

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

O.V.,

Claimant,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case Nos. 2012080931
2012080932

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard these matters on November 28, 2012, in Los Angeles, California.

Claimant's mother, M.B., represented O.V. (Claimant).¹

Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented the South Central Los Angeles Regional Center (Service Agency).

Elizabeth Camacho, Interpreter, provided interpreter services to Claimant's mother.

Upon his own motion, the ALJ consolidated the two matters, OAH case numbers 2012080931 and 2012080932. (Welf. & Inst. Code, § 4712.2.) The two cases share a common claimant and common questions of law. (*Ibid.*) The consolidation does not result in any prejudice or undue inconvenience and neither party objected. (*Ibid.*)

As neither party offered Claimant's current individual program plan (IPP), the ALJ requested that the Service Agency offer the IPP at the conclusion of the hearing; the IPP was marked for identification and admitted into evidence. The ALJ left the record open to allow Claimant to submit objections to the IPP and for the Service Agency to file a reply. Both parties filed timely submissions that were marked for identification and admitted into the

¹ Initials identify Claimant and his mother to preserve Claimant's confidentiality.

record. The ALJ read and considered both submissions, except that Claimant's mother filed additional documents that were not part of the record and made additional arguments and assertions that went beyond the current IPP. The ALJ did not consider those extra-record documents and arguments and he did not make that same extra-record material part of the record.

The parties submitted the matter for decision on December 14, 2012.

STATEMENT OF THE CASE

Claimant requests the following: 1) 20 hours per month of Floortime (FT) services provided by a specific provider; 2) two hours per week of social skills training by the same provider; 3) reimbursement for an independent FT evaluation that Claimant's parents funded privately; and 4) to prohibit the Service Agency from funding any psychological evaluation of Claimant.

Based on the evidence it has of Claimant's disability-related needs, the Service Agency is willing to fund three hours per week of FT and two hours of social skills training, both for a period of three months. To fund such services thereafter, the Service Agency contends it requires a current and appropriate psychological evaluation of Claimant.

FACTUAL FINDINGS

1. Claimant's mother requested FT and social skills training from the Service Agency. By two notices of proposed action, both dated July 27, 2012, the Service Agency denied those services. The Service Agency explained its denial to Claimant's mother by noting that it was "no longer clear that he [Claimant] exhibits symptoms that are required to receive such a diagnosis" and it needed to confirm Claimant's diagnosis through a psychological evaluation "to clarify an appropriate diagnosis and to assist with program planning" The Service Agency cited Welfare and Institutions Code section 4643.5, and stated that a regional center eligibility determination is final "unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous." The Service Agency further cited to Welfare and Institutions Code sections 4646, 4646.4, and 4646.5, and informed Claimant that "[w]ithout a current psychological evaluation, [the Service Agency would not] continue to fund services . . . under an Individual Program Plan. If you [Claimant's mother] refuse to provide consent for a psychological evaluation, [the Service Agency] will cease funding services."

2. Through his mother, Claimant requested an administrative hearing on August 22, 2012. Claimant requested that the Service Agency fund 20 hours per month of FT through the provider, Helping Hands. Claimant's mother also requested an order prohibiting the Service Agency from funding and pursuing any psychological evaluation of Claimant.

She further requested that the Service Agency fund two hours per week of social skills training also through Helping Hands. Lastly, Claimant's mother requested that Claimant's previous service coordinator be required to take 40 hours of intensive training in autism.²

Claimant's Description

3. Claimant is a six-year-old boy who lives with his parents. He has a diagnosis of autism. Claimant is hyperactive and constantly needs attention. At home, he is constantly running throughout the house and will not sit still. He attempts to run and wander away from his home and family almost daily. He is unaware of danger. He will turn on the stove and will open the front door to anyone who knocks. Claimant will speak to himself. He bites his clothes. When he plays with others, he plays only as he wants to and will hit his peers if they refuse to play as he wants. He regularly has emotional outbursts. He shows little or no affection toward his mother, the disciplinarian of the family, although he shows abundant affection toward his father and brother. At school, Claimant is less difficult. In school, Claimant is not disrespectful or violent but he is still easily distracted. Claimant's current IPP, dated July 13, 2012, supported this description.³

Claimant's Psychological Evaluations

4. In 2008, the Service Agency funded a psychological evaluation of Claimant by Victor C. Sanchez (Sanchez), Ph.D., a clinical psychologist. Sanchez evaluated Claimant on December 9, 2008, when Claimant was approximately two years and nine months old. Sanchez reviewed records, interviewed Claimant's mother, made clinical observations, and administered a number of tests: the Wechsler Preschool and Primary Scale of Intelligence, Third Edition (WPPSI III), the Leiter-R, the Peabody-TVIP (Peabody), the Developmental Profile II, the Beery Visual Motor Integration Test (Beery), and the Gilliam Autism Rating Scale (GARS), among others.

5. On the Developmental Profile II, Claimant scored the following age equivalencies: 18 months in communication, social, and self-help skills; 30 months in physical skills; and 20 to 22 months in academic skills.

6. On the GARS, Claimant scored an autism quotient of 106.

7. Sanchez "discontinued" the WPPSI III, Leiter-R, Peabody, and Beery because he could not properly administer them. In his report, Sanchez explained that Claimant "would become somewhat angry when the examiner made more energetic efforts to gain his

² At hearing, Claimant's mother withdrew the request that Claimant's former service coordinator submit to any autism training.

³ Claimant's mother asserted that she had never received a copy of this most recent IPP, despite the meeting being held in July 2012. The Service Agency failed to explain this fact.

attention. As such, it eventually became necessary to discontinue efforts to administer items.” He further wrote, “The syndrome of symptoms described above suggests the likely presence of Autism. the score generated by the [GARS] falls at a level consistent with the view that Autism is probably present.” Regarding Claimant’s cognition, Sanchez wrote, “The behavioral excesses and deficits associated with the syndrome of Autism disallowed formal administration of any measure of cognitive abilities. As such, a diagnosis in this area must necessarily remain deferred.” Sanchez diagnosed Claimant with autism but recommended, among other things, to “[r]e-evaluate when it is more likely that [Claimant] would be amenable to working with assessment materials.”

8. The Service Agency has sought to reevaluate Claimant to confirm the autism diagnosis. The Service Agency’s pursuit of Claimant’s reevaluation is due to Sanchez’s four-year-old incomplete evaluation and because, recently, a Service Agency consultant observed Claimant and noted that his mannerisms did not appear to comport with a diagnosis of autism (discussed in Factual Findings 16 and 21).

9. On April 26, 2012, the Service Agency sent a written notice to Claimant’s mother, noticing Claimant for a psychological evaluation to be conducted on May 24, 2012. However, on April 27, 2012, Claimant’s mother sent an electronic mail to the Service Agency informing it that she would not authorize any psychological evaluation. On May 29, 2012, the Service Agency sent Claimant’s mother another letter, requesting that she authorize the evaluation. In that letter, the Service Agency informed Claimant’s mother that Claimant’s diagnosis of autism was no longer clear, based on his symptoms, citing Welfare and Institutions Code section 4643.5, subdivision (b), and informing her that without a current evaluation, the Service Agency could not and would not continue funding services.

10. Claimant’s mother continues to refuse to allow the Service Agency to fund or perform any psychological evaluation of Claimant because she believes the Service Agency only wishes to evaluate him to gather data to support revoking his regional center eligibility. She does not believe the Service Agency genuinely seeks to assist her son in any way.

11. In 2012, Claimant’s parents pursued a private, independent psychological evaluation through an entity called “Advances and Breakthroughs in Mental Health.” Benjamin A. Stepanoff (Stepanoff), Psy.D., a licensed clinical psychologist with that entity, evaluated Claimant on August 22, 23, and November 12, 2012. In his report, Stepanoff described his evaluation as “for the purpose of diagnostic clarification.” Stepanoff reviewed records and interviewed Claimant’s parents, Claimant’s behaviorist, and respite provider. He did not, however, administer any diagnostic or other evaluative tests. Nevertheless, Stepanoff diagnosed Claimant with autism and attention deficit, hyperactivity disorder (ADHD), and recommended among other things, “Intensive social skills building, ie [*sic*]: floor time [*sic*] and ABA intervention.”

12. Stepanoff did not testify at hearing.

13. Michelle Cuevas (Cuevas), Ph.D., staff psychologist for the Service Agency, reviewed Stepanoff's and Sanchez's evaluations and opined that a current psychological evaluation is required to clarify his diagnosis and properly develop a service plan for Claimant. Cuevas noted that Sanchez called for further evaluation as Claimant matured and that Stepanoff failed to administer any diagnostic testing. This was significant to Cuevas who consequently opined that Stepanoff's diagnosis and recommendations could not be given any significant weight, based upon an evaluation with no psychometric data. Cuevas emphasized that it is precisely the psychometric data that the Service Agency seeks to review to assess Claimant's autism diagnosis and to suggest services to meet his disability-related needs. Cuevas also explained that it would not be appropriate to set forth a long-term regimen of services through the Service Agency, including FT or social skills training, before reviewing Claimant's current diagnoses and baseline functioning through a complete psychological evaluation.

14. Cuevas described her professional and educational background and training at hearing; she set forth sufficient credentials to opine as to Claimant's diagnostic and service needs. Cuevas was persuasive.

Floortime Services

15. In 2011, Claimant's mother requested that the Service Agency evaluate Claimant for FT. Claimant's mother had previously requested FT services and, in 2011, specifically requested an FT evaluation. On October 19, 2011, Robin Houston (Houston), an independent consultant clinical specialist for the Service Agency, screened Claimant for FT services. Houston testified and set forth her qualifications at hearing. Houston's background was adequate to support her opinions.

16. At the October 2011 screening, Houston clinically observed Claimant in a Service Agency assessment room. Houston observed Claimant playing with and manipulating food and kitchen toys and a doll with play accessories. Houston wrote, "Using the Neuro-developmental Disorders of Relating & Communication/Functional Emotional Developmental Levels . . . a scale that rates a child's social-emotional developmental levels, [Claimant] was observed to perform at some of the highest levels on this scale" Houston concluded, "Overall, [Claimant] demonstrated very little restrictions in his affective states. He was able to interact reciprocally using language to modulate his interactions. He also engaged in some pretend play." Of pertinence here, Houston opined that FT was not an appropriate service for Claimant, based on her observations. Instead, Houston opined that Claimant requires "an opportunity to advance his social skills" and a careful review of his progress that would include "a psychological re-evaluation for updating overall developmental progress."

17. Claimant's mother was frustrated that the Service Agency chose to pursue an FT screening, when she had requested an FT evaluation. Consequently, Claimant's parents

funded a private, independent FT evaluation conducted by the entity Holding Hands. Holding Hands is a vendored provider of the Service Agency. Ziba Nassab, Holding Hands' Clinical Director, evaluated Claimant on May 23, 2012, and testified at hearing. Nassab's assessment procedures included a clinical play assessment, a parent interview, a functional emotional assessment scale, a sensory profile inventory, and a records review. Among other things, Nassab recommended that Claimant receive 20 hours per month of FT, four to five hours per week over a six-month period.

18. Nassab's credentials were sufficient to support her evaluation and opinions and those opinions were fully credited and considered in juxtaposition to those of the Service Agency, namely the opinions of Cuevas and Houston. At hearing, Houston clarified that while she did not observe the type of deficits in Claimant that FT services would properly address, she believed that a full psychological evaluation would clarify whether FT or other services would best meet his needs. When considered together with Cuevas' testimony, Nassab's opinions were less persuasive, although Nassab's testimony established that Claimant would benefit from FT. Based on Cuevas' opinions, it is nonetheless prudent and reasonable to seek a complete psychological evaluation of Claimant before deciding what services, including FT and social skills training, Claimant requires long-term and what services the Service Agency is mandated to fund.

19. Claimant's mother argued that Houston was biased against Claimant and that Houston opined as she did solely to support the Service Agency's ulterior motive of revoking regional center eligibility or simply to support the denial of services. There was no evidence that Houston was biased against Claimant or that her opinions were improper. To the contrary, Houston supported her opinions with observed clinical data and reasonable inferences based on her knowledge of services for persons with developmental disabilities. Further, given that there is no current psychometric data on Claimant, and after considering Cuevas' testimony, it was proper for the Service Agency to have screened Claimant for FT before pursuing an FT evaluation.

Social Skills Training

20. Between December 2011 and June 2012, the Service Agency funded social skills training for Claimant through the Los Angeles Speech and Language Therapy Center.

21. Houston reviewed Claimant's social skills progress with the Los Angeles Speech and Language Therapy Center on March 29, 2012. Houston found that the "descriptions made of him in his progress report are not significantly different from what was observed of him during the consultation with this clinical specialist on 10/19/2011," but when considering his ability to engage with peers and play, Houston found that Claimant had made very good progress overall. Houston recommended that he continue social skills training through June 29, 2012. Houston also wrote, ". . . given [Claimant's] presentation . . . it would be strongly advised that he have a psychological re-evaluation by one of [the Service Agency's] vendored psychologists to formally update his overall developmental

competencies and diagnostic picture when this service ends and before additional services begin.”

22. Claimant made developmental progress in his social skills training funded by the Service Agency.

23. Claimant’s mother wants social skills training to be provided by Helping Hands for at least one year. The Service Agency is not opposed to using the provider Helping Hands to provide time limited FT and social skills training. However, the evidence established that it is reasonable to require a psychological evaluation, as sought by the Service Agency, before social skills training is provided for any significant length of time. As discussed *ante*, Stepanoff’s psychological evaluation is of no value and Sanchez’s is incomplete. Claimant’s current baseline functioning and a clear diagnosis should be established before services are provided, as opined by Cuevas.

Claimant’s Mother’s Arguments

24. Claimant’s mother demonstrated significant emotion while testifying. It is clear she loves Claimant and is advocating to the best of her abilities for what she believes he needs. She advocated for Claimant with great passion. However, Claimant’s mother showed a profound misunderstanding of the Service Agency’s role in her son’s service coordination and Claimant’s rights under the Lanterman Act, as well as a deep-seated distrust of the Service Agency. Claimant’s mother demonstrated that deep-seated distrust by asserting improper motives by the Service Agency that the evidence did not support and by fomenting and maintaining an acrimonious relationship with Service Agency personnel, an acrimony she displayed at hearing whenever she referred to the Service Agency or when examining the Service Agency’s witnesses. That attitude has impeded her son’s service coordination. For example, Claimant’s mother has prohibited the Service Agency from gaining access to Claimant’s academic and medical records held by Claimant’s school district. Such a prohibition leaves the Service Agency with less information about Claimant’s skills and deficits and impedes the Service Agency’s ability to coordinate and plan Claimant’s services.

25. Claimant’s mother’s arguments were unpersuasive. There was no evidence that the Service Agency’s actions with regard to Claimant were duplicitous. Rather, the evidence established that the Service Agency properly and reasonably seeks to reevaluate Claimant to confirm his diagnoses and to assist it in coordinating and planning Claimant’s services. There is nothing improper about the Service Agency pursuing an evaluation of Claimant, in a case like this one, where the Service Agency has evidence or data that suggests his autism diagnosis may be inaccurate.

Other Findings

26. The evidence also established that Claimant could benefit from FT and social skills training, although without psychometric data, it is unclear whether FT and social skills training are the most effective services available for him or whether other services could

better address Claimant's needs. As discussed in Legal Conclusion 8, it is appropriate to allow the provision of FT and social skills training for a limited time to allow the Service Agency to fund a psychological evaluation of Claimant, if ultimately allowed by Claimant's mother.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Claimant bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

Applicable Statutory Law

2. Welfare and Institutions Code section 4646 states in part:

(a) 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.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents . . . shall have the opportunity to actively participate in the development of the plan.

[¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team. 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 . . . at the program plan meeting.

3. Welfare and Institutions Code section 4646.4 states in part:

(a) 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 . . . 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:

[¶] . . . [¶]

(c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

4. Welfare and Institutions Code section 4646.5 states in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible.

[¶] . . . [¶]

(7) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years.

5. Welfare and Institutions Code section 4643.5 states in part:

[¶] . . . [¶]

(b) An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional

centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

Analysis

6. Services funded by regional centers must be person-centered. (Welf. & Inst. Code, § 4646, subs. (a) & (b).) The Service Agency is to take into account Claimant's particular disability-related needs and preferences. (*Ibid.*) The service planning for persons with developmental disabilities is accomplished by a planning team that includes both the person with the disability (and his or her family when a minor), and the regional center. (Welf. & Inst. Code, § 4646, subd. (d).) The planning team members are equal participants who jointly prepare a service plan. (Welf. & Inst. Code, §§ 4646, subd. (d), 4646.4, subd. (c), & 4646.5, subd. (b).) The Legislature mandates that the planning process include the gathering of information and "conducting assessments" to uncover and determine a person's skills and deficits. (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) Those assessments must be conducted by "qualified individuals." (*Ibid.*) The Service Agency is required to follow a "schedule of regular periodic review and reevaluation" of a person's services. (Welf. & Inst. Code, § 4646.5, subd. (a)(7).)

7. Given these mandates, it is logical for the Service Agency to pursue a psychological evaluation of Claimant, particularly here, where the previous evaluations are inadequate. Furthermore, where the Service Agency has evidence that Claimant's autism diagnosis may be inaccurate, it is rational for the Service Agency to seek a complete psychological evaluation, a "comprehensive reassessment," as the Legislature has termed it. (Welf. & Inst. Code, § 4643.5, subd. (b).) The evidence supports the Service Agency's pursuit of a psychological evaluation of Claimant. There is no evidence to support a conclusion that such a pursuit is improper.

8. Claimant's service needs remain unclear to date. Whether FT or social skills training are the most appropriate and effective services for Claimant cannot be conclusively determined with the evidence in this record. The evidence established that Claimant would likely benefit from FT and that he has benefitted from social skills training. However, given the lack of clarity regarding Claimant's diagnosis, it is reasonable to limit those services as the Service Agency originally proposed: three hours per week of FT and two hours per week of social skills training, for a three-month period. If Claimant's mother refuses to allow a psychological evaluation to occur within that three-month period, the Service Agency need not continue those services after the three months expire. Such a time limit should be imposed even if Claimant shows progress with these services within the three-month period because it stands to reason that most children with the types of deficits Claimant manifests would benefit from these types of services. The question is whether Claimant's disability(ies) are best addressed with FT and social skills training or whether other services are more appropriate for him, based on his particular skills and deficits. The Service Agency is entitled to seek the answers to these questions before it funds such services over a longer term. In doing so, the Service Agency is following its mandate to provide person-

centered/individualized supports and services that are appropriate in addressing Claimant's disability-related needs in a cost-effective manner. (Welf. & Inst. Code, §§ 4646, 4646.4, & 4646.5.)

9. There is no authority to grant Claimant his costs in pursuing the independent FT evaluation. Even if such authority existed, under the facts herein, Claimant is not entitled to such compensation, as it was reasonable for the Service Agency to screen Claimant for FT and forego the evaluation at this time, based on Houston's findings.

10. Cause exists to deny Claimant's appeal regarding Floortime services, as set forth in Factual Findings 1-19, 24-26, and Legal Conclusions 1-8.

11. Cause exists to deny Claimant's appeal regarding social skills training, as set forth in Factual Findings 1-14, 20-26, and Legal Conclusions 1-8.

12. Cause exists to deny Claimant's appeal regarding reimbursement for an independent Floortime evaluation, as set forth in Factual Findings 1-19, 24-26, and Legal Conclusions 1 and 9.

ORDER

Claimant's appeal is denied in case numbers 2012080931 and 2012080932.

The Service Agency shall fund three hours per week of Floortime services for three months; and two hours per week of social skills training for three months.

Claimant cannot unilaterally choose a particular provider of Floortime or social skills training services. To effectuate this Order, the providers of Floortime and social skills training shall be determined, in concert with Welfare and Institutions Code section 4512, subdivision (b), after the parties consider all available information in a properly noticed IPP meeting. An IPP meeting is unnecessary if the parties agree as to the provider(s).

After three months of services for Floortime and social skills training ends, the Service Agency shall no longer fund such services unless and until the Service Agency can fund and complete a psychological evaluation of the type that the Service Agency requires.

If and when Claimant submits to and completes a psychological evaluation of the type the Service Agency requires, the planning team members shall then assess the results of the new psychological evaluation together with all other necessary data from all planning team members within a properly noticed IPP. Such an IPP should be held after the psychological evaluation is completed and the parties have obtained the written results. The IPP should be held well before the three-month period ends, in order to avoid a gap in service provision, presuming such services are thereafter warranted.

The Service Agency shall not reimburse Claimant any sum for his independent Floortime evaluation.

Dated: December 31, 2012



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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.