

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014051206

CLAIMANT,

And

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on July 17, 2014, in Pomona, California. Claimant was represented by Matthew Pope, Attorney at Law, Claimant's authorized representative.¹ San Gabriel Pomona Regional Center (SGPRC or Service Agency) was represented by Julie Ocheltree, with Enright & Ocheltree, LPP.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on July 17, 2014.

ISSUE

The parties agreed that the issue to be decided is:

¹ Claimant's name is omitted throughout this Decision to protect his privacy.

Should SGPRC decrease funding for 1:1 direct behavior intervention hours from 130 hours per month to 108 hours per month?

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FACTUAL FINDINGS

1. Claimant is a 21-year-old male client of the Service Agency, diagnosed with Autistic Disorder (now designated as Autism Spectrum Disorder). He has been a regional center consumer since he was diagnosed at two years, seven months of age.

2. Claimant became a client of the SGPRC in October 2013, after transferring from Eastern Los Angeles Regional Center (ELARC), with several services already in place.

3. Claimant began receiving Applied Behavioral Analysis (ABA) services at age five. In September 2006, Claimant began receiving ABA services through the Institute for Applied Behavior Analysis (IABA), funded by ELARC. According to a December 12, 2012 Individual Program Plan (IPP) through ELARC, the purpose of IABA's services was "to decrease target behaviors (self-stimulation/erseveration, self-injurious behavior, screaming and physical aggression). . . [and to] increase the frequency of replacement behaviors, teach new skills to increase his independence and to teach parent skills to caretakers." (Exhibit C.) At one point, IABA began providing 160 hours per month of services.

4. In a January 10, 2012 progress report, IABA recommended that Claimant continue to receive 160 hours per month of direct behavior intervention. IABA noted that Claimant continued to show progress in decreasing

his challenging behaviors and increasing his use of language to get his needs met. Specifically, Claimant had "dramatically decreased his aggression towards others," and his "screaming and self-stimulatory behaviors continue[d] to remain low and show[ed] a decreasing trend." (Exhibit K.)

5. In 2012, Claimant began the process of relocating outside ELARC's catchment area, and since IABA did not provide services in that area, Claimant had to find another service provider. In July 2012, Claimant began receiving community integration services through TOTAL Programs, funded by ELARC. In an initial assessment interview with TOTAL in July 2012, Claimant's mother reported that Claimant was developing or advanced in many of the identified adaptive skills. However, she also reported that "skills [Claimant] previously demonstrated now required prompting." (Exhibit I.) Although Claimant continued to engage in elopement, non-compliance, and socially inappropriate behavior, his previous self-injurious behaviors (except bending his fingers back) and aggressive behavior had not occurred for over one year. (Exhibit I.)

6. During the time Claimant was transitioning to his new home and receiving community integration services through TOTAL, his aggressive behaviors increased. The number of service hours provided by TOTAL was not established by the evidence. (Exhibit J; Testimony of Claimant's mother.)

7(a). In April 2013, Claimant underwent a Functional Behavior Assessment Report and Intervention Plan through the Center for Autism Related Disorders (CARD), funded by SGPRC. At the time of the assessment, Claimant had been removed from school while his school district was implementing a transition program.

7(b). In the area of Language/Communication, it was noted that Claimant demonstrated delays in receptive and expressive language. However, he was able

to following simple one-step instructions with prompting by an adult, although he could become distracted in busy environments. He was able to use gestures to communicate his wants and needs. He was unable to initiate or sustain a conversation. Although his mother noted that he was able to use five-word sentences to communicate, this was not observed by the evaluator. Claimant's mother also noted that Claimant's use of vocal language had recently regressed.

7(c). According to the April 2013 assessment, in the area of "Self-Help Skills," Claimant demonstrated delays. He required prompts to sustain on-task behavior to complete his bathing. His mother reported that, if he was not prompted to stay on task, he would remain in the restroom for hours. He was also unable to brush his hair, brush his teeth, or shave his facial hair without assistance. Although he could use a spoon, fork and cup independently, he could not prepare his own meals without supervision.

7(d). In the area of "Social Behavior," Claimant demonstrated limited leisure skills and would often sit alone without engaging in any social behavior or leisure activities. He responded to his name and could sustain eye contact without prompts. However, he had difficulty responding expressively, and he required prompts to engage in sequential and interactive play.

7(e). Regarding "Maladaptive Behaviors," Claimant displayed both maladaptive and stereotypic behaviors across people, places and events. These observed behaviors included non-compliance/vocal protest (4 times per hour), self-injurious behavior (2.8 times per hour), and aggression (daily, per parent report), and occurred particularly on transition prompts. Additionally, Claimant's mother reported that Claimant often became "stuck" during transitions. His stereotypic behaviors included vocal stereotypy (1.2 times per hour), physical stereotypy (3.2 times per hour), and ritualistic behavior (0.8 times per hour).

7(f). The assessment set forth goals to measure and reduce non-compliance, aggression, self-injurious behavior, vocal stereotypy, physical stereotypy, ritualistic behavior, and enumerated goals to increase his skills in identified areas including:

Goal #1, "Verbal Imitation/Echoics[:]" By May 2014, [Claimant] will vocally produce 3 word phrases . . . with 80% accuracy . . . [:]

Goal #2, Manding[:]" By April 2014, [Claimant] will produce . . . 3 word sentences . . . when manding for objects/activities, including appropriately gaining other person's attention, with 80% accuracy . . . [:]

Goal #3, Manding for Cessation[:]" By April 2014, [Claimant] will request for cessation [of a non-referred activity or removal of an undesired item] in naturally occurring situations or removal of an object/activity, in absence of maladaptive behaviors, with 80% accuracy . . . [:]

Goal #4, Following Instructions[:]" By April 2014, when presented with 2-step functional instructions where [Claimant] will need to travel between rooms, he will respond correctly, with 80% accuracy . . . [:]

Goal #5, Feeding[:]" By April 2014, [Claimant] will be able to prepare his own simple meals and snacks

consisting of (#) steps . . . with 1 prompt, with 80% accuracy . . . [:]

Goal #6, Grooming (Brushing Hair)[:] By April 2014, [Claimant] will be able to brush his hair independently, with 80% accuracy . . . [:]

Goal #7, Grooming (Shaving)[:] By April 2014, [Claimant] will be able to shave independently, with 80% accuracy . . . [:]

Goal #8, Hygiene (Brushing Teeth)[:] By May 2014, [Claimant] will be able to brush his teeth, with 80% success . . . [:]

Goal #9, Hygiene (Showering)[:] By April 2014, [Claimant] will be able to complete his shower routine, with 80% success . . . [:]

Goal #10, Emotional Coping (Replacement Behavior) [:] By April 2014, [Claimant] will engage in appropriate coping strategies . . . in the absence of maladaptive behaviors . . . during emotionally upsetting situations, with 80% accuracy . . . [:]

Goal #11, Flexibility[:] By April 2014, [Claimant] will be able to demonstrate tolerance to changes in routine . . . in the absence of maladaptive behaviors . . . with 80% accuracy . . . [:]

Goal #12, Attention[:] By April 2014, [Claimant] will sustain attention to a single task or activity . . . for 3 activities for a period of 5 minutes each, as evidenced by continuing with the task and not getting distracted . . . with 80% accuracy . . .[:]

Goal #13, Gaining Attention[:] By April 201[4], when presented with an opportunity to mand or tact, [Claimant] will gain someone's attention . . . in the absence of maladaptive behaviors, with 80% accuracy . . . [:]

Goal #14, Safety/Environmental Awareness[:] By April 2014, [Claimant] will exhibit improved safety/environmental awareness by looking forward and around his surroundings during walks, and as well as identifying whether it is safe or not safe to cross the street, with 80% accuracy . . . [:]

Goal #15, Leisure Activity[:] By April 2014, [Claimant] will be able to engage in 5 leisure activities for completion of activity or until transition to another task is presented, with 80% accuracy . . . [:]

Goal #16, Emotions[:] By April 2014, [Claimant] will be able to receptively identify 5 new emotions . . . with 80% accuracy . . . [:]

Goal #17, Social Cues[:] By April 2014, when presented with various social cues . . . , [Claimant] will respond appropriately to the behavioral social cues for 10 situations . . . , with 80% accuracy[.]

(Exhibit 3.)

7(g). CARD recommended “87 hours per month (20 hours per week) of 1:1 direct therapy in the home to address inappropriate behaviors and skill deficits related to home and community settings[,] . . . eight hours per month of supervision, [and] 9 hours per month (2 hours per week) of direct parent training and consultation to address generalization of skills and behavioral interventions with family and team members.” (Exhibit 3.)

8. Based on CARD’s April 2013 assessment, SGPRC agreed to fund Claimant’s behavior intervention program through CARD at the recommended number of hours to address the goals identified in the CARD assessment. These CARD goals, as well as the goals identified in the December 2012 ELARC IPP, were incorporated into Claimant’s September 2013 IPP through SGPRC.

9. On May 31, 2013, after beginning Claimant’s in-home program, CARD requested that SGPRC fund additional hours. CARD’s updated recommendation was “225 hours per month (52 hours per week) of 1:1 direct therapy in the home to address inappropriate behaviors and skill deficits related to home and community settings[,] . . . eight hours per month of supervision, [and] 9 hours per month (2 hours per week) of direct parent training and consultation to address generalization of skills and behavioral interventions with family and team members.” (Exhibit 4.)

10. SGPRC agreed to fund the hours requested in CARD’s May 2013 updated recommendation.

11(a). In a June 5, 2013 Behavior Assessment report, CARD noted that Claimant's "overall aggression has increased throughout May, both in intensity and frequency." (Exhibit 5.) Additionally, CARD noted the following regarding Claimant's transitioning:

When asked to transition (i.e. bathroom to bedroom or car to home), [Claimant] is non-compliant. In the past, use of physical prompts has typically resulted in escalated aggression or "flopping" behavior in which [Claimant] falls to the ground. Due to his size, both "flopping" and escalated aggression are problematic. Thus, use of physical prompting is not typically used to transition [Claimant]. Currently, therapists have been instructed to follow through on demands to transition and wait out [Claimant] until he does so successfully. Unfortunately, [Claimant] may remain "stuck" for up to 6 hours at a time. Per parent report, [Claimant] gets "stuck" approximately 8-10 times per day. These episodes last anywhere from 20 minutes to 6 hours. Therapists have been more successful than [Claimant's mother] in transitioning [Claimant] in a shorter period of time and with less problem behaviors than when [Claimant's mother] attempts to transition [him] by herself. In addition, [Claimant] has recently been aggressing towards [his mother] during these periods and may become easily agitated.

(Exhibit 5.)

11(b). CARD recommended continuing Claimant's behavioral program at the same number of hours (i.e. direct therapy - 225 hours per month/52 hours per week). (Exhibit 5.)

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12(a). In June 2013, SGPRC Behavior Analyst, Elizabeth Annamraju, visited Claimant twice to observe him and his mother with CARD staff. Ms. Annamraju noted:

[Claimant's] current services include 225 hours of direct services monthly with 8 hours of supervision in addition to 6 hours daily of behavior intervention funded by [Claimant's school district]. Additionally, he receives 5 hours monthly of music therapy, counseling services with Dr. Rod Rhodes 5 hours monthly, [and] behavior respite at 36 hours monthly . . ."

(Exhibit 6.)

12(b). On July 18, 2013, Ms. Annamraju visited Claimant at his home in the morning. She noted:

[Claimant] was in the bathroom completing his morning routine. He spent most of his time engaging in self-stimulating activities in front of the mirror and would not comply with requests to brush his teeth or get dressed. He had reportedly begun his routine at 8:30 a.m. The observation began at 10:15 and

concluded shortly before noon, and no progress was made. Mother continued to insist that he was “stuck” and needed behavioral intervention to help him “move past his stuckness.” When the therapist would make any demands, [Claimant] would immediately protest making various sounds, or would strike out. [The CARD supervisor, Betty Tia] says that this routine can take as little as 15 minutes or last 5-6 hours.

(Exhibit 6.)

12(c). On July 25, 2013, Ms. Annamraju again observed Claimant at his residence and also in the local community. When she arrived at Claimant’s home, he was eating his lunch and appeared calm. However, when the therapist prompted him to continue taking bites of food, Claimant immediately started yelling and hitting his head with his hand. His therapist gave him a pillow to soften the blows, but did not make any requests until he calmed down. When Claimant finished his lunch, his mother and therapist prepared him for a trip to the gym to swim. At the gym, Claimant’s mother watched him swim while his therapist followed alongside him swimming laps. Ms. Annamraju asked the therapist what goals they were working on at that moment in the community, and he said that they were not working on a goal, but that this was Claimant’s leisure time. Claimant’s mother reported that one of Claimant’s other therapists had accompanied them to the beach the prior day as an outing. (Exhibit 6.)

12(d). In a report of her observations, Ms. Annamraju noted:

Due to [Claimant’s] diagnosis and behaviors, he clearly needs continued services and [his] mother needs

support. However, the [CARD] services provided are not behavioral interventions. The services in place more closely resemble community integration and/or behavioral respite services.

(Exhibit 6.)

12(e). Ms. Annamraju recommended the continuation of Claimant's music therapy, counseling with Dr. Rhodes, and the following:

Continue behavior intervention services by CARD, funded by [Claimant's school district].

Over 2 months, transition behavioral intervention services by CARD, funded by SGPRC, into a combination of community integration services and behavioral respite services to provide supervision and activity for [Claimant].

Assess [Claimant] for behavioral intervention services, including parent goals, to decrease maladaptive behaviors. These services should not exceed 15 hours weekly.

(Exhibit 6.)

13(a). In an October 3, 2013 Progress Report, CARD noted that Claimant had enrolled in an adult transition program in his school district and intended to attend the program five full days per week, with a 1:1 aide from CARD in the

classroom. However, "due to behavioral challenges," Claimant had only attended the program four times since August 2013.² (Exhibit 7.)

13(b). Progress toward goals to reduce maladaptive behaviors was noted as follows:

- (1). For non-compliance, the prior six-month goal was to decrease from a baseline of four times per hour to three times per hour while demonstrating a consistent increase in the replacement behaviors. "As of September 2013, this goal is met. [Claimant] engaged in non-compliant behaviors 0.86 times per hour. Instances of [Claimant] getting 'stuck' is not included in the topography." (Emphasis in original.) (Exhibit 7.) A new 6-month goal was set to decrease non-compliance to .4 times per hour.
- (2). For aggression, the prior six-month goal was to decrease from a baseline of 0.55 times per hour to 0 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of September 2013, this goal is emerging. [Claimant] engaged in aggression 0.03 time per hour. Although not met, aggression has decreased from baseline." (Emphasis in original.) (Exhibit 7.)
- (3). For self-injurious behavior, the prior six-month goal was to decrease from a baseline of 2.8 times per hour to 0 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of September 2013, this goal is emerging. [Claimant] engaged in self-injurious behaviors 0.59 times per hour. The topography of self-

² He did not return to the transition program on a regular basis until April 2014. (See Factual Finding 16.)

injurious behavior has been modified. Previously, [Claimant] used a closed fist to hit his thighs and/or rib area, leaving bruises. Currently, [Claimant] will use a closed fist to hit his head.” (Emphasis in original.) (Exhibit 7.)

(4). For vocal stereotypy, the prior six-month goal was to decrease from a baseline of 1.2 times per hour to 0.5 times per hour while demonstrating a consistent increase in the replacement behaviors. “As of September 2013, this goal is emerging. [Claimant] engaged in vocal stereotypy 0.6 times per hour.” (Emphasis in original.) (Exhibit 7.)

(5). For physical stereotypy, the prior six-month goal was to decrease from a baseline of 3.2 times per hour to 2.8 times per hour while demonstrating a consistent increase in the replacement behaviors. “As of September 2013, this goal is met. [Claimant] engaged in physical stereotypy 0.46 times per hour.” (Emphasis in original.) (Exhibit 7.) A new 6-month goal was set to decrease physical stereotypy to 0 times per hour.

(6). For ritualistic behavior, the prior six-month goal was to decrease from a baseline of 0.8 times per hour to 0 times per hour while demonstrating a consistent increase in the replacement behaviors. “As of September 2013, this goal is emerging. [Claimant] engaged in ritualistic behavior 0.71 times per hour.” (Emphasis in original.) (Exhibit 7.)

13(c). Progress toward goals to increase skills was noted as follows:

Goal #1, “Verbal Imitation/Echoics[:] As of September 2013, this goal is met. [Claimant] is able to produce 3-4 word sentences . . . with 1000% accuracy . . .

Continuation Goal: By May 2014, [Claimant] will improve his language fluency by imitating phrases, reading short paragraphs, and singing verses to songs, in 80% of opportunities . . . [:]

Goal #2, Manding[:] As of September 2013, this goal is emerging. [Claimant] mands for tangible items or activities, in 77% of opportunities. [Claimant] gains attention appropriately, in 35% of opportunities. . . . [:]

Goal #3, Manding for Cessation[:] As of September 2013, this goal is emerging. [Claimant] is able to mand for a break or verbally express dislike for an item or activity, in 100% of opportunities. However, [Claimant] requires prompts in 50% of opportunities to mand in the absence of maladaptive behaviors (i.e. screaming, self-injury) . . . [:]

Goal #4, Following Instructions[:] As of September 2013, this goal is emerging. The current target is 1-step with 58% success. Incorrect responses include negative attention seeking behaviors, vocal protest, and/or self-injury. While [Claimant] demonstrates understanding of the instructions as evident of successes in previous trials, the occurrences of maladaptive behaviors inhibit his success with this goal. . . . [:]

Goal #5, Feeding[:] As of September 2013, this goal was not introduced. Due to occurrences of maladaptive behaviors, the current focus is on morning routines and consumption of meals and liquids. . . [:]

Goal #6, Grooming (Brushing Hair)[:] As of September 2013, this goal is not met. Due to occurrences of maladaptive behaviors, [Claimant] requires prompts per opportunity to complete the task . . .[:]

Goal #7, Grooming (Shaving)[:] As of September 2013, this goal is emerging. Due to occurrences of maladaptive behaviors, [Claimant] requires prompts per opportunity to complete the task as he may engage in aggression. . . [:]

Goal #8, Hygiene (Brushing Teeth)[:] As of September 2013, this goal is emerging. A task analysis is presented consisting of 19 steps. However, due to getting "stuck," the CARD therapy team is working on teaching the first 7 steps, where [Claimant] is successful in 71% of opportunities. [Claimant] requires prompts to wet the toothbrush and to brush his top left side. . . [:]

Goal #9, Hygiene (Showering)[:] As of September 2013, this goal is emerging. [Claimant] is able to

shower independently. However, he needs supervision as he may not consistently complete the steps to the task such as thoroughly soaping his body. As of this month, [Claimant] is able to complete a shower within 40 minutes to 1 hour. . . [:]

Goal #10, Emotional Coping (Replacement Behavior)

[:]As of September 2013, this goal is emerging.

[Claimant] will engage in coping strategies such as taking deep breaths when presented with less preferred instructions, in 55% of opportunities. . . [:]

Goal #11, Flexibility[:] As of September 2013, this goal is emerging. [Claimant] demonstrates flexibility, in 77% of opportunities. . . [:]

Goal #12, Attention[:] As of September 2013, this goal is emerging. The current target is 2 minutes with 56% success. Incorrect responses include instances of when [Claimant] gets "stuck." . . .[:]

Goal #13, Gaining Attention[:] As of September 2013, this goal is emerging. [Claimant] appropriately gains attention, in 35% of opportunities. Incorrect responses include negative attention seeking behaviors such as out of context laughing. . . .[:]

Goal #14, Safety/Environmental Awareness[:] As of September 2013, this goal is not met. Per observation,

when in the community setting [Claimant] requires prompts per opportunity to attend to and follow safety rules. [Claimant] will generally walk, then stop, then proceed to walk again when ready. This poses a safety concern as [Claimant] may stop in the middle of the road when there is oncoming traffic. . . [;]

Goal #15, Leisure Activity[:] As of September 2013, this goal is emerging. While [Claimant's] preferences may vary, he is able to play games on a handheld device, watch movies, and draw independently. Currently [Claimant] has been getting stuck, making it difficult to engage in leisure activities. . . [;]

Goal #16, Emotions[:] As of September 2013, this goal is met. [Claimant] is able to receptively identify happy, mad, sad, disgusted, and bored, in 100% of opportunities. . . [;]

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Goal #17, Social Cues[:] As of September 2013, this goal is emerging. [Claimant] mastered saying "bless you," when someone sneezes. The current target is

someone gets hurt and [Claimant] is expected to ask if the person is okay. [Claimant] requires verbal prompt in 100% of opportunities.

(Exhibit 7.)

13(d). In the October 2013 progress report, CARD recommended that Claimant's 1:1 direct therapy in the home be reduced to 130 hours per month (30 hours per week).

14. SGPRC funded the CARD-recommended number of 1:1 direct therapy hours (30 hours per week), and Claimant's mother did not object to the decreased number of direct therapy hours.

15(a). In an April 21, 2014 Progress Report, CARD noted that Claimant remained enrolled in the adult transition program in his school district and was expected to attend three full days per week (Mondays, Wednesdays and Fridays) to receive training in the classroom. Once he completed the training for one month, he would be able to participate in the vocational program on Tuesdays and Thursdays. He has a 1:1 aide from CARD in the classroom. However, "due to behavioral challenges," Claimant had only attended the in-class program six times since August 2013. (Exhibit 9.)

15(b). Progress toward goals to reduce maladaptive behaviors was noted as follows:

- (1). For non-compliance, the prior six-month goal was to decrease such behavior to 0.4 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of March 2014, this goal is emerging. [Claimant] engaged in non-compliant behaviors 1.25 times per hour [which had increased from 0.86 times per hour]. Instances of

[Claimant] getting 'stuck' is not included in the topography." (Emphasis in original.) (Exhibit 9.)

- (2). For aggression, the prior six-month goal was to decrease from a baseline of 0.55 times per hour to 0 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of March 2014, this goal is met. [Claimant] engaged in aggression 0 times per hour." (Emphasis in original.) (Exhibit 9.)
- (3). For self-injurious behavior, the prior six-month goal was to decrease from a baseline of 2.8 times per hour to 0 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of March 2014, this goal is emerging. [Claimant] engaged in self-injurious behaviors 0.17 times per hour. Although not met, the occurrences of self-injurious behaviors have decreased since the last reporting period." (Emphasis in original.) (Exhibit 9.)
- (4). For vocal stereotypy, the prior six-month goal was to decrease from a baseline of 1.2 times per hour to 0.5 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of March 2014, this goal is not met. [Claimant] engaged in vocal stereotypy 1.6 times per hour [which had increased from 0.6 times per hour]. The topography of vocal stereotypy has changed, in that [Claimant] will repeat phrases such as 'How are you? Good' until he is directed to stop." (Emphasis in original.) (Exhibit 9.)
- (5). For physical stereotypy, the prior six-month goal was to decrease from a baseline of 3.2 times per hour to 2.8 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of March 2014, this goal is emerging. [Claimant] engaged in physical

stereotypy 1.02 times per hour [which had increased from 0.46 times per hour]. The topography of physical stereotypy has changed over time." (Emphasis in original.) (Exhibit 9.)

- (6). For ritualistic behavior, the prior six-month goal was to decrease from a baseline of 0.8 times per hour to 0 times per hour while demonstrating a consistent increase in the replacement behaviors. "As of March 2014, this goal is emerging. [Claimant] engaged in ritualistic behavior 0.77 times per hour [which had slightly increased from 0.71 times per hour]." (Emphasis in original.) (Exhibit 7.)

15(c). Progress toward goals to increase skills was noted as follows:

Goal #1, "Verbal Imitation/Echoics[:]" As of March 2014, this goal is met. [Claimant] is able to imitate phrases, read short paragraphs, and sing verses to songs, in 80% of opportunities . . . [:]

Goal #2, Manding[:]" [By March 2014, [Claimant] mands for tangible items or activities using 3+ word phrases, in 80% of opportunities. Incorrect responses include [Claimant] gesturing. [Claimant] gains attention appropriately, in 70% of opportunities. . . . [:]

Updated Goal[:] By April 2015, [Claimant] will use at least 2 different mand frames . . . per day when manding objects/activities, with 80% accuracy . . . [:]

Goal #3, Manding for Cessation[:]" As of [M]arch 2014, this goal is met. [Claimant] is able to mand or express

(gesture) for cessation of an activity or item in 100% of opportunities. Oftentimes, [Claimant] will engage in the activity or task until completion. . . . [;]

Goal #4, Following Instructions[:] As of December 2013, this goal is met. [Claimant] is able to follow multiple step instructions without physical prompts. However, the occurrences of "stuckness" have inhibited [Claimant] from engaging in fluid execution of the steps. . . [;]

Goal #5, Feeding[:] [As of March 2014, Claimant] is able to prepare his own sandwich (varied), cereal, and hot dogs for meal preparation with 100% success. However, when certain ingredients such as a hot dog require heating, [Claimant's mother] has prepared this for [Claimant. He] is able to toast his own bread and/or bagel.

Updated Goal[:] By April 2015, [Claimant] will be able to prepare simple meals and snacks total, with 80% accuracy. . . [;]

Goal #6, Grooming (Brushing Hair)[:] Discontinued. . . . As of March 2014, this goal has not been introduced. [Claimant] has not had the opportunity to work on this skill due to his "stuckness." As such, this skill has not been incorporated into the morning routine.

However, his hair is short and does not require brushing . . . [;]

Goal #7, Grooming (Shaving)[:] [As of March 2014, Claimant] is able to shave independently. However, he requires an average of 4 prompts to shave certain parts of his face that he may have missed. Also, to prevent “stuckness,” a visual picture of a face is taped on the mirror where the staff will point to the area of the face that may require more shaving.

Updated Goal[:] By April 2015, [Claimant] will be able to shave independently, with 100% accuracy. . . [;]

Goal #8, Hygiene (Brushing Teeth)[:] As of February 2014, this goal is met. [Claimant] is able to brush his teeth independently. In addition, he is able to get and rinse his mouth with mouthwash.

Goal #9, Hygiene (Showering)[:] As of March, 2014,] this goal is met. [Claimant] is able to complete a shower within 25 minutes regularly. However, he requires one prompt per opportunity to adjust the water to appropriate temperature as he will often set the temperature to hot only.

Updated Goal[:] By April 2015, when preparing to shower, [Claimant] will adjust the water temperature to warm, with 80% accuracy. . . [;]

Goal #10, Emotional Coping (Replacement Behavior)
[:] [As of March 2014, Claimant] will engage in coping strategies such as taking deep breaths when presented with less preferred instructions, in 43/% of opportunities [decreased from 55% in September 2013]. . . [;]

Updated Goal[:] By April 2015, [Claimant] will engage in appropriate coping strategies (i.e. taking a deep breath, stating emotion, asking for a break, etc.) in the absence of maladaptive behaviors (self-injurious behaviors) during emotionally upsetting situations, with 80% accuracy . . . [;]

Goal #11, Flexibility[:] As of March 2014, this goal is met. Per parent report, [Claimant] has been flexible with changes in routine. However, the occurrences of "stuckness" have inhibited [Claimant] from transitioning fluidly . . . [;]

Goal #12, Attention[:] As of March 2014, this goal is met. When presented with a task or activity, [Claimant] is able to sustain attention to the task until completion with 100% of opportunities. However, the occurrences of "stuckness" may prolong the completion of the task.

Goal #13, Gaining Attention[:] [As of March 2014, Claimant] gains attention appropriately in 70% of opportunities [increased from 35/5 in September 2013] [:]

Updated Goal[:] By April 2015, [Claimant] will engage in appropriate behavior to gain someone's attention (i.e. gently tapping someone, gestures, name, etc.) in the absence of maladaptive behaviors, with 80% accuracy . . . [:]

Goal #14, Safety/Environmental Awareness[:] [As of March 2014, Claimant] is able to safely cross streets and walk through parking lots (alongside cars) in 100% of opportunities. . . [:]

Updated Goal[:] By April 2015, [Claimant] will exhibit improved safety/environmental awareness by adhering to 5 different safety or community signs, with 80% accuracy. . . [:]

Goal #15, Leisure Activity[:] As of March 2014, this goal is met. [Claimant] is able to engage in the following activities: watching TV/movies, reading books, playing Wii, playing board games, and listening to music. . . [:]

Goal #16, Social Cues [previously identified as Goal #17:] As of March 2014, CARD will generalize this skill.

[Claimant] continues to say "bless you" when others sneeze. When he is in an environment with other people, he will move aside if he is in someone's way. However, when he screams in the community, he does not attend to the social cues of others.

Goal #17 Shopping List [a newly-added goal:] By April 2015, [Claimant] will be able to create a shopping list, make the purchases from the list, and purchase the items, with 80% accuracy . . .[:]

(Exhibit 9.)

15(d). In the April 2014 progress report, CARD noted that "[Claimant's mother] shared that [Claimant's] 'stuckness' has been of primary concern as these occurrences inhibit him from efficiently completing tasks in the home and community settings. In addition, these occurrences have prevented [Claimant] from being able to attend school regularly. [Claimant's mother] reported that she is working on getting authorization to have [Claimant] assessed by a neurologist who may be able to provide additional recommendations which may assist in decreasing the frequency and duration of [Claimant's] 'stuckness.'" (Exhibit 9.) CARD also noted that, Claimant's mother "is required to be present during all regional center funded therapy sessions, and has demonstrated the ability to effectively intervene with [Claimant's] maladaptive behaviors. In addition, she also suggested ideas that assisted in helping move [Claimant] along when he gets 'stuck.'" (Exhibit 9.)

15(e). CARD's Summary and Recommendations included the following:

[Claimant] has demonstrated progress in his CARD program as evident by the goals that he has met. In terms of skill acquisition and generalization, [Claimant] has maintained/achieved the following: . . . [Claimant] is able to shower independently, brush his teeth and use mouthwash, make his own bed, and apply deodorant; . . . [Claimant] is able to make purchases at stores and at restaurants, he is able to prepare some simple meals, he is able to sustain attention to a task or activity until its completion; . . . [Claimant] has exhibited an increase in his verbal communication with others when manding for activities or items and making comments; . . . [Claimant] is able to follow multiple steps instructions; and . . . [Claimant] has demonstrated improved inhibition of maladaptive behaviors and improved emotional coping skills. [Claimant] has also demonstrated improved flexibility across all activities. . . . In terms of maladaptive behaviors, [Claimant] no longer engages in aggression towards others as of January 2014. . . . While [Claimant] continues to engage in non-compliance, self-injurious behaviors, vocal stereotypy, physical stereotypy, and ritualistic behaviors, the CARD therapy team is able to easily redirect. In regards to "stuckness," typically [Claimant] will be "stuck" on average of 1 minute to 3 hours.

However, there have been a few occurrences where [Claimant] has been stuck for 6-7 hours. . . .

While [Claimant] has demonstrated progress in his CARD program, he continues to maintain difficulties. When reviewing areas of skill deficits, [Claimant's mother] reported that [Claimant] previously mastered various skills and is able to be independent. However, due to the "stuckness," [Claimant] has not been able to demonstrate efficient execution of skills. . . .

[Claimant] has not demonstrated regression. Therapy sessions have been consumed by the occurrences of "stuckness." While [Claimant] has demonstrated some successes where he is able to go about his day with few occurrences of "stuckness," these days have not been consistent. . . . Per discussion with [Claimant's] mother, she has reported that without the consistent evening staff (currently [Claimant] has two evening sessions per week) and afternoon weekend staff, [Claimant] is exhibiting extended durations of getting stuck. However, per CARD data, the patterns of "stuckness" has demonstrated a consistent trend. . . .

CARD has encouraged [Claimant's mother] to continue to present [Claimant] with opportunities to engage in his daily routines in the absence of CARD staff to maintain consistency for [Claimant]. Per observation, [Claimant's mother] has demonstrated

the ability to assist in helping [Claimant] move along when he is "stuck." [Claimant's mother] also reported that she needs to complete daily chores and run errands and that she is unable to do so without support. . . .

As a result of the above-mentioned delays and difficulties, it is recommended that [Claimant] receives [sic] 25 hours of direct ABA services per week [108 hours per month of 1:1 direct therapy]. . . A decrease in therapy hours has been recommended due to the rate of [Claimant's] skill acquisition. . . .

Due to the occurrences of [Claimant's] current excesses and [Claimant's mother's] household responsibilities, it is also recommended that [Claimant] receives [sic] behavioral respite services in the absence of CARD Staff. To ensure consistent implementation of behavioral strategies and promotion of appropriate behaviors, it is recommended that CARD provides training to behavioral respite staff . . .

[¶] . . . [¶]

Also, due to the nature of [Claimant's] maladaptive behaviors (i.e. "stuckness"), it is recommended that

[Clamant] be assessed by a neurologist to address potential medical conditions and possible treatments.

(Exhibit 9.)

15(f). SGPRC agreed to fund CARD's recommended reduced 1:1 direct therapy hours for Claimant (108 hours per month /25 hours per week). However, Claimant's mother did not agree with the reduction.

16. In April 2014, Claimant returned to the school district's transition program. Summer break began in June, and Claimant is expected to return to the transition program in August 2014.

17(a). Claimant is currently receiving 130 hours per month (30 hours per week) of 1:1 direct therapy through CARD, 30 hours per month of behavioral respite with behaviorally-trained staff from Behavioral Respite in Action (BRIA), music therapy and counseling through Dr. Rhodes.

17(b). Claimant's mother is his service provider for In-Home Supportive Services (IHSS), providing all of the service hours, estimated between 230 to 250 hours per month. Claimant's IHSS hours, his CARD service hours (45 hours per week through school district and 30 hours per week through regional center), and his BRIA respite add up to approximately 19 hours per day.

18. In a Notice of Proposed Action (NOPA) dated May 19, 2014, SGPRC informed Claimant's mother that it intended to decrease Claimant's 1:1 Direct Behavior Intervention hours from 130 hours per month to 108 hours per month, based on CARD'S April 2014 recommendation. The NOPA further cited to Welfare and Institutions Code sections 4646, subdivisions (a) and (b), 4646.4, subdivision (a)(1), 4646.5, subdivision (a)(1) and (a)(2), and 4886.2, and specifically noted;

Welfare and Institutions Code section 4686.2, defines "intensive behavioral intervention" to include any form of applied behavioral analysis "that is comprehensive, designed to address all domains for functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate." (Emphasis added.)

(Exhibit 1.)

19. On May 27, 2014, Claimant's attorney filed a request for fair hearing on Claimant's behalf, seeking to maintain the current number of Service Agency funded ABA hours. (Exhibit 1.)

20. At the fair hearing, Betty Tia, Clinical Lead Manager Designee with CARD, testified on behalf of the Service Agency. Ms. Tia has a Master's degree in ABA, and is a Board-certified Behavioral Analyst. Her credible testimony established the following:

- (a). Ms. Tia wrote the April 2014 progress report for CARD. She stands by her recommendation to reduce direct therapy hours from 30 hours to 25 hours per week, due to Claimant's demonstrated progress toward his goals. She has observed that he is "very successful with skills sets if you take out the 'stuck' behavior" which is "one of the primary challenges to [Claimant] performing a task." In the middle of a routine or transition, Claimant will engage in "non-activity" and will not move for a few seconds to almost three hours. This is atypical behavior which she has not previously observed in other children suffering from

Autism Spectrum Disorder. Ms. Tia recently recommended assessment by a neurologist to explore possible medical causes of the “stuckness.”

(b). CARD services for Claimant are provided in-home and at school. All of the 30 hours at school (6 hours per day) and 15 of the in-home hours (mornings preparing Claimant for school and afternoons transitioning to home) are funded by his school district, Monday through Friday during the school year. The remaining in-home/community hours, from 4:00 p.m. through 8:00 p.m. on weekdays, and five varying hours on Saturdays and Sundays, totaling 130 hours per month, are funded by SGPRC.

(c). CARD has not been able to staff all of the hours authorized by SGPRC, and is currently short at least 2-3 hours per week. The reasons for the staffing shortage include a change in staff, unavailability of staff in general, unavailability of male staff, and available staff’s lack of a required Bachelor’s degree. However, Ms. Tia did not believe that the staff shortage could have caused any change in Claimant’s behavior. When asked if she would ever recommend reduction in hours due to CARD’s lack of staff, Ms. Tia said, “no,” pointing out that that would be clinically and ethically inappropriate since she must look at the best interests of the child.

(d). Ms. Tia acknowledged that the most beneficial, evidence-based level of ABA services is 40 hours across all settings. She also acknowledged that Claimant had been receiving 75 hours per week of ABA services funded by the school district and SGPRC. However, she maintained that, at this time, Claimant’s needs will be met at 25 direct service hours per week, funded by SGPRC.

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21. Elizabeth Annamraju also testified on behalf of the Service Agency. She agreed with CARD's recommendation, noting that she will "typically defer to vendors' recommendations [because they] see the clients on a daily basis." She also acknowledged that the national standard for providing ABA services is 40 hours across all settings, including school and home. When asked why the regional center would authorize hours far exceeding the 40-hour standard, Ms. Annamraju noted that if a vendor can justify the hours, the regional center will accommodate them if possible. However, the expectation is to see progress and an eventual decrease in services.

22. Jon Hope, SGPRC's Associate Director of Client Services, and Manager of Autism Services, also testified on behalf of the Service Agency. His credible testimony established the following:

- (a). Mr. Hope agreed with CARD's initial April 2013 recommendation of 87 hours per month (20 hours per week) of 1:1 direct therapy in the home. Although he did not agree with the May 2013 recommendation of 225 hours per month (52 hours per week) of 1:1 direct therapy in the home because he did not feel it was appropriate to fund that level of services. However, he knew that in prior months CARD had been unable to fulfill authorized service hours, so he agreed to fund the recommended hours as "makeup hours," with the understanding that it would be temporary. After receipt of Ms. Annamraju's July 2013 report, he did not seek to change the number of service hours because he understood that Claimant's parent was not in agreement with such a change and he "wanted to give the vendor a chance," and he wanted to "cooperate and support [Claimant's] parent." He agreed with the

reduction of services to 30 hours and the current recommendation to reduce the hours to 25 per week. Even with the reduction, SGPRC will still be funding "a very intensive behavioral program with a high level of support."

(b). Mr. Hope acknowledged that the number of direct ABA service hours Claimant is receiving is "far beyond the statutory standard," which is 40 hours per week. When asked why he continued to fund at that level, he noted that it was "what the parent has asked for," and Claimant "is making progress."

23. Claimant's mother testified on Claimant's behalf. She disagreed with several of CARD's progress report findings regarding Claimant's progress, noting that she did not believe he was doing as well as documented and asserting that he had been progressing much better through IABA, where he was doing "outstanding." She also pointed out that several of Claimant's acquired skills have decreased since CARD's recent problems with staffing. She also noted that, when Claimant began receiving services with CARD, his periods of "stuckness" were longer, and when CARD staffing is consistent, it improves.

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LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's proposed decrease of Claimant's 1:1 direct behavior intervention hours from 130 hours per month to 108 hours per month is denied. (Factual Findings 1 through 23; Legal Conclusions 2 through 9.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See Evidence

Code sections 115 and 500.) Thus, in attempting to decrease Claimant's 1:1 direct behavior intervention hours, SGPRC bears the burden of proving by a preponderance of the evidence that the decrease is appropriate to meet Claimant's needs and the goals stated in Claimant's IPP. SGPRC has met its burden.

3. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he 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.

(Emphasis added.)

4. Welfare and Institutions Code section 4646, subdivision (a) provides:

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. (Emphasis added.)

5. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

[¶] . . . [¶]

(5) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The individual program plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

6. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and

supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made."

(Emphasis added.)

7. Pursuant to the Lanterman Act, an IPP must include a statement of the consumer's goals and objectives, based on the consumer's needs and preferences. Services provided a consumer must be effective in meeting the consumer's IPP goals, and there must be reasonable progress toward objectives.

8(a). According to Claimant's IPP, the purpose of his ABA services was to decrease target behaviors (self-stimulation, self-injurious behavior, and physical aggression), and to increase the frequency of replacement behaviors, and to teach skills to increase his independence. In 2013, CARD formulated several goals to address the IPP objectives, and Claimant has made reasonable, steady progress in his ABA therapy. The evidence established that CARD's services have been effective in progressing toward meeting Claimant's IPP objectives, even with the added complication caused by is non-compliance ("stuckness"). After a year of CARD services, Claimant has met several identified goals and worked toward updated goals, and his targeted behaviors have decreased. Given his progress,

CARD has determined that Claimant's needs can be met with 25 hours per week of regional center funded ABA services. No other expert has opined otherwise. Consequently, continuation of Claimant's ABA services at a decreased number of hours per week (25 hours per week), as recommended by CARD, is appropriate to meet Claimant's needs.

8(b). While Claimant's mother was concerned about Claimant regressing due to CARD's staffing issues, this concern was not sufficient to establish that CARD's recommended five-hour-per-week decrease would be detrimental to Claimant's progress. As Claimant's mother acknowledged, when CARD staffing is consistent, Claimant's "stuckness" improves. Consequently, once the staffing issue resolves and CARD is consistently providing all of the recommended/authorized hours, these should be sufficient to meet Claimant's needs.

9(a). The NOPA cited Welfare and Institutions Code section 4686.2, as one of the statutory bases for its proposed action. Welfare and Institutions Code section 4686.2, subdivision (d)(2), defines "intensive behavioral intervention" as "any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress." However, this is a definition, not a mandated limit of funding.

9(b). Additionally, although Ms. Tia acknowledged that the evidence-based level of ABA services is 40 hours across all settings, she maintained that at this time, for regional-center funded hours, Claimant's needs will be met at 25 hours per week. Ms. Annamraju agreed with this recommendation, deferring to the vendor's recommendations despite the asserted 40-hour standard. Furthermore, while Mr. Hope knew that Claimant's ABA direct service hours are

“far beyond” 40 hours per week, he continued to fund at this level, because it was “what the parent has asked for,” and Claimant “is making progress.”

10. Given the foregoing, SGPRC’s proposed decrease in funding for Claimant’s 1:1 direct behavior intervention hours from 130 hours per month to 108 hours per month, as recommended by CARD, was appropriate.

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ORDER

San Gabriel Pomona Regional Center’s decrease of funding for 1:1 direct behavior intervention hours from 130 hours per month to 108 hours per month is upheld.

Claimant’s appeal is denied.

DATED: July 31, 2014

JULIE CABOS-OWEN

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.