

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH Nos. 2016040642
2016041020
2016060266

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these matters in San Bernardino, California, on July 13, 2016.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was present at the hearing.

The parties agreed to have the matters consolidated for hearing and decision because they involve common questions of law and fact. The matters were submitted on July 13, 2016.

ISSUES

1. Should IRC increase the hours claimant's family receives for respite by 213¹ hours per month in order to give his mother a break from providing instructional assistance while claimant takes online college courses and studies at home? (OAH No. 2016040642)
2. Should IRC fund "personal assistant services" for claimant in order to provide him with instructional assistance at home and at school? (OAH No. 2016041020)
3. Should IRC continue to provide community activity support services (CASS), even though claimant did not request or consent to CASS, and is in need of instructional assistance at home, which CASS does not provide? (OAH No. 2016060266)

FACTUAL FINDINGS

PROCEDURAL BACKGROUND

1. On February 25, 2016, IRC served claimant with a notice of proposed action denying claimant's request for increased respite hours (from 60 to 213) because (1) claimant's request for the increase was to provide him with instructional assistance at home, a services that does not fall within the category of respite care, and (2) IRC is prohibited from funding more than 30 hours of respite care per month absent extraordinary circumstances, which did not exist.

2. On March 24, 2016, IRC served claimant with a second notice of proposed action re-stating the reasons for denial that were contained in the February 25, 2016, notice of proposed action. IRC added, however, that claimant passed his first semester

¹ The fair hearing request indicated claimant was requesting 215 hours of increased respite care, however, at the hearing claimant's mother amended the request to 213 hours.

of college “without any needed support” and that CASS, despite being provided by IRC, was not used. The letter did not address the provision of any services provided at claimant’s home while he took his online courses.

3. On April 5, 2016, claimant’s mother filed a request for fair hearing objecting to IRC’s decision not to fund 213 hours of increased respite care. Claimant’s mother stated she spends 213 hours per month providing support for claimant because claimant is unable to attend classes on campus full-time.

4. On April 17, 2016, claimant’s mother filed a second fair hearing request objecting to IRC’s failure to provide personal assistance services. Claimant’s mother stated that claimant’s IRC consumer services coordinator told her claimant would have someone to take notes for him in class and support him in his educational goals. At the hearing, claimant’s mother clarified that this request also meant that claimant needed personal assistance in his home while he took his online college courses. Claimant’s mother again requested additional respite hours in order to give her a break from providing “supports and services consumer needs to access his education”

5. On April 28, 2016, representatives from IRC and claimant’s mother participated in an informal meeting regarding the related fair hearing requests. Following the meeting, IRC adhered to its original determination not to fund personal assistance services or increase claimant’s respite hours.

6. On May 6, 2016, OAH granted claimant’s motion to consolidate the first and second fair hearing requests due to the similarity of the issues and convenience for the claimant.

7. On May 26, 2016, claimant’s mother filed a third fair hearing request objecting to the provision of CASS for claimant because she never agreed to the services, she never signed the addendum to claimant’s Individual Program Plan (IPP) regarding the provision of the services. Claimant’s mother also objected because CASS

does not provide claimant with instructional assistance in his home and she again requested IRC provide claimant with personal assistance services to do so.

8. IRC did not send out a new notice of proposed action denying claimant's third fair hearing request because of the impending hearing date on the first two fair hearing requests. The third matter was placed on calendar by OAH to be heard concurrently with the first two fair hearing requests. The parties agreed to having all three matters heard and resolved concurrently given the similarity of issues involved.

CLAIMANT'S BACKGROUND

9. Claimant is 18 years old. He resides at home with his mother, grandfather, stepfather, and stepbrother. He qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder (autism).

10. Claimant graduated high school in 2015 and began attending Victor Valley College (VVC). Claimant would like to live independently of his family someday. He also hopes to pursue a career as a personal trainer or working with computers.

IRC currently funds 60 hours per month of respite care and 35 hours per month of CASS through Pathway, Inc. (Pathway), an IRC vendor. CASS is designed to provide claimant with general assistance on campus, such as accessing classes and resources, sitting with claimant, helping him set up supplies, transporting him to and from school, facilitating interaction with other students and teachers, making sure he has what he needs for class, and ensuring he gets to where he needs to go during the school day.² CASS does not provide equivalent support at home for claimant's online college courses; does not provide note taking services on campus or at home; and does not

² CASS provides assistance with access to many different things in the community; for purposes of this decision, only the community activity services pertaining to education are relevant.

provide any type of instructional assistance to ensure claimant properly completes assignments or adheres to a study schedule in order to meet course goals and requirements.

Claimant receives 50 hours per month of In Home Supportive Services to help him with personal care. Claimant's most recent IPP, dated August 13, 2015, described him as a very intelligent young man who struggles with some daily self-care issues. Claimant experiences difficulty speaking with strangers, advocating for his needs, and communicating with people other than through social media.

HISTORY OF DISCUSSIONS BETWEEN CLAIMANT'S MOTHER, CLAIMANT, AND IRC

11. Claimant's 2015 IPP indicated that claimant's mother told IRC she believed claimant would need a "personal attendant" to help him attend classes at VVC. The IPP also indicated claimant's mother told IRC she was meeting with representatives at VVC on August 27, 2015, to discuss accommodations available to claimant at VVC. In that IPP, there was a new service request for both CASS and personal assistant services.

12. In October 2015, a meeting was held between claimant's mother, Tracy Fakhouri from Pathway, claimant, and claimant's IRC consumer services coordinator, Daniel Timmons. The purpose of the meeting was to discuss services available from Pathway. Personal assistant services and community activity support services were discussed. Ms. Fakhouri explained at the meeting, according to IRC, that Pathway could provide general assistance on campus for claimant but could not provide note taking services or personal assistant services.

13. Following the meeting, Pathway submitted an Individualized Service Plan (ISP) for claimant recommending 109 hours of CASS in order to support claimant with accessing and attending college classes. IRC reviewed the ISP and concluded that, since claimant was currently taking 7 units of coursework, 8 hours per week, or 35 hours per month, of CASS was sufficient to meet his needs. Mr. Timmons also told her that the

hours had to be used outside the home, so claimant could possibly receive more assistance if he were to complete online courses on campus.³

14. On October 22, 2015, claimant's mother e-mailed Mr. Timmons the following:

[C]an you please tell me what personal assistant, adaptive skills, and community support services IRC offers its clients[?]
As previously discussed at the meeting and based on [claimant's] needs, it was discussed that [claimant] needed a personal assistant to help with his home schools schedule, online class, and his Saturday class, at VVC . . . Tracy [Fakhouri] agreed to the home school schedule and you never objected or said that the program was only a community support service program. I think going to campus and finding out the resources are a good idea, and I am also happy with the approval for Saturday school, but I think he should continue his home school schedule and online log in at home since that is what he is used to. The whole purpose of online school is to do it from the comfort at home and not at school. Because [claimant] has autism change is hard for him and he is accustomed to doing his

³ Mr. Timmons sent an e-mail to claimant on October 21, 2015, making it clear that the CASS could not be used in the home and that his recommendation was to "get a basic schedule together of . . . how many hours [claimant] needs to log in for his Online Class and do the Online classes at VVC."

program at home, and making a sudden change would be drastic. . . .

15. Mr. Timmons replied to claimant's October 22, 2015, e-mail that he would need a few days to provide claimant's mother with the various definitions of the services, and reiterated that CASS is meant to happen "outside the home." Claimant's mother responded, "ok let's go with the 35 hours, and I will await your response to the requested information. Thanks." He then sent claimant's mother a description of the different services available.

16. Pathway updated the ISP to include 35 hours of CASS for claimant.⁴ According to claimant's ISP, Pathway described CASS as follows:

[Claimant] will receive assistance with accessing his college classes at [VVC]. [Claimant] will be assisted with ensuring he gets to class on time. [Claimant] will be facilitated with setting up his supplies, staying on task, communicating with his instructors and peers, participating in class, packing up his supplies when his class is over, [s]taff will meet [claimant] at his residence, and assist him through the end of his school day. [Claimant] will be given assistance and instruction on how to complete assigned tasks while learning. [Claimant] will be given prompts and assistance with developing good student/teacher relationships. [Claimant] will be given prompts and assistance with developing good relationships.

⁴ For whatever reason, an addendum to claimant's IPP was never completed, but was later rectified by IRC Program Manager Anthony Dueñas.

[Claimant] will be assisted with accessing the school campus library, campus disabled student center, as well as [the] counseling office when needed. [Claimant] will receive verbal prompts related to safety issues while at school.

17. According to claimant's mother, she tried to use CASS during both the Fall 2015 and Spring 2016 semesters. During the fall, CASS was unable to provide anyone for claimant's Saturday class or his online class. During the Spring semester, Dansby Sturdivant, the CASS worker provided by Pathway, accompanied claimant to school but, according to claimant, did nothing other than talk to the students around him. Once claimant's mother checked his syllabus and noticed that the work had not been completed and that CASS had not been providing any type of instructional assistance, she filed for an emergency withdrawal out of the course claimant was taking on campus so that he would not obtain a failing grade. She was not concerned about the online courses he took at home because she had been providing claimant with instructional assistance and support from 8:00 a.m. to 2:00 p.m., and in the evenings, on a daily basis.

18. On February 22, 2016, a semi-annual progress review meeting was held at claimant's home between claimant, his mother, and Mr. Timmons. The consumer identification notes for that date indicated claimant's mother continued to have a "concern that [claimant] will require additional supports to go to class with him and would like additional supports for his online [home] classes." It was at this meeting that claimant's mother requested the additional 213 hours of respite and personal assistance services that prompted the notice of proposed action denying the respite services, and prompted the March 24, 2016, notice of proposed action.

19. Claimant's mother e-mailed Mr. Timmons on April 25, 2016, as follows:

We are in receipt of the addendum [adding the 35 hours of CASS to claimant's IPP], but we would like to add some additional information to it. We would like to include the fact that [claimant's] goal is to graduate from VVC in 2017 with [an associate of arts degree], but in order for him to successfully graduate college he needs the requested accommodations. The requested accommodations included **a personal assistant, note taker, instructional guidance and services**. [Claimant] would also like to include the fact that IRC and VVC were unable to provide claimant with accommodations of the personal assistant note taker, and instructional guidance and services during Fall 2015 and currently in Spring 2016. Due to lack of support from IRC, and VVC, [claimant's] mother requests an additional increase of [213] respite hours because of the accommodations [claimant's] mother provides which include **individualized support, time [management], note taking, instructional guidance for his campus class and online classes**. [Claimant] takes 1 campus class and 4 classes online, which require a lot of time. [Claimant] also request[s] that his current needs and accommodations be updated and reflected in the addendum. . . . [Emphasis added].

20. Mr. Dueñas responded that the purpose of the addendum was to add services that were not in existence when the August IPP was completed. He noted that her other requests were part of the fair hearing requests.

EVIDENCE PRESENTED BY IRC

21. IRC Program Manager Anthony Dueñas and Consumer Services Coordinator Daniel Timmons testified at the hearing. According to both witnesses, an increase in respite hours was denied because respite is to provide a break from caring for an individual and not to provide instructional services. Personal assistance services were denied because those services were not intended to provide instructional assistance.

22. A handbook regarding personal assistance services from the Department of Developmental Services supported the testimony of Mr. Timmons and Mr. Dueñas. Personal assistance services do not provide instructional assistance for college. Similarly, respite services are not intended to provide instructional assistance for college.

23. Mr. Timmons and Mr. Dueñas testified that generic resources are available and claimant must first access generic resources in order to provide the service requested.

24. Mr. Timmons testified that he did search IRC vendors to ascertain if instructional assistance was available at home, but he could find no vendor. He also testified that in his experience, IRC does not have a vendor that provides note taking services at school. According to Mr. Timmons, claimant's mother informed him that she met with claimant's professors on campus to ensure everything was going smoothly. Mr. Timmons also noted claimant passed his on-campus courses without instructional assistance or other supports.

25. Mr. Timmons testified that he referred claimant to generic resources on-campus to assist him.

GENERIC RESOURCES AVAILABLE

26. Victor Valley College has a Disabled Student Programs and Services Center (DSPS) that provides qualifying students with various accommodations. As stated in the

manual, the purpose of DSPS is to promote "equal access for students with disabilities in the college setting." DSPS provides various services such as test-taking facilitation, specialized counseling, mobility assistance, note-taker services, alternate media services, access to adaptive technology, and registration assistance. Claimant qualifies for assistance from DSPS. DSPS does not provide instructional assistance and does not provide any services at home for students taking online courses.

27. In order to receive note taking services at VVC, claimant is required to work with his DSPS counselor to obtain appropriate services. Some of the possible accommodations include a student note-taker who is enrolled in the class; a tape recorder; instructor's notes; and other adaptive technology. Claimant tried to access note taking services through DSPS, however, no students volunteered to take notes. Claimant was not offered other options, according to claimant's mother, such as instructor notes. Claimant tried checking out tape recorders for his online courses, but when claimant went to check out tape recorders, none were available.

28. VVC has a writing lab to assist students with essay writing assignments. According to the internet printout, the purpose of the writing lab is to help generate ideas, help focus on topics, help add support for ideas, help organize ideas, help research ideas, help search the internet, and help document research. The writing lab does not write a person's essay for them, does not correct or edit the work, does not proofread the work for common errors, and does not guess at possible grades for the work. If a student is unable to visit the campus for assistance with a writing project, students may e-mail questions to the writing center.

Claimant's mother tried to get claimant services at the writing center, which is available to all students, but was told claimant needed too much assistance in his writing and that was not the type of service the writing center provides.

29. IRC referred claimant to the Department of Rehabilitation (DOR). IRC provided an internet printout of assistive technology programs offered by DOR. The description of assistive technology is as follows:

[A]ssistive technology allows [disabled persons] to live independently and be part of the community. [Assistive technology] allows individuals with disabilities to hear a talking clock when they can't see it, feel the vibration of an alarm instead of hear[ing] it, [and] get dressed with the use of a dressing stick.

30. The DOR documents provided by IRC from DOR pertaining to assistive technology services offered did not contain any description of instructional assistance, note taking services, educational services at home or at school, or other services similar to those claimant is seeking.

ACCOMMODATIONS CLAIMANT RECEIVES FROM VVC

31. Claimant's mother has met extensively with VVC representatives regarding accommodations for claimant. The DSPS at VVC has documented the following limitations for claimant: manual writing, cognitive processing, social interaction, psychological ability, and intellectual ability. According to DSPS, because of his various limitations, claimant is authorized to receive a note taker, tape recorder, extended time to take exams, a distraction-reduced environment for test taking, a reader or oral administrator for test taking, priority registration, and access to the assistive technology lab.

32. According to claimant's mother, he has not received a note-taker, has not had access to a tape recorder, and certain classes have not provided him with extended time to take tests. Claimant's mother e-mailed the DSPS director on July 6, 2016,

indicating that VVC has not been providing claimant with the required accommodations. No evidence refuted claimant's mother's testimony about VVC's failure to provide these services.

CLAIMANT'S MOTHER'S TESTIMONY

33. Claimant's mother has been providing claimant with instructional assistance from approximately 9:00 a.m. to 2:00 p.m., on almost a daily basis. She creates a daily schedule for claimant that includes study time, homework time, and taking his classes online. Claimant's mother explained that this is similar to what she did for claimant in high school, since he was home-schooled.

34. Claimant's transcripts show that he took two classes in Fall 2015 (English and Learning Strategies) and five classes in Spring 2016 (Sociology, Cultural Anthropology, Geography, Health, and Kinesiology). All but two of these classes were taken online.

35. The two classes claimant took on campus were Health and English. Claimant had to withdraw from the Health course during Spring 2016 because claimant's mother determined that the Pathway provider, Dansby Sturdivant, had not been providing claimant with any assistance in class. VVC allowed claimant to do an "emergency" withdrawal from that class after the deadline in order to make sure he was not placed on academic probation. Claimant passed his English class with a C.

36. Since claimant has begun taking more online courses at home, the amount of instructional assistance required at home has become increasingly difficult. Claimant's mother stated that in order for claimant to pass his courses, he needs assistance with staying on task and doing what is expected of him. For example, logging on at the appropriate time, posting to discussion boards as required, interacting with other students as required, posting or providing assignments in the appropriate manner, responding to messages and postings in the online discussion groups, attending the

online lectures, notetaking, maneuvering the power point presentations, taking quizzes, completing practice exercises, and working through the class syllabi.

37. Claimant's mother provided documentation of what a typical day is like, as well as the various syllabi from classes claimant took in the past. Claimant's mother explained that she provided instructional services, consistent with the above, that exceeded 213 hours per month. A typical schedule for claimant is as follows:

9:00 a.m.: Study at kitchen table, read assigned chapters, complete written assignments, take any tests, etc.

10:00: Break

10:15 a.m.: Resume study

12:00p.m. Lunch

1:00 p.m.: Study at kitchen table, read assigned chapters, written assignments, take any tests, etc.

38. Claimant's mother stated that he does better taking his courses online at home where he can get one-on-one instructional assistance to ensure he passes. Although she is not opposed to claimant taking some courses at school, he needs the same type of instructional assistance at school (i.e., note taking, staying on task, and getting where he needs to go) as he does when he takes an online class. Claimant's mother stated that in the Fall 2015 semester, Pathway did not have anyone available to go with claimant to his Saturday class and VVC did not provide a note taker. In Fall 2016, claimant's mother gave Pathway another try. She learned that Mr. Sturdivant was not preparing claimant for class, not working with him to interact with teachers or students, and generally not showing claimant what he needed to do. Claimant's mother explained

that she is not opposed to Pathway or some other provider administering CASS services at school as long as they "do what they are supposed to do." Claimant's mother did not cancel or wish to discontinue CASS services, rather, the crux of her complaint was that she did not like the way the service was being provided. Thus, she stopped using Pathway during the Spring 2016 semester.

39. Claimant's mother tried to contact DOR to see if claimant was eligible for some sort of assistance through that agency but DOR would not assist with anything other than trying to "get [claimant] a job."

40. Claimant's mother said she did not inquire specifically as to whether other options were available for note taking on campus through DSPS, but her e-mail to the director dated July 6, 2016, reflected she has complained regarding the lack of services. No evidence was presented to rebut claimant's mother's claim that she has complained and not received any remedy from DSPS.

41. Claimant's mother is trying to work with claimant so that he can graduate with an associate of arts degree in 2017.

CLAIMANT'S TESTIMONY

42. Claimant testified at the hearing. Claimant was quiet and shy, but very polite. Claimant was able to express his preferences and needs when prompted.

43. Claimant likes school because it teaches him "different things." He said he would like to get an associate of arts degree.

44. Claimant's favorite class was sociology. He also liked kinesiology because it "talks about different parts of the body" and he would like to do personal training someday.

45. Claimant prefers online courses because he can do them at home and work at his own pace. Claimant said his mother provides him with a lot of help. Claimant

said when he is at school it is very difficult to pay attention. Claimant says he tries to take notes but it is too difficult to “catch” everything the professor is saying.

46. Claimant said that the provider given to him by Pathway did not assist him in his one on-campus class in Spring 2016. The provider did not help him stay on task or pack supplies; did not meet him at his residence to take him to school; did not give him assistance or instruction on how to complete assigned tasks; did not help him with relationships with students and teachers; did not help him access the library, disabled student center, counseling center, writing center, or cafeteria; did not give him verbal prompts related to safety; and did not talk to him in the classroom. According to claimant, all the provider did was “talk to other students.”

47. Claimant said he thinks he was able to pass his courses because of his mother’s assistance. He attributed his success to the home-school schedule his mother created, the supervision she provided, and the instructional services she gave regarding formatting, assignment review, and writing, to name a few. Claimant stressed that he is in great need of a note taker.

CLOSING ARGUMENTS

48. IRC argued that one of the reasons for the denial of claimant’s requests for services is because there are generic resources available through VVC and DOR. The other reason for the denial is because the type of assistance being requested – respite and personal assistance – is not the same thing as tutoring, note taking, or general instructional assistance. IRC acknowledged that claimant should seek support at the school, such as going to the library or accessing other resources. IRC acknowledged that the CASS worker did not appear to do what he was supposed to do, but noted that a new CASS provider can be considered to provide the CASS services on-campus. IRC argued that they do not provide note taking or instructional guidance; are not in the

business of providing “academic support”; and do not even know of a vendor willing to take on that service.

49. Claimant’s mother submitted on the evidence.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

2. “Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

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THE LANTERMAN ACT

3. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare. & Inst. Code, § 4500 et seq.)⁵ 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

⁵ All further statutory references are to the Welfare and Institutions Code, unless otherwise noted.

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.

4. Section 4502, subdivision (b), provides:

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(3) *A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.*

[¶] . . . [¶]

(10) *A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.* (emphasis added.)

5. 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.

6. The Lanterman Act includes "education" as one of the services and supports available to eligible consumers. (§ 4512, subd. (b).)

7. 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. (§ 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." (§ 4620.)

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

9. Section 4646 requires that the IPP 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.

10. 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. Section 4648 also requires regional centers to be fiscally responsible.

11. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (§ 4648, subd. (a)(2).) Services and supports *shall be flexible and individually tailored to the consumer* and, where appropriate, his or her family. (*Ibid.* [emphasis added].) Regional centers are authorized to enter into vendorization arrangements or contracts to purchase services or supports for a consumer “from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, determines will best accomplish all or any part of that consumer’s program plan. (§ 4648, subd. (a)(3).)

12. 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. (§ 4648, subd. (a)(6).)

13. The regional center is 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. (§ 4646.4.)

14. Section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage.

EVALUATION

15. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or support, funding for an instructional assistant. Claimant met his burden.

The testimonial evidence, three consolidated fair hearing requests, e-mails exchanged between IRC and claimant's mother, and IRC's letter to claimant dated May 9, 2016, established that claimant's mother was seeking instructional guidance on campus and at home in order to meet claimant's educational needs, although she asked for the services under the categories of respite and personal assistance services. IRC provided 35 hours of community activity support services⁶ to assist claimant while he took his online campus courses and correctly asserted that respite or personal assistance services do not apply to instructional guidance on campus or in the home. As a result, claimant's request for 213 additional hours per month of respite services and a personal assistant are denied. The inquiry, however, does not end there.

⁶ Even though claimant's mother may not agree with the services provided by CASS, she signed the August 2015 IPP which included a new service request for CASS and personal assistance services, and acknowledged in her second October 22, 2015, e-mail that claimant would accept the services.

A preponderance of the evidence established that claimant needs instructional assistance for the courses he takes on campus and at home. The instructional assistance claimant requires is not the equivalent of tutoring or substantive supplemental instruction. Rather, the tasks claimant needs someone to perform include, but are not limited to, taking lecture notes; ensuring claimant gets to class on time; working through the syllabus for each class; completing the assignments claimant is supposed to complete; reviewing claimant's assignments to ensure the product meets the assignment goals; taking quizzes and tests when required; logging on to the class network at required times; posting required posts to discussion boards; interacting with students and professors during online courses; allocating enough time to study; studying the appropriate material; and helping claimant remain focused on his required educational tasks.

IRC is correct that claimant must first exhaust generic resources before IRC can consider funding claimant's request. The evidence established claimant has tried to obtain services through VVC to provide note taking assistance and writing assistance. However, VVC did not provide a note taker because there was no volunteer, and did not offer claimant any alternative services in order to obtain lecture notes. VVC's writing center does not provide the type of writing assistance claimant needs. Further, the writing center is assignment specific; it does not provide students with instructional assistance on day to day matters such as quizzes, lectures, or studying. VVC does not provide any services in a student's home. VVC also does not provide instructional *assistance*; their services are limited to helping qualified students merely *access* educational resources. Claimant requires assistance beyond what VVC generic resources provide.

Similarly, claimant currently receives 35 hours of community activity support services through Pathway. Pathway does not provide services in a student's home nor

does it provide note taking services on campus. Pathway does not provide instructional assistance to ensure claimant remains on task, completes assignments on time, and adhere to a study schedule in order to meet course goals and requirements. Further, according to claimant and claimant's mother, the Pathway worker did not provide assistance to claimant beyond sitting next to him in class and conversing with other students. While CASS is a needed service in order to help claimant access educational and other opportunities in the community, CASS alone is insufficient to meet the educational needs claimant is seeking.

Finally, although IRC argued claimant could obtain assistive technology through DOR, the type of services claimant needs – instructional assistance at home and at school – is much broader than merely assistive technology. Again, it is a question of *assistance* not merely *access*. The description of the type of assistive technology provided by DOR demonstrated that DOR's assistive technology is not the type of assistance claimant needs.

A preponderance of the evidence established claimant has exhausted all available generic resources pertaining to the type of services he is seeking. No evidence was presented to show there are any generic resource available to provide claimant the type of instructional assistance he needs other than those already tried. The fact that IRC provided claimant with CASS in order to help him access his education and provide guidance on campus shows that IRC believes claimant needs those services. No evidence was presented to rebut claimant's or his mother's claim that he also requires similar assistance at home when taking online courses. IRC informed claimant that since CASS does not provide services at home, claimant should take his online courses at school. Requiring claimant to do so would require claimant to be treated differently than other students who can take their online courses at home without assistance and does not reflect claimant's educational preference.

IRC, as a payor of last resort, and consistent with the provisions of the Lanterman Act requiring services and supports to be flexible and tailored to a consumer, must provide claimant with the appropriate services and supports to assist him both at school and so that he may take his desired online courses at home. Accordingly, the parties shall convene an IPP meeting to develop a vendor service to assist in hiring and retaining an instructional assistant to provide up to 120 hours⁷ of instructional assistance to claimant at home and at school, in addition to retaining the 35 hours of community activity supportive services in place. The instructional assistant shall provide, at a minimum, the following services: note-taking services; time management services (i.e. keeping claimant on task); studying services (i.e. helping claimant create and adhere to a study schedule as appropriate to meet course goals); and instructional guidance (i.e., helping claimant stay on-task, ensuring claimant properly completes assignments,

⁷ Claimant takes a full-time schedule of courses, or three classes per week. The classes meet several hours a day at least twice per week. Allowing 10 hours per class, per week, is approximately 30 hours per week, or 120 hours per month. This will ensure claimant has someone to tend to his needs during the classes, but also provide instructional assistance before or after class or any other day in order for claimant to meet the course objectives. When combined with claimant's 35 hours of community activity supportive services, which may be used for transportation to and from on-campus activities or classes and to assist him in the classroom, the additional 120 hours per month of instructional guidance is sufficient, based upon the evidence presented, to help claimant meet his educational goals. Any remaining instructional guidance claimant needs to meet his goals can be provided by his mother, a natural support, who has been providing this support, thus far.

ensuring claimant's work product reflects the substantive requirement of various assignments).

The IPP meeting and the vendorization process shall be expedited, as much as possible, so that claimant may begin accessing services as close to the commencement of his next semester of courses at VVC.

ORDER

1. Within 15 days of date of this Decision, IRC shall convene an IPP meeting which shall be attended by claimant's mother and claimant, claimant's consumer services coordinator, and other staff as deemed necessary by IRC, to develop a vendor service to hire an instructional assistant to provide 120 hours per month of instructional assistance to claimant at home and at school.

The services to be provided by the instructional assistant shall be agreed upon by claimant, claimant's mother, and IRC, and shall include, but are not limited to, the following services: note-taking; time management (i.e., keeping claimant on task); studying (i.e., helping claimant create and adhere to a study schedule as appropriate to meet course goals); instructional guidance (i.e., helping claimant stay on-task, ensuring claimant properly completes assignments, ensuring claimant's work product reflects the substantive requirement of various assignments); and assistance with claimant's online home-based courses (i.e., logging on at the appropriate time, posting to discussion boards as required, interacting with other students as required, posting or providing assignments in the appropriate manner, responding to messages and postings in the online discussion groups, attending the online lectures, notetaking, maneuvering the power point presentations, taking quizzes, completing practice exercises, and working through the class syllabi).

The IPP meeting and the vendorization process shall be expedited, as much as possible, so that claimant may begin accessing services as close to the commencement of his next semester of courses at VVC.

2. IRC shall continue to fund 35 hours of CASS but shall secure someone from Pathway or another vendor, other than Dansby Sturdivant, to provide the services.

3. Claimant's appeal from IRC's decision not to fund personal assistance services or provide claimant with 213 additional hours of respite care are denied.

DATED: July 26, 2016

_____/s/_____

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.