

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

EASTERN LOS ANGELES

REGIONAL CENTER,

Service Agency.

DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Alhambra, California, on October 3 and 7, 2014.

Matthew M. Pope, Attorney at Law, represented Claimant. Claimant's father attended the hearing. Claimant was not present at the hearing.

Arturo De LA Torre, Supervisor, Family Services & Supports, represented Eastern Los Angeles Regional Center (ELARC or regional center.)

Oral and documentary evidence was received and the record was left open to allow claimant to submit curricula vitae (CV) for his expert witnesses who testified at the hearing. The CVs were received on October 8, 2014, and admitted as Exhibits H and I. Claimant also submitted a list of publications along with further written argument. The regional center objected to the list of publications. On October 14, 2014, the undersigned issued a written ruling sustaining the objection. The written ruling and the list of publications are marked collectively Exhibit J for identification only. The matter was submitted for decision on October 14, 2014.

ISSUE

1. Is the decision to terminate claimant's discrete trial training (DTT) as proposed by the regional center appropriate?
2. Was claimant entitled to DTT services during the pendency of these proceedings?

FACTUAL FINDINGS

1. Claimant is a 21-year-old male with an autism diagnosis.

BACKGROUND AND PRIOR HISTORY

2. ELARC has funded 20 hours per week of DTT for claimant through REACH Integrated Services (REACH), since July 2003. Claimant has received DTT for more than 13 years.

3. REACH is a non-profit organization started by claimant's father. He has been a board member since its inception and has recently served as President of the board.

4. ELARC initially attempted to terminate DTT services in 2010. Claimant appealed and the matter went to hearing. On October 3, 2011, Administrative Law Judge Amy Lahr issued a decision granting claimant's appeal of ELARC's decision to terminate DTT services.

5. On September 20, 2012, ELARC issued a decision terminating the vendorization of REACH for non-compliance with the vendorization requirements set forth in California Code of Regulations, title 17, section 54370, subdivision (a). In its decision, ELARC alleged that the service then provided by REACH was not the same service that ELARC approved for vendorization. In support of its decision, ELARC cited late and unsigned progress reports, failure to name the interventionist providing the service, serving consumers longer than four years, failure to develop fade-out and

transition plans, and failure to cooperate with ELARC in consumer planning. REACH appealed ELARC's decision to terminate vendorization to the Department of Developmental Services (Department). On April 8, 2013, the Department issued a written decision reversing ELARC's decision to terminate REACH's vendorization. In its decision, the Department stated that the above mentioned performance standards are not requirements of Regulation section 54342, subdivision (a). Nor did REACH's alleged failure to meet these performance standards, as alleged by ELARC, "indicate that the provision of services is other than for which REACH had been vendored."

FACTUAL FINDINGS REGARDING CURRENT DISPUTE

6. On April 1, 2014, ELARC issued claimant with a Notice of Proposed Action (NOPA), seeking to terminate its funding DTT services effective June 30, 2014. The stated reason in the NOPA for the termination of DTT funding was set forth as follows:

Based on ELARC clinical team review of entire case file and progress reports relevant to DTT services, it has been determined that these services are no longer appropriate. [Claimant] receives 20 hours per week of DTT services, which is an unusually high number of hours for a consumer who has been receiving the service for 10+years. DTT service is time-limited to approximately 2 to 4 years. DTT intensive behavioral services are designed to typically benefit children under age 9. [Claimant] is 19 years of age. ELARC is also currently providing 16 hours a month of Adaptive Skills Training. Because of [claimant's] needs, this service is more appropriate. Attempts in the past to discontinue DTT have not been successful. Clinical reviews in the last few years

have been consistently indicating the need to discontinue the service. (Exhibit 1)

7. ELARC also asserted in the NOPA that although the REACH progress reports mention a fade out plan, "no measurable goals have been proposed to transfer skills to a parent role and thus continued dependence of the service remains evident."

8. The NOPA was sent by both standard U.S. mail and certified mail on May 8, 2014. On May 20, Gabriella Moreno, claimant's service coordinator, sent an email to respondent's father informing him of the NOPA and that he had until May 21, to file a request for hearing. Claimant filed an appeal on May 29, 2014. Claimant's father testified that he was out of the country from May 7 to May 20, 2014. When he returned home, he saw a post office notice of certified mail and picked up his certified mail including the NOPA on May 22. Claimant's father further stated that since he actually received the NOPA on May 22, he believed that he had ten days (until May 31) to file a request for hearing. He then took the NOPA to attorney Pope who filed the request for hearing on May 29, 2014.

9. Claimant's most recent Individual Program Plan (IPP), dated July 19, 2013, noted that he displays temper tantrums approximately once per week, but behavior will vary month-to-month. He "also has a history of engaging in aggression (i.e., pushing others) and self-injurious behaviors (i.e., hitting his face and/or cheek)." Father reported that claimant's tantrums have no consistent pattern and can vary from week to week. [Claimant's] behaviors consist of aggression, whining, screaming, hissing, grunting and self-injurious behavior. Claimant is triggered by common events such as when things are taken from him, when he is denied requests, and when he is presented with a non-preferred task. The IPP also notes that Claimant and his family wish to improve his social-emotional skills. Under the section "Services and Supports Needed," the IPP stated that ELARC is currently funding 20 hours per week of DTT. (Exhibit 9)

10. In support of its proposed action, ELARC relied on the recommendations of Heike Ballmaier (Ballmaier), Psy.D. Ballmaier is a Psychologist and a Board Certified Behavior Analyst. She has been a psychologist/behavioral consultant for EALRC since 2006. As part of her duties, Dr. Ballmaier evaluates requests for behavioral services and offers recommendations for the type and level of intensity of treatment services. In addition, Dr. Ballmaier designs behavioral programs in all settings including schools, home, residential facilities, and state hospitals.

11. Dr. Ballmaier testified that ABA-DTT has certain critical components, including measurable short and long-term goals, decreasing behaviors, progress reports consisting of relevant data to determine if goals have been or are being met, and parent education and involvement. Since November 2008, based on a review of Claimant's REACH progress reports and other records, Dr. Ballmaier has continuously recommended that a fade-out plan should be designed to eventually fade-out DTT services. She testified that behavioral services are time-limited and intensive behavioral services are typically intended for a maximum period of two to four years, and on some occasions as much as six years. According to Dr. Ballmaier, there is a developmental window of opportunity for gains resulting from DTT, and when gains from treatment level off, DTT should be faded out and in its place a consumer should receive adaptive skills training (AST) with DTT principles. Finally, Dr. Ballmaier stated that to continue a treatment such as DTT that is no longer effective presents an ethical question.

12. Dr. Ballmaier opined that, based on her review of REACH's progress reports (Exhibits 14A, 15A and 16A), claimant was no longer making sufficient progress to justify continuing the service. According to Dr. Ballmaier, if there is no progress, then there is a danger that DTT would become a baby sitting service that is relied upon by the parents. When gains from treatment level off, such as in claimant's case, DTT should be faded out and in its place a consumer should receive adaptive skills training. Dr.

Ballmaier recognizes that claimant presents a complex case and that he will need services and supports throughout his life. She nevertheless recommends that DTT should be faded out and replaced with AST with DTT principles.

13. In support of her opinion, Dr. Ballmaier referenced four published research studies (Exhibits 18, 18A, 18B and 18C).

(a) Exhibit 18 is a publication entitled "Outcome for Children with Autism Who Begin Intensive Behavioral Treatment between Ages 4 and 7." In the Discussion section of this publication, the author writes "Interestingly, age at intake predicted neither treatment outcome nor gains in treatment for children in the behavioral group, suggesting that this variable may not be as important for outcome as previously thought (Citation). Similar findings have been reported for younger children. However, other investigators have reported a relation between age at intake and treatment outcome, perhaps because of their inclusion of children with a wider age range than in the present study. Because identification of the age range during which intensive ABA is most effective has important ramifications for public policy, further research to resolve the conflicting findings is warranted." The author also noted that the study had several limitations, including "quasi-random rather than random group assignment, small sample size, and no direct quality control measures of treatment."

(b) In the second publication, "Early Intervention in Autism" (Exhibit 18A), the writer concluded that early intervention leads to better outcomes. In addition, the author noted that prior studies demonstrated that children make greater gains when they receive intervention at a younger age.

(c) The third research publication, "Age at Intervention and Treatment Outcome for Autistic Children in a Comprehensive Intervention Program" (Exhibit 18B),

involved a study of 18 children with Autism, nine of whom received intensive intervention services prior to age 60 months and nine of whom began receiving ABA serves after 60 months of age. The author noted that six of the nine children in the younger group received positive outcomes, while only one of nine of the older group of children received a positive outcome. However, the author of the publication noted that "broad interpretation of these results, however, is limited by small sample size and by less than optimal research design."

- (d) The fourth publication entitled "A Perspective on the Research Literature Related to Early Intensive Behavioral Intervention for Young Children with Autism" (Exhibit 18C) concludes that: "Although there is very little professional disagreement that early intervention is important and beneficial for youngsters with autism, it remains the case that most children diagnosed with autism spectrum disorders continue to have significant functional difficulties throughout the lifespan. It is also the consensus of professional literature that a variety of educational and therapeutic techniques helps children with autism at all levels of functioning to develop skills, interests, and relationships."

14. The research publications cited by Dr. Ballmaier dealt specifically with young children. She testified that there have been no publications that have been based on research regarding the effectiveness of ABA or DTT on adults with autism. A close review of the research publications shows that there were limitations on the underlying research studies such as small sample size, flawed research designs, and a lack of direct quality control measures of treatment (Exhibits 18 and 18B). Further, there was somewhat of a conflict among the research studies. One study concluded that age at intake predicted neither treatment outcome nor gains in treatment for children in the behavioral group, potentially reducing the importance of this factor (Exhibit 18), while

another study concluded that early intervention leads to better outcomes (Exhibit 18A). Because of the above described limitations of the research studies, the undersigned cannot extrapolate the conclusions set forth in the publications to find that ABA (DTT) is not an effective treatment for adults who suffer from autism.

15. Dr. Ballmaier never personally evaluated Claimant; rather she based her opinion and recommendations on record review, including progress reports, on research in the area, and on her experience and education.

16. Claimant presented the testimony of Betty Joe Freeman, Ph.D., a psychologist. Dr. Freeman is a retired professor who taught at the UCLA School of Medicine from 1973 through 2003. Dr. Freeman performed an evaluation of claimant, and issued a report dated May 5, 2014. Dr. Freeman spent 45 minutes with claimant. She testified that claimant engaged in constant repetitive behaviors and was inattentive to tasks. Claimant also exhibited some aggressive behavior during the assessment. Dr. Freeman conducted the following tests: Differential Ability Scales II (DAS II); Adaptive Behavior Assessment System II (ABAS II); Vineland II, Adaptive Behavior Scales (Vineland II); and Social Skills Responsiveness Scale II (SRS II). The results of the above tests are as follows:

- (a) In the DAS II, claimant scored at two year, two months age equivalent in verbal comprehension, and a naming vocabulary score of seven years, one month. Dr. Freeman noted that claimant had a relatively good vocabulary; however, he presented with significant language processing problems.
- (b) The ABAS II, according to Dr. Freeman, is a more meaningful assessment for claimant because it is based on his daily social adaptive functioning in multiple skill areas. Claimant's scores were in the extremely low range in almost all specific adaptive skill areas.

- (c) The Vineland II is an additional measure of personal and social skills necessary for everyday living. Claimant's age equivalent scores were at the first percentile in all areas. For example, claimant had a two year-eleven month age equivalent score (AES) in receptive language and a one year-four month AES in expressive language. Claimant's daily living scores were between the six and eight-year-level in the daily living skills area, and the three year level in socialization.
- (d) SARS II identifies social impairment associated with autism spectrum disorders and quantifies its severity. Claimant received scores indicating moderate deficits in the areas of social cognition, social communication, social interaction, and social motivation. The results suggest clinically significant deficits in reciprocal social behaviors that result in moderate interference in claimant's every day social interactions.

17. In her report, Dr. Freeman concluded:

[Claimant] remains substantially disabled in all areas. Thus it is mandatory that [claimant] continue to receive services based on the principles of ABA (DTT in the nomenclature of ELARC). Applied Behavior Analysis, employing Discrete Trial Training as a structured teaching technique, is a comprehensive process that focuses on systematically reducing behaviors which interfere with learning, while simultaneously teaching productive replacement skills. Learning to learn, communication, socialization and leisure skills are best taught through this systematic format by creating continuous teaching opportunities and reinforcement while simultaneously focusing on generalizing

these skills into increasingly natural environments. . . .
[Claimant] continues to require very substantial support, as he is at a critical stage in his development and without continued ABA services he will require even more intensive support and would need a higher level of care in the future as he ages. (Exhibit C)

18. In addition to Dr. Freeman, claimant presented the testimony of Mitchell Todd Taubman, Ph.D., a psychologist who has extensive training and experience in ABA and DTT. He teaches as an Adjunct Professor in the following three universities: (1) in the Behavior Analysis Department at St. Cloud State University; (2) in the Department of Applied Behavioral Science at the University of Kansas; and (3) in the Department of Behavior Analysis at the University of North Texas. Dr. Taubman is also the Co-Director for Autism Partnership, and is a vendored psychologist for the Department of Developmental Services. In addition, Dr. Taubman has given talks and presented numerous papers at annual meetings and conventions of the Association for Behavior Analysis, and at meetings and conferences held by other organizations. Dr. Taubman also has clinical experience in providing DTT services to adults while he was Clinical Director at Straight Talk Clinic and as Clinical Director for the Behavior Therapy and Learning Center.

19. Dr. Taubman testified that DTT involves the breaking down of instructional content, and providing instruction, repetition and structure, along with management of behavior. Progress is measured by behavior improvement, achievement of ability or skills, and the transferring the achievements and improvement to every day usage. Dr. Taubman stated that DTT is not limited to children but is also appropriate for adults. Indeed, it could be a life-long service to some individuals. During the five-year period that Dr. Taubman was Clinical Director at Straight Talk Clinic, he oversaw the provision

of DTT services to developmentally disabled and mentally ill adults in residential facilities.

20. Ann Simun, Psy.D., performed an evaluation of claimant and issued a report dated September 6, 2011. (Exhibit B.) Dr. Simun also reviewed Claimant's REACH progress reports. Dr. Simun interviewed claimant's therapist and his father, and observed claimant during structured and unstructured time with his therapist. Dr. Simun then spent five hours performing the assessment, including two hours testing claimant utilizing various testing instruments, including the following:

- (a) Claimant's cognitive skills were assessed using the Southern California Ordinal Scales of Development. The results showed that claimant's general level of cognition is at the Intuitive Level, but that he has skills at the concrete. Both results suggest that claimant is below expectancy, but that he is continuing to learn and develop.
- (b) On the Gray Oral Reading Test, claimant was able to read at the 2nd grade level.
- (c) Claimant scored in the Severely Impaired range in the Comprehensive Assessment of Spoken Language test. He was able to answer some basic personal questions such as his name, but made echolalic errors on some tasks (Billy is three, how old are you? "Three."). This appeared to be due to poor comprehension of the question. His score was consistent with that of a four-year-old.
- (d) Claimant's score in the Academic Knowledge subtest of the Wookcock Johnson Test of Achievement, 3rd Edition, was consistent with that of a four-year-old.
- (e) Claimant's functional skills were tested informally. He was able to tell time to the hour, count objects, match numerals to quantity, read common signs

(stop, walk, exit, etc.), and identify coins and bills. He was also able to brush his teeth, dress, and use the toilet semi-independently.

21. Dr. Simun concluded that claimant continues to have a high level of problem behaviors, despite the intervention. Claimant has learned some replacement behaviors, but continues to have difficulty applying new skills when he is upset. In the conclusion of her report, Dr. Simun wrote:

There has been limited generalization of the compliance and reducing of negative behaviors to other adults outside the behavior therapist. . . . Safety continues to be a significant concern in the household. Although elopement from the house has decreased with environmental controls, when [claimant] does leave, his parents can no longer catch him. Verbal methods of control are minimally effective once he is upset or moving.

[Claimant] is physically dangerous to himself and others on a regular basis, specifically, running in front of cars, biting his arm, hitting himself in the face and leg, and hitting and pushing others. The frequency of external aggression, even with a high level of intervention continued to be high. This indicates that he needs to continue with the service at the current level and possibly increase the amount of parent training in addition to the behavioral training directly with [claimant].

Given the severity of [claimant's] behaviors, and the evidence that many of the interventions are working (although with some variability) it is imperative that behavioral service continue at their present level and not be reduced. His need is very high, and the risks to him and his family are great if his support is reduced or withdrawn at this crucial time in his life. The data appear to show that [claimant] increased his aggression, tantruming and SIB (self-injurious behavior) when his services were reduced. . . . Elimination of DTT services will likely lead to an inability for [claimant] to be maintained in his own household, and leading to a much more restrictive living situation. (Exhibit B at p. 7)

22. Claimant's father testified at the hearing. He explained that prior to receiving DTT, Claimant was constantly tantruming, crying, and he was non-verbal. Claimant was delayed in all areas and his parents could not ever leave him unattended. By the age of seven, claimant began engaging in self-injurious behaviors. He would also elope on occasion.

23. REACH began working with claimant in 2003. At that time, in addition to the above mentioned behaviors, claimant had no independent living skills. From the beginning, claimant's parents participated in claimant's DTT. They have learned to implement DTT strategies. With REACH's guidance, Claimant's parents have helped him learn many skills and overcome obstacles. For example, claimant's parents are now able to take him to certain restaurants and movie theaters by applying DTT techniques. They started by taking claimant to one restaurant a number of times applying DTT techniques until he became comfortable with that particular restaurant. It took seven years of DTT for claimant to be able to eat a meal at a restaurant without behaviors. Claimant's

parents have taken him to over forty restaurants over the past few years. Claimant's parents have also taken him to the theater to see Phantom of the Opera, during which he behaved well throughout the entire production. Parents helped claimant to accomplish this by showing him the movie version many times starting with a few minutes at a time and increasing the viewing time until he was able to sit through the entire movie without becoming frustrated or temperamental. According to claimant's father, DTT has been the primary reason for claimant's behavioral gains over the past few years. According to claimant's father, claimant's progress has been slow, but he has made progress nonetheless.

24. Claimant's parents' ultimate goal is for Claimant to be self-reliant, and in that regard, they do not want him to receive DTT services indefinitely. However, Claimant's father thinks that Claimant still has many maladaptive behaviors that need to be addressed, such as his self-injurious behaviors and elopement issues. To be sure, claimant's progress from DTT is slow, but he continues to benefit from it. Claimant's parents want Claimant to have the opportunity to become as independent as possible.

DISCUSSION

25. The decision on whether DTT is appropriate for adults and whether it is continuing to benefit claimant in this case must be decided in large part by a thorough review of the expert testimony. The experts who testified in this case all have outstanding credentials and extensive education, training and experience in ABA and DTT. Dr. Ballmaier has extensive clinical experience and is Board Certified Behavior Analyst. Dr. Freeman is a Professor Emerita at UCLA, and is a nationally recognized expert in the treatment of Autism Spectrum Disorders. Dr. Taubman has extensive clinical experience in ABA and DTT, and teaches ABA principles at the university level. Although there was a substantial amount of evidence introduced in this case on the issue of DTT, there was no clear-cut un rebutted evidence regarding the effectiveness of

DTT on adults. The publications cited by Dr. Ballmaier on the effectiveness of DTT were limited to research studies of children and, as noted in Factual Finding 14, there were limitations on these studies such as small sample size, flawed research designs, and a lack of direct quality control measures of treatment. Finally, all three experts agreed that there were no studies specifically addressing the effectiveness of DTT on adults. Clearly, there is disagreement among the experts in the field on this issue. Therefore, it was not established and the undersigned cannot conclude that DTT is not an effective treatment for adults.

26. The question remains: Does DTT continue to be an effective treatment for claimant? At first glance, the fact that claimant has been receiving DTT for 13 years seems like an inordinately long time. Dr. Ballmaier made salient points supporting her contention that a fade-out is necessary in this case. Her testimony was clear, concise and credible. However, Dr. Ballmaier has never personally assessed claimant. This is a factor that affects the weight that is given to her opinion. In contrast, claimant's expert, Dr. Freeman, conducted a thorough assessment of claimant in May of this year. Her opinion that it is imperative that claimant continue to receive DTT services because of the critical stage of his development, is supported by the written report issued by Dr. Simun, who assessed claimant in 2011. Dr. Simun spent five hours assessing claimant, which included a substantial amount of time observing claimant with his DTT therapist. In addition to Dr. Freeman's testimony and the reports issued by Drs. Freeman and Simun, claimant's father's testimony regarding the daily benefits that claimant receives from his DTT, was based on his personal observations and his substantial participation in claimant's DTT. Based on the totality of evidence presented in this case, ELARC did not establish that claimant is no longer benefiting from DTT. In fact, the evidence established that claimant continues to make gains in his behaviors as a result of his DTT services.

27. ELARC is providing adaptive skills training (AST) for claimant; however, AST is not a substitute for DTT. AST focuses on independent daily living skills, such as dressing and grooming but does not address behavior issues.

28. ELARC contended that the fact that claimant's father is active in REACH's governing board influenced REACH's staff to issue biased progress reports recommending that DTT services should be continued. While the potential exists for employees of REACH to be influenced in this manner, there was no competent evidence presented to support ELARC's contention.

LEGAL CONCLUSIONS RE: DTT SERVICES

1. Cause exists to grant Claimant's appeal and reverse ELARC's decision to terminate Claimant's DTT, as set forth in Factual Finding numbers 1 through 28, and Legal Conclusion numbers 2 through 4, below.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act), incorporated under Welfare and Institutions Code section 4500 et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[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." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Applying those provisions here, Claimant's appeal must be granted. ELARC did not demonstrate that its decision to terminate DTT was supported by the evidence. As noted in Claimant's IPP, he has continuing needs with self-injurious behaviors, which his DTT program addresses. Alternative services proposed by ELARC may assist in meeting those needs, but the evidence did not show that they should supplant them. Accordingly, Claimant's DTT may not be terminated at this time.

LEGAL CONCLUSIONS RE: FUNDING DTT SERVICES PENDING HEARING

5. Claimant contends that ELARC should have provided DTT services during the pendency of these proceedings pursuant to Welfare and Institutions Code section 4701, subdivision (n), which states in part: "That if a request for a fair hearing by a recipient is postmarked or received by a service agency no later than 10 days after receipt of notice of proposed action mailed pursuant to subdivision (a) of Section 4710, current services shall continue as provided in Section 4715." Welfare and Institutions Code section 4715, subdivision (a) provides that "[E]xcept as otherwise provided in this section, if a request for hearing is postmarked or received by the service agency no later than 10 days after receipt of the notice of proposed action mailed pursuant to Section 4710, services that are being provided pursuant to the recipient's individual program plan shall be continued during the appeal procedure."

6. Welfare and Institutions Code sections 4701 and 4715 do not indicate whether the phrase "receipt of notice of proposed action," refers to the actual or attempted delivery. Therefore, one must look to the rationale underlying these time limitations. California Code of Regulations, title 17, section 50900 is instructive. It states in pertinent part:

The intent and purpose of this subchapter is to implement, interpret, and make specific, and this subchapter shall be

read in conjunction with, the statutory provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 of the Welfare and Institutions Code, commencing with Section 4700) relative to the fair hearing procedures and fair hearing rights of persons applying for or receiving services pursuant to said Act. It is the intent of this subchapter:

- (a) To implement the fair hearing procedures such that resolutions of disagreements may be accomplished at the earliest opportunity.
- (b) To interpret the fair hearing procedures in a manner which protects the claimant's fair hearing rights and promotes the rights of claimants to dignity, privacy, and humane care as established by the Lanterman Developmental Disabilities Services Act.
- (c) To make specific the responsibilities of the claimant, service agency, and state department to conduct full and impartial fair hearings to resolve differences between service agencies and persons applying for or receiving services pursuant to the Lanterman Developmental Disabilities Services Act.

7. The underlying rationale for the 10-day time limit to file a request for hearing is to resolve cases at the earliest opportunity and to interpret fair hearing procedures in a manner which protects claimants' rights. In this case, claimant's parents were out of the country from May 7, through May 20, 2014. Claimant's father went to the post office on May 22, to retrieve his certified mail, including the NOPA. He took the NOPA to his attorney who faxed a request for hearing on May 29 (seven days later). Since claimant's father actually received the NOPA on May 22, the request for hearing was timely under Welfare and Institutions Code sections 4701 and 4715. Therefore claimant was entitled to funding for DTT services pending the decision in this matter.

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ORDER

1. Claimant's appeal is granted. Eastern Los Angeles Regional Center's decision to terminate Claimant's DTT hours is reversed.

2. Claimant is entitled to funding for DTT services retroactive to the effective date of the Notice of Proposed Action (April 1, 2014). The Eastern Los Angeles Regional Center shall reimburse claimant's family for any payments they made to REACH for DTT services since April 1, 2014, through the date of this decision.

Dated: October 23, 2014

_____/s/____

HUMBERTO FLORES

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.