

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Continuation of Special Individual Training
Services:

OAH No. 2017020479

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 28, 2017.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present at the hearing. Claimant's father was also present.

The matter was submitted on March 28, 2017.

ISSUE

Should IRC maintain claimant's 60 hours per month of special individual training services?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On January 27, 2017, IRC served claimant with a notice of proposed action denying claimant's request to maintain her 60- hours per month of specialized individual training services (SIT).

2. On February 4, 2017, claimant filed a fair hearing request objecting to IRC's decision, and this appeal followed.

BACKGROUND

3. Claimant is a 20-year-old female who resides with her parents and brother. She qualifies for regional center services based on diagnoses of autism and moderate intellectual disability. Claimant currently receives 60 hours per month of specialized individual training services (SIT) from California Psychcare. Claimant uses a walker and also wears a helmet sporadically in the event she falls. Claimant suffers from a medical condition known as dystonia, where she will suddenly drop for no reason.

4. According to Program Manager Anthony Dueñez, SIT is designed to be a "set of extra hands" for consumers who are also receiving applied behavioral analysis services (ABA). Generally, the care provided by SIT is consistent with the ABA goals and program plan developed by a behavioral therapist. SIT is meant to be used only to manage severe behaviors.

5. According to claimant's semi-annual progress report from California Psychcare in March 2016, claimant was able to actively and effectively reduce the frequency of noncompliance and reduce behavioral barriers to effective participation in activities in the home and community. Based on this report, IRC determined SIT services were not appropriate for claimant. IRC recommended claimant's family pursue respite services through In Home Supportive Services (IHSS).

6. Claimant's Client Development Evaluation Report (CDER) showed she is not independent. On a scale of one to five, with five being practically independent, claimant scored a 3.4.

7. Mr. Dueñez testified that claimant has been receiving behavioral services from Pedro Villa. Mr. Villa completed a behavioral progress report on February 16, 2016, indicating claimant's dystonia symptoms are causing her to regress behaviorally. In other words, claimant's behavior varies depending on her current medical symptoms. Notably, the report did not document any excessive, aggressive, or violent behaviors. Mr. Dueñez testified that claimant's behaviors, therefore, appear to be a result of her medical condition, which SIT does not address. Mr. Dueñez testified that it might be more appropriate for claimant to have a licensed vocational nurse who can assist her with accessing the community and being more independent at home. In July 2016, IRC scheduled a registered nurse assessment to be conducted in order to determine what services would best fit with claimant's challenges. This assessment would have been used to determine whether claimant's behaviors (i.e. dropping, freezing in place, etc.), were due to claimant's disability or medical condition. However, claimant's parents cancelled the assessment because they were content with the SIT services.

8. Mr. Dueñez explained that the persons who provide SIT services are not medically trained, rather, they address behavioral issues. SIT personnel go out into the community with claimant and act as an extra pair of hands to help her be more independent. LVNs and RNs, on the other hand, do not go out in the community, nor do persons contracted to provide IHSS services.

9. Mr. Dueñez opined that, based on the above, SIT is not appropriate and claimant should be transitioned to LVN or RN services due to her medical condition. He also recommended claimant's parents seek IHSS services so they can have a break, if desired.

10. Claimant's Consumer Services Coordinator, Angelica Serrano, corroborated Mr. Dueñez's testimony.

CLAIMANT'S MOTHER'S TESTIMONY

11. Claimant's mother provided compelling credible testimony regarding the importance of keeping claimant's current services in place.

12. Claimant has been attending public school since January 2016. She attends a school for autistic children where the staff is trained to deal with autistic behaviors. Claimant wears a helmet when she is at school and uses her walker to get around. Claimant is also being trained to use adaptive equipment so she can access her homework on the computer and other lesson plans.

13. Claimant's mother said claimant's "dropping" behavior is not just medical; claimant uses the dropping behavior as a crutch to get what she wants. It has been happening more in the past few weeks. Claimant's mother is very concerned about transitioning away from SIT because the persons who provide SIT services are trained to pick claimant up and deal with her dropping behaviors; an LVN or RN may not. Claimant's mother called some LVN services and learned that LVN's and RN's will only provide the services designated on their contract, and picking claimant up may not be one of those services. Moreover, claimant's mother said claimant is quite heavy and is "dead weight" when she falls; claimant's mother is unsure an LVN or RN could deal with claimant's falling.

14. Claimant's mother does not object to decreasing SIT services, but testified that no appropriate alternative service has been identified to deal with claimant's problems. She explained claimant loves to go out into the community, and without a service that assists with that, it would have an adverse impact on claimant.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. Welfare and Institutions Code section 4643.5, subdivision (b), provides that a service agency seeking to change a service contained in a consumer's IPP has the burden of demonstrating that its proposed action to limit or eliminate a service presently being received by a consumer pursuant to that consumer's IPP is "clearly erroneous" in light of new information that may have come to light.

THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal,

physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. 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 program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2). Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. IHSS services are a generic resource. (Welf. & Inst. Code, § 4659.)

EVALUATION

12. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. IRC had the burden of demonstrating the need to eliminate the service or support, SIT services. IRC did not meet that burden.

SIT services may no longer be appropriate to address claimant's challenges. However, it was not shown that claimant's behaviors were entirely attributable to her medical condition as opposed to her disability. Moreover, the alternative service identified – LVN or RN services – do not permit claimant to access the community as those services are designed to be used, like IHSS, in the home. Absent evidence that claimant's behavioral challenges are entirely attributable to her medical condition as opposed to her autism, and absent evidence of an alternative services to SIT that would provide claimant with the same level of service she currently has from SIT that would allow her to access the community, the SIT services must remain in place at 60 hours per month.

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ORDER

Claimant's appeal from Inland Regional Center's determination that it should no longer fund 60 hours per month of specialized individual training services is granted. IRC shall continue to fund the services at the current level.

DATED: April 10, 2016

KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.