

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2016121057

DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on March 30, 2017, in Los Angeles, California.

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Claimant's mother represented claimant, who was not present.

Oral and documentary evidence was received, and argument was heard. The record was held open until May 8, 2017, for claimant to submit denial letters from Medi-Cal for speech therapy and occupational therapy, and until May 15, 2017, for Service Agency to raise any objections. Additionally, the record was held open until May 15, 2017, for both parties to submit written closing arguments.

On May 15, 2017, the Service Agency and claimant's written closing argument were received and lodged as exhibit 7 and exhibit X, respectively. On May 16, 2017, Service Agency filed and served an objection (lodged as exhibit 8) to two Medi-Cal denial letters it received from claimant on May 8, 2017, on the grounds that they are

vague and incomplete. On May 17, 2017, the ALJ received and marked the two Medi-Cal denial letters¹ as follows: (1) letter, dated January 19, 2017, denying occupational therapy evaluation, speech, sound, and language comprehension, and Pasadena MTU (marked as exhibit Y); and (2) letter, effective February 7, 2017, to June 7, 2017, cancelling therapeutic exercises, occupational therapy evaluation, and Pasadena MTU (marked as exhibit Z).

Although Service Agency filed its objections late, on May 19, 2017, the ALJ, on her own motion, reopened the record to consider the objections. The events that transpired while the record was held open are described in the ALJ's orders dated May 19, 2017, and June 1, 2017. On June 5, 2017, claimant submitted a response (marked as exhibit AA). Claimant's mother stated in this response that claimant's Medi-Cal authorization for therapeutic exercises, occupational therapy evaluation was cancelled because claimant receives 45 minutes per month of occupational therapy from California Children's Services. Attached to claimant's June 5, 2017 response is another letter from Medi-Cal, dated February 15, 2017, denying speech, sound, and language comprehension and speech/hearing therapy (marked as exhibit BB). Given this response and claimant's mother's testimony at the hearing that Medi-Cal had denied claimant's request for speech and occupational therapies, the Service Agency's objections are overruled, and exhibits Y, Z, AA,² and BB are admitted.

¹ The reason for the delay in the ALJ's receipt of these exhibits has not been determined. Nevertheless, it appears that claimant served the documents on opposing counsel in a timely manner.

² The June 5, 2017 response is admitted as evidence because it contained a statement from claimant's mother that the school district has most recently offered

The record was closed and the matter was submitted for decision on June 5, 2017.

ISSUE

Should the Service Agency be allowed to terminate speech and occupational therapy for claimant?

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-8; claimant's exhibits A-C, E, G, I-M, O-W, Y-BB.

Testimony. Sonia Garibay (FDLRC Regional Manager); Arpi Khanjian (FDLRC Service Coordinator Specialist); Shoghig Dikijian (FDLRC Executive Director Designee for the Hearing); claimant's mother.

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FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 15-year-old female who qualifies for regional center services based on a diagnosis of Autism and Intellectual Disability (Moderate).³

to provide one hour of speech therapy and one hour of occupational therapy per week to claimant. (See Factual Finding 18.)

³ The record indicates that claimant's neurologist, Jason T. Lerner, MD, also diagnosed claimant with cerebral palsy. However, it was not established whether Kern Regional Center, the service agency which initially found claimant eligible for

2. By a Notice of Proposed Action (NOPA) and letter dated December 6, 2016, the Service Agency informed claimant that it was terminating funding for speech and occupational therapy because “[she] ha[s] access to speech and occupational therapies [*sic*] services through the [claimant’s school district], a generic resource and through MediCal, a second generic resource.” (Ex. 1, p. 3.) On December 29, 2016, claimant filed a request for a fair hearing appealing the Service Agency’s decision. This hearing ensued.

3. The issue under consideration is whether the Service Agency’s decision to terminate claimant’s speech and occupational therapy was correct.

CLAIMANT’S BACKGROUND

4. Claimant lives at home with her mother and brother. She walks on her own, although she has difficulty sitting still. She communicates primarily by reaching, pointing, and taking other’s hands. She makes little to no eye contact when communicating with others. Although claimant is sometimes capable of following one-step directions with gestural cues, she is unable to follow more complex directives. She finger feeds and occasionally uses a spoon. She requires assistance in most self-care tasks, including dressing, showering, toileting, washing her face, combing her hair, and brushing her teeth. Claimant engages in self-injurious behavior, including head banging, holding her breath while squeezing her head, and throwing and breaking objects. She has no safety awareness and requires 24-hour care and supervision.

regional center services in 2010, ever made a determination about claimant’s eligibility based on this condition.

PROVISION OF SPEECH THERAPY AND OCCUPATIONAL THERAPY SERVICES TO CLAIMANT

5. In 2010, claimant moved with her family from Hawaii to Kern Regional Center's (KRC) catchment area. Thus, she was initially evaluated and found eligible for regional center services by KRC.

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6. On April 25, 2014, following a fair hearing, a Decision was issued ordering KRC to fund 90 minutes per week of speech therapy and 195 minutes per month of occupational therapy.

7. On September 15, 2015, claimant's mother signed an individual program plan (IPP) in which KRC agreed to provide 90 minutes per week of speech therapy and 195 minutes per month of occupational therapy to claimant.

8. A. Since May 2016, claimant has been receiving 90 minutes per week (7.5 hours or 450 minutes per month) of speech therapy from Professional Child Development Associates (PCDA).

B. In a September 7, 2016 speech therapy progress report, claimant's therapist, Preetha Sundareswaran, MS, SLP, indicated that claimant uses essentially two signs (bring the palms together for "more" and patting her stomach for "please") and one vocalization ("mamama") to communicate her needs. Ms. Sundareswaran noted that "[claimant] is beginning to be able to sustain shared attention in activities of her interest for longer periods when regulated. She is demonstrating the ability to imitate, and respond to the clinician with support during sustained attention." (Ex. L, p. 3.) The speech therapist recommended that claimant continues to receive the current level of services in order to help her develop a functional means to communicate her wants and needs. Suggested goals for claimant included communicating her toileting needs,

increasing her repertoire of signs and gestures, and sustaining a state of shared attention with an adult for at least four minutes.

C. In a November 3, 2016 speech therapy progress report, Ms. Sundareswaran noted that, since the last progress report, claimant was able to sign “more” three times without support and “all done” with hand-over-hand support. On one occasion, she produced “bababa” sound with her mother’s verbal prompting to say “bye.” Claimant also demonstrated gradual progress “in being able to remain regulated, and enter and sustain shared attention and engagement with the clinician for short periods of time.” (Ex. J., p. 1.) Ms. Sundareswaran recommended that claimant continue to receive the current level of services in order to help her develop a functional means to communicate her wants and needs. Suggested goals for claimant included using five signs, gestures, or vocalizations to communicate her needs, following simple functional directions and sustaining a state of shared attention with an adult for at least four minutes.

9. A. From May 12, 2016 to August 8, 2016, claimant received occupational therapy from PCDA for 60 minutes twice per week. Since August 8, 2016, due to scheduling limitations, she has been receiving 60 minutes of occupational therapy per week (five hours or 300 minutes per month), all of which were funded by KRC.⁴

B. An August 30, 2016 occupational therapy progress report from PCDA indicates that claimant was making slow but gradual progress. Her therapist, Jillianne

⁴ Although KRC was obliged to fund 195 minutes of occupational therapy per month under the IPP, KRC in fact funded five hours (300 minutes) of occupational therapy per month through PCDA. At the hearing, neither party could provide an explanation as to why claimant’s occupational therapy was funded at a level beyond what is required under the IPP.

Tahara, OTD, OTR/L, noted in this report that claimant was demonstrating emerging imitation skills with simple activities. Additionally, she was showing more trust in her therapist by taking the therapist's hand to ask for help to turn on simple cause and effect toys. Ms. Tahara recommended for claimant to continue to receive occupational therapy five times a month for 60-minute sessions for the next six months, at which time her goals will be reassessed. Goals for claimant included "demonstrat[ing] shared attention to participate in her daily and family routine" and "demonstrat[ing] improved motor skills as it relates to safety awareness." (Ex. M, p. 4.)

C. In a November 23, 2016 occupational therapy progress report, Ms. Tahara again recommended that claimant continue to receive 60-minute sessions of occupational therapy five times a month over the next six months. She found that claimant benefited from the occupational therapy sessions and wrote:

[Claimant] has made gradual progress towards her primary goals of achieving and prolonging basic regulation and shared attention. Having built good rapport with the therapist, [claimant] has made progress towards longer sustained attention during simple two part cause and effect interactions such as placing balls into a bucket and waiting for the therapist to pour them over her head. She shows great enjoyment in these sensory experiences and is able to more actively participate in these activities.

(Ex. K, p. 2.)

Goals for claimant included "demonstrat[ing] shared attention to participate in her daily and family routine" and "demonstrat[ing] trunk control and balance to support her self-care skills and safety in her environment." (*Id.*, pp. 3- 4.)

10. On December 1, 2016, claimant's case was transferred from KRC to FDLRC. After the transfer, claimant and FDLRC have been unable to reach an agreement regarding the content of her IPP. Therefore, claimant's September 15, 2015 IPP remains in effect, and it is her most recent IPP.

11. As described above, on December 6, 2016, FDLRC informed claimant that it was terminating her speech therapy and occupational therapy services because claimant failed to exhaust generic resources. On December 29, 2016, claimant appealed this decision. The authorization for claimant's speech and occupational therapy expired as of December 30, 2016. Because termination of the services was in dispute, FDLRC continues to fund 5 hours (300 minutes) of speech therapy and 7.5 hours (450 minutes) of occupational therapy per month pending a final administrative decision, pursuant to Welfare and Institutions Code section 4715.

CLAIMANT'S 2017 SPEECH THERAPY AND OCCUPATIONAL THERAPY EVALUATIONS

12. A. On March 2, 2017, Jessie L. Ginsburg, MS, CCC-SLP, Director of Clinical Services at Pediatric Therapy Playhouse, conducted a speech and language evaluation of claimant.⁵ She set forth her findings and recommendations in a report dated the same date.

⁵ Claimant also submitted a January 2, 2014 evaluation from Jessica Gonzalez, MA. Ms. Gonzalez recommended that claimant receive 60-minute sessions of individual speech therapy four times per week. However, this evaluation was given little weight because it was performed over three years ago, prior to the September 15, 2015 IPP, which established that claimant's unmet need for speech therapy was 90 minutes per week.

B. According to this report, claimant's vocabulary consists of three words: mama, more (pronounced "muh"), and shi-shi (for toileting). Claimant began verbalizing these words only in recent years. Specifically, she began to say both "more" and "shi shi" two years ago, when she was thirteen-years old. As described above, claimant communicates primarily through reaching, pointing, and taking others' hands.

C. During an assessment of claimant's speech sound inventory, she demonstrated significant deficits in the areas of speech production and sequencing sounds. Although claimant was observed to produce vowels, she was not observed to produce diphthongs.

D. During an assessment of claimant's core developmental milestones, she demonstrated significant deficits in the areas of self-regulation, two-way communication, behavioral organization and behavioral elaboration, emotional ideas, and emotional thinking.

E. Due to claimant's significant deficits in the areas of speech, language, and social skills, Ms. Ginsburg recommended the following: (1) individual speech and language therapy four times per week to increase claimant's speech and language; (2) tactile-kinesthetic therapy to increase her speech sound inventory and to improve her coordination of oral musculature for speech production; (3) continued occupational therapy as determined by claimant's occupational therapist; (4) continued Floortime therapy for 20 hours per week; and (5) assessment for an augmentative and alternative communication device. It should be noted that Ms. Ginsburg did not specify, in terms of minutes or hours, how much speech and language therapy claimant should receive on a weekly basis.

13. A. On March 22, 2017, Claudia Chavez, MA, OTR/L, at Jump and Schout Therapy, conducted an occupational therapy assessment of claimant. She set forth her findings and recommendations in a report dated the same date.

B. During this assessment, Ms. Chavez observed that claimant was unable to sit still and unable to follow simple one step commands. Ms. Chavez wrote, “[s]he knocked down numerous objects and containers in the shelves in the treatment room. . . . [Claimant] was observed to be banging her head on the wall and floor throughout the assessment. Per mom, this is common for [claimant] to do throughout her day.” (Ex. B, pp. 1-2.)

C. Ms. Chavez attempted to administer the Bruininks-Oserestsky Test of Motor Proficiency, Second Edition (BOT-2). The BOT-2 is a standardized test that evaluates a child in the areas of fine motor precision, fine motor integration, manual dexterity and upper-limb coordination. However, claimant was unable to complete any portions of the BOT-2 and scored in the well-below average range in all areas. She was unable to comprehend the directions from the evaluating therapist, unable to fill in shapes with a pencil, unable to fold a paper in half, unable to hold a pair of scissors independently, unable to grab a peg with a fine pincer grasp, and unable to copy any shapes such as circles, squares, and stars.

D. Ms. Chavez assessed claimant’s activities of daily living and independent activities of daily living using the Roll Evaluation of Activities of Life (REAL). The REAL is a standardized rating scale used to assess a child’s abilities to care for herself in the home, school, and community. It assesses activities of daily living and independent activities of daily living most common among children from the ages of 2 years to 18 years, 11 months. On the REAL, claimant scored well below average in all activities of daily living and independent activities of daily living. Specifically, claimant is unable to don clothing that involves fasteners, unable to tie her shoes, unable to choose clothing that is appropriate to the season and occasion. She is unable to perform hygiene and grooming tasks, such as washing her face, brushing her hair, brushing and flossing her teeth, bathing and showering independently, and toileting independently. She is unable

to obtain items for leisure or play, unable to obtain items for meal preparation, unable to prepare a cold snack, unable to access cooking appliances, and unable to fasten safety belt independently in cars. As for personal safety skills, she is “unable to make and receive phone calls, unable to notify an adult when injured or hurt, unable to dial 911, unable to perform simple first aid, unable to follow safety rules when talking with strangers, does not have stranger awareness when asked to leave a location with an unfamiliar person, unable to follow fire safety rules, unable to identify the location of the fire extinguisher, unable to clean up broken glass, and does not know the natural disaster plan for her geographic area.” (Ex. B. p. 4.)

E. Claimant’s mother completed the Sensory Processing Measure (SPM), a questionnaire used for school-aged children which gathers information regarding a child’s sensory processing abilities and functioning as observed on a daily basis. This test measures seven areas of performance, including social participation, vision, hearing, touch, body awareness, balance and motion, and planning and ideas. The SPM test results indicate that claimant suffered definite dysfunction in all areas except for vision, in which she demonstrated minimal to moderate difficulties.

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F. Based on these test results and her clinical observations, Ms. Chavez recommended the following:

Due to [claimant’s] current functional level and based on her ability to learn new skills and follow simple one step directions, individual occupational therapy is recommended 2x/week (50 minutes treatment, 10-minute parent consult at end of session for a total of 60 minutes) for 6-months [s/d] addressing overall self-care and fine motor delays, as well as

parent training to have patient engage in daily sensory activities. Reassessment and goal progress to be checked in 6-months [sic], if minimal or no progress has been made after 6-months [sic], reduce therapy frequency to 1x/week. At this time, it is recommended for [claimant] to participate in repetitive practice of daily skills, and to focus on simple basic self-help skills with assistance.

(Ex. B. p. 8.)

G. Ms. Chavez also listed several long-term goals for claimant, which included the following: donning and taking off a shirt with correct orientation with minimum assistance; donning socks and shoes with minimum assistance; and completing teeth brushing sequence of putting toothpaste on toothbrush, then brushing teeth for at least a minute with only verbal prompting.

TESTIMONY OF SERVICE AGENCY REPRESENTATIVES

14. At the hearing, Service Agency did not dispute claimant's need for speech and occupational therapy. However, Service Agency contended that generic resources, namely, claimant's school district and Medi-Cal, are available to fund both services.

15. Sonia Garibay, Regional Manager at Service Agency, testified that, under the Lanterman Act, regional centers are the payers of last resort, and claimant is required to seeking funding first through her school district and through Medi-Cal. However, claimant's mother refused to sign a consent form which would provide the Service Agency with access to claimant's Individualized Education Plan (IEP) at her school district. Therefore, the Service Agency could not determine how much speech and occupational therapy she is receiving at her school. Ms. Garibay also stated that Medi-Cal is an alternative source of funding for both speech and occupational therapy.

The Service Agency must receive a denial letter from Medi-Cal in order to rule it out as a generic resource.

16. Shoghig Dikijian, Executive Director Designee for the Fair Hearing, testified about a January 24, 2017 informal meeting held between claimant's mother and the Service Agency. During this meeting, claimant's mother orally informed Ms. Dikijian that claimant was receiving 30 minutes per week of speech therapy and one hour per week of occupational therapy through her school district. Claimant's mother indicated that she was unsatisfied with the number of hours for both services provided by the school district. Ms. Dikijian advised claimant's mother to contest the IEP and offered the services of FDLRC's Special Education Law Clinic (Law Clinic) to help claimant with the appeal process. However, claimant's mother expressed concerns that the Law Clinic's advocates were students working under the supervision of an attorney. At the end of the meeting, Ms. Dikijian recommended the following actions to resolve the fair hearing request: (1) claimant's mother to request funding for two hours of speech therapy and two hours of occupational therapy per week through the school district; (2) claimant's mother to request an independent speech evaluation through the school district; (3) Service Agency to refer claimant's case to the Law Clinic for support and advocacy; (4) claimant's mother to involve her Service Coordinator in the IEP process and to provide documentation and information to the Law Clinic upon request; (5) Service Agency to continue to provide 7.5 hours (450 minutes) of speech therapy and 5 hours (300 minutes) of occupational therapy per month until April 30, 2017 to allow time for the IEP process to be finalized.

TESTIMONY OF CLAIMANT'S MOTHER

17. A. At the hearing, claimant's mother testified about her efforts to seek funding for her daughter's speech and occupational therapy through Medi-Cal and through the school district.

B. Claimant's mother requested occupational and speech therapy through Medi-Cal, but authorization was denied. She submitted letters dated January 19, 2017, and February 15, 2017, from Medi-Cal denying funding for occupational and speech therapy. Claimant's mother reported that the request for occupational therapy was denied because claimant currently receives 45 minutes per month of occupational therapy and physical therapy through California Children's Services (CCS). Claimant was not receiving this service from CCS at the time that the IPP was developed on September 15, 2015.

C. As of the date of the hearing, claimant was receiving 30 minutes of speech therapy and one hour of occupational therapy per week through her school district. Claimant's mother testified that the school district has offered to maintain the same level of service hours for this year. Claimant's IEP has not been finalized, and the most recent IEP is still in draft form. Claimant's mother asserted that she intends to appeal the school district's offer of one hour of occupational therapy and 30 minutes of speech therapy per week if those service hours are not increased through the IEP process. Although Service Agency had offered her the assistance of the Law Clinic, claimant's mother did not act on this offer based on concerns that advocates at the Law Clinic are students and that Service Agency could not provide her with statistics regarding the Law Clinic's success rate.

18. In a letter dated June 5, 2017, claimant's mother stated that the school district has recently offered to provide to claimant one hour of speech therapy and one hour of occupational therapy per week.

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LEGAL CONCLUSIONS

STANDARD AND BURDEN OF PROOF

1. The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) The burden of proof is on the party seeking to change the status quo by terminating benefits previously granted. (See Evid. Code, § 500). In this matter, the burden is on FDLRC to establish by a preponderance of the evidence that good cause supports the termination of speech and occupational therapy. It has not met this burden.

GENERAL PRINCIPLES OF THE LANTERMAN DEVELOPMENTAL DISABILITIES SERVICES ACT

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act)(Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting Welf. & Inst. Code, § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “specialized 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.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

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4. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is

the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. In addition, Welfare and Institutions Code section 4646, subdivision (d), states, "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals and objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained by generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting."

DISTINCTIONS BETWEEN SERVICES PROVIDED UNDER SPECIAL EDUCATION LAW AND SERVICES PROVIDED UNDER THE LANTERMAN ACT

6. A. In this case, claimant's need for speech and occupational therapies is not in dispute. At issue is the source of the funding. The Service Agency contends that two generic sources, claimant's school district and Medi-Cal, are available as funding for both services.

B. With respect to the latter source, claimant has sought funding from Medi-Cal as appropriate, but funding for the speech and occupational therapies was denied. (Factual Finding 17B.)

C. With respect to the former source, the Service Agency contends that it is not responsible for funding claimant's speech and occupational therapy because they are educational services typically provided by the local school district to school-aged

children. In support of this position, the Service Agency, in the NOPA, cited to Welfare and Institutions Code section 4648, subdivision (a)(8), which provides that “regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” The Service Agency further contends that some of the 2009 amendments to the Lanterman Act, codified as Welfare and Institutions Code section 4648.5, subdivision (a)(3), specifically suspended funding “educational services,” which seems to support the assertion of Welfare and Institutions Code section 4648, subdivision (a)(8), as a bar to funding speech and occupational therapies.

7. Implicit in the Service Agency’s contention is the notion that the provision of speech and occupational services by the school district absolves it of its responsibility to provide these services to school-aged consumers. This position ignores the fact that both school districts and the regional centers are authorized by statute to provide some of the same types of services, including speech and occupational therapies, to consumers. (Welf. & Inst. Code, § 4512, subd. (b); Educ. Code, §§ 56031, subd. (b)(1), 56363; see also 20 USC § 1401(26) & (29).) However, distinctions may be drawn between the services available under special education law and those available under Lanterman Act because the two statutory schemes serve different purposes.

8. Pursuant to the Individuals with Disability Education Act (IDEA)⁶ and the California Education Code, a school district must provide special education to students with disabilities. The obligation, if any, for a school district to provide services, such as

⁶ Enacted by Congress in 1975 as the primary objective of the Individuals with Disabilities Education Act is “to assure that all children with disabilities have available to them a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(c).

speech and occupational therapy, ultimately derives from a district's obligation to provide "designated instruction and services."⁷ Education Code section 56363 defines designated instruction services as supportive services that "may be required to assist an individual with exceptional needs to benefit from special education" Consequently, a school district is only required to provide speech and occupational therapy if they are necessary to help the student "benefit from special education." While the services may also benefit a child outside the classroom, the main purpose is to increase access to special education.

9. The purpose of the Lanterman Act, on the other hand, is not primarily educational in nature and is much broader in scope. It contemplates a system of coordinating the services that numerous state and local agencies may provide to people with developmentally disabilities. These services must be "sufficiently complete" so as to

⁷ Federal statute and regulations refer to similar services as "related services." Title 20 United States Code section 1401 (26)(A), as well as Code of Federal Regulations section 300.39, provides that related services generally means "transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children."

meet the needs and choices of each developmentally disabled person “at each stage of life and to support their integration into the mainstream of life of the community.” (Welf. & Inst. Code, § 4501.) Further, services and supports should be available to enable the developmentally disabled person to approximate the pattern of everyday living available to persons of the same age who are not developmentally disabled, and to allow the integration of the developmentally disabled into the mainstream of life within their communities. (*Ibid.*) In essence, unlike the special education statutory scheme, the Lanterman Act envisions an all-encompassing reach into every aspect of a developmentally disabled child’s life. The objectives set forth in the Lanterman Act include integrating him or her into the community, fostering residence in the family home, resolving familial problems by providing respite care and other family supports, none of which are goals under special education laws and regulations. (Welf. & Inst. Code, §§ 4646, subd. (a), 4690.2, subd. (a); *Association for Retarded Citizens, supra*, 38 Cal.3d at p. 388.)

10. Given these distinctions between the special education statutory framework and the Lanterman Act, whether a service is to be provided by a school district or by a regional center should be determined by examining the purpose of service; that is, whether the service is intended to increase a child’s access to special education or it is intended to achieve the broader, community-based goals of the Lanterman Act. It should be noted, as a caveat, that a service should not be compartmentalized as solely an “educational service” or a “Lanterman Act” service. A child may benefit from a service both in the school and in the community, and he or she therefore may need services from the school district as well as from the Service Agency.

CLAIMANT’S SPEECH AND OCCUPATIONAL THERAPY SERVICES

11. Applying the foregoing analysis to the instant case, while Service Agency is not responsible for funding speech and occupational therapies that are primarily

intended to increase claimant's access to special education, it must, however, fund claimant's unmet need for services that are primarily intended to address the challenges she faces as she attempts to lead an independent life in the community.

12. A. With respect to speech therapy, the progress reports from Ms. Sundareswaran indicate that the focus of the service is functional communication to enable claimant to express her wants and needs, including self-care needs such as toileting. (Factual Findings 8B and 8C.) Ms. Ginsburg, who performed claimant's most recent speech and language evaluation, found that claimant suffers significant deficits in various areas, including speech production, sequencing sounds, self-regulation, and two-way communication. Her recommendations are aimed at increasing claimant's speech sound inventory and improving her coordination of oral musculature for speech production. (Factual Finding 12E.) The totality of the evidence established that this service is primarily intended to assist claimant to communicate some very basic wants and needs at home and in the community, even though the skills she learns through the therapy may also be helpful to her at school. Thus, it is the Service Agency's responsibility to fund claimant's unmet needs for speech therapy.

B. Ms. Ginsburg recommended speech therapy four times per week, but she did not specify the quantity of the service claimant requires in terms of minutes. The September 15, 2015 IPP established that claimant's unmet need for speech therapy was 90 minutes per week (450 minutes per month), and there is no evidence that claimant's need for speech therapy has decreased since that time. According to claimant's mother, the school district has offered an additional 30 minutes of speech therapy services on a weekly basis. Therefore, claimant's unmet need for speech therapy is 60 minutes per week (300 minutes per month). The Service Agency must continue to fund this service for six months, subject to further assessment. If claimant shows minimal or no progress

after six months, the IPP team should reconsider the amount, frequency, and duration of speech therapy at that time.

13. A. With respect to occupational therapy, the progress reports from Ms. Tahara indicate that the goals of the therapy were to assist claimant to participate in her daily and family routine, to support her self-care skills, and to improve her safety awareness. (Factual Findings 9B and 9C.) Ms. Chavez's most recent occupational therapy assessment of claimant was entirely concerned with claimant's self-care skills and basic self-help skills. (Factual Findings 13C and 13D.) The long-term goals that she set for claimant are intended to enable claimant to dress herself and to brush her teeth independently. (Factual Findings 13G.) The totality of the evidence established that the primary purpose of these services is to address the self-care needs of claimant at home and in the community, even though the skills that she learns through the therapy may also be helpful to her at school. Thus, it is the Service Agency's responsibility to fund claimant's unmet needs for occupational therapy.

B. Ms. Chavez recommended that claimant receives two 60-minute sessions of occupational therapy per week, for a total of 600 minutes per month. Claimant is currently receiving 60 minutes per week (300 minutes per month) of occupational therapy through her school district. Additionally, claimant is receiving 45 minutes per month of occupational therapy through CCS. Therefore, Service Agency must continue to fund claimant's unmet need for occupational therapy at the rate of 255 minutes for six months. Per the recommendation of Ms. Chavez, a reassessment should be performed in six months. If claimant shows minimal or no progress after six months, the IPP team should reconsider the amount, frequency, and duration of occupational therapy at that time.

14. Notwithstanding the conclusions discussed above, claimant, as a member of the IPP team, also bears certain responsibilities and duties. Claimant should

collaborate with the Service Agency in exploring all resources of funding that are available to her. In this respect, claimant will be required to cooperate with Service Agency by providing IEP documentation and information to the Service Agency upon request and by involving her service coordinator in the IEP process.

ORDER

1. Claimant's appeal of the Frank D. Lanterman Regional Center's decision to terminate her speech and occupational therapy is GRANTED.

2. Service Agency shall fund 300 minutes per month of speech therapy provided by Professional Child Development Associates or another provider selected in accordance with the requirements of the Lanterman Act. A reassessment of this service shall be performed no later than six months from the date of this Decision. No later than six months from this Decision, an IPP team meeting shall be convened to discuss the amount, frequency, and duration of speech therapy services, including, if appropriate, a reduction in services, if claimant shows insufficient progress to justify the current level of services funded by the Service Agency, or has available other sources of funding that address claimant's IPP goals.

3. Service Agency shall fund 255 minutes per month of occupational therapy provided by Professional Child Development Associates or another provider selected in accordance with the requirements of the Lanterman Act. A reassessment of this service shall be performed no later than six months from the date of this Decision. No later than six months from this Decision, an IPP team meeting shall be convened to discuss the amount, frequency, and duration of occupational therapy services, including, if appropriate, a reduction in services, if claimant shows insufficient progress to justify the current level of services funded by the Service Agency, or has available other sources of funding that address claimant's IPP goals.

4. Claimant and her authorized representative shall cooperate with the Service Agency by involving her service coordinator in the Individualized Education Plan (IEP) process with her school district and by providing IEP documentation and information to the Service Agency upon request.

DATE:

JI-LAN ZANG

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 90 days.