BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2016050184

DECISION

The fair hearing in this matter was heard by Administrative Law Judge Marcie Larson (ALJ), Office of Administrative Hearings (OAH), State of California, on December 1, 2016, in Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Claimant's mother represented claimant.

Evidence was received, the record was closed and the matter was submitted for decision on December 1, 2016.

ISSUES

Should ACRC be ordered to fund treatment provided to claimant by Timothy M. Slone, Doctor of Chiropractic (D.C.)?

FACTUAL FINDINGS

1. Claimant is an eight-year-old boy with Down's Syndrome, who is eligible for ACRC services based on his diagnosis of intellectual disability and autism spectrum disorder (ASD). He receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et seq.). Claimant was made eligible for ACRC services in 2011, based on a diagnosis of mental retardation.[1] In approximately March 2013, he was diagnosed with autism.

2. On June 18, 2015, a planning team consisting of claimant, claimant's mother and Becky Van Velzer, ACRC Service Coordinator, conducted an annual Individual Program Plan (IPP) meeting for claimant. The IPP sets forth the annual goals and objectives for claimant. At hearing, Ms. Van Velzer testified about her interactions with claimant and his mother. Ms. Van Velzer has been claimant's service coordinator for five years.

As of June 2015, claimant had been receiving approximately one year of applied behavior analysis (ABA) intensive services through Learning Arts, Monday through Friday, for four hours in the morning. At the IPP meeting, claimant's mother informed Ms. Van Velzer that claimant was going to start receiving "brain therapy" by Dr. Slone in

[1] The language used to describe the developmental disabilities relevant in this matter has changed over time. The Lanterman Act was recently amended to change the term "mental retardation" to "intellectual disability." The Lanterman Act still uses the term "autism" but that developmental disability is now called an "autism spectrum disorder" in the DSM-5.

Rocklin, California.[2] Claimant's mother explained that the treatment with "Quantitative Electroencephalography (qEEG)" is used to "determine which parts of [claimant's] brain is underactive and stimulate those parts of the brain." Claimant's mother stated that she intended to request funding for the treatment from the Rocklin Unified School District (Rocklin). Claimant received educational services specified in his Individual Education Program (IEP), provided by Rocklin, through May 2015.

3. In August 2015, claimant's mother requested that ACRC fund treatment provide by Dr. Slone. Initially, claimant's private insurance paid for the treatment. Claimant's parents switched insurance companies and the new company would not pay for the treatments. Claimant's mother informed Ms. Van Velzer that claimant was having a "tremendous amount of development" with the treatment provided by Dr. Slone. On August 14, 2015, Ms. Van Velzer sent a letter to Dr. Slone, requesting copies of all assessments, treatment plans, and progress notes concerning his treatment of claimant. Dr. Slone did not respond to the letter or forward the requested information.

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4. Learning Arts submitted a detailed report to ACRC dated December 22, 2015, regarding claimant's participation in ABA Intensive Intervention services between May and December 2015. The report included a program description which provided that:

> Early Intensive Intervention targets comprehensive verbal behavior and self-help skills across multiple domains. The EII

[2] The treatment provided by Dr. Slone was also referred to as "Dynamic Brain" and "Brain Balance" in the documentation submitted at hearing. The parties agreed to refer to the treatment received by claimant as "treatment received by Dr. Slone."

> program is for children between eighteen months and seven years of age. These programs are most effective with high (up to 8 hours per day) consistent service levels, closely partnered with children's educational team and parent/guardian participation. The ultimate goal of this program is for the consumer to obtain as close to typical functioning as is possible for the specific individual in cognitive, motor, language, social and self-help skills.

The report explained that claimant was born with Down's Syndrome and experienced "a number of medical challenges including several colon surgeries." Claimant also suffers from severe food allergies and severe autism. Claimant has "always demonstrated stereotypic behavior (spinning, hand flapping, muscle tightening) and does not speak." The report sets forth a behavior intervention plan with targeted behaviors and goals and objectives in several areas, including communication, cognitive, socialization, self-help, aberrant behavior and family education. Each goal and objective area includes detailed information for current goals, baseline information, progress in meeting the goals as of May 2015, and the status of meeting the goals as of December 22, 2015.

The report stated that claimant had made "significant progress" since May 2015. He met 13 of the 26 suggested goals, 13 goals were in progress and 10 new goals would be introduced. The summary and recommendation was that claimant continue with 30 hours per week of in-home ABA services, three hours per week with a board certified behavioral analyst and one hour per week of parent training.

5. In approximately January 2016, claimant's mother submitted to Ms. Van Velzer, an undated report from Dr. Slone concerning his treatment of claimant. The report contained a medical history, a physical examination, treatment goals, and

progress notes. Dr. Slone noted that claimant's mother stated that her goals for claimant's treatment were to "have his eyes see, his ears hear and his hands and feet play." She also wanted claimant "potty trained." The report stated in part that:

> Based on the examination findings and what was obtained through the history, a treatment plan will be established to increase the input into his nervous system through the use of manipulation, sensorimotor stimulation, vestibular exercises, brain stem stimulation, auditory/visual stimulation, joint position/balance exercises and metronome work. Due to [claimant's] depressed cognitive output, it is recommended that he be treated 3-5 times per week.
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> Treatment goals are to mitigate [claimant's] current symptoms through working on his neurologic development, sensory input and motor output. More specifically, by improving the visual system so that he will be able to track items, make eye contact and understand nonverbal communication. This will eventually allow him to be able to play, read and interact with others appropriately. By improving his auditory system, he will be able to listen/hear at frequencies that are not too high or too low, allowing him to communicate with others. Improvement of the sensory system will allow the environment input that he experiences through the day to enhance brain function and allow him to function appropriately. By developing the vestibular system, [claimant] would have a better understanding of where he is

> in "space" along with his balance and communication. Developing his brainstem function will help him coordinate his eye function, digestion, auditory function, vision, facial experiences, taste, smells and blood pressure which helps regulate the nervous system. Develop the cerebellum so that he can maintain balance, perform coordinated actions and be able to participate with adults and children in games and socialization and learning. Home exercises will be provided to help address the neurodevelopment delays as well as support treatment that is provided inside the office.

Dr. Slone also noted that claimant had been treated 34 times since June 2015, and had made "tremendous improvements." He noted that claimant was able to "look and listen to people who are speaking to him," interact with others, and that his impulse control improved. The progress notes include information from treatments claimant received from June 16, 2015, through January 6, 2016. The progress notes vary, but generally describe that the treatment claimant received from Dr. Slone included spinning, stretching, vibration and auditory stimulation, various exercises including balance work, tracking, adjustments of the cervical spine, ribs, toes, fingers, elbows and use of various scents.

6. On or about February 22, 2016, Ms. Van Velzer forwarded to Herman Kothe, Licensed Clinical Social Worker, and ACRC Client Services Manager, claimant's request that ACRC fund treatment provided by Dr. Slone. Ms. Van Velzer informed Mr. Kothe that the request had been received "months ago," but she recently received the last of the requested reports.

7. On March 11, 2016, Ms. Van Velzer spoke to Robin May, ASD Clinical Specialist for ACRC, concerning claimant's request that ACRC fund treatment provided

by Dr. Slone. Ms. Van Velzer also forwarded to Ms. May a copy of the undated report prepared by Dr. Slone and the December 22, 2015 Learning Arts report. Ms. May reviewed the material and provided her opinions regarding claimant's request, in an email to Ms. Van Velzer. Ms. May opined in relevant part:

> The treatment provided by [Dr. Slone] is not indicative of any evidence based practice for ASD. Based on the treatment descriptions in the report, it most closely resembles auditory integration, sensory integration, and possibly massage, which are emerging or unestablished treatments according to the National Standards Projection Phase 2, published by the National Autism Center in 2015.
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> The treatment described is also not included in the evidence based practices identified by the National Professional Development Center on ASD in the 2014 publication.
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> ACRC utilizes both of these nationally vetted authorities to define evidence based practices for ASD. It is not within the scope of ACRC's role to be able to evaluate the quality of individual research articles. Therefore, ACRC looks at these authorities to determine the criteria for both high quality research and the definition of evidence based practices.
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> Given that there are two services occurring at the same time, there is no way to determine the causality of the outcomes reported by [Dr. Slone]. It could be the result of goals

> achieved in the ABA program or simply maturation over time.
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> The gains reported by [Dr. Slone] are anecdotal and have not been objectively measured, therefore there is no concrete evidence that [they] have occurred.

8. The National Professional Development Center (NPDC) on ASD, has recommended that a practitioner who treats individuals with ASD should begin with interventions identified as "Established" in the National Standards Projection Phase 2 (NSP). Specifically, the NSP has identified the following interventions as falling into the Established level of evidence:

- Behavioral Interventions
- Cognitive Behavioral Intervention Package
- Comprehensive Behavioral Treatment for Young Children
- Language Training (Production)
- Modeling
- Natural Teaching Strategies
- Parent Training
- Peer Training Package
- Pivotal Response Training
- Schedules
- Scripting
- Self-management
- Social Skills Package
- Story-based intervention

Additionally, the NPDC has recommended that the "judgement of the professionals with expertise in ASD must be taken into consideration. Once interventions are selected, these professionals have the responsibility to collect data to determine if an intervention is effective."

9. Prior to reaching a decision on claimant's request to fund services provided by Dr. Slone, Mr. Kothe reviewed Dr. Slone's website. The website provided information concerning Dr. Slone's education and the types of treatments his practice provides to clients. Dr. Slone holds a Bachelor of Science in Industrial Fitness. He attended Life Chiropractic College West, where he "attended a post doctorate neurology course and became a Board Certified Chiropractic Neurologist in 1998."

Since obtaining his board certification, Dr. Slone took courses in the "diagnosing and treatment of ADD/ADHD, Autism, Dyslexia, Vestibular Rehabilitation and Dystonia." Dr. Slone completed certification in Active Release Technique and is a Qualified Medical Examiner for the State of California. Dr. Slone has also taken courses in the area of "BrainBased Learning Techniques" and is "undergoing training in the diagnosing and treatment of "Neuro-Developmental Delays." Dr. Slone's website described the "BrainBased Learning Program" in part as a program:

> … designed to enhance all patients ability to learn through stimulating the nervous system and provided BrainBased Learning Techniques. It is important to know that this program will not teach the student how to read, write or spell, but will identify areas of the nervous system that may not be functioning properly and treat the deficient areas. Once the area or areas are identified, a specific treatment plan will be developed to enhance the nervous system, thus

improving the patient's ability to learn and improve academic performance.

10. On March 23, 2016, ACRC denied claimant's mother's request to fund the treatment provided to claimant by Dr. Slone. The Notice of Proposed Action (NOPA) and accompanying letter sent to claimant's mother, stated in relevant part that:

> Regional centers are prohibited from funding experimental treatments which are not scientifically proven or clinically determined safe or effective. It is unclear from your statements and Dr. Slone's report what treatment is even being provided by Dr. Slone. The Slone Chiropractic website indicates their staff provide "BrainBased Learning," but does not specify what that treatment consists of. You have stated that [claimant] is receiving "Brain Balance" training. There is no evidence that either Dr. Slone's treatment, or BrainBased Learning, or the Brain Balance program is scientifically proven or clinically determined safe or effective to address the symptoms of autism spectrum disorder or intellectual disability. None of those treatments is an evidence-based treatment for autism spectrum disorder as defined by the National Standards Projection, Phase 2 (2015) nor the National Professional Development Center on ASD (2014). Nor is there any evidence any of those treatments is scientifically proven or clinically determined safe or effective to treat the symptoms of intellectual disability, since there is

no treatment which has been found to treat the symptoms of intellectual disability.

The NOPA also stated that although claimant's mother reported that claimant had made gains since he began treatment with Dr. Slone, her observations were "solely anecdotal and not evidence of the treatments effectiveness as any such progress has not been objectively measured.'" The NOPA further stated that since claimant had been receiving ABA-based behavioral health treatment at the same time he received treatment from Dr. Slone, there was "no way to determine" whether claimant's gains were a result of the treatments he received from Dr. Slone, or the ABA services.

Additionally, the NOPA stated that the ABA treatment claimant receives is "an evidence-based treatment for autism and is thus scientifically proven and clinically determined safe and effective." The NOPA further noted that claimant had "made gains from the ABA-based treatment which have been objectively measured through data collection." Claimant's mother was encouraged to contact Learning Arts if she did not believe the program was meeting claimant's needs.

The NOPA further stated that ACRC did not have the authority to purchase non-medical therapies and claimant does not qualify for an exemption to this prohibition. Additionally, the NOPA explained that ACRC may only fund services by "vendored or contracted service providers." Dr. Slone is not vendored and does not have a contract with ACRC to provide services to regional center clients.

11. Claimant's mother filed a Fair Hearing Request to appeal from ACRC's denial of funding for treatment provided to claimant by Dr. Slone. On May 17, 2016, an informal meeting was held by ACRC. The denial was not overturned. However, ACRC requested that claimant's mother provide additional documentation and clinical information concerning treatment goals, a treatment plan and the effectiveness of the treatment provided by Dr. Slone.

12. After the informal meeting, Ms. Van Velzer sent claimant's mother copies of physical therapy and occupational therapy reports from claimant's early intervention services, to provide to Dr. Slone. Ms. Van Velzer provided the reports so that Dr. Slone would have a sample report to review that included the type of information ACRC needed in a report, including treatment goals and a treatment plan. Dr. Slone did not provide ACRC a treatment plan as requested.

13. On June 14, 2016, a planning team meeting consisting of claimant, claimant's mother and Ms. Van Velzer, conducted an annual IPP for claimant. Claimant's mother informed Ms. Van Velzer that claimant had been receiving therapy from Dr. Slone for approximately one year and that she was "astounded by the progress." Since the treatments began, claimant has been able to "go to the beach, go to the dentist, relax at home, seek out people and respond in ways to communication he never had before." Claimant's mother explained that "due to financial limitations" claimant was not able to receive all the treatments recommended by Dr. Slone. The IPP report noted that claimant's parents were "currently in the fair hearing process" with ACRC concerning their request to fund Dr. Slone's treatment.

14. Dr. Slone prepared a second report dated August 20, 2016, concerning his treatment of claimant. Dr. Slone explained that claimant was referred to his practice "because of the success we have had dealing with individuals with behavioral, neurologic and social difficulties." He further stated that his practice "incorporates a multidisciplinary approach to address conditions from developmental delays to neurologic conditions such as Autism, ADHD, stroke and movement disorders." Dr. Slone explained claimant had been treated for 13 months and has "experienced tremendous changes." The examples Dr. Slone included that claimant was able to "sit in a room by himself without using an IPAD; play with family members; track an object; consistently acknowledge people with a wave; go in public and act appropriately

without being overstimulated most of the time; respond to auditory commands; and has expanded his diet." Dr. Slone also stated that claimant's parents reported that claimant had "cried for the first time when he did not get what he wanted." Dr. Slone opined that "[t]hese are all socially significant changes that have a positive impact for [claimant] and his family.

The report contained a physical evaluation that included numerous items such as blood pressure, gaze, reflexes, testing for light and sound sensitivity, strength testing, facial recognition and duplicate facial expression. Dr. Slone also noted that an initial examination of claimant demonstrated "severe limitations" because claimant's behavior was "so severe that he could not participate in many of the aspects of the evaluation." He further stated that claimant was not able "sit still, unable to communicate, unable to follow simple instructions and was hypersensitive to every sensory test attempted."

The report also stated that claimant's mother told Dr. Slone that due to claimant's hypersensitivity, claimant was not able to go out in public or participate in social activities. Claimant had "tantrums when he encountered sensory stimulation." Dr. Slone stated that since claimant began receiving treatments, he is able to tolerate the "sensory stimulation of the environment." Dr. Slone also stated that prior to receiving treatment, claimant was "completely nonverbal," and "there was no evidence that he ever attempted to communicate or understand others." Dr. Slone opined that since receiving treatment, claimant's communication has "dramatically changed." Claimant speaks single words. He also plays with a ball and with family members. Dr. Slone opined that "[w]hile these improvements are significant, there is still a tremendous amount of work to be performed in order to get [claimant] the treatment he needs. Treatment is necessary to allow him to continue to develop his nervous system and skill necessary to maximize his ability to engage in socially significant aspects of life."

15. Mr. Kothe testified that ACRC does not dispute that claimant may have benefited from the treatment he receives from Dr. Slone. However, none of the services and treatments Dr. Slone provided claimant are effective evidence-based treatments for ASD, as set forth in the NPDC or NSP. Additionally, Dr. Slone is not a professional with expertise in ASD. Other than taking courses about autism, there is no indication that Dr. Slone has any training in treating patients with ASD. ACRC was not provided with any data collected to demonstrate effectiveness of the treatment provided by Dr. Slone. Dr. Slone's reports did not contain objective assessment information for social skills, cognitive skills, maladaptive behaviors, or communication skills or ability. There was no information concerning a baseline assessment, which would allow measurement of progress. Nor did Dr. Slone provide any data or specific measurable objectives targeting gains based on the treatment provided.

16. Additionally, Mr. Kothe testified that the treatment provided to claimant by Dr. Slone is considered nonmedical interventions, because Dr. Slone does not have a medical degree. ACRC's authority to fund nonmedical therapies was suspended in 2009. Claimant does not qualify for an exemption to this prohibition because the treatment provided by Dr. Slone is not the primary or critical means for ameliorating claimant's intellectual disability or ASD. To meet the standard, claimant must demonstrate that absent the treatment, other services would not be able to address claimant's identified goals and objectives. Mr. Kothe stated that claimant has been receiving an array of evidence-based ABA services for ASD. ACRC considers Learning Arts to be a primary or critical means for ameliorating claimant's ASD. The services provided by Dr. Slone are not necessary to enable claimant to remain in his family home.

17. Claimant's mother testified that there was no change in claimant after receiving a year of ABA services. It was not until claimant was treated by Dr. Slone that he began to improve. Within 48 hours of receiving the first treatment from Dr. Slone,

claimant went to the kitchen sink to get a glass of water. Prior to receiving treatment, claimant was often forced to drink and eat. Claimant also resisted having his teeth brushed or his diaper changed. Since receiving treatment, he no longer resists these activities. Claimant's mother also explained claimant was often agitated and could not sit still. Now, he can sit calmly and play with others. Claimant's mother contended that ACRC has the authority to be flexible and creative in approving treatment for clients. She believes that funding the treatment claimant receives from Dr. Slone will allow him to live a more independent life.

18. Ruth Bartlett, a friend of claimant's family, testified at hearing. Ms. Bartlett is a high school teacher that works with disabled students diagnosed with ASD, Down's Syndrome and intellectual disabilities. Ms. Bartlett testified that before claimant received treatment from Dr. Slone, he was highly irritable, often upset and would cling to his parents. He had no focus and was not able to pacify himself. Since receiving treatment, he is more grounded and focused. He follows routines, and has a mission, plan and direction. He is happier and calmer. He expresses emotions and seems authentically bonded to his family. Ms. Bartlett explained that based on her experience working with children with autism, she has not before seen the quick changes she has observed in claimant. Ms. Bartlett has not attended claimant's treatment sessions with Dr. Slone and she is not sure what services he is providing to claimant.

19. Claimant's mother submitted several letters from individuals who have witnessed claimant's improvement since receiving treatments from Dr. Slone, including claimant's father. In a letter dated November 22, 2016, claimant's father explained that claimant has received "all kinds of therapies from before he was 6 months old." He explained that none of the therapies made a "significant difference in improving" claimant's function. Claimant's father explained that since claimant has received treatment from Dr. Slone, there has been significant improvement in claimant's

behavior. Activities that used to be exhausting and require significant effort on the part of family members, are no longer a challenge. For example, claimant no longer fights when his diaper is changed. He cooperates with teeth brushing. He will allow his hair to be cut. He walks to the car and climbs into his car seat. He goes to bed without having to be wrestled and sleeps through the night. Claimant's father explained that the quality of life for their family has dramatically improved as a result of the treatment claimant has received from Dr. Slone.

Claimant's pediatrician Dr. Michael Allen wrote a letter dated May 16, 2016, in support of the treatment provided by Dr. Slone. Specifically, Dr. Allen stated that he had been claimant's pediatrician for "a few years." Dr. Allen wrote that claimant exhibited "severe developmental delays and behavior issues." He opined that claimant had received "many hours of multiple therapies on a weekly basis since he was 2 months old. By the age of 7 years, he did not show much improvement." Dr. Allen explained that since claimant began receiving treatment from Dr. Slone, he has seen "significant improvement" and that he had "never seen a child improve so much, in such a short amount of time." Dr. Allen has not reviewed the reports written by Dr. Slone.

Dr. Allison Trout, claimant's dentist wrote a letter dated January 6, 2016. Dr. Trout wrote that claimant has "showed improvement with his behavior during his dental visit" on December 9, 2015. She described claimant as "much calmer." Claimant was "able to open his mouth and stay open while following directions and listening." Additionally, there was less of a need for "assisted adult restraints" because claimant was not fighting or resisting the dental treatment.

Katherine Stofer, claimant's speech therapist, wrote an email dated April 7, 2016. Ms. Stofer wrote that she was claimant's therapist for one year. When she first began working with claimant, he did not make eye contact, tensed his muscles, did not respond to his name, did not follow directions and infrequently vocalized upon request.

Ms. Stofer stated that since June 2015, she has "noticed great change in [claimant's] ability to follow directions." His body is calmer and he attempts to vocalize when requested. She further stated that claimant's progress in the past 10 months has "superseded any demonstrated progress he has made previously."

Krista Wagner, claimant's former behavioral therapist, wrote an email dated May 9, 2016. Ms. Wagner worked with claimant prior to and after his treatments with Dr. Slone. She stated that before claimant began his treatment with Dr. Slone, "program targets in gross motor or vocal imitation lessons were pushing through slowly and at times were difficult to teach." Within one week after claimant began receiving treatment from Dr. Slone, his "gross motor and vocal imitation was increasing." Within two weeks, claimant's ability to ask for what he wanted increased each day. Ms. Wagner explained that it was "a very emotional day" when claimant said "up" for the first time. Within a few months of receiving treatment, claimant was "showing emotional appreciation." Ms. Wagner stated that six month goals were being met within one to two weeks.

Petra Delacruz, a family friend, wrote an email dated November 20, 2016. Ms. Delacruz has known claimant since birth. When Ms. Delacruz visited claimant's home, she observed that he would "be irritated and would throw tantrums, he would not eat and most often would only be at a single place." On November 19, 2016, Ms. Delacruz visited claimant's home. Claimant waved to Ms. Delacruz when she said hello and gave her a hug. He then walked to the kitchen and asked for blueberries using his picture chart. When Ms. Delacruz left the home she said goodbye to claimant. He looked at her and waved goodbye. Ms. Delacruz stated that she was "amazed" with his improvement.

20. Claimant's mother also submitted nine articles generally concerning brain function, the effect of motor function on the brain, and an analysis of unsupported gait in a toddler with autism. Some of the articles were provided to claimant's mother by Dr.

Slone. There was no evidence or testimony concerning how the articles related to the treatments provided to claimant by Dr. Slone.

DISCUSSION

21. When all the evidence is considered, claimant's mother did not demonstrate that the treatment provided to claimant by Dr. Slone has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant's intellectual disability or ASD. The reports issued by Dr. Slone and documents that claimant's mother submitted do not substantiate that the treatment by Dr. Slone constituted "evidence-based practice," as that term is defined in Welfare and Institutions Code section 4686.2, subdivision (d)(3), or that it has been proven to be effective in ameliorating claimant's intellectual disability or ASD.

22. In contrast, the evidence submitted by ACRC was persuasive that the treatment provided by Dr. Slone has not been recognized by the NPDC or the NSP as an evidence-based practice for treating an individual with intellectual disability or ASD, to allow ACRC to fund it under the Lanterman Act. The evidence also did not establish that the treatment by Dr. Slone is the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's intellectual disability or ASD. Rather, the ABA services claimant receives are the primary or critical means for ameliorating his conditions. Additionally, there was no evidence to establish that Dr. Slone's treatment is necessary to enable claimant to remain in his home. ACRC may only fund services provided to a consumer from a vendored or contracted service provider. Dr. Slone is not vendored nor does he have a contract with ACRC to provide services to regional center clients

23. It was apparent at the hearing that claimant's mother has a strong desire to obtain the best treatment and services for her son. She is seeking funding for the services provided by Dr. Slone to help her son achieve his highest potential in order to

live a more independent life. It is evident that claimant has the support and encouragement of many people, including Dr. Slone. The progress claimant has made over the last year has given claimant's parents hope for the future. But ACRC is prohibited by the Lanterman Act from funding therapies that have not been clinically determined or scientifically proven to be effective for the treatment or remediation of developmental disabilities. The legislature enacted this prohibition not only to safeguard taxpayers from the wasteful spending of public funds, but also to protect consumers and their parents from the false hope of therapies that have not been established to meet the claims made by some of their practitioners. There was inadequate support presented at hearing for the effectiveness of the treatment provided by Dr. Slone in ameliorating claimant's intellectually disability or ASD. Consequently, ACRC's denial of funding must be upheld.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, section 4500 et seq.) Under the Lanterman Act, regional centers fund services and supports for persons with developmental disabilities. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities," in relevant part, as follows:

> 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, and normal lives. The determination of which services and

> supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

2. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code sections 4700 through 4716.) Claimant's mother requested a fair hearing to appeal ACRC's denial of her request to fund treatment by Dr. Slone. The burden is on claimant to establish that the ACRC is obligated to fund the treatment, which is a new benefit. (See *Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161.)

3. Welfare and Institutions Code section 4648, imposes limits on the services and supports that regional centers may fund, and, in relevant part, 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.
>
> (3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from

any individual or agency that the regional center and consumer or, when appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

[¶] ... [¶]

(8) 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.

[¶] ... [¶]

(16) Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not

purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or

> nutritional therapy when the use of the product for that purpose is not a general physician practice. For regional center consumers receiving these services as part of their individual program plan (IPP) or individualized family service plan (IFSP) on July 1, 2009, this prohibition shall apply on August 1, 2009.

4. Welfare and Institutions Code section 4686.2 imposes limitations on the types of therapies a regional center may fund to address the behaviors of a consumer with an autism spectrum disorder, and, in relevant part, provides:

> (b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:
>
> (1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.
>
> [¶] ... [¶]
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> (d) For purposes of this section the following definitions shall apply:
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> [¶] ... [¶]
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> (3) "Evidence-based practice" means a decisionmaking process that integrates the best available scientifically

rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

5. Welfare and Institution Code section 4648.5 provides in relevant part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

[¶…¶]

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual

program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

6. Claimant's mother did not establish that the treatment provided to claimant by Dr. Slone has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant's intellectual disability or ASD. Consequently, under Welfare and Institutions Code section 4648, subdivision (a)(16), ACRC may not fund the requested treatment.

7. Claimant's mother did not establish that the treatment provided to claimant by Dr. Slone is an evidence-based practice that promotes positive social behaviors, and ameliorates behaviors that interfere with learning and social interactions. Consequently, under Welfare and Institutions Code section 4686.2, ACRC may not fund Dr. Slone's treatments.

8. ACRC may only fund services by vendored or contracted service providers. (See Welf. & Inst. Code, § 4648, subd. (a)(3(A).) Dr. Slone is not vendored and does not have a contract with ACRC to provide services to regional center clients.

9. The treatment provided by Dr. Slone is a nonmedical therapy. As a result, pursuant to Welfare and Institution Code section 4648.5, subdivision (a)(4), ACRC is not required to fund the treatment unless claimant qualifies for an exemption. Claimant failed to establish that he qualifies for an exemption under Welfare and Institution Code section 4648.5, subdivision (c). There is no evidence that the treatment provided by Dr. Slone is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's developmental disabilities, or that the service is necessary to enable claimant to remain in his home and no alternative service is available to meet his needs.

10. ACRC may not fund services which are available from other resources. (Welf. & Inst. Code, § 4659.) ACRC also "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." (Welf. & Inst. Code, § 4648, subd. (a)(8).) Claimant receives services for his developmental disabilities funded through his school district and private insurance. If claimant's mother does not believe the services are meeting claimant's needs, she has the option to contact those entities to seek additional assistance for claimant.

11. When all the evidence is considered, claimant's mother did not establish that ACRC should be ordered to fund the treatment provided to claimant by Dr. Slone. The request for funding from ACRC must therefore be denied.

ORDER

Claimant's appeal is DENIED. Alta California Regional Center's denial of funding for services provided to claimant by Dr. Slone under the Lanterman Act is SUSTAINED.

DATED: December 12, 2016

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MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)