

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019110253

DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 25, 2019, in San Bernardino, California.

Stephanie Zermeño, Fair Hearings Representative, Inland Regional Center (IRC), represented IRC.

Claimant's mother represented claimant.

The matter was submitted for decision on November 25, 2019.

SUMMARY

Claimant's mother requested that IRC provide a one-on-one aide to accompany claimant to various activities when claimant's mother was not available. She requested that IRC fund an instructional program in reading. And she requested that IRC provide claimant with chiropractic care. IRC denied those requests, and claimant appealed. Claimant is not entitled to those services, and the appeal is denied.

FACTUAL FINDINGS

Background

1. Claimant, a 15-year-old male, receives services from the regional center under diagnoses of intellectual disability and autism spectrum disorder. He lives in the family home with his mother and maternal grandmother. Claimant's mother is not employed outside the home. Claimant attends school; he is in the ninth grade. At school, he has a one-on-one aide, who is trained in intense behavioral intervention (IBI). The school district provides speech therapy, occupational therapy, and IBI. The school district also provides curb-to-curb transportation. Claimant is in school from 7:30 a.m. to 2:30 p.m. five days per week.

2 Claimant is verbal and mobile. He has limited communication skills but communicates with complete sentences. His mother wants him to increase his communication skills. He goes out into the community with his family. They go to amusement parks, movie theaters, and basketball games. Claimant has participated in Special Olympics for track and field. He performs personal care but needs prompting and some assistance. He cannot prepare snacks or meals. Claimant engages in some

disruptive social behaviors, which include pacing, jumping, flapping his fingers, and rocking. He has sporadically hit and pinched. He attempts to run away at least once per week. He has limited safety awareness and requires supervision during waking hours.

3. Claimant receives \$325 per month in Supplemental Security Income (SSI). His mother is the payee. He receives 213 hours per month of In-Home Supportive Services (IHSS). His mother is the IHSS provider. Claimant has medical insurance with Inland Empire Health Plan (IEHP) through Medi-Cal. Claimant's health is generally stable. Claimant receives 28 hours per month of preferred provider respite. IRC has authorized a temporary increase in respite hours to 48 hours per month during times when claimant is out of school for breaks. At this time, claimant does not receive applied behavior analysis (ABA) services at home, but the IBI that he receives at school is, in some respects, similar to ABA. IRC has suggested that claimant's mother consider an ABA program for claimant.

4. Celina Gonzalez is claimant's IRC consumer services coordinator. On July 31, 2019, claimant's mother sent a letter to Ms. Gonzalez in which she requested additional services. IRC granted some of the requests but denied others. Claimant's mother requested a one-on-one aide to accompany claimant to various activities when claimant's mother is not available. Claimant's mother gave the following examples of activities: A summer program that meets twice a week, extracurricular activities, and Special Olympics. Also, she requested that IRC fund an instructional program in reading with the Lindamood-Bell reading program.

5. At some point, claimant's mother also requested that IRC provide claimant with chiropractic care. In a September 11, 2019, individual program plan (IPP)

addendum, at page eight, there is a note that "Mother has requested that IRC fund Chiropractic care."

6. IRC sent claimant's mother a notice of proposed action (NOPA) dated September 23, 2019. Amy Clark, a program manager with IRC, wrote the NOPA. IRC denied a one-on-one aide to accompany claimant to various activities, denied the Lindamood-Bell reading program, and denied chiropractic care.

7. Claimant's mother appealed the denial of the three requests. She filed a fair hearing request that IRC received October 24, 2019.

The NOPA

8. In the NOPA, Ms. Clark contends as follows:

9. For two reasons, claimant is not entitled to have IRC provide a one-on-one aide to accompany him to various activities when his mother is not available. First, the family of a minor child without disabilities would be responsible for accompanying the child or finding someone to accompany the child to the sort of activities specified. Accompanying claimant or arranging for someone to accompany him to such activities does not involve extraordinary care. Second, claimant's 213 hours of IHSS benefits are a generic resource that can be used, in part, to hire an aide to accompany claimant to activities.

10. Ms. Clark contends there are two reasons why claimant is not entitled to have IRC fund a Lindamood Bell reading program. First, the family of a minor child without disabilities would be responsible for providing such a program. Second, claimant's school district is responsible for providing an appropriate educational program for claimant, and regional centers are prohibited from funding educational

services for children from three to 17 years of age. And with regard to the Lindamood-Bell program in particular. IRC does not vendorize that program, i.e., IRC does not have a contract with Lindamood-Bell.

11. Regarding the request that IRC provide claimant with chiropractic care, Ms. Clark further contends that, if claimant needs chiropractic care, IEHP, his medical insurance provider, has an obligation to provide that. A regional center cannot fund medical or dental services unless there is documentation that a health care insurer or other medical care provider has denied the service and the regional center concludes that an appeal from that decision would have no merit.

Ms. Clark's Testimony

12. In Ms. Clark's testimony, she reiterated much of what she wrote in the NOPA.

13. Regarding the request for a one-on-one aide to accompany claimant to various activities Ms. Clark added that, with regard to the Special Olympics activities, there is a generic resource; Special Olympics will provide a "buddy."

14. And regarding the request for chiropractic care, Ms. Clark added that there is no evidence that a medical professional has found that claimant needs such care.

Claimant's Mother's Testimony

15. Claimant's mother testified as follows: Whenever claimant is out of the house, he must have protective supervision.

16. Claimant's mother testified that she is claimant's caregiver most of the time when he is not in school. Claimant's mother is enrolled in an online class that is scheduled on Tuesdays from 6 :00 p.m. to 7:00 p.m. and on Saturdays from 11:00 a.m. to noon. Also, she needs study time for the class. She cannot accompany claimant to activities outside the home at those times.

17. Claimant's mother testified that she requested that IRC fund a Lindamood-Bell reading program for claimant because he is in the 10th grade but reads at only a third to fourth grade level. She said she previously asked the school district to provide a Lindamood-Bell reading program, but the school district denied her request.

18. Claimant's mother has had chiropractic treatments, and she wants claimant to be able to go to the same chiropractor who treated her. She asked IEHP to fund claimant's being treated by her chiropractor, but they denied the request. At the hearing, claimant's mother referred to an article she had read. It provided that chiropractic care can improve the life of autistic children. Chiropractic care can relieve stress and stop headaches.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Claimant has the burden of proof. (Evid. Code, §§ 115 & 500.) Claimant is seeking an order requiring the regional center to provide a service or support that is not provided for in claimant's IPP and that is not currently being provided.

2. The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.)

Overview of a Regional Center's Obligation to Provide Services

3. The Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500, et seq. (Lanterman Act), is an entitlement act. People who qualify under it are entitled to services and supports. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

4. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens, supra*, 38 Cal.3d, at p. 388.)

5. Persons with developmental disabilities have "a right to dignity, privacy, and humane care," and services and supports, when possible, should be provided in natural community settings. (Welf. & Inst. Code, § 4502, subd. (b).) Persons with developmental disabilities have "a right to make choices in their own lives" concerning "where and with whom they live." (Welf. & Inst. Code, § 4502, subd. (j).)

6. Regional centers should assist "persons with developmental disabilities and their families in securing those services and supports . . . [that] maximize opportunities and choices for living, working, learning, and recreating in the community." (Welf. & Inst. Code, § 4640.7, subd. (a).) Regional centers should assist "individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices." (Welf. & Inst. Code, § 4648, subd. (a)(1).)

7. In *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233), the court of appeal addressed the Lanterman Act and said:

In order for the state to carry out many of its responsibilities as established in this division, the Act directs the State Department of Developmental Services to contract with "appropriate private nonprofit corporations for the establishment of a "network of regional centers." (§§ 4620, 4621.) Regional centers are authorized to "[p]urchase . . . needed services . . . which regional center determines will best" satisfy the client's needs. (§ 4648.) The Act declares: "It is the intent of the Legislature to encourage regional centers to find innovative and economical methods" of serving their clients. (§ 4651.) The Act directs that: "A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region." (§ 4652.)

[¶] . . . [¶]

[T]he Regional Center's reliance on a fixed policy is inconsistent with the Act's stated purpose of providing services "sufficiently complete to meet the needs of each person with developmental disabilities." (§ 4501.) The Act clearly contemplates that the services to be provided each client will be selected "on an individual basis." (*Association*

for Retarded Citizens v. Department of Developmental Services, supra, 38 Cal.3d 384, 388.)

A primary purpose of the Act is "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family." (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d 384, 388.) In strong terms, the Act declares: "The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families" requiring the state to "give a very high priority to the development and expansion of programs designed to assist families in caring for their children at home." (§ 4685, subd. (a).) In language directly applicable to the present case, section 4685, subdivision (b), states that "regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child." (§ 4685, subd. (b).)

The Lanterman Act "grants the developmentally disabled person the right to be provided at state expense with only such services as are consistent with its purpose."

(*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d 384, 393.) As noted previously, a primary purpose of the Act is to "minimize the institutionalization of developmentally disabled persons and their dislocation from family."

8. The Act provides examples of services and supports that should be considered.

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. 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. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his

or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (Welf. & Inst. Code, § 4512, subd. (b).)

Requirement that Regional Centers Be Cost Conscious

9. While the Lanterman Act emphasizes the services and supports to which consumers are entitled, the act also requires regional centers to be cost conscious.

10. It is the intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the

individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).)

11. When selecting a provider of consumer services and supports, the regional center, the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall consider, "the cost of providing services or supports of comparable quality by different providers, if available." (Welf. & Inst. Code, § 4648, subd. (a)(6)(D).)

12. The Lanterman Act requires regional centers to do a number of things to conserve state resources. For example, it requires regional centers to "recognize and build on . . . existing community resources." (Welf. & Inst. Code, § 4685, subd. (b).)

13. Welfare and Institutions section 4659, subdivision (a) provides, in part:

[T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

14. None of these provisions concerning cost-effectiveness detracts from the fact that eligible consumers are entitled to the services and supports provided for in the Lanterman Act. These provisions concerning cost-effectiveness do teach us, however, that cost-effectiveness is an appropriate concern in choosing how services and supports will be provided. There is a tension between the requirement that services and supports be cost effective and the proposition that entitlement is determined by what is needed to implement a consumer's IPP. The cost-effectiveness of a particular service or support must be measured against the extent to which it will advance the goal specified in the IPP, and consideration must be given to alternative means of advancing the goals.

Regional Center May Not Supplant Generic Resources

15. A regional center cannot provide services or supports if some other agency has an obligation to provide them and has not refused to do so.

Regional center funds shall not be used to supplant the budget of an 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).)

Family's Responsibility to Provide Services for a Child Without Disabilities

16. Welfare and Institutions Code section 4646.4, subdivision (a)(4), provides that a regional center shall have an internal process that shall ensure adherence to federal and state law and regulation and shall ensure, among other things:

Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

Regional Center Shall Not Purchase Medical Services Unless a Health Care Provider Has Denied a Request to Provide the Service

17. Welfare and Institutions Code section 4659, subdivision (d)(1), provides:

[A] regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit. . . . Regional centers may pay for medical or dental services during the following periods:

(A) While coverage is being pursued, but before a denial is made.

(B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued.

(C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan.

Claimant's School District May Be Responsible for Providing a One-On-One Aide for Extracurricular Activities

18. Education Code section 56345.2, subdivision (a), provides:

Pursuant to Section 300.107 of Title 34 of the Code of Federal Regulations, each public agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the individualized education program team of the individual with exceptional needs, to provide nonacademic and extracurricular services and activities in the manner necessary to afford individuals with exceptional needs an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest

groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with exceptional needs, and employment of pupils, including both employment by the public agency and assistance in making outside employment available.

(c) Pursuant to Section 300.117 of Title 34 of the Code of Federal Regulations, each public agency shall ensure that each individual with exceptional needs participates with nondisabled children in extracurricular services and activities to the maximum extent appropriate to the needs of that individual. Each public agency shall ensure that each individual with exceptional needs has the supplementary aids and services determined by the individualized education program team of the individual to be appropriate and necessary for the individual to participate in nonacademic settings.

Analysis of Request for a One-On-One Aide

19. Welfare and Institutions Code section 4646.4, subdivision (a)(4), requires a regional center, when purchasing services, to consider a family's responsibility for providing similar services and supports for a minor child without disabilities. Claimant's mother is a homemaker and a caregiver for claimant. She does not work outside the home. She is taking an online course that requires her attendance two hours per week and requires study time. Claimant is at school seven hours per day, five days per week, and the school district provides transportation to and from school. Currently, IRC has agreed to provide extra respite hours for periods when school is not in session.

Through IHSS, claimant's mother is paid for providing 213 hours per month of care for claimant. Thus, while claimant's mother has substantial responsibilities, she also has great flexibility in arranging her activities. A parent with this flexibility and level of responsibility would expect to arrange his or her schedule to accompany his or her child to an appropriate number of activities. A parent of a minor child without disabilities would expect to do that, and a parent of a child with disabilities should expect to do that.

20. As noted above, claimant receives 213 hours per month of IHSS. If claimant's mother is unavailable occasionally, she can use part of the IHSS funds to hire an aide to accompany claimant to activities.

21. Education Code section 56345.2 provides that a school district shall take steps to provide extracurricular services and activities in the manner necessary to afford individuals with exceptional needs an equal opportunity for participation in those services and activities. That section further provides that a school district shall ensure that each individual with exceptional needs participates with nondisabled children in extracurricular services and activities to the maximum extent appropriate. Claimant offered no evidence that he attempted to have the school district provide an aide to accompany him to extracurricular activities. And as noted above, Welfare and Institutions Code section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

22. Claimant did not establish by a preponderance of the evidence that he is entitled to have IRC provide a one-on-one aide to accompany him to activities.

Analysis of Request for IRC to Fund a Reading Program

23. Welfare and Institutions Code section 4646.4, subdivision (a)(4), requires a regional center, when purchasing services, to consider a family's responsibility for providing similar services and supports for a minor child without disabilities. The regional center shall take into account any added cost of providing the service to a claimant because of his or her disability. When a parent is concerned that a school district is not providing appropriate tutoring for a child who is performing below his or her grade level, the parent may appeal the school district's decision, and the parent may obtain private tutoring services. It is not unusual for a family to obtain private tutoring services for a minor child without disabilities. And to the extent providing the service to a disabled child costs no more than providing it to a child without disabilities, the family of a disabled child is responsible for the cost. If IRC were responsible for providing a reading program, it would be responsible for paying only whatever additional cost resulted from claimant's being disabled. Claimant offered no evidence that a reading program for him would cost more than a reading program for a minor child without disabilities.

24. Claimant's school district is responsible for providing a free and appropriate education for him. If claimant's school district is not doing that, claimant can take steps to require the school district to perform that duty. Claimant's consumer services representative can consult with claimant and claimant's mother as to how to proceed with an appeal if claimant's mother concludes that the school district failed to provide an appropriate education. But again, Welfare and Institutions Code section 4648, subdivision (a)(8), prohibits a regional center from using funds to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

25. Claimant did not establish by a preponderance of the evidence that he is entitled to have IRC fund a reading program for him.

Analysis of Request for IRC to Fund Chiropractic Services

26. No medial professional recommended that claimant have chiropractic care. Claimant failed to prove that chiropractic services are needed to satisfy the requirements of claimant's IPP.

27. Welfare and Institutions Code section 4659, subdivision (d)(1), provides that a regional center shall not purchase medical services for a consumer three years of age or older unless the regional center is provided with documentation that Medi-Cal, private insurance, or a health care service plan denied a request to provide the service. Claimant did not provide IRC with documentation that IEHP denied a request to provide chiropractic care.

28. Claimant did not establish by a preponderance of the evidence that he is entitled to have IRC fund chiropractic care for him.

ORDER

Claimant's appeal of IRC's decision not to fund a one-on-one aide, a reading program, or chiropractic care is denied.

DATE: December 10, 2019

ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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