

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

19 SAN DIEGO REGIONAL CENTER
CONSUMERS (See attached list)

Claimants,

vs.

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH Nos. (See attached list)

DECISION

This hearing addressed the appeals of 19 San Diego Regional Center (agency) consumers who were notified by the agency that funding for their Relationship Development Intervention (RDI) programs was being discontinued due to recent legislative amendments to the Welfare and Institutions Code. The discontinuance of the RDI funding issues were bifurcated from other issues raised in the consumers' appeals and, in a November 18, 2009 order, the parties were advised that this "consolidated hearing will only address the common issues of fact and law relating to [the agency's] ability under the law to fund services provided by RDI. Any specific issues relating to individual consumers will be addressed in separate hearings . . ."

The consolidated RDI matters came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Diego, California, on January 25, 2010.

The agency was represented by Steven J. Cologne, Esq. of Higgs, Fletcher & Mack LLP.

Claimants were represented by Lucas F. Oltz, Esq. of Coughlin, Stoia, Geller, Rudman & Robbins.

Oral and documentary evidence was received and the record was left open so the parties could submit written closing briefs. The briefs were timely received and the matter was deemed

submitted on February 1, 2010.

ISSUE

Does Welfare and Institutions Code section 4648, subdivision (a)(15) preclude the agency from funding the consumers' RDI programs?

FACTUAL FINDINGS

1. RDI is a therapy program designed to ameliorate the effects of Autism Spectrum Disorders (ASD). In a January 11, 2010 article by Amy Leventhal, Ph.D. and Deborah Berrang, M.Ed. RDI is described as follows:

... a cost effective, research guided, intervention approach for remediating Autism Spectrum Disorders (ASD). The purpose of RDI is to develop intersubjectivity, the agreed upon core of autism's social and communicative deficits (Baron-Cohen, 2000). Intersubjectivity encompasses joint attention, social referencing, theory of mind, social reciprocity, and communication for experience sharing purposes. RDI has a foundation of research and theoretical support and a growing body of empirical evidence for its practices. (C¹-11)

2. In response to statutory amendments to the Welfare and Institutions Code the agency reviewed the programs it was currently funding. RDI was one of those programs and the agency determined that it could no longer fund the program because it was not a treatment modality that was scientifically proven to be effective in treating ASD. Behavioral Analyst and Consultant Gina Green testified that existing RDI studies were not "controlled," "objectively measured" studies; therefore, since "we don't want to rely solely on subjective observations," there is no valid scientific evidence to support the efficacy of RDI in ameliorating the effects of ASD.

3. Agency witness, Dr. Lynn Gregory, testified that although there are "no adequate peer review studies that prove the effectiveness of RDI," she has reviewed the RDI progress reports from various families over the past 1 ½ years and the "parents and children are meeting the designated goals." Dr. Gregory believes that the 2009 National Standards Report, published by the National Autism Center, properly categorized RDI as an "emerging treatment" "that is a promising intervention in view of the clinical outcomes." Dr. Gregory has seen no evidence that RDI is ineffective in treating ASD. Dr. Gregory testified that RDI consultants complete intake assessments of new clients to establish baseline behaviors and identify goals to be completed within a six-month time-frame. The set goals, which are written in "measurable outcome language," are periodically reviewed to see if consumers are meeting the established

¹ "C" refers to claimants' exhibits.

goals. In conclusion, Dr. Gregory testified that RDI is a "promising intervention that needs more study." Dr. Gregory, like Green, believes that controlled, scientific research is necessary to establish the efficacy of RDI in ameliorating the effects of ASD.

4. Claimants' experts testified that although there have been no "controlled" experiments that prove RDI's effectiveness, the clinical data reveal that RDI is effective. In other words, it has been clinically determined that RDI is an effective treatment modality for ameliorating the effects of ASD.

5. Interestingly, the experts' testimony and observations revealed that they really did not disagree in their assessments of RDI and the research concerning its effectiveness as an ASD intervention. The experts agreed that there are no "controlled" scientific studies that prove the efficacy of RDI; however, there is clinical evidence of RDI's success. The experts' references to "controlled" concerned studies where a group is assessed, baselines are established, and then the group is randomly divided into two groups, one of which receives a given therapy and the other of which does not (instead they receive a placebo). Neither group knows if they are receiving the treatment or a placebo and, after a period of time, the groups' progress is evaluated to see if one group has a significant improvement over the other group. However, what is described in the RDI research and clinical data that has been gathered constitutes longitudinal studies where time acts as a control. In other words, as in natural life field studies, individuals are evaluated to establish baselines, measurable goals are set, the treatment commences and improvement is measured over time. In the case of RDI there have been thousands of clients (a large sample size) world-wide who have been clinically evaluated over time and the clinical evaluations have established the effectiveness of RDI in treating ASD. With a treatment modality such as RDI and disabilities such as ASD longitudinal clinical studies are probably the best scientific proof of efficacy available. This is so because ethical guidelines concerning human experiments preclude researchers from implementing traditional strictly "controlled" scientific assessments of RDI which would result in assigning someone with ASD to a placebo group, thus denying them the benefit of any treatment, whatsoever.

LEGAL CONCLUSIONS

1. Effective July 1, 2009, the Welfare and Institutions Code was amended. The amendments, which were designed to effect cost savings, included section 4648, subdivision (a)(15). That section provides, in pertinent part: "... regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective . . ." It is clear from the statute that the legislature intended to direct the State's limited resources toward proven therapeutic modalities and that such proof can come from clinical observations/determinations as well as from studies based on more stringent scientific experimental designs.²

² Evidently, in recognition of the limitations on the use of stringent experimental design in the area of assessing the efficaciousness of interventions for special needs children, as discussed in Finding 5, the legislature elected to state the type of acceptable proof in the alternative. The legislature used the disjunctive conjunction "or" in the statute revealing its intent that clinical determinations are a substitute for, and as acceptable as, scientific proof in establishing the effectiveness of an intervention.

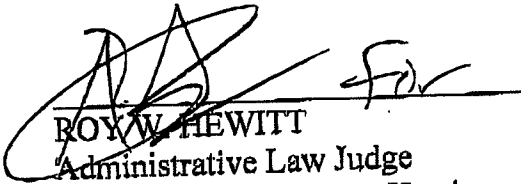
2. The Factual Findings, considered in their entirety, establish that RDI has been clinically determined to be an effective treatment for ASD. Consequently, the agency is not precluded by Welfare and Institutions Code section 4648, subdivision (a)(15) from funding claimants' RDI programs.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The agency's decision to discontinue funding claimants' RDI programs is reversed.

DATED: February 22, 2010.


ROYAL HEWITT
Administrative Law Judge
Office of Administrative Hearings

Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). All parties are bound hereby. Any party may appeal this decision to a court of competent jurisdiction within 90 days.

The Consumers and the Associated OAH numbers

1.	Adam A.	2009091269
2.	Claire A.	2009101149
3.	Cody B.	2009091154
4.	Gian B.	2009090613
5.	Mitchell B.	2009101408
6.	Ethan B.	2009101400
7.	Niesla F.	2009090413
8.	Geena G.	2009091026
9.	Cecilia G.	2009101416
10.	Jason H.	2009090957
11.	Brandon K.	2009090338
12.	Andrew K.	2009091078
13.	Nicolas N.	2009090616
14.	Chase R.	2009090586
15.	Zachary S.	2009101422
16.	Chase S.	2009090612
17.	Stephen T.	2009091025
18.	Daniel T.	2009090610
19.	Tyler Z.	2009091234

DECLARATION OF SERVICE**OAH No.: SEE ATTACHED LIST**

I, Donna Dunson, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 1350 Front Street, Suite 6022, San Diego, CA 92101. On February 22, 2010, I served a copy of the following document(s) in the action entitled above:

DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

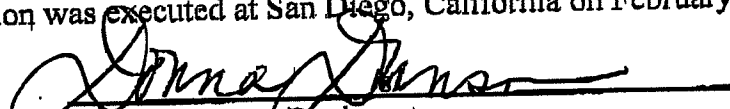
Steven J. Cologne
Higgs Fletcher & Mack LLP
401 West A Street
Suite 2600
San Diego, CA 92101-7910
Via Fax: 619.696.1410 and US Mail

Lucas F. Olts
Coughlin Stoia Geller Rudman & Robbins
655 West Broadway Ste 1900
San Diego, CA 92101
Via Fax: 619.231.7423 and US Mail

United States Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in San Diego, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid [by certified mail].

Fax Transmission. I personally transmitted the above-described document(s) to the person(s) at the fax number(s) listed above, from fax machine number (619) 525-4419, pursuant to Government Code section 11440.20 and California Code of Regulations, title 1, section 1008, subdivision (d). The fax transmission was reported as complete and without error. A copy of the transmission report showing the date and time of transmission, properly issued by the transmitting machine, is attached to this declaration of service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at San Diego, California on February 22, 2010.


Donna Dunson, Declarant