

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL  
CENTER,

Service Agency.

OAH No. 2013080580

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Placerville, California, on October 2, 2013.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant was represented by his mother.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was left open for the parties to submit closing briefs. On October 16, 2013, Service Agency's Closing Brief was submitted and marked as ACRC's exhibit 11. Claimant's Response to ACRC's Closing Brief was submitted on October 24, 2013, and marked as claimant's exhibit 7. On the same date, ACRC filed Objections to Admission into Evidence of Claimant's Newly Submitted Documents, and claimant filed a Response to ACRC's Objections, which were marked as exhibits 12 and 8, respectively. Service Agency's Objection to Claimant's Response to Closing Brief was submitted on October 28, 2013, and marked as exhibit 13. Claimant's Response to Service Agency's Objection to Claimant's

Response to Closing Brief was submitted on October 29, 2013, and marked as exhibit 9. The record was closed and the matter was submitted for decision on October 29, 2013.

## ISSUES

Is ACRC required to fund monthly high speed Internet service in the family home?

## PROCEDURAL ISSUES

Claimant's Response to ACRC's Closing Brief included photographs and documents, as attachments, which ACRC contends were not included in claimant's exchange of documentary evidence prior to hearing, as required by Welfare and Institutions Code section 4712, subdivision (d), and were not entered as evidence at the time of hearing. ACRC alleges that it would be prejudiced in this matter if claimant's new documents are admitted into evidence at this time, as the service agency would be denied the right to present oral testimony about those documents, and would be denied the right to cross-examine claimant's witnesses about those documents. Therefore, ACRC requested that the court issue an Order denying the admission of the photographs and documents attached to Claimant's Response to ACRC's Closing Brief as evidence in this matter.

Claimant contends, "All articles we submitted pertain to our response to ALTA's closing brief. . . In our response to ALTA California Regional Center's Closing Briefing we responded to all the points in their brief and restated what was discussed at the Fair Hearing on October 2, 2013. We also corrected incorrect information and inconsistencies in their brief. Therefore we respectfully would like to [sic] court to consider our [sic] all parts of our response to the closing brief/our closing brief."

The only documentary evidence that will be considered for this Decision is that which was submitted at Hearing. Service Agency's Closing Brief and Claimant's Response to ACRC's Closing Brief will be considered as respective arguments of the parties, but any

information considered to be an admission of new evidence not previously provided to the other party will not be considered.

## FACTUAL FINDINGS

1. Claimant is a twelve-year-old boy eligible for ACRC services based on a diagnosis of autistic disorder and epilepsy. He has also been diagnosed with apraxia, Attention Deficit Hyperactivity Disorder (ADHD) and Intellectual Disability. He is functionally non-verbal but has limited verbalizations and gestures. He has a history of aggression, self-injurious behaviors and property damage. Claimant has a Dynavox Maestro (Dynavox), which was purchased in 2012 with MediCal funding, for his use as a speech generating device. Claimant lives with his parents and younger brother in the family home in Pollock Pines, a somewhat remote part of El Dorado County.

2. Claimant attends Guiding Hands School, a nonpublic school with specialized educational services for children with autism, funded by the Pollock Pines School District. He began attending Guiding Hands on approximately January 18, 2011, after being previously homeschooled. His current Individualized Education Program (IEP), dated May 8, 2013, noted that he "require[s] assistive technology devices and/or services....The team agreed that [claimant] would benefit from an aac [AAC] (Augmentative and Alternative Communication) device because of his severe speech apraxia. He is currently using the Dynavox Maestro. The staff and parent receives assistance on how to use the device from Supportive Life."

3. The IEP also notes that claimant requires language and speech as a related service, and "sessions will include direct and indirect (to allow time to program Dynavox speech device) service and to provide training for parent to utilize it at home."

Claimant's IEP contains Annual Goals and Objectives which require the use of his speech generating device. In discussing claimant's communication development the IEP notes include the following:

Recently, his speech generating device was reprogrammed with the help of Kristen Carroll, M.A., CCC-SLP, from the Communication Technology Education Center (CTEC) to make it easier for [claimant] to navigate throughout the different screens. Highly motivating items such as pictures of sea creatures, dinosaurs, trains and "Free Willy" movies were added. The core 20 words were also placed on the first screen so they are easily accessible to help [claimant] communicate in a variety of situations. [Claimant's] Occupational Therapist, Priya Talreja, M.S., OTR/L, assisted with setting up an OT page so that [claimant] can use his device during Occupational Therapy to request highly preferred sensory activities such as "Ball Pool" and "Platform Swing." A screen was added so [claimant] can be a 'classroom helper' and use his device to direct the other students in his classroom to line up or tell them when it is time for lunch.

4. Stacy Blaine is claimant's ACRC Service Coordinator. She testified that claimant's parents requested funding for additional training in the use of the Dynavox provided by the Supported Life Institute. They also requested financial assistance from ACRC to fund monthly Internet service in the family home. ACRC agreed to fund a twenty-hour evaluation for assisted communication devices. These hours were used to fund services from Kristen Carroll at the Communication Technology Education Center (CTEC), a program of the Supported Life Institute, to assist in training parents and claimant's school staff on use of the Dynavox.

Ms. Blaine also agreed to "seek guidance and consultation by ACRC supervisor and ACRC Best Practices Committee in seeking funding for monthly Internet service." When she

consulted with the Best Practices Committee, they requested further information regarding the requirements of the Dynavox, and whether downloading data and uploading information could be done at claimant's school or at a community or other location the family could access for high speed Internet service.

5. Ms. Blaine testified that she spoke with the Dynavox tech support department and was informed that periodic updates to the Dynavox are done, approximately once every other month and in order to back up information or receive on-line technical support, the Dynavox user would need access to a high speed Internet service. Technical and customer support does not necessarily require that the Dynavox itself be hooked up to high speed Internet; as such support can also be accessed by phone. The Dynavox tech support department is available from 8:00 a.m.-6:00 p.m. EST. Therefore, tech support is not available on weekends or after 3:00 p.m. PST.

The Service Coordinator also informed the Best Practices Committee that the least expensive Internet service available in the family home would cost approximately \$69.99 per month.

6. The ACRC Best Practices Committee considered the available information and determined that it did not support ACRC funding high-speed internet service in the family home. It concluded that funding high-speed Internet service is a parental responsibility and that there are alternative generic resources available to access that service in the community. Specifically, ACRC suggested accessing the internet, for the limited time required, in the community, such as through the library or restaurants, through claimant's school, friends, family or parent's employer.

7. On August 7, 2013, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "ACRC is denying your request to fund monthly high-speed internet service in the family home for use with [claimant's] Dynavox Maestro, an augmentative and

alternative communication device which [claimant] uses in the educational setting as well as in the home and community.”

The NOPA stated that the reason for the action was that “High speed internet access is not required on a daily basis for the functioning of the Dynavox. Rather, high speed Internet access is required for brief periods only for the limited purposes of downloading software updates for the Dynavox every other month and on occasion backing up the information on the Dynavox. It is not cost-effective for ACRC to pay approximately \$70 per month to provide high speed internet in the family home when the need is so limited and when alternative resources exist to provide that service. Specifically, software updates for the Dynavox and data back up are also required to enable [claimant] to use the Dynavox in the educational setting, and high speed Internet access is already available for [claimant’s] use on his school campus for that purpose. And free wireless Internet access is also available in various locations throughout the community and may be available from friends and family (natural supports) for the limited use required.

“Further, Dynavox technical and customer support does not necessarily require that the Dynavox itself be hooked up to high speed Internet. Rather, such support can be accessed both by phone OR high speed Internet from Mon.-Fri. 8-6 p.m. EST, and 24/7 via email (accessible through the parents cell phone which has email capability.) Additionally, even with high-speed internet, no tech support would be available after 3 p.m. on weekdays or at all on weekends in case there is a problem with the Dynavox. Thus, even with high speed Internet in the home, there may be some unavoidable instances when the Dynavox is not usable and tech support is unavailable, and it would be wise to plan for such an instance. Moreover, ACRC does not believe that brief or temporary unavailability of the Dynavox device for any reason would pose a health and safety risk for [claimant].

"ACRC is willing to work with the family to further investigate any cost effective alternatives to permit [claimant] to have expanded access to high speed Internet for the Dynavox."

8. Claimant filed a Fair Hearing Request, dated August 9, 2013, which stated the following reason for the request:

ACRC is denying our request to fund monthly high-speed internet service in our home which supports [claimant's] augmentative communication device. This device is [claimant's] only productive means of communication and internet service is vital to the performance and stability of the device.

9. Claimant's mother appeared as a very caring parent trying to do all she can for her child. She testified to the importance of claimant having access to his Dynavox, describing it as the opportunity to "unlock our child from his body and become a means for him to communicate with the world." She explained that claimant can exhibit serious behaviors and opined, credibly, that some of those behaviors may be linked to his frustration in not being able to communicate with others. She explained that, since he began using the Dynavox, his behaviors have improved with his ability to communicate. Tantrums and aggressive incidents are less frequent and shorter in duration.

10. Claimant previously had some experience with Proloquo, a speech-generating APP used on an iPod Touch. He was not successful with this device, but his parents concluded that it demonstrated that he might be successful using an AAC device as a possible means of communication. They began the process of obtaining the Dynavox Maestro, the model chosen for the reason that it has an onboard camera. Claimant has

issues with icons and drawings from past experiences, and has shown more interest and motivation with photographs.

11. Claimant's mother testified that claimant had limited success with the Dynavox prior to Kristen Carroll programming the device. She explained that claimant was not using the device without prompting and hand over hand instruction. He would often bite, kick and hit those working with him and was destructive with the device. During this time, the device was mainly left at school.

After Ms. Carroll programmed the device, claimant's mother stated that they saw an immediate change. The family was taught how to utilize the device and claimant showed progress at home. The device is now with him at all times. Claimant's mother explained that classroom staff is "still struggling to implement the device into this setting." She gives instruction to the speech pathologists and classroom staff that are not trained on the device, with assistance from Ms. Carroll.

12. Claimant's mother contends that high speed Internet is crucial for the Dynavox to "be used at its optimum level." She described incidents of using Dynavox phone support to address programming problems and was told the issues could have been resolved much quicker through Internet support rather than the technician explaining things over the phone. She also contends that, without high speed Internet, the device "stays stagnant" until programmed by CTEC. "There is no reasonable way to do it without the Internet; there is just not enough time in the day or free flexible (when issues arise, a new real photo icon needs to be added, the system glitches, he has a new folder that needs to be added, etc.) hours" for claimant's mother, Ms. Carroll, or school staff to accommodate this.

She suggested that she could utilize remote tech support every business day from 6 a.m.-7:15 a.m., before claimant starts his school day. She could also use the Internet in the evenings to upload images and videos.



13. Claimant's mother testified that accessing the Internet through the community would not be appropriate. There are limited resources in their remote location and businesses are only open for designated hours, may offer limited privacy for using the phone during Internet tech support, or may require purchases. She also explained that the family has very limited friend and family support. They are also Jehovah's Witnesses and "are to use judgment and consideration of others, and therefore are admonished to use outside resources available and not to rely on others in the congregation if there is another means."

14. Claimant's family had high speed Internet service in the home for six months at a trial rate of \$19.99 per month. When the trial ended and the rate increased to \$69.99, they determined that the new rate was not feasible. The parents contacted Comcast to inquire about low cost services and were informed that their income did not allow them to qualify for a reduced rate. The parents contend that they cannot afford Internet access but that contention was not substantiated.

Claimant's father is employed as a machinist/engineer. His parents receive 272 hours per month of In Home Supportive Services (IHSS) through El Dorado County, and are claimant's IHSS workers.

15. The family currently has Internet access through their iPhones.

16. Claimant's family did not request assistance with Internet funding from the school district, nor did they meet informally with ACRC to discuss alternatives.

17. Kristen Carroll, M.A., CCC-SLP, is the Speech-Language Pathologist with Communication Technology Education Center (CTEC), A Program of the Supported Life Institute that has been assisting with claimant's Dynavox. She testified that she first worked with the Dynavox at claimant's school. She explained that the staff did not have much experience with the device and wanted help to incorporate it into the school day. She shared the process of customizing and programming the device and noted that claimant

was particularly motivated by pictures and enjoys sea creatures. The classroom teacher relies on claimant's mother for programming educational materials to address topics being taught at school.

She testified to the many benefits of in-home Internet access including allowing remote access for tech support, software updates, downloading books, videos and music. She opined that it would be more efficient to have access within the home, rather than using alternative resources for Internet access.

18. All parties were in agreement that claimant wants and needs communication with the world around him and that access to communication is crucial to lowering behaviors. ACRC does not dispute the severity of his developmental disabilities, his apraxia, or his need for the Dynavox.

19. ACRC remains willing to work with the family to further investigate any cost effective alternatives to permit [claimant] to have expanded access to high speed Internet for the Dynavox.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a), provides:

(a) 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 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.

3. Section 4512(b) provides, in pertinent part:

“Services and Supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The 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, where appropriate, the consumer’s family, and shall include consideration of a range of services 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

4. Section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
  - (2) Utilization of generic services and supports when appropriate.
  - (3) Utilization of other services and sources of funding as contained in Section 4659.
  - (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.
5. Section 4646.5, subdivision (a)(4), states:

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

- 6. Section 4512, subdivision (e), defines "natural supports" to mean:

[P]ersonal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

- 7. The claimant has the burden of proof in this matter. He has not sustained that burden. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid. Code, § 500.) It could not be determined by a

preponderance of the evidence that ACRC is required to fund the full monthly cost for high speed Internet service in claimant's family home at this time.

High speed Internet access in the family home is not required for operation or maintenance of claimant's Dynavox. The evidence showed that software updates are needed approximately every other month. Data backup and remote tech support require Internet access but there was no evidence that it is required in the home. There is no question, and the evidence clearly demonstrated, that availability of high speed Internet in the family home would be extremely useful, convenient, and time saving. In fact, many families choose to fund such service. However, as beneficial as it might be, it was not established that ACRC is responsible for funding that cost at this time. It was not clear that use of generic services, natural supports, or other resources were exhausted, or that ACRC funding would be a cost-effective option.

ACRC remains willing to work with the family to further investigate any cost-effective alternatives to permit claimant to have expanded access to high speed Internet for the Dynavox.

## ORDER

The appeal of claimant Ethan W. is denied. It is recommended that the parties reconvene the planning team to discuss what alternatives may be available to meet claimant's needs in light of the foregoing.

DATED: November 12, 2013

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SUSAN H. HOLLINGSHEAD

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**