

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PATRIK A-S.,

Claimant,

vs.

FRANK D. LANTERMAN
REGIONAL CENTER,

Service Agency.

OAH CASE NO: 2012120828

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 11, 2013, in Los Angeles, California.

Claimant's mother represented Claimant.

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (Regional Center or Service Agency).

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Regional Center may reduce Claimant's Applied Behavior Analysis (ABA) services from 8 hours per week of direct service and two hours per month of supervision to five hours per week of parent consultation and two hours per month of supervision.

FACTUAL FINDINGS

1. Claimant is a twelve-year-old Service Agency consumer by reason of his diagnosis of Autism. He resides with his parents and two-year-old sibling.

2. Autism Spectrum Therapies (AST) has been providing ABA services to Claimant since December 2008, initially at the rate of 11.5 hours per week of direct intervention. These hours were reduced to ten per week on December 1, 2010, and to eight hours per week in June 1, 2011.

3. In its report dated July 24, 2012, covering the period of January to June 2012, AST recommended a reduction in the weekly direct service hours from eight to five, effective December 2012, based on Claimant's progress and his parents' skills at implementing behavioral strategies. AST repeated its recommendation in its latest progress report, dated January 25, 2013, and covering the second half of 2012. AST's Clinical Director, Lisa Lee, Ph.D. (Lee) opined at the hearing that Claimant and his parents have made sufficient progress to warrant a reduction in the number of hours and a change in focus to greater parent management of the program.

4. Dr. Lee testified that five hours per week of parent consultation, where AST staff assist and consult with the parents in implementation of the established goals, and two hours of supervision per month are sufficient to address Claimant's maladaptive behaviors and to meet his present needs. Kelly Namanga, B.C.B.A., who supervises the AST staff that provides direct service agreed with Dr. Lee's opinions and conclusions.

5. Service Agency agreed with AST's recommendation. The Regional Center clinical team also concluded that a shift from direct services to parent consultation services was also appropriate for the remaining five hours. As Jean Johnson, Ph.D. (Johnson) explained at the hearing, ABA services are funded to address maladaptive behaviors and adaptive skill deficits, and intensive services are most effective in children aged three to six. The goal of ABA is to shift to greater involvement by those who will continue to impact a consumer's environment on a regular basis, primarily the parents. In her opinion, parent consultation is now the most appropriate ABA service for Claimant to help him maintain gains and generalize them to his environment.

6. AST has also been providing services to Claimant at school. In an Individual Education Plan (IEP) dated January 29, 2013, Claimant's parents and the District agreed that Claimant needs frequent prompting during free and academic time. He needs adult assistance to move around school. He also needs assistance to go to the bathroom every hour and will often put objects like paper clips and wrappers in his mouth. The parties agreed that AST staff would no longer be required for half-day supervision, and that District staff could provide the necessary supports after training by AST.

7. On December 12, 2012, Service Agency issued a Notice of Proposed Action to reduce Claimant's ABA direct service hours from eight to five per week. Claimant's parents filed a fair hearing request on December 21, 2012.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option. ..." (*Id.*)

4. In this case, all the clinical evidence received at the hearing supports Service Agency's conclusion that Claimant's needs will be adequately served with the planned changes. Claimant has made sufficient progress, and his parents have learned necessary skills, that a reduction in the number of hours and a change to parent consultation services is appropriate. While Claimant's mother continues to be concerned about his behaviors, the clinicians, who are familiar with the behaviors displayed at home as well as in school, opine that the recommended services are sufficient to meet Claimant's needs. School District officials also appear to believe that Claimant has made sufficient progress in school so that he no longer requires the specialized skills of AST during the school day, a conclusion Claimant's parents seem to have shared when they signed the IEP. Therefore, in the existing circumstances, reduction of ABA direct service hours from eight to five per week is warranted and consistent with the requirements of the Lanterman Act.

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ORDER

Claimant's appeal is denied and Service Agency may reduce Claimant's ABA services from 8 hours per week of direct service and two hours per month of supervision to five hours per week of parent consultation and two hours per month of supervision.

Dated: February 25, 2013

/s/

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.