miss in the interim.

4. Terri Cook-Clark, claimant's consumer services coordinator, and Kimberly Steitz, SDRC Early Start Program Coordinator, testified about SDRC's decision to no longer fund claimant's services. As they explained, now that claimant has turned three, providing those services is the school district's responsibility. They also testified that claimant does not qualify for an exemption to receive those services under the Lanterman Act and that there are typically "gaps" in services provided by school districts because of breaks. Moreover, the speech services claimant receives are not so critical that it will be unduly detrimental to him to have gaps in the provision of those services.

5. Claimant's mother testified that the gap in services is detrimental to her son, that the law requires SDRC to fund the services until the school district assumes them, and that her son qualifies for an exemption. She testified about the vast improvements he has made, how regional center provided additional speech services in the past which greatly aided his language development and her valid concern that he will need to be able to communicate with his teachers when he enters school. Although claimant's mother introduced documents demonstrating that claimant's speech services are beneficial to him, those conclusions were not relevant to the issue of which agency should fund those services.

¹ Claimant's mother requested a two week interval between his assessment and IEP meeting to allow her time to review the assessment results and prepare for the IEP meeting. There was nothing unreasonable about that request.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. “Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Claimant had the burden of proving that he qualified for respite services.

The Lanterman Act and Regional Centers

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (the Lanterman Act) which is found at Welfare and Institutions Code section 4500 *et seq.*

3. The Lanterman Act provides a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The State Department of Developmental Services (the DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

2009 Amendments to the Lanterman Act

6. Owing to California’s unprecedented budget shortfall, every area of state government was impacted by the fiscal crisis, including the DDS. Assembly Bill 9 (AB 9) was passed which amended the Lanterman Act in an effort to meet the economic predicament. Section 4648.5 was added to Welfare and Institutions Code which provides:

“(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center’s 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.”

The new code section did not define “extraordinary circumstances,” nor did it indicate what would constitute “primary or critical means for ameliorating” the consumer’s developmental disability so as to allow a consumer to continue receiving these services, presumably leaving this determination to each regional center and the trier of fact on a case by case basis.

Applicable Regulations

7. California Code of Regulations, title 17, section 52112, subdivision (a), provides that school districts “shall provide special education and related services to eligible children at age three.” Subdivision (f) provides that regional centers “may continue providing or purchasing services” during two distinct times; (1) until the beginning of the school year when the school district’s program is not in session and (2) when the regional center interdisciplinary team determines that the services are necessary.

Cause Exists to Deny the Request to Fund Services

8. A preponderance of the evidence did not establish that SDRC should fund claimant’s services. Nothing requires it to do so and claimant’s services are now the

responsibility of his school district. No evidence was presented that demonstrated claimant qualifies for an exemption to allow SDRC to continue funding his services and the fact that the school district is behind schedule in its evaluations was insufficient to so qualify. SDRC correctly determined that claimant is not eligible for services at this time as they are the responsibility of his school district.

ORDER

Claimant's request that services be funded is denied. The San Diego Regional Center shall not fund claimant's services at this point in time.

DATED: May 11, 2012

MARY AGNES MATYSZEWSKI
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 ninety days.