

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

In the Matter of:

CLAIMANT

And

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022030614

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephonically on July 28, 2022.

Keri Neal, Fair Hearings Representative, represented Inland Regional Center (IRC).

Adeyinka Glover, Attorney and Client Rights Advocate, represented claimant, who was not present.

Oral and documentary evidence was received. The record closed, and the matter was submitted for decision on July 28, 2022.

ISSUE

Should IRC fund claimant's current Applied Behavioral Analysis (ABA) provider, or another ABA provider, to provide claimant with personal assistance services while she is attending college courses?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 22-year-old female consumer of services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq. Claimant is eligible for services based on her diagnosis of autism spectrum disorder (ASD). Claimant currently attends Riverside City College (RCC) and lives at home with her parents.

2. On January 12, 2022, claimant requested that IRC provide funding for claimant's current ABA provider, ACCESS, Inc., to provide personal assistant (PA) services to claimant while she attends college.

3. By letter dated February 12, 2022, IRC denied claimant's request based upon the clinical recommendation that claimant receive 35 hours per month of direct ABA services, and eight hours of supervision, and that ACCESS, Inc. is not vendored to provide either PA services or Independent Living Services (ILS). Additionally, IRC wrote it is prohibited from funding ABA or intensive behavioral intervention services for the purpose of providing school services pursuant to Welfare and Institutions Code section 4686.2, subdivision (b)(3). The letter further informed claimant that IRC has already previously attempted to find ILS or PA services for claimant while she attends

college but was unable to locate a vendor to accept claimant's case, primarily due to staffing shortages due to the COVID-19 pandemic (pandemic). IRC also stated that it approved California Psychcare (CPC) to provide Specialized Individual Services (SIT) in the interim until a permanent service provider was secured.

4. On March 11, 2022, IRC received petitioner's due process hearing request appealing IRC's decision, and this hearing followed.

IRC's Evidence

5. IRC provided testimony from three witnesses at the hearing, as well as numerous documents received into evidence. The following factual findings are based upon the testimony of those witnesses, as well as supporting documents.

TESTIMONY OF LESLY DIAZ-MADRID

6. Lesly Diaz-Madrid is claimant's current Consumer Services Coordinator (CRC) at IRC. Ms. Diaz-Madrid has been a CRC for the past six years, and she has been claimant's CRC for the past nine months. Her duties include coordinating services with IRC vendors, providing generic resource information to consumers, and participating in the development of and writing of Individual Program Plans (IPP) based on the needs of the consumer with input from the consumer. Ms. Diaz-Madrid participated in the development of claimant's most recent IPP by conducting the meeting and writing the IPP. Participants in that IPP meeting were Ms. Diaz-Madrid, claimant's mother, and Elizabeth Tagle, a program manager at IRC who supervises Ms. Diaz-Madrid. Ms. Diaz-Madrid testified that after writing the most recent IPP, IRC has not yet received the signed document back from claimant's mother.

7. Ms. Diaz-Madrid described claimant's current needs for assistance with her activities for daily living. Specifically, claimant is independent regarding toileting, other than needing prompts with regard to her menstrual cycle; she can perform basic cooking with prompts but needs assistance with stove burners or oven safety; she can dress herself, but needs prompts to dress appropriately for the weather; she is able to perform basic hygiene tasks like bathing, but needs assistance to do so thoroughly; she is able to identify money, but needs assistance on knowing how much change to get back when making a purchase; and she communicates verbally but does not use full sentences during conversations, can't hold a long conversation, and may use from two to ten words in a conversation. Ms. Diaz-Madrid testified that claimant has some challenging behaviors because she enjoys drawing and when she sees a printer, she will grab the paper because she wants to draw, primarily rainbows. Also, claimant can be resistant when she does not get her way or has to do a non-preferred task, but she is compliant when redirected. Claimant can get overstimulated in crowded areas and is always supervised by her parents.

8. Diaz-Madrid described the services that claimant currently receives as 55 hours of respite per month from Inland Respite; 125 hours of ILS per month from Roman Empire; ABA therapy hours of 35 hours per month plus eight hours per month of supervision from ACCESS, Inc.; reimbursement to parent for PA services while claimant is in class at RCC; Financial Management Service (FMS) reimbursement to parents for transportation to and from RCC; and reimbursement to parents for a summer baking class with supplies. Ms. Diaz-Madrid also stated that claimant receives generic services of reimbursement from In-home Support Services (IHSS) for 283 hours per month of in-home care with claimant's mother as the care provider, and claimant also receives social security (SSI) benefits of \$900 per month.

9. Ms. Diaz-Madrid explained that when she first became claimant's CSC about nine months ago, claimant was also receiving 18 hours per month of PA hours from Maxim Healthcare (Maxim), and claimant was receiving six hours of specialized individualized training (SIT) from CPC while CPC was conducting an assessment of claimant for the appropriate aide while claimant attends RCC. According to Ms. Diaz-Madrid after CPC conducted the assessment, CPC services were terminated by claimant's parent. After claimant's parent terminated CPC's services, Ms. Diaz-Madrid submitted referrals to other IRC vendors seeking a vendor who could provide claimant with PA hours or ILS hours to assist claimant while she attends RCC.

Prior to Ms. Diaz-Madrid being claimant's CSC, claimant received transportation services to and from RCC from Dial-a-Ride, but claimant's parents requested that transportation of claimant to and from RCC be provided by whomever was providing the PA or ILS hours to claimant while she was on campus. Ms. Diaz-Madrid was unable to find any providers because most were understaffed due to the pandemic. Some providers do not provide PA or ILS services on college campuses, and some do not provide transportation. Regardless, Ms. Diaz-Madrid was unable to find a provider after contacting about 15 different vendors. She explored both IRC vendors and vendors from other regional centers. Finally, Ms. Diaz-Madrid was able to locate one vendor from another regional center, specifically the San Gabriel Regional Center, to provide ILS services to claimant while she attended RCC. That vendor is Roman Empire Living Skills (Roman Empire).

Roman Empire indicated to Ms. Diaz-Madrid that they do have staff with ABA experience who can assist claimant. Ms. Diaz-Madrid stated that having staff with ABA experience was initially preferred by claimant's mother for a provider of PA or ILS services but was not a requirement, which was documented on an IPP addendum

signed by claimant's mother on May 31, 2022. Roman Empire also indicated that they could provide transportation of claimant to and from RCC. IRC authorized Roman Empire to provide an assessment of claimant for ILS services for attending RCC. The assessment involved an observation of claimant while she was on campus at RCC, along with claimant's mother. Ultimately, IRC authorized Roman Empire to provide ILS services to claimant while she attends RCC. However, Roman Empire has attempted to contact claimant's mother by email multiple times to set up the service but has not received a response. As of July 25, 2022, Roman Empire still had not received a reply from claimant's mother.

10. Prior to Diaz-Madrid becoming claimant's CSC, claimant received PA services from Maxim. Ms. Diaz-Madrid stated that she contacted Maxim to see if they could provide PA services to claimant while she was at RCC. Ms. Diaz-Madrid explained that Maxim was previously terminated for PA services for claimant because they had insufficient staff due to the pandemic. When Ms. Diaz-Madrid contacted Maxim to ask if they could staff the PA services for claimant, the representative for Maxim informed her that they would not take the referral for claimant because they had a bad experience with claimant's mother, who would persistently call and demand staffing as soon as possible for claimant despite repeatedly being told that Maxim had no staff because of the pandemic. This created a negative experience for the case manager at Maxim, and as a result, Maxim would not work with claimant.

After Maxim was terminated because they had insufficient staff, Ms. Diaz-Madrid stated that CPC would, in the interim, provide assistance to claimant while she attended classes at RCC. However, once claimant's mother terminated the services of CPC, IRC then began parental reimbursement to claimant's mother because claimant's mother was attending classes with claimant. IRC also authorized reimbursement to

claimant's mother for her time and for transportation to and from RCC pending a provider being secured.

11. Ms. Diaz-Madrid explained that claimant started attending RCC on August 23, 2021, but that IRC has not yet been informed by claimant whether or not she will attend RCC in the fall of 2022. According to Ms. Diaz-Madrid, claimant's mother has repeatedly asked for ABA services to be provided to claimant while claimant is attending classes at RCC. Claimant's mother has also asked that any ILS or PA provider also be ABA trained. However, Ms. Diaz-Madrid also stated that having PA or ILS staff trained in ABA is not the same as funding ABA services.

TESTIMONY OF PAMELA HUTT

12. Pamela Hutt is employed by IRC as a Program Manager and a Behavioral Specialist for the Behavioral Health Team, positions she has held since 2015. Ms. Hutt has worked for IRC since 1989 and joined the management of IRC in 1995. She has worked with the IRC behavioral health team since 1996. Ms. Hutt holds a master's degree in social work. Her duties as a Program Manager include oversight of all behavioral health services for IRC, including ABA services, crisis management services, adult PA services for college campuses, and PA services for minors. All of the CSCs working at IRC bring their cases to Ms. Hutt for review and assessment. Ms. Hutt is also responsible for bringing in any necessary parties for oversight and establishing services for consumers and families. Ms. Hutt has been involved in claimant's case since the ABA and Behavioral Health Treatment services were moved to IRC for funding after claimant's medical insurance stopped funding ABA services after claimant turned 21 years of age.

13. Ms. Hutt explained that ABA services is an evidence-based and research-based treatment modality to assist with increasing good behaviors and reducing unwanted behaviors, and to increase skill sets for social skills and independence. Additionally, Ms. Hutt explained that parent participation is critical for ABA services because it is a form of 24-hour model teaching where the parent continues the training for consistency in tasks of daily living. She stated that ABA services requires active participation from the parents, consumer, and behavioralist. ABA services are generally conducted in the home, but occasionally are conducted in the community to determine if the skills are working after those skills have been taught in the home. Ms. Hutt stressed that ABA services cannot be provided when a consumer is engaged in other activities like a college course because the premise of ABA is that it is formal training and teaching and requires focus and attention. She stated that ABA services give the consumer a foundation and fundamental skills, and the consumer should graduate from ABA services into more independent living with the lowest amount of support possible such as PA or ILS because the goal is to create a more independent consumer. ABA services are not meant to be a life-long service and the consumer must eventually graduate from ABA services so that they do not become ABA dependent.

Ms. Hutt explained that PA services are designed to assist the consumer so that the consumer can be successful in another environment or for an activity. For authorization of PA services, IRC verifies that the activity the consumer would like to engage in cannot be achieved without the assistance of a PA provider. Ms. Hutt stated that for a consumer of claimant's age, the goal is for claimant to be as independent as possible, and IRC looks for the PA to provide minimal support and "give loose structure" for prompting as required for claimant to be successful. Parent participation is not required or desired for PA services because the goal is an independent consumer.

Ms. Hutt also explained that ILS services are usually identified for transitional age consumers, such as claimant, who is a young adult. She explained that ILS services are “like part 2” after the consumer has completed ABA services to increase their skill sets. ILS services are far less formal than ABA services and build upon the skills taught by ABA services. She stated that ILS services provide “loose training and support” for the consumer and take place entirely in the community, such as identifying money, paying bills, buying food, communication, and social skills. ILS services also do not require or desire parent involvement because the focus is on independence. Ms. Hutt noted that IRC had already authorized ILS services for claimant with Roman Empire, a program she described as well-rounded and comprehensive for a college setting.

Ms. Hutt explained that PA and ILS service providers are not required to have ABA training because they are all different types of services, each with their own training and requirements.

14. Ms. Hutt reviewed an emailed observation report from a PA services vendor that had observed claimant while she was attending classes at RCC with her mother, which was received in evidence. The email report stated that claimant “required extensive verbal and visual prompts to remain on task, and to stay engaged with the process of completing her assignment,” and that “it was difficult to determine if [claimant] is completely dependent upon her staff to prompt her to participate, and complete her work, or can she independently take the initiative to begin and complete her assignments, and engage in class participation.” Ms. Hutt testified that the observation report showed that claimant had difficulty being a part of the college setting in a meaningful manner.

Ms. Hutt also reviewed a letter dated May 31, 2022, to claimant from the Dean of Student Services of RCC wherein a written reprimand was issued to claimant

regarding accusations of academic dishonesty in claimant's ceramics class because claimant's mother admitted to performing at least 50 percent of the classwork on behalf of claimant. The letter stated that the ceramics professor informed the dean that he witnessed claimant's mother performing the majority of the work in the course. Ms. Hutt stated that this letter shows that claimant is not participating or engaged in the work required for her class, and that it is not a meaningful environment for claimant. Ms. Hutt also acknowledged that claimant has demonstrated impulsive and perseverating behaviors, as well as has taken items from others, and escaping to steal paper so she can draw, all while attending class at RCC. However, Ms. Hutt stressed that clinically impulsive and perseverating behaviors are not significant behaviors but are minimum behaviors that need redirection. Ms. Hutt stated that claimant is not participating in the classes and is trying to escape the task at hand because it is not claimant's preferred activity. Ms. Hutt explained that claimant's lack of engagement calls into question whether claimant even wants to be in the college environment at all. While anyone such as a PA or ILS service provider can provide claimant with redirection, the underlying question of why claimant is displaying these behaviors such as escaping has not been addressed.

15. Ms. Hutt testified that claimant has had years of ABA therapy, since 2010, and at some point, claimant needs to stop her dependency on ABA services. Ms. Hutt emphasized that it is impossible to provide ABA services while claimant is attending college courses because ABA therapy is an in-home service consisting of formal training and instruction. Instead, for a college setting, claimant needs a PA or ILS provider to give her the necessary support to achieve independence. She further noted that consumers should not be attending college with their parents because the goal for most consumers of attending college is to acclimate to that environment. If

obtaining the course information alone is the goal, then a home-study program is more appropriate.

16. Ms. Hutt stated that she corresponded with multiple PA and ILS vendors to find the right fit for claimant, and she authorized the funding for the PA and ILS services for claimant. She stated that CPC was put in place to provide appropriate PA services to claimant to support her goals. Unfortunately, claimant's mother terminated those services and cut off all communication with CPC by not responding to their emails and/or telephone calls. Ms. Hutt stated that CPC already had a team of staff ready to assist claimant on campus, but claimant's mother wanted CPC to work on an ABA program at college, which is not appropriate because CPC was there to support claimant to become more independent in the college setting and not to provide an ABA program.

TESTIMONY OF ELIZABETH TAGLE

17. Elizabeth Tagle is employed by IRC as a program manager for the Riverside transition team, a position she has held for the past four-and-a-half years. Her duties include oversight of the general function of the Riverside transition team, working with CSCs to provide services and supports for consumer needs, and provide assistance as emergencies arise. Prior to her current position with IRC, Ms. Tagle worked for 17 years at IRC as a CSC. Ms. Tagle holds a master's degree in rehabilitation counseling. Ms. Tagle has been the program manager overseeing claimant's case managers for the past four-and-a-half years. Ms. Tagle has been personally involved with meetings with claimant and her family regarding services for claimant.

18. Ms. Tagle testified that claimant's CSC prior to Ms. Diaz-Madrid had requested that she be taken off of claimant's case because she was under a lot of

stress and anxiety as a result of claimant's mother's demands. Ms. Tagle has been more directly involved with claimant's case over the past year. Ms. Tagle drafted the notice of proposed action in this matter and the letter dated February 14, 2022, denying claimant's request for ACCESS, Inc. or any ABA provider to attend classes with claimant at RCC. Ms. Tagle explained that the decision to deny claimant's request was based upon the clinical recommendations for the amount of ABA services claimant should receive. She reiterated Ms. Hutt's position that ABA services are formal instruction given in the home and meant to reduce unwanted behaviors, and that PA and ILS services are better suited for adults attending college, such as claimant. She explained that the services provided by IRC are based on the consumer's needs and goals and are individualized to the consumer. Ms. Tagle stated that IRC is flexible regarding service options so that the services provided can be customized to the consumer's needs. Ms. Tagle further stated that another reason that funding for ABA services for claimant while she is on RCC's campus was denied is because Welfare and Institutions Code section 4686.2, subdivision (b)(3), forbids the purchase of ABA services for the purpose of school services.

19. Ms. Tagle testified that the best way to address claimant's needs while attending RCC classes is an appropriate PA or ILS service provider. Ms. Tagle testified that given her experience with claimant, the lack of a consistent PA or ILS service provider for claimant while she is attending RCC classes has impeded her ability to be more independent.

Testimony of Claimant's Mother

20. Claimant's mother testified at the hearing. Claimant lives at home with both her mother and father, and she has attended college at RCC since August 2021. According to claimant's mother, claimant wants to be either a chef or an artist.

Claimant's mother attends college classes with claimant and drives claimant to and from those classes. Currently, claimant is taking RCC classes of cardio, intermediate ceramics, and reading. Claimant has previously taken the classes of beginning ceramics, cardio, water aerobics, and reading. Claimant is on the RCC campus for about five to six hours per day on Monday through Thursday each week. Claimant is also involved in campus activities, including Red Cross Club, Art Club, and the Extended Opportunity Programs with the Disability Resource Center.

21. Claimant's mother testified that when the Dial-a Ride service funded by IRC was transporting claimant to and from the RCC campus, there was an incident on November 8, 2021, when they dropped claimant off at the wrong location on campus and the PA provider had to search for claimant. Claimant was found 15 minutes later in the library with paper she had taken from a printer and was drawing rainbows. This incident caused claimant's mother to be upset and anxious.

22. Claimant's mother testified that CPC failed to implement the goals of ABA services and were not ABA trained, and "don't know how to work with [claimant.]" Claimant's mother attempted to have a meeting with IRC so that the staff of CPC could be trained on ABA therapies. Claimant's mother has made multiple requests to IRC that PA or ILS staff working with claimant should be trained in ABA.

23. Claimant has received ABA services since 2010 from ACCESS, Inc. and claimant's mother asked for funding from IRC to have ACCESS, Inc. to give PA services to claimant while she is on campus at RCC. According to claimant's mother, claimant was doing well with ACCESS, Inc. and they have worked with claimant since she was in elementary school. Claimant is familiar with ACCESS, Inc. and ACCESS, Inc. has been consistent and regular with claimant. Claimant graduated from high school with a 3.5 GPA during a time she had ACCESS, Inc. providing ABA therapy.

24. Claimant's mother described her experience with claimant attending RCC. Claimant does not get ready to go to class independently and requires assistance from her mother for grooming and redirecting claimant to go through a checklist of items before leaving the house. Claimant's mother drives claimant to the RCC campus and during the drive claimant will sometimes roll down the window, "clicks on the seat," and has on one occasion opened a door. Once at the campus, although claimant knows where her class is located, she will frequently make stops at other locations "to grab paper" or to "run off," and claimant's mother "blocks her" from doing that. Claimant's mother stated that if claimant knows that a building has a printer, such as the library or the cardio class, then claimant will go to those locations to steal paper so she can draw, typically rainbows. When claimant is in her class, she wants to grab paper. In her ceramics class, claimant will go to the teacher's room to get paper from a printer, which the teacher has forbidden. Claimant's mother described behaviors claimant exhibits while attending RCC, which include wandering off or running off without asking, difficulty focusing on her work with a need to be redirected, impulsive and perseverative behaviors, and stealing paper from various printers on the college campus so she can use it to draw.

25. Claimant's mother stated that claimant generally gets good grades in her RCC classes. With regard to the intermediate ceramics class, claimant's mother stated that claimant got a D grade in that class, because, as the dean's letter states, she did not participate in the class. Claimant's mother testified that claimant participated about 50 to 60 percent in the class but "needs to be redirected." With regard to the intermediate ceramics class, claimant's mother testified as follows:

I feel that intermediate ceramics was harder for her. I am also learning. I need to see if I can redirect her. She did well

in basic ceramics class last year, but in intermediate class I had to learn the wheel so I could teach [claimant]. I am trying to get her to do it independently.

Claimant's mother believes that claimant needs IRC funded ABA services while in her ceramics class to be successful. She believes that ABA services will help claimant's behaviors and keep her focused because ABA "is the expert on that." Claimant's mother also believes that if claimant had PA or ILS services from staff who are trained with ABA therapies, then claimant will be successful.

26. Claimant's mother testified that she does not believe it is her responsibility to provide services and supports for claimant, but it is instead IRC's responsibility to do so. Claimant's mother wants claimant to be more independent, and she does not believe it is her duty to go to RCC classes with claimant. Instead, she believes IRC must provide services and support for claimant to do so. Claimant's mother believes that claimant wants to attend classes at RCC, but she needs support to do so. Claimant's mother admitted that it is not appropriate for her to attend college classes with claimant because claimant should be socializing without her. She stated that claimant spends all of her time with her mother making her dependent on her mother, which she believes is unfair. Claimant's mother wants claimant to be more independent.

Claimant's Documentary Evidence

27. Claimant provided a substantial number of documents, which were received in evidence. Included within those documents were email correspondence from claimant's mother regarding her multiple requests from IRC for ABA services for claimant while she is at RCC, claimant's transcript from RCC, and two letters from

claimant's physical therapists each stating that claimant benefits from ABA services because she has difficulty staying on task and focusing. One of the letters from the physical therapist stated that claimant does well "when she has a person to consistently give her instruction to stay on task," and the other physical therapist wrote that claimant would benefit from having someone who was adaptable but authoritative to keeping claimant on task.

28. Additionally, claimant provided a declaration from claimant's mother that mirrored her testimony at the hearing, a declaration from claimant's father describing claimant's behaviors at the RCC campus and generally that require frequent redirection, and a declaration from a behavioral technician at Autism Behavior Services, Inc. describing claimant's behaviors and steps she took to redirect claimant.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to receive personal assistance services from either ACCESS, Inc. or another ABA provider while attending college classes.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its

persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (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. (Welf. & Inst. Code, §§ 4501, 4502; *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.)

4. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “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. . . .”

5. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“Services and supports for persons with developmental disabilities” means 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, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements,

6. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

7. In order to be authorized, a service or support must be included in the consumer’s individual program plan (IPP). (Welf. & Inst. Code, § 4512, subd. (b).) In

implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

8. "Natural Supports" is defined in the Lanterman Act as "personal associations and relationships typically developed in the family and community that enhance or maintain the quality and security of life for people." (Welf. & Inst. Code, § 4512, subd. (e).)

9. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).) The regional center is also required to consider 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, § 4646.4.)

10. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Welf. & Inst. Code, §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.)

11. Welfare and Institutions Code section 4686.2 provides in part:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services, or

intensive behavioral intervention services or both, as defined in subdivision (d), shall:

(1) Conduct a behavioral assessment of each consumer to whom the vendor provides these services.

(2) Design an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer's goals and objectives, as set forth in the consumer's individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer's progress shall be evaluated and reported.

(3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

(2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers

receiving services participate in the intervention plan for the consumers, given the critical nature of parent participation to the success of the intervention plan.

(3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

(4) Discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer's treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

[¶] . . . [¶]

(d) For purposes of this section the following definitions shall apply:

(1) "Applied behavioral analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.

(2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate. . . .

Evaluation

12. Claimant failed to establish by a preponderance of evidence that she is entitled to funding from IRC for PA services to be provided by the ABA service provider of ACCESS, Inc., or from any ABA service provider, while claimant attends college classes. The evidence established that claimant has difficult behaviors, both on and off the RCC campus, that require assistance and frequent redirection. However, as Ms. Hutt credibly testified, those behaviors should be affectively addressed by a PA or ILS provider. Claimant has failed to establish that claimant's behaviors justify providing an ABA service to provide her with PA or ILS services during her college classes, as claimant asserts. Instead, the evidence demonstrates that ABA services are a formal instruction and not appropriate or compatible with claimant taking college classes because claimant must focus on the class at hand and not on ABA instruction. Furthermore, Welfare and Institutions Code section 4686.2. subdivision (b)(3), prohibits IRC from purchasing ABA services for school services. IRC witnesses credibly testified that as a young adult claimant must progress and graduate from her training from ABA services towards independence with appropriate assistance from a PA or ILS service provider while attending college classes.

13. While claimant's mother's concern and intentions to provide the best possible care for her daughter is evident, her insistence on ABA services during claimant's college classes, disguised as PA services, is simply misguided, and undercuts the goal of increasing claimant's independence.

14. IRC is therefore not required to provide funding for any ABA provider to assist claimant while she attends college courses, and IRC is not required to fund any ABA training for any PA or ILS provider assisting claimant while she attends college courses.

ORDER

Claimant's appeal is denied.

DATE: August 8, 2022

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision.