

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No. CS0004111

OAH No. 2023040373

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 8, 2023, in Santa Clarita, California.

Paul Mejia, Fair Hearing Specialist, represented the Service Agency, North Los Angeles County Regional Center (NLACRC). Claimant was represented by Mother. To protect privacy, the names of Claimant and his family are not used.

Testimony and documents were received in evidence. The record was held open for Claimant's submission of documents until November 15, 2023, and for response by

the Service Agency until November 22, 2023. Claimant timely submitted documents. The Service Agency timely objected.

During the hearing, Claimant sought to introduce into evidence a few of the Service Agency's ID notes. ID is short for "interdisciplinary." The notes are between persons with expertise in various disciplines who cooperate in carrying out the Service Agency's tasks. ID notes memorialize these and any communications of significance, including with a Claimant or Claimant representative. The two pages of ID notes Claimant sought to introduce show communications between Mother and Service Agency personnel in October and November 2017 and are marked Exhibit B.

Note that because of the order they were uploaded to Case Center, Exhibit B is on pages B1 through B2, whereas Exhibit A is on pages B3 through B7.

The Service Agency's Objection to Claimant's Evidence was timely and marked Exhibit 18. The grounds of the objection are: (i) the Service Agency provided Claimant all pertinent ID notes months before the hearing, so that Claimant had ample opportunity to identify notes as evidence before the hearing; (ii) Claimant did not comply with Welfare and Institutions Code section 4712, subdivision (d)(2), requiring a Claimant to make available any documentary evidence at or before the hearing; (iii) the notes Claimant offers are irrelevant because the issue at the hearing was whether the Service Agency may terminate Claimant's Early Intervention Vision Services, not Vision Therapy, the different service discussed in the notes; and (iv) the notes are prejudicial to the Service Agency because, out of context, they appear to imply that the Service Agency was offering to fund Vision Therapy.

The objections are overruled. During the hearing Mother could not quote the ID notes Claimant wished to introduce, but she described them in some detail. From

discussion of taking a break from the proceedings so that the Service Agency might locate these notes, it appeared most convenient to give the parties time to locate and present the notes after the hearing. The parties thus had at the hearing such information regarding the proposed evidence as would prevent any surprise. There is no prejudice, as the difference between the services discussed in the proffered notes does not obscure the issues at the hearing.

The record closed and the matter was submitted for decision on November 22, 2023.

STATEMENT OF THE CASE

Claimant, legally blind, received services funded by the Service Agency to mitigate his visual limitations due to Cortical Visual Impairment (CVI). The Service Agency stopped funding the services in April 2023 after reviewing an Individualized Education Plan (IEP) showing Claimant received similar services from a generic source, his school district. Claimant contends that the services previously funded were too well adapted to Claimant's needs to be effectively replaced. The Service Agency contends the law prohibits it from funding services available from a generic source. The issue is whether the Service Agency's discontinuance of funding was proper.

FINDINGS OF FACT

1. The Service Agency served its Notice of Action (NOA) to Claimant on March 7, 2023. Claimant timely appealed.

2. The reason stated in the NOA for the Service Agency's proposed action, to be effective April 7, 2023, was that vision services previously funded by the Service Agency were available from Claimant's school district, a generic resource. The resource is generic in that it is available generally to all qualified members of the public, rather than to persons qualified for services under specific provisions of the Lanterman Act.

3. Claimant, nine years old, resides with his parents. He is eligible for services under the Lanterman Act based on diagnoses of cerebral palsy, epilepsy, and unspecified intellectual disability. In addition, Claimant has suffered since infancy from visual impairment (VI). He is a student in the Sulphur Springs School District.

2017 IPP and IPP Addendum

4. The parties agreed on an Individual Program Plan (IPP) for Claimant dated February 9, 2017. An IPP Addendum dated August 21, 2017, approximately four months before Claimant turned five years old, stated on page A42 of Exhibit 2:

The educational services which NLACRC is currently funding for [Claimant] are Occupational Therapy (OT) and Speech Therapy, up to 20 hours per month . . . ; Vision Therapy, up to 10 hours per month via Therapeutic Living Center; and Child Development Services, up to 15 hours per month NLACRC will continue to fund those services in the same intensity and frequency as NLACRC is currently funding until the educational services which are outlined in [Claimant's] current IEP, executed by consumer's mother . . . on 7/17/17, whether home bound or classroom based,

whichever is first to occur, are implemented by Sulphur Springs School District (or other relevant school district).

As soon as a specific service is implemented by Sulphur Springs School District (or other relevant school district), NLACRC has the right to terminate the specific service it was providing which corresponds to the implemented service.

NLACRC will review the situation in 30 days to determine whether appropriate steps have been taken by the parties to the IEP to implement [Claimant's] educational services identified in his current IEP. If for some reason NLACRC continues to fund educational services past the initial 30 day period, NLACRC has the right of continued periodic review to determine whether appropriate steps have been taken by the parties to the IEP to implement services provided in the current IEP.

2022 IEP

5. Claimant's most recent IEP is dated November 2, 2022. It states on page A67 of Exhibit 4 that Claimant's "global developmental delays" include VI and legal blindness, among other disabilities, and that Claimant "requires Special Education services and related adapted devices to support his access to and progress in the curriculum."

Medical Evaluation and Testimony

6. Margaret Swaine, M.D., F.A.A.P., is a developmental-behavioral pediatric specialist employed by the Service Agency who, as she testified, reviewed Claimant's November 2022 IEP and, years before that, his participation in the Early Start Program. She also reviewed services relating to VI provided Claimant by Wayfinder Family Services (Wayfinder) and funded by the Service Agency until mid-2023.

7. Employed for 15 years, currently Dr. Swaine is manager of the Service Agency's medical services. She graduated from the medical school at Tufts University in Massachusetts, was an intern and resident at the University of California at Los Angeles (UCLA), and later completed a three-year pediatrics fellowship.

8. Dr. Swaine noted that the November 2022 IEP devotes a great deal of attention to Claimant's vision and VI. For instance, first among a list of supplementary program accommodations in the IEP are these, as described on page A70 of Exhibit 4:

Materials should be simple in form, high contrast (bright yellow against a black background, etc.); Choose objects/pictures with only one or two colors to prevent visual "overload"; place object within 6 inches from his eyes; limit viewing area by showing one object/picture or one part of an object/picture at a time; Keep simple and uncluttered

As Dr. Swaine noted, the IEP gave many more types of accommodations for Claimant, noting as well that they are the sorts of accommodations or services that were previously provided by Wayfinder and funded by the Service Agency.

9. In response to Claimant's inquiry, his insurer, Anthem Blue Cross, advised in a March 30, 2023 letter that Vision Therapy was not available under his policy. Before the inquiry, Claimant had been examined by his physician, who recommended, as stated on page A128, Exhibit 8, "continued CVI and visual stimulation therapy." Children with a diagnosis of CVI show abnormal visual responses that are not attributable to eye function.

Service Provider Wayfinder

10. Wayfinder is an Early Start service provider and a vendor to the Service Agency for vision services under Service Code 805. As explained at the hearing by Elisa Hill, the Service Agency's Early Start manager, the 805 service code is used for services under the Infant Development Program and Regulation 54342. Under Regulation 56766, services under Service Code 805 may not be provided for children over five years old. As a result, the Service Agency is out of compliance with title 17 of the California Code of Regulations, and specifically Regulation 56766. Thus, as Ms. Hill explained, a change from funding Wayfinder's services was legally required and in fact should have occurred when Claimant turned five years old.

11. Gerald Calderone is a case services supervisor (CSS) at the Service Agency, to whom Claimant's case is assigned. He corroborated Ms. Hill's testimony. He stated that, so far as he knew, services under Service Code 805, such as Wayfinder's, are never approved for a child over five years of age. As soon as Mr. Calderone became aware of the anomalous funding in this case, he took steps to have Claimant's VI services transferred to the school district.

12. Under Wayfinder's Program Design criteria, entrance into its programs is usually for children between birth and three years of age.

13. Wayfinder's June 29, 2023 Annual Report notes Claimant's visual diagnosis as Optic Nerve Atrophy and CVI. It describes Claimant's progress with the help of EIP Specialist Rosemary Granger. But the report also states on page A124 of Exhibit 7, that Claimant could "continue to benefit from in-home vision stimulation sessions provided by Wayfinder"

14. Wayfinder's June 29, 2023 report provides in Exhibit 7, page A124, these details, among others: "[Claimant] displays a delayed response and [is not] consistent when presented with visually stimulating objects. His eyes continue to turn outward and upward direction alternately. He has delayed (3-5 second) response to light perception." Wayfinder continued to recommend vision services.

ID Notes

15. A November 16, 2017 ID note records that Claimant's school district was not providing him vision therapy in the belief it was a developmental need and not necessary for Claimant's access to his educational program.

16. A July 13, 2021 ID note shows that Claimant's CSC was then Janine Cates, who discussed with Mother that NAPA Center, a provider of pediatric therapies, was a vendor for services, such as intensive PT, to those under three years of age. She told Mother the Service Agency might not be able to fund its services to Claimant because he was more than three years old.

17. An August 23, 2021 ID note shows that CSC Cates consulted with CSS Calderone on whether services from NAPA Center had been funded for a consumer over three years old. CSS Calderone advised that the services had been funded only when the consumer was in the Early Start program at the Service Agency. The program

is separate from Lanterman Act services. Only children under three years old are eligible for the program.

18. A November 18, 2021 ID note shows that CSC Cates asked Wayfinder to submit a progress report and extended authorization for the services to allow time for the report to be received and reviewed. CSC Cates wrote at about this time that she was unsure whether Wayfinder in accordance with its practice might stop providing Claimant services when he turned eight years old.

19. In a February 22, 2022 ID note, Exhibit 14, page A163, CSC Cates wrote that she would discuss with Mother and Wayfinder "fading out" its services if the Wayfinder team found that Claimant was not regressing from progress achieved with the services. At this point the Wayfinder services were set to stop in April 2022.

20. In a May 19, 2022 ID note, CSC Cates wrote that Wayfinder's services were extended to July 31, 2022 to allow time for IPP Planning and because CSC Cates did not know Mother's thoughts about her family's needs for the service.

21. In July 2022 CSC Cates left the Service Agency. She was eventually replaced as CSC by Marnie King, who wrote in a September 26, 2022 ID note she had called Wayfinder regarding Claimant's vision therapy.

22. A December 7, 2022 ID note in Claimant's file states: "Contact with Lisa Depiro [behavioral consultant at the Service Agency] regarding vision therapy. CSC [Marnie King] wanted advisement on whether the therapy should continue to be funded by RC. IEP is needed and further consultation with clinical team."

23. A December 30, 2022 ID note by CSC King states: "Telephone/email contact with [Mother] regarding vision therapy auth[orization] extension."

24. A January 5, 2023 ID note by CSC King states: "Telephone/email contact with Margie-Vision Therapist regarding the status of the services and if RC [NLACRC] would continue to fund. CSC responded with status of the IPP planning."

25. An April 12, 2023 ID note by CSC King states in part:

Mother called CSC to request that vision services be continued until appeal or agreement has been determined by the team. She stated that services have been interrupted as of 4/7/23. Mother stated that Paul Mejia's supervisor had advised her to reach out to her service coordinator to continue the services until the dispute was resolved.

26. Later on April 12, 2023, CSC King wrote in an ID note regarding funding or POS of vision services from Wayfinder: "Meeting was scheduled with the fair hearings team for 4/12/23. POS will be extended throughout the hearings process. CSC will notify Wayfinder that they can continue services until further notice."

27. Lynda Moreno is a teacher for the visually impaired. As she stated in an August 22, 2023 letter and in the fair hearing, she is not a vision therapist, working with other service providers to provide students accommodations and materials in support of their education. Instruction may occur outside the classroom, as part of a student's everyday life, but the goal is that a student will be able to transfer skills, wherever learned, to the classroom.

28. Ms. Moreno has been working with Claimant for years and with others, such as school district personnel, a team that provides Claimant continuing assistance. At times they emphasize repetition, the better to consolidate learning, and at times the

emphasis is on new strategies to help advance Claimant's learning, or his ability to learn new things.

29. Mother testified that it is unfair that Claimant should lose the benefit of services he has had for years from Wayfinder and that have proved effective in allowing him to learn despite his struggle with VI. She pointed out that the Service Agency managed Claimant's case poorly. CSC King worked with her and Claimant for years and she understood Claimant's needs well as a result of competence and years-long experience working with the family.

30. One of Claimant's maternal aunts corroborated Mother's testimony regarding Wayfinder and how the program it offered Claimant was effective in working with the family and teaching Claimant.

LEGAL CONCLUSIONS

1. Generally, the party asserting a claim or urging a change in the status quo has the burden of proof in an administrative proceeding. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) The Service Agency bears the burden of proof here.

2. Welfare and Institutions Code section 4646, subdivision (d), provides:

[IPP's] shall be prepared jointly by the planning team.

Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by

agreement between the regional center representative and the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

3. Welfare and Institutions Code section 4646.4 provides:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports if appropriate

4. Welfare and Institutions Code section 4646.5 describes the planning process for IPP's. The statute's subdivision (a)(8), states that the process includes: "A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation."

5. Welfare and Institutions Code section 4646.5, subdivision (b), provides that IPP's "shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years."

6. Welfare and Institutions Code section 4648, subdivision (a)(8), states that a Service Agency's 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."

7. Welfare and Institutions Code section 4659, subdivision (a), provides in pertinent part:

[T]he 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 . . . school districts

8. Welfare and Institutions Code section 4697, subdivision (b)(3), provides that the Department should meet stakeholders to review the service delivery system and make recommendations for change when desirable, including: "The various monitoring and oversight functions of state and local agencies and recommendations for improving effectiveness and minimizing duplication."

9. Regulation 54342 assigns service codes to types of services. The regulation's subdivision (a)(37) states: "Infant Development Program - Service Code 805. Infant development programs shall meet the appropriate requirements in Sections 56710 through 56734 and 56760 through 56774 of these regulations."

10. Regulation 56766 provides:

(a) A consumer shall be eligible for an infant development program pursuant to a determination of the ID Team that the consumer meets all of the following criteria:

(1) The consumer is under age five;

(2) The consumer either does not qualify for services from a publicly supported local school program or, if qualified, is awaiting service because the local school program is inactive or there are no current vacancies. Services jointly funded by Special Education and the regional center are exempted from this provision; and

(3) The consumer's IPP includes an objective(s) which can be met by an infant development program.

ANALYSIS

11. A Service Agency's funding for services is generally set out in an IPP, the services being chosen by agreement of a Claimant or family on one hand and Service Agency personnel on the other, as provided in Welfare and Institutions Code section 4646, subdivision (d).

12. A Claimant's needs and other considerations may change. Accommodating change is built into the Lanterman Act, such as in Welfare and Institutions Code sections 4646.5, subdivision (b), and 4697, subdivision (b)(3). As needs change, services previously agreed are subject to review. The August 2017 IPP Addendum was under the Act a proper review of Claimant's needs, with a view to possible modification.

13. Mother is not in agreement with the modification made, the Service Agency's decision to stop funding Wayfinder's services. But she understood and agreed at the time of the August 2017 IPP Addendum that the Service Agency might reconsider funding the services once the Sulphur Springs School District started funding them. The school district has been funding those services, as Dr. Swaine testified credibly.

14. In 2021, about two years before modification of the IPP regarding Wayfinder's services, as recorded in multiple ID notes, Mother was advised that the Service Agency was reconsidering funding the services. She was advised that there was reason for change based on the Lanterman Act. She was advised more specifically that, under Welfare and Institutions Code section 4648, subdivision (a)(8), a regional center may not supplant another agency in offering and funding services available as a generic resource, such as the school district's services.

15. The services for VI from the school district cannot be expected to be the same in every way as those provided by Wayfinder. But it appears in light of Dr. Swaine's review of records that they are comparable and appropriate.

16. The Service Agency was out of compliance with California law and regulations in funding services under Service Code 805 for a child, Claimant, over five

years of age. The Service Agency has brought itself back into compliance, however belatedly. The Service Agency's delay in recognizing that it must stop funding Wayfinder's services has not prejudiced Claimant, given that he continues to receive VI services, now from his school district.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS LUCERO
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.