BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of: TIMOTHY S., Claimant, vs. FRANK D. LANTERMAN REGIONAL CENTER, Service Agency.	OAH No. 2012020706

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on June 19, 2012, in Los Angeles.

Timothy S. (Claimant), who was not present, was represented by his father, who is an attorney licensed to practice law in California.[1]

Julie A. Ocheltree, Esq., Enright & Ocheltree LLP, represented the Frank D. Lanterman Regional Center (Service Agency).

At the parties' request, the record remained open after the hearing for the submission of closing briefs, which were timely received. Claimant's brief was marked for identification as exhibit C84. The Service Agency's brief was marked as exhibit SA18. Claimant's reply brief was marked as exhibit C85. The record was closed and the matter

[1] Initials and family titles are used to protect the privacy of Claimant and his family.

was submitted for decision upon receipt of the last brief on July 2, 2012. However, due to the Fourth of July holiday and because the ALJ was out of state from July 8-16, the ALJ requested, and the parties agreed, to extend the deadline for issuance of this Decision to July 25, 2012.

ISSUES

1. Shall the Service Agency reimburse Claimant's family for services provided by the family from June 2010 to the present?

2. Shall the Service Agency pay Claimant's father for advocacy services?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits SA1-SA16 were admitted; except that exhibit SA7 was admitted only for purposes of demonstrating the Service Agency's view of contacts noted therein, but not as a statement of all contacts between the parties during the relevant times. Claimant's exhibits C1-C83 were admitted. The Service Agency's opening brief was marked as exhibit SA17. The parties' closing briefs were marked as described above. The briefs were reviewed but they are not considered to be evidence.

Testimonial: Michele Johnson, FDLRC Supervisor; and Claimant's father.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1 Claimant is a 20-year-old non-conserved male who is eligible for regional center services based on his diagnosis of autism and moderate mental retardation.

2 After a long series of communications between the parties described in more detail below, the Service Agency issued a Notice of Proposed Action dated January 13, 2012, in which Claimant's father was advised that the Service Agency had

agreed to a Supported Living Services (SLS) assessment for Claimant, but that the Service Agency would not provide funding retroactively for any services the family had previously provided to Claimant, nor would the Service Agency pay Claimant's father attorney's fees for advocating on behalf of his son.

3 On February 13, 2012, Claimant's father submitted a Fair Hearing Request to the Service Agency on behalf of his son, in which the Service Agency was requested to timely provide services required by law; provide services retroactively; pay for advocacy services for an attorney of Claimant's choosing to represent him; and complete the Individual Program Plan (IPP) process promptly.

4 A hearing for this matter was timely set for March 19, 2012. However, the parties jointly requested a continuance of the hearing to allow time for them to conduct another IPP meeting, as well as an informal meeting pursuant to Welfare and Institutions Code section 4710.7. The hearing of this matter was therefore continued to June 19, 2012. In requesting the continuance, Claimant's father executed a written waiver of the time limit prescribed by law for the holding of the hearing and for the ALJ to issue a decision.

5 Although initially in question, the authority of Claimant's father to represent his son in this matter was established on April 3, 2012, when Claimant's father was appointed to act as Claimant's representative with respect to regional center services by the Executive Director of the Developmental Disabilities Area Board 10.

6 At the outset of the hearing, the ALJ determined jurisdiction exists in this case only to decide the two issues enumerated above concerning retroactive reimbursement of services and advocacy fees. (See Discussion, *Jurisdictional Issues*.)

CLAIMANT'S BACKGROUND INFORMATION

7 Claimant has substantial disabilities and requires constant supervision at all times. Claimant's father describes him as functioning like an 18-month-old infant.

8 Claimant has been a client of the Service Agency since he was a young child. Beginning in or about 2004, however, Claimant's parents decided to stop using regional center services after a dispute with the Service Agency over equestrian therapy.

9 As a young child, Claimant attended a public school program, with his mother accompanying him. Claimant's parents decided to withdraw their son from the public school program because they did not believe he was benefitting from it. Claimant was home schooled since approximately the fourth or fifth grade. He is not currently involved in any formal day program.

10 Claimant resides with his parents at home. One family residence has a main home and a guest house. Claimant currently resides in the guest house, though he is constantly supervised by his parents and other family members.

THE PARTIES' CONTACTS IN 2010 AND 2011

11 In late June or early July of 2010, Claimant's father contacted the Service Agency to inquire about regional center services. Claimant's father testified that a Service Agency employee advised him that Claimant was not eligible for services unless and until he received In Home Supportive Services from Los Angeles County (IHSS). However, Claimant's father's testimony was not persuasive, in that his account of this contact was vague, and it differed in terms of the dates and the circumstances in which it was made. Claimant's father provided no corroboration for his testimony regarding this contact. No further action was taken by either Claimant's father or the Service Agency at that time, indicating that Claimant's father did not specifically request that his son's case be reactivated or that any particular service be provided.

12 In May or June of 2011, Claimant's father contacted the Service Agency, this time to reinstate services for his son. He was told that the Service Agency would reactivate Claimant's case. A letter from Service Agency representative Michele Johnson, dated June 24, 2011, was sent to Claimant's father, stating that Irene Owuor had been

assigned to coordinate services for Claimant. Claimant's case with the Service Agency was reactivated on June 24, 2011. Ms. Owuor attempted to schedule a meeting in August with Claimant's father but was told Claimant's father was unavailable then because he had to attend to his own father's serious health issues out-of-state and would not be available until September. Claimant's father asked Ms. Owuor to contact him in September.

13 The evidence is not clear regarding the contacts between the parties from September through November of 2011, mainly because neither Ms. Owuor nor Claimant's father generated much written correspondence during this time, unlike that which was generated subsequently. However, the evidence indicates that the parties were in contact with each other in early or mid-September, after Claimant's father returned from his trip. At or about that time, Ms. Owuor requested medical and school information for Claimant. Claimant's father responded with an e-mail to Ms. Owuor on October 18, 2011, in which he provided the requested information and stated, "I am writing to request services for Timothy …. He needs 24 hour per day care and supervision." (Ex. C2.) Although not entirely clear, it appears that Claimant's father was again out of state around this time. By November 3, 2011, Ms. Owuor and Claimant's father were again in contact to schedule a meeting, presumably upon his return from his second trip. (Ex. SA7, p. 19.) The only other documented contact between the parties is a letter from Claimant's father to Ms. Owuor, dated November 26, 2011 (ex. C3), in which Claimant's father requested Ms. Owuor to set up the meeting. Neither of the two referenced e-mails sent by Claimant's father, or the ID chart notes created by Ms. Owuor, describe any other contacts between the parties during this time period. But Claimant's father testified that he did not "push things faster" because he assumed he would be retroactively compensated for any services he and his family were providing to his son.

14 Presumably as a result of the November 26, 2011 letter she received, Ms. Owuor scheduled a meeting with Claimant's father for December 8, 2011.

THE INDIVIDUAL PROGRAM PLAN PROCESS

15 On December 8, 2011, the parties held their first IPP meeting. Claimant's father brought Claimant to meet with Ms. Owuor at the Service Agency office. The parties discussed the nature and extent of Claimant's disabilities and needs. Claimant's father stated his son needed at least 15 hours of personal care beyond the nine hours per day of care covered by IHHS funding which had been initiated by that time. Claimant's father also stated that he wanted the IPP to reflect that personal care hours funded by the Service Agency should be family vendored, and that he, his wife, Claimant's brother and a family friend would do what was necessary to become vendored. Claimant's father also requested that other services be provided "separate from the 24 hour care required to attend to Claimant's direct needs for care and protective supervision." On December 10, 2011, Claimant's father sent Ms. Owuor a lengthy e-mail in which he reiterated his requests. (Ex. C3, p. 3.)

16 On December 15, 2011, Ms. Owuor called Claimant's father and advised him that her supervisor believed the family vendored care as proposed was not supported by pertinent regulations, and that instead the Service Agency believed supported living services (SLS) would be more appropriate. For that reason, the Service Agency wanted to conduct an SLS assessment to determine Claimant's needs. Claimant's father replied that family vendored care was supported by the law, and he asked for funding "at a minimum an additional 15 hours a day of protective care."

17 Claimant's father confirmed the December 15, 2011 telephone discussion in an e-mail he sent to Ms. Owuor that same day. (Exs. C5 & SA7, pp. 26-28.) In that e-mail, Claimant's father confirmed that he had told Ms. Owuor, "I was not going to categorize the type of care that Claimant should have or agree to any categorization of

such care unless and until after we had a meeting to discuss and develop an appropriate plan for services for Claimant as required by California law. Whether such services are categorized as "supported living services" or other services, should not be a decision that is made at the beginning of the planning process. Rather, we should be discussing the service needs, and the regional center should be determining, with the input and approval of Claimant's parents (me) the nature and extent of needed services and how best to provide them to him." Claimant's father also wrote in his December 15th e-mail that he had "no objection to any type of assessment as part of the planning process and would welcome the opportunity to meet with somebody at Claimant's apartment to review his needs and assessment as part of the planning process. However, the planning process is not a process that is determined solely by decision by the regional center." Claimant's father asked to schedule another meeting "to start working on the individual program plan." (Id.)

18 On December 29, 2011, Ms. Owuor called Claimant's father to schedule another IPP meeting. (Ex. SA7, p. 29.) He declined the offer to meet but asked for a letter stating why they should not continue to discuss his request for family vendored services. (Ibid.) Ms. Owuor wrote in an interdisciplinary (ID) note in Claimant's case file that Claimant's father "did not agree with supported living for his son because he did not approve of a bunch of strangers working with his son in his son's apartment."

19 On January 4, 2012, Ms. Owuor's supervisor, Michele Johnson, contacted Claimant's father and indicated that the Service Agency wanted an SLS assessment to determine Claimant's needs (Ex. C6). Specifically, Ms. Johnson indicated that such an assessment would provide comprehensive details on his activities, needs and supports. Ms. Johnson acknowledged that the family was interested in having family provided supports for Claimant, but that she thought the best place to start "is for us all to be on

the same page regarding his needs. Once we have determined his needs, then we could move on to the services that he would require." (Ex. SA7, p. 29.)

20 On January 5, 2012, Claimant's father sent an e-mail to Ms. Johnson in reply, agreeing to an SLS assessment, complaining of delays in obtaining services for Claimant and requesting that the Service Agency pay for advocacy for Claimant and also that funding for services be paid retroactively. (Ex. C7.) However, Claimant's father also wrote, "To the extent that the Regional Center needs an assessment to better able determine the exact extent of his needs as part of developing a plan for his care I would welcome a generic assessment of his needs. However, I do not agree that it is a "Supported Living Plan" that he needs or doesn't need. I believe that this should be an assessment of his needs generically…. [A]s Claimant's attorney and parent, I will not agree to any specific plan or program unless and until the nature and extent of that plan, as well as the limitations and legal consequences of that plan have been communicated to me in detail in writing and I reply in writing that such plan, limitations and consequences are acceptable." (Ex. SA7, pp. 31-32.)

21 With a cover letter dated January 10, 2012, Ms. Johnson sent to Claimant's father a second draft IPP. (Exs. SA7, p. 33 & SA9.) The second draft IPP included funding for the SLS assessment. In her cover letter to Claimant's father, Ms. Johnson stated that, in her view, the parties were still in the midst of the program planning process and could amend the IPP as needed, and that the Service Agency had "not granted or denied your request for 15 hour per day of support."

22 On January 13, 2012, Ms. Johnson sent Claimant's father the Notice of Proposed Action in question, wherein the Service Agency denied funding for retroactive services and attorney's fees. In that letter, Ms. Johnson stated "FDLRC has agreed to fund only an assessment to assist in determining Claimant's needs." (Ex C9, p. 2.)

Claimant's father was also referred for advocacy assistance to an assigned Client's Rights Advocate, Mr. Timothy Poe.

23 Inclusion Services, a Service Agency approved vendor, performed an SLS assessment of Claimant on January 24, 2012. (Ex. SA8.) Inclusion Services issued its SLS assessment report on or about February 8, 2012. The assessment report recommends SLS funding to cover 543 hours per month, comprised of 436 SLS hours at a 1:1 staff ratio and 100 SLS hours at a 2:1 staff ratio during stimulating program hours. Inclusion Services proposed a total cost of $13,739.00 per month for those services, including the vendor's administrative costs, which it stated was negotiable.

24 In a letter to Ms. Owuor dated February 1, 2012, Claimant's father stated, among other things, that he did not agree to the second draft IPP. (Ex. SA10.) He explained why he believed that Claimant's local school district could not provide Claimant an acceptable service program, and argued that the Service Agency should therefore not exclude programming hours based on those Claimant could receive at school. (Ex. C10).

EVENTS AFTER THE FAIR HEARING REQUEST WAS FILED

25 In an e-mail to Ms. Johnson dated February 20, 2012, Claimant's father explained why he disagreed with the legal determinations set forth in the Notice of Proposed Action, but he added that he was still willing to defer the hearing request until the other issues in the IPP were resolved. He explained that he did not want to make determinations piece-meal and would rather proceed with the IPP "on all matters in an attempt to reach an agreement on as many matters as possible . . . ." (Ex. SA7, p. 33.)

26 On February 22, 2012, Ms. Johnson contacted Claimant's father to schedule another IPP meeting. (Ex. SA7, p. 34.) Soon thereafter, Claimant's father went out of state to care for his father. The hearing of this matter was continued. The parties communicated by phone and by e-mail frequently during March of 2012. On March 21,

2012, Claimant's father indicated in an e-mail that he had reviewed the SLS assessment by Inclusion Services. He wrote, among other things, that "I am hopeful that, whether those services are provided through a family-vendored program or though Inclusion Services, the Regional Center will understand that these services need to be provided."

27 Another IPP meeting was held on March 23, 2012. Among other things, Ms. Johnson discussed the fact that the family vendored services had not been agreed to and for that reason were not included in the second draft IPP. Claimant's father and Ms. Johnson discussed the possibility of Claimant attending a school program and the Service Agency funding 15 hours per day of services on weekends and nine hours per week day, or more hours during the week if Claimant attended a shortened school program. However, Claimant's father declined those proposals and asked the Service Agency to pay for family vendored services at the same amount and rate as recommended by Inclusion Services. (Ex. SA7, p. 39.)

28 On April 4, 2012, Ms. Johnson sent Claimant's father an e-mail notifying him that a second Notice of Proposed Action would be sent denying his request for family vendored funding in the amount of $13,739 per month for SLS services. On April 9, 2012, Claimant's father sent Ms. Johnson an e-mail in which he asked, among other things, why a Notice of Proposed Action would be sent prior to completing the process of creating an IPP.

29 A second Notice of Proposed Action was sent to Claimant's father on April 10, 2012, denying Claimant's request for family vendored funding in the amount of $13,739 per month for SLS services. (Ex. SA12, pp. 86-98.)

30 On or after May 3, 2012, Claimant's father submitted a second Fair Hearing Request in response to the second Notice of Proposed Action. The second Fair Hearing Request contains a number of requests, including that the Service Agency complete the process of creating an IPP, that it allow Claimant's family to be vendored to provide SLS

to Claimant, and that it fund such SLS services at the amounts and rates recommended in Inclusion Services' SLS assessment report. That matter was referred to OAH for hearing, and bears OAH case number 2012050727. The hearing in that matter is scheduled for August.

REQUEST FOR ADVOCACY

31 Claimant's father contends that between January 14, 2012, and March 29, 2012, he called Mr. Poe on several occasions to request advocacy services, but did not receive a return call until March 29, 2012. During that call, Mr. Poe stated that he could not represent Claimant, and sent a confirming letter to that effect. In the letter, Mr. Poe states that his office did not have the resources to represent Claimant "at hearing," but that "we remain available to provide information and advice." (Ex. C42.) Claimant's father presented no other written correspondence between himself and Mr. Poe or any other evidence corroborating that he contacted Mr. Poe several times and was ignored.

32 Based on the evidence presented, including the testimony of Claimant's father and the letter from Mr. Poe, it appears that Claimant's father simply requested Mr. Poe to represent Claimant at a hearing. It was not established that Claimant's father requested information or advice from Mr. Poe at any time.

DISCUSSION

BURDEN AND STANDARD OF PROOF

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)[2] An administrative hearing to determine

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) When one seeks government benefits or services, the burden of proof is on him or her. (*See,* e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In this case, Claimant bears the burden of proof, because he is seeking funding that the Service Agency has not before agreed to provide.

JURISDICTIONAL ISSUES

Section 4710.5, subdivision (a), provides that an applicant for or recipient of services dissatisfied with any decision or action of a regional center may request a fair hearing within 30 days after "notification of the decision or action complained of . . . ."

Section 4710 delineates two types of notifications that a regional center is required to provide a consumer regarding a decision or action from which can result a request for a fair hearing pursuant to section 4710.5. In section 4710, subdivision (a), a regional center is required to provide a notification when it proposes to "reduce, terminate, or change services set forth in an individual program plan" or when a consumer is determined to be no longer eligible for services. In section 4710, subdivision (b), a regional center is required to provide a notification when it makes a decision "to deny the initiation of a service or support requested for inclusion in the individual program plan." It is clear from these statutes that jurisdiction does not exist to decide a service request that is made for the first time in a fair hearing request, or that has not been previously requested for inclusion in an IPP and been the subject of a notification required by section 4710.

This interpretation is consistent with other parts of the Lanterman Act which require the parties to meet and confer, and hopefully collaborate, in the provision of

services before resorting to litigation. For example, an authorized regional center representative and the consumer or her authorized representative must sign an IPP prior to its implementation.

(§ 4646, subd. (g).) If the consumer or his representative does not agree with all the components of the IPP, the consumer or the representative may indicate that disagreement in the IPP. (*Id*.) Disagreement with specific plan components cannot prohibit implementation of services and supports agreed to by the consumer or his representative. (*Id*.)

If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at the conclusion of the IPP process, a subsequent IPP meeting shall be convened within 15 days, or later at the request of the consumer or her authorized representative, or when agreed to by the IPP planning team. (§ 4646, subd. (f).) Additional meetings may be held with the agreement of the IPP planning team. (*Id*.) If, at the end of this process, the consumer or her authorized representative does not agree with the plan in whole or in part, he shall be sent written notice of his fair hearing rights, as required by section 4701. (§ 4646, subd. (g).)

At the outset of the hearing in this matter, the ALJ determined that jurisdiction in this case exists only to decide the issues concerning retroactive reimbursement of services and advocacy, but not for Claimant's requests in the Fair Hearing Request that the Service Agency timely provide services required by law or that it complete the IPP process promptly.

At no time prior to the Fair Hearing Request applicable to this case did the Service Agency issue a notification required by section 4710, subdivision (b), regarding a decision to deny the initiation of a service or support other than the denial of requests for retroactive reimbursement of services and advocacy that are involved in this case.

Nor did the Service Agency issue a notification that it had decided to discontinue the IPP process or no longer meet with Claimant's father. The Service Agency did not issue such notifications because it is clear that when Claimant's father submitted the Fair Hearing Request in question, the parties were still engaged in the IPP process regarding services and supports, primarily the family's desire to secure funding of at least 15 hours per day of personal care for Claimant. Conversations and meetings regarding that funding continued several months after the Fair Hearing Request had been filed.

Claimant contends that interpreting the Lanterman Act in this way will lead to abuse by regional centers that wish to bar a consumer's way to a fair hearing by simply withholding the required notification. That is a relevant concern. However, such a barrier would be easily removed when evidence indicates that a family had specifically requested a service, the IPP process had been concluded at least with regard to that service, and for whatever reason the involved regional center refused to issue the required notification. Such a situation can easily be discovered and remedied at, during or after a fair hearing. This is not the situation in this case. There is no evidence that the Service Agency withheld a required notification for any other service. It was not established that Claimant's family had specifically requested a service or support, had concluded the IPP process with the Service Agency with regard to that service, and sought to litigate the matter through a fair hearing. The fair hearing process provided by the Lanterman Act does not provide a double-barreled approach to obtaining services and supports, with one barrel being aimed at continuing the IPP process with respect to a particular service, while the other barrel is aimed at litigating the propriety of the same service.

The key question of an administrative proceeding is whether due process has been provided. Due process requires, at a baseline, that the parties be provided with reasonable notice of the contentions supporting the requested action and an

opportunity to be heard. (*Gray v. Medical Board of California* (2005) 125 Cal.App.4th 629, 637.) Due process is a two-way street; it applies to both parties involved.

In this case, it appears that Claimant's family was primarily concerned with the Service Agency funding 15 hours per day of personal care for Claimant. It is clear that Claimant's father had requested such funding at various times during the IPP process. However, Claimant's father alluded to that funding being either family vendored or provided by Inclusion Support. Claimant's father also requested that "other services" be provided, including assistive technology. When the Fair Hearing Request in question was submitted, the parties were still actively engaged in discussing all of those issues. The Fair Hearing Request, which simply requested that the Service Agency "timely provide services required by law," did not provide the type of notice required by due process, especially in light of what was happening between the parties at the time it was submitted.

In any event, the above concerns dissolved when the Service Agency issued its second Notice of Proposed Action, which specifically denied the family's request for family vendored funding in the amount of $13,739 per month for SLS services. Claimant has submitted a second Fair Hearing Request in which that level and type of funding has been requested, as well as a request for a conclusion to the IPP process. The hearing in that matter is scheduled for next month. Claimant is not prejudiced by those issues being considered in the next matter as opposed to this one.

REIMBURSEMENT REQUEST

A consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, ..." (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).)

As discussed above, the process of creating an IPP is supposed to be collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (§§ 4646, 4648.) If the parties cannot agree on the provision of a service after the IPP process has concluded, the consumer is notified of his or her fair hearing rights, and thereafter a hearing officer shall make the decision after a hearing.

The issue of reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Where the parties disagree, the hearing process will resolve the dispute.

The Lanterman Act does not specifically authorize retroactive service payments in the fair hearing context. Regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. (See, Cal.Code Regs, tit. 17, § 50612, subds. (a), (b) & (c).) In this case, the Service Agency has not preauthorized the services in question, nor was an emergency situation proven to exist.

Yet, the lack of specific statutory or regulatory authorization is not necessarily controlling. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . ." (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be thwarted if not applied. Otherwise, the general

requirements that services should be funded through the process of developing a consumer's IPP (§§ 4646, 4646.5, and 4648), and the above-described regulatory restriction on unilateral funding, would be superfluous. Thus, prior Fair Hearing decisions have included orders for reimbursement only when the equities weighed in favor of the consumer, or when the purposes of the Lanterman Act would be thwarted if not granted.[3]

Claimant complains that reimbursement is warranted, in part, because the Service Agency significantly delayed starting the IPP process. Claimant's father contends he first requested services in June of 2010 and that two years later his son has still not received them. However, it was not established that Claimant first requested services in June of 2010. That contact appears to have been informational. In reality, it was not until May or June of 2011 that Claimant's father first contacted the Service Agency to reactivate his son's case.

At that time, Claimant was a regional center consumer in the anomalous situation of not having an IPP after years of no contact with the Service Agency. The Lanterman Act requires that an IPP be performed within 60 days of intake and assessment of a new consumer. (§ 4646, subd. (d).) However, when an existing consumer requests review of an existing IPP, a meeting shall be held within 30 days of the request. (§ 4646.5, subd. (b).) Claimant's situation does not squarely fit either situation, but his is more akin to the new consumer than a current one with an existing IPP.

Upon reactivation of Claimant's case in June of 2011, Claimant's Service Coordinator attempted to schedule an IPP meeting in August, but was unable to because Claimant's father was out-of-state until September. Such a meeting would have been well within the 60 day period applicable to this case.

[3] Prior OAH decisions are only advisory, not binding.

Claimant also contends, but did not establish, that the Service Agency ignored frequent requests by him from September through November of 2011 to start services or schedule an IPP meeting. The parties were in contact during this period. Although not entirely clear, it appears that a second out-of-state trip by Claimant's father further delayed a meeting. What is clear is that Claimant's father was not pressing for funding to start, because he believed he would obtain retroactive reimbursement for any services he provided during this time. After Claimant's father returned from his second out-of-state trip by early November, the Service Agency scheduled an IPP meeting for early December of 2011. Under these circumstances, it cannot be concluded that the Service Agency acted inequitably or in an attempt to thwart the purposes of the Lanterman Act regarding how and when the first IPP meeting was scheduled.

Claimant also contends that the Service Agency violated the Lanterman Act in how it engaged in the IPP process. The parties have held numerous IPP meetings but reached few agreements. Claimant's father will not sign an IPP document until he agrees with its entirety, and he does not want to sign piece-meal agreements for some services without a comprehensive global agreement regarding all of his son's needs and services. For those reasons, no IPP document has been signed, and no services (other than the SLS assessment) have been funded. Pursuant to the Lanterman Act, the parties are required to continue meeting until they reach an agreement or until they have reached an impasse and the regional center has provided notice that is has denied a particular service request(s). That is what has happened in this case. The parties appear to have a profound disagreement over the services required for Claimant. After several years of no contact between the parties, that is not particularly surprising. It must also be noted that the Fair Hearing Request in question was submitted less than two months after the IPP process was initiated, and before the results of the agreed upon SLS assessment was circulated. Under these circumstances, it was not established that the Service Agency

has acted inequitably or has attempted to thwart the purposes of the Lanterman Act regarding the IPP process.

Claimant is requesting to be reimbursed $13,739 per month for the 24 months dating back from the present to June of 2010 when he contends he first requested services from the Service Agency. The total amount of reimbursement would exceed $300,000.00. The monthly rate of service is based on the SLS assessment done by Inclusion Services. Claimant's family has not engaged Inclusion Services or any other vendor to provide services. Claimant did not establish that the family has provided him any care during the relevant time frame different from that provided for the several years after the family cut-off contact with the Service Agency. The fact that an approved vendor would charge the Service Agency a set monthly amount for services rendered does not establish the value of the family's care for their son or that it has incurred such costs. In fact, it has not been established that Claimant requires SLS at this time, as that issue is not before the ALJ in this case (as explained above) and no findings of the necessity of such service is made herein or implied. The family has apparently continued to provide the same type and level of services to Claimant that it has self-funded for the past several years during the relevant time period. Under these circumstances, it was not established that the purposes of the Lanterman Act would be thwarted if reimbursement is denied.

ADVOCACY SERVICES

Section 4512, subdivision (b), lists "advocacy assistance, including self-advocacy training, facilitation and peer advocates," as a service or support that can be provided or funded by regional centers.

In this case, it was not established that Claimant's father requested or needed the Service Agency to provide advocacy assistance or training. In the Notice of Proposed Action applicable to this case, the Service Agency advised Claimant's father that he

could contact his son's assigned Client's Rights Advocate, Mr. Poe, for advocacy assistance. Claimant's father simply requested Mr. Poe to represent his son at a hearing. Although Mr. Poe declined to represent Claimant, he did offer to provide information and advice to Claimant's father. Thus, it was not established that the Service Agency failed to provide requested advocacy assistance to Claimant's father.

In reality, Claimant's father, who is a licensed attorney in this state, is requesting to be compensated for his own time pursuing this matter against the Service Agency. There is nothing in the Lanterman Act that supports such a request. Reimbursement for attorney's fees incurred by a consumer's family in connection with a fair hearing is not allowed, and cannot fairly be considered as the sort of advocacy assistance referenced in the Lanterman Act. It would be unfair to construe the Lanterman Act in a way that would compensate one family engaged in a dispute with a regional center because a parent is an attorney, but not compensate another family whose parents are not.

Under the American Rule of attorney's fees, parties to litigation are each liable for their own attorney's fees, and the prevailing party is not entitled to recover attorney's fees from the other party absent a contractual agreement or statutory authorization. (See *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124; Code Civ. Pro., § 1021.) An example of a statutory authorization is found in special education law, where a student's family may recover attorney's fees if they prevail in a due process proceeding. However, the Lanterman Act does not contain such a statutory provision.

Claimant cites to Code of Civil Procedure section 1021.5, which allows the Superior Court to award attorney's fees to a successful party against an opposing party in an action which has resulted in the enforcement of an important right affecting the public interest. However, the Code of Civil Procedure generally does not govern fair hearings under the Lanterman Act. Moreover, the instant case does not involve the enforcement of an important right affecting the general public; it affects the personal

interests of Claimant and his family. In addition, Claimant has not prevailed in this case, and would not be entitled to such relief even if Code of Civil Procedure section 1021.5 applied to this case. Finally, Claimant's father presented no evidence of his time or costs incurred in this matter and thus there is an absence of underlying proof of his claim.

LEGAL CONCLUSIONS

1. Pursuant to sections 4646, 4701, 4710 and 4710.5, jurisdiction does not exist in this matter to decide Claimant's request to order the Service Agency to timely provide services required by law or to complete the IPP process promptly. (Factual Findings 1-30 and Discussion.)

2. Pursuant to sections 4706, 4646, 4646.5, 4647, 4648, and *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, cause was not established to order the Service Agency to reimburse Claimant's family for services provided by the family from June 2010 to the present. (Factual Findings 1-30 and Discussion.)

3. Pursuant to section 4512, cause was not established to compensate Claimant's father for advocacy services he has provided in this matter. (Factual Findings 1-32 and Discussion.)

ORDER

Claimant Timothy S.'s appeal is denied.

DATE: July 23, 2012

/s/

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ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.