

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELIZABETH P.,

Claimant,

and

**EASTERN LOS ANGELES REGIONAL
CENTER,**

Service Agency.

OAH Case No. 2012060623

DECISION

David Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Eastern Los Angeles Regional Center, in Alhambra, on August 1, 2012.

Claimant Elizabeth P. was represented by her mother and father, Sandra and Troy L. (initials are used to protect the confidentiality of Claimant and her family). The Eastern Los Angeles Regional Center (ELARC or the Service Agency) was represented by Judy Castañeda, Fair Hearing Coordinator. Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on August 1, 2012.

ISSUE

The parties agreed that the issue to be decided by the ALJ is:

Should the Service Agency approve or deny Claimant's request to attend the day program at Performing Arts Studio West?

FACTUAL FINDINGS

1. Claimant is an 18-year-old woman. She began receiving regional center services about 16 years ago and has been diagnosed with mild mental retardation and Down Syndrome. Her parents have been appointed as her conservators.

2. In a Notice of Proposed Action (NOPA) dated June 4, 2012 (Exhibit 1), ELARC notified Claimant that it denied her request for funding for her enrollment at the Performing Arts Studio West (PASW) because other programs and supports were available. More specifically, the Alhambra Unified School District (school district) offered a post-high school program for Claimant. Claimant was also considering enrollment at a community college with support from the family and a school district transition specialist.

3. Claimant filed a Fair Hearing Request dated June 8, 2012 (Exhibit 2).

4. In June 2012 Claimant received a Certificate of Credit Completion from the school district, indicating that she had completed the required high school course of study. (Exhibit 5.) However, this is not the equivalent of having been graduated from high school. Claimant received special education services from the school district, and took pride in having been mainstreamed while in school. During the meeting for her Individualized Education Program (IEP) in October 2011, the focus was largely on services that would enable Claimant to obtain the Certificate. (Exhibit 9.) The IEP covered the period through October 2012, which Claimant's mother believed was to include possible extended school year services for the summer of 2012. Claimant's mother believed that this would be the end of school district services for Claimant. The IEP includes the school district's recommendation of its LIFT program (Learning Independence For Transition) as a post-high school service. A typical daily schedule for LIFT (Exhibit 3) includes breakfast and lunch, current events, functional academics, community based instruction, independent living skills and vocational skills, social skills, healthy lifestyle and self-advocacy.

5. Claimant was hesitant to attend the open house for LIFT as she believed that she was finishing with services from the school district and was looking forward to other opportunities, such as community college and PASW. After the open house, Claimant and her parents expressed a lack of interest in the LIFT program because she had already achieved many of the skills that would be part of LIFT. For example, Claimant can do her laundry, cook, be safe and travel in the community, and has other skills. Claimant declined to enter the LIFT program. In July 2012, Claimant's mother forwarded to Ms. Castañeda an email (undated) from the high school's educational specialist to the school psychiatrist indicating that Claimant "seems to be thriving in the area of the Arts. LIFT for Elizabeth would not be a good fit for her. Her goal is to attend PASW and PCC (Pasadena Community College), this will be good for her." (Exhibit 4.)

6. Claimant has expressed interest in the Arts for some time, and her resume (Exhibit 3) and other evidence established that she has participated in dancing and singing programs and performances, as well as other creative activities and sports. She was accepted

at PCC and wishes to pursue theater arts. However, when she was able to register for classes, she found that classes were already closed in the following areas of interest: introduction to theater, acting, numerous different dance and choreography classes and health classes. Claimant is less interested in attending general education classes and intends to attempt to register in December for desired classes.

7. Claimant has been accepted at PASW. The founder and director, John Paizis, wrote a letter to ELARC in May 2012 (Exhibit 3) noting, among other things, that PASW is a vendor to many regional centers providing adult day programs that provide services categorized as creative arts services. PASW focuses on adults with developmental disabilities and its training in acting, music, dance and production includes components of vocational training and job placement. He includes a long list of examples of PASW performers involved in television and commercials, print ads, videos, movies and other projects. Claimant submitted a letter dated May 1, 2012 (Exhibit C-12) indicating her goal to attend PCC and to take classes at PASW in performing arts. She writes: "This is my first love and I feel this is my chosen direction."

8. Ms. Castañeda testified in support of the Service Agency's position in the NOPA that based on Welfare and Institutions Code section 4659,¹ generic resources should be pursued to fund Claimant's educational services and that the Service Agency would provide funding only as a payor of last resort if generic sources were unavailable. Further, as the school district has primary responsibility for providing educational services to Claimant, section 4648 prohibits the Service Agency from funding services of another agency that has a legal responsibility to provide services.

9. Claimant's Individual Program Plan (IPP), dated November 16, 2011 (Exhibit 8), indicates that her parents were informed of the LIFT program available for students aged 18-22 and that, per language in the Trailer Bill (new laws relating to reduced budgeting and redesign of services fro regional centers), Claimant was informed of the need to utilize generic vocational transition services before regional center funds can be utilized for training.

10. There was an informal meeting to try to resolve the present dispute on June 28, 2012, summarized in a letter by Ms. Castañeda (Exhibit 7). Many of the points raised by Claimant's parents at the hearing were also discussed in the informal meeting. Ms. Castañeda wrote that it was recommended that Claimant's parents pursue funding for PASW from the school district, and she offered the services of ELARC's education specialist Mary Hosokawa, who has experience with the school district and the LIFT program.

11. Claimant's mother testified that she has advocated for Claimant with many school district personnel and told them that Claimant intends to attend PCC and PASW. The only program the school district has offered is LIFT. She acknowledged, however, that she

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

has not made a formal request and/or asked to initiate an IEP meeting to determine if the school district will consider funding PASW for Claimant.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) 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 1-3.)

2. Where a consumer seeks Service Agency funding for a service and the Service Agency declines, the consumer has the burden to demonstrate that the Service Agency is incorrect. In this case, Claimant had the burden to show that funding for PASW should be provided by the Service Agency.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow such persons, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (§ 4502.)

4. Section 4646.5 defines the content of the planning process for the IPP. It must include a statement of goals based on the consumer's needs and time-limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include 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 IPP goals and the identification of the providers of services.

5. Section 4646, subdivision (a), states, in pertinent part:

"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. . . . 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, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

6. Cost effectiveness is accomplished in many ways throughout the Lanterman Act. As relevant here, the Service Agency is entitled to rely on other funding sources, such as a school district for certain types of services, to be the primary source before regional center funds are available. Under section 4648, subdivision (8): “Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” More specifically, under section 4659, subdivision (1), regional centers are to “identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to . . . school districts.”

7. As the state budget situation has worsened, new laws were enacted to reemphasize use of generic sources and other responsible agencies. Effective September 1, 2008, according to section 4646.4, regional centers are to assure that, in preparing IPP’s, they have utilized “generic services and supports when appropriate” and “other sources of funding as contained in Section 4659.” Further, section 4648.55, effective in 2011 and as applicable to Claimant stresses the importance of referring to the educational system (school districts) for funding of day programs, vocational education and work services for consumers who are 18 to 22 years of age and still eligible for special education services. Regional centers “shall assist the consumer in accessing those services. To ensure that consumers receive appropriate educational services and an effective transition from services provided by educational agencies to services provided by regional centers, the regional center service coordinator, at the request of the consumer or, where appropriate, the consumer’s parent, legal guardian, or conservator, may attend the individualized education program (IEP) planning team meeting.” An exemption is allowed, under “extraordinary circumstances,” “based on a determination that the generic service is not appropriate to meet the consumer’s need.” Grounds do not exist at this time to apply this exemption.

8. Under the circumstances of this case, most particularly because Claimant is still eligible for special education services from the school district, ELARC is not required to fund for PASW until Claimant has made a formal request for the school district to provide such funding and there is an answer from the school district. The Service Agency’s suggestion that Ms. Hosokawa is available for consultation follows the obligation, under section 4648.55 above, to assist consumers in accessing school district services.

9. The evidence establishes that Claimant has not pursued available generic resources in the form of school district funding for PASW. The fact that the high school educational specialist wrote to the school psychologist indicating the LIFT program was not a good fit, and that PASW and PCC were a good fit, could support the request, as well as Ms. Hosokawa’s knowledge of LIFT and other educational resources. Therefore, the code sections relating to generic resources supports the Service Agency’s denial of the funding request, as generic resources have not been exhausted.

10. There is sufficient support in the law and the facts to support a denial of of funding for PASW as decided by the Service Agency.

ORDER

Claimant Elizabeth P.'s appeal of Eastern Los Angeles Regional Center's decision to deny funding for PASW is denied.

IT IS SO ORDERED.

DATED: August 7, 2012.

DAVID ROSENMAN
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.