

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2014100928<sup>1</sup>

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 18, 2014, in Concord, California.

Claimant's mother represented Claimant, who was not present.

Mary Dugan, Fair Hearing and Mediation Specialist, represented Regional Center of the East Bay (RCEB).

The record closed on November 18, 2014.

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<sup>1</sup> This matter had been consolidated for hearing with OAH No. 2014100837, but that matter resolved prior to taking evidence. A Notice of Resolution was signed by both parties and filed on November 18, 2014.

## ISSUE

Whether RCEB is required to provide Claimant with an additional ABA program while he attends a facility-based day care program which includes such programming.

## FACTUAL FINDINGS

1. Claimant, born March 20, 1997, is currently 17 years old. He receives services from RCEB pursuant to a diagnosis of autism in accordance with his Individual Program Plan (IPP). Claimant lives with his mother and younger brother, who is also an RCEB consumer.

2. Claimant resided out of the family home in a group home setting for several years, until August of 2013. Since he moved home, his mother has sought to provide the best care for Claimant, as well as care which allows her to maintain her employment. Claimant currently attends school, returning home afterwards. During the after-school hours, care has been provided by an RCEB vendorized agency, as well as county-provided In Home Support Services (IHSS). In addition, Claimant and his family receive applied behavioral analysis (ABA) services from RCEB ABA vendor "Goals for Autism." For that program, a clinical supervisor oversees a worker who works directly with Claimant and his mother on behavioral issues.

3. RCEB and Claimant's mother agreed to explore a facility-based after school care program for Claimant. Application has been made to NY Learning Center, a specialized day care program convenient to Claimant's school, but it is unknown whether Claimant has been accepted. If he is, RCEB will fund the program. NY Learning Center provides Intensive Behavioral/Social Skill Services (IBSS) to participants. IBSS is an intensive ABA program, provided for consumers with severe behavioral challenges and intense social skill development needs.

4. Claimant's mother filed a fair hearing request on Claimant's behalf. She requested that in addition to funding facility-based day care, RCEB continue to fund Goals for Autism. She envisions that Goals for Autism would continue to work with Claimant while attending NY Learning Center. RCEB disagreed with the request, and this hearing followed.

5. Claimant's mother is extremely concerned about both the transition to NY Learning Center and Claimant's safety there. NY Learning Center provides a 1:3 staffing ratio, and Claimant's mother believes that he needs 1:1 attention. Claimant has very problematic behavior issues, which are exacerbated by his physical size. At age 15, Claimant was over six feet tall and weighed 180.5 pounds. He has not been observed to be aggressive against staff or peers, but he has a history of self-injurious behavior when upset, that includes hitting his head against the wall. Changes in routine are particularly challenging and upsetting for Claimant, and he has a history of "bolting." On one occasion, his in-home caregiver fell asleep and Claimant left the house, winding up on a freeway, where he was stopped by a police officer, handcuffed, and placed in a police car. Claimant continues to act out that experience, including by placing his hands behind his back as if to be handcuffed, and becoming very agitated. As a result of her knowledge of Claimant, his mother believes that he needs 1:1 staffing for his safety.

6. In support of her request, Claimant's mother provided an evaluation conducted November 4, 2014, by RCEB psychiatrist Tamar Meidav, M.D. Following a meeting with Claimant's mother and Claimant, and a review of Claimant's records, Dr. Meidav made notes on a form regarding his pertinent history, examination, diagnostic impressions, recommendations, and follow-up plan. The handwriting on the document is at times difficult to read. In the recommendations section, it appears Dr. Meidav wrote the following:

2) Psychosocially [arrow] – care Parent Network referral -  
?IHSS?? [arrow] ADT evaluation – Crisis Response Project  
[unreadable] CBT referral – IBSS if using Goals for autism  
behvst? – Consider if wraparound useful in future – Living  
options when older [arrow] SLS w brother.

7. Claimant's mother represented that Dr. Meidav agreed with her that Goals for Autism should be provided in addition to NY Learning Center. A close reading of the recommendations does not fully support this representation. Nonetheless, Claimant's mother's statements that Dr. Meidav was supportive of her request and agreed with her that 1:1 learning from a familiar face would support his success at NY Learning Center are accepted.

8. Jennifer Holly is employed by Goals for Autism, and is Claimant's clinical supervisor. She has seen him approximately three hours each week for the last nine months. Holly has a degree from the University of Cincinnati with a foundation (emphasis) in ABA analysis. Holly testified that Claimant has been doing well with his ABA program, but there have been significant problems due to consistency of caregivers. Goals staff has worked to train the caregivers, but they often leave, preventing consistent care. Holly opined that regardless of the setting, the care should be consistent, and that Claimant needs to have 1:1 care at this time for his safety. She has observed his self-injurious behavior to escalate quickly; for example, from pounding on his chest to pounding his head against a wall. This type of behavior is more common when there are changes in his routine.

## LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act:

[I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

*(Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically: "[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community . . . . Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers." (Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place: "A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP]." (Welf. & Inst. Code, § 4648, subd. (a)(3).)

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects. Regional centers are specifically charged to provide services in the "most cost-effective and beneficial manner" (Welf. & Inst. Code, § 4685, subd. (c)(3)) and with "the maximum cost-effectiveness possible" (Welf. & Inst. Code, § 4640.7, subd. (b)).

5. The provision of ABA services by regional centers is regulated by statute. ABA and IBSS are defined by statute, as follows:

“Applied behavioral analysis” means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.

(Welf. & Inst. Code, § 4686.2, subd (d)(1).)

“Intensive behavioral intervention” means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for not more than 40 hours per week, across settings, depending on the individual’s needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.

(Welf. & Inst. Code, § 4686.2, subd. (d)(2).)

6. The statutes define IBIS as a more intensive and comprehensive form of ABA. RCEB is required to provide services consistent with the cost-effective use of public funds; clearly, it cannot fund duplicative services. To provide an ABA program in addition to an IBIS program would be duplicative and contrary to the statutory requirements. In this case, it would also be premature. Claimant has not yet been accepted at NY Learning Center. In the event that he is, a program will be planned for him. It may be that in order to transition him into the program successfully, it will be determined that a greater staffing ratio should be implemented at first. But it is difficult

to foresee the need or justification for an overlapping program designed for in-home care with the same goals as the facility-based program.

7. The evidence demonstrated that the decision of RCEB staff not to fund both the NY Learning Center and the Goals for Autism program simultaneously was correct. Accordingly, Claimant's appeal will be denied.

## ORDER

Claimant's appeal is denied.

DATED: November 19, 2014

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MARY-MARGARET ANDERSON

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.