

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Nos. 2012120660

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings (OAH), on January 29 and March 26, 2013, in Torrance, California.

Claimant was represented by Bruce Bothwell, Esq.¹ Claimant's mother was also present.

Harbor Regional Center (HRC, RC, or Service Agency) was represented by its Manager of Rights Assurance, Gigi Thompson.

Oral and documentary evidence was received. The record was left open in order for the parties to submit closing briefs. Claimant's closing brief was received and marked as exhibit C-52. HRC's closing brief was received and

¹ Claimant's last name, and the names of his family members, are omitted throughout this Decision to protect their privacy.

marked as exhibit RC-13. The matter was submitted for decision on April 10, 2013.

ISSUES

The parties agreed that the issues to be decided are:

1. Shall the RC be ordered to fund 30 hours per week of behavioral therapy (Applied Behavior Analysis (ABA)) for Claimant?
2. Should the RC be ordered to fund Behavioral Education for Children with Autism (BECA) as the ABA provider for Claimant?
3. Should the RC be ordered to fund compensatory ABA services for Claimant?

FACTUAL FINDINGS

1. Claimant is a seven and one-half year-old boy who is a client of the RC because of his diagnosis of autism. Claimant's Fair Hearing Request was filed on November 12, 2012.
2. Claimant is currently enrolled in a third grade "autism class." At school, Claimant is provided a one-to-one ABA aide for 31 hours a week. The school also provides 6 hours of ABA services in his home. The school also provides a total of 16 hours of supervision time, 10 of which are designated for use at school and 6 of which are designated for use at Claimant's home. These ABA services are provided by Autism Comprehensive Educational Services (ACES). Claimant presently has an on-going dispute with his school district related to the level and location (home or school) of services which the school funds.

3. Claimant contends that he requested funding for ABA services no later than January 2011. RC contends that July 2012 was the first time that Claimant requested that RC fund ABA, and that prior discussions were limited to the ABA that was being funded by the school.
4. Claimant is seeking compensatory ABA services beginning on March 2010 through the present date. .
5. Claimant has been a consumer of the RC since March 2010. From almost the very beginning of their interaction, both parties have been concerned about Claimant's behavioral problems, including his aggression and self-injurious behavior. At the outset, RC offered "Managing Behavior" (MB) classes for Claimant's parents. The parents took the first class, but were unable to take the second class because it was cancelled due to a lack of interest from enough people. During this time frame, RC also assisted Claimant's family with obtaining MediCal services and also In-Home Support Services (IHSS).
6. Hernandez testified that communication with Claimant's parents has been "difficult" and normally requires the use of a family member to serve as an interpreter. In early 2011, Hernandez became aware of the seriousness of Claimant's self-injurious behaviors. In March 2011, Hernandez became aware that Claimant's self-injurious behaviors were becoming more serious. At that time, Hernandez was trying to get to know Claimant's family, to gather information, to stabilize the family, and to assist the family in obtaining IHSS services and with the IEP process. On March 28, 2011, Hernandez visited Claimant's home and observed that Claimant was "destroying" the home. Pictures taken on that date show Claimant as having a severe tantrum and being

completely out of control. Claimant was also apparently biting and hitting himself, and the pictures also portrayed substantial bruising on his face and body.

7. On March 7, 2011, there was an incident at school which prompted the parties to discuss having a Functional Behavior Analysis (FBA) performed. According to the RC, an FBA was not performed, in part, because the school was also in the process of doing an FBA and the parties wanted to see those results before proceeding with an FBA produced by the RC. On April 6, 2011, RC employee Jenna Mattingly suggested that RC perform its own FBA. On April 11, 2011, RC personnel had a meeting. Present at the meeting, were Claimant's service coordinator/case manager Guadalupe Hernandez (Hernandez), a Program Manager, and the Director. At that time, it was decided that ". . . an FBA is indicated at this time" Nevertheless, RC did not perform an FBA at that time. Instead, RC decided to wait, in part, for the school's FBA to be completed, and also to see if the school placement and services would change.
8. On April 6, 2011, Hernandez went to a school IEP meeting and requested that the school assess Claimant for behavioral therapy at school. Hernandez was attempting to coordinate the provision of services between the school and RC. On April 6, 2011, Jenna Mattingly recommended that Hernandez refer Claimant for an FBA. During this time, Claimant's parents were planning a trip to Vietnam during the summer of 2011, which was to begin in late June and end the week before school would resume.

9. In April and May 2011, the school district performed its FBA and its report is dated May 10, 2011. Hernandez could not explain why the RC did not assess Claimant's behavior through an FBA during this time period. However, in November 2011, when the parents requested an update regarding RC services, Hernandez told the parents that the RC "needed to gather information from the school" before "assessing" the parents' request for services.
10. On May 6, 2011, the school offered Claimant 30 hours per week of ABA services. On June 20, 2011, RC requested that Claimant's parents sign a consent form (CF) which would have allowed RC to speak with the school. Parents declined to sign the CF. On May 16, 2011, Hernandez was present at a school coordinated Individualized Education Plan (IEP) meeting, during which the school's FBA report was reviewed by all parties, including Hernandez. However, no formal access and/or permission was had been given by the parents as of this date. Thus, Hernandez did not formally have permission to copy the report for the RC's use, and it was also Hernandez's impression at that time that the parents were satisfied with the school's offer of 30 hours per week of ABA.
11. On December 14, 2011, a CF was provided to the parents for the second time. The parents declined to sign and stated that they wanted to speak with their attorney before signing, and also because they wanted to get the school's services stabilized before signing the CF. As such, RC was not permitted to communicate with the school regarding Claimant without a signed CF. Similarly, even though ACES is an

approved RC vendor, RC could not speak with ACES regarding Claimant without parent's consent.

12. As of July 2012, parents had still not signed the CF. At this time, they were provided a copy of the CF for the third time. At no time did RC send a written letter requesting their signature on the CF and/or explaining that the CF needed to be signed before RC would proceed with an FBA. The parents were also not provided information regarding the CF in Vietnamese which is their first language. RC could have done a better job at communicating with parents that the FBA would not go forward until the parents signed the CF form. Nevertheless, on July 23, 2012, parents signed a CF as to Claimant's medical records, but not for Claimant's school records. Parents again stated their desire to review the CF, for Claimant's school records, with their attorney before signing the CF.

13. On September 28, 2011, Claimant's father requested an ABA program to be funded by RC. On October 5, 2011, Hernandez wrote to Claimant's father and indicated that RC would complete an FBA by the end of October 2011. On November 23, 2011, Hernandez apologized to parents for the delay via email. She did not mention that the delay was being caused by the fact that the CF was still unsigned. Hernandez's email also offered suggested dates for the in-home evaluation. On November 22, 2011, Hernandez prepared a purchase-of-service order (POS) for interpreter service for Claimant's mother related to the FBA. This conduct by Hernandez suggests that RC was willing to do an FBA without the necessity of a signed CF.

14. On August 14, 2012, parents provided a signed CF for Claimant's school records. Thereafter, RC obtained the school records, but there was a delay. Hernandez told the parents that once the school records were received, she would request a behavior evaluation/FBA. Hernandez was unable to explain why her records only reflected that she sent the CF to the school district, in order to obtain the school's records, in January 2013, instead of closer in time to August 2012 when parents signed the CF. Additionally, while Hernandez believes she forwarded the CF to the school district on an earlier date before January 2013, the average response time from a school district is approximately one to two weeks and Hernandez would likely have followed up if she had sent an earlier request for documents to the school district. After this three to four month delay, RC then authorized a behavior evaluation, and an evaluation of Claimant's home took place on January 23, 2013.
15. RC also contended that the delay after parents signed the CF in August 2012 was due to RC being "required" to inquire into using Health Families or MediCal to perform the FBA and/or provide ABA services.
16. B.J. Freeman (Freeman), former Director of Autism Services at UCLA for 30 years and a licensed psychologist, testified on Claimant's behalf. Freeman's report, dated June 19, 2012, states that Claimant should receive between 30-35 hours of ABA therapy per week "across both home and school settings." However, at hearing, she opined that Claimant is not, and will not, benefit from remaining in a classroom. If he is asked to do something he does not like, Claimant reacts with aggression and self-injurious behavior. If another person intervenes,

Claimant then turns his aggression toward others, often hitting other people. Freeman disagrees with the school's assessment. She believes that Claimant needs to be taught at home on a one-to-one basis. Her opinion is that Claimant is lacking key "readiness" skills, which are normally acquired between ages two and three. Without these basic readiness skills, she believes that he can not learn in a school setting. Freeman believes that Claimant's self-injurious and aggressive behaviors are so pronounced that Claimant is unable to learn, even though he has some skills, such as telling the difference between a baby, a ball, and a cup. During his schooling, Claimant has been placed in a general education setting, a setting for children with mild to moderate issues, and a special autism class. In all of these settings, Claimant has shown little progress. Freeman referenced psychologist Twila Clark's report which was produced in 2010 when Claimant was approximately five and one-half years of age. In the skill areas of communication, daily living, and socialization, Claimant tested no higher than the age equivalent of 11 months.

17. Freeman also believes that ACES is not an effective provider of ABA services because Claimant has not made significant progress during the one and one-half years (beginning in approximately September 2011) during which time ACES provided ABA therapy for Claimant.
18. Freeman reviewed ACES' FBA dated March 13, 2012. Her opinion is that ACES does not really understand what Claimant's needs are, or how to address those needs. If Freeman could develop a plan for Claimant, she would have ABA provided to Claimant for six to eight hours per day, for every day of the week. This would result in a total of between 42 to

56 hours of ABA services per week, with a mid-point of 49 hours per week. This opinion of Freeman's was not stated until the hearing. Also, Freeman's previously issued report stated that Claimant should receive ABA services both at school and at home. At hearing, she changed her opinion, and she now believes that all ABA services should be provided at home. Freeman believes Claimant's overall skills presently are the age equivalent of a two year-old child, but that he likely has more ability which is being suppressed by his self-injurious behaviors.

19. Freeman believes that ABA should be provided by Behavioral Education for Children with Autism (BECA) instead of ACES. She has previously worked with BECA, and she feels BECA is experienced in dealing with Claimant's issues. Freeman also believes that Dr. Shabani would be a good alternative ABA provider.
20. Bonnie Ivers (Ivers), a licensed psychologist, testified on behalf of the RC. She has approximately 16 years of experience in the field of autism. While Ivers is "not really familiar" with BECA, and she has not personally met with Claimant, her limited experience is that BECA has not had success with some RC cases she classifies as "intense" and which are similar to Claimant's. Ivers believes Behavior and Education (BAE) would be the most appropriate ABA provider for Claimant.
21. Ivers believes that, in general, a minimum of 25 hours per week of ABA services are required, with a maximum of 40 hours per week. However, she did not express an opinion as to Claimant's particular needs in this case.
22. Ivers described Claimant's self-injurious behavior as "significant" and noted that Claimant wears a helmet. She also stated that the medical

and school reports reveal that Claimant's self-injurious behavior doubles in intensity and occurrence at home, as compared to school. Similar to Freeman, Ivers has concerns that ACES does not seem to know how to deal with Claimant's self-injurious behavior, has no goals regarding this behavior, and has not made much progress in this area. On the other hand, ACES' report, dated December 14, 2012, shows that Claimant met three of five benchmarks in the school setting, as compared to one of five benchmarks in the home setting. Nevertheless, the overall evidence established that Claimant's self-injurious behaviors remain pronounced in both the home and school setting and need to be addressed.

23. In approximately March 2013, RC offered 10 hours per week of ABA services in addition to the ABA presently funded by Claimant's school. RC also concurrently offered parent training.
24. It was established that it is usually preferable for there to be one ABA provider to provide consistency. After she examined Claimant in June 2012, Freeman later visited Claimant's school in September 2012. Her impression was that Claimant is in a classroom with 14 autistic children, many of whom have a one-to-one aide. Her observation was that Claimant's classroom is noisy and chaotic, especially in the afternoon which is when Claimant's behavioral issues are more pronounced.
25. The most recent IEP was conducted on April 24, 2012, but was not agreed to by the parents. The school district continues to offer and provide the ABA services described in factual finding number 2, and which said services were apparently agreed to at some previous date.

The most recent IEP that was agreed to by the parents was not submitted into evidence.

26. The most recent Individual/Family Service Plans (IFSP), dated June 20, 2011, and July 23, 2012, were both agreed upon by Claimant and the RC. Those IFSP reports stated, "[F]amily is satisfied with current services and supports from school, but is overwhelm (sic) with the amount of time it is taking to get them started for their son."
27. ABA services funded by a regional center are generally provided to assist a consumer with his home-life and in accessing the community. ABA services funded by a school district are generally provided to a consumer in order to assist him in accessing his education.

LEGAL CONCLUSIONS AND DISCUSSION

1. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See Evid Code §§ 115 & 500.) Thus, in attempting to have the RC begin funding ABA, and change vendors, and in seeking compensatory services, Claimant bears the burden of proving by a preponderance of the evidence that his requests are warranted because the level of service that Claimant is presently receiving is not effective in meeting the goals stated in Claimant's individual program plan (IPP).²
2. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

² HRC uses the designation IFSP instead of IPP. However, any subsequent references to IPPs apply to HRC's IFSPs.

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. (Emphasis added.)

3. Welfare and Institutions Code section 4646 provides, in part:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and

choices of the consumer, and reflect the cost-effective use of public resources. Emphasis added.)

4. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

[¶] . . . [¶]

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services. (Emphasis added.)

5. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental

disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

[¶] . . . [¶]

(7) No service or support . . . shall be continued unless the consumer or, where appropriate, his or her parents . . . is satisfied and the regional center and the consumer or, when appropriate, the person's parents . . . agree that planned services and supports have been provided, and reasonable progress toward objectives have been made." (Emphasis added.)

6. Pursuant to the Lanterman Act, an IPP must include a statement of the consumer's goals and objectives, based on the consumer's needs and preferences. Services provided a consumer must be effective in meeting the consumer's IPP goals, and there must be reasonable

progress toward objectives. Claimant's most recent IFSP agreed to by the parents stated that Claimant was satisfied with the services being provided by school district. Presently, the parents are no longer satisfied with the ABA services offered by the school district.

SHALL THE RC BE ORDERED TO FUND 30 HOURS PER WEEK OF BEHAVIORAL THERAPY (APPLIED BEHAVIOR ANALYSIS (ABA)) FOR CLAIMANT?

7. Presently, Claimant receives a total of 37 hours of ABA services, 31 hours provided at school and 6 hours at home, and an additional 16 hours of supervision services. Claimant is also concurrently requesting that the school district convert its funding for the 31 hours of ABA school-based services into funding for 31 hours of ABA provided at home, in addition to the 6 hours of ABA therapy already being provided at home.
8. Cases which have concurrent unresolved and on-going disputes between Claimant and the school district, and Claimant and the RC, are difficult logistically. In general, if the school district is failing to meet Claimant's needs, the RC must step in to provide services as the "payor of the last resort" in order to "fill the gap" in services. (Welf.& Inst. Code § 4648, subdivision (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)). If HRC feels that the school district has failed to provide services to Claimant that IDEA requires it to provide, HRC has the authority to pursue reimbursement under section 4659, subdivision (a), which provides that "the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, . . . (1) Governmental

or other entities or programs required to provide or pay the cost of providing services.”

9. In this case, Freeman’s opinion established that a reasonable amount of ABA hours is 49 hours per week. This amount is the mid-point between her testimony that Claimant requires between 42 and 56 hours per week. Since Claimant is presently receiving 37 hours, an additional 12 hours of ABA services is warranted. While these additional hours are warranted, the overall evidence did not establish that the presently funded 31 hours of ABA in-school services need to be fully replaced and funded by RC at this time. That is, while Claimant’s progress has been slow, it is, at least in part, due to the failure of ACES personnel to provide effective services. Also, Claimant has, at times, made better progress at school than at home. As such, it was not established that all ABA services need to be provided to Claimant in his home. Lastly, Freeman is the only expert who believes that all ABA services need to be provided at home, which is in disagreement with the school district’s and the RC’s opinions, and her previous opinion stated in her written report. Thus, while Claimant’s contention is understandable, Claimant did not prevail on his contention that RC should fund, at home, all of the 31 hours of ABA services presently being provided by the school. If such a conclusion were reached, Claimant would then receive funding for a total of 67 ABA hours (37 from the school and 30 at home), or between approximately 9.6 and 13.4 hours per day, depending on whether Claimant received services for 5 or 7 days per week. Also, if Claimant’s needs truly justify changing his 31 ABA hours provided at school into 31 home-based ABA hours, then Claimant has

a high likelihood of prevailing in his case against the school district. If Claimant is successful in his litigation with the school district, the school district would then be obligated to fund 31 home-based ABA hours which would focus on Claimant's education, as compared to any home-based hours funded by .IRC, which would focus on his ability to access his community, rather than his ability to access his education.

10. RC's closing brief argued that Welfare and Institutions Code section 4686.2, subdivision (d)(2), prohibits RC from participating in the funding more than 40 hours per week of ABA services. It is unnecessary to decide whether this statute applies in this matter. RC already has proposed funding 10 hours of ABA in its brief which, when added to the 37 ABA hours presently funded by the school, makes the total ABA hours funded at 47, which is over the 40 hour "limit." Thus, RC has already decided that the 40 hour "limit" should not apply in this case based on its review of Claimant's needs.

SHOULD THE RC BE ORDERED TO FUND BECA AS THE ABA PROVIDER FOR CLAIMANT?

11. While continuity in a service provider is desirable, ACES has not made substantial progress with Claimant, and Freeman and Ivers both agree that ACES is ineffective.
12. BECA is an approved RC vendor. Allowing BECA to provide services would allow the parties to assess whether or not BECA would be a more effective than ACES. BECA might bring new ideas and expertise to assist Claimant.
13. On the other hand, RC believes that BAE would be the most appropriate ABA provider for Claimant. It was not establish that BAE

would be an inappropriate ABA provider. That is, even if BECA would be a “better” provider, if BAE is an “adequate” provider, then BAE may be utilized. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. In this case, the evidence established that either BECA or BAE would be appropriate ABA providers to replace ACES. Generally speaking, a regional center is allowed wide latitude in implementing the IPP, as long as Claimant’s needs are being met. The only evidence presented regarding BAE was that it would be an adequate provider of ABA services, as BECA would also be. The undersigned does not determine which provider is “better.” Rather, the undersigned determines whether or not the offered services meet Claimant’s needs. In this case, neither BAE nor BECA have previously been utilized, and the evidence established that both would be appropriate providers. Thus, RC should be allowed to utilize their chosen vendor. However, nothing in this decision is meant to suggest that Claimant can not, in the future, request a change in vendors if BECA becomes the ABA provider utilized by the school district and Claimant’s needs require only one ABA provider for consistency purposes.

SHOULD THE RC BE ORDERED TO FUND COMPENSATORY ABA SERVICES FOR CLAIMANT?

14. The discussions between the parties in 2010 dealt with obtaining ABA services, and other issues, from the school district. Then, in April 2011, Jenna Mattingly suggested that RC perform an FBA. Thereafter, in June 2011, December 2011, and July 2012, parents were provided a CF. They chose to not sign the CF. While Hernandez was present at a May 2011

IEP meeting wherein the school's FBA was reviewed, Hernandez did not technically have the parent's consent to formally obtain this report, or a copy, and other school records. Also, the parent's signed a consent form in July 2012, but only for Claimant's medical records. This conduct reveals that parents had the ability, and knowledge, to understand the significance of the CF. Ultimately, the parents chose to wait until August 14, 2012, to sign the CF which allowed RC to obtain the school records, which the RC had told parents were necessary before performing their own FBA. However, RC certainly should have been more proactive in this area. It was not established that an FBA could not have been completed without the school records. While having other records is desirable, RC had determined an FBA was necessary as of April 2011. RC is not allowed to delay services for Claimant, indefinitely, because his parents would not sign the CF. However, at least initially, it was reasonable for the RC to delay the FBA while waiting for the CF to be signed. RC certainly was anticipating that parents would sign the CF in order to begin the FBA process. Ultimately the parents were partially responsible, at least initially, for the delay. In sum, the 16 month delay, from April 2011 to August 2012, must be considered in determining whether or not compensatory services are warranted. The undersigned concludes that RC was not responsible for the first 60 days while waiting for the CF to be signed and for another 60 days during which an FBA should have been scheduled and completed. RC has a responsibility to Claimant. Unless Claimant's parents materially interfere with RC's ability to assess and provide services to Claimant, RC must timely provide services to Claimant. Thus,

it is concluded that as of August 1, 2011, RC should have provided ABA services to Claimant.

15. Next, the time period after August 2012, when the parents signed the CF, must be discussed. RC's contention that the delay after parents signed the CF in August 2012 was due to RC being "required" to inquire into using Health Families or MediCal to perform the FBA and/or provide ABA services was not convincing. In June 2011, RC first asked parents to sign the CF. RC had between June 2011 and August 2012, when the parents signed the CF, to examine the availability of any and all generic services. It would be unreasonable to place the burden/fault on Claimant for the delay after August 2012. RC was well aware that ABA services were being sought by Claimant. RC had a responsibility to inquire into the use of generic resources while waiting for the CF to be signed, rather than waiting over a year and then effectively saying, "[N]ow that you have signed the CF, we now need to examine the use of generic resources." The RC has far more expertise than the vast majority of most parents, and certainly Claimant's parents, in what has become a complex system of seeking and obtaining services. It is responsible for developing a system of guiding consumers through the process in a reasonable manner and within a reasonable time-frame. While the law mandates that regional centers utilize generic services, it does not excuse the regional center from providing services for an unreasonable period of time while searching for those generic services.

16. Welfare and Institutions Code, section 4706, subdivision (a), states:

"The ALJ is empowered by statute to resolve all issues concerning the

rights of persons with developmental disabilities to receive services under [the Act]" This language is sufficient to encompass the right to retroactive benefits. While the Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the fair hearing context, the statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. However, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement or retroactive services because general principles of equity may require reimbursement or retroactive services in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) In this case, compensatory services are warranted beginning on August 1, 2011.

ORDER

The RC is ordered to begin funding 12 hours, per week, of in-home ABA services, beginning on the date of this order. RC is allowed to utilize BEA as the ABA service provider. RC is further ordered to provide compensatory ABA services for the time period beginning on August 1, 2011, and through the date of this order, at a rate of 12 hours per week.

DATED: April 23, 2013.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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