

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

In the Matter of the Fair Hearing Request of:

ALEXANDRA W.,

Claimant,

vs.

**EASTERN LOS ANGELES REGIONAL
CENTER,**

Service Agency.

OAH Case No. 2012070438

DECISION GRANTING THE APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on August 9, 2012, in Alhambra. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Alexandra W. (Claimant), who was present, was represented by her parents.¹

The Eastern Los Angeles Regional Center (Service Agency) was represented by Rhoda Tong, Supervisor, Community Residential Services.

ISSUE

Shall the Service Agency provide funding for Claimant to attend the creative arts/vocational program provided by Performance Arts Studios West from August 6, 2012, through August 24, 2012?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon exhibits 1-8 submitted by the Service Agency, exhibit A submitted by Claimant's parents; and the testimony of Service Coordinator Jean Lee, Claimant's father and mother, and Claimant.

¹ Initials and family titles are used to protect the privacy of Claimant and her family.

FACTUAL FINDINGS

1. Claimant is an 18-year-old female who is a Service Agency consumer based on her qualifying diagnosis of autism. On or about June 13, 2012, her mother requested Claimant's Service Coordinator for the subject funding from the Service Agency.
2. By a Notice of Proposed Action dated June 14, 2012, Claimant's parents were advised that the Service Agency had denied the requested funding.
3. On June 28, 2012, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, which appealed the denial of her service request.
4. Claimant lives at home with her parents and older brother.
5. Claimant receives special education services funded by her local school district. However, she was last enrolled in a non-public school, the Speech and Language Development Center (SLDC). More recently, Claimant has been recommended for transition school. Claimant's parents intend to enroll her in an academic program at a nearby community college as part of her transition plan.
6. Claimant is interested in the arts as a career, either in writing, acting, singing and/or producing. She is intensely interested in the entertainment industry and someday would like to be a star.
7. Claimant's parents have requested funding for their daughter to attend the Performance Arts Studios West (PASW) for the specified three weeks in August for two reasons. First, they view it as another part of her transition plan. They believe PASW will be a perfect bridge between the special education services Claimant received at SLDC and the academic program she will receive at the community college she will attend in the fall. Second, they believe PASW is a unique vocational opportunity where Claimant can learn about many aspects of the entertainment industry.
8. PASW is vendored with several regional centers as an adult day program. The Service Agency in the past had a courtesy vendor relationship with PASW. PASW caters to those with developmental disabilities, and the literature from PASW indicates that it focuses on vocational training for those interesting in a career in the performing arts, either as performers, production or support staff. In fact, PASW touts its track record of placing developmentally disabled individuals in performing roles and other types of entertainment-related employment. Claimant's parents and Claimant have met with staff from PASW and all believe she would be a good fit for the program.
9. In terms of dealing with Claimant's problem behaviors and social deficits, the Service Agency is providing funding for one hour per week of social skills training; and Claimant's parents pay for Claimant to attend a social group with similarly situated females.

10. During an Individualized Education Program (IEP) meeting held in June of 2012, funding for PASW was discussed. Claimant's Service Coordinator, Jean Lee, attended the IEP meeting. Claimant's local school district declined to provide funding for the service, instead offering extended summer school programming. Claimant's parents testified that Claimant has already progressed from that type of programming, which is why she is now seeking a transition program. The extended summer school was from July 5th to August 1st. Claimant's parents want her to attend PASW during the break between summer school and when she attends community college courses in the fall. Also, the local school district has no vocational program related to the arts.

11. Claimant's family and the Service Agency have been unable to find any generic resource that can provide vocational training related to the performing arts. Though the community college where Claimant will be attending has an arts department, it does not offer art courses to those with developmental disabilities.

12. The scheduling of the hearing in this matter was such that part of the three week period in question has already passed. The Service Agency's hearing representative indicated that should Claimant prevail in this case, the Service Agency would not object to providing the funding in question during the traditional two-week winter break period.

DISCUSSION

Jurisdiction and Burden of Proof

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.²) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-3.)

The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

When one seeks government benefits or services, the burden of proof is on her. (*See, e.g., Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, since Claimant is seeking funding the Service Agency has not before agreed to provide, she bears the burden of proof.

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

Responsibility for Funding Vocational Training to a Person between the Ages of 18-22

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.” (§ 4501.) The purpose of the scheme is twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 & 4685); and, (2) to enable disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501, 4750-4751.)

Generally, the Lanterman Act provides that regional centers are the payer of last resort, ultimately responsible for gaps in services. Thus, when a generic agency fails or refuses to provide a consumer with those supports and services needed to allow disabled people to maximize potential for normal lives, the Lanterman Act generally requires the regional centers to make up the service shortfall under the appropriate circumstances. (§ 4648, subdivision (g).)

In light of the state’s recent budget crisis, various cost containment measures have been added by the Legislature to the Lanterman Act. For example, section 4648.55, subdivision (a), prohibits regional center funding for day programs, vocational education, work services or mobility training for a consumer who is 18 to 22 year of age, if the consumer is eligible for special education services and has not received a diploma or certificate of completion, unless the planning team determines that the consumer’s needs cannot be met in the educational system.

In this case, it was not established that section 4648.55 prohibits the Service Agency from providing the requested service. It is true that Claimant is between the ages of 18 to 22, and has not yet received her diploma or certificate of completion. But it is equally true that her local school district cannot meet her needs. It has no vocational training related to the performing arts. During the last IEP meeting, school district staff only offered extended summer school, out of which Claimant has already transitioned. As Claimant’s mother argued, since Claimant has already progressed from summer school, putting her back into summer school could foster regression. Neither Claimant’s parents nor the Service Agency have found any other generic resource that can provide what PASW offers.

The Service Agency also points to section 4648.5, another provision recently added to the Lanterman Act in response to the current state budget crisis, which suspends regional center funding of services that are non-medical therapies, including specialized recreation, art, dance and music.

However, Claimant’s parents seek this service to provide vocational training, not as a non-medical therapy. This is clear from the fact that Claimant is already receiving services for her social and behavior deficits from other programs. Since the requested service will not serve as a non-medical therapy, section 4648.5 has no application to this case.

Neither of the two statutes cited by the Service Agency will prohibit regional center funding of the requested service. It was abundantly established that the service will be beneficial for Claimant and will meet her needs. Therefore, no reason was established to deny the request. However, due to the timing of the service request and the hearing of this matter, by the time this Decision is received by the parties, at least half, if not all, of the requested three week service period will have passed. The Service Agency will not object to the funding of this service during the traditional two-week winter break period. Therefore, Claimant's parents may elect to either receive the funding for the time that remains in August or for two weeks during the winter break from Claimant's community college coursework.

LEGAL CONCLUSION

Pursuant to sections 4501, 4509, 4685, 4648 and 4750-4751, cause was established to order the Service Agency to provide funding for Claimant to attend the creative arts/vocational program provided by Performance Arts Studios West. (Factual Findings 1-12, Discussion.)

ORDER

Claimant Alexandra W.'s appeal is granted. The Eastern Los Angeles Regional Center shall provide funding for Claimant to attend the creative arts/vocational program provided by Performance Arts Studios West. Claimant's parents may elect to either receive the funding for the time that remains in August or for two weeks during the winter break from Claimant's community college coursework.

DATED: August 10, 2012

ERIC SAWYER,
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.