

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

OAH No. 20150995

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 Whittier on January 19, 2016. Eastern Los Angeles Regional Center (Service Agency) was represented by Arturo Del La Torre, M.S., M.F.T., Supervisor. Claimant was represented by his mother.

The Service Agency presented Exhibits 1– 9 and the testimony of Randi Bienstock, Psy.D., Psychology Consultant. Claimant presented the testimony of his mother and Mischa Monazzam, Case Supervisor with Innovative Behavioral Therapies. The Service Agency's exhibits were 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 January 19, 2016, 2015, and finds that the following facts were established by a preponderance of the evidence:

ISSUE

The issue presented for decision is whether claimant should continue to

receive the same number of hours of intensive behavioral intervention services.

FACTUAL FINDINGS

1. Claimant is an 11-year-old child who has been diagnosed with autism. Based on his diagnosis and attendant developmental delays, claimant is eligible for and has been receiving services from the Service Agency including in-home respite, a one-to-one aide at his after-school program, and 20 hours per week of intensive behavioral intervention therapy. Claimant is also eligible for or receives In-Home Supportive Services, Medi-Cal coverage, and Supplemental Security Income.

2. In June 2013, claimant underwent a psychological evaluation which showed that he has delays across a range of developmental domains. He exhibited poor eye contact, did not engage in reciprocal conversation, showed a lack of social engagement and poor visual attention, exhibited very limited play skills, and did not demonstrate functional or symbolic play. He did not play with a toy or participate in a birthday party activity. Claimant exhibited limited communication skills. He only stated, "I want chicken" and kept repeating this phrase. His mother indicated that her son had a variety of preoccupations. At the time of the evaluation, claimant was preoccupied with chickens. He had difficulty with transitions and was inflexible. The psychologist recommended that claimant receive special education as well as communication and occupational therapy. The psychologist also recommended that claimant be evaluated for applied behavioral therapy.

3. Claimant lives with his mother and her long-time boyfriend in the family home in Whittier. He is toilet-trained but requires prompts and assistance to perform most of his self-help and daily living tasks, including showering, dressing, and teeth brushing. Claimant is sensitive to sounds and textures. He

likes only soft cotton clothing and does not like tags on his clothing. He does not play appropriately with toys or with his peers. Claimant tends to isolate himself from other children his age and does not like to share. He likes to climb fences and take off his seat belt in the car. He will elope from his home and while he is out in the community unless he is supervised. At home and at his after-school program, claimant has exhibited tantrum behaviors comprised of hitting, biting, and throwing objects. Claimant is echolalic.

4. (A) Claimant attends elementary school in Whittier where he receives special education services and supports due to autism. From the school district, he receives specialized academic instruction in a special day class with accommodations, occupational therapy, speech and language services, adaptive physical education, and transportation for the regular and extended school years. Claimant's goals in the educational setting include being able to identify the feelings of others, communicate his own wants and needs, write and recognize words, and play appropriately and independently with a variety of toys.

(B) At claimant's individualized education program meeting in November 2014, the program specialist noted that claimant was more alert and aware of his surroundings. The speech and language specialist found that claimant followed the speech and language program and used more words and less jargon. The special day class teacher added that claimant was a joy. He participated more in the classroom, needed less prompting to use words, and repeated modeled words. He was able to answer routine questions independently. Claimant's mother stated at the meeting that her son was making more eye contact and using expressive language but she still had concerns about her son's speech and his tendency to express anger by pressing his chin on her. The school district staff explained that children with autism tend to speak fast and have difficulty with

pronunciation. The school district staff surmised that claimant might be expressing anger because he did not like a particular activity.

5. Claimant's mother is a single parent and works as a registered nurse for a Newport Beach plastic surgeon. She provides nursing care to patients in homes or a hotel while they recover from their surgeries. Currently, she works three 24-hour nursing shifts per week on Tuesdays, Thursdays, and Sundays. When she is working and not at home, claimant's mother has arranged for her boyfriend's adult daughter to babysit and supervise her son in their home. Her boyfriend is employed as an on-call elevator and escalator service or repair person and has unpredictable work hours.

6. After school, claimant attends the after-school and day care program at a preschool in Whittier (after-school program) for approximately 3.5 hours every day. His mother pays for the after-school program and the Service Agency provides the services of an individual aide for claimant for 60 to 80 hours per month.

7. In February 2014, after an applied behavior analysis (ABA) and discrete trial training (DTT) evaluation, claimant began receiving 20 hours weekly of intensive behavioral intervention services from Innovative Behavioral Therapies (IBT) due to his problematic behaviors. The Service Agency has been funding this service. Due to his mother's work schedule, claimant receives 17 hours of the intensive behavioral intervention services at his after-school program during the week and three hours of the therapy at home on Saturday mornings.

8. From observations of claimant, interviews with his mother, and the results of the evaluation, IBT found that claimant exhibited the following problematic behaviors: tantrums, aggressiveness, verbal and physical stereotypy, perseveration, elopement, poor safety awareness, lack of initiating or sustaining

play with other children, limited ability to answer questions or to respond to his name, and difficulty sitting or standing still. In addition, IBT determined that claimant had deficits in receptive and expressive language, social and play skills, and adaptive skills. IBT established goals for claimant's intensive behavioral intervention service to reduce his problematic behaviors, including his tantrums and aggression, and to improve his varied deficits.

9. On January 16, 2015, the Service Agency convened an Individual Program Plan (IPP) conference with claimant's mother. The parent agreed to the outcomes and plans discussed during the conference and the Service Agency prepared a written IPP. In the IPP document, claimant is described as a child who has tantrums; he hits his mother, bites, and engages in inappropriate behavior at home and at his after-school program. One of claimant's goals is to learn safety awareness and compliance. During the conference, claimant's mother made the commitment that she would ensure her son's health and safety and learn and practice the behavioral techniques. While the IPP states that the Service Agency would "consider funding [the] behavior intervention [therapy] if appropriate and per policy and procedures," claimant has, in fact, been receiving the service from IBT for 20 hours per week and the Service Agency has been paying for it since February 2014.

10. (A) The site of claimant's after-school program is not an ideal location for the provision of the intensive behavioral services. As set forth in the progress reports, IBT's therapists have had to use different places in the after-school program to conduct therapy sessions. The therapists have conducted claimant's therapy sessions in the three classrooms, the outside play area that has tables and benches, and the offices. Children and their parents are noisy whenever they leave the after-school program through the classrooms. During

the hot summer weeks, staff members conduct activities in the classrooms. On some occasions, the staff vacuumed the classroom where the IBT therapist is conducting behavioral therapy with claimant. Claimant is distracted by the voices and noises occurring during his therapy sessions. He covers his ears and engages in verbal, self-stimulatory behaviors or verbal stereotypy. When he is removed from the distracting noises, claimant is responsive and focused in his therapy sessions.

(B) Claimant's home is a suitable place for providing intensive behavioral services. Still, claimant is frequently distracted by the mirror in his bedroom and jumps from the furniture. He also tries to avoid therapy by going to the bathroom where he plays with water. Due to her work schedule, claimant's mother has attended her son's therapy sessions only on Saturdays at the family home.

NOTICE OF PROPOSED ACTION

11. On April 15, 2015, the Service Agency issued a Notice of Proposed Action, denying claimant's request that he continue to receive 20 hours per week of intensive behavioral intervention services from IBT at his after-school program. The Service Agency indicated that claimant was receiving the service at his after-school program during the week without parent participation or training and that the behavioral therapy "should be done at home with 100% parent participation." The Service Agency advised that it was not denying ABA services but was proposing that the services be provided at the home with the full participation of claimant's mother.

12. On April 16, 2015, claimant's mother filed a Fair Hearing Request to challenge the Service Agency's decision. She wrote that her son has benefitted from the intensive behavioral services provided at both the after-school program

and in the home. The mother indicated that the provision of the services at the after-school program "can integrate other children" and helps claimant to learn to be comfortable around other children and in different places.

13. (A) In or about July 2015, the Service Agency conducted a clinical review and informal hearing of claimant's case. Service Agency personnel met with claimant's mother and obtained her statements. In addition, on July 7, 2015, the Service Agency representative and psychology consultant spoke with IBT's clinical director on the telephone.

(B) On August 31, 2015, the Service Agency issued a letter upholding its decision that claimant's intensive behavioral services be provided to him in the family home with "100% parent participation." In its letter, the Service Agency clarified that it would continue to fund the intensive behavioral intervention services for claimant as long as the service was provided in the home and the parent "commit[ted] to participate in the treatment 100% of the time." The Service Agency suggested that, if the mother is not able to fully participate in the therapy, it might be appropriate to reduce the number of hours of therapy "to accommodate [her] work schedule." The Service Agency added that the provision of intensive behavioral intervention therapy requires the collection of data and is a temporary service limited to two years under its policies.

(C) In its August 31, 2015 letter, the Service Agency also posited that its decision was reasonable "based on all the supports" that the family was receiving from the regional center. The Service Agency indicated that claimant was receiving 60 to 80 hours of the services of a one-to-one aide at his after-school program and 16 hours per month of in-home respite. The Service Agency also noted that claimant was receiving 80.3 hours per month of In-Home Supportive

Services from the Department of Social Services.¹

14. (A) The Service Agency's Purchase of Service Guideline for Behavioral Intervention Services dated January 31, 2011 (POS Guideline) states that behavioral intervention services are provided by a qualified behavior specialist and utilize principles of ABA to ameliorate or eliminate behaviors exhibited by a consumer. Targeted behaviors are those that prevent social development, jeopardize a consumer's current living situation, threaten the health or safety of the consumer or others, or impede the consumer's social inclusion and independence. The POS Guideline states that the Service Agency will consider the purchase of behavioral intervention services only when no other source of payment is available.

(B) Under the POS Guideline, prior to behavior intervention services being purchased for a consumer, the Service Agency requires that the consumer's parent or primary care giver complete a parent group orientation to behavior intervention services and behavioral strategies workshops. The purpose of the orientation is to explain to the parent or caregiver how behavioral intervention services address behavioral challenges and promote adaptive functioning in the home and community. According to the POS Guideline, the orientation also provides an opportunity for the Service Agency to explain its expectations that the parent or caregiver must be involved in the implementation of the

¹ It was not established that the number of services a consumer is receiving constitutes a valid ground to reduce or discontinue the consumer's intensive behavioral intervention services. Welfare and Institutions Code section 4686.2, subdivision (b), sets forth the circumstances when a regional center may discontinue intensive behavioral intervention services for a consumer.

intervention principles and be responsible for the continuation of the intervention principles and techniques independently. The workshops provide the parent or care giver with information about the basic principles of behavior, which is to help them to develop the skills needed to promote positive social behaviors and to ameliorate a consumer's behaviors that interfere with learning and social interaction. After the orientation and workshops, the Service Agency expects that many parents and care givers will be able implement the behavioral techniques at home and in the community and successfully manage the consumer's behavioral challenges.

(C) According to the POS Guideline, the Service Agency's intensive behavioral intervention program is for children with a diagnosis of autism who have severe behavioral deficits that may be addressed by intensive ABA programs and one-to-one instruction. The intensive ABA programs are intended to produce significant improvements in social behavior and skills acquisition. Intensive behavioral services may be authorized by the Service Agency up to 20 hours per week for a period not to exceed two years. A Service Agency psychology consultant must review all requests for assessment and treatment and progress reports and must provide a clinical opinion regarding the necessity of the service, the effectiveness of the program, and the need for continuation of the service. Continued funding for the intensive behavior intervention program is based upon documented progress in the achievement of the objectives and the successful and continued participation of the parent or care giver in implementing the program.

(D) The POS Guideline provides that intensive behavioral intervention services will be terminated when the objectives identified in the treatment plan, which were agreed upon by the Service Agency, are accomplished; when, in the

judgment of the planning team and psychology consultant, the consumer has not made progress toward behavioral objectives; and when there is documentation of a lack of appropriate parent or care giver participation in implementing the program.

15. (A) Randi Bienstock, Psy.D., testified on behalf of the Service Agency. Dr. Bienstock has been the Psychology Consultant for the Service Agency since 2006. She provides Service Agency staff with input on eligibility matters and reviews behavioral services for consumers. Dr. Bienstock reviewed claimant's case, including progress reports and data from IBT, and spoke with IBT staff. She agreed that claimant needs intensive behavioral intervention services, but she has concerns about the efficacy of the services as they are provided to him.

(B) Dr. Bienstock opined that, according to the last progress report, claimant has not made significant progress while receiving services from IBT. She indicated that the manner of delivery of the services has not been effective or consistent under ABA principles for two basic reasons. First, Dr. Bienstock observed that claimant's mother has not fully participated in her son's ABA therapy sessions. She indicated that parent participation is very important for ABA therapy to be effective because the parent must implement behavioral strategies when the therapist is not present. She suggested that claimant's mother has not learned those strategies and is not implementing them in the home or community. Second, Dr. Bienstock opined that claimant's after-school program is not an appropriate environment to provide ABA therapy from a clinical perspective. She noted that the noises and the presence of other children at the after-school program are distracting and prevent claimant from concentrating on his ABA therapy sessions. Dr. Bienstock suggested that the number of ABA therapy sessions should be reduced if claimant's mother is unable

to participate in her son's sessions.

(C) Dr. Bienstock was also critical of IBT for not teaching the behavioral strategies to claimant's mother or to his one-to-one aide at the after-school program. To properly address and reduce claimant's maladaptive behaviors, Dr. Bienstock indicated that the intervention strategies should be taught to both the parent and the aide so that they can implement the strategies in natural settings and claimant can learn and apply the behavioral skills in different daily situations. Dr. Bienstock also opined that IBT should also train the parent and the aide to collect data on claimant's behaviors to properly track and measure claimant's progress under the ABA therapy. Dr. Bienstock has not visited or observed claimant at his after-school program and has not evaluated him. Her opinions are based on her reviews of claimant's progress reports prepared by IBT.

16. (A) Mischa Monazzam, Case Supervisor with IBT (Monazzam), testified in support of claimant. Monazzam has been employed at IBT for five years and has been claimant's case supervisor since May 2015. She was also claimant's therapist for eight months. On January 16, 2016, Monazzam prepared the most recent Behavioral Progress Report for claimant's intensive behavioral intervention service. The Service Agency presented the Behavioral Progress Report at the hearing (Exh. 9).

(B) As summarized by Monazzam in her testimony and the Behavioral Progress Report, claimant has made progress reducing many of his problematic behaviors under IBT's intensive behavioral intervention program. In the areas of tantrums, claimant has reduced the number of his tantrums from two tantrums per week in September 2015 to less than one tantrum per week in the months of October and November 2015. In the area of aggression, claimant has reduced his aggressive episodes from 3.25 times per week in September 2015 to zero

aggressive episodes in November 2015. Since IBT therapists began redirecting claimant from his behavior in spinning objects, claimant has reduced his aggressiveness. Claimant has reduced his aggressiveness to such a significant degree in the prior three months that IBT is not tracking aggression any longer. In the area of verbal stereotypy, claimant engaged in verbal stereotypy at the rate of 5.5 times per hour when he was first evaluated in December 2013. As of November 2015, he had reduced his verbal stereotypy to 2.58 times per hour. In area of elopement, claimant eloped eight times in six hours of being observed by IBT staff in December 2013, or 1.33 times per hour. By November 2015, claimant had reduced his elopement to 0.05 times per hour. IBT staff indicated that claimant's decreased elopement is likely due to his ability to now request and wait for a desired item or activity. In the area of perseverative behavior, the ITB staff has seen an increase in claimant spinning objects.

(C) In skills deficits, claimant has also made progress in meeting many of his goals. In the area of eye contact, claimant did not respond to his name verbally or by making eye contact when he was first assessed in December 2013. As of November 2015, claimant is able to respond 85 percent of the time with eye contact, answering "yes," and stating the person's name, when he is called by his name in natural environmental settings. In the area of social greeting, in October 2014, claimant met his goal of responding to social greetings with a hand wave and verbal response in four out of five opportunities as measured by IBT staff. In the current reporting period, claimant has maintained his ability to initiate social greetings by waving and saying "hi" or "bye" for 40 percent of the time when the IBT therapist arrives or leaves the day care program. However, he tends to use the wrong name of the therapist. In the area of receptive instructions, claimant previously met his benchmark of responding appropriately

to five different functional tasks in four out of 5 opportunities and he has mastered 19 one-step simple actions. As of November 2015, claimant mastered 23 one-step simple actions and five functional tasks. IBT staff plan to introduce new functional tasks to claimant's program. With regard to his goal of expressively identifying at least 10 labels from eight to 10 categories when asked, in four out of five opportunities, claimant is able to expressively identify 58 labels across six categories, which is considered to be a mastery level. With regard to his goal for joint attention, claimant is able to "engage in proximal point to request at a mastery level." In November 2015, he was able to distal point to request when asked at 87 percent of the time. When assessed in December 2013, claimant did not engage in proximal point to request for items. With regard to the goal of expressing his preference, claimant has met his benchmark for responding appropriately to questions regarding his preference and has continued to respond, "Yes, please," and "No, thank you," when asked for his preference in the natural environment. With regard to his goal for emotions, claimant is able to receptively and expressively identify four different emotions. IBT staff plan to introduce new emotions during the next reporting period. With regard to personal information, claimant initially was unable to answer questions about his name or age, or his mother's name. Claimant has learned to respond to 10 questions calling for personal information but has difficulty in responding to questions about his address. With regard to his goal of making transitions, claimant has met his benchmarks and continues to transition from preferred to non-preferred tasks. With regard to his goal for staying on task, claimant is now able to remain seated for up to 10 minutes when, in fact, he had difficulty in remaining seated and staying on task when first assessed. His goal for the next reporting period is to remain seated for 12 minutes. With regard to his goal for

dressing, claimant is able independently to pull up his underwear and pants and remove pull-over garments such as shirts and socks. However, due to limited therapy sessions in the home setting, IBT staff has not been able to address this goal. Claimant has met his goal for interactive play; he is able to engage in appropriate play with a ball with others for at least five exchanges in four out of five opportunities. He is learning how to kick, throw, and bounce a ball while the IBT therapist is moving. With regard to the goal of taking turns, claimant's progress has declined.

(D) As set forth in the January 1, 2016 Behavioral Progress Report, IBT has recommended supplementary goals for claimant for generalization across different settings and times. For safety awareness, claimant's goal is reduce his unsafe behaviors, such as walking on a ledge or eloping, in four out of five opportunities. Claimant has reduced his unsafe behaviors by engaging in safe play during 60 percent of opportunities. IBT staff has not observed claimant engaging in any unsafe play behavior on the playground. For community identification, claimant's goal is to be able to receptively and expressively identify at least eight helpers in the community in four out of five opportunities. During the current reporting period, claimant has been able to identify five community helpers, including a policeman, fireman, doctor, teacher, and postal worker.

(E) In the Summary and Recommendations section of the January 1, 2016 Behavioral Progress Report, Monazzam indicated that claimant has made steady progress towards meeting most of his skill acquisition goals. Claimant's verbal stereotypy has decreased during therapy sessions. He has maintained his ability to follow instructions, which, in turn, has led to a decrease in his tantrum and elopement behaviors. He has shown progress in his ability to recall personal information, which is important for his safety. Claimant continues to persevere

on objects by spinning them, but he is responsive when redirected to play with different objects in appropriate manner. Claimant continues to be distracted during therapy sessions when peers come near him and play in a loud manner. However, claimant has demonstrated an ability to remain seated during therapy sessions and responds well redirections by IBT staff. Claimant does continue to exhibit problematic behaviors and skills deficits characteristic of a child with Autism. He presents with significant delays in communication, play skills, motor skills, social skills, and adaptive skills. His delays impact his life and the lives of his family members. Monazzam recommended that claimant continue to receive 20 hours per week of one-to-one ABA services to address his delays, behaviors, and deficits.

(F) To determine claimant's progress towards his goals for decreasing problematic behaviors and increasing his acquisition of language and social skills, IBT staff collect and assess data obtained from observations and treatment sessions with claimant at the after-school program. IBT employees did not collect any data from claimant's one-to-one aide at the after-school program or from his mother while she supervised and interacted with her son at home and in the community.

17. As established by Monazzam's testimony, claimant has made progress towards most of his goals since he started receiving therapy from IBT in February 2014. Monazzam agreed that the after-school can be a distracting place to provide behavioral therapy, but she added that it is important for claimant to learn to work through the distractions. She also observed that the after-school program is similar to a school setting and that claimant is able to learn social skills and responses there that can only help him to be comfortable and to learn at his school. Still, Monazzam opined that at least one-half of the 20 hours of the

intensive behavioral intervention program should be provided to claimant in his home. The behavioral therapy should be generalized to the home environment so that claimant can work on other behaviors and learn other skills. For example, IBT staff can work with claimant at home on his goal for dressing which is difficult to do at the after-school program. Moreover, the parent should learn to implement the all of the ABA strategies and training at home to optimize her son's progress under the program. Monazzam's testimony and opinions carried significant weight in this matter inasmuch as she currently supervises claimant's therapy and observes claimant in his therapy sessions at the after-school program once a week and she previously worked with the child in therapy.

18. (A) Claimant's mother has been a registered nurse for nine years. Her work hours at the plastic surgery office have been irregular, for she is required to spend nights with patients to care and supervise them while they recover from surgery. She considers her job to be very important for the continued well-being of her family, but she is willing to adjust her work hours and to be at home in order to ensure that her son continues to receive the 20 hours week of intensive behavioral intervention therapy from IBT. Claimant's mother is currently training other nurses so that they can relieve or assume her nursing shifts. She agrees that her son should receive one-half of his weekly intensive behavioral intervention therapy hours at home and has spoken with IBT staff about providing 10 hours per week of ABA services to her son in the family home.

(B) Claimant's mother believes strongly that her son has progressed and benefitted from having his intensive behavioral intervention therapy provided at both his after-school program and at home. Claimant is now able to communicate with others. He can state what he wants and lead his mother to a desired item. He now makes eye contact with others and says "hi." On a recent

family outing to the Long Beach Aquarium, claimant has able to ask for help and to calm himself. He shows less frustration. Claimant can spell his name, state his mother's name, and is learning his address and telephone number, which are important for his safety. Despite claimant's progress, claimant's mother still has concerns about his tendency to elope and to have tantrums. When upset or angry, claimant will scratch and throw items and will not state why he is angry. In other words, while claimant's behavior and skills have improved since receiving the intensive behavioral intervention service, his mother believes that her son still needs more behavioral therapy and does not want his service hours to be reduced. Contrary to the Service Agency's position, claimant's mother asserts that she has been implementing ABA strategies. For example, when out in the community, she makes sure that her son stops at street corners and keeps his head up. She uses strategies to calm claimant when he is upset. Claimant's mother is willing to chart and collect data on her son's behaviors. She testified in a sincere and credible manner.

* * * * *

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, Welfare and Institutions Code section 4500 et seq. (Lanterman Act), to grant, in part, claimant's request for continuation of the intensive behavioral intervention, based on Findings 1 – 18 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.)² 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 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, behavior training and behavior modification programs and training for parents of children with developmental disabilities. Nothing in section 4512, subdivision (b),

² Further section references are to the Welfare and Institutions Code unless indicated otherwise.

is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in the 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).)

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 a consumer 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.

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.

8. Under section 4686.2, subdivision (a), any vendor who provides ABA services, or intensive behavioral intervention services, or both, shall do the following: (1) conduct a behavioral assessment of the consumer; (2) design an intervention plan that includes the service type and the number of hours and parent participation needed to achieve the consumer's goals and objectives set forth in the consumer's IPP; and (3) provide a copy of the intervention plan to the regional center for review and consideration by planning team members.

Under section 4686.2, subdivision (b), notwithstanding any other provision of law or regulation to the contrary, the regional center shall do the following:

- (1) purchase only ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions;
- (2) purchase only ABA or intensive behavioral intervention services when the parent or parents of the minor consumer receiving services participate in the intervention plan for the consumer, given the critical nature of parent participation to the success of the intervention plan;
- (3) not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services;
- (4) discontinue purchasing ABA or intensive behavioral intervention services for a consumer when the consumer's treatment goals and objectives are achieved;
- (5) evaluate for each consumer the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention services no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and

objectives shall be updated and revised; and

- (6) Not reimburse a parent for participating in a behavioral services treatment program.

Under section 4686.2, subdivision (d)(4), parent participation shall include, but shall not be limited to, the following meanings: (1) completion of group instruction on the basics of behavior intervention; (2) implementation of intervention strategies, according to the intervention plan; (3) collection of data, if needed, on behavioral strategies and submission of that data to the provider for incorporation into progress reports; (4) participation in any needed clinical meetings; and (5) purchase of suggested behavior modification materials or community involvement if a reward system is used.

DISCUSSION

10. As a regional center consumer, claimant is entitled under the Lanterman Act 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 child. Due to his diagnosis of autism, claimant engages in problematic behaviors and lacks language, social, and adaptive skills. Under his January 2015 IPP, the planning team has determined that claimant requires intensive behavioral intervention services to address his behaviors. He has been receiving 20 hours weekly of intensive behavioral intervention services from the vendor IBT since February 2014. Because his mother works outside the home and has irregular work hours, claimant has been receiving the major portion of the therapy, 17 of the 20 weekly hours, at his after-school program during the week. The remaining three weekly hours have been provided on Saturdays at claimant's home.

In this appeal, the Service Agency does not contend that claimant's

intensive behavioral intervention services should be discontinued. The Service Agency is not claiming that claimant has achieved his treatment goals and objectives. Indeed, the Psychology Consultant for the Service Agency concedes that claimant still needs the service, which comports with the opinions of the IBT supervisor who prepared the most recent Behavioral Progress Report and claimant's mother. The IBT supervisor and the parent also agree that claimant has made progress in ameliorating his problematic behaviors and learning language and social skills but that he needs to continue receiving the therapy.

Rather, the Service Agency has decided that, based on ABA principles and its POS Guideline, claimant's intensive behavioral intervention service should be provided only in the family home and only with "100 percent parent participation." By "100 percent parent participation," the Service Agency means to say that the parent must participate in every session of her son's intensive behavioral intervention therapy. The Service Agency has offered to reduce the number of hours of therapy if the parent is not able to participate in all of the sessions.

The Service Agency's position is not supported by the law and is untenable. Under section 4686.2, subdivision (b)(1), intensive behavioral intervention services must reflect evidence-based practices, promote positive social behaviors, and ameliorate disruptive behaviors. Under section 4686.2, subdivision (a)(2), the intervention plan must include the service type, number of hours and parent participation needed to achieve the consumer's goals and objectives, as reflected in the consumer's IPP. There is no provision in the Lanterman Act mandating that ABA or intensive behavioral intervention services be provided only in the consumer's home. Moreover, claimant's IPP does not require that his behavioral therapy be provided to him only in his home.

As for parent participation, the Lanterman Act recognizes that parent participation is critical to the success of an intervention plan for a consumer, but the Lanterman Act does not require that a parent participate in every therapy session for his or her child. Under section 4686.2, subdivision (b)(2), a regional center can only purchase intensive behavioral intervention services when the parent of a minor consumer participates in the intervention plan. Under section 4686.2, subdivision (d)(4), there are several meanings for parent participation, none of which state that the parent must sit in on every therapy session. Parent participation can include group instruction, implementation of intervention strategies, data collection, participation in clinical meetings, and purchase of behavior modification materials or community involvement. Here, the evidence showed that claimant's mother has implemented intervention strategies with her son at home and in the community.

Based on the preponderance of the evidence and applicable provisions of the Lanterman Act, claimant clearly needs the intensive behavioral intervention service to address his behaviors and to enhance his skills deficits and claimant should continue to receive the 20 hours per week of the service as specified in his IPP. Because parent participation is important for the success of the intervention plan and the vendor IBT and claimant's mother agree that therapy should be provided in the home as well as in the after-school program, one-half of the 20 hours of the service shall be provided to claimant in the family home. Claimant's mother should be present for the majority of the therapy sessions in the home, but the parties and the service vendor must discuss the optimal amount of hours of parent attendance at the therapy sessions and other aspects of the parent participation in the intensive behavioral intervention service, including data collection and attendance at clinical meetings, as well as the delivery of

behavioral training to the mother and the one-to-one aide in a planning team meeting.

* * * * *

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

1. The appeal of claimant is granted, in part, as follows: Service Agency shall continue to provide claimant with 20 hours per week of intensive behavioral intervention therapy or services; provided, however, ten hours per week of the service shall be provided to claimant in his home. The remaining ten hours per week of the service may be provided to claimant at his after-school program.

2. The Service Agency shall convene a individual planning program meeting to amend the individual planning program to reflect this Decision that claimant shall receive 20 hours monthly of intensive behavioral intervention services from Innovative Behavioral Therapies and to discuss claimant's goals and objectives, the parent's specific responsibilities for participation in the intervention plan, and the responsibilities of the Service Agency and the vendor to train the parent and the one-to-one aide in implementing the intervention plan and collecting data.

Dated: February 2, 2016

/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.