

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

SERVICE
AGENCY.

OAH No. 2015040586

A Proceeding Under the Lanterman
Developmental Disabilities Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Alhambra on October 14 and 29, 2015. Service Agency was represented by Judy Perez, Fair Hearing Coordinator. Claimant was represented by his parents.

The Service Agency presented Exhibits 1– 24 and the testimony of the service coordinator and the consumer services chief. Claimant presented Exhibits 50 - 123, and the testimony of the mother and father. The parties' exhibits are hereby admitted into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i).

Oral and documentary evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on October 29, 2015, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should receive

reimbursement or retroactive payments of rental and/or utility payment assistance from the Service Agency for the months of June and July 2009, August 2009 through December 2009, and July 2013 through November 2014.

FACTUAL FINDINGS

1. Claimant is a 30-year-old, conserved adult who has been diagnosed with intellectual disability. He has also been diagnosed with Attention Deficit Hyperactivity Disorder, Autism, and Anxiety Disorder. Based on his diagnosis of intellectual disability and the developmental delays attendant thereto, claimant has been eligible for services from the Service Agency for an undetermined number of years. He has received regional center services including, but not limited to, personal assistance hours, independent living skills training, supported living services, and rental payment assistance.

2. Claimant is ambulatory, uses public transportation, and is active in his community. He walks to the train station, his job at a nearby supermarket, and his volunteer activities. At home, he can perform most of his personal self-help tasks but needs prompts or reminders for some of his tasks. He can make purchases of personal items and groceries, prepare some of his meals, make his bed, and perform some household tasks. On a monthly basis, claimant receives Supplemental Security Income (SSI), In-Home Supportive Services (IHSS) hours, and a federal housing subsidy. In or about 2004, when he was 19-years-old, claimant attained a certificate of completion from San Marino High School and began working at a volunteer job arranged by his mother. Three years later, he began working at the supermarket. Over the past several years, claimant's parents have sought services and provided for their son so that he can be an independent adult.

2008

3. From November 2007 through May 2008, claimant attended the Independent Living Skills Program at Taft College near Bakersfield. The Service Agency provided the funding for claimant to attend the residential program. In June 2008, claimant returned home because he was homesick and was not able to complete the residential program. In 2008, claimant's parents purchased a small, two-bedroom house in Pasadena (Pasadena house) from a bank; the house was in foreclosure. In or about July 2008, claimant moved into the Pasadena house with a roommate.

4. On July 7, 2008, the Service Agency held an Individual Program Plan (IPP) meeting with claimant and his father at the Pasadena house purchased by the parents. At that time, claimant was already living in the house with a roommate, who was a friend and also a consumer of the Service Agency. Claimant was working at the supermarket located five blocks from his home. According to the IPP, claimant was nervous about living alone in the house and was afraid of many things. At home, claimant cooked simple meals and engaged in gardening and wood crafting activities. At the IPP meeting, the Service Agency agreed to continue providing claimant with independent and supportive living services. One of claimant's goals was to learn to live independently. Following the IPP meeting, an IPP document was signed by the parties. This 2008 IPP did not show that claimant's parents asked for financial assistance for their son to live in the Pasadena house. He did have a roommate at the time.

5. Claimant lived in the Pasadena house with the roommate for five months. The roommate paid rent of \$900 per month plus a share of the cost of utilities.

2009

6. (A) In January 2009, the roommate moved out after he and claimant had an argument. Claimant suffered a broken arm during the argument. His parents asked the Service Agency for financial assistance to help claimant pay the rent and utility expenses for living in the Pasadena house since his roommate had moved out of the home.

(B) In January 2009, the Service Agency approved the payment of rental and utility assistance of \$1,200 per month for claimant. The rental and utility payment assistance was to be paid until claimant obtained a monthly rental subsidy or voucher from the Rental Assistance Program of the Pasadena Community Development Commission, a federally-funded agency that assists qualified families or individuals with their rent obligations by providing Housing and Urban Development (HUD) section 8 rent subsidies.

7. (A) Three months later, on March 18, 2009, the parties held an IPP meeting to prepare an addendum to the 2008 IPP that reflected claimant's change of circumstances in his living arrangements and the parents' request for financial assistance. Claimant was living independently in the Pasadena home after the roommate had moved out of the house. His parents stated that claimant had a difficult time paying his share of the rent for the house, which was \$900, and that he could not afford to pay the full rent for the house by himself. The Service Agency formally approved the provision of supplemental rent assistance of \$900 per month for the three months of February through April 2009 under a money management service code and other rental assistance of \$300 per month for the four months of February through May 2009. Behavioral services were also proposed for claimant so that he might be able to reduce his anxiety while living independently and to learn to live with a roommate.

(B) In a letter dated March 31, 2009, the Supervisor of the Service Agency's Home and Independent Service Unit wrote to claimant's mother and stated, in part, that the Service Agency's agreement to provide \$900 per month to supplement the rent for claimant's house due to the departure of his roommate and to provide \$300 per month in supplemental funds was a "limited time agreement." The supervisor also told claimant's mother that most regional center consumers, who live independently, resided in homes that they can afford and that the Service Agency did not usually pay the mortgages of other persons. The supervisor noted that claimant's parents had bought the Pasadena house where claimant was living.

8. (A) On April 2, 2009, claimant's mother signed a Vendor Applicant Orientation form in which she acknowledged receiving an application for vendorization and related materials. The mother submitted the vendor application to the Service Agency which then approved her to be her son's vendor of money management services so that she could receive rental assistance payments under a miscellaneous service code.

(B) Beginning on April 8, 2009, the Service Agency and claimant's mother entered into Payment Agreements under which she was to receive \$900 per month in rental payment assistance and/or \$300 per month in utility payment assistance that was provided to her son. The \$300 monthly utilities payments were supposed to be for personal items (\$100), groceries (\$100), and utilities (\$100). The payments were justified as the provision of money management services to claimant. Under each Payment Agreement, claimant's mother as the parent vendor was required to submit Provider of Care Claim forms with a copy of monthly ledgers documenting the provision of the service of rental and utility payment assistance.

(C) On or about April 13, 2009, the parties entered into a Payment Agreement for claimant to receive \$900 per month in rental payment assistance for the months of February through April 2009 and \$300 per month in utility payment assistance for the months of February through May 2009. On April 27, 2009, the Service Agency agreed to provide \$900 of rental assistance for the months of May through July 2009.

(D) On or about June 9, 2009, the parties entered into a Payment Agreement for claimant to receive \$900 per month in rental payment assistance for the months of May through July 2009.

(E) In August and September 2009, claimant's mother submitted Provider of Care Claim forms to the Service Agency for payment for providing money management services or rental and utility payment assistance of \$900 per month to claimant for May 2009 through July 2009. The Service Agency then paid claimant's mother the sum of \$2,700 for rental payment assistance for these three months.

9. Based on the documentary evidence presented by the parties, the Service Agency provided claimant with rental and utility payment assistance of \$1,200 per month for the months of February 2009 through May 2009. In addition, the Service Agency provided claimant with rental payment assistance of \$900 per month for the months of June and July 2009. The Service Agency did not provide any rental or utility assistance to claimant in January 2009; he had a roommate during that month.

10. On July 22, 2009, the Service Agency held an IPP meeting with claimant's parent for their son, who was now 24-years-old and living on his own at the Pasadena house. He was working at the supermarket and receiving job coaching services from Villa Esperanza Supportive Employment. Claimant was still

nervous when he was alone in the house and wanted a roommate. Participants in the IPP meeting decided that claimant's SLS provider and his family would "assist" him in finding a roommate. The Service Agency was providing funding for SLS for claimant. His SLS provider was People's Care, which was providing him with independent living skills training in the areas of personal hygiene, household chores, money management, community safety, grocery shopping, nutrition and meal preparation, emergency preparedness, and social recreation activities. Goals for claimant included living independently with appropriate supports and learning to be more independent and to stay at his home without calling his parents so often.

11. It was not established by the July 22, 2009 IPP that claimant's parents made a request of the Service Agency for continued funding of monthly rental payment and utility payment assistance or that the Service Agency refused to provide such assistance to claimant. It was not established that the parents requested a live-in caregiver for their son. Claimant's parents did not file a fair hearing request to appeal any decision or offer of services made at the July 22, 2009 IPP meeting.

12. The assistance for monthly rental payment and monthly utility payment ceased at the end of July 2009. The Service Agency and claimant did not enter into any new Payment Agreements for the payment of monthly rental or utility payment assistance for the months of August 2009 through December 2009. Claimant did not request authorization for such payments and did not receive rental assistance from the Service Agency during the last five months of 2009.

13. Four months later, on November 11 and December 14, 2009, claimant's mother asked the Service Agency for an extension or continuation of

the rental and utility payment assistance until her son's application for a HUD section 8 rental subsidy was approved by the PCDC. The Service Agency asked the mother to submit documentation of claimant's application for the rental subsidy and her vendorization application for the money management services.

2010

14. (A) In or about January 2010, the Service Agency approved claimant's request for rental assistance payment of \$900 per month and utility payment assistance of \$300 per month for the six-month period from January through June 2010. Claimant's mother was required to complete Payment Agreements as a parent vendor of money management services. She signed Payment Agreements in January and November 2010.

(B) On January 7, 2010, the Service Agency sent to claimant's mother a Payment Agreement for money management services at the rate of \$900 per month for rental payment assistance for the period from December 2009 through May 2010. Claimant's mother had returned a payment agreement and indicated that \$300 should be added to the amount. The Service Agency told her that the revised payment agreement could not be processed in that manner and that she should contact the service coordinator.

(C) On or about February 2, 2010, the Service Agency and claimant's mother as a parent vendor entered into a Payment Agreement for \$300 per month of utility payment assistance for the six months from January through June 2010. In April and July 2010, claimant's mother submitted Provider of Care Claim forms to the Service Agency and obtained payment of rental and utility payment assistance.

15. On January 6, 2010, the Pasadena Community Development Commission (also commission) sent a Verification of Stipend Payments to the

Service Agency. Said commission advised the Service Agency that claimant had applied for a rent subsidy and the commission needed verification of his income from the Service Agency. The service coordinator completed the Verification of Stipend Payment, stating that claimant received \$1,200 per month as a one-time service for rent and utility payment assistance because he was having financial difficulties. The service coordinator wrote that the regional center payments would not continue if claimant received a rent subsidy from the commission.

16. (A) On an undetermined date in January 2010, claimant received approval to receive a HUD section 8 rent subsidy or voucher. He began receiving a rent subsidy of \$644 per month based on his rental of one bedroom of the Pasadena house from his parents.

(B) On March 14, 2010, claimant's parents submitted requests for accommodation with Pasadena Community Development Commission in order to obtain waivers or exceptions for claimant to rent from his parents and an increase in the section 8 rental assistance subsidy based on the rental of the second bedroom in the Pasadena house to a caregiver for claimant. The parents were advertising for a live-in caregiver for their son.

17. On April 6, 2010, claimant's parents requested that the Service Agency extend or approve the payment of rental and utility assistance for their son for three more months. On April 8, 2010, the service coordinator advised claimant's mother that the rental and utility payment assistance had been previously approved as a money management service on a one-time basis for six months from January through June 2010. The service coordinator indicated that the Service Agency had not approved continuance of the assistance until a roommate could be found for claimant.

18. On July 23, 2010, the Service Agency conducted an annual IPP

meeting for claimant. The Service Agency prepared an IPP document which was signed by claimant and his mother. At the time of this IPP meeting, claimant was living on his own in his home in the Pasadena house, working at a nearby supermarket, and volunteering at the Y.M.C.A., Ronald McDonald House, and Huntington Memorial Hospital. He was receiving SLS from Easter Seals of Pasadena. He was receiving SSI as well as IHSS for 91 hours per month. Claimant's mother was his IHSS worker. His SLS aide accompanied or took claimant to his volunteer activities after his mother made sure that claimant was ready to leave on time. One of claimant's goals under this IPP was to continue living independently with supports. Claimant was still nervous about living alone in the Pasadena house but he was doing well. He wanted a roommate, preferably a young male, but his mother believed that her son was not ready to have a roommate. Participants in the IPP meeting decided that claimant's SLS provider and his family will "assist [claimant] in searching for a roommate." Because their son did not have a roommate, claimant's parents wanted him to continue receiving financial support from the Service Agency with his rent and utilities. The Service Agency committed to providing funds to claimant to help pay his rent and utilities for six months only as a money management service. Claimant's parents were expected to submit receipts of rent and utility payments with their Provider of Care Claim forms to obtain payment or reimbursement of the rental and utility payment assistance. It was not established that, during the July 23, 2010 IPP meeting, claimant's parents requested the Service Agency or the SLS vendor to find or place a live-in caregiver for their son in the Pasadena house.

19. In September 2010, claimant's parents arranged for a family friend named Jeff Knox to live in the Pasadena house as claimant's roommate or house guest. Knox was homeless at the time and needed a place to stay. Knox paid rent

of \$450 per month and stayed through the end of the year and continuing into the following year 2011.

20. For the year 2010, the Service Agency paid rental and/or utility payment assistance to claimant of either \$900 or \$1,200 per month for the months of January through June or August 2010 pursuant to service authorizations. The parties entered into Payment Agreements for the so-called money management services for the months of January through December 2010 but the evidence showed that claimant's mother filed Provider of Care Claim forms to receive payment for only the first eight months of the year 2010.¹ In any case, claimant's parents are not seeking reimbursement or payment of any rental or utility payment assistance for their son for 2010.

2011

21. On January 31, 2011, the Service Agency issued a Notice of Proposed Action, proposing the denial of claimant's request for money management service in the form of rental payment assistance of \$900 per month and utility payment assistance of \$300 per month. The Service Agency determined that, because claimant had a roommate, Knox, living in the house since September 2010, claimant's family was considered a generic resource and natural support and should help him with his rental obligations. In addition, the Service Agency indicated that it was in process of approving parent-coordinated personal assistance (PCPA) services for claimant while claimant's mother was

¹ The record contains an indication that the Service Agency may have provided claimant with \$900 of rental assistance payments in November and December 2010 but the evidence of these payments was not clear.

completing the process for becoming a parent vendor for SLS for her son. SLS had been provided by a vendor which was terminated in December 2010. In addition, claimant was receiving SSI, IHSS hours, and the HUD section 8 rent subsidy or voucher. In the NPA, the Service Agency indicated that a regional center can make rent, mortgage, or lease payments or pay household expenses of a consumer receiving SLS only under certain conditions set forth in Welfare and Institutions Code section 4689.² Claimant did not file a fair hearing request to appeal this decision of the Service Agency to deny rental and utility payment assistance.

22. In January 2011, the Service Agency agreed to fund 217 hours per month of PCPA services for claimant on a temporary basis until claimant's mother completed the SLS vendorization process. From January 2011 through December 2012, claimant's mother provided PCPA service hours to her son through a staff of four to six persons.

23. From January 2011 through November 2011, Knox continued to live in the Pasadena house with claimant as a roommate. Knox paid rent of \$450 per month. In or about November 2011, Knox moved out of the Pasadena house. Claimant's parents also sold the family's long-time home in San Marino and purchased a new home. In December 2011, the parents moved into the Pasadena house with claimant pending the close of escrow on the purchase of on their new home.

24. For the year 2011, the Service Agency did not provide claimant with

² It was not established that the Service Agency followed or abided by the conditions set forth in Welfare and Institutions Code section 4689 in denying or agreeing to provide rental and utility payment assistance in this matter.

rental payment or utility payment assistance. Claimant is not seeking any reimbursement of rental payment or utility payment assistance for 2011 in this proceeding.

2012

25. In January 2012, claimant's parents lived another month in the Pasadena house with claimant while waiting for escrow to close on their new home. In February 2012, the parents moved into the new home. Claimant became upset when his parents left the Pasadena house. He stayed with his parents in their new home for two or three days per week over the next four months until May 2012.

26. In June 2012, claimant's parents arranged for their daughter Meagan to live with claimant in the Pasadena house as her brother's roommate and live-in caregiver. Meagan had just graduated from the University of California at Berkeley and she reluctantly agreed to live with claimant for one year. Because claimant now had someone living in the second bedroom of his house, he qualified for a higher HUD section 8 rental subsidy and began receiving approximately \$1,200 per month from Pasadena Community Development Commission. In addition, claimant's mother as a PCPA services vendor paid her daughter Meagan to supervise claimant at night and she sought reimbursement from the Service Agency for the payments made to the daughter as PCPA service hours.³ Meagan lived in the Pasadena house with claimant for the remainder of

³ In a Decision in Case Numbers 2012120506 and 2013011002 dated September 13, 2013, the fair hearing request of claimant's parents for reimbursement of payments made to their daughter to live with and care for

the year 2012. It was not established whether Meagan paid rent or paid for utilities while living in the Pasadena house.

27. On May 23, 2012, the Service Agency issued a Notice of Proposed Action, proposing the denial of claimant's request for money management service in the form of rental assistance of \$600 for the two months of May and June 2012. The Service Agency determined that it was not responsible to provide "gap funding for rental costs due to the fact that [claimant did] not have a roommate." The Service Agency indicated that claimant's portion of the rent was covered by the generic resources of SSI and the HUD section 8 rental subsidy and suggested that claimant's parents as the owners of the Pasadena house were financially responsible to pay for its costs. The Service Agency stated that a person living on his own must consider whether he can afford his living situation. The Service Agency also indicated that, while claimant was receiving PCPA services while living in his own home, the regional center considered his living situation to be supported living. The Service Agency had been waiting since 2009 for claimant's mother to complete the vendorization application and process to become her son's SLS provider. Two previous SLS providers had been terminated and a SLS assessment was pending so that SLS could be funded for claimant. Claimant did not appeal this decision of the Service Agency to deny the provision of rental and utility payment assistance.

28. (A) On July 9, October 16, and December 18, 2012, the Service Agency held IPP meetings with claimant's parents and prepared a draft document for claimant's 2012 IPP. The parents disagreed with the language and content of

claimant in excess of the authorized 217 hours monthly of parent-coordinated personal assistance hours was denied. (Exh. 18.)

the draft IPP document prepared by the Service Agency and did not sign it.⁴

(B) The draft IPP documents showed that, as of the dates of the IPP meetings in 2012, claimant's sister Meagan was living with him in the Pasadena house as his roommate and personal assistant or live-in caregiver. He was happy that his sister was living with him and was not calling his parents as much as before his sister moved in with him. Claimant was not receiving SLS because the Service Agency was waiting for claimant's mother to complete the vendorization process to become her son's SLS provider. Claimant's mother was still vendored to provide PCPA services to her son for 217 hours per month. The parents had requested that claimant have a live-in caregiver for 10 hours per day. The draft IPP document also indicated that the parents wanted a new housemate for claimant by September 2014 and, if he did not have a paying roommate by then, then the parents stated that he would need assistance with paying the rent for the Pasadena house to remain living there.

29. After the parents submitted a letter from claimant's psychiatrist, which stated that claimant needed a live-in caregiver to reduce his anxiety, the Service Agency agreed to fund an additional eight hours per day of PCPA services for him presumably in lieu of a live-in caregiver. The parents informed the Service

⁴ In an email dated July 17, 2013, claimant's father asked the service coordinator to prepare an IPP document that completely and accurately reflected their discussions over the course of the three IPP meetings in 2012. The father stated that the IPP should reflect their service requests, including the request for live-in caregiving support; the need for claimant's mother to be the SLS provider; and claimant's progress while under his mother's SLS support and direction. (Exh. 77)

Agency that claimant was not able to be alone in his Pasadena home. He became paranoid and anxious when alone. When told not to call his parents so often, claimant cried and locked himself in his bedroom. Every morning, his mother came to the Pasadena house to provide supportive services and to remind claimant to take his medication which was prescribed by his psychiatrist. The Service Agency advised the parents that a change in IHSS worker might be warranted so that claimant would not be so attached to his mother.

30. The draft IPP document for 2012 did not specifically show that the parents asked the Service Agency for rental assistance payment or utility payment assistance for claimant during these IPP meetings in 2012. However, the Service Agency's issuance of the Notice of Proposed Action denying rental assistance, as set forth in Finding 27 above, demonstrated that the parents did, in fact, ask for rental assistance early in the year 2012.

31. On October 22, 2012, the Service Agency issued another Notice of Proposed Action, proposing the denial of claimant's request for funding for supplemental rental or mortgage costs of \$900 per month as a money management service. The reasons for the proposed action were the same reasons that the Service Agency gave in the May 23, 2012 Notice of Proposed Action. Claimant's parents did not appeal this decision denying rental assistance and did not contest the provision of extra personal assistance hours instead of a live-in caregiver.

32. In a letter dated November 16, 2012, claimant's psychiatrist, Aura Marie Pawley, M.D., of San Marino Psychiatric Associates, informed the Pasadena Community Development Commission that she had conducted an assessment of claimant's abilities. Dr. Pawley opined that the greatest obstacle to claimant achieving independent living status was his severe anxiety disorder and that a

primary contributing factor to his anxiety was the fact that he had been living alone for substantial periods of time. Dr. Pawley recommended that claimant have a caregiver live with him and that it would be ideal if that person was his sister with whom he was close. Claimant's sister was living with claimant at the time and providing him with supportive services.

33. For the year 2012, the Service Agency did not provide claimant with rental payment or utility payment assistance. Claimant did not appeal the Service Agency's denials of such assistance in 2012. In this proceeding, claimant is not seeking any reimbursement or payment of any rental payment or utility payment assistance for 2012.

2013

34. In the year 2013, claimant's sister Meagan continued living with him in the Pasadena house from January through July. She helped to supervise her brother as his roommate and live-in caregiver. After his sister moved out in July 2013, claimant lived alone in his house and did not have a roommate or housemate for the remaining five months of the year. It was not established that, during the first six or seven months of 2013, during which time their daughter lived with claimant, the parents requested any rental payment or utility payment assistance from the Service Agency.

35. On July 17, 2013, claimant's father reopened discussion with the Service Agency about his son's IPP for 2012, which remained unsigned. In an email to a Service Agency manager, the father indicated that he wanted to finalize his son's IPP for 2012 but that the draft document was not complete and did not reflect the service requests made on behalf of claimant during the three IPP meetings in 2012, including requests for a live-in caregiver, SLS, and an updated qualifying diagnosis of autism. The father also indicated that, because

claimant's current SLS agency was not able to provide proper services, the mother wanted to assume the role of providing SLS to their son at the pay rate for PCPA services. In his July 17, 2013 email, claimant's father did not request rental payment or utility payment assistance from the Service Agency.

36. It was not established that, in the year 2013, claimant's parents requested the Service Agency provide or fund rental payment or utility payment assistance for their son. During the hearing, the parents presented a partial draft of an IPP for 2012 (Exh. 81), which had been revised and prepared by them. The parents asserted that the draft IPP document constituted evidence that they had made a request for rental and utility payment assistance in 2013. The partial draft states that the goal or objective for claimant's living arrangements was:

To receive financial assistance to cover the cost of the room my live-in caregiver is using (and has been using) until [claimant] find[s] a peer housemate to move and pay the rent.

This draft IPP document states that the Service Agency is to provide "financial assistance of \$900/month until a peer housemate moves in and begins paying rent." Because the goal for claimant's living arrangement has a date of "4/30/14," the parents claimed that the draft IPP document was presented to the Service Agency in 2013 and shows that they made a request for rental payment and utility payment assistance in 2013. The contentions of claimant's parents were not persuasive. The draft of the IPP document is not a complete document but a draft and no evidence was presented to corroborate that the partial draft was actually given to the Service Agency or represents the discussions of the parties at any IPP meeting.

37. In or about September 2013, claimant's SLS provider hired a live-in caregiver to supervise and assist claimant for five nights per week. The caregiver arrived at the Pasadena house at 11:00 p.m. and stayed until 7:00 a.m. The caregiver slept at the house during the night shifts.

38. On November 18, 2013, claimant's mother complained to the Service Agency's Chief of Consumer Services about the failures of the Service Agency and the SLS provider to find a housemate for her son and the failure of the Service Agency to document claimant's requests for services in the IPP documents. The mother asserted that claimant had been asking for a housemate for six years. She indicated that the Service Agency had paid rental assistance for six months after her son's roommate left, but then it stopped the rental assistance even though the SLS provider had not found a housemate for him. Claimant's mother pointed out that her daughter had been her brother's housemate and caregiver for over one year, but she had moved out of the house.

39. (A) For the year 2013, the Service Agency did not provide, and claimant did not receive, rental payment or utility payment assistance. The evidence did not demonstrate that claimant's parents requested such assistance from the Service Agency in 2013 either before or after their daughter moved out of the Pasadena house and stopped being her brother's roommate and live-in caregiver.

(B) Claimant's parents noted that, in 2013, the Service Agency did not issue any notices of proposed action denying requests for rental and utility payment assistance. The parents ostensibly argued that the lack of any notice of proposed action supported their position that their son should have received rental and utility payment assistance during that year. Their argument was not persuasive inasmuch as no probative evidence was presented that the parents had

requested rental and utility payment assistance in 2013. In this fair hearing matter, claimant is seeking reimbursement or payment of rental and utility assistance of \$1,200 per month for the last five months of 2013 and eleven months in 2014.

2014

40. From January through December 2014, claimant lived by himself in the Pasadena house. He did not have a roommate or housemate for the year. Claimant did not receive any rental or utility payment assistance from the Service Agency in 2014.

41. (A) On May 12, 2014, Listo, Inc. (Listo), a SLS and ILS vendor, completed an Individual Service Plan for Independent Living Skills Services for claimant. Listo recommended that claimant receive up to 48 hours per week of independent living skills training to meet objectives in self-advocacy, domestic skills, financial management, use of public transportation, community integration, and social skills. Listo determined that training in domestic skills was important for claimant so that he could reduce his reliance on his family.

(B) On May 12, 2014, Listo completed a Report of Services for the personal assistance services that were being provided to claimant so that he could transition to a new provider as requested by his mother. The mother was also asking for personal assistance support for claimant during the day as well as overnight. Claimant needed personal assistance and supervision services at home

and in the community as a matter of his health and safety.⁵ He had incidents in the community where he made comments that were misunderstood by co-workers at his supermarket job and he needed supervision to defuse potentially volatile situations. Listo recommended that claimant receive up to 71 hours per week of personal assistance services so that he can be supervised at home to complete household chores and at night, supervision and guidance in the community, and monitoring of his social interactions to ensure his safety and independence.

(C) On December 3, 2014, Listo updated the Individual Service Plan for Independent Living Skills Services for claimant. Listo recommended that claimant continue to receive up to 48 hours per week of independent living skills training to meet objectives and growth in safety, communication skills, financial or money management, community integration, and peer interaction. One of claimant's goals in community integration and peer interaction was that he should invite peers to his home for events or dinners. Listo also recommended that claimant enroll in safety classes and participate in social events. Listo added that, in order for the service plan to be successful, claimant had to be willing to accept prompts and recommendations from staff of the independent living skills provider. If claimant's social interaction became unsafe, unmanageable, or dangerous for claimant and staff, Listo recommended that claimant's parents, regional center personnel, or law enforcement officials become involved to "neutralize such interaction[s]."

⁵ It was not established whether claimant's mother stopped being the parent vendor for her son's PCPA service hours or that the responsibility for providing the service was transferred to a vendored agency.

(D) On or about December 16, 2014, Listo posted a job listing on Craigslist for the position of a live-in caregiver for claimant. The live-in caregiver was to be employed by Listo to provide supportive services as a personal assistance service rather than as an independent living service. The caregiver would be providing personal assistance services to claimant at night and would earn overtime pay. By living in the second bedroom of claimant's house, the caregiver would make claimant eligible to receive a higher HUD section 8 rent subsidy.

42. In 2014, the Service Agency and claimant's parents held annual IPP meetings over the course of several dates including: June 23, October 8, November 12, and December 3, 10, and 17. The parties held follow-up meetings in January and February 2015. During the course of these IPP meetings, the Service Agency produced drafts of an IPP document and claimant's parents submitted additional information as well as revisions of the draft IPP document.

43. (A) As shown by the draft IPP document prepared by the Service Agency after the June 20, 2014 IPP meeting, claimant was living in the Pasadena house but he did not like living there alone. His parents wanted their son to have a housemate for companionship. As of the date of this IPP meeting, claimant was receiving a HUD section 8 rental subsidy or voucher of \$887 per month, which was to be reduced to \$723 on September 1 because he lived in the Pasadena house by himself. The rental subsidy or voucher would be increased to \$1,146 per month if claimant had a roommate or live-in caregiver. Listo and claimant's parents were trying to find someone to occupy the second bedroom of the Pasadena house. Claimant was also receiving \$697 in SSI benefits, 78 hours per month of IHSS for which his mother was the IHSS worker, and up to 71 hours of personal assistance services and 48 hours per week of independent living skills training provided by Listo.

(B) At the follow-up IPP meeting on June 30, 2014, claimant's parents made a request of the Service Agency that their son receive rental assistance until someone was found to occupy the second bedroom of the Pasadena house. The parents stated that claimant needed a housemate or roommate to help pay the rent and living expenses. The parents indicated that, without rental assistance, it was not financially feasible for claimant to continue living in the Pasadena house.

44. On July 2, 2014, claimant's mother sent documentation to the Service Agency showing that the monthly payment on the first mortgage for the Pasadena house is \$2,317.43 and that there is a second mortgage. The mother stated that the lack of a housemate in the Pasadena house "financially destroyed" the family and forced them to sell their family home in San Marino. She stated that, for six years, she and her husband had to pay \$64,800 (\$900 per month x six years) to cover the cost of the empty room in the Pasadena house. Claimant's mother contended that the Service Agency agreed to pay rental payment assistance until the SLS provider helped claimant to find another housemate. She asserted that rental assistance should be \$1,200 per month, which includes \$900 for the empty bedroom and \$300 for the gap in rent covered by the HUD section 8 rental subsidy.

45. On August 4, 2014, claimant's parents sent a revised draft of the IPP document to a Service Agency manager, Lee L. Strollo II (Strollo). (Exh. 84) Strollo prepared another draft of the IPP and sent it to claimant's parents. On August 25, 2014, the parents sent another revised draft of the IPP document to Strollo and asked, in part, about the Service Agency paying for the "live-in /overnight caregiver's rent."

46. On December 17, 2014, claimant's parents obtained an estimate of the fair market rent of the Pasadena house from Zillow. The fair market rent was

said to be \$2,073 per month. The Zillow estimate showed that claimant's parents bought the house in July 2008 for \$345,000.

2015

47. On February 4, 2015, one of claimant's parents and the regional center service coordinator signed a 2014 IPP (Exh. 9) and agreed with the outcomes and plans described in the IPP document with the following condition:

The language of Parent Proposed IPP Draft, pages 1 – 18, was accepted by [the Service Agency] and shall be used (with the exception of notes made on pages 8 – 11. These notes are attached. The balance of the Parent Proposed IPP shall be reviewed and approved at next meeting. Target dates for all goals and objectives will be established at that time, too.

On May 5, 2015, regional center manager Strollo signed and approved the 2014 IPP. For goals for living arrangements, the 2014 IPP states that the long-term goal for claimant is to continue to live in the Pasadena house with the support of a live-in caregiver or companion, receive services and supports from a SLS provider, and move into in a single apartment at Casa de Amma in San Juan Capistrano in Orange County in 2020. For objectives in living arrangements, the 2014 IPP states that the SLS agency will immediately begin recruiting for a live-in companion, the cost of which will be incorporated into the SLS service budget.

48. (A) The 2014 IPP further provides, in the Living Arrangement Option section, that claimant does not like living alone and that his parents desire that a live-in caregiver move into the Pasadena house with their son. Claimant's independent living skills had regressed in that he did not tidy his room or sort his

clothes for laundering and left dirty dishes in the kitchen sink. Claimant was spending approximately \$240 per month on groceries and \$60 per month on meals purchased at fast food restaurants.

(B) According to the 2014 IPP, claimant is receiving a HUD section 8 rental subsidy or voucher of \$723 per month. The rental subsidy would increase to \$1,146 per month if claimant has a live-in caregiver or roommate occupying the second bedroom of the Pasadena house. After reviewing information about the mortgage payment for the Pasadena house, the amount of claimant's SSI benefit payment (\$697 per month), and HUD section 8 rental subsidy or voucher, the Service Agency approved the funding of \$900 per month in rental assistance for claimant beginning on December 1, 2014. The Service Agency is to review the rental assistance every six months. The 2014 IPP provides that claimant is also receiving 36 hours per month of personal assistance services, 78 hours per month of IHSS with the mother as the IHSS worker. Claimant's parents believe that the rental assistance of \$900 per month was too low and were given their appeal rights.

49. On February 18, 2015, the Service Agency issued a Notice of Proposed Action (NPA), agreeing to provide \$900 per month of rental assistance to claimant beginning on December 1, 2014, and denying the provision of rental assistance of \$900 per month retroactively or prior to December 1, 2014. In the NPA, the Service Agency stated that it could not fund rental assistance prior to December 1, 2014, because the last active IPP was signed in July 2011 and had expired and because the regional center had issued NPA's denying rental assistance in previous years and claimant had not appealed those decisions. The Service Agency also indicated that the parties had participated in meetings for the 2014 IPP from July through November 2014 but that "it wasn't until

December [2014] when the meetings occurred every week.” The Service Agency stated that, based on their meetings, it was appropriate to provide rental assistance beginning on December 1, 2014.

50. On or about March 31, 2015, claimant’s parents filed a Fair Hearing Request in which they disagreed with the Service Agency’s denial of their request for rental assistance prior to December 1, 2014. Claimant’s parents asserted that claimant was entitled to reimbursement of the costs of the fair market rent of the empty room in the Pasadena house, utilities, Direct TV, and Wi-Fi, which would otherwise have been shared or paid by a housemate. The parents stated that, for the period from August 1, 2008, through September 1, 2010, the costs were \$1,700 per month, and, for the period from October 1, 2011, through June 1, 2012, the costs were \$1,275 per month.

51. In a letter dated April 20, 2015, claimant’s next-door neighbors advised his parents that their son had been crying every night for the past three months. They stated that they could hear claimant “sobbing from [their] house” and “[it] breaks [their] heart[s] to hear him.”

52. On June 12, 2015, claimant’s parents filed an Amended Fair Hearing Request in which they modified the dates and the amounts for which they are seeking reimbursement of rental and utility costs that claimant purportedly would have received “had there been a housemate and/or live-in caregiver residing in his house with him.” In the Amended Fair Hearing Request, the parents stated that claimant was seeking “[r]eimbursement of ‘fair market’ for empty room, utilities, groceries, and household items that would have been otherwise been received had there been a housemate and/or live-in caregiver.” The parents indicated that the pertinent dates and costs are as follows: June and July 2009 at \$300 per month for utilities [\$300 x two months or \$600], August through

December 2009 at \$1,200 per month for rent and utilities [\$1,200 x five months or \$6,000], and July 2013 through November 2014 at \$1,200 per month for rent and utilities [\$1,200 x 17 months or \$20,400]. In this fair hearing proceeding, the parents are requesting reimbursement of a total amount of \$27,000 for past rental payment and utility payment assistance.

53. In August 2015, claimant's parents found a housemate to live in the Pasadena house with their son and to help care for him. The new housemate is a "behavior teacher" at a school and has been diagnosed with autism and is high-functioning. With a housemate occupying the second bedroom, claimant qualifies for a higher HUD section 8 rental subsidy or voucher of approximately \$1,200 per month. As of August 2015, claimant does not need the rental and utility payment assistance from the Service Agency. However, he has not received the rental assistance for the months of December 2014 through July 2015 that the Service Agency agreed to provide him pursuant to the 2014 IPP signed in February 2015.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant, in part, claimant's request for reimbursement or retroactive payments of rental and utility payment assistance, based on Findings 1 – 53 above.

2. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)⁶ The purpose of the Lanterman Act is to prevent or to minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, to enable them to approximate the pattern of everyday living of non-disabled persons of the same age, and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; § 4501.)

3. 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, and normal lives. (§ 4512, subd. (b).) The determination of which services or supports are necessary for each consumer shall be made through the individual program plan (IPP) process; on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family; and, and include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in

⁶ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

meeting the goals stated in the IPP, and the cost-effectiveness of each option.

(Ibid.)

Services and supports listed in the IPP may include, but are not limited to, special living arrangements, protective services, assistance in locating a home, behavior training and modification programs, daily living skills training, paid roommates, and supported living arrangements. Nothing in section 4512, subdivision (b), is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her IPP. *(Ibid.)*

4. Chapter 5, article 2, of the Lanterman Act (§§ 4640 et seq.), sets forth the responsibilities of regional centers. Section 4646, subdivision (a), provides that it is the Legislature's intent to ensure that the IPP and the 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 consumer and their families be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

The IPP is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, conservator, or legal representative, shall have the opportunity to actively participate in the development of the IPP. (§ 4646, subd. (b).) The IPP shall be prepared jointly by the planning team. Decisions regarding

the consumer's goals, objectives, and services and supports that will be included in the consumer's IPP and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, conservator, or authorized representative at the IPP meeting. (§ 4646, subd. (d).) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at an IPP meeting, then a subsequent IPP meeting or meetings shall be convened. (§ 4646, subd. (f).)

Prior to implementation of an IPP, an authorized representative of the regional center and the consumer or, where appropriate, his or her parents or conservator, shall sign the IPP. If the consumer, or the consumer's parent or conservator, does not agree with all components of the IPP, he or she may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or the consumer's parent or conservator. If the consumer, or his or her parent or conservator, does not agree with the IPP in whole or in part, he or she shall be sent written notice of his or her fair hearing rights pursuant to section 4701. (§ 4646, subd. (g).)

5. The planning process for the IPP described in section 4646 shall include, in part, the gathering of information and conducting of assessments; statement of goals based on the consumer's needs, preferences, and life choices; and a statement of specific and time-limited objectives for implementing the consumer's goals and addressing his or her needs. (§ 4646.5, subds. (a)(1) and (2).) In addition, the planning process must include 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 IPP

goals and objectives, and identification of providers of services responsible for attaining each objective, including vendors, contracted providers generic service agencies, and natural supports. (§4646.5, subd. (a)(5).)

The IPP planning process shall also include a schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled and that consumers and families are satisfied with the IPP and its implementation. (§ 4646.5, subd. (a)(8).)

6. Each regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model in which each consumer shall have a designated service coordinator responsible for providing or ensuring that needed services and supports are available to the consumer. (§ 4640.7, subd. (b).) Service coordination shall include those activities necessary to implement an IPP, including, but not limited to, participation in the IPP process; assurance that the planning team considers all appropriate options for meeting each IPP objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's IPP; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the IPP to ascertain that objectives have been fulfilled and to assist in revising the IPP as necessary. (§ 4647, subd. (a).)

7. Services and supports must assist individuals with developmental disabilities to achieve the greatest self-sufficiency possible and exercise personal choices. The regional center must secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP, and within the context of the IPP, the planning team shall give highest preference to those services and supports which would allow an adult person with developmental

disabilities to live as independently as possible in the community and to interact with persons without developmental disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

In implementing IPP's, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (§4648, subd. (a)(2).)

Section 4648, subdivision (a)(8), also provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing such services.

A regional center may, directly or through an agency acting on behalf of the regional center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease, foster family placements, health care facilities, and licensed community care facilities. (§ 4648, subd. (a)(9)(A).)

Section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with regional center purchase of service policies, to utilize generic services and supports when appropriate, and to utilize other services and sources of funding as contained in section 4659. Section 4659, subdivision (a), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental or other entities or programs required to provide or pay the costs of providing services, or private entities, to the extent they are liable for the cost

of services, aid, insurance, or medical assistance to the consumer.

SUPPORTED LIVING SERVICES AND SUPPORTS

8. Article 4, chapter 6, of the Lanterman Act (§§ 4685 et seq.) deals with services and supports for persons living in the community. Section 4689 provides that, consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the IPP.

Section 4689, subdivisions (a)(1)-(8), provides that, in order to provide opportunities for adults to live in their own homes, the Department of Developmental Disabilities and regional centers must ensure that supported living arrangements adhere to the following principles:

- a. Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside;
- b. The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere;
- c. The consumer's preference shall guide decisions concerning where and with whom he or she lives;
- d. Consumers shall have control over the environment within their own homes;
- e. The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals;
- f. The services or supports shall be flexible and tailored to a consumer's needs and preferences

- g. Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities; and
- h. Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes. (§ 4689, subd. (b).) The range of supported living services and supports available include, but are not limited to, assistance in finding a home; social, behavioral, and daily living skills training and support; development of 24-hour emergency response systems; and recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates. Assessments of consumers' needs may begin before they turn 18 years of age to enable them to move to their own homes when they reach the 18 years of age.

REIMBURSEMENT

9. A regional center may, pursuant to vendorization or contract, purchase services or supports for a consumer from any individual or agency which the regional center and the consumer or, where appropriate, his or her parents, legal guardian, conservator, or authorized representative, determines will best accomplish all or any part of the consumer's IPP. Vendorization or contracting is the process for identifying, selecting, and utilizing service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. (§ 4648, subds. (a)(3) and (a)(3)(A).)

A regional center may reimburse an individual or agency for services or

supports provided to a consumer if the individual or agency has a rate of payment for vendored or contracted services established by the Department of Developmental Services pursuant to the Lanterman Act, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. (§ 4648, subd. (a)(3)(B).)

DISCUSSION

10. Under the Lanterman Act, claimant is entitled to treatment and rehabilitative services and supports in a natural community setting so that he may live an independent, productive, and normal life that approximates the pattern of everyday life of a nondisabled person. As a regional center consumer, claimant should receive services and supports that assist him to achieve self-sufficiency, make personal choices, and live independently as possible in the community. His services and supports must be based on his needs and preferences and may include special living arrangements, assistance in finding a home, and supported living arrangements. Supported living services and supports should provide claimant with the opportunity and supports to live in his own home and may include daily skills training and the support and the recruitment, training, and hiring of individuals to provide him with personal care and assistance, such as in-home supportive services workers and paid roommates.

In this regard, rental and utility payment assistance may be considered a form of supportive living service and support. Rental and utility payment assistance can cover or help pay the costs attendant to living in one's own residence which are not paid for or shared by another tenant, roommate, or the

landlord. Such assistance enables a consumer to live independently and to have contact and interactions with persons without developmental disabilities in the community. The Service Agency has recognized that rental and utility assistance can help a consumer, such as claimant, to achieve goals of independent living and community integration by classifying such assistance as a money management service and by vendorizing claimant's mother to receive payments on behalf of her son. Over the past eight years, the Service Agency has authorized the payment of rental and utility assistance to claimant for a limited number of months in 2009 and 2010 when claimant's parents requested such assistance and while claimant was waiting to receive a HUD section 8 rental subsidy or voucher and the Service Agency was waiting for claimant's mother to complete the application to become her son's SLS provider or vendor. Rental and utility payment assistance has been authorized as an appropriate service for claimant as a regional center consumer.

For purposes of this appeal, however, claimant's request for utility payment assistance of \$300 per month for the two months of June and July 2009 and for rental and utility payment assistance of \$1,200 per month for the five months of August through December 2009 [and for the 12 months of July 2013 through June 2014] cannot be justified based on the evidence presented and is not proper under the basic tenets of the Lanterman Act.

First, in January and March 2009, as set forth in claimant's 2008 IPP and 2008 Addendum IPP, the Service Agency agreed to provide claimant with rental payment assistance of \$900 per month for February through April 2009 and utility payment assistance of \$300 per month for February through May 2009. Claimant's roommate had moved out of the Pasadena house in January 2009 and the parents had requested financial assistance so their son could continue living

independently in his own home. The Service Agency explained to claimant's parents that the assistance was a money management service and was being provided to claimant because his roommate had left. The Service Agency also told the parents that the assistance was a time limited and would be paid until their son received a HUD section 8 rental subsidy. Thereafter, claimant's mother signed Payment Agreements and submitted Provider of Care Claim forms. The Service Agency then paid the sum of \$6,600 in rental and utility payment assistance to claimant or his parents for the months of February through July 2009. The Service Agency did not pay the \$300 utility payment assistance to claimant for the months of June and July 2009 (\$600) and the evidence did not clearly show that the parents had asked for the assistance or filed Provider of Care Claim forms to seek payment or reimbursement for this service. Nor was it shown that the Service Agency authorized the assistance for these two months.

For the latter half of 2009, the evidence likewise did not show that claimant's parents requested rental or utility payment assistance from the Service Agency. No evidence was presented that the parents entered into any Payment Agreements or submitted claim forms to receive payment of such assistance for the period of August through December 2009. In July 2009, an IPP meeting was conducted and the IPP document did not demonstrate that the parents requested rental and utility payment assistance as they had done earlier in the year. It was not until the end of the year, in December 2009, that claimant's parent asked for an extension or continuation of the rental and utility payment assistance until the HUD section 8 rental subsidy application was approved for her son. Following the request, in January 2010, the Service Agency approved the financial assistance for claimant. Thereafter, claimant's mother signed Payment Agreements and submitted Provider of Care Claim forms. Claimant received

rental and utility payment assistance in 2010 until or through August 2010. In September 2010, a family friend moved into the Pasadena house and paid rent and claimant had no need for rental or utility assistance for the remainder of 2010 since he had a roommate.

Because the evidence did not show that claimant's parents submitted claim forms or asked for utility payment assistance for June and July 2009 or rental and utility payment assistance for the last five months of 2009, claimant's demand in the current fair hearing proceeding for reimbursement of sums totaling \$6,600, for purported services for 2009 is not proper for several reasons.

Under the Lanterman Act, services and supports which are necessary for and preferred by a consumer must be considered and evaluated during the IPP meeting process. Decisions about the purchase and provision of appropriate services must be made by agreement between the regional center and the consumer or his parent or conservator and memorialized in a final IPP document. A regional center can only provide services agreed to and set forth in an IPP for a consumer. This planning process for a consumer's IPP as well as the coordination of services to meet a consumer's goals in his IPP are essential elements of the system for the delivery of services and supports to consumers under the Lanterman Act. In this fair hearing matter, claimant's parents have requested "reimbursement" of rental and utility payments, which they presumably made six years ago in 2009 on behalf of their son. Their request is not a request for services or an appeal of a denial of services. Aside from the fact that their request for reimbursement is not supported by any documentation of payments or costs, the parents did not ask for the financial assistance at that time in 2009 and the Service Agency did not authorize the financial assistance for their son in an IPP. The parties did not discuss the necessity, propriety, or cost-effectiveness of the

financial assistance in 2009 in a planning meeting. The parents' request for reimbursement for rental and utility costs from 2009 is thus contrary to the planning process and coordination of services model required by the Lanterman Act and cannot be granted six year later in this proceeding.

Second, the request of claimant's parents for reimbursement of rental and utility payments or costs of \$1,200 per month for the months beginning in July 2013 and continuing to November 2014 suffers from the same fatal flaws. Near the end of the preceding year, in October 2012, the Service Agency issued a NPA denying rental and utility payment assistance. Claimant's parents did not appeal this decision. The financial assistance was neither planned nor provided in 2013. It was not authorized in an IPP. Of course, claimant's sister lived with him from June 2012 through July 2013 and presumably he did not need any rental assistance if his sister paid or helped to pay the rent and utility costs for the Pasadena house. After July 2013, the evidence did not show that the parents asked for rental and utility payment assistance over the course of the next year. In July 2013, the father renewed discussions with the Service Agency about his son's services under his unsigned 2012 IPP but, again, the father did not ask for financial assistance for rental and utility payments. In September 2013, claimant's mother did ask about a housemate for her son and the SLS provider hired a live-in caregiver for him. However, the mother did not ask for rental or utility payment assistance either. Because the evidence did not show that the parents asked for rental and utility payment assistance in either the last half of 2013 or the first half of 2014, the Service Agency and the parents did not have a chance to evaluate the appropriateness of any such request in planning meetings. To order the Service Agency to make a retroactive payment of rental and utility payment assistance in these circumstances now for 2013 and 2014 without the benefits of

the IPP planning process is not condoned under the Lanterman Act and will not be granted in this proceeding.

On the other hand, there is cause under the Lanterman Act to grant the request of claimant's parents for rental payment assistance earlier than December 2014 date set by the Service Agency. In February 2015, the Service Agency agreed to fund \$900 per month of rental payment assistance for claimant but only beginning in December 2014. The Service Agency stated that claimant's last signed IPP was in 2011 and had expired, the parties did not hold frequent meetings about rental assistance until December 2014, and the parents had not appealed prior Notices of Proposed Action denying such assistance in previous years. For these reasons, the Service Agency's declined to fund the rental payment assistance any earlier than December 2014. The determination of the Service Agency was arbitrary. Claimant did not request the assistance only in December 2014. Rather, at a follow-up meeting on June 30, 2014, for the discussion and planning of claimant's services under his IPP for 2014, the father requested rental payment assistance for his son. The father informed the Service Agency that claimant needed a housemate or roommate to help pay the rent and the expenses for living in the Pasadena house. The parties discussed, or had opportunities to discuss, claimant's services over the course of several IPP meetings in the latter half of 2014 and early 2015. Because claimant's parent requested rental assistance on June 30, 2014 and, after a series of IPP meetings, the Service Agency agreed to provide retroactive rental assistance of \$900 per month in February 2015, it is only fair and reasonable under the Lanterman Act that claimant receive the rental assistance retroactive to July 2014. The Service Agency was informed of claimant's need for the assistance on June 30, 2014, and his need remained unchanged during the remainder of 2014 inasmuch as he lived

alone and did not have a roommate or housemate. Accordingly, claimant should receive reimbursement or payment of rental assistance of \$900 per month beginning in July 2014, rather than December 2014.

Regarding other arguments raised by claimant's parents, claimant will not be granted utility or supplemental rental payment assistance of \$300 per month from July 2014 through November 2014. As set forth in the February 18, 2015 NPA, the Service Agency agreed to fund \$900 per month of rental assistance retroactive to December 2014. While claimant's parents filed an appeal of the NPA with respect to the retroactive date of the funding and have asked for rental and utility payment assistance of \$1,200 dating back to 2009 and beginning in July 2013, they did not appeal or contest the provision of \$900 per month in rental assistance. In addition, the Service Agency should not be expected to pay another \$300 per month for utilities, groceries, and household costs, which is presumably one-half of the household costs when there is another person living in the house, when, in fact, claimant did not have a roommate or housemate in the Pasadena house, did not incur extra household expenses, and did not present any evidence of these extra household expenses.

Finally, claimant's parents contended that their son should receive reimbursement or the retroactive payment of rental assistance because his SLS vendor failed to find a roommate or live-in caregiver for him and the Service Agency had a duty under the Lanterman Act to monitor the SLS vendor and ensure that claimant had a roommate or live-in caregiver to live with him in the Pasadena house. The parents argue that, as a consequence of the Service Agency's failure to fulfill its obligations, the second bedroom in claimant's house remained unoccupied, claimant endured hardship while living alone, and they were forced to expend funds so that their son could continue living

independently in his own house. The parents' argument is not persuasive. While the Service Agency had a duty to secure necessary services and supports for claimant and a responsibility to monitor the vendor's delivery of services and supports, the issue of whether claimant should receive the rental service of assistance is separate and distinct from the issue of whether claimant should have also received the services of a roommate or live-in caregiver. Like the approval of rental assistance, the Service Agency and the parents, as claimant's conservators should have first considered the need and propriety of a roommate or live-in caregiver for claimant during IPP meetings. Here, claimant's Individual Program Plans and draft IPP documents showed that the SLS vendor and the parents were to help find a roommate for claimant but the documents did not clearly show that one of claimant's IPP goals was to have a roommate or live-in caregiver or that the SLS vendor was directed to hire a roommate or caregiver to live in his home. Moreover, the family's preference for a roommate or live-in caregiver for claimant has not been clear or consistent. In July 2010, claimant's mother did not think that her son was ready to have a roommate. In January 2011, claimant received personal assistance hours with his mother as the parent coordinator. In September 2013, the SLS vendor hired a caregiver to stay with claimant but only at night. In other words, the provision of a roommate or live-in caregiver has not been a goal, objective, or service for claimant under any of his IPP's. The parents have intertwined and confused their fair hearing request for rental payment assistance with complaints about the lack of a roommate or live-in caregiver when, in fact, the latter is not only a different type of service but also has never been vetted or approved for claimant through the program planning process. Their claims that the Service Agency was purportedly lax or negligent in finding a roommate or live-in caregiver for their son was not borne out by the evidence

and, in any case, would not require the payment of rental payment assistance.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

1. The appeal of claimant is granted, in part, as follows: Service Agency shall pay rental assistance of \$900 per month for the five months from July 2014 through November 2014. The total amount of additional rental assistance due and payable to claimant is \$4,500.

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2. Claimant's request for utility payment assistance for the months of June and July 2009 and his requests for rental and utility payment assistance for the months of August through December 2009 and for the months of July 2013 through June 2014 are denied.

Dated: November 12, 2015

/s/

Vincent Nafarrete

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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