

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

**In the Matter of:**

**CLAIMANT**

**v.**

**SAN ANDREAS REGIONAL CENTER, Service Agency.**

**OAH No. 2021100614**

**DECISION**

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference on January 5, 2022.

San Andreas Regional Center special project manager James Elliott represented San Andreas Regional Center (SARC), the service agency.

Claimant represented himself.

The matter was submitted for decision on January 5, 2022.

**ISSUE**

Is claimant entitled to SARC payment for communication aide or communication partner hours in June 2021 that did not involve training?

## FACTUAL FINDINGS

1. Claimant is 36 years old and has been eligible for and receiving services from SARC for several years based on his diagnosis of autism disorder (moderate). Claimant also has other health disorders, including Verbal Apraxia. It is described in claimant's March 4, 2021 Individual Program Plan (IPP) as a "neurological disorder that affects the brain pathways involved in planning the sequence of movements involved in producing speech."

2. Claimant lives in his own apartment with 24-hour supported living services. Claimant describes himself in his IPP and in his written personal operations manual as a "strong self-advocate." In his March 2021 IPP, claimant describes the manual he wrote as describing his "current needs, regular routines, effective interventions, and other details" that his service agency can use to get to know him and use as a resource. He used his own words for his manual. Claimant makes his own decisions about his day-to-day activities.

3. Claimant completed high school, some community college courses in 2015, and one course in 2020. Claimant used the assistance of a "trained communication partner" referred to by the service agency as a communication aide. For communication, claimant uses a variety of techniques, including typing on his computer and reading aloud what he has typed. This technique is known as "facilitated communication." As demonstrated during the hearing, a communication aide holds claimant's arm or elbow for guidance when claimant is typing.

4. Facilitated communication is not funded by SARC because it is not considered clinically valid. Under applicable regulations, communication aides may be funded under an authorized code to include evaluation for communication aides and

training in use of communication aides. Augmentative communication techniques are funded. They include the use of a Lite Writer, icons, yes/no choice boards, and schedule boards.

5. In July 2021, claimant submitted an invoice to SARC for 101 communication training hours and partner hours, at the rate of \$85 per hour for a total of \$8,585. This total included 41.5 hours for "communication partner." SARC allowed payment for 59.5 hours communication aide training pursuant to a 2017 mediation agreement described in Findings 8 through 11.

### **Proposed Action and Appeal**

6. On September 7, 2021, SARC issued a Notice of Proposed Action to deny funding for tasks in June 2021 for a communication aide that did not involve communication training. SARC proposed denial of 41.5 hours used by the communication aide to serve as a case manager.

7. SARC also proposed that the denied hours could be funded by a generic agency such as In-Home Supportive Services or personal assistant hours for assisting claimant with case management tasks. The communication aide declined due to a lower pay rate for those services. Claimant appealed, submitting a Fair Hearing Request.

### **2017 Mediation Agreement**

8. On December 21, 2017, claimant and SARC (by its representative) entered into and signed a Mediation Agreement and Notice of Resolution. Section 2.c. provides:

The regional center agrees to fund communication aide hours through existing to future providers with the intent of equipping the service provider(s) with a “train-the trainer” capability to assist claimant’s staff in developing the appropriate skills to assist the claimant in using appropriate communication methods during service hours, at home, and in the community.

9. Section 2.e. provides in pertinent part:

During the transition period, the regional center will continue to fund the communication aide for the purpose of providing facilitated training.

10. Section 2.e.ii. provides:

The intent of the use of the communication aide is to train the claimant’s service provider (e.g., independent living skills) staff to be able to communicate with the claimant during the course of day-to-day service delivery without need for specialized assistance in the form of the aide.

11. Section 3. provides in pertinent part:

All parties agree that funding agreed to in item . . . 2(c) [is] intended to change or reduce over time and be phased out as the claimant progresses towards independence with new skills. . . .

## **Claimant's 2021 IPPs**

12. Claimant's IPP dated March 4, 2021, part II, D, Personal Growth, communication, states that facilitated communication is to phase out pursuant to the 2017 mediation agreement and "ultimately the plan is for [claimant] to be fully independent and fade out his communication support." Outcome 10 of the IPP states that claimant received communication aide support up to 50 hours per month per the mediation agreement. SARC agreed to submit a request to continue this funding "per mediation agreement." The statement was repeated in the progress of outcome 10. Nothing in the IPP changed the mediation agreement.

13. Claimant's supplemental IPP dated September 30, 2021 revised outcome 10. The "to do" list included: 1. SARC agreed to submit a request to continue funding for a communication aide "up to 50 hours per month per mediation agreement"; 2. Claimant will receive those hours "to allow him to be easily assimilated in the community and help him to express his desires independently"; and 3. The communication aide "will assist [claimant] to communicate effectively and train staff to facilitate this communication." Nothing changed the mediation agreement.

## **Claimant's Contentions**

14. At hearing, claimant testified that his communication partner performed some administrative tasks in June 2021, such as typing his updated personal operation manual to help him educate his supported living staff about his needs. In June 2021, claimant transitioned to another service provider. Other tasks of the communication aide performed in June 2021 included preparing claimant for SARC or other team meetings, to meet with his service providers, and to participate in his assessment.

15. At hearing, claimant contended that 31 hours used by the communication aide were not administrative and not for case management because claimant was exercising his right to communication. He also contended that staff training is essential for his health and safety, so he can exercise his rights. But this did not involve training staff to assist claimant to communicate. He contended that no one has that capacity.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (the Act), the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (*Id.*, §§ 4501, 4502, subd. (b)(3); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government-funded services. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161; Evidence Code, §§ 115, 500.)

3. The 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.” (Welf. & Inst. Code, § 4501.) While regional centers have a duty to

provide a wide array of services, they are also directed to provide services in a cost-effective manner. (*Id.*, § 4646, subd. (a).)

4. One of the intentions of the Act is to ensure that the provision of services to consumers and their families to be effective in meeting the goals stated in the IPP, “reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.” (Welf. & Inst. Code, § 4646, subd (a).) Service coordination shall include those activities necessary to implement an IPP. (Welf. & Inst. Code, § 4647, subd (a).) Claimant’s recent IPPs do not reflect the services of a communication aide, except per the mediation agreement which limits the services only to training. (Findings 8 and 10.)

5. The department shall ensure that implementation of best practices that impact individual services and supports are made through the individual program planning process or an individualized family service plan pursuant to Section 95020 of the Government Code, and that consumers and families are notified of any exceptions or exemptions to the best practices and their appeal rights. (Welf. & Inst. Code, § 4620.3, subd. (d).) At the conclusion of an IPP meeting, an authorized representative of the regional center shall provide to the consumer, a list of the agreed-upon services and supports, and, if known, the projected start date, the frequency and duration of the services and supports, and the provider. (*Id.*, § 4646, subd. (g).) Claimant’s 2021 IPP and addendum did not change the mediation agreement to provide a maximum number of hours only for communication aide training. (Findings 12 and 13.)

6. Despite a broad interpretation of the Act, the law and policy in this matter do not change. Claimant is commended for his independence and self-advocacy. However, claimant has not met his burden of proving that he is entitled to

SARC payment for 41.5 communication aide hours in June 2021 that did not involve training.

**ORDER**

Claimant's appeal is denied.

DATE:

BARBARA O'HEARN  
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.