

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of Claimant's Request for  
Personal Assistant Services:

OAH No. 2016031163

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on May 5, 2016.

Lee-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's father represented claimant, who was not present at the hearing.

The matter was submitted on May 5, 2016.

ISSUE

Does claimant's request for IRC to fund 26 additional monthly hours of social recreation fit within the exemption in the Lanterman Act, which bars a regional center from funding social recreation services?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 20-year old male who qualifies for regional center services based on a diagnosis of autism. Claimant's family has two homes. Claimant's mother and autistic brother, who is also an IRC consumer, reside in one of the homes. Claimant lives with his father in the other home. Claimant also has two sisters who frequent both homes. Claimant currently receives the following services from IRC: 40 hours of respite; 138 hours<sup>1</sup> of community activities support administered by Pathways; and 24 hours of social recreation<sup>2</sup> administered through In-Roads. Claimant also receives 283 hours of in home

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<sup>1</sup> The Annual Progress Report submitted by Pathways, and IRC records, reflected claimant receives 138 hours of support from Pathways. Claimant's father contended that claimant receives 120 hours for Pathways. The Annual Progress Report submitted by Pathways as the authorized vendor is determined to be more credible as it is consistent with the testimony of IRC's two witnesses.

<sup>2</sup> Prior to 2010, claimant received 39 hours of social recreation. After the passage of Assembly Bill 9 in 2009, regional centers were barred from providing social recreation services unless they met an exemption. At some point after 2010, IRC attempted to reduce or eliminate claimant's 39 hours of social recreation. Pursuant to a mediation agreement, the parties agreed that IRC would fund 24 hours of social recreation until April 2015, when the agreement to fund the social recreation would become eligible for review. To date, IRC has not reviewed the matter to determine the continued need to fund social recreation services.

supportive services (IHSS) and approximately \$887 in social security paid to his mother on a monthly basis.

2. On January 30, 2016, IRC served claimant with a notice of proposed action denying claimant's request for 26 additional hours of social recreation. Specifically, IRC stated:

Your request has been denied because regional centers are prohibited from funding social recreation services. While there are some exceptions to law under extraordinary circumstances, they don't apply in this case. . . . At this time, IRC believes that 24 hours a month is sufficient to meet his needs.

You stated you needed an additional 26 hours per month of social recreation services so that [claimant] may participate in Special Olympics, and a White Tiger Martial Arts class. At the time of review, there was no evidence that In Roads, the social recreation provider, will be teaching the gymnastics class for Special Olympics or instruct either kickboxing or jujitsu class for White Tiger Martial Arts. In effect, In Roads would simply be transporting [claimant] to the activity, watch him participate in the activity instructed by someone else, and return home. It would not be unusual for a parent or family member to take a non-disabled adult child to an activity or appointment.

In Roads has developed an Individual Service Plan (ISP). A review of [claimant's] goals lists accessing the community

and making purchases as one goal. [Claimant's] other goal is to visit local parks and do activities there. Both these goals are with the same aide and instruction of his social recreation coach. [Claimant] goes shopping 2-3 times a month to use money management skills and continues to need assistance from his coach on counting money and identifying coins. He goes to various parks 2-3 times a month to learn community safety awareness and dangers in the community. His coach accompanies him and works on his specific goals.

[Claimant] is currently funded for 138 hours per month of community activities support through Pathways. His goal is to access community resources in order to develop interpersonal relationships, safety functional communication and self-direction skills while out in the community. Hours from this existing Pathway service could be used to meet your request.

3. On March 15, 2016, claimant filed a request for a fair hearing appealing IRC's decision. This hearing ensued.

#### CLAIMANT'S REQUEST FOR ADDITIONAL SOCIAL RECREATION HOURS

4. Claimant, through his father, is requesting 26 additional hours of social recreation. According to the fair hearing request, the reason for the additional 26 hours is because claimant is enrolled at White Tiger Martial Arts after 4:00 p.m. and "special olympics" every Saturday. Claimant's request specified that he needs a "one on one" for safety, to facilitate communication with the instructor, and to help manage behaviors. Claimant's request further stated that the current social recreation provider restricts

services between the hours of 8:00 a.m. and 4:00 p.m. Claimant's father also pointed out in the request that time constraints prohibit him from being present.

5. At the hearing, claimant's father testified that claimant is not currently enrolled at White Tiger Martial Arts or Special Olympics but would like to be enrolled. He testified that the current social recreation hours – 24 – amount to only about 45 minutes a day, and that is not enough to attend the requested classes.

6. Claimant's father is claimant's IHSS provider. Claimant's father testified that he uses the 283 hours to care for claimant during nighttime hours – between 10:00 p.m. and 7:00 a.m., because claimant needs care 24 hours a day 7 days a week. Claimant's father has not considered hiring another IHSS provider to free him up to take claimant to the requested martial arts classes because it is difficult to find a provider. Claimant's wife uses the 283 hours of IHSS hours provided to claimant's brother to care for claimant's brother. In addition, both parents work full-time. Although claimant does have two teenaged sisters, claimant's father does not consider them natural supports due to their age.

7. Claimant's father noted that Pathways accounts for about six hours per day and although they do social recreation, claimant has homework, classes, and other things that he needs to attend to during those hours. Claimant's father testified that as claimant advances in college next semester, he will have even more homework and other things he needs to do during the day.

8. Claimant's father submitted written testimony that he also read at hearing. In that writing, claimant's father elaborated on the request:

[Claimant] is now 20 years old and requires more social interaction with peers and appropriate recreational activities. He is interested and enrolled in a martial arts program but is unable to attend due to his lack of social recreation hours

allotted to him. [Claimant] is also interested in Special Olympics but his involvement is greatly hindered for the same reason he is unable to attend martial arts. [Claimant] is also interested in paint ball [sic], and radio controlled car racing, as there is a car racing club in our local area.

Unfortunately, [claimant's] parents do not have the luxury of being a natural support for many of these endeavors. We have extraordinary circumstances which prevent us from doing so. We have another son who is severely autistic and has frequent epileptic seizures. In addition, we have two teen aged daughters that need our attention and supervision as well. Also, we are busy running a home-based consulting business.

#### IRC'S EVIDENCE PRESENTED AT HEARING

9. Consumer Services Coordinator Geneva Marshall testified at the hearing. Ms. Marshall verified the services and supports claimant receives from IRC. According to Ms. Marshall, claimant's goals in the social recreation program is to increase social skills, safety awareness, and money management. In Roads is the provider of social recreation. Pathways also works on the same types of goals. Specifically, Pathways assists claimant with accessing community activities and accessing college classes, where he can also develop relationships, acquire social skills, and learn money management.

Ms. Marshall testified that claimant could use the 138 hours provided to him though Pathways to attend karate and participate in the Special Olympics. She also noted that claimant's parents have a natural responsibility to provide services and supports like social recreation.

10. Program Manager Anthony Dueñez testified at the hearing. Mr. Dueñez stated that IRC is prohibited by law from funding social recreation services unless an exemption applies. Mr. Dueñez does not believe the exemption applies.

According to Mr. Dueñez, social recreation is not designed to alleviate behavioral issues or function as a long-term service. To the contrary, the purpose of social recreation is to teach social skills and get a person receiving services out into the community where he or she can use those social skills. Mr. Dueñez testified that, if all the hours of services and supports claimant receives from IRC and IHSS are added together, claimant receives approximately 17.5 hours per day in paid services or supports. In other words, that leaves only 6.5 hours of unpaid support per day – not including time for sleep. Mr. Dueñez opined that claimant’s current services and supports provided by IRC, in addition to the IHSS hours, could be used to meet claimant’s social needs.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from

family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and *Institutions* Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision 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 individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. IHSS services are a generic resource. (Welf. & Inst. Code, § 4659.)

12. With respect to social recreation services, Welfare and Institutions Code section 4648.5 provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

[¶] . . . [¶]

(2) Social recreation activities, except for those activities vendored as community-based day programs.

[¶] . . . [¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

## EVALUATION

13. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or support, funding for additional social recreation hours. Claimant has not met that burden.

Claimant's father testified credibly regarding the difficulties faced by the family in providing care and support to both of his autistic children, running a home-based business, and raising two teenaged daughters. However, establishing extraordinarily difficult family circumstances is not the standard when determining whether a claimant's request for social recreation services fits into the statutory exemption. Although the evidence established that claimant strongly desires to attend the classes offered by White Tiger Martial Arts and to participate in the Special Olympics, the evidence did not establish that these services are a "primary" or "critical" means for ameliorating the physical, cognitive, or psychosocial effects of claimant's autism, necessary to enable claimant to remain in his home, or that no alternative service is available to meet claimant's needs.

Claimant has the maximum number of IHSS hours allowed by law. He currently

receives social recreation services from In Roads. He also receives services from Pathways. Claimant could use his IHSS hours or his time at Pathways to attend a martial arts class or participate in the Special Olympics. If claimant's parents are unavailable, they could hire an IHSS provider for some of the hours to tend to claimant's needs, while they act as a natural support and take claimant to the martial arts course or to participate in the Special Olympics. In other words, there are both alternative services – and generic resources – available to meet claimant's needs. Funding for additional social recreation services is therefore barred under the Lanterman Act.

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## ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund personal assistance services is denied.

DATED: May 9, 2016

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

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