

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021090251**

**DECISION**

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 26, 2021, in Los Angeles, California.

Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

//

//

//

Claimant's mother represented claimant,<sup>1</sup> who did not appear at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 26, 2021.

## **ISSUE**

Should ELARC reimburse claimant's caregiver for the care she provided to claimant in lieu of his day program in the amount of 138 hours per month for the period of March 16, 2020, to July 6, 2021?

## **EVIDENCE**

Documentary: Exhibits 1 through 12; A through D.

Testimonial: Victor Pena, ELARC Services Coordinator, and claimant's mother.

//

//

//

//

---

<sup>1</sup> Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and his family.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 38-year-old conserved male who qualifies for regional center services under the categories of cerebral palsy and epilepsy. Claimant does not live with his parents but with his caregivers, Patricia Garcia (Garcia) and her husband.

2. On July 27, 2021, ELARC issued a Notice of Proposed Action denying claimant's request for the Service Agency to reimburse Garcia for the care she provided to claimant in lieu of his day program in the amount of 138 hours per month for the period of March 16, 2020, to July 6, 2021. On August 24, 2021, claimant filed a request for a fair hearing appealing the denial. This hearing ensued.

### **Claimant's Individual Program Plan**

3. Claimant's most recent individual program plan (IPP), dated July 27, 2021 (2021 IPP), contains Service Agency's and claimant's family's agreements, sets forth specific objectives and goals, and contains the services and supports to achieve them. (Ex. 4.) It also describes claimant's needs and behaviors.

4. As set forth in the 2021 IPP, claimant has been living with his caregivers for the past 19 years, but his parents visit him frequently. Claimant's mother is his conservator and is involved in making decisions about his care. Claimant does not have full use of his upper extremities. He can only use his right arm and hand to manipulate objects. Claimant is also non-ambulatory. For mobility, someone either holds claimant up for walking or wheels him in a wheelchair. Claimant is non-verbal and communicates by grunting, coughing or other sounds. His caregivers understand his needs by the sounds he makes, but claimant is unable to communicate his needs

to others who are not familiar with him. Claimant's seizures are being controlled by a medication which requires assistance to administer. Claimant has a previous history of self-injurious behavior by hitting his face with a closed hand when he was upset, but he rarely engages in such behaviors recently. Claimant needs to be fed food cut in bite-sized pieces, and he continues to wear a diaper. He requires maximum assistance with his daily living skills, including dressing and bathing. Claimant requires 24-hour supervision.

5. As of the date of the 2021 IPP, ELARC funded the following services to claimant: 138 hours per month of day program services provided through the vendor, REACH Education Services (REACH), and 21 days of emergency respite.

### **Claimant's Participation in His Day Program Before the COVID-19 Pandemic**

6. Claimant has participated in REACH's community-based day program for over 18 years. He attends the program Monday through Friday, for approximately eight hours per day. Due to the extent of his needs, REACH provides claimant with a one-on-one aide, Ricardo,<sup>2</sup> whom claimant trusts. An Individual Services Plan by REACH dated May 2020 (2020 ISP) indicates that before March 16, 2020, when the COVID-19 emergency stay-at-home orders were issued, claimant's day program consisted of the following: (1) participation in physical activities three times per week, including exercising at a local gym and taking short walks at a wilderness park; (2) transportation to a lunch location and eating lunch; (3) daily readings of current events by Ricardo; and (4) interactions with claimant's peers from REACH. (Ex. 6.)

---

<sup>2</sup> Ricardo's last name was not established by the record.

## **The COVID-19 Pandemic and Suspension of In-Person Services**

7. Beginning on March 16, 2020, due to the COVID-19 pandemic, REACH stopped providing in-person services, and Garcia cared for claimant during the hours that claimant would have attended REACH.

8. On April 23, 2020, Christine Murray (Murray), a Service Coordinator with ELARC, conducted a wellness check with claimant's mother. Murray wrote in the Consumer I.D. Notes,<sup>3</sup> "Mom expressed that consumer is doing well and staying safe. He is missing his program." (Ex. 12, p. 73.)

9. On May 4, 2020, claimant's Service Coordinator, Elva Rama (Rama) indicated in the Consumer I.D. Notes that she called claimant's mother, who gave her a new contact number for Garcia. According to the Consumer I.D. Notes, on May 5, 6, and 11, 2020, Rama made several attempts to contact Garcia before she was able to reach her and scheduled an IPP meeting for May 21, 2020, to be held by telephone. On May 12, 2020, Rama reached claimant's mother, who indicated that she "want[ed] copies of all letters (from ELARC) sent to her." (Ex. 6, p. 74.)

10. Sometime in May 2020, on a date not established by the record, REACH also developed the 2020 ISP with claimant. The 2020 ISP reiterated the services that claimant received prior to the COVID-19 emergency stay-at-home orders, as described above. It also noted that "[claimant] is currently being offered virtual/remote services,

---

<sup>3</sup> Consumer I.D. Notes are records of every interaction between the Service Agency and the consumer.

however, per his care provider, they have expressed to opt out of remote services, and wait until there is a re-opening plan set for REACH services.” (Ex. 6, p. 47.)

11. On May 21, 2020, Rama conducted an IPP meeting with Garcia and claimant’s mother. The parties finalized and signed the IPP (2020 IPP) on the same date. There is no indication in this 2020 IPP that either Garcia or claimant’s mother made a request for Garcia to be compensated for the care she was providing to claimant in lieu of his attendance at REACH. (Ex. B.)

### **Department of Developmental Services Directives**

12. On July 17, 2020, and August 30, 2020, the Department of Developmental Services issued Directive 01-071720 (Directive #1), and Directive 01-83210 (Directive #2), respectively. Directives #1 and #2 outlined the policies and procedures for reimbursement of claims for providing nonresidential services using alternative approaches during the COVID-19 state of emergency. Directives #1 and #2 indicated that beginning September 1, 2020, regional centers and providers would be permitted the use of Alternative Nonresidential Services (Alternative Services) to “meet the individual needs of consumers, sustain the state's developmental services provider network, and continue receipt of federal reimbursement for services provided to consumers during the COVID-19 State of Emergency.” (Ex. 5, p. 36.) Instead of traditional services such as day programs, regional centers and providers may provide Alternative Services which may consist of the following:

- a. Supports related to minimizing the exposure to or impact of COVID-19 on the consumer;
- b. Completion of an individual assessment of skills, preferences, and service needs for the consumer;

- c. Completion of an individualized service plan to provide needed services for the consumer;
  - d. Alternative services delivered to the consumer via telephone, video or other electronic communication;
  - e. Delivery of supplies or other items to the consumer's home needed to provide services or supports;
  - f. Use of self-guided training and educational materials supplied to the consumer by the provider intended to support the consumer's service;
  - g. Skills training to individuals within the consumer's household who are specifically designated to support the consumer;
  - h. Alternative services provided in-person at the consumer's home, in a community setting, or at the provider's facility, modified to comply with the most protective state or local COVID-19 safety guidelines in effect at the time the service is to be delivered;
- \*Provider staff must be trained on COVID-19 safety precautions prior to the delivery of in-person services.
- i. Supports for transition to the Self-Determination Program; and

- j. Other modifications to nonresidential services that are approved by the consumer that further or achieve his or her service needs.

(Ex. 5 p. 37.)

### **Claimant's Selection of Alternative Services**

13. On September 21, 2020, REACH conferred with Garcia by telephone regarding the provision of Alternative Services. REACH and Garcia reached an agreement, which was memorialized as an addendum to the May 2020 ISP (2020 Addendum). According to this 2020 Addendum, the Alternative Services from REACH consisted of: (1) daily wellness check calls; (2) ISP to be updated every six months and annually and addenda to ISP to be evaluated every three months; (3) delivery of personal protective equipment and other supplies to claimant's home; (4) provision of self-guided materials on an as-needed basis; and (5) COVID-19 trainings to be conducted by the program supervisor on an as-needed basis. Thus, claimant choose to receive services under options a, c, and d described in Directives #1 and #2, and he opted out of receiving in-person alternative services at his home (option h).

14. The 2020 addendum noted,

[Garcia] (claimant's) main care provider agreed for [claimant] to continue receiving Alternative services Monday thru Friday. [Garcia] verbally agreed on having [claimant] participate in wellness checks (only), since [claimant] requires full hand[s] on assistance. [Garcia] is comfortable with these calls/services daily. She requests voice mails from staff in the event she is not available so



that she can relate messages to [claimant] along with text messages. REACH staff will explore a variety of conversation topics and activities that reflect his ISP goals.

(Ex. 7, p. 52.)

15. The addendum also advised:

REACH Services will offer the alternative service delivery framework in lieu of traditional non-residential in person services as permitted by directives issued by the California Department of Developmental Services. All services will continue to be person focused and will align with the program participants['] current goals and objectives. All program participants and families have been informed of service alternatives available and or program modifications. The alternative service delivery framework shall remain in place until otherwise directed by the California Department of Developmental Services. Program participants can opt out of the alternative service program at any time. Services may evolve and be amended to reflect the most current state and public health guidelines and directives.

(Ex. 7, p. 51.)

//

//

//

## Events from October 2020 to July 2021

16. Sometime in October 2020, claimant's Service Coordinator changed from Rama to Victor Pena (Pena).<sup>4</sup> On October 5, 2020, Pena contacted REACH's program supervisor, Matthew Zurita (Zurita). Pena wrote of his conversation with Zurita: "Per Mr. Zurita, [claimant] is not receiving in person services at this time but family opted to receive alternative services: wellness checks, providing resources to family. Currently 1 to 1 staff is not being utilized in the home." (Ex. 12, pp. 74-75.)

17. On February 26, 2021, Pena conducted a COVID check-in by telephone with Garcia. Garcia did not express any concerns regarding REACH's provision of Alternative Services, and she did not request compensation for the care she was rendering during the time that claimant would have attended his day program.

18. On June 30, 2021, claimant's mother called Pena to request reimbursement to Garcia for the care she provided to claimant during his day program hours since March 16, 2020. This is the first time that claimant made such a reimbursement request with the Service Agency. Pena wrote in the Consumer I.D. Notes:

Per [claimant's mother], for the past 15 months (during the pandemic) Reach staff have only been providing packets for

---

<sup>4</sup> Pena testified at one point during the hearing that he became claimant's Service Coordinator in May 2020, but he testified at another point that he became the Service Coordinator in October 2020. However, the Consumer I.D. Notes indicate that Rama remained claimant's Service Coordinator until at least June 2020, and Pena wrote his first entry in the Consumer I.D. Notes on October 5, 2020.

[claimant] and conducting short wellness checks as needed. This has left most of the care and programming that took place at the day program to be taken care of by Mrs. Garcia ([claimant's] Caretaker). [Claimant] then inquired if it would be possible for Mrs. Garcia to be compensated [*sic*] for the additional care that was provided during [claimant's] regular day programming hours.

(Ex. 12, p. 77.)

19. On July 1, 2021, Pena conferred with his supervisor regarding claimant's request. Pena wrote of his supervisor's response: "Supervisor confirmed that ELARC will not be able to provide funding for [claimant's] care giver due to the request being for a duplication of funding and the care being provided to [claimant] would be more appropriately supplemented by [In-Home Supportive Services (IHSS)] hours or [Personal Assistance (PA)] services." (Ex. 12, p. 77.)

20. On July 6, 2021, REACH opened for-in person services, and as of the same date, claimant resumed in-person services with Ricardo Monday through Friday.

21. On July 7, 2021, claimant's mother and Pena exchanged emails regarding claimant's request for Garcia to be paid for the care she provided to claimant during his day program hours during the period from March 16, 2020, to July 6, 2021. Pena informed claimant's mother that ELARC would not be able to reimburse Garcia, but that Garcia may be compensated by IHSS. Pena provided claimant's mother with the telephone number for IHSS. Claimant's mother responded:

I fail to see how we were to know to put these services in [claimant's] plan as the Pandemic was unplanned and

unprecedented in our lifetimes. Also Regional Center nor did his day program inform Ms. Garcia nor myself that if we changed his planned [*sic*] she could have received compensation for 6 hours of work, five days a week, for 15 months she provided for [claimant]. Essentially her pay as care giver to [claimant] was greatly reduced because she did the job that the day program had previously provided. Putting seeking compensation as a personal responsibility on [Garcia] is unacceptable.

(Ex. 12, p. 78.)

22. On July 27, 2021, Pena, Garcia, and claimant's mother participated in an IPP meeting during which claimant's mother expressed her concerns that Garcia was not compensated for the care that she provided to claimant during his day program hours from March 16, 2020, to July 6, 2021. Garcia and claimant's mother refused Pena's suggestion to apply for IHSS before requesting PA hours because they preferred for claimant to participate in REACH's in-person day program, as he had done so beginning July 6, 2021.

### **Pena's Testimony**

23. At the hearing, Pena explained that because claimant choose Alternative Services through REACH, ELARC already dispensed funding to REACH during the COVID-19 pandemic. Although Pena acknowledged that claimant did not receive the same level of services under the Alternative Services model as he did with the traditional in-person model, Pena noted that the funding was also used by REACH to retain its staff, such as Ricardo, who otherwise would not be able to keep his job until

REACH's re-opening in July 2021. Therefore, Service Agency cannot reimburse claimant because it would be a duplication of the funding that was already dispensed.

24. Pena testified that one way for Garcia to be compensated for the care she provided to claimant during his day program hours was to apply for PA hours. Regional centers fund PA hours for caretakers to assist consumers in performing tasks such as grocery shopping or going to a doctor's appointment. However, claimant would have had to terminate the Alternative Services with REACH. Furthermore, before granting any request for PA hours, ELARC is required to consider generic sources, such as IHSS, first. Only after Garcia is denied IHSS may ELARC assess claimant's needs and provide funding for the appropriate number of PA hours. Pena did not recall ever explaining to Garcia or claimant's mother about Garcia's eligibility for PA hours. However, Pena stated that during his time as claimant's Service Coordinator, neither Garcia nor claimant's mother raised the issue of being compensated for claimant's care during his day program hours, not even during the COVID check-in telephone call he had with Garcia on February 26, 2021. According to Pena, ELARC was not aware of any concerns by Garcia or claimant's mother regarding payment for Garcia's care until June 30, 2021. Pena also stated that although IPP meetings occurred in May 2020 and July 2021, claimant had the ability to request an IPP meeting at any time in the interim to express concerns about his services, and an IPP addendum could have been drafted to reflect any service changes.

### **Claimant's Mother's Testimony**

25. At the hearing, claimant's mother described the difficult conditions that her family underwent during the COVID-19 pandemic. According to claimant's mother, during the May 2020 IPP meeting with Rama, she and Garcia did not raise the issue of being compensated for the care Garcia provided because they believed that the

pandemic would be over and that REACH would open in June 2020. From July 2020 to October 2020, claimant's mother became preoccupied with caring for her daughter, who underwent a high-risk pregnancy. Her daughter was initially on bed rest and then gave birth to a premature baby who stayed in the neonatal intensive care unit for two months. To protect claimant, his mother stayed away from the Garcia home and did not visit claimant until October 2020.

26. Claimant's mother testified that in October 2020, Garcia chose Alternative Services for claimant through REACH because it was of "paramount importance" (claimant's mother's words) to keep Ricardo paid through the pandemic. Claimant's mother felt that they had no other choice because it was the only way to ensure that Ricardo would be available as claimant's one-on-one aide once REACH reopened. Claimant's mother stated that Garcia refused the option for in-home Alternative Services (option h under Directives #1 and #2) due to fears of claimant's vulnerability to COVID-19 infections.

27. Claimant's mother reported that from March 2020 to July 2021, REACH only provided daily check-ins by text, and Garcia provided approximately 15 additional hours of care per day. Claimant's mother also asserted that neither the Service Agency nor REACH informed her and Garcia of the possibility that Garcia could be compensated for this additional care. Claimant's mother testified that she did not receive either Directive #1 or Directive #2 from the Service Agency. She also pointed out that the Association of Regional Center Agencies (ARCA) sent a letter to all regional center consumers stating that "[s]ervice coordinators have been proactively reaching out to people they serve and their families to ask what help they need and how the regional center can be part of the solution." (Ex. A, p. A1.) However, she was never in receipt of this ARCA letter. Additionally, claimant's mother testified that

ELACR never notified her of the change in Service Coordinator from Rama to Pena. Claimant's mother expressed her frustration about ELARC's lack of communication throughout the pandemic. She does not believe that Garcia should be expected to know her options for compensation and to advocate for herself.

## **LEGAL CONCLUSIONS**

### **Standard of Proof**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) 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.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant requests funding that Service Agency has not agreed to provide previously, and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

### **Statutory Framework**

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. 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.) The types of services and supports that a regional center must provide are "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." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

//



5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further 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.

### **Retroactive Reimbursement from March 16, 2020, to June 30, 2021**

6. On June 30, 2021, claimant requested that the Service Agency reimburse Garcia for the care that she provided to him during his day program hours when REACH was closed for in-person services. Claimant's request for reimbursement for the care that Garcia provided from the start of the stay-at-home orders (March 16, 2020) to the time of his request to for funding (June 30, 2016) is a request for retroactive service authorization.

7. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. A purchase of service authorization must be obtained in advance from the regional center for all services purchased out of center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for emergency services "if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

8. Thus, the regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. Here, while the COVID-19 pandemic constituted an emergency, none of the other regulatory requirements for retroactive funding is fulfilled. Garcia is not a vendored service provider. Claimant is not requesting reimbursement for services provided for a limited time during which he was unable to reach the Service Agency. He is requesting reimbursement for services rendered over 15 months during which time an IPP meeting took place in May 2020, a COVID check-in took place in February 2021, and his Service Coordinator was easily within reach to schedule additional IPP meetings to make any changes to his service plan.

9. Ordinarily, services are provided to the consumer through the IPP process. The consumer's IPP "shall be reviewed and modified by the planning team . . .

as necessary, in response to the person's achievement or changing needs, . . . ." (Welf. & Inst. Code, § 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code, § 4646.5, subd. (a).) The process of creating an IPP, by its nature, is collaborative. (Welf. & Inst. Code, § 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (Welf. & Inst. Code, §§ 4646, 4648.) If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (Welf. & Inst. Code, § 4646, subd. (g).) If the consumer or his parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (Welf. & Inst. Code, § 4646, subd. (g).)

10. The issue of retroactive reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed.

11. Yet, the lack of specific statutory authorization 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]. . . ." (Welf. & Inst. Code, § 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, supra*, 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. Otherwise, the general requirements that services should be funded through the IPP process (Welf. & Inst. Code, §§ 4646, 4646.5, and 4648) would be made superfluous. Thus, prior decisions in other fair hearing 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.<sup>5</sup>

12. Generally, 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) the party 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) the party must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.) A vital principle of equitable relief is detrimental reliance, or as put by the California Supreme Court in the case *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795: "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."

13. Neither Garcia nor any representative from REACH testified at the hearing. Therefore, there is little evidence of what advice, if any, REACH provided to Garcia regarding the selection of Alternative Services on claimant's behalf. However, by

---

<sup>5</sup> Prior OAH decisions pertaining to other consumers are only advisory, not binding.

claimant's mother own admission, she and Garcia selected Alternative Services through REACH because they wanted Ricardo to be paid during the COVID-19 pandemic so that he would be available as claimant's one-on-one aide once in-person services resumed. In addition, claimant chose not to receive in-person at home programs under the Alternative Services model through REACH to prevent any COVID-19 infection. The addenda to REACH's 2020 ISP also notified claimant and his family that Alternative Services can be terminated at any time. Under these circumstances, there is no evidence to show that Garcia selected Alternative Services and provided care to claimant during his day program hours in reliance on any misleading conduct or advice given by the Service Agency. In other words, claimant did not rely on ELARC's conduct to his detriment. By choose to receive Alternative Services, claimant in fact gained a benefit, in that he was able to ensure the availability of Ricardo as an aide after in-person services resumed.

14. Denying retroactive authorization and reimbursement in this case also will not thwart the purposes of the Lanterman Act. As discussed above, the funding and provision of services and supports to a regional center consumer is supposed to be collaborative. If claimant wanted his caregiver to be compensated for the care she provided to him during his day program hours, he must express his concerns with Service Agency, so that the Service Agency would have an opportunity to explore different options with him. In this case, claimant chose the Alternative Services model to ensure Ricardo's availability as an aide, and he chose not to receive in-home services at his home. However, claimant did not express his discontentment with his selection of Alternative Services model until months later.

15. It is unclear from the record what communication, if any, occurred between the Service Agency and claimant's mother regarding the selection of

Alternative Services through REACH. ELARC may not have copied claimant's mother on all communications it had with Garcia, as claimant's mother had requested. However, by her own admission, claimant's mother was also preoccupied with caring for her daughter during the early part of the COVID-19 pandemic. Better communication between the parties could have averted the problems that are at issue in this matter. Nevertheless, when claimant made the request for reimbursement to Garcia months after choosing the Alternative Services model, the Service Agency had already disbursed the funding to REACH, and any further reimbursement to Garcia would constitute duplicative funding in contravention of the Lanterman Act.

16. Therefore, cause does not exist to reimburse Garcia for the additional care she provided during claimant's day program hours from March 16, 2020, to June 30, 2021. Claimant satisfied none of the criteria set forth at California Code of Regulations, title 17, section 50612, subdivision (b)(1), for retroactive authorization. Additionally, the equities do not weigh in favor of granting Garcia reimbursement.

### **Funding for Garcia from June 30, 2021, to July 6, 2021**

17. The remaining issue is whether Garcia may be funded for the care she provided to claimant in lieu of his day program from the date of the request (June 30, 2021) until the resumption of in-person services by REACH (July 6, 2021).

18. Welfare and Institutions Code section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan

pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate. . . .

19. Welfare and Institutions Code section 4648, subdivision (a)(8) provides:

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

20. Under these statutes, a regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. In this case, after claimant made the funding request for Garcia, ELARC informed claimant that Garcia must first apply for IHSS, a generic resource, before funding Garcia's care as PA hours may be considered. Even if Garcia does not financially qualify for IHSS and is denied that resource, the Service Agency must demonstrate that all generic resources have been exhausted under the requirements of the Lanterman Act. However, both Garcia and claimant's mother refused to consider IHSS. Therefore, cause was not shown to authorize funding under Welfare and Institutions Code sections 4646.4, subdivision (a),

and 4648, subdivision (a)(8), because claimant's family chose not to pursue or utilize generic resources proposed by the Service Agency.

## **ORDER**

Claimant's appeal is denied.

The Service Agency is not required to reimburse claimant's caregiver for the care she provided in lieu of claimant's day program in the amount of 138 hours per month for the period of March 16, 2020, to July 6, 2021.

DATE:

JI-LAN ZANG

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.