

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0010438

OAH No. 2023110829

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 12, 2024.

Claimant's mother (Mother) appeared on behalf of Claimant as his authorized representative. (Titles are used to protect the privacy of Claimant and his family.)

Tami Summerville, Appeals Manager for South Central Los Angeles Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on January 12, 2024.

ISSUES

Whether Service Agency must fund the following three services for Claimant: (a) 20 hours of job training; (b) social skills training; and (c) a summer and/or fall camp.

EVIDENCE RELIED ON

Documents: Service Agency's Exhibits 1 through 3 and 5 through 7; Claimant's Exhibit A.

Testimony: Team Leader Mayra Munguia; Program Manager Dr. Samantha Rowles; Program Manager Alberto Amenta; Team Leader Dorice Cooper; and Mother.

SUMMARY

In October 2021, Service Agency agreed to resume funding for social skills training (SST) and vocational education for Claimant. However, these services were not provided to Claimant. In July and September 2023, Service Agency again agreed to fund SST, 20 hours of job training, and a summer and/or fall camp program for Claimant. Through no fault of Claimant, Service Agency has failed to fund or find vendors for these services.

Service Agency's failure to timely provide Claimant's services resulted in a denial or modification of services without the consent of, or notice to, Claimant. Service

Agency is ordered to find vendors for, and fund Claimant's SST, 20 hours of job training services, and a summer and/or fall camp. Service Agency is admonished that a failure to do so within 30 days of the date of this decision may constitute a violation of Welfare and Institutions Code section 4713.5. (Further statutory references are to the Welfare and Institutions Code.)

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 18 years and 4 months old and lives with Mother. Claimant is eligible for services under the Lanterman Developmental Disabilities Act (Lanterman Act) (§ 4500 et seq.) based on a diagnosis of Autism Spectrum Disorder (ASD). Claimant is not conserved. On November 1, 2023, Claimant designated Mother to be his authorized representative pursuant to section 4701, subdivision (d)(1).

2. In October 2021, Service Agency approved resuming Claimant's SST service and approved funding for vocational education. In July and September 2023, Service Agency again agreed to resume Claimant's SST funding, and agreed to fund 20 hours of job training (previously approved as vocational education) and a summer and/or fall camp program for Claimant (collectively Claimant's remaining Individual Program Plan (IPP) services).

3. Service Agency does not dispute its failure to provide Claimant's remaining IPP services or that it did not provide Claimant an estimated date of when Claimant's remaining IPP Services would be provided.

4. By the time Claimant filed his Request for Appeal (RFA), Service Agency had failed to provide Claimant's SST and job training services for over two years and had failed to provide Claimant's camp service for over four months. Service Agency's failure to provide Claimant's remaining IPP services during this time constitutes a reduction of, or change in, the services provided for in Claimant's IPP. Section 4701, subdivision (k), requires Service Agency to obtain written mutual consent from Claimant to make such reductions or changes and, if Claimant does not consent to the changes, to issue a Notice of Action as provided for in section 4701, subdivision (a). (§ 4701, subd. (k)(2).)

5. Service Agency acknowledged it did not issue Claimant a Notice of Action either denying the Claimant the provision of his remaining IPP services or reducing the services provided for in Claimant's IPP. Service Agency thereby failed to provide adequate notice to Claimant. Service Agency further failed to inform Claimant how he could appeal the delay in service provision, failing to comply with section 4705, subdivision (c)(2), which requires regional centers to inform consumers of the appeal procedures when service provision is denied or modified.

6. On November 1, 2023, Claimant submitted an RFA requesting a fair hearing to require Service Agency to provide Claimant's remaining IPP services.

7. Despite Service Agency's failure to issue a Notice of Action, Claimant's submission of the RFA is sufficient to meet jurisdictional requirements for a fair hearing. (§§ 4701, subd. (a) & (k)(1), 4711, & 4712.)

Claimant's Service Needs

8. Claimant has been a consumer of regional center services since 2010. Claimant graduated from Lakewood High School in June 2023. Claimant is ambulatory,

can perform basic self-care, including hygiene and basic meal preparation, although he often requires prompting and needs an extended amount of time to complete tasks. Claimant can be left home alone for short periods of time but otherwise requires supervision to ensure his safety.

9. As provided for in his most recent IPP, dated September 26, 2023, Claimant has been receiving the following services funded by Service Agency: 80 hours per month of Personal Assistance (PA) services, transportation coupons for local commuting, gym membership at 24-Hour Fitness, and funding for a personal trainer. In addition, Claimant receives In-Home Supportive Services through the Department of Public Social Services.

10. Claimant's September 2023 IPP also provides for Service Agency to resume funding for SST, and to fund for 20 hours per month of job training, services initially approved in October 2021 via an email between Mother and Claimant's then Team Leader (TL), Mayra Munguia. (Exh. A, p. B5.) Before the COVID-19 pandemic (pandemic), Claimant received in-person SST, but this service was not available during the pandemic. Since October 2021, Mother has requested Claimant's SST be provided in-person, rather than virtually, because by October 2021, Claimant had lost a significant amount of SST time and other opportunities for social interactions, resulting in increasing deficits to his social skills. During the summer of 2023, Mother reiterated her request for in-person SST, noting she had observed Claimant's social skills regressing since he no longer had the routine and social interactions provided by school, including his school one-to-one aide. Additionally, Mother informed TL Munguia that since his high school graduation, Claimant at times would express himself loudly, become combative, and have emotional outbursts, i.e., stomping his feet, slamming a door, and talking back to her.

11. In addition to the SST and job preparation services, in the summer of 2023 Claimant requested summer camp be approved and Service Agency provided Claimant a list of summer 2023 camp providers. (Exh. 2, p. A30.) Subsequently, Service Agency's approval for camp was modified to approval for summer, fall, and/or winter camps.

12. As noted above, Service Agency does not dispute its failure to provide Claimant his remaining IPP services. At hearing Service Agency provided explanations of its efforts to meet Claimant's service needs and the obstacles it faced in securing Claimant's remaining IPP services.

Service Agency's Efforts to Provide Claimant's Remaining IPP Services

13. Claimant's Team Leader from October 2021 through September 2023 was TL Munguia, and TL Munguia's Program Manager (PM) during this time was Alberto Armenta. TL Munguia and PM Armenta worked in a unit assigned to consumers who were minors (Minor Unit). In November 2023, Claimant's case was transferred to Service Agency's adult unit managed by PM Dr. Samantha Rowles, and Dorice Cooper was assigned as Claimant's new TL. TLs Munguia and Cooper and PMs Armenta and Rowles testified at hearing.

EFFORTS MADE BY SERVICE AGENCY'S MINOR UNIT

SST

14. PM Armenta explained that over the past two years, Service Agency decided the focus of Claimant's service provision was to provide PA and respite services to Claimant. Based on this focus, PA and respite services were the services he and TL Munguia first secured, and which were only finalized in August 2023. He

acknowledged they did not consult with Claimant or Mother when setting this priority. They then focused on obtaining funding for a gym membership and personal trainer for Claimant, services which have also been recently secured. PM Armenta and TL Manguia described the work entailed in finding a young male adult to provide both Claimant's PA and respite services, as well as the efforts to obtain the gym membership and personal trainer, and concluded they made diligent efforts on Claimant's service provision.

15. PM Armenta and TL Munguia did not begin work on obtaining SST Services for Claimant until December 2022 and since that time have only provided Claimant with five SST referrals. TL Munguia and PM Armenta asserted they made diligent efforts to secure SST services for Claimant but claimed it was hard to obtain an SST vendor that met Mother's requirements. Throughout the hearing they repeatedly referred to 'Mother's requirements' as cause for the SST service delay. However, by the conclusion of their testimony they acknowledged that over a two-year period the only requirements requested by Mother were that the SST be provided in-person and the SST location be within a reasonable distance from her and Claimant's home. An additional requirement was that the SST vendor had to provide the SST to teenagers and young adults, but they acknowledged this was not a requirement of Mother's but rather a function of Claimant's age. Ultimately, PM Armenta acknowledged the SST service delay was not a result of any requirement, act, or omission of Claimant or Mother.

16. The location of the first SST referral provided by Service Agency was over 30 miles away from Claimant's home and was made through an existing courtesy vendorization Service Agency has with San Gabriel/Pomona Regional Center. Mother declined this program because it was not in Claimant's community, and attending the

program would have required a lengthy commute, thus defeating one of the purposes of SST, which is to assist the consumer with developing relationships in one's own community. Contrary to Service Agency's initial depiction of Mother's request that SST services for Claimant be available within his community as a personal requirement or obstacle, Mother's request was merely a reminder to Service Agency of its obligations under the Lanterman Act which include prioritizing services that will maximize Claimant's participation in the community and making available and providing services throughout the state to prevent his dislocation from his own community. (See §§ 4501, 4646.5, subd. (a)(2).)

17. Three other SST referrals offered by Service Agency to Claimant either did not provide SST to individuals of Claimant's age or did not provide in-person SST. The fifth SST vendor offered by Service Agency to Claimant, The Gathering Place, was vendored by Service Agency and offered-in person SST to teenagers and young adults. Mother and Claimant went to The Gathering Place for one session, but Mother found the service inaccessible and in an inappropriate location and did not return after their first visit. When Mother and Claimant arrived at The Gathering Place one evening, there were multiple unhoused persons and tents adjacent to its entrance and it smelled of urine; when Mother and Claimant entered the building, they were informed they needed an elevator code, but none was provided to Mother and Claimant, effectively preventing Claimant from receiving the SST service.

18. Based on the limited SST providers vendored by Service Agency which could serve Claimant, TL Munguia reached out to Westside Regional Center (WRC) and Harbor Regional Center (HRC) for referral lists and possible courtesy vendorization. WRC provided some referrals which have not worked out and HRC has not responded to Service Agency. At hearing, Mother inquired of TL Munguia and PM Armenta as to

what efforts they made to hear back from HRC or to expedite the courtesy authorization process. For instance, Mother asked TL Munguia if she had reviewed the SST vendors listed on the HRC website and contacted them directly to identify appropriate vendors, after which she could ask HRC directly for courtesy authorization for any appropriate HRC SST vendors identified, rather than waiting for HRC to provide Service Agency an SST referral list. TL Munguia replied she had not done so because she had to follow Service Agency's directives and courtesy vendorization process step-by-step, which prohibited her from making the efforts described by Mother. PM Armenta affirmed that Service Agency's Chief of Case Management provided a verbal directive requiring TL Munguia to wait for HRC's response to her request for a referral list.

19. During October 2023, Mother found the service provider ICAN California Abilities Network (ICAN) on Service Agency's provider list and asked TL Munguia if Claimant could receive a referral to ICAN for SST. In an October 31, 2023, email TL Munguia explained to Mother ICAN is not vendored by Service Agency and a courtesy vendorization could be completed but it would take time; TL Munguia further stated she would send related documents to Mother over the next two days. However, TL Munguia never sent any related documents to Mother and did not make a request to HRC for courtesy vendorization for ICAN SST services.

20. At hearing, TL Munguia testified she did not move forward with the referral because Mother never responded to her October 31, 2023, email. Upon questioning, however, TL Munguia acknowledged the purpose of Mother's email was, in fact, to ask for the referral and TL Munguia did not communicate to Mother in her email that she would not make the referral unless she heard back from Mother; TL Munguia further acknowledged her email to Mother could reasonably be read as

stating she was going to make the referral based on Mother's request. TL Munguia had no explanation for her misleading communication to Mother regarding the SST ICAN referral or why she did not send Mother the related paperwork.

21. In early November 2023, Claimant's case was transferred to the adult unit. TL Munguia acknowledged she did not provide TL Cooper any information about Claimant's request for a courtesy vendorization for ICAN SST services and she had no explanation for her failure to do so. Finally, TL Munguia acknowledged she could have placed Claimant on a waitlist for in-person SST vendors, but she did not, and she again had no explanation for her failure to do so.

Job Training Services

22. Regarding job training services, TL Munguia acknowledged she provided Mother misinformation in 2021 when vocational education was included as a service to be provided to Claimant. At hearing, TL Munguia clarified Claimant requires a high school diploma to participate in job training programs, which he only just obtained in June 2023. However, at no time before the fair hearing did Service Agency inform Claimant his October 2021 approved job training services were not going to be provided until he obtained his high school diploma.

23. On October 4, 2023, TL Munguia completed a referral for job training services to ICAN, a Service Agency vendor for job training services. Claimant's intake meeting with ICAN's supportive employment services was on October 24, 2023, with Cynthia Fontana, ICAN's Supportive Employment Services Case Manager. However, during the intake meeting, Ms. Fontana informed mother the intake was for job coaching services, which are provided to an individual who is already employed, and not for job preparation services, which are provided to individuals seeking

employment. As Claimant was not already employed, Mother informed Ms. Fontana they were not interested in the service. No other efforts were made by the Minor Unit to secure Claimant's job training services.

Camps

24. Despite Claimant's July 2023 request for, and Service Agency's agreement to provide, Claimant a camp program in the summer, fall, and/or winter of 2023, TL Munguia did not make efforts towards securing camps between July and November 2023, during her remaining time as TL for Claimant.

SERVICE AGENCY'S ADULT UNIT

25. PM Dr. Samantha Rowles, PM for Service Agency's Adult Unit and supervisor of TL Cooper, testified to the following at hearing. Claimant's case was transferred to her unit at the beginning of November 2023. There was discussion with PM Armenta of hosting a meeting with TLs Munguia and Cooper and Mother to facilitate the transition of Claimant's case to the Adult Unit, but that meeting was not held. As a result, and as affirmed by TL Cooper's testimony, the Adult Unit knew little about Claimant's case or the significant delays Claimant had already experienced in receiving his remaining IPP services once his case had transferred to the Adult Unit.

26. PM Dr. Rowles acknowledged Service Agency's lack of clear and timely communication with Mother did not support timely and efficient delivery of services. PM Dr. Rowles further acknowledged the Department's Ombudsman contacted her regarding Mother's November 2023 complaint to the Ombudsman that TL Cooper was not replying to Mother's inquiry regarding SST services. There was a seven-week delay between Mother's November 2023 inquiry to TL Cooper regarding her efforts to secure SST services and TL Cooper's response in December 2023. PM Dr. Rowles was

also aware of Mother's complaint to the Ombudman that TL Cooper sent some information regarding potential service delivery to Mother through encrypted emails which Mother informed TL Cooper she could not open. Ultimately, as established by the evidence at hearing, Ms. Summerville had to direct TL Cooper to not use encrypted email when communicating with Mother.

27. TL Cooper also testified at hearing regarding her efforts to deliver Claimant's remaining IPP services. On November 2, 2023, TL Cooper called Mother and exchanged voice messages; TL Cooper introduced herself as Claimant's new TL and Mother reiterated her previous requests for SST, job training, and camps, and voiced her interest in ICAN as a service provider for these services. TL Cooper researched ICAN and informed Mother she could not find it within Service Agency's vendor list and stated she would need to obtain a courtesy authorization for ICAN services. Even until the day before the fair hearing, as established by emails and testimony, TL Cooper was unclear for which services ICAN was vendored by Service Agency and for which services it was not vendored. TL Cooper was the last Service Agency witness to testify, and by the conclusion of the hearing she understood that ICAN offers SST and camps, services for which ICAN is not vendored with Service Agency but is vendored with HRC; ICAN also offers job training services (both job preparation and job coaching, once employed), for which ICAN is vendored with Service Agency.

28. TL Cooper testified it was not her responsibility to contact HRC regarding Service Agency's request for courtesy vendorization for SST services because that is the responsibility of Service Agency's vendor specialist. In regard to her seven-week delay in responding to Claimant's request for SST, TL Cooper believed that her responses regarding winter camps was sufficient communication. TL Cooper further testified she is frequently out in the field and receives numerous emails on any given

day and Mother often emailed her after 10:00 p.m., and these factors may have contributed to her non-responsiveness to Mother.

SST

29. On December 15, 2023, Claimant completed his intake assessment with ICAN's SST services. On December 19, 2023, Barbara Huhn, ICAN's Social Program Coordinator, informed TL Cooper ICAN's Social program had accepted Claimant for SST services pending receipt of Service Agency's Purchase of Service (POS) authorization. If approved, the SST services could be provided to Claimant on Tuesdays and Thursdays, 3:00 p.m. – 7:00 p.m., and Saturdays, 9:00 a.m. – 3:00 p.m., 12 hours per week. However, by the date of the hearing Service Agency had not secured or provided Claimant SST services.

Job Preparation Services

30. On December 7, 2023, TL Cooper spoke with Ms. Fontana regarding ICAN job preparation services for Claimant. Ms. Fontana confirmed ICAN's supportive employment services are vendored by Service Agency and that Claimant had an intake assessment on October 24, 2023, for job coaching, not job preparation, services. However, Ms. Fontana stated that in addition to Claimant declining the job coaching service, ICAN concluded Claimant was not a good fit as she found he did not actively participate in the assessment process and so she was not certain he wanted the service. Ms. Fontana did not communicate ICAN had determined Claimant was not a good fit to Claimant or Mother. Ms. Fontana also clarified for TL Cooper that ICAN's job training services and SST services are managed by different units and referral or other information about an individual are not shared across units.

31. Ms. Fontana agreed to conduct another intake meeting with Claimant on the condition that Claimant is the primary participant. A second intake assessment was held and ICAN agreed to provide supportive employment services to Claimant. TL Cooper submitted a POS request for Claimant to receive job preparation services through ICAN and these services were set to begin January 24, 2024.

Camp Services

32. ICAN also provides social skills camp programs but is not vendored with Service Agency for this service. TL Cooper learned she must first obtain a courtesy authorization through HRC for camp services before she can submit a POS request on behalf of Claimant.

33. During November and December 2023, TL Cooper and Mother communicated about a few camp programs. Ultimately Mother requested Claimant receive ICAN's camp program that was scheduled to begin January 18, 2023. TL Cooper submitted a request for courtesy vendorization for ICAN's camp service to HRC on December 23, 2023, and by the date of the hearing had not heard back. TL Cooper also learned that ICAN's camp and SST services are provided by the same unit and an individual cannot receive both services during the same quarter. As HRC did not timely respond to Service Agency's request for courtesy authorization for camp services for January 2024, at the time of the fair hearing, Service Agency hoped it would receive courtesy authorization from HRC for SST services during the first quarter of 2024. Again, however, at the time of the fair hearing HRC had not responded to Service Agency's request for courtesy authorization for SST services.

Service Agency's Failures to Communicate with Claimant and Mother

34. Service Agency's witnesses acknowledged their flawed communication with Mother and Claimant. Based on the evidence presented, Service Agency's witnesses failed to timely and directly communicate with Mother and Claimant, causing additional delays in service delivery and causing a breakdown in trust, consequences which are necessarily detrimental to Claimant.

35. PM Armenta acknowledged three instances of Service Agency's failures to communicate with Mother and Claimant. Early on in TL Manguia's work as Claimant's TL, Mother voiced dissatisfaction with her efforts. Without speaking to Mother, PM Armenta and TL Manguia transferred Claimant's case to another TL. Mother and Claimant did not want the case transferred and Claimant filed a 4731 complaint which resulted in Claimant's case being transferred back to TL Manguia. PM Armenta also acknowledged that he and TL Manguia did not communicate with Claimant or Mother about their decision to prioritize securing Claimant's PA and respite services. Mother only learned of this prioritization during their testimony at hearing and clarified she wished she had been consulted because SST and job preparation have been Claimant's priority. Finally, PM Armenta acknowledged he sent an email to Mother stating Service Agency would not transfer Claimant's case to the adult unit until Service Agency secured Claimant's remaining IPP services, and yet, Service Agency transferred Claimant's case to the adult unit without securing any of Claimant's remaining IPP services. Based on Mother's understanding Claimant's case would not be transferred to the adult unit until his remaining IPP services were in place, Mother declined an October meeting with TLs Manguia and Cooper, believing it was premature. Mother was only informed of the transfer after it was complete.

36. At hearing, Service Agency witnesses portrayed Mother as speaking for Claimant, who is no longer a minor, inferring she is somehow prohibiting Claimant from speaking for himself and implying the requests Mother has made, and her advocacy efforts on Claimant's behalf, do not reflect Claimant's requests or needs. Examples include Service Agency witnesses repeatedly testifying Claimant does not have a conservatorship and only minimally participated in September 2023 virtual IPP meeting or ICAN supportive employment services intake assessment. However, TL Munguia acknowledged she knows that in addition to ASD, Claimant has cognitive delays, and it was reasonable to conclude he did not participate in, for example, the IPP meeting, because he has limited ability to participate. Service Agency witnesses also testified they did not offer Claimant or mother information on conservatorships before Claimant reached 18 years of age and did not communicate with Mother any expectation Service Agency had regarding Claimant directly participating more in IPP meetings once he reached majority.

37. Finally, the record includes information that TL Cooper provided misinformation to Ms. Fontana and Ms. Huhn regarding Mother and regarding Claimant's behaviors, information which was irrelevant or inaccurate and seemed to serve no purpose other than to possibly further delay the provision of services. Service Agency's ID Notes show that on December 5, 2023, when speaking with Ms. Fontana to follow-up on possible job preparation services, without prompting TL Cooper informed Ms. Fontana Mother has filed "several complaints," "including with the Ombudsman." (Exh. 6, p. A58.) This information is inaccurate, as there is no evidence of Mother filing several complaints; and the information was irrelevant, possibly confidential, and served no positive purpose.

38. Similarly, the Case ID Notes show that on December 8, 2023, Ms. Huhn informed TL Cooper the ICAN SST program does not accept individuals with behavioral challenges. TL Cooper then informed Ms. Huhn Claimant has problems with disruptive behaviors, including running and wandering away, and emotional outbursts. (Exh. P. A53.) However, there was no evidence in the record of Claimant running or wandering away. To the contrary, Claimant's IPP provides that "Mother reported [Claimant] continues to not have any disruptive social behaviors, aggressive social behaviors, self-injurious behaviors, destruction of property, or running or wandering away behaviors." (Exh. 3, p. A40.) Further, TL Cooper did not provide context to Ms. Huhn regarding Claimant's recent emotional outbursts, which Mother described as slamming doors, stomping, and talking back to Mother (Exh. 6, p. A60), behaviors which had only occurred since the summer of 2023 and may be attributable to Claimant's recent loss of routine and social opportunities.

Claimant's Evidence

39. Mother explained Claimant has been a consumer of regional center services for 15 years and she has a history of positive relationships with Service Coordinators. However, more than two years have passed without Claimant receiving his SST and job training services, and more than four months have passed without Claimant receiving his camp service, and Mother is unsure of Claimant's path of recourse. Mother believes that based on TL Munguia's admission she did not make timely efforts to secure Claimant's remaining IPP services that Service Agency has neglected Claimant and deprived him of equal access to State funded regional center services. Mother emphasized that amongst all the delays, most recently TL Cooper did not act on Claimant's SST service until December 2023, nearly seven weeks after Mother first informed TL Cooper of this unmet service need.

40. Mother explained she contacted the Department's Ombudsman, Sangita Prasad, in November 2023 based on TL Cooper's failure to respond to Mother's request for SST services and based on the overall delay in the provision of Claimant's remaining IPP services. On December 5, 2023, Ombudsman Prasad contacted TL Cooper and asked her about updates regarding the provision of Claimant's remaining IPP services, and any services that might meet Claimant's needs in the interim. After the Ombudsman communication with TL Cooper, TL Cooper made efforts toward securing Claimant's remaining IPP services.

41. Mother made two additional requests related to a request for documents and a request for a continuance. Mother provided an email showing on January 3, 2024, she made a request of Service Agency to provide all POS, NOAs, IPPs, and all executed documents since January 1, 2010. Mother explained Service Agency did not respond until January 11, 2024, in violation of sections 4726 and 4728 which provide the record request must be complied with within three business days. Mother then explained the over 400 pages of documents were provided in hard copy and without any organization, and based on Claimant's developmental disability he requires them to be provided electronically and with some semblance of organization. Section 4728 provides that Service Agency must establish its own procedure for responding to record requests. However, Service Agency's record request policy was not presented at hearing and as such it was not established if Claimant has a right to receive the documents electronically or in an organized manner. By the time of hearing Service Agency had complied with the request, though approximately four days late. Accordingly, as presented the issue is now moot.

42. In addition to the request for documents, on page 3 of Claimant's Position Statement (Exh. A, p. B3), Mother requested a continuance of the fair hearing

to be given the opportunity to subpoena an HRC witness and to review the documents Service Agency provided in response to the records request. However, Mother did not mention her request for a continuance during the fair hearing. As Claimant's Position Statement was uploaded to Case Center on the morning of the hearing, it was not fully reviewed by the ALJ until after the record closed, and so the ALJ was not aware of Mother's request. Based on Mother's participation in the fair hearing and because Mother did not request a continuance during the fair hearing, the request for continuance is deemed waived.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-7.)

Burden and Standard of Proof

2. The party asserting a condition which would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence Claimant's remaining IPP services have been denied or modified without Claimant's consent. (Evid. Code, § 115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Notice Requirements

3. "Adequate notice" means a written notice which informs a consumer of, among other things, the action taken by the regional center, the reason or reasons for that action, the effective date of that action, the specific provision or provisions of law, regulation, or policy supporting the action, and information describing the appeal process and the consumer's rights. (§ 4701, subd. (a).)

4. "Mutual consent" means Claimant, or his authorized representative, has provided a written agreement to a regional center's proposal to reduce, terminate, or change the services specified in an IPP or to deny the initiation of a service or support requested for inclusion in the IPP. If mutual consent is not provided by Claimant, the regional center must comply with the notice provisions in section 4701, subdivision (a), regarding the proposed change or modification. (§ 4701, subd. (k).)

5. Regional centers must inform consumers and persons having legal responsibility for consumers in writing of the regional center's appeals procedures for fair hearings when they apply for service, when they are denied service, when notice of service modification is given pursuant to section 4710, and upon request. § 4705, subd. (c)(2).)

6. Service Agency violated Claimant's and Mother's rights to notice provided by sections 4701, subdivision (a) and (k)(2), and 4705, subdivision (c)(2). Between October 2021 and the fair hearing, Service Agency effectively denied or modified Claimant's IPP by failing to provide Claimant his remaining IPP services without obtaining written consent from Claimant or Mother and without providing written notice of such denial or modification. (Factual Findings 1-7; Legal Conclusions 3-5.)

Regional Center Responsibilities

7. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’ and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

8. Section 4501 provides the requirements regional centers must meet in their communication with consumers and in the delivery and effectiveness of their services:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports.

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.

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities

The Legislature finds that the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness. It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served. . . .

9. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646, 4646.5, subd. (a).)

10. Regional centers must establish an internal process to ensure adherence with applicable federal and state law and regulation and must ensure, among other requirements, it considers information obtained by the consumer or authorized representative about the consumer's need for the services, barriers to service access, and other information. (§ 4646.5, subd. (a)(5).)

11. To achieve the stated objectives of a consumer's IPP, the regional center must provide the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible and exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

12. "If there are identified gaps in the system of services and supports consumers for whom no provider will provide services and supports contained in their individual program plan, the department may provide the services and supports directly." (§4648, subd. (g).)

13. Though regional centers have wide discretion in how to implement the IPP, "they have no discretion in determining whether to implement: they must do so." (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

Service Requirements

14. Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the developmental potential of the person and are directed toward the achievement of the most independent, productive, and normal lives possible; a right to dignity, privacy, and humane care; a right to social interaction and participation in community activities; and a right to make choices in their own lives, including, but not limited to, where and with whom they live, their

relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation. (§ 4502, subd. (b)(1), (2), (6), & (10).)

15. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

16. Section 4713.5, subdivision (a), requires Service Agency to implement the final hearing decision as soon as practical and no later than 30 days following the date of the final hearing decision, "unless [Service Agency] notifies [Claimant] and their authorized representative in writing, with a copy to the department, of the specific exceptional circumstances that make it impossible to implement the decision within that timeframe and provides the date when the decision will be implemented." Section 4713.5, subdivision (b), provides Claimant or Mother may contact the Department if they are dissatisfied with Service Agency's compliance with the decision, after which the Department must take appropriate actions to obtain compliance with the decision.

Analysis

17. In developing Claimant's IPP, Service Agency complied with many provisions of the Lanterman Act, including those requiring consumer participation in the development of the IPP and services which are uniquely tailored to meet the consumer's needs. However, Service Agency's failure to provide Claimant's remaining IPP services is in violation of section 4648, which requires Service Agency not only to

identify the required services in the IPP, but to provide them to the consumer. (Factual Findings 8-40.)

18. In addition, Service Agency's failure to provide Claimant's remaining IPP services resulted in violation of its responsibilities, as provided in section 4501, and of Claimant's personal rights under the Lanterman Act as identified in section 4502. Service Agency's multiple failures to communicate timely, directly, and clearly with Claimant and Mother resulted in gaps in communication, itself, and gaps in Claimant's service deliveries, gaps in service provision prohibited by section 4501. (Factual Findings 8-41.) In addition, although Service Agency presented that it prioritized some of Claimant's services, including PA and respite, over his remaining IPP services, section 4501 specifically provides for consumers to receive an array of services, and does not provide for a consumer's services to be provided piecemeal over a period of two years. Further, Service Agency's provision of some of Claimant's IPP services is not sufficient evidence of program effectiveness, as required by section 4501, which requires the provision of services to rise to the level of establishing the services "have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served." Contrary to the requirements of section 4501, Service Agency's failure to timely provide Claimant's remaining IPP services resulted in Claimant demonstrating regressive social and emotional skills and a disconnect from the community following his graduation from high school. (Factual Findings 8-40.)

19. The over two-year gap in provision of Claimant's SST and job training services further resulted in a violation of Claimant's rights under section 4502. Claimant's SST and job training services are integral to Claimant, a now 18-year-old young man who needs to develop social and job preparation skills for him to have

meaningful social interaction and participation in community activities, and to make important choices in his life including employment. In addition, Service Agency's misinformation to vendors denied Claimant and Mother the dignity to be accurately represented during the service acquisition process. (Factual Findings 8-40.)

20. Claimant's appeal is granted. Service Agency is ordered to secure and fund the following three services for Claimant: (a) 20 hours of job training; (b) social skills training; and (c) a summer and/or fall camp no later than 30 days from the date of this decision. Service Agency is admonished that a failure to do so within 30 days of the date of this decision may constitute a violation of section 4713.5.

ORDER

21. Claimant's appeal is granted. Service Agency is ordered to secure and fund the following three services for Claimant: (a) 20 hours of job training; (b) social skills training; and (c) a summer and/or fall camp no later than 30 days from the date of this decision.

DATE:

CHANTAL M. SAMPOGNA

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.

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

In the Matter of:

CLAIMANT

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2023110829

**RULING AND ORDER DENYING SERVICE AGENCY'S APPLICATION FOR
RECONSIDERATION**

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a final decision in this matter on January 30, 2024.

On February 14, 2024, the Service Agency applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713 (application). The application was timely submitted. Claimant was notified of the application, as was the Department of Developmental Services.

On February 16, 2024, Claimant's representative filed a response to the application.

The undersigned hearing officer, who did not hear the matter or write the decision for which reconsideration is requested, was assigned to decide the application. The undersigned hearing officer hereby makes the following ruling and order.

ANALYSIS

1. Pursuant to Welfare and Institutions Code section 4713, subdivision (b), a party may apply for reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Undesignated statutory references are to the Welfare and Institutions Code.)

2. Pursuant to section 4713, subdivision (d), the application for reconsideration must be decided within 15 days of receipt. The hearing office responsible for deciding the application may deny it, grant it and modify the decision, or grant it and set the matter for another hearing.

3. The wording of section 4713, subdivision (b), as well as the expedited deadline for deciding an application set by section 4713, subdivision (d), make clear that the mistake of fact or law in question must be apparent from the decision (for example, an obvious mathematical error in calculating hours of service, an order that fails to accurately encompass the facts or legal conclusions, citation to the wrong statute, or reliance on a law that is no longer in effect). In such instances, the hearing office can either correct the mistake if the resolution is apparent from the decision or order an additional hearing if the resolution is not apparent.

4. There is nothing in section 4713 suggesting an application for reconsideration contemplates the hearing officer reviewing the entire record, including the admitted exhibits and the recorded hearing, to determine if the ALJ made errors in evidentiary rulings or made mistakes of fact or law. That process is undertaken in an appeal of the decision to the Superior Court, not in an application for reconsideration pursuant to section 4713.

5. In this case, the application does not specify a particular "mistake of fact" in the decision that must be corrected. The application also does not specify a particular "mistake of law" cited in the decision that must be corrected. Rather, the application argues the ALJ made procedural errors by excluding certain testimony the Service Agency wished to present at the hearing.

6. The application asserts the Service Agency was not allowed to provide evidence that the multi-year delay in services was caused by Claimant's mother. The Service Agency first contends it was prevented from speaking directly to Claimant about his preferences. (This assertion was vague as to time. The services had been delayed since 2021; Claimant was a minor and represented by his mother prior to September 2023; and Claimant's mother was his authorized representative after November 1, 2023.) The Service Agency also contends Claimant's mother prevented the Service Agency from timely securing services for Claimant because she was "behaving rudely." (Application, p. 5.)

7. According to the Service Agency, the ALJ disallowing testimony about Claimant's mother's allegedly rude behavior was mistake of law and a violation of section 4712 as follows: "The ALJ did not follow the law as it pertains to the appeal hearings. Under the appeal procedure statutes, both parties shall have the right to present oral and written evidence and to cross examine witnesses." (Application, p. 5.)

8. Essentially, the Service Agency objects to the ALJ's evidentiary rulings that excluded testimony the ALJ deemed irrelevant (i.e., evidence about Claimant's mother's rude behavior). It is not clear that the mistakes of fact or law contemplated by section 4713 were meant to cover evidentiary rulings made during a hearing. In any event, a determination concerning the correctness of the ALJ's evidentiary rulings cannot be made by reviewing the decision. The application seeks reconsideration of the entire record (all exhibits and recordings of the proceeding), along with the factual assertions the Service Agency makes in the application. Section 4713 does not allow that kind of review.

9. Additionally, the Service Agency's assertion that the ALJ made a mistake of law is incorrect. While both parties have the right to present oral and written evidence, this does not allow unfettered presentation of all information. Section 4712, subdivision (i)(1), requires the ALJ to "make [her] best effort to fully and fairly develop the record and create an environment in which all relevant facts, both favorable and unfavorable, are brought out." However, the ALJ is not required to accept all information offered, and she has the discretion to determine what is relevant to the proceeding.

10. For the foregoing reasons, the application must be denied.

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ORDER

The Service Agency's application for reconsideration of the final decision is DENIED.

IT IS SO ORDERED.

DATE:

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings