

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

In the Matter of:

Claimant,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2021020122

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 2 and 29, 2021.

Claimant was represented by Heather S. Zakson, and his father (Father).¹

Christina M. Petteruto represented the Regional Center of Orange County (Service Agency or RCOC).

¹ Family titles are used to protect the privacy of Claimant and his family.

Testimony was given. As many of the proposed exhibits were duplicative, the parties were ordered to submit a joint exhibit list by May 21, 2021. In addition, parties were permitted to submit written closing briefs. The documents were timely received and were marked as follows: (1) the joint exhibit list was marked as Exhibit 1-A; (2) Claimant's brief was marked as Exhibit EEE; and (3) RCOC's brief was marked as Exhibit 26.

In addition to the exhibits listed in the joint exhibit list, the documents marked as Exhibits 1 through 3 were admitted into evidence as jurisdictional documents, and Father's April 2, 2020 Declaration, which parties agreed would serve as part of Father's testimony, was marked and admitted as Exhibit DDD.

ISSUE

1. Whether RCOC should fund eight hours per month of behavioral support services in the form of direct services and training of group home staff.
2. Whether RCOC should reimburse Claimant and Father for funds expended for behavioral support services provided by Bradley Silverman, Ph.D., Abeita and Associates, since November of 2020.

EVIDENCE RELIED UPON

Documents: Exhibits 1-4, 8, 16, 19-24, A-DDD.

RCOC Witnesses: Sandy Marquez-Gonzales, RCOC Service Coordinator; Jack Stanton, RCOC Associate Director of Housing; Carrie Otto, RCOC Area Manager; Christina Genter, RCOC Behavioral Services Resource Coordinator; Neshe Parkes, Psy.D.

Claimant's Witnesses: Steven Lawrence, M.D.; Dr. Silverman; Kathleen Carmichael, Behavioral Assistant; Alex Tecson, Facility Administrator; Imelda Samonte, Facility Staff.

FACTUAL FINDINGS

Fair Hearing Request

1. The present dispute is related to Claimant's request for program services for behavior support.

2. Father submitted a Fair Hearing Request dated February 7, 2021, and the matter was set for hearing on April 2, 2021. Under "Reason(s) for requesting a fair hearing," Father indicated:

On or about Nov. 17, 2020, client requested program services for behavior support. On or about Dec. 1 2020, RCOC improperly denied Client's request. On or about Dec. 1, 2020, RCOC misled and told Client that the request had been granted, and did not provide [Notice of Proposed Action], impeding Client's right to timely appeal the denial.

(Exh. 2 and 3.)

3. The Fair Hearing Request has a section asking for a description of what is needed to resolve the complaint. Father requested, "RCOC to fund behavior support 20 hours/week direct services for client support and group home staff training, with 2 hours/week supervision, through vendored provider Dr. Bradley Silverman." (Exh. 2 and 3.)

4. On March 19, 2021, Father amended the Fair Hearing Request to request, RCOC to fund behavior support 8 hours per month [*sic*] direct services for client support and group home staff training, with 2 hours/week supervision, through vendored provider Dr. Bradley Silverman. RCOC to reimburse Claimant for expenditures for behavior support services and consultation.”

(Exh. 1.)

Background

5. Claimant is a 22-year-old consumer who is eligible for Lanterman Developmental Disabilities Services Act services (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)² based upon a qualifying diagnosis of autism spectrum disorder (ASD). In addition to his RCOC qualifying diagnosis, Claimant has been diagnosed with a mood and anxiety disorder. Father and Claimant’s uncle are Claimant’s co-conservators.

² All statutory references are to the Welfare and Institutions Code unless otherwise designated.

6. In December 2019, Claimant moved from a Level 4I group home into a Level 3 adult residential facility³ in Buena Park (Buena Park ARF or facility).⁴ The transition went well, and Claimant is reportedly happy with his new placement. (Exh. E, p. 6.)

7. A Level 3 community care licensed (CCL) facility is required to have one direct care staff for up to three consumers in the facility. Claimant resides at the Buena Park ARF with one other resident and receives 24-hour care.

8. Claimant attends an adult transition program (ATP) in Buena Park five days per week for approximately six hours a day. As part of Claimant's Individualized Education Program (IEP), the Buena Park School District (District) provides Claimant transportation to and from school, vocational and life skills training, speech-language therapy, occupational therapy, behavior support, social skills training, counseling, physical education, recreation, on-the-job training, and community-based instruction. According to Claimant's January 14, 2021 IEP, Claimant showed "tremendous growth as measured by and against his behavior plan" prior to the school closures in March 2020. (Exh. 20, p. 8.)

³ Parties mistakenly refer to the Buena Park ARF as a group home. Group homes, however, are community care facilities that are licensed to provide 24-hour care and supervision to children, not adults. (See Cal. Code Regs., tit. 16, § 80001, subd. (g).)

⁴ The name of ARF is anonymized to protect Claimant's privacy rights.

9. In March 2020, the COVID-19 pandemic emergency required closure of Claimant's school. As a result, Claimant was unable to access the other services that were provided by the school district as part of his IEP.

10. In addition, the Buena Park ARF prohibited all visitors and discontinued all off-site activities. As a result, Father, who visited Claimant weekly at the Buena Park ARF before the closure, was not able visit Claimant regularly.

11. On March 21, 2020, Claimant had an outburst where he suddenly threw a glass coaster at staff, ran into his room and then returned to the living room and pulled the television to the floor. Claimant then ran back into his room where he stayed until Father arrived at the Buena Park ARF. Alexander M. Tecson, the facility administrator, submitted a special incident report (SIR)⁵ to the Service Agency the following day.

12. On March 26, 2020, Father⁶ requested in-home services for Claimant, expressing the concern Claimant was at risk of losing his residential placement as "it was a difficult and lucky find." (Exh. T, p. 387.) Service Coordinator Sandy Marquez-Gonzalez advised Father that "due to COVID-19 and following [Department of Developmental Services] directives, [RCOC is] putting on hold all new services that include having a new provider come into the home." (Exh. S) She further explained that

⁵ A Special Incident Report, or SIR, is a formal report that is filed with the regional center whenever a person served by the regional center is involved in an unusual event, such as a crime or injury.

⁶ All communications made by Ms. Zackson on Father's behalf will be attributed to Father.

the Buena Park ARF agreed to provide Claimant with program support in the form of additional supervision.

13. On March 28, 2020, Claimant had a second outburst after Father visited him, when he suddenly threw a plate of food on the floor, threw objects at staff and the other resident and attempted to damage facility property.

14. On March 30, 2020, RCOC authorized program support funding for one additional staff member for six hours a day, five days per week. (Exh. E, p. 0257.) Despite the additional supervision, Claimant continued to exhibit disruptive behaviors, including property destruction and aggression toward Buena Park ARF staff.

15. On April 3, 2020, Father called Claimant's primary physician, Virginia Johnson, M.D. Dr. Johnson was unwilling to prescribe medication without an in-person consultation and suggested the Buena Park ARF try over-the-counter herbal or homeopathic compounds.

16. On April 6, 2020, Father consulted with Claimant's psychiatrist, Steven Lawrence, M.D., who advised that Claimant's outbursts were due to his anxiety caused by the changes to his routine and boredom from staying home all day. Dr. Lawrence prescribed a trial of Fluoxetine (Prozac) to medicate Claimant's anxiety. However, Dr. Lawrence noted at the hearing that environmental factors can overpower any medication and trying to medicate the problem is likely to fail without some type of behavioral support.

17. Due to continued incidents, the Service Agency convened a meeting on April 16, 2020, with SC Marquez-Gonzalez, RCOC area supervisor Marisa Patterson, Buena Park ARF administrator Tecson, Buena Park ARF staff Imelda Samonte, Father and Ms. Zackson. A request was made to authorize a one-to-one behavior support

provider to be present at the Buena Park ARF with Claimant. Administrator Tecson denied the request, explaining that the Buena Park ARF was not allowing anyone into the facility unless it was for end-of-life hospice care due to the Department of Public Health's current regulations. When the request was made to allow a behavior support provider to provide services outside, Administrator Tecson informed Father that he would conduct additional research to determine if that was allowed under the current regulations. (Exh. C, p. 198.) Father and the Buena Park ARF also advised the Service Agency that Claimant had been prescribed psychotropic medication and was being monitored by Dr. Lawrence.

18. On April 23, 2020, Father hired a private behavior support provider, Allie Souza, who provided Buena Park ARF with materials and suggestions on how to manage Claimant's outbursts. Following this session, no incidents were reported for over three weeks.

19. On April 29, 2020, Father contacted the Service Agency and advised them that Claimant needed additional "structure and support in the home" and requested that "RCOC . . . help find a way for [Claimant's] behavior support provider to work with him." (Exh. Z) SC Marquez-Gonzalez advised Father that "currently facilities/group homes are not allowing non-essential individuals to visit the homes due to COVID19 concerns." (*Ibid.*)

20. In the ensuing months, there were multiple communications and meetings with Father, the Service Agency and Buena Park ARF in response to Claimant's continuing outbursts. During these communications, Father expressed his concerns over losing the placement at Buena Park ARF as Buena Park ARF relayed that it planned on issuing Claimant a 30-day order once the COVID-19 orders pass. (Exh. C, 182.)

21. On July 29, SC Marquez-Gonzalez met with RCOC's Living Options Resource Group Coordinator Shernan Hidalgo to discuss Claimant, his increasing behaviors and Father's request for behavioral services for the duration of the COVID-19 orders. Following the meeting, SC Marquez-Gonzalez was directed to offer the Buena Park ARF a change in the level of funding to the Level 4E rate. In exchange, the Buena Park ARF would be responsible for providing Claimant with: (1) a minimum of behavioral consultations for 12 hours over six months; (2) a behavioral plan to address Claimant's aggressive behaviors; and (3) additional staff to address Claimant's needs at the facility. (Exh. C, p. 182.)

22. On August 5, SC Marquez-Gonzalez met with RCOC Area Supervisor Theresa Ta and RCOC's Behavior Services Coordinator regarding Father's request for behavior services while the COVID-19 orders were in place. SC Marquez-Gonzalez noted that the Buena Park ARF had signaled its intention to issue Claimant a 30-day notice after the COVID-19 orders had passed and that Father was requesting authorization for their behavioral therapist to go to the Buena Park ARF but that the facility was following the recommendations of the Department of Social Services, Community Care Licensing (Licensing) and not allowing non-essential workers into the facility. SC Marquez-Gonzalez was advised: (1) the Buena Park ARF was funded to provide behavioral support and consultation when Claimant's behaviors were affecting his placement; (2) the Buena Park ARF could "hire a behavior consultant to work with the home staff and address his behaviors" and (3) SC Marquez-Gonzalez may wish to consult with the "QA [Coordinator Hidalgo] regarding the responsibility of the home to provide behavioral support." (Exh, C, p. 180)

23. SC Marquez-Gonzalez prepared a Purchase of Service (POS) on August 1, 2020, requesting that the Buena Park ARF be provided with additional funding to

address Claimant's mood swings. On August 6, 2020, Administrator Tecson agreed to provide Claimant with Level 4E services.

24. On August 12, 2020, an Individual Program Plan (IPP) addendum was prepared, documenting SC Marquez-Gonzalez's preparation of a POS changing Claimant's level of service to a 4E "swing bed."⁷ The following day, SC Marquez-Gonzalez advised Father that the Service Agency determined that the best way to fund Father's request for behavioral services was to increase Claimant's level of care from a Level 3, which did not include a behavioral services component, to a Level 4E, which would require the Buena Park ARF to staff the facility with a behavior consultant and provide 12 hours of support every six months. (Exh. LL.)

25. From August 12, 2020, until October 19, 2020, the Buena Park ARF did not hire a behavior consultant. On October 20, 2020, Claimant's IPP team consisting of Father, SC Marquez-Gonzalez, Administrator Tecon and Ms. Samonte met with Administrator Tecson by telephone. During the meeting, Administrator Tecson announced Claimant was scheduled to begin services with Abeita and Associates. (Exh. C, p. 17.)

26. Kathleen Carmichael, Behavioral Assistant with Abeita and Associates, began providing services to Claimant at the Buena Park ARF on October 28, 2020.

27. Based on Ms. Carmichael's observations of Claimant, Abeita and Associates generated a positive support plan. On November 10, 2020, Abeita and Associates submitted a request to increase the level of behavioral consultation from

⁷ As a "swing bed," the Buena Park ARF, which is classified as a Level 3 CCL facility, is permitted to retain Claimant and provide him with Level 4 services.

two hours a month to four hours a month for six months. The increased hours of support would include: "staff training, increase[d] observation of [Claimant] at home and during school Zoom sessions, as well as one on one time with [Claimant] to teach him replacement skills." (Exh. J, p. 339.) On November 16, 2020, Ms. Carmichael emailed the request to SC Marquez-Gonzalez, copying Dr. Silverman, Administrator Tecson and Father.

28. SC Marquez-Gonzalez reviewed the request with Coordinator Hidalgo on November 18. Coordinator Hidalgo treated this as a request from Buena Park ARF for additional program hours so that the Buena Park ARF could receive reimbursement for retaining Abeita and Associates for additional behavioral support hours. (Exh. C, p. 164.) RCOC subsequently issued a POS for four additional program support hours per month. Though Dr. Silverman was initially under the impression that the increased authorization was for behavioral support hours, he soon realized it was for program support and Abeita and Associates continued to provide only two hours of services until January 27, 2021. (Exh. G, p. 320.)

29. On January 27, 2021, an IPP meeting was held with Father, Administrator Tecson, Ms. Samonte, SC Marquez-Gonzalez, RCOC Supervisor Marisa Patterson, Dr. Silverman, Ms. Carmichael, and Attorney Zakson.

30. During the meeting, Attorney Zakson stated that Father believed RCOC's approval of program support hours meant that it had approved behavior support hours. RCOC Supervisor Patterson explained that the Service Agency could attempt to increase funding for the Buena Park ARF by increasing Claimant's level of care so that the facility could increase its behavioral support hours with Dr. Silverman and Ms. Carmichael.

31. Following the meeting, Father advised SC Marquez-Gonzalez that he supported Ms. Carmichael's November 16, 2020, request for the additional behavior support hours. Father further indicated that if RCOC's approval for program hours were not to add additional behavior support hours, he was appealing RCOC's decision. Father then submitted a Fair Hearing Request asserting that RCOC had "misled" Claimant. (Exh. 2 and 3.) Father also arranged to privately pay Abeita and Associates to increase Ms. Carmichael's hours at Buena Park ARF in order to meet Claimant's perceived needs.

32. In February 2021, RCOC increased Claimant's level of residential care to 4I beginning February 18, 2021. This increased level of care required the Buena Park ARF to provide a minimum of 16 hours of behavior consultation services and staff training for which they are paid at a higher rate.

33. On March 2, 2021, Dr. Silverman informed Father that Ms. Carmichael recommended that Claimant receive eight hours per month of behavior consultation services, with 2.75 of those hours being billed to RCOC. (Exh. AAA)

Current Status

34. Since the initial COVID-19 emergency orders, many of the visitation restrictions on CCL facilities have eased, which allowed Father to resume his weekly visits with Claimant.

35. In addition, Claimant returned to a hybrid model of learning on October 5, 2020, which include three days per week of virtual learning on Mondays, Wednesdays and Fridays from 10:00 a.m. until 2:00 p.m., and in-person learning on Tuesdays and Thursdays from 8:00 a.m. to 3:00 p.m. Though Claimant is scheduled to

exit the ATP at the end of the school year, it is hoped he will successfully transition into an Adult Day Program.

TESTIMONY OF BUENA PARK ARF STAFF

36. Ms. Carmichael has worked at Abeita and Associates, under Dr. Silverman's supervision, for the past six years. Ms. Carmichael began working with Claimant and the Buena Park ARF, under Dr. Silverman's supervision, on October 28, 2020. Abeita and Associates had been retained to provide two hours of behavioral support services a month. Ms. Carmichael expressed her opinion that two hours per month were inadequate to address Claimant's behaviors. Ms. Carmichael, however, declined to provide an opinion regarding the number of service hours that would be appropriate.

37. Dr. Silverman is a licensed psychologist and an employee of Abeita and Associates. Though Dr. Silverman indicated that he is a San Diego Regional Center vendor, neither he nor Abeita and Associates is not an authorized RCOC vendor.

38. Dr. Silverman supervises Ms. Carmichael, and she reviews the cases and individuals Ms. Carmichael works with. Though Dr. Silverman had spoken with Administrator Tecson periodically, he has not provided Claimant with any direct services. His recommendations are based on his review of Ms. Carmichael's documentation.

39. Dr. Silverman indicated that Claimant would benefit from additional support at least once a month. Dr. Silverman, however, declined to state the number of service hours he believed would benefit Claimant.

40. After Claimant was approved as a Level 4E "swing bed" in August 2020, the Buena Park ARF had to provide 12 hours of consultant services in the span of six months. Administrator Tecson began looking for a behavior consultant at that time but was not able to secure one until October 2020 when the Buena Park ARF secured the services of Abeita and Associates.

41. On February 18, 2021, the Service Agency agreed to increase its funding and categorize Claimant as a Level 4I, which required the Buena Park ARF to provide 16 hours of services in the span of 6 months.

42. According to Administrator Tecson, Ms. Carmichael's services have been very effective and there have been no recent behaviors in the home which has required an SIR. A portion of those services were paid for through RCOC and the remainder is paid for by Father. Administrator Tecson believes that 16 hours of services over six months are sufficient to meet Claimant's needs.

43. Ms. Samonte is one of the three caregivers at the Buena Park ARF. In addition, there is one other full time staff member and one part-time employee.

44. Ms. Samonte noted that prior to the implementation of behavior support services, Claimant began exhibiting many disruptive behaviors after the COVID-19 orders were implemented. Claimant would tear his clothes, deliberately clog toilets, throw things including his iPad during Zoom meetings, "peel" his skin, damage or attempt to pull down the television, and, on one occasion, became physically aggressive with her by pushing her.

45. After Ms. Carmichael began working with Claimant, Ms. Samonte noted an improvement in Claimant's behaviors. Though he still exhibits many difficult

behaviors, including hitting the table, ripping his clothes and clogging the toilets, his more extreme behaviors have lessened.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a hearing following the Service Agency's denial to fund additional behavioral support hours, and therefore, jurisdiction for this appeal was established.

Standard and Burden of Proof

2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See, Evid. Code, § 500.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See, Evid. Code, § 115.)

3. Claimant, as the party seeking funding for previously unfunded behavioral support hours, must prove by a preponderance of the evidence that the additional funding is necessary to meet his needs. Claimant has not met his burden.

Applicable Law

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of

services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

5. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports that: meet the individual needs and preferences of consumers (§§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (§§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (§ 4502, subd. (a).); and “maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4640.7, subd. (a).)

6. The determination of which services and supports are necessary are made through the IPP process, based on the needs and preferences of claimant and claimant’s family, when appropriate, and should include the consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The Lanterman Act contemplates that the services and supports provided to each consumer will be flexible and individually-tailored to meet the needs of the consumer and his family. (§ 4648, subd. (a)(2).)

7. The “services and supports” which may be provided to a consumer include “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability” and may include “adaptive equipment and supplies” (§ 4512, subd. (n).)

8. In securing services and supports for its consumers, regional centers must ensure that its purchase of services and supports conforms to its purchase of service policies. (§ 4646.4, subd. (a)(1).) These policies are reviewed by the Department of Developmental Services "to ensure compliance with statute and regulation." (§ 4434, subd. (d).) They must also be cost-effective. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources, avoid duplication of services, and ensure the cost-effective use of public funds. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

9. Regional centers, however, cannot deny requested services and supports on the basis of a general policy not to provide such services and supports. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225.) Reliance on an inflexible policy is inconsistent with the Lanterman Act's stated purpose of providing services "sufficiently complete to meet the needs of each person with developmental disabilities." (*Id.* at 232, citing § 4501.) The Lanterman Act clearly contemplates that services to be provided to each consumer will be selected "on an individual basis." (*Id.* at 233, citing *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Duplication for Services

10. In the present instance, there appears to be a fundamental misunderstanding of the differing roles of RCOC, Buena Park ARF, and Abeita and Associates. Abeita and Associates are consultants hired by a RCOC vendor, Buena Park ARF, to provide behavior support services to Claimant. As Abeita and Associates is not vendorized or under contract with RCOC, the Service Agency may not fund Abeita and Associates for behavior support services provided to Claimant. (§ 4648, subd. (a)(3).)

11. The Service Agency may not pay for behavior support services for which they have already funded Buena Park ARF to provide.

12. Before the COVID-19 pandemic, the Buena Park ARF was successful in meeting Claimant's needs. After Claimant's behavior deteriorated, the Buena Park ARF was required, as a licensed CCL facility, to conduct a reassessment to determine if it was able to continue to meet Claimant's needs. (See Cal. Code Regs., tit. 16, § 85068.3.) After the Buena Park ARF signaled to Father that it would be issuing a 30-day notice after the COVID-19 orders have passed, Father requested that RCOC provide Claimant with supports in order for Claimant to maintain his placement.

13. As the Buena Park ARF was not permitting any non-essential visitors into the facility, the Service Agency offered the Buena Park ARF additional funding in the hopes that the facility, with additional staff and consultant hours, could meet Claimant's increased needs and Claimant could maintain his placement.

14. When the Buena Park ARF agreed to accept the funding to provide Claimant with Level 4E services in August 2020, the Buena Park ARF became responsible for staffing a behavioral services consultant. The *minimum* level of staffing and consultant hours the Buena Park ARF has agreed to provide is set forth in California Code of Regulations, title 17, section 56004. For a reason that was not made clear on the record, the Buena Park ARF delayed in retaining a behavioral support consultant until the end of October 2020.

15. Despite Claimant's contention that he submitted a request for additional four hours per month of behavior consultation on November 16, 2020, there is no evidence Claimant or Father submitted a request for additional hours of service. There was a request by Abeita and Associates for additional funding but there was no

indication from the email that Claimant or Father had joined in that request. Despite the initial misapprehension that their request had been granted, Abeita and Associates was made aware that RCOC had not authorized funding for their services and did not provide additional hours of service.

16. During the January 27, 2021 IPP, after parties relayed Claimant's need for additional behavior support hours, the Service Agency offered to increase Claimant's level of care, which would increase funding for the Buena Park ARF so that the facility could obtain additional hours of support from Abeita and Associates.

17. Claimant's request for eight hours of behavioral support is not supported by any assessment or recommendation by a qualified individual that the additional hours are necessary for meeting Claimant's needs and goals contained in his IPP. When asked if the behavioral support hours that were currently being provided to Claimant, Administrator Tescon testified that he did not believe Claimant required additional behavioral support hours. When asked about the number of hours Claimant requires, though Dr. Silverman and Ms. Carmichael both testified that additional hours could benefit Claimant, they could not speak to the number of hours that Claimant needs.

Reimbursement

18. A primary goal identified in the Lanterman Act is to enable clients with developmental disabilities to approximate the pattern of everyday living enjoyed by non-disabled people of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

19. The Lanterman Act does not specifically authorize the type of retroactive reimbursement sought by Father. In fact, section 4648, subdivision (a)(3)(B), provides that a regional center may only reimburse an individual or agency for services and supports provided without a specific agreement in place if that person or agency is otherwise vendored with the regional center or has a contract in place, and the services or supports were supplied on an emergency basis consistent with a prior vendorization or contract. (See also, Cal. Code Regs., tit. 17, § 50612, subd. (b).)

20. The lack of specific statutory authorization for reimbursement is not necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . .” (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Thus, prior Fair Hearing decisions in other cases have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted.

21. In this case, the equities do not weigh in favor of reimbursement of Claimant and Father for funds expended for behavioral support services provided by Bradley Silverman, Ph.D., Abeita and Associates, since November of 2020.

22. First, Claimant has failed to present evidence that private funds were used to pay for services prior to the January 27, 2021 IPP. Following the January 27, 2021 IPP, Father was aware that RCOC had denied Father’s request to fund additional

behavioral support hours but chose to privately fund those services even though there was no evidence there was any danger to Claimant's current residential placement.

Claimant's Contentions

23. Contrary to Claimant's assertion that RCOC is denying Claimant's services due to his placement in a CCL facility, it is the level of care for which it is funding Buena Park ARF which results in duplication of services and prevents RCOC's authorization of behavior support hours. The increased level of service RCOC provides funding is contingent upon the Buena Park ARF providing consultant services, in the present instance behavior support services, which would enable Claimant's continued residential placement. RCOC could conceivably fund Buena Park ARF at a level 3 service level and separately fund services to be provided by a vendorized behavior support consultant.

24. If Claimant or Father so requests, RCOC shall convene another IPP meeting to determine whether funding Claimant's current placement at the Buena Park ARF at the current service level is warranted in order to meet claimant's IPP goals.

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ORDER

- 1, Claimant's appeal is denied.
2. If Father or Claimant requests, the Service Agency will convene an IPP meeting with Claimant and other members of the IPP team within 30 days of the date of this Decision to determine whether Claimant's current placement at the Buena Park ARF at Level 4I meets Claimant's current needs.

DATE:

NANA CHIN
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.