

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VANESSA J.

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2013100843

DECISION

Administrative Law Judge Jerry Smilowitz, State of California, Office of Administrative Hearings, heard this matter on November 22, 2013, in Los Angeles, California, at the offices of South Central Regional Center (SCLARC or Service Agency).

Claimant was present. She was represented by her advocate, Victoria Baca.¹

Johanna Arias-Bhatia, Fair Hearings Coordinator, represented the Service Agency.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on November 22, 2013.

ISSUE

The parties agreed on the following statement of the issue to be decided: Shall the Service Agency continue funding of Independent Living Skills services for Claimant?

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

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 – 28. Claimant did not submit any exhibits.

Testimony: For Service Agency, Daniel Flores, Service Coordinator, and Laschell Miles, Program Manager. Claimant did not present any witness or testify on her own behalf.

FACTUAL FINDINGS

1. Claimant is a high-functioning 30-year old woman who receives services from SCLARC because of a diagnosis of mild mental retardation and epilepsy. She lives with her family, and is un-conserved. Since October of 2001, Service Agency has been funding 32 hours each month for Independent Living Skills training, first through Solutions Plus Services, and later, starting in May of 2006, with Partnership for Active Learning Services, Inc. (PALS).

2. The first "Individual Service Plan for Independent Living Skills" prepared by Solutions Plus (Exh. 7) identified six domains in which specific goals identified in claimant's then-Individual Program Plan (IPP) would be addressed. These were: 1. Money Handling; 2. Independent Living (learning how to cook simple meals twice a month, perform menu planning for the week, and learning about food spoilage and proper disposal of spoiled food; 3. Cognitive (learning how to write and pronounce words in English); 4. Leisure and Recreation (join a softball and bowling team to learn how to interact with her peers and how to be a team player); 5. Independent Living Skills (learning home maintenance); 6. Community Safety (learning safety skills at home and in the community, including emergency skills). The time frame for each domain was 13 months until January of 2002. A Quarterly Progress Report prepared in October of 2005 (Exh. 13) stated that Claimant had "Achieved" her goal in the domain of Home Maintenance, and had "Partially Achieved" the other domain goals. The last progress report prepared by Solutions Plus Services was in January of 2006 (Exh. 14). It concluded that Claimant had still only partially achieved the remaining goals.

3. The PALS assessment listed four objectives: 1. Community Awareness (being introduced to the local police, fire department, entertainment centers, and the MTA bus transportation, participate in social gatherings, and locate her medical clinic and dental offices); 2. Cognitive (learning to write a few new words a month, applying for a library card, adding and subtracting, writing a short letter); 3. Medical (learning how to schedule medical and dental appointments, arrange transportation to and from these appointments, apply for ACCESS, a public transit system for persons with a disability, and locate a nearby pharmacy); 4. Self-Help (perform tasks without reminders, including cooking, grocery shopping, comparing prices, using coupons and keeping her home clean and safe).

4. The last progress report in the record was written in February of 2011. (Exh. 24). It variously described Claimant as having achieved many Independent Living Skills (ILS), but still needing "moderate assistance" from her ILS Educator, particularly with

respect to transportation, going out in the community, and attending medical appointments. On the other hand, Claimant was able to pick up medication from her local pharmacy and communicate with her doctor with “minimum assistance.”

5. SCLARC has a services policy on “Independent Living Training Programs.” The current one was approved by the Department of Developmental Services on October 18, 2010. (Exh. 27.) SCLARC may purchase training if the consumer is at least age 18 and meets all of the following criteria:

- A. Has appropriate skills before entering a program to complete training in approximately 24 months as indicated by an independent living training skills assessment.
- B. Demonstrates an understanding of the goals and expectations of the program through informal interviewing and test, and expresses a willingness to participate in and complete the program.
- C. Has no medical, behavioral or other problems which would prevent one from developing independent living skills.
- D. Has ability to maintain self in the community with appropriate supports without jeopardizing health and safety.
- E. Does not have any problem that requires continuous monitoring which would preclude consumer placement in an unsupervised setting.
- F. Is not in public school system or part of another generic resource

6. SCLARC had never enforced the time limits in its former services policy.

7. The current policy contemplates that once the provider is determined, a meeting is held 60 days later with the provider, the consumer, family (when appropriate) and “relevant SCLARC staff” to determine if the consumer is making sufficient progress in the program to justify ongoing funding. Funding for skills training will not exceed two years at 30 hours per month and shall focus on specific objectives related to independent living. The consumer’s Individual Program Plan should identify and document specific areas of skill deficit and progress, with quarterly “face-to-face contact with the consumer.” The policy allows for continuation of funding beyond the initial authorization, but it must be based on “documented progress and realistic expectation of achievement of time-limited objectives” as well as the “clinical appropriateness of the training considering the objectives in the previous year.”

8. Neither Claimant's last IPP, nor any of her IPPs appear in the record.

9. On February 7, 2013, Service Coordinator Daniel Flores conducted an "Annual Consumer Contact (Face to Face)" with Claimant, her mother, and PALS Staff. The ensuing report is at the core of the present dispute.

10. At the meeting, which was conducted in Claimant's home, Flores expressed the Service Agency's concern that ILS is meant to be a limited program, and Claimant has not come up with plans for living independently. The family supported Claimant's decision to continue with ILS. Flores pointed out that there had been no progress. He informed Claimant and her mother that goals had to be identified in a plan of action, showing steps taken to live independently, for instance, the saving of money for a rent deposit, money management, and making own appointments. Claimant's mother stated that there was no such plan. Since neither Claimant nor her mother testified, the summation of what transpired at this meeting came only from Flores. He told the family that a decision on ILS would be decided at a later time.

11. Claimant's former Service Coordinator had sought to terminate ILS funding in 2011, but did not follow up with the necessary steps.

12. A report of the meeting was prepared on March 22, 2013. (Exh. 5.) Notwithstanding the expressions of concern made at the meeting, Flores wrote this in his report: "Skills Demonstrated in Daily life #7 Met and Ongoing: Vanessa will continue to receive 32 hours of independent living services to improve her self-help skills with agency Partnership in Active Learning [address omitted]. Her ILS worker has been an asset to her independent living skills and has been able to assist her with obtaining the services she requires to improve overall well-being." This is the entirety of any ILS reference in the report. There is no mention of the discussion Flores had with Claimant, her mother, and the vendor. Flores took this approach in his report because a Notice of Proposed Action (NOPA) had not yet been decided. He needed time to discuss the matter with Program Manager Laschelle Miles.

13. A NOPA letter prepared by SCLARC, dated September 27, 2013, informed Claimant's mother that ILS services will be terminated because consumers with the appropriate skills are expected to complete the training within approximately 6-12 months. It continues,

Further in order to qualify for ILS, the consumer must have the ability to maintain his/her self in the community with appropriate supports, without jeopardizing health or safety, as well as the source of income that will provide them the financial stability themselves independently (SSI, SSA, employment). Finally, the consumer cannot have any problem that requires continuous monitoring which would preclude placement in an unsupervised setting.

[¶] . . . [¶]

If, after one year, no progress has been made towards independent [living] (e.g., consumer has not saved money for deposit, or an apartment has not been located), SCLARC may terminate funding. Vanessa has been receiving ILS services since 10-01-2001, almost for 12 years. At the most current Individual Program Plan (IPP),² meeting, Vanessa's mother reported to the assigned Service Coordinator that Vanessa does not intend to reside independently within the next six months. Therefore, at this time, there is no need to continue ILS services.

Further, your Service Coordinator can provide you with assistance to apply for In Home Supportive Services (IHSS), which is a generic resource. The IHSS program provides personal and domestic services to aged, blind or disabled individuals in their own homes. The purpose of this program is to allow consumers an opportunity to live safely in their own homes.

Moreover, SCLARC is charged with the responsibility to identify and refer consumers to generic resources in their local community which are available to meet their individual needs. SCLARC cannot purchase services or supports for consumers which would otherwise be available through a generic resource. To that end, SCLARC is the payer of last resort.

16. Claimant's representative argued that claimant would not be eligible for IHSS services because she is too high-functioning to qualify.

CONCLUSIONS OF LAW AND DISCUSSION

1. Service Agency cannot terminate funding for ILS services at this time because an Interdisciplinary Team (ID Team) did not determine that the ILS services Claimant was receiving from PALS no longer met her needs.

2. Both SCLARC and Claimant raised California Code of Regulations, title 17 (CCR), section 56718, as support for their competing positions. This regulation provides, in pertinent part: "(1) Funding of a consumer's placement in a vendor's program shall be terminated when one or more of the following occur: . . . (3) The ID Team has determined through a consumer evaluation that the vendor's program no longer meets the consumer's needs."

3. CCR, section 54302, subdivision (A)(39) defines the Interdisciplinary Team (ID) as including that group of persons convened in accordance with Welfare and Institutions

² As noted earlier, neither party presented any IPP.

Code³ section 4646 for the purpose of preparing a consumer's IPP. Pursuant to section 4646, subdivision (b), this group includes a regional center representative, the consumer, or, where appropriate, his or her parents, legal guardians, conservator or authorized representative.

4. Section 4646, subdivision (d), further provides: "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and support 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" members of the ID Team.

5. A further discussion of the IPP process is not necessary here. The ID Team was convened, and the only report of that meeting concluded that ILS services shall be continued. There is no indication in the NOPA itself that any of the concerns expressed therein were discussed with the other members of the ID team. Indeed, the only comment evaluating the services provided was a very positive one with the ID team determining that the vendor's program continued to meet the Claimant's needs.

6. This Legal Conclusion clearly does not reflect the viewpoint of SCLARC, as reflected in its NOPA and the argument it presented at the hearing, that ILS services here have no end in sight, and therefore funding for these services should be terminated. But CCR, section 56718, requires that a process be followed, which did not happen in this case. The ID team met, but there is no indication that a true evaluation transpired.

7. However, section 4648, subdivision (a)(7), authorizes a regional center to terminate funding unless "reasonable progress toward objectives [has] been made." Claimant argued that SCLARC cannot require her to present a plan. SCLARC's service policy, as summarized in Factual Finding 7, while not specifically using the word "plan," nonetheless requires that, for continuation of funding beyond the initial authorization, there must be a showing of documented progress and realistic expectation in the IPP.

8. Welfare and Institutions Code section 4646.4, subdivision (a), directs a regional center to establish an internal process to ensure, when purchasing services and supports, conformance with the regional center's purchase of service policy, as approved by the Department of Developmental Services (DDS). Thus, SCLARC can explore whether Claimant can benefit from other programs and/or generic resources.

ORDER

The appeal by Claimant from a decision by Service Agency to discontinue funding of ILS services provided by PALS is granted. Nothing in this Order presents the Service

³ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

Agency from issuing another NOPA if a future resolution cannot be reached through that process described in CCR, section 56718.

Dated: December 9, 2013



JERRY SMILOWITZ
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.