

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022020887

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on June 16, 2022.

Claimant was represented by his mother.

Keri Neal, Fair Hearing Representative, represented the service agency, Inland Regional Center (IRC).

Documentary evidence and testimony were received. The record was closed, and the matter was submitted for decision on June 16, 2022.

ISSUES

(1) Shall IRC fund one hour per day of instruction, five days per week, at Lindamood-Bell Learning Processes (LMB), a private academic institution? (Of note, both claimant and IRC erroneously spelled this program in their documents.)

(2) Is claimant estopped from making this request given that it was previously denied following a hearing in 2021?

FACTUAL FINDINGS

Jurisdiction

1. January 31, 2022, IRC issued a Notice of Proposed Action (NOPA) advising claimant that his request that IRC fund LMB “a program that focuses on education and academics” was denied. IRC asserted that its previous denial of this request was upheld in 2021 by an Administrative Law Judge with the Office of Administrative Hearings (OAH). IRC noted that claimant has now “renewed your request in response to the repeal of [Welfare and Institutions Code section 4648.5, subdivision (a)(3)] which prohibited regional centers from funding educational services for children ages three to 17.” IRC set forth the various reasons why it was again denying claimant’s request. Claimant appealed the denial and this hearing ensued.

Prior Decision

2. In 2020, IRC denied claimant’s request that IRC fund one hour per day, five days per week, of LMB instruction during the regular school year. Claimant appealed that denial and a hearing followed. On June 11, 2021, in OAH No.

2021020072, OAH issued a decision affirming IRC's determination not to fund the requested LMB service. Claimant did not appeal that decision and it is now final. Accordingly, claimant is precluded from relitigating any of the facts found or issues decided in that decision.

3. A review of that decision indicates that the only "new issue" that can be decided in this matter is whether the repeal of Welfare and Institutions Code section 4648.5 requires IRC to now fund the requested service.

Background Information

4. Claimant is a 14-year-old male who recently completed middle school and will be attending high school in the fall 2022. He resides at home with his mother; his father has court-ordered visitation rights. Claimant qualifies for regional center services on the basis of a diagnosis of mild intellectual disability. IRC documents indicated that claimant's qualifying diagnosis was mild intellectual disability but that his intake report "documented provisional autism, however the diagnosis is not inputted on his client developmental evaluation report (CDER)." Claimant's CDER only identifies mild intellectual disability as claimant's developmental disability; the autism spectrum disorder disability section of the CDER is marked "none."

5. Claimant receives special education services from his school district "as a student with Autism (primary) and speech and language impairments (secondary)." Of note, claimant's school district providing services to him under an autism disability is not binding on IRC. Schools are governed by California Code of Regulations, Title 5 and regional centers are governed by California Code of Regulations, Title 17. Title 17 eligibility requirements for services are much more stringent than those of Title 5.

Documents Introduced at Hearing

6. Many of the documents introduced at this hearing predated the 2021 decision and any findings made about those documents in the 2021 decision cannot be disturbed in this decision.

7. The post-2021 decision documents introduced at this hearing, and documents not referenced in the prior decision, as well as the witness testimony, are summarized below.

IRC DOCUMENTS

8. A June 27, 2019, letter from IRC approved LMB as an IRC vendor. LMB program design documents were attached to the IRC letter. LMB is a private academic institution that offers academic instruction.

9. Claimant's March 19, 2022, IRC Individual Program Plan (IPP) Summary Sheet documented that the services in place for claimant were a "conference registration fee," 45 hours per month of preferred provider respite, and 131 hours per month of COVID preferred provider respite. The new request for services were 240 hours for LMB from June 17, 2022, to September 30, 2022, and one hour per day LMB "5 days/week outside of summer dates (in appeal)."

10. Claimant's March 19, 2022, IPP documented claimant's qualifying diagnoses, his abilities and needs, the services he received and what was currently happening with him. Claimant requires "assistance in all areas of daily living," he "needs supervision at all times to ensure his safety," but "has continued to make progress with his expressive and receptive language skills." Claimant has also "been making more of an effort to try tasks on his own, such as self-care." Claimant's mother

reported that she would like her son to continue to improve his communication and social skills. She would also like him to “progress academically with educational support.”

The IPP noted that the services which IRC agreed to fund are: Self Determination program; Conference Registration Fee funding; Medic Alert and/or If I Need Help safety kit when requested; preferred provider respite/preferred provider COVID respite; 240 total hours from June 17, 2022, to September 30, 2022 for the LMB summer program; and camp for the 2022 summer which had not yet been requested and was subject to availability. The IPP also noted that claimant requested one hour per day, five days per week, outside of the summer dates, of LMB instruction which was in the appeals process; which is the subject of this hearing Claimant previously attended daycare but was no longer eligible when he turned 13. He is insured through private insurance with Kaiser via his mother’s employment and “has straight Medi-Cal via Institutional Deeming.” Claimant does not qualify financially for SSI at this time but does receive 260 hours per month of In Home Support Services (IHHS).

The “Communication” section of the IPP documented that claimant’s mother reported that claimant’s “expressive language skills have continued to show improvement within this past year” and he uses sentences of more than three words with a vocabulary of more than 30 words. Claimant is able to initiate interactions with others but has a difficult time maintaining them. He was receiving speech services twice per week funded by Kaiser. The authorization for those services would end in April 2022 and per claimant’s mother, Kaiser had not authorized continued speech therapy. In this therapy, claimant was “working on articulation, retelling stories, inferences, conversational skills, telephone skills, and community signs.” Claimant was also receiving speech therapy through his school district. Claimant “continues to utilize

scripted speech and echolalia at least once per week” and “continues to have spontaneous language which has increased within the last year.” Claimant’s mother would like claimant to “work on fostering growth and resiliency with his verbal/communication needs within this next reporting period.”

The IPP documented that claimant’s mother would like claimant “to continue to expand on his vocabulary, interact and remain engaged in conversations, make appropriate requests in complete sentences, and speak spontaneously” and improve “his pragmatics of communication.” Claimant’s mother would like to continue with the Kaiser-funded speech services and those the school district offered. “Overall mother will keep [IRC] appropriately informed regarding pertinent updates as it relates to [claimant].” The IPP further noted that what claimant wanted/needed from service agencies/generic resources was speech therapy via Kaiser and school, that Kaiser and Medi-Cal would be requested to fund needed speech services in accordance with their policies and claimant’s school district would fund needed speech services in accordance with his Individualized Education Plan (IEP). Claimant’s school district was responsible for providing appropriate educational services which were to be identified in his IEP, IRC would assist the family with exploring appropriate educational objectives and transitional services through the school district, IRC would attend IEP meetings as appropriate and invited, and monitor claimant’s progress annually, and IRC would request the school records as needed to update its case file.

11. Claimant’s mother requested an addendum to the IPP to reflect that she provided IRC with the letter from the Department of Developmental Services (DDS) advising of the changes to Welfare and Institutions Code section 4648.5 which restored a regional center’s ability to fund educational services for children ages 3 to 17 and that she had provided a letter from claimant’s physician recommending

"additional support such as the [LMB] program." Claimant's IPP was amended on April 18, 2022, to document her request that these matters be added to the IPP.

12. Consumer ID Notes documented the communications between IRC and claimant's mother. A note on April 21, 2022, indicated that claimant's mother advised IRC that claimant's IEP meeting had been canceled and was "pending rescheduled." Contrary to claimant's assertion at hearing, this note did not contradict IRC's position that it was not notified when the IEP was rescheduled. No documentation was offered showing that IRC was ever advised of the new IEP date. No evidence contradicted IRC's claim that it had not been advised of the new IEP date or been requested to attend the re-scheduled IEP meeting.

13. An April 22, 2022, email from IRC advised claimant that after reviewing the additional records from LMB that claimant provided, IRC was "standing by the decision to deny your request to fund LMB services throughout the year in addition to funding LMB summer session services for the reasons stated in the informal meeting letter and the [NOPA]" previously provided to claimant.

DOCUMENTS REGARDING WELFARE AND INSTITUTIONS CODE CHANGES

14. On October 7, 2021, DDS issued a letter to all regional centers advising that effective July 1, 2021, changes to Welfare and Institutions Code section 4648.5 "restores regional center authority to fund . . . educational services for children three to 17, inclusive, years of age. . ." DDS directed regional centers to provide "outreach to consumers, families, providers and local community organizations to facilitate awareness about the availability of these [restored] services" and "revise its purchase of service (POS) policies, as necessary, to reflect restoration of funding for the services and promote compliance" with the revised code section. Regional centers were

directed to submit their outreach plan and revised POS policies to DDS by December 15, 2021.

15. On May 19, 2022, DDS issued a letter to IRC approving its revised POS policies “contingent upon the regional center’s assurance the policies are implemented in compliance with applicable federal and state laws and regulations.” DDS’s letter further stated that the IPP planning team shall consider the cost effectiveness of the services, the cost of providing the services, and select the least costly available provider of comparable services. IRC’s revised POS were attached to DDS’s letter and contained the following under the heading “**Educational Services**” (emphasis in original):

Educational services for children three to 17 may be funded when the need has been identified in the IPP and the following conditions have been met:

1. The service is not available through the educational system and/or school district.
2. All generic resources have been exhausted.
3. The service is not a typical parent responsibility for minor children.
4. The consumer’s need for extraordinary care, services, supports and supervision, and the need for timely access to this care has been considered.

16. IRC introduced DDS service codes and information regarding teaching credentials. The educational services code noted that a “regional center shall classify a

vendor as a [sic] Educational Services provider if the vendor provides, or obtains, educational related services and supports, not available through the educational system and/or school district, as identified in the consumer's IPP."

LMB DOCUMENTS

17. Documents from LMB described its program, evaluation and instruction plan, personnel, rates and scholarship information.

18. On January 21, 2022, claimant's mother sent IRC an email with LMB's Recommendations prepared by LMB's Associate Center Director. That document advised that the "diagnostic Learning Ability Evaluation administered on September 22, 2021 indicates that [claimant] benefitted from the sensory-cognitive instruction researched and developed by [LMB]." The Recommendation stated further:

Although [claimant] demonstrated initial improvement, he continues to exhibit numerous areas of substantial weakness on evaluation. Therefore, we must continue instruction with a guarded prognosis for significant outcomes.

We recommend continued instruction – 4 hours per day, five days per week – for 10-12 weeks. This will be one of multiple periods of intervention.

The Associate Center Director advised further that LMB could not "determine the finite amount of instruction necessary due to the many variables and individual responses to sensory input during the instruction period." But, progress updates would be provided "regularly during instruction to provide insight into the amount of

intervention necessary and/or program focus." A retest would also be administered at regular intervals to assess progress and provide additional recommendations. The recommendation also stated that the LMB Academy "*may* be an academic and social fit for [claimant]" and LMB "*can be* the beginning of a new journey in learning, filled with opportunities to experience school as never before." (Emphasis added.) The use of the words "may" and "can be" demonstrated that attending the LMB Academy was merely a suggestion and not a definitive recommendation.

LMB recommended two sensory-cognitive programs. According to LMB documents, these two programs are evidenced-based which IRC acknowledged at this hearing. The first program LMB recommended was "Visualizing and Verbalizing for Language Comprehension and Thinking" described as follows:

This program provides sensory-cognitive development of concept imagery - the ability to create an imaged gestalt (whole) from oral and written language. This dual coding processing with imagery and language supports the development of oral vocabulary, oral language comprehension, reading comprehension, written language expression, ability to follow directions, and critical/analytical thinking."

The second program LMB recommended was "Seeing Stars" described as follows:

This program provides sensory-cognitive development of simple imagery - the ability to visually image sounds and letters within words. Dual coding with imagery and

language supports the development of phonemic awareness through the multisyllable level, visual memory, word attack, word recognition, spelling, contextual reading (both accuracy and fluency), and reading comprehension. The program develops the imagery-language connection for spontaneous self-correction an accurate, affluent contextual reading.

19. LMB documents detailed these two evidence-based programs.

20. LMB records from June 2021 through September 2021 documented claimant's progress in the "Visualizing and Verbalizing" program. As of September 10, 2021, claimant had completed 316 hours of the recommended 200 to 240 hours of instruction. The "Comments" section noted:

[Claimant] is working to create detailed imagery and verbalization from third grade stories one sentence at a time, as well as the multi-sentence level. His teachers will review difficult vocabulary within the text before reading the stories, to familiarize him with these concepts.

[Claimant] does require prompting and modeling to support his verbalization and to ensure that his imagery is accurate. When his teachers support him with his pictures and help him complete his verbalization, [claimant] is able to verbalize the story main idea with prompts. Next Goals: Increase the level of stories[.]

21. Two documents each titled "Learning Ability Evaluation Summary" recorded claimant's scores on various tests administered between May 14, 2020, and September 22, 2021, and between September 30, 2020 and April 6, 2022. No expert testimony was offered to interpret or explain those tests or those scores.

22. An April 12, 2022, LMB Learning Ability Evaluation Consultation had claimant's name on it but the document was merely an explanation of the program and testing, there were no specific references to claimant in the document.

23. LMB "Recommendations" received by IRC on April 13, 2022, stated that the "diagnostic Learning Ability Evaluation administered on April 6, 2022 indicates that [claimant] would benefit from further sensory-cognitive instruction researched and developed by [LMB] to develop his learning and literacy skills." Further, although claimant "demonstrated initial improvement, he continues to exhibit multiple areas of substantial weakness on the evaluation. We recommend continued instruction – 4 sessions per day, five days per week - for 10-12 weeks. This will be one of multiple periods of intervention." The words "1-6 hours per day" in a different font and different color were typed on the document above this paragraph. No explanation of this was offered at hearing. As with the prior recommendation referenced above in Factual Finding No. 18, LMB could not determine "the finite amount of instruction necessary" for claimant but would provide regular progress updates. The recommendation again suggested that the LMB Academy "may" and "can be" "the beginning of a new journey" for claimant. As before, the use of the words "may" and "can be" demonstrated that attending the LMB Academy was simply a suggestion.

LETTERS FROM PHYSICIANS

24. A letter dated January 20, 2022, from Moin Vera, M.D., Ph.D., Kaiser Permanente Regional Metabolic Center, addressed "To Whom It May Concern" stated that claimant is an individual "with autism, developmental delay, and obesity, who was found to have a heterozygous pathogenic variant in the FBX011 gene that is associated with these clinical findings." Individuals with this variant "have delayed psychomotor development, intellectual disability ranging from mild to moderate . . . Speech delay, and possible seizures, among other physical comorbidities, such as obesity. Behavioral abnormalities, including autism spectrum disorder, attention-deficit/hyperactivity disorder, anxiety, and aggression are common, as is dysmorphic features." No documents demonstrating how claimant was given this autism diagnosis were offered at hearing. Dr. Vera wrote further:

[Claimant's] medical health is complex and multisystemic, requiring monitoring by multiple different specialists and requiring daily assistance by caregivers. Therefore, any additional supportive services provided to [claimant], such as, an Education Therapist, participation in programs such as the Linda Bell [*s/c*] Program in Pasadena, clinic-based occupational therapy, speech/language therapy and physical therapy, **may** provide him with maintaining and/or improving the skills and physical capabilities he is currently using to access his education by preserving his functioning in the academic setting. (Emphasis added.)

Dr. Vera's use of the word "may" demonstrated that he was not stating affirmatively that LMB was being recommended, just that it, along with the other programs he referenced in his letter, "may" help claimant.

25. On June 3, 2022, claimant sent an email to IRC enclosing an April 21, 2022, letter from Kaiser physician Edward S. Curry, M.D., addressed "To Whom It May Concern." Dr. Curry wrote that claimant "has been diagnosed with autism spectrum disorder, developmental speech and language disorder" and has been receiving Kaiser Permanente speech and language therapy. Again, no documents demonstrating how claimant was given this autism diagnosis were offered at hearing. Dr. Curry wrote that claimant "would benefit from additional speech services from Linda Mood Bell [sic] Sensory Cognitive Program which would be an [sic] year round program. The combination of both regular speech and language therapy and Linda Mood Bell [sic] **could** enhance his learning and speech abilities. (Emphasis added.) As with Dr. Vera, Dr. Curry's use of the word "could" demonstrated that he was not stating affirmatively that LMB was being recommended, simply that it could enhance claimant's abilities.

SCHOOL DISTRICT DOCUMENTS

26. Claimant's 2019 Psychoeducational Evaluation documented that he received specialized academic instruction, speech therapy, occupational therapy, and adaptive physical education. His "overall cognitive ability measured in the Very Low range" and he "demonstrated significant delays in verbal and nonverbal reasoning abilities, long-term retrieval and working memory."

27. Claimant's 2019 IEP identified his preacademic/academic/functional skills, communication development, growth/fine motor development, social/emotional behavior, vocational skill, adaptive/daily living skills, and his health. The IEP identified

the various services claimant received from the school district including intensive individual services, language and speech services, occupational therapy, specialized academic instruction, and adaptive physical education (APE). The IEP noted that it was recommended that APE be discontinued and claimant be given general physical education because of how well he had progressed. The IEP further documented that the school district had offered extended school year (ESY) to claimant "to prevent skills regression over an extended break" but claimant did not attend.

28. A March 13, 2020, IEP amendment documented that the percentage in general education times changed during the 2020-2021 school year and the service times changed for specialized academic instruction and intensive individual services.

Witness Testimony

29. Candice Bustillos is an IRC Consumer Services Coordinator (CSC) and claimant is assigned to her caseload. CSC Bustillos testified about the various documents at issue, describing claimant's qualifying diagnosis, needs, maladaptive behaviors, and services received. She learned "just yesterday" that claimant's mother attended an IEP on June 3, 2022, but CSC Bustillos has received no documents from that IEP nor was she invited to attend. She has no documents indicating that the school district refuses to fund the LMB one hour request. She also has no documents indicating that claimant's insurance received or denied the request.

CSC Bustillos is familiar with the LMB program and testified that it costs \$157 per session. She explained IRC's rationale for denying claimant's request for one hour per day, five days per week, of LMB instruction outside of the summer hours that IRC funds, rested, in part, on the opinions of claimant's educational advocate, Sarah Pelangka, Ph.D., BCBA-D, E.S.C., who sent emails to IRC in 2021 advising that claimant's

school district would not agree to fund LMB all year because of his scores on testing. Claimant was behind and not at grade level due to his cognitive abilities. In another email Dr. Pelangka referenced her telephone call to claimant's mother wherein Dr. Pelangka advised the mother that she was hesitant to recommend LMB because "it is a very costly program, and would not "be feasible for a district to cover such an expense" and that if the district had failed to offer the appropriate services to claimant, they "can be offered by a certified professional in evidence-based strategies/curriculum, and it doesn't have to be at [LMB]." Dr. Pelangka also stated that claimant's mother advised that claimant had not "shown any progress since 4th grade yet he's been attending LMB every Summer" and that Dr. Pelangka informed claimant's mother that "the district would probably question why that progress hasn't generalized to the academic setting and question its validity."

CSC Bustillos explained that the one hour LMB services claimant seeks are available through generic resources: his school or private insurance. The letters from the two Kaiser physicians simply recommend services offered by generic resources and nothing in them requires claimant to attend LMB or IRC to fund it.

30. Kerniece Perscell is an IRC Program Manager (PM) who supervises CSC Bustillos. She testified that the LMB recommendation noted the services would benefit claimant by developing his learning and literacy skills. She testified these skills are the type provided by claimant's school district, a generic resource. She also noted that the letters from the two Kaiser physicians identify services that are provided by generic resources, the school and private health insurance. Also, claimant is currently receiving speech services at Kaiser so the two recommendations were for additional services and claimant has never produced any documentation to IRC demonstrating that he has exhausted generic resources.

PM Perscell explained further that another basis for the denial was DDS's approval of IRC's revised POS which set forth how and when educational services will be provided. There's been no showing that the service is not available through claimant's school district. There has been no showing that claimant has exhausted all generic resources. IRC did consider claimant's needs when making the decision. LMB is a costly program and there are more cost-effective options available. Claimant's school district is required to provide the services that will meet his educational needs, and in this appeal, he is requesting a service to be provided during the school year, and it is the school district's responsibility to provide and fund those services.

31. Claimant's mother testified that LMB is an evidence-based program which she has been requesting from the district ever since her son was enrolled and the district has never offered to fund the service. She also requested that Kaiser fund the LMB service but was told they would not nor would Kaiser provide her with a denial letter because the service is one that they do not fund, so they were not denying a service. Claimant's mother also disputed that the service she is requesting is during school because she is requesting one hour be provided Monday through Friday after school hours. She is requesting the service so her son can maximize his full potential and become as independent as possible.

Closing Arguments

32. Claimant's mother argued that she would like the request to be granted and the program be provided throughout the remainder of the year. She argued that claimant has made progress; if he had not, LMB would not have recommended he attend in the program. Further, if she had seen "a plateau," she would not have requested the program. She has seen claimant have progress in all areas and with the repeal of Welfare and Institutions Code section 4648.5, regional centers can now fund

educational services for children under age 17. She has reached out to generic resources and none of them have offered to fund the service, which is why she has requested it be funded by IRC. Claimant's mother repeatedly argued to the undersigned Administrative Law Judge that that "my son's future is in your hands."

33. IRC argued that it does fund services not available through the school district but, even with the repeal of Section 4648.5, it must still take cost-effectiveness into account and LMB costs \$157 per session, which is a very costly program.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." ((Welf. and Inst. Code, § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden of Proof

2. In a proceeding to determine whether a claimant is eligible for services, the burden of proof is on the claimant to establish he or she meets the eligibility criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

4. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

[¶] . . . [¶]

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.
6. A regional center is required to consider the cost-effective use of public resources, generic resources, and the family's responsibility for providing services and

supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, §§ 4646, 4646.4.)

7. Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (Welf. & Inst. Code, §§ 4648.)

8. Welfare and Institutions Code section 4659 states in part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

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

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

Collateral Estoppel and Issue Preclusion

9. In 2009 Welfare and Institutions Code section 4648.5 eliminated a regional center's authority to purchase certain services, including "educational services

for children three to 17, inclusive, years of age.” An exemption from the general prohibition on the purchase of specific services could be granted if the regional center determined that the service was a “primary or critical means” for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service was “necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs.” This code section became inoperative on July 1, 2021, and was repealed as of January 1, 2022.

10. In *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342-344, the California Supreme Court set forth the doctrine of issue preclusion. According to the court, the doctrine of issue preclusion “precludes relitigation of issues argued and decided in prior proceedings,” when six criteria are met. These criteria are: (1) “The issue sought to be precluded from relitigation must be identical to that decided in a former proceeding;” (2) the issue to be precluded “must have been actually litigated in the former proceeding;” (3) the issue to be precluded “must have been necessarily decided in the former proceeding;” (4) “the decision in the former proceeding must be final and on the merits;” (5) “the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding;” and (6) application of issue preclusion must be consistent with the public policies of “preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.” Application of those criteria to the instant case results in claimant being precluded from relitigating the exact issue litigated and decided in the 2021 administrative action: “Must the regional center fund one hour per day, five days per week, of cognitive-sensory academic instruction for claimant at the Linda Mood Bell Academy (LMB Academy) during the regular school year, in addition to the 240 hours of cognitive-sensory academic instruction it already funds during the summer when claimant is not in school?”

11. The only new issue presented in this matter, which has not been previously decided, is whether the repeal of Welfare and Institutions Code section 4648.5 now means IRC must fund the requested service. Based upon the evidence of record, the answer to that question is still no. Even though this code section was repealed, regional centers must still look first to generic resources and also consider the costs and cost effectiveness of requested programs. Claimant did not demonstrate by a preponderance of the evidence that he had exhausted his generic resources, that the service he is seeking is not one offered by his school district, and he did not refute IRC's position regarding the costliness of the service.

Claimant also did not refute IRC's position that because of claimant's cognitive skills, the program he is requesting is not appropriate for him. Moreover, the school district did offer ESY to claimant, but he did not attend and no explanation for his failure to attend was offered at this hearing. Finally, contrary to claimant's mother's assertion that "my son's future is in your hands," this is not the case. The Lanterman Act sets forth requirements that must be met before a service can be provided. A preponderance of the evidence did not establish that IRC should fund this request and claimant's appeal is denied.

12. Alternatively, even if the issue had not already been litigated, claimant's request would still be denied for the reasons set forth above.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund one hour per day, five days per week, of academic instruction for claimant at the

LMB Academy during the regular school year is denied. IRC's decision not to fund that service is upheld.

DATE: June 29, 2022

MARY AGNES MATYSZEWSKI
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.