

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2021120470

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 17, 2022.

The Service Agency, Eastern Los Angeles Regional Center, was represented by Jacob Romero, Fair Hearing Representative. Claimant was represented by Matthew Pope, Attorney at Law. Titles instead of names are used for the privacy and confidentiality of the family.

This matter is governed by the Lanterman Act: the Lanterman Developmental Disabilities Services Act, codified as Welfare and Institutions Code sections 4500 through 4885.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on June 17, 2022.

STATEMENT OF THE CASE

Claimant is working toward a college degree that will allow him to work in the accounting field. Concern for how he might enter the workforce was expressed by both parties during a meeting in May 2021 regarding Claimant's IPP, Individual Program Plan. Claimant requested funding for his participation in CIP, the College Internship Program at CSULB, the California State University at Long Beach, a program unfamiliar to the Service Agency and outside its catchment area. While the Service Agency was still considering CIP, Claimant applied, was accepted, and has been participating in CIP since September 2021. After researching options, including a similar program, PIP, Paid Internship Program, with which the Service Agency was familiar, the Service Agency determined that PIP would better serve Claimant and denied Claimant's request for CIP in November 2021.

ISSUES

Whether Claimant's participation in CIP should be curtailed in favor of other programs, particularly PIP, which the Service Agency believes would better serve his interests, or whether the status quo should be maintained such that the Service Agency should fund Claimant's ongoing participation in CIP.

FINDINGS OF FACT

1. The Service Agency served Claimant a Notice of Proposed Action on November 16, 2021, denying Claimant's request for CIP. Claimant submitted a Fair Hearing Request on November 29, 2021.

2. Claimant is eligible for services based on a diagnosis of ASD, Autism Spectrum Disorder.

3. Claimant is 27 years old and not under conservatorship. He graduated from Carlsbad High School, Carlsbad, California, in 2014 with a GPA, Grade Point Average, of 3.2. He was living with his father. Claimant then attended Carlsbad City College and was employed by his father as an accounts receivable clerk. In September 2020, Claimant began attending CSULA, California State University Los Angeles.

4. Claimant transferred to CSULB for the Spring 2022 semester. He transferred for two main reasons: proximity to the CIP office and because there is less competition for certain classes. At CSULA, Claimant would have to wait to be admitted to some classes, or he might be forced to attend only online.

5. Claimant and a roommate share an apartment that is walking distance from the CIP office at CSULB. Ambulatory and verbal, Claimant testified at the hearing, expressing his wish to continue in CIP. As Claimant can be difficult to understand, his aunt, familiar with his speech, and with whom he lived before he attended CSULB, repeated some of his testimony as needed for clarity.

6. As noted below, CIP sends personnel to check on Claimant weekly. Claimant takes care of his personal hygiene. He is able to shop and pay for purchases. CIP stipulates that the family provide Claimant no more than \$550 per month as a way

to train him in financial management. Claimant learns to budget and use his money for groceries, other necessities, and personal items.

7. The Service Agency referred Claimant to Heike Ballmaier, Psy.D., BCBA-D, for a February 4, 2021 Psychological Evaluation, Exhibit 4. Administering the WASI-2, the Wechsler Abbreviated Scale of Intelligence Second Edition, Dr. Ballmaier found on page A20 of the evaluation that Claimant's score was in the low average range, but "assumed that [Claimant's] nonverbal cognitive, visual spatial, and simultaneous processing skills are likely to reflect strengths and more highly developed skills." Dr. Ballmaier's diagnosis on page A25 was ASD:

Requiring Support in areas of Social Communication and
Substantial Support in Restricted, Repetitive Behaviors

Without intellectual impairment (verbal comprehension and
reasoning appear to be compromised while nonverbal
reasoning likely reflects at least average functioning)

With accompanying language impairment

Associated with a likely history of learning disorders due to
significant auditory and sequential processing difficulties

8. An IPP was developed following a May 14, 2021 online conference that included Claimant's aunt as his representative and Claimant's CSC, Consumer Services Coordinator, Christine Luo. As set out in Exhibit 5, page A34, they discussed Claimant's education and CIP:

[Claimant] is currently attending CSULA for accounting and
will be done in 2022. However, [Claimant] would like to join

a CIP (College Internship Program) with Long Beach at fall 2021 and then complete his courses in Cal State Long Beach. The main reason for transfer is to attend the CIP in Long Beach. They want CIP to teach him independent skills, social skills, and help him with academics. Family is worried about expenses. Aunt stated it is about \$100,000 per year not including school expenses. Aunt stated the program is vendored with regional center and the Regional Center would usually fund for about \$71,000. SC stated that she will need to learn more about the program before agreeing to the service. Aunt told SC to contact Lauren at (413)394-5023 for more information. Aunt stated that they hope he can start CIP in the fall even if he might not be accepted into the transfer to Cal State Long Beach in fall. [Claimant] does not really have friends at school as they are more like acquaintances to him.

9. George M. Delalosa has been the Service Agency's employment specialist for approximately six years. His experience before joining the Service Agency includes urban planning and working with programs that provide access to employment for people with disabilities. He has been a consultant to educational institutions and for five years was a community college administrator. He is familiar with the ways of developing workforce opportunities for people on the margins of society. He informed regarding the vast generic support services offered for the disabled, including those receiving services and supports from service agencies. Mr. Delaloza is also a member of five partnerships whose work is helping the disabled with all aspects of higher education affecting both their abilities and disabilities.

10. At the Service Agency, Mr. Delaloza's duties include research concerning and overseeing workforce opportunities, and communications and other involvement in employment development services. Having worked closely with employers and programs that employ Service Agency clients, he advises Service Agency personnel of available options.

11. Aunt testified that but for CIP at CSULB, Claimant would have continued at CSULA, which is a convenient bus ride from the residence she shared with Claimant for somewhat more than a year.

12. The 2022 CIP Orientation Packet, Exhibit A, page B3, states:

If you are a regional center client, please begin contacting your Service Coordinators to ensure funding is approved. Please note: you will not be able to begin the program on the January 10th start date without fully approved/authorized Regional Center POSs, CIP housing contract and deposit. Actively reaching out to your Service Coordinator for updates can be very helpful in this process. After the Regional Center funding is in place, you will receive the housing contract. Once you receive the contract, please submit your first payment. Please return all of your admissions forms as soon as possible so that your file is complete or bring them to the orientation.

13. In Aunt's view, CIP has proved a "huge" benefit for Claimant. CIP is teaching Claimant to self-advocate. It includes fitness, dietary, and stress resilience projects. It includes a Social Skills Department whose mission is to assist students with

social competence and to read social cues. CIP does not place students in employment, but helps them to find paid employment.

14. CIP personnel check on Claimant's physical health and keep track of his developmental progress, academic and otherwise, to make sure that Claimant is accomplishing goals to which he agreed. Among important benefits, CIP sends personnel to clean Claimant's apartment weekly. Claimant also speaks every week with a CIP advisor, who is there to help Claimant with budgeting and banking and to deal with any problems that might arise.

15. In an August 4, 2021 email, Exhibit Q, page B208, CSC Luo provided Aunt the reasons that the Service Agency was "uncomfortable" with funding CIP:

[CIP] requires the regional center to provide SLS (Supported Living Services) and community integration program when for our vendors we usually have one or the other. The program is also very expensive for what it does. Per the service coordinator whom [s/c] has a consumer who attends the program it should be a temporary stay for about 2-3 years in hope of transferring to [CSULB]. But the [CSC] also heard that there are some consumers who might have to stay at the program 4-5 years. That is odd to us as there is an expectant time of 2-3 years. The other issue is that he was not given quarterly/semiannual progress reports as all of our SLS and community integration program usually provides. We would like reports as to know what goals are being worked on and what is the progress of accomplishing those goals.

16. In a November 10, 2021 email to Aunt, Exhibit Q, page B209, CSC Luo advised the Service Agency would not fund CIP:

The reason for the denial is that the program is out of our catchment area and per our employment specialist we have other programs that is [s/c] within our catchment area that can provide support to [Claimant]. The programs that are mentioned that can help support [Claimant] is AST [Adaptive Skills Training] or ILS [Independent Living Skills], socialization training program, and PIP

17. Service Agency personnel's communications regarding a consumer are noted in writing in ID, interdisciplinary, notes. They are interdisciplinary because typically they reflect discussion among personnel trained in different disciplines, such as social work or employment development.

18. The September 22, 2021 ID note, Exhibit N, page B161, is CSC Luo's summary of discussions regarding CIP. CSC Luo:

discussed with George [Delaloza], Supervisor, and community services in regards to CIP. Everyone is in agreement that the CIP program might not be the best option for [Claimant]. The regional center is able to offer PIP, ILS, and PA [Personal Assistance] if needed for school. [Claimant] is also an independent individual whom [s/c] can benefit more if he is able to integrate into the community with these supports. These supports can be provided within the ELARC catchment area. The CIP program may not be a

good fit as it is in a more restricted setting where [Claimant] will be living with other consumers of the regional center. There was also concerns in regards to the CIP program based on what community services as [sic] shared. It was also recommended to see if there are socialization programs available for [Claimant] as [Aunt] shared that he has self-isolation issues.

19. The November 18, 2021 ID note shows that the Service Agency had contacted another service agency, HRC, Harbor Regional Center, about CIP. A CSC from HRC advised that some of its consumers participated in CIP.

PRINCIPLES OF LAW

1. The party that asserts a claim or seeks to change the status quo generally has the burden of proof in administrative as in other types of proceedings. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) Claimant is such a party and bears the burden of proof in these proceedings. Under Evidence Code sections 115 and 500, the evidentiary standard Claimant must meet is proof by a preponderance of the evidence.

2. Welfare and Institutions Code section 4501 recognizes the state's responsibility to assist persons with developmental disabilities and the complexities involved in coordinating the provision of services and supports among many government agencies. The Lanterman Act is meant to empower consumers by enabling them "to approximate the pattern of everyday living available to people without disabilities of the same age," to integrate them into the community and allow

them to build circles of support. The statute requires that service agencies generate evidence that they are effective, under the supervision of DDS, the Department of Developmental Services.

3. Welfare and Institutions Code section 4512, subdivision (b), states that services and supports are to facilitate an independent, productive, and normal life according to need, preferences of the consumer and family as appropriate, and concern for saving costs. In making decisions, consumers, their families, and the Service Agency are to cooperate and agree, as reflected in an IPP. Services and supports cover a broad range, not limited to those in the long list set out in the statute.

4. Welfare and Institutions Code section 4512, subdivision (e), provides:

“Natural supports” means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

5. Welfare and Institutions Code section 4511, subdivision (d), provides that a Service Agency may provide training to build “circles of support,” a phrase that means, as set out in Welfare and Institutions Code section 4512, subdivision (f):

[A] committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

6. Welfare and Institutions Code section 4520, subdivision (d)(1), states as a fundamental principle that those with developmental disabilities:

are capable of self-determination, independence, productivity, and integration and inclusion in all facets of community life, but often require the provision of community services, individualized supports, and other forms of assistance.

7. Welfare and Institutions Code section 4646.5 states that the IPP planning process must include, among other things, gathering information and conducting assessments and a statement of goals based on the needs, goals, and choices of the consumer, with a statement of specific, time-limited objectives for implementing the goals and addressing the needs. The statute also requires a schedule both of the type and amount of services and supports the Service Agency is to purchase and the generic resources to be used from identified providers.

8. Welfare and Institutions Code section 4648 states that to implement an IPP the Service Agency must, with exceptions not pertinent here, work with vendors or contract with providers that the Service Agency and a consumer or consumer's family have determined will best accomplish the IPP's implementation.

9. Welfare and Institutions Code section 4620.3 mandates that service agencies use best practices by giving thought to matters such as how long a consumer may need a particular service or support, whether the service agency's consistency in dealings with vendors may save costs, and similar considerations designed to make the funding or provision of services and supports sensible and effective.

ANALYSIS

1. The evidence indicates that Claimant is doing well with the assistance of CIP. In mid-May, when discussions about CIP began between the Service Agency and Aunt on Claimant's behalf, it was an open question whether CIP would be beneficial or how it might compare to other programs, such as PIP, the program Mr. Delaloza recommends highly. But the question changed once Claimant was accepted into and began participating in CIP.

2. At hearing, Claimant argued that estoppel should apply to the Service Agency's current position: that because the Service Agency did not act promptly, but had waited about half a year, until November 2021, to issue the NOPA, it waived the right to recommend any service or support different from CIP. Estoppel is not appropriate. There appears to be no legal authority, and none cited by Claimant, for precluding consideration of what services or supports would best serve Claimant. Still, there is some force to Claimant's argument. It is less clear, now that his position has

changed, and especially because it has changed for the better, that he should be asked to retreat from a beneficial program.

3. Government and government agencies are at times criticized, even maligned, for going slow. But criticism of this sort is not always just. The Lanterman Act itself is apropos. Supports and services are intended as the product of an IPP, on which, as set out in Welfare and Institutions Code section 4512, subdivision (b), the parties must work jointly so that agreement may be reached. The process of reaching agreement takes time. If the process is to be even-handed and careful, and therefore just, it is preceded by gathering information, not only from a consumer and the consumer's family as appropriate, but also from vendors and providers of generic resources, as provided in Welfare and Institutions Code section 4646.5. Gathering information takes time.

4. The Service Agency in this case was striving to fashion solutions that would be most beneficial to Claimant, and is hardly to be criticized for its efforts. But Mr. Delaloza was immediately accessible as an employee of the Service Agency. If he was aware of a program better than CIP, he might have been consulted earlier, in May 2021 or shortly after that, and all information at his disposal might then have been promptly transmitted to Aunt and Claimant.

5. Mr. Delaloza may well be correct in his estimation that PIP and other programs the Service Agency could offer Claimant are superior to CIP. The evidence indicates that PIP is very like CIP, in that both accomplish similar goals of well-monitored employment and social integration. A notable difference between the two is that PIP is considerably less expensive. As the Lanterman Act is concerned with realizing cost savings where possible, PIP is in this regard superior to CIP. When

programs offer substantially the same benefits but one is less costly, the less costly might indeed be preferred.

6. But cost savings do not necessarily override personal preference. Cost may be a weighty consideration, but does not necessarily outweigh other statutory considerations. Personal preference is an express consideration in the Lanterman Act. Such personal preference deserves to be accorded considerable weight in this context. Claimant will be living with a program day to day at a crucial time in his development as he approaches integration into the workforce.

7. In addition, Claimant has not just expressed a preference for CIP, he has acted upon it. All indications are that CIP has proved quite beneficial to Claimant. PIP may be theoretically superior, but it has not been tried on Claimant, as CIP has. In these circumstances, there is doubt that PIP's putative advantages would measure up to the real advantages that Claimant is already enjoying in CIP.

8. Mr. Delaloza's testimony was wholly convincing that PIP is an excellent program that would without doubt benefit Claimant a great deal. But with any program new to him such as PIP, Claimant would face multiple challenges, not least the challenge of becoming acquainted with new program personnel. Claimant has been working for months on getting to know people in CIP, both peers and monitors, and it appears he has made good progress. It is not clear that this progress should be sacrificed in favor of starting up the same efforts all over again in a new program in the hope the progress might be replicated.

9. In the end, Mr. Delaloza's testimony and the Service Agency's other evidence did not demonstrate that PIP is, in Claimant's particular circumstances, superior to CIP. Other than potential cost savings, there seems to be no basis for

ending a program that has been benefitting Claimant for months in favor of forcing him to adjust to a new program. The cost savings are not enough in the circumstances to deny Claimant's appeal.

10. The Service Agency's reluctance to fund CIP makes some sense because the Service Agency is familiar with PIP as it is not with CIP, and this familiarity would allow the Service Agency to ensure that at every step of Claimant's climb toward generating income for himself his upward progress would be better understood and well supported by Service Agency personnel. But these considerations are less important to Aunt and Claimant, because they know from experience, now months long, that Claimant is climbing well toward his goals and there are people dedicated both to his progress and program to ensure that that will continue.

11. The Service Agency's position that CIP need not be funded because it is out of the catchment area is not persuasive. The Service Agency has been able to communicate with its counterpart, HRC, with a catchment area covering CIP. That communication may be extended and, if appropriate, there seems to be nothing to prevent Claimant's services and supports from being transferred.

CONCLUSIONS OF LAW

Claimant's participation in CIP should not be curtailed, The Service Agency may be correct, in principle, that other programs, especially PIP, would better serve Claimant's interests. But in total the evidence indicates that the status quo should be maintained for Claimant's continuing benefit, and that Claimant should continue in CIP with Service Agency funding.

ORDER

Claimant's appeal of the Service Agency's decision to deny funding for his participation in CIP, the College Internship Program at CSULB, the California State University at Long Beach, is granted. The Service Agency shall fully fund Claimant's participation in the CSULB program, including reimbursement for fees paid to CIP for Claimant's participation in and since September 2021.

DATE:

THOMAS LUCERO

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.