

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2016031404

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 11, 2016, in Alhambra, California.

Claimant was represented by his mother (Mother).¹ Claimant was not present.

Jacob Romero, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (Service Agency).

The parties submitted the matter for decision on May 11, 2016.

STATEMENT OF THE CASE

The issue in this matter is whether the Service Agency must fund music therapy for Claimant.

The Service Agency contends that it is prohibited from funding music therapy, that Claimant receives other services which constitute the primary or critical means of ameliorating the effects of his developmental disability, and that Claimant must obtain generic resources to fund the music therapy.

¹ Initials are used to identify Claimant and family title is used to identify Claimant's representative to preserve Claimant's privacy.

Claimant contends he needs the music therapy, he receives great benefit from the music therapy, has exhausted generic resources, and therefore the Service Agency should fund the therapy.

FACTUAL FINDINGS

1. Claimant is an eight-year-old boy with autism. He lives at home with his family which includes two older sisters. Claimant attends his local public school where he receives special education services and supports.

2. In school, Claimant is mainstreamed in a general education classroom with a one-to-one aide to assist him with staying on task.

3. ELARC has never funded music therapy for Claimant. He currently receives music therapy one time per week for 45 minutes from a certified music therapist at the Colburn Community School for the Performing Arts at a cost of \$300 per month. Claimant also receives piano lessons through the school's adaptive music program.² The Claimant has received piano lessons and music therapy funded by his parents since preschool. Claimant has musical talent and responds to music as a treatment modality.

4. Because Claimant's needs consume a substantial portion of the family budget, Claimant requested that ELARC fund his music therapy. Mother has attempted to raise funds for Claimant's music therapy by making and selling hand-painted children's tambourines. Mother has also applied for scholarships and financial assistance. Unfortunately, her efforts are not sufficient to raise the funds necessary to pay for the music therapy. Claimant's school district has also denied his request for music therapy.

5. In its February 5, 2016 Notice of Proposed Action (NOPA), ELARC denied Claimant's request citing the prohibition on funding non-medical therapies set forth in amendments to the Lanterman Act contained in Welfare and Institutions Code sections 4646 and the requirement that generic resources be used as set forth in Welfare and Institutions Code section 4646.4.

6. Claimant's Individual Program Plan (IPP) dated April 24, 2015 sets forth the following goals/desired outcomes:

- (1) Claimant will continue to live at home with his family.
- (2) Claimant will receive medical/dental care annually or as needed.
- (3) Claimant will display age appropriate social skills.
- (4) Claimant will attend a day care setting with support as needed.
- (5) Claimant's parents will attend a conference to increase their knowledge of autism.

² Claimant does not seek funding for the piano lessons.

7. ELARC funds a personal assistant to attend summer day camp with Claimant and a Social Emotional Developmental Intervention (SEDI) program which uses play based therapy and is administered by Pasadena Child Development Associates (PCDA).

8. The most recent PCDA progress report, dated February 15, 2016, details progress made by Claimant toward goals in the areas of self-regulation, attention, and social engagement. According to the report, the SEDI program provided through PCDA has been effective for Claimant.

9. The evidence presented by Claimant established that the music therapy at issue is based on clinical and therapeutic research that considers the social developmental milestones of persons with developmental disabilities. Claimant's therapy has used music as a modality to address his behavior challenges and attention deficits.

10. Claimant benefits from the music therapy, the therapy is effective, and he enjoys the sessions.

11. ELARC does not dispute that Claimant receives a benefit from the music therapy or that music therapy is effective.

LEGAL CONCLUSIONS

1. As Claimant seeks funding for a new service, he bears the burden of proof by a preponderance of the evidence.

2. Welfare and Institutions Code section 4648.5 states in part:

(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 costs of providing the following services:

[¶] . . . [¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(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 for 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.

3. Music therapy is a non-medical therapy subject to Welfare and Institutions Code section 4648.5. Therefore, the Service Agency may not fund Claimant's music therapy unless it meets the exemption criteria. (Welf. & Inst. Code, § 4648.5, subd. (c).)

4. There was no evidence that music therapy is necessary to enable Claimant to remain in his home. Thus, Claimant did not establish that criterion.

5. The relevant analysis in this case is whether music therapy is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of Claimant's autism, and whether Claimant's circumstances in this regard constitute extraordinary circumstances.

6. Claimant undoubtedly benefits from music therapy. It is a service that meets his needs. However, the evidence did not establish that the music therapy is a primary or critical means of addressing his disability, or that his music therapy or the absence of that therapy constitutes extraordinary circumstances.

7. There was insufficient evidence that music therapy is the primary or critical means to address Claimant's disability-related needs. Instead, Claimant's school program and the SEDI program are the primary means of addressing the effects of his disability at this time.

8. While the clinical and therapeutic nature of music therapy was established, the nature of the therapy did not further the exemption analysis in Claimant's favor.

9. Claimant's music therapy does not qualify for exemption pursuant to Welfare and Institutions Code section 4648.5, subdivision (c).

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10. Cause exists to deny Claimant's appeal, as set forth in Factual Findings 1-11, and Legal Conclusions 1-9.

ORDER

Claimant's appeal is denied.

Dated: May 23, 2016

Glynda B. Gomez
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.