

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SOFIA P,

Claimant,

OAH No. 2012080627

and

EASTERN LOS ANGELES  
REGIONAL CENTER,

Respondent.

DECISION

Administrative Law Judge Deena Ghaly, Office of Administrative Hearings, heard this matter on September 26, 2012 in Alhambra, California.

Walter J. P. (Father), a non-attorney advocate and claimant's father, represented Sophia P. (Sophia)<sup>1</sup>.

Margarita Duran, Eastern Los Angeles Regional Center (ELARC), represented ELARC.

Testimonial and documentary evidence was received, the case argued and the matter was submitted for decision on September 26, 2012.

ISSUES

Whether ELARC should continue funding community activity support services provided by Community Integration Project.

FACTUAL FINDINGS

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<sup>1</sup> Initials identify claimant and her father to preserve their confidentiality.

1. Claimant is a 19-year-old woman eligible for regional center services due to a diagnosis of mild mental retardation and Downs Syndrome. She lives with her father, a truck driver, and her 16-year-old brother. Her father works irregular hours and is sometimes not home until late at night. A grandmother and a cousin live nearby and provide some help and support. Sofia's mother died in 2007.

2. Sofia is in good physical health though at 53 inches and 115 pounds, her doctor has said she needs to lose weight. Currently, Sofia is a full-time student in the Whittier Union High School District Transition Program. Her program includes job training, math and reading training, money skills, community instruction, and, for one hour per week, fitness class. Because she has behavioral deficiencies (talking back and similar rude behavior), Sofia's curriculum includes a behavior plan under which she is rewarded for appropriate behavior.

3. Sofia is able to perform many adaptive living tasks such as washing and drying dishes, sweeping the floor, folding laundry, and, with some limitations, tending to her personal needs. Sofia is also mobility trained and can ride public transportation with verbal instruction. She demonstrates appropriate stranger awareness and is able to practice street safety with her school instructors when out in the community with them.

4. Sofia receives 45 hours per month of service from the Community Integration Project (CIP). According to the May 16, 2012 CIP Individual Implementation Plan, Sofia has the following objectives: to improve interpersonal skills by learning to properly interact with others; reduce frequency of inappropriate behavior; and engage in her choice of exercise, usually at the YMCA or Special Olympics exercise classes. CIP provides program hours from 4:30 to 8:00 pm on weekdays and from 10 am to 2 pm on Saturdays. CIP's services also include taking groups of consumers, including Sofia, on outings such as walks, dance classes, excursions to bowling allies and mini golf courses, and game nights.

5. Sofia's most recent Individual Program Plan (IPP), dated July 16, 2012, notes that Sofia "has some periods of resistiveness (sic) and continues to display some temper tantrums." (ELARC Exhibit 8 at pages 1 and 2). It also notes that her father is aware of behavior modification services at ELARC. (*Id.* at pages 2 and 3.) With respect to the need for the CIP services, the IPP does not address Sofia's behavioral and interpersonal limitations but states that "[g]oals set by CIP are not appropriate and Due to TBL<sup>2</sup> parent was reminded that ELARC is not funding social/recreational activities." (*Id.* at pages 2 and 3.)

6. CIP services were originally arranged for Sofia in the wake of her mother's death when Sofia was 16. The program was intended to assist her to access social and recreational community services more independently. Father credibly testified that the program is important for keeping Sofia active and productive in ways that not only assist with her physical well-being but do so in an atmosphere that promotes and emphasizes

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<sup>2</sup> TBL stands for Trailer Bill Law and references the change in the law limiting funding of recreational activities under the Lanterman Act discussed more fully in Legal Conclusion 2, *ante*.

appropriate social interaction. He looked into the alternatives ELARC suggested but found that none of them would provide opportunities for physical exercise in social settings. They would basically consist of extended babysitting under which he felt Sofia was likely to sit at home and watch television.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (the Lanterman Act), developmentally disabled persons in California have a statutory right to treatment and habilitation services and supports at state expense. (Welf. & Inst. Code §§ 4502, 4620, 4646-4648;<sup>3</sup>

2. Section 4648.5 of the Lanterman Act, which was enacted to address a budgetary imbalance in the California 2009-2010 fiscal year, provides as follows:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' (*sic*) 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 cost 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 of 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.

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<sup>3</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

3. Nothing in section 4648.5 abrogates a developmentally disabled person's right to treatment and habilitation services and supports at state expense. To the contrary, section 4648.5 authorizes regional centers to conduct an individualized assessment of a developmentally disabled person's extraordinary circumstances, if any, that would warrant an exemption from the state's budget spending reductions.

4. Cause does not exist for ELARC to terminate funding for Sofia's CIP program in that the CIP's services were provided to her to address behavioral deficiencies Sofia clearly continues to experience and which are a direct result of her disabilities. Social recreation only constitutes a small component of the program, and appears to be integrated into the community interaction and behavior management component. ELARC's alternatives consisting primarily of home care will not address Sofia's need for continuous exposure to social situations in a structured learning environment. Under these circumstances, it is appropriate to grant an exemption for the CIP services in this case

ORDER

Claimant's appeal is granted. Eastern Los Angeles Regional Center may not suspend funding for community activity support services provided by Community Integration Project.

Dated: October 22, 2012

  
DEENA GHALY  
Administrative Law Judge  
Office of Administrative Hearings

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.