

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

and

TRI-COUNTIES REGIONAL CENTER,

Service Agency.

OAH No. 2016081036

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 16, 2017, and April 26, 2017, at Simi Valley, California.

Donald R. Wood, Attorney at Law, appeared and represented the Tri-Counties Regional Center (Service Agency).

Kathy Greco, Attorney at Law, appeared and represented claimant.

The record was held open for the parties to submit concurrent closing briefs by May 15, 2017. Claimant filed a timely closing brief, marked Exhibit 23 for identification. Respondent filed a timely closing brief, marked Exhibit W for identification.

The record was closed and the matter was taken under submission on May 15, 2017.

STATEMENT OF ISSUES

The issues in this matter are:

1. Whether the Service Agency shall be required to fund or reimburse claimant's family for out-of-state residential placement at Waterfall Canyon Academy (Waterfall Academy) in Utah, as a matter of law;
2. Whether, under equitable principles, the Service Agency shall be ordered to reimburse claimant's family the sum of \$114,500 for placement and service costs;
3. Whether the Service Agency staff shall be ordered to receive training regarding the intake and assessment process;
4. Whether the Service Agency shall pay claimant's attorney fees incurred in connection with the fair hearing.

## EVIDENCE CONSIDERED

*Documents.* Service Agency's Exhibits 1-21; Claimant's Exhibits A-V.

*Testimony.* Lalo Edward Perez, Intake Coordinator; Anna Welling, Service Coordinator; Steven Graff, Ph.D.; Sarita Freedman, Ph.D.; Anoushka Moseley, Community Placement Manager; Mary Ellen Thompson, Adult Team Manager; Susan Baukus, claimant's Life Coach; Claimant; Claimant's father.

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 24-year-old Service Agency consumer based on a diagnosis of autism. He has also been diagnosed with an autoimmune disease known as Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections (PANDAS).
2. Throughout his childhood, claimant received private psychological counseling for behavioral issues. Beginning in the eighth grade, claimant received special education services from the Conejo Valley School District based on a classification of Other Health Impairment. When claimant was nine years old, Dr. Sayed

Naqvi diagnosed claimant as “autistic” and prescribed SSRI medication. (Ex. P, p. 0070.) Claimant graduated from high school in 2012, and attended some community college courses with some difficulty. He possesses employable skills, having worked at Burger King, and he has otherwise sought services through the Department of Rehabilitation, executing a release of medical information on November 24, 2014.

3. In September 2013, claimant and his parents began receiving private therapeutic counseling from Dr. Sarita Freedman, a licensed psychologist. During their first family session, Dr. Freedman recommended that claimant apply for regional center services to get more home support. The parents opted to defer applying for regional center assistance, choosing to first explore the GAP program, a post-high school program for students on the autism spectrum and not ready for college.

4. In 2014, on Dr. Freedman’s recommendation, the family retained Susan Baukus to serve as claimant’s life coach and provide support in his daily life, and in his pursuit of employment and education. Dr. Freedman testified that Ms. Baukus helps families “navigate regional center services,” among other things. (Testimony, Dr. Sarita Freedman.) Ms. Baukus was familiar with the intake procedures at the Service Agency and knew “who to call.” (Testimony, Susan Baukus.)

5. Dr. Freedman testified that she observed a loving relationship between claimant and his parents, but acknowledged, “From the beginning the parents were looking for a placement outside of the home because claimant’s behaviors were quite challenging and they weren’t able to manage them on their own.” Dr. Freedman directed in-home behavioral interventions. For example, claimant was forgetting to brush his teeth in the morning and interventions were implemented to address the sequencing of his morning activities to make sure he brushed his teeth.

6. Claimant also developed a compulsion to use electronics and spent excessive amounts of time at his computer. He was particularly attracted to Fanfiction,

an online sight for creative writing, which served as claimant's "escape" and coping mechanism. Although not a definitive diagnosis, Dr. Freedman believed claimant had an addiction to electronics. The family attempted interventions to limit or control claimant's computer access, which heightened family tensions and exacerbated claimant's behavioral issues. Claimant wrote, "Now you want to take [the computer] away from me . . . I am terrified that a side of me that I have fought to get rid of because its [*sic*] a side that mom was scared of . . . she feared that if she took my electronics away from me I would punch her in the face." (Ex. 20, p. 0471.)

7. Dr. Freedman recommended "moving [claimant] into a therapeutic residential environment" because he would be expected to earn privileges by doing what is expected of him, something "difficult to implement at home." (Ex. 20, p. 0422.) On June 29, 2015, Dr. Freedman recommended to claimant's father a "residential placement where [computer addiction] can be a focus of the treatment plan. . . . As you probably know, there are no programs here in [California] that will address this problem, and I would encourage you to consider the out-of-state programs." (Ex. 20, p. 0418.)

8. By July 11, 2015 claimant's father had inquired with facilities in Hawaii, Oregon, Utah, and Colorado. He discovered that residential placement was "very very very expensive" and that "it would be critical to get a break, insurance or [regional center] coverage." (Ex. 20, p. 0406.)

9. Dr. Steven Graff, a psychologist and clinical director of the Service Agency, testified that regional center services do not cover addiction treatment.

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#### INTAKE PROCEDURES

10. On April 7, 2015, Edward L. Perez, Intake Coordinator for the Service Agency, completed a Tri-Counties Regional Center Initial Intake Inquiry form, gathering

basic information by telephone making notes while talking to claimant and a parent. (Ex. 3.) He made notes on the intake form of some prior dates on which messages were left or received. Claimant presented evidence to establish that voicemail messages were left with the Service Agency dating back to November 2014, and that the Service Agency failed to respond to those messages in a timely fashion. Both parties presented testimonial evidence of multiple efforts to communicate by telephone and both parties accused the other of failing to respond to voicemail messages. The testimony was vague, lacking specificity as to dates or content of the voicemail messages. Accordingly, the testimony was insufficient to make any finding of fact, except as follows.

11. The intake coordinator testified that claimant's mother called in December 2014, and that, on December 17, 2014, he returned the call and left a voicemail message with a scripted description of the qualifying conditions for eligibility. Because claimant was an un-conserved adult, the intake coordinator insisted that he speak directly with claimant. At the time, claimant was in a program at Los Angeles and, between travel time and program attendance, he was not available by telephone during regular business hours.

12. On February 17, 2015, the intake coordinator noted that claimant left a voicemail message, reading a script of his problems and medications, and expressing agreement to the process. There followed the phone intake on April 7, 2015, noted in Factual Finding 10.

13. On April 22, 2015, claimant and his father met with the intake coordinator for an intake assessment. The intake coordinator noted that claimant was ambulatory and appeared to have a normal gait pattern with no physical limitations that would prohibit his participation in age-appropriate outdoor gross motor activities involving running, jumping and climbing. He assessed claimant's self-care and independent living skills, his social and behavioral skills, his cognitive functioning, his communication skills,

his birth and early development history, his medical history, his educational history, and legal information. The intake coordinator concluded that claimant "does not appear to . . . display the constellation of symptoms seen in individuals with substantial handicapping [autism spectrum disorder], with onset prior to 18 years. He is not intellectually disabled and does not have epilepsy or cerebral palsy." (Ex. 3, p. 0018.) The intake coordinator deferred making a recommendation for regional center services pending further assessment, ordering a psychological evaluation on May 6, 2015. The intake coordinator advised claimant that he may need to attend further assessments to complete the intake process.

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14. On May 6, 2015, Louis Vodhanel, Ph.D., performed a psychological evaluation to measure claimant's levels of cognitive, adaptive, and social behavioral skills to assist the Service Agency in determining claimant's eligibility for regional center services. He administered various test instruments, including Wechsler Adult Intelligence Scale (Fourth Edition), Wide Range Achievement Test (Third Edition), Vineland Adaptive Behavior Scales (Second Edition), Gilliam Autism Rating Scale, and Autism Diagnostic Observation Schedule Module Four. He reported his observations of claimant's behavior, cognitive and intellectual functioning, academic skills, adaptive functioning, and emotional functioning. The psychologist concluded that claimant had a full scale IQ and academic testing in the average range, but that his adaptive skills were in the deficit range overall, and his social skills were in the borderline range. The results of autism testing were "in the very likely range for autism." (Ex. 9, p. 0073.) Without making a diagnosis of a qualifying condition, the psychologist scheduled further evaluation on July 28, 2015, with Dr. Nopar.

15. On July 15, 2015, claimant had an anger outburst and drove his car through the garage door at his parent's home. He was arrested and placed on a 72-hour hold at Ventura Psychiatric Hospital.

16. The next day, July 16, 2015, claimant was released and, without notifying the Service Agency or inquiring about funding, his parents sent claimant out-of-state for residential treatment, first at Open Sky in Colorado, and then at Waterfall Academy in Utah. (See Factual Findings 31-46.)

17. On July 28, 2015, claimant failed to appear for his clinical appointment with Dr. Nopar. Claimant's father appeared in his place and explained that claimant was placed out-of-state for treatment. On August 12, 2015, the intake coordinator wrote claimant a letter, properly address and mailed in care of his parents, in which the intake coordinator stated:

It has recently come to my attention . . . that you have temporarily moved out of the area to a residential treatment program and are not available to meet with the doctors to complete your regional center evaluation and assessment and eligibility determination during the allotted time frame provided to complete the assessment. Therefore, I am writing to you to inform you that your case has been closed under the category of "not determined" and will be reopened to complete the assessment process upon your return, request to complete the assessment process and availability to meet with the doctors.

(Ex. 5.)

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18. Three months later, on November 12, 2015, the Service Agency scheduled a clinical appointment for eligibility on November 24, 2015. "To this end [claimant's] case was reactivated." (Ex. 6, p. 0028.) Claimant traveled from Utah to participate in the assessment. Based on the assessment and information obtained during the interview with claimant and his parents, the Service Agency psychologists recommended "bringing claimant into the regional center as an eligible person" based on a diagnosis of autism spectrum disorder. (Ex. 6, p. 0029.)

19. Effective December 8, 2015, the Service Agency determined that claimant was eligible for regional center services.

#### INDIVIDUAL PROGRAM PLAN (IPP)

20. The Service Agency assigned Anna Welling as the service coordinator for claimant's case. The service coordinator communicated with claimant through his father about arranging an initial IPP meeting.

21. Claimant traveled from Utah to attend the initial IPP meeting on January 26, 2016, which took place in the family home. Also in attendance were claimant's parents and Susan Baukus, claimant's life coach, who was familiar with regional center procedures and services, and the service coordinator for the Service Agency. Claimant was "active in expressing his thoughts and making his plan." (Ex. 8, p. 0060.)

22. The IPP assessed claimant's capabilities and problems, including the following express statements:

Claimant "is a published writer online [and] living on his own.  
... [Claimant] is learning basic life skills at Waterfall  
Academy. It is a structured program. He does not know when



it will end. . . . [Claimant] said Utah is cold and he prefers living in Southern California. (Ex. 8, p. 0060)

23. The IPP stated desired outcomes to improve claimant's situation as follows: Claimant will (a) "live in a safe and supportive environment"; (b) "maintain good health"; (c) "be more comfortable in social interacting"; and (d) continue to work at Burger King, where he worked while attending Waterfall Academy. (Ex. 8, p. 0065.)

24. These general goals were hand-written on a Person-Centered Individual Program Agreement (IPP Agreement), and signed by all IPP participants, including claimant. The service coordinator prepared the IPP in a type-written report based on the IPP Agreement. The IPP incorporated the agreed-upon desired outcomes, and expanded on "what needs to happen" throughout the IPP. The Service Agency agreed only to "provide ongoing case management." (Ex. 8, p. 0062.) The IPP expressly provided that funding for claimant's placement at Waterfall Academy was covered by private insurance. There is no reference in the IPP that the family was requesting the Service Agency to search for California placement or to have the Service Agency fund out-of-state placement at Waterfall Academy.

25. Claimant contended that the IPP was deficient and should have included provisions to make immediate arrangements for claimant's return to California, but the evidence was unconvincing based on the following facts and circumstances:

(A) Susan Baukus testified that claimant's "number one goal was to get back to California," and implied that the service coordinator intentionally omitted language to that effect. She haltingly testified that the IPP agreement was blank, with no handwritten provisions on the form, at the time she signed the document. Her testimony is uncorroborated by contemporaneous notes or any other writing made in connection with the IPP meeting. She took no

action to examine or object to the contents of the IPP, as would reasonably be expected of one familiar with regional center procedures.

(B) Claimant's father also testified that the IPP Agreement was blank at the time the parties signed it. He acknowledged that he is a film producer and executive, experienced in the nature and legal consequences of written contracts. His testimony was uncorroborated by contemporaneous notes, emails, or any other writing made in connection with the IPP meeting. He took no action to examine or object to the contents of the IPP, except that on March 11, 2016, he called the adult team manager with the Service Agency to complain that he had not received a copy of the IPP. He also complained that "they have been waiting for some tours to be scheduled" to inspect residential facilities in California, but the service coordinator had not returned calls. (Ex. 12, p. 0164.)

(C) Claimant's testimonial evidence that the IPP was signed in blank lacks credibility because the testimony is inherently improbable, uncorroborated, and contradicted by the record. Notwithstanding the improbability of claimant's evidence, it is well established that "if one signs an instrument containing blanks, he must intend it to be filled in by the person to whom it is delivered." (*Rancho San Carlos v. Bank of Italy Nat. Trust & Sav. Ass'n* (1932) 123 Cal.App. 291, 293.)

(D) The service coordinator did not expressly testify as to whether she completed the IPP Agreement before or after it was signed, a factual issue raised after her testimony during the presentation of claimant's case-in-chief. However, a written instrument is presumed to express the true intent of a party. (*Bank of Am. Nat. Trust & Savings Assn. v. Craig* (1961) 193 Cal.App.2d 281.) She attended the IPP meeting in her official capacity as the service coordinator for

the Service Agency and it is presumed that her official acts were regularly performed. (Ev. Code, § 664.) Moreover, terms of a written agreement may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement. (Code Civ. Proc., § 1856, subd. (a).)

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(E) The circumstances under which the IPP Agreement was made do not establish any extrinsic ambiguity, illegality, or fraud. Based on the foregoing, the evidence is insufficient to overcome the presumption that the IPP Agreement expressed the complete and final understanding of the parties at the time of its execution.

#### EFFORTS RE INSTATE PLACEMENT

26. On March 14, 2016, claimant's father left a message with the service coordinator, asking about a tour of a California facility. On March 15, 2016, the service coordinator sent a referral packet to a facility doing business as ARC TIL. On March 21, 2016, claimant's father rejected the facility because "it would not have enough structure" for claimant. (Ex. 12, p. 0165.) He inquired about a facility in Long Beach.

27. On June 13, 2016, claimant and his parents attended an annual face-to-face meeting at the family home. During the annual meeting, claimant's father again asked the service coordinator about "a living situation for young adults with autism in Long Beach." (Ex. 12, p. 0168.) The service coordinator searched the Internet, found the facility, and sent the information to the father. On July 11, 2016, claimant's father examined the online information and determined the Long Beach facility was not appropriate for claimant "as he still requires 24/7 supervision" and the facility did not provide as much supervision as was being provided at Waterfall Academy.

28. In July 2016, claimant's father received a call from a woman at another ARC facility in Simi Valley. This facility also did not have the amount of supervision

desired by claimant's parents. Moreover, the facility did not have any current vacancy, and referred the family to an ARC facility in Ventura because it was larger and more likely to be able to accommodate.

29. The adult team manager left a voice message for the service coordinator to schedule a tour of the ARC facility in Ventura on August 9, 2016, if possible. On July 21, 2016, the service coordinator communicated with claimant's family about contact information at the Ventura facility, and the service coordinator "felt that it would work best if they scheduled a tour around your schedule." (Ex. 12, p. 0173.)

30. On July 25, 2016, Dr. Graff spoke with claimant's therapist at Waterfall Academy to discuss progress. He was informed that claimant was living in "transitional living . . . in what sounds like a group home" with a lot of freedom to come and go, and that he is "not ready for his own apartment." (Ex. 12, p. 0175.) In Dr. Graff's opinion, claimant's behavioral needs could have been met with supported living services (SLS) in an apartment. He investigated to see if claimant would qualify for Ventura County Behavioral Health for severe mental illness, but came to the conclusion that he was not going to be accepted. He did not believe claimant needed 24-hour monitoring and supervision based on reports from Waterfall Academy. Claimant wanted maximum independence, but his father was concerned that he had not shown sufficient skills to be independent.

#### OUT-OF-STATE SERVICES

31. Claimant received treatment at Open Sky from July 16, 2015, to October 27, 2015. His parents chose the facility. Prior to his placement at Open Sky, claimant did not inform or obtain the consent of the Service Agency or Department of Developmental Services (DDS), or inquire whether regional center funding was generally available for out-of-state placement or specifically available for behavioral treatment at

Open Sky. During his placement at Open Sky, claimant had not yet been found eligible for regional center services.

32. On October 27, 2015, claimant was transferred from Open Sky to Waterfall Academy for residential placement and services in Utah. His parents chose the facility. Prior to his placement at Waterfall Academy, claimant did not inform or obtain the consent of the Service Agency or DDS, or inquire whether regional center funding was generally available for out-of-state placement or specifically available for behavioral treatment at Waterfall Academy.

33. When the Service Agency determined that claimant was eligible for regional center services six weeks later, on December 8, 2015, claimant made no request for regional center funding of out-of-state services. Blue Shield of California (Blue Shield) was funding the placement.

34. On January 6, 2016, Blue Shield determined that claimant's placement at Waterfall Academy was "not medically necessary" because claimant had improved "to the degree not requiring a 24 hrs/day supervised treatment as of 1/4/16 forward." (Ex. C.) Accordingly, Blue Shield denied continuing coverage.

35. Claimant filed an independent medical review request with the California Department of Managed Health Care (DMHC) to appeal the denial of insurance coverage. Maximus Federal Services Inc. (Maximus) was contracted by the DMHC to perform the review. On July 5, 2016, Maximus determined that "the services at issue were not and are not medically necessary" for treatment of claimant's medical condition, and upheld Blue Shield's denial of coverage for the services.

36. On July 11, 2016, claimant's father wrote the service coordinator, "At this point it now falls to the Regional Center/DDS to reimburse us for past payments we made on Regional Centers [*sic*] and [claimant's] behalf as well as cover [his] future treatment at Waterfall until a suitable California-based facility can be found." (Ex. D. p.

0023.) When asked about the expected duration of claimant's stay at Waterfall Academy, claimant's father wrote, "It's hard to say how much longer [claimant] will be there. He seems to be doing well in gaining some new skills thankfully. I would guess two to three more months seems possible in transition before he could 'test/apply' to move to the independent house. Hard to say. Obviously this is beyond on my expertise level." (Ex. D., p. 0024.)

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37. By "invoice" dated July 12, 2016, claimant's parents demanded the Service Agency to reimburse claimant's out-of-state residential care services for the seven-month period from January 2016 through July 2016, at the rate of \$8,700 per month, in the total amount of "\$34,800."<sup>1</sup> (Ex. E.) The demand provided no details regarding options considered or the reasons other options were insufficient to meet claimant's needs.

38. On July 25, 2016, the Service Agency denied the request for retroactive reimbursement, issuing a Notice of Proposed Action to refuse payment of claimant's attendance at Waterfall Academy. Funding was denied because claimant had already been placed and was residing at Waterfall Academy prior to becoming eligible for regional center services and, as a result, the placement was not part of the IPP and never agreed to by the Service Agency.

39. On August 12, 2016, claimant filed a fair hearing request, alleging "They have had sufficient and plenty of time to find appropriate placement, which they could not do," and requesting "reimbursement for services of current placement [and] actively

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<sup>1</sup> The invoice contained a mathematical error; seven months of service at the rate of \$8,700 equals \$60,900, the actual total of monthly charges.

work with [client] to find appropriate placement in California.” (Ex. 2.) Claimant did not lodge a complaint with the director of the Service Agency about personnel issues.

#### CONTINUING EFFORTS TO PLACE CLAIMANT IN CALIFORNIA

40. On September 7, 2016, the IPP was amended to authorize an evaluation to determine the level of SLS services appropriate to meet claimant’s needs. The evaluation was to be performed by SAGE Supported Living Services (Sage), with the Service Agency funding for six hours of evaluation.

41. On September 27, 2016, the Service Agency issued a Regional Center Statewide Placement Request, furnishing identifying and assessment data about claimant. Nineteen regional centers responded, “No, we do not have an appropriate placement for this client.” (Ex. 14.)

42. On November 2, 2016, the IPP was amended to authorize a second evaluation to determine the level of SLS appropriate to meet claimant’s needs. This evaluation was to be performed by People Creating Success, with the Service Agency funding for four hours of evaluation.

43. On December 13, 2016, the IPP was amended to reflect claimant’s intent to return to California and live in an apartment. The Service Agency agreed to fund 40 hours per month of independent living services (ILS) support.

44. In January 2017, with the assistance of Sage, the family secured an apartment for claimant to move into within the Service Agency’s catchment area.

45. On February 8, 2017, the IPP was amended to continue the authorization of 40 hours of ILS support per month, to be increased to 24 hours per day, for a period of three months, upon claimant’s arrival in California. On February 24, 2017, the IPP was amended to authorize the increase in funding for three months, “effective March 3, 2017 which will be [claimant’s] first day landing in California.” (Ex. B, p. 0011.)

46. On February 28, 2017, claimant left Waterfall Academy and returned to California. Claimant's parents paid Waterfall Academy for 14 months of residency at the rate of \$8,700 per month, and they incurred unspecified attorney fees in connection with their prosecution of the fair hearing request. Claimant's father increased the demand for reimbursement to the adjusted sum of \$114,500. (Ex. N-O, pp. 0064-0069.)

## LEGAL CONCLUSIONS

Based upon the foregoing factual findings, the administrative law judge makes the following legal conclusions:

### STANDARD OF PROOF

1. Claimant, as the party seeking government benefits or services, bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)
2. The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

### STATUTORY FRAMEWORK

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.)
4. Any person believed to have a developmental disability is eligible for initial intake and assessment services at a regional center. (Welf. & Inst. Code, § 4642, subd. (a)(1).) Initial intake includes "information and advice about the nature and availability of



services provided by the regional center and by other agencies in the community, including guardianship, conservatorship, income maintenance, mental health, housing, education, work activity and vocational training, medical, dental, recreational, and other services or programs that may be useful to persons with developmental disabilities or their families.” (Welf. & Inst. Code, § 4642, subd. (a)(2).)

5. Initial intake must be performed within 15 working days following a request for assistance. (Welf. & Inst. Code, § 4642, subd. (a)(2).) If an assessment is needed, the assessment must be performed within 120 days following initial intake, and may include “collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs.” (Welf. & Inst. Code, § 4643, subd. (a).)

6. Following intake and within 60 days of a completed assessment, regional centers are required to develop an IPP for any person found to be eligible for regional center services. (Welf. & Inst. Code, § 4646, subd. (c).) The legislative intent of the Lanterman Act is to ensure that “the provision of services to consumers<sup>2</sup> and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.” (Welf. & Inst. Code, § 4646, subd. (a).) An IPP must be prepared jointly by the planning team, and must identify the consumer’s goals, objectives, and services and supports that will be included in the consumer’s IPP. (Welf. & Inst. Code, § 4646, subd. (d).)

7. The rights of consumers and the corresponding regional center obligations are governed by the IPP procedure and regional centers have wide discretion in determining how to implement the plan agreed upon by the IPP

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<sup>2</sup> “Consumer” means a person who has a disability that meets the definition of a developmental disability under the Lanterman Act. (Welf. & Inst. Code, § 4512, subd. (d).)

participants. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.)

8. Once a consumer is determined to be eligible for services by a regional center, the consumer remains "eligible by any other regional center if [the consumer] move(s) to another location within the state." (Welf. & Inst. Code, § 4643.5, subd. (a).)

9. Funding for out-of-state services is governed by Welfare and Institutions Code section 4519, which provides:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the client's [IPP]. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director,

is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension shall not exceed six months.

#### FUNDING FOR OUT-OF-STATE SERVICES

10. Cause was not shown to authorize funding under Welfare and Institutions Code section 4519 to reimburse claimant for placement and service costs incurred at Waterfall Academy because DDS did not receive, review, and approve a plan for out-of-state service in claimant's IPP.

11. The family placed claimant with service providers outside the state of California, acting unilaterally before claimant was eligible for regional center services, and without notifying the Service Agency or DDS. There was no evidence of a diagnosis of an eligible condition until the Service Agency completed its assessment. After claimant was determined to be eligible for regional center services, no demand was made to fund the out-of-state services for more than seven months. When made, the demand lacked any detail regarding options considered before placing claimant out-of-state or the reasons in-state options were inadequate.

12. The IPP, which governs claimant's rights and the Service Agency's obligations, does not reflect that claimant required out-of-state placement due to a lack of availability of services and supports in California. Moreover, the plan omits any direction either to seek funding for the out-of-state services through DDS or seek a residential placement in California. By the time the demand for reimbursement was made, the IPP merely directed the regional center to provide case management services.

13. Claimant's outburst while the intake process was pending, and the damage he caused by driving the family car into the garage door, were behaviors that understandably caused his family to be concerned and to take action. However, the behavioral issues that claimant exhibited were not extraordinary or so extreme as to merit searching outside of California for placement services to the exclusion of seeking placement in California. In fact, the weight of the evidence shows that, in spite of his developmental disability, claimant was relatively highly functioning before and after the isolated instance of dangerous conduct.

14. Claimant did not establish at hearing that Waterfall Academy was uniquely capable of treating claimant's behavioral needs to the exclusion of all similar service providers in California. Claimant's father rejected local services proposed by the Service Agency because, in his opinion, those facilities lacked sufficient supervision. However, the father's desire to have his adult child supervised 24 hours per day is not competent medical evidence to show that such level of care was necessary to enable claimant to approximate the pattern of everyday living available to people without disabilities of the same age. Dr. Graff's testimony, Blue Shield's initial determination, and the results of the medical review performed by Maximus are compelling evidence to the contrary.

15. Once given the opportunity to conduct a comprehensive assessment to determine the services and supports available in California, the Service Agency acted with reasonable diligence to amend the IPP accordingly and to implement the services and supports necessary to enable claimant to move into an apartment in California. Claimant's return to California is evidence that in-state options were available to meet claimant's needs, rendering it now futile to order the Service Agency to submit a request to DDS for retroactive funding for out-of-state services.

## EQUITABLE RELIEF

16. Claimant argues, "This case is all about fairness and justness," citing equitable principals in support of the request for reimbursement of expenses incurred. Indeed, equitable relief may be asserted against government agencies in administrative hearings "where justice and right require it." (*City of Los Angeles v. Cohn* (1894) 101 Cal. 373.)

17. Estoppel against a welfare agency may be appropriate when the agency has negligently or intentionally caused a claimant to fail to comply with a procedural precondition to eligibility, and the failure to invoke estoppel would cause great hardship to the claimant. (*Lentz v. McMahon* (1989) 49 Cal.3d 393.) Four elements must be established in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.)

18. A public agency may be estopped to assert a statutory basis to deny benefits if it "acted in an unconscionable manner or otherwise set out to, or did take unfair advantage of a party"; however, a public agency is not estopped in instances of errors or omissions that cause a claimant to fail to act diligently on his claim. (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297.)

19. The California Supreme Court, quoting from an early decision of the United States Supreme Court, stated: "The vital principle [of equitable estoppel] is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It

involves fraud and falsehood, and the law abhors both." (*Seymour v. Oelrichs* (1909) 156 Cal. 782, 795.)

20. In this case, the Service Agency was slow to act on claimant's initial request for assistance. Although the intake coordinator acknowledged the mother's initial inquiry on December 17, 2014, he did not perform an initial intake until April 22, 2015, substantially more than 15 days after the request for assistance was made. Moreover, the Service Agency was slow to implement in-state services in the management of claimant's case after it became known that in-state services were preferred by claimant and his family.

21. However, claimant's evidence of ordinary negligence and delays is not grounds to order equitable relief. There is no evidence to show that the Service Agency was apprised during the intake process that the family intended to place claimant in an out-of-state residential program. There is no evidence to show that, by placing claimant out-of-state, the family acted in reliance on any conduct or advice given by the Service Agency or that the Service Agency made any representation to suggest that the family would have the right to reimbursement if they placed claimant out-of-state.

22. On the contrary, claimant's father relied on the advice of Dr. Freedman, the family's hired counselor, who directed the family to search for out-of-state programs relating to computer addiction. Nothing in the record could be interpreted to suggest that the Service Agency would pay for computer addiction treatment or out-of-state residential placement, if claimant was found eligible for services, even if the Service Agency had determined claimant was eligible for regional center services before claimant's outburst on July 15, 2015. Claimant's father was aware of the expense involved in the programs that he alone researched, but there is no evidence that he made any inquiry or was given any misleading advice by the Service Agency before acting on his own to place his son in two separate out-of-state residential programs. To

the contrary, claimant's family was advised by Dr. Freedman in September 2013 to request regional center assistance, but took no action on the advice until November 2014.

23. Although the intake process and the search for a California placement took a long time, the delays were not exclusively attributed to the Service Agency. Claimant was unavailable during the intake process during regular business hours while attending and traveling to a Los Angeles program, contributing to the delays in gathering data from an authorized source. The father rejected various proposals for California placement based on personal desires for maximum supervision. Because claimant's father expressly represented to the Service Agency that it could take two to three months before claimant was ready to return to California (Factual Finding 36), the Service Agency's failure to perform with urgency is not evidence that it acted in an unconscionable manner or that it took advantage of claimant. There is no evidence to show that the Service Agency engaged in any conduct that would mislead claimant's father to place claimant out of state, or that the placement was an act that the family would not have otherwise done but for the Service Agency's conduct.

24. Accordingly, the Service Agency is not equitably estopped from denying reimbursement under the facts and circumstances of this case.

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#### TRAINING REGARDING THE INTAKE AND ASSESSMENT PROCESS

25. Claimant presented evidence about the Service Agency's failure to perform an initial intake in a timely fashion, including testimony that phone calls were not returned and that claimant's case was improperly closed for four months when claimant moved out of state. The testimony otherwise expressed dissatisfaction with case management after claimant was determined to be eligible for services, specifically that the service coordinator failed to diligently search for a California placement.

26. The fair hearing process addresses a specific decision or action by a regional center. (Welf & Inst. Code, §§ 4710.5, 4710.6, and 4712.) The nature of claimant's complaints about intake and assessment are more appropriately processed through other administrative procedures. Specifically, Welfare and Institutions Code section 4731 provides:

- (a) Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section
- (b) Initial referral of any complaint taken pursuant to this section shall be to the director of the regional center from which the consumer receives case management services. If the consumer resides in a state developmental center, the complaint shall be made to the director of that state developmental center. The director shall, within 20 working days of receiving a complaint, investigate the complaint and send a written proposed resolution to the complainant and, if applicable, to the service provider. The written proposed resolution shall include a telephone number and mailing address for referring the proposed resolution in accordance with subdivision (c).
- (c) If the complainant is not satisfied with the proposed resolution, the complainant may refer the complaint, in writing, to the Director of Developmental Services within 15 working days of receipt of the proposed resolution. The director shall, within 45 days of receiving a complaint, issue a written administrative decision and send a copy of the decision to the complainant, the director of the regional center or state developmental center, and the service provider, if applicable. If there is no referral to the



department, the proposed resolution shall become effective on the 20th working day following receipt by the complainant.

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27. Claimant filed a fair hearing request, but did not lodge a complaint with the director of the Service Agency about these personnel issues. The scope of a fair hearing is “to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an IPP . . . or disputes regarding rates or audit appeals.” (Welf. & Inst. Code § 4731, subd. (e).) This administrative law judge lacks jurisdiction to impose employment discipline, or to order any employee of the Service Agency to complete job training. This fair hearing is simply not the forum to resolve claimant’s complaints about the manner by which the Service Agency performed the initial intake of claimant’s request for assistance or the manner by which claimant’s case has been managed. Accordingly, the request to order the Service Agency to undergo training is denied.

#### ATTORNEY FEES

28. Generally, each party to a lawsuit must pay its own attorney fees; a successful party is not entitled to recover attorney fees from the opposing party, unless a statute or contract specifically provides otherwise. (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 237; see Code Civ. Proc., § 1021.) In the context of an administrative hearing concerning a specific state-regulated agency, “when the Legislature wants to permit the recovery of expenses or attorney fees . . . , it has done so explicitly.” (*K.I. v. Wagner* (2014) 225 Cal.App.4th 1412, 1423, *as modified* (June 2, 2014); See Code Civ. Proc., § 1028.5, subd. (b) [a small business or qualifying licensee may recover reasonable litigation expenses from a regulatory agency, including “expenses incurred in administrative proceedings”]; see also Bus. & Prof. Code, § 5107 [California Board of Accountancy may recover attorney fees incurred in administrative

disciplinary hearings]; Bus. & Prof. Code, § 3753.7 [same for Respiratory Care Board of California].)

29. In this case, claimant has not prevailed in his appeal of the Service Agency's denial of the demand for reimbursement, or on his request for staff training. Moreover, claimant cites no specific statutory authority in the Lanterman Act to grant the recovery of attorney fees in connection with services rendered at a fair hearing. The parties executed an IPP Agreement, but the contract contains no provision for the payment of attorney fees in connection with any dispute concerning the enforcement of those services to which the parties agreed.

30. Accordingly, claimant is not entitled to recover attorney fees incurred in connection with the fair hearing.

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## ORDER

Claimant's appeal is denied.

The Service Agency is not required to fund or reimburse claimant's family for out-of-state residential placement at Waterfall Academy.

The Service Agency is not required to reimburse claimant's family the sum of \$114,500 for placement and service costs.

The Service Agency staff is not required to receive training regarding the intake and assessment process.

The Service Agency is not required to pay attorney fees incurred by claimant's family in connection with the fair hearing.

DATED:

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MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.