

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

OAH No. 2016040753

v.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 20 and September 9, 2016, in Torrance, California.

Julie A. Ocheltree, Attorney at Law, represented the Harbor Regional Center (HRC or Service Agency). Elizabeth Stroh, Service Coordination Quality Manager, was present on both days of hearing. Eva Casas-Sarmiento, Attorney at Law, represented Claimant, who was not present at hearing. Claimant's mother (Mother) appeared on both days of hearing. Ellie Chung, Certified Interpreter, provided Korean language interpreter services at the July 20, 2016 hearing, and Yvonne Yoo, Certified Interpreter, provided Korean language interpreter services at the September 9, 2016 hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on September 9, 2016.

ISSUES

1. Must the Service Agency provide funding for Claimant to receive independent living skills (ILS) services in his home in lieu of funding for Claimant to attend a day program?
2. Must the Service Agency provide professional written translation services to translate “important documents” from English to Korean?
3. Must the Service Agency increase respite hours from 30 hours per month to 48 hours per month?

FINDINGS OF FACT

1. Claimant is a 39-year-old Korean man who lives with his parents within the Service Agency’s catchment area, and is a consumer of the Service Agency. Specifically, Claimant is autistic, has a moderate intellectual disability, and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code sections 4500, et seq.¹ Claimant requires assistance with most of his self-help skills including bathing, dressing, and daily hygiene, has toileting accidents, depends on others to prompt him to initiate and complete tasks, has aggressive behavioral issues, and understands both English and Korean. Claimant’s father (Father) understands both English and Korean. Claimant’s mother (Mother) understands Korean.

2. Claimant currently receives 283 hours per month of in-home support services (IHSS), for which Mother serves as his provider. Claimant also receives funding for round-trip transportation to and from attendance at a day program four hours per day, five days per week. Claimant receives 30 hours per month for respite.

¹ All statutory references are to the Welfare and Institutions Code.

3. The Service Agency issued a Notice of Proposed Action (NOPA) on March 18, 2016, denying Claimant's request for the Service Agency to fund for independent living services to be provided in Claimant's home, professional translation services to translate (in writing) a functional behavior assessment and a nursing assessment from English to Korean, and for an increase in respite hours per month from 30 to 46. On April 19, 2016, Mother filed a Fair Hearing Request on Claimant's behalf.² All jurisdictional requirements have been met.

A. REQUEST FOR ILS SERVICES AT HOME

5. Claimant requires assistance with most of his self-help skills including bathing, dressing, and daily hygiene, and is very dependent on prompts in all of his activities throughout the day. Claimant is not responsible for completing any chores at home.

6. Beginning in February 2012, Claimant began attending Cole Vocational Services (Cole), which is a day program for individuals with adaptive skills and behavior challenges. Cole focuses on adaptive skills such as kitchen activities, computer skills, personal hygiene, exercise, art and music, banking, laundry, gardening, and exploring the community. The staff-to-client ratio is two to four, except out in the community, when the ratio changes to one to two. Cole offers morning and afternoon sessions. Its clients attend one of those sessions each day, for four hours. A behavior management consultant is on staff to instruct staff on how to work with clients with behavioral issues and to develop plans for clients with behavioral issues.

7. When Claimant began attending Cole, he attended regularly, five days per week. Initially, Claimant attended morning sessions, but later switched to attending

² Mother and Father serve as Claimant's conservators.

afternoon sessions. During the three years in which Claimant attended Cole, Claimant had three goals: (1) increasing his communication skills (i.e., communicating his needs); (2) improving his health and well-being (i.e., participating in physical activities of his choice for 45 minutes); and (3) increasing his independence (i.e., placing his backpack in his locker and retrieving it before leaving for the day). Claimant did not meet his first goal regarding his communication skills or his third goal of increasing his independence, but he did meet his goal of improving his health and well-being. Initially, Claimant participated readily in activities, did not demonstrate any aggressive behavior, and did not have toileting accidents. He also interacted with his peers at Cole, participated in activities such as balloon volleyball, table ice hockey, and x-box, and seemed to have a good time.

8. From December 2012 to May 2013, Claimant “took a break” from attending Cole.³ When he returned, Claimant routinely wet and had bowel movements in his pants, drooled, and sometimes fell asleep during activities. In 2014, Claimant’s attendance began decreasing steadily. In the spring of 2015, Claimant did not attend Cole for approximately two months. When he returned, he continued having toileting accidents. Thereafter, Claimant attended Cole off and on, and then stopped attending completely beginning in July 2015. It has been more than one year since Claimant attended Cole.

9. At meetings between Mother and Cole’s staff throughout the years, Mother, as early as April 2012, advised that Claimant would become resistive, non-compliant, and often engaged in behaviors such as yelling and getting physical with her when she tried to get Claimant ready to attend the day program. Mother interpreted

³ Neither party presented any evidence setting forth the reason Claimant stopped attending Cole from December 2012 to May 2013.

Claimant's behavior as Claimant not wanting to attend Cole's program. Mother also advised staff that Claimant would go to bed late at night and did not like getting up in the morning to get prepared to attend the afternoon session. Mother testified at hearing that Claimant's sleep was impacted by her changing Claimant's diaper two or three times a night. Mother would require Claimant to shower in the middle of the night on those occasions when he had a bowel movement during his sleep.

10. Mother also testified that Claimant had stopped attending Cole because Claimant demonstrated heightened levels of upset and aggression when Mother attempted to prepare him for the day program. Specifically, Claimant would shove, push, throw things, growl, and pace back and forth from one room to the other, making it extremely difficult to get Claimant ready for the program. Ordinarily, it took Mother approximately two hours to get Claimant ready to attend the program, but when he was agitated, it took more considerably longer to get him ready.

11. Sina Akni, who has been Cole's program manager for more than 14 years, testified at hearing. Ms. Akni was very involved in Claimant's activities at Cole. Cole's staff had not experienced Claimant's engaging in the aggressive behaviors described by Mother.

12. Mother further testified that when Claimant returned home from the day program, he often exited the van and ran to the front door. While there, he generally paced back and forth, and appeared upset. Mother interpreted this behavior as Claimant not liking Cole and wishing not to attend there.

13. In contrast, Mother noted that every weekend, Claimant attended activities at his church along with other individuals with disabilities, and demonstrated no resistance to attending those church activities.

14. In response to Mother's concerns, Cole, beginning in April 2012, offered repeatedly to send its behavior consultant to Claimant's house to observe Claimant get

prepared for the program. The purpose of the observation was for the consultant to develop strategies and offer suggestions to address the negative behaviors Claimant demonstrated when getting prepared to attend the program. Ms. Akni testified that, when she offered to have the behavior consultant observe Claimant, she did so with the language assistance of either a counselor who spoke Korean and English, or an interpreter Mother had brought to meetings between Cole's staff and herself. For a number of reasons, mostly due to Claimant's parents cancelling observation meetings, the behavior consultant never observed Claimant in his home.

15. Because Claimant did not like attending a day program, coupled by his lack of independent skills, Mother believed Claimant would benefit from an independent living skills/adaptive skills training in their home, instead of forcing him to attend a day program he did not like. It was Mother's hope that Claimant would learn how to complete daily living tasks with minimal prompting, feel encouraged to venture out into the community more often, and then eventually return to a day program for increased socialization and community integration activities. In that regard, Mother requested the Service Agency to fund for independent living skills services in the home.

16. On November 19, 2015, during Claimant's Individual Family Service Plan (IFSP)⁴ meeting between Mother and the Service Agency, the Service Agency agreed to fund for a Functional Behavior Assessment (FBA)⁵ to address how Mother could learn

⁴ The IFSP is also known as an Individual Program Plan (IPP).

⁵ A FBA is a process for identifying the purpose or function of an individual's behavior. The process involves a combination of direct observation, data collection and analysis, interviews, and records review. A FBA results in a behavior intervention plan designed to modify maladaptive behaviors and teach adaptive replacement behaviors. (Exhibit 8.)

how to manage and respond to Claimant's negative behaviors. The Service Agency also agreed to fund for an ILS assessment.

1. FBA

17. Behavior and Education, Inc. (BAE) conducted an FBA and prepared a report dated December 30, 2015. The report indicated Claimant was referred for a FBA due to concerns about Claimant's lack of independent living skills and prompt dependent behavior. Due to language barriers, a Korean-speaking assessor was assigned to conduct the FBA. The FBA included a basic living skills assessment, because, according to assessment protocol, basic living skills were considered prerequisite skills for any functional skills program for any learner regardless of age, setting, or disability. The basic living skills assessment addressed self-help, self-care, self-management, hygiene, and completing daily routines. The FBA also analyzed three of Claimant's problem behaviors: tantrumming (i.e., frowning and non-compliance), engaging in stereotypical behavior⁶ (e.g., grabbing and squeezing others, and growling and pacing around), and shaving his body (i.e., shaving hair off of his chest, navel, and pubic areas with a razor).⁷

18. The BAE assessor found that Claimant had severe deficits in the areas of communication, social skills, and adaptive living and self-help skills, and demonstrated severe prompt dependency, which limited his skills repertoire. The BAE assessor also

⁶ "Stereotypical behavior" is defined as repetitive and restricted patterns of motor or vocal behavior that do not serve a functional purpose other than to deliver automatic reinforcement. (Exhibit 8.)

⁷ Rashes, irritation, or cuts, with or without bleeding, often accompanied this behavior.

found that Claimant engaged in problematic behaviors on a daily basis to access his wants and to avoid non-preferred tasks. The BAE assessor concluded that it was necessary that Claimant be taught alternative replacement behaviors. In that regard, the BAE assessor recommended that Claimant receive Applied Behavior Analysis (ABA) services in the form of parent training to teach Claimant's parents the skills necessary for teaching Claimant functional alternatives for his problem behavior. In addition, parent training would focus on teaching Claimant's parents the basic behavioral principles in order to identify the function of Claimant's behavior and respond in a way that would likely increase or decrease the future occurrence of the behavior. Finally, the BAE assessor recommended that Claimants' parents be taught strategies and techniques for handling tantrum behavior when it occurred.

19. After reviewing the FBA, the Service Agency funded 40 hours of behavioral intervention services delivered by BAE over a period of four months, from March 2016 through June 2016. A Korean-speaking behaviorist from BAE provided the services, which included teaching Claimant's parents behavioral strategies and techniques following a training model that consisted of explaining and discussing the skill to be taught, observing the behaviorist model the skill, observing parents applying the skill in and out of sessions, and incorporating the behaviorist's feedback into continued practice until able to utilize the strategy independently. The training focused on Claimant's toileting skills and non-compliance issues.

20. BAE prepared a progress summary dated July 1, 2016 and reported that Mother learned various proactive, teaching and reactive strategies to increase Claimant's overall compliance and toileting skills. Mother independently made and implemented a visual schedule for Claimant that included going to the restroom every hour. Mother worked on fading out prompts with the visual schedule, such as gesturing and using indirect prompts to have Claimant transition to the next activity more independently.

21. The Service Agency's client sciences manager, Mia Gurri, who authored the Service Agency's March 18, 2016 NOPA, testified at hearing. Upon its review of the July 1, 2016 progress summary prepared by BAE, the Service Agency concluded that even though BAE made no recommendation for additional hours of services, Claimant still required more behavior modification services to address other behaviors. Specifically, the Service Agency concluded Claimant needed additional behavior modification services to address negative behaviors related to Claimant waking up and getting ready to attend his daily day program. Additionally, the Service Agency concluded Claimant's parents needed additional assistance in managing Claimant's behaviors in the home, including his sleep schedule. As such, at the time of hearing, the Service Agency was in the process of authorizing additional behavioral service hours for Claimant.

22. Ms. Gurri, who supervises a team of service coordinators, also explained that should BAE prepare a step-by-step behavior program for Claimant's parents follow, Claimant's service coordinator, Taejong Min, who is Korean, would ensure the parents receive the information by interpreting English to Korean for them.⁸

2. Service Agency's ILS Program and Assessment of Claimant

23. The Service Agency contracted Integrated Life, LLC (Integrated Life) to conduct an ILS assessment of Claimant. The Service Agency wished to use the assessment to determine whether Claimant would benefit from participation in its ILS program. At one time, the Service Agency's ILS program consisted mostly of in-home services; however, the Service Agency found that model ineffective. The current ILS program is time-limited and includes two components. The first component consists of

⁸ Ms. Min assists with interpreting from English to Korean for a number of the Service Agency's clients and/or their parents or caregivers.

consumers receiving ILS services in a group setting on Saturday mornings for three hours. The staff-to-participant ratio is one to three, and participants are required to participate for approximately 18 to 24 months. After successful completion of the group class, participants will receive one-on-one instruction in the home-setting to ensure the participants generalize learned skills in the home environment.

24. On April 7 and 14, 2016, Ruth Flores from Integrated Life observed Claimant in his home and in the community, interviewed Claimant and Mother, and prepared a written report dated April 29, 2016. Claimant's service coordinator, Taejong Min, who is Korean, attended the assessment and served as an interpreter. Neither Ms. Flores nor Ms. Min testified at hearing.

25. The report indicated that in addition to observing Claimant and conducting interviews, Ms. Flores reviewed Claimant's IPP and noted that Claimant engaged in behaviors such as clapping his hands with great force, yelling, tantruming, and engaging in physical aggression, particularly toward Mother, in the form of hitting, grasping Mother's hands tightly, and spitting. Ms. Flores also reviewed Claimant's goals at Cole.

26. Ms. Flores noted Claimant completely lacked skills in the categories of money management (i.e., 0 skills out of 12),⁹ meal preparation (i.e., 0 skills out of 17),¹⁰

⁹ Money management skills included identifying coins, presenting enough money for purchases, checking for correct change, making change up to \$20, having a checking account, having a savings account, using checks, making deposits, using a debit card, using an ATM machine, ordering meals, and paying for meals.

¹⁰ Meal preparation skills included washing hands for meal preparation, cleaning food preparation area, using kitchen utensils, using knives, using a can opener, using a blender, using a microwave, using a toaster, using a toaster oven, using a stove top,

and housekeeping (i.e., 0 skills out of 22).¹¹ In the category of community access, Ms. Flores noted Claimant carried a valid ID and could ride a bike (i.e., 2 skills out of 14).¹² Ms. Flores noted Claimant required prompting and encouragement to initiate or participate in all independent living skills tasks, and he failed to achieve minimum ratings in the independent skills categories.¹³ Consequently, Ms. Flores concluded Claimant lacked the requisite skills to participate in an independent living skills program.

using an oven, setting the table, clearing the table, reading food labels, following a simple recipe, making a sandwich, and preparing a simple meal.

¹¹ Housekeeping skills included identifying common cleaning supplies, initiating chores, sweeping the floor, mopping the floor, dusting furniture, cleaning countertops, using a vacuum cleaner, keeping the bedroom clean, making the bed, changing bed linens, completing simple bathroom cleaning, identifying when clothing needed laundering, putting clothes in the hamper, sorting clothes for the laundry, washing clothes in the washing machine, drying clothes in the dryer, folding clothes, putting clean clothes away, washing dishes by hand, operating a dishwasher, and disposing trash.

¹² Community access skills include carrying a valid ID, stating health conditions, calling 911, carrying and using a cell phone, not talking to strangers, walking in the neighborhood, looking both ways before crossing the street, identifying and obeying danger signs, seeking assistance if lost, riding a bicycle, riding ACCESS, riding the bus, utilizing bus transfers, and having a driver's license.

¹³ The category of money management required a minimum score of two. The category of meal preparation required a minimum score of three. The category of housekeeping required a minimum score of four.

Ms. Flores recommended that Claimant “consider the possibility of developing basic independent living skills goals in his day program.”

27. The Service Agency reviewed the ILS assessment report and concluded Claimant was not qualified to participate in its Saturday group ILS program, and, therefore, not yet qualified to receive in-home one-on-one ILS services. Additionally, Ms. Gurri, based on her more than 15 years’ experience at the Service Agency, seven of those as a service coordinator, opined that an in-home program would be isolating for Claimant, as he would be away from his peers in a more restrictive environment.

3. Roman Empire Living Skills Assessment

28. Roman Empire Living Skills (Roman Empire) provides one-on-one instruction related to activities of daily living skills, such as hygiene, grooming, and personal care. Emily Lorah, program manager for Roman Empire Skills, and her colleague evaluated Claimant for independent living/adaptive skills training services at the behest of Mother, and prepared an Individual Service Plan (ISP) dated July 7, 2016. Ms. Lorah did not know Claimant and had not worked with him in the past.

29. Ms. Lorah, who testified at hearing, earned her bachelor’s degree in 2012 in human services, with a concentration in mental health and persons with disabilities, from California State University at Fullerton. In 2014, she earned her master’s degree in human services from Liberty University. Ms. Lorah has worked as a program manager at Roman Empire since March 2015 and currently oversees about 200 regional center

clients.¹⁴ Before her employment at Roman Empire, Ms. Lorah worked a short period as a paraprofessional, behavior therapist, and a child and youth program assistant.

30. The purpose of the assessment was to gather information to determine the consumer's eligibility to Roman Empire's program and to establish a set of goals and objectives that would empower Claimant in money management, food management and food preparation, personal appearance and hygiene, health, housekeeping, transportation/accessibility and mobility, and interpersonal communication skills and relationships.

31. In the area of money management, Ms. Lorah found Claimant needed a lot of assistance, as he did not understand basic information about the social security benefits he received, needed support understanding the value of coins and bills, and needed complete prompting when making a money transaction. Ms. Lorah established a goal that Claimant would increase the use of money and learn how to make transactions within the community, with an immediate objective that Claimant learn how to identify various coins.

32. In the area of food management and meal preparation, Ms. Lorah found Claimant needed a lot of support, as he did not understand the basic functions of the kitchen and needed support preparing meals for himself. Ms. Lorah established a goal that Claimant learn how to select and prepare simple foods that are healthy and nutritious with minimal assistance from Mother, with an immediate objective that Claimant would learn how to use cooking utensils and appliances.

¹⁴ Although Roman Empire is a vendor for a number of regional centers, Harbor Regional Center is not one of them. Roman Empire does not have an office within Harbor Regional Center's catchment area.

33. In the area of personal appearance and hygiene, Ms. Lorah found Claimant required help maintaining his personal hygiene. While Claimant could brush his teeth, dress himself, and fold clothes, he required a lot of prompting. Also, Claimant required prompts to go to the bathroom or he would soil himself. Ms. Lorah established a goal that Claimant would learn to attend to basic hygiene tasks, with an immediate objective of prompting Claimant to use the toilet every two hours until he could do so independently.

34. In the area of health, Ms. Lorah found Claimant did not manage his health needs or make his own appointments. Ms. Lorah established a goal that Claimant would keep healthy on a yearly basis, with an immediate objective that Claimant be prompted to take his medication on a regular basis. Ms. Lorah also indicated that the Roman Empire educator would teach Claimant the basic steps to call his doctor or dentist.

35. In the area of housekeeping and organizational skills, Ms. Lorah found Claimant needed help organizing and cleaning personal belongings, and that Mother performed most of the chores at home. Mother confirmed at hearing that she completed the bulk of chores in the home with no independent assistance from Claimant. Claimant required constant supervision and guidance while completing chores. Ms. Lorah established a goal that Claimant would learn how to maintain a clean and safe environment at home, with an immediate objective that Claimant would learn how to complete various chores around his home.

36. In the area of transportation/accessibility and mobility, Ms. Lorah found Claimant required a lot of mobility training and never went out into the community without adult supervision. Claimant often walked out into the street without looking and did not understand street signs and signals. Ms. Lorah established a goal that Claimant would become more familiar with the community surrounding his home, with an

immediate objective of Claimant learning how to walk around his own neighborhood safely.

38. In the area of interpersonal communications, Ms. Lorah found Claimant had limited communication skills and had trouble communicating and advocating for himself. Ms. Lorah established a goal that Claimant would learn to communicate his needs to his family and educator, with an immediate objective that Claimant learn to express his feelings, including anger, in an appropriate manner.

39. At hearing, Ms. Lorah explained that after observing Claimant, interviewing Mother, reviewing reports from Cole regarding Claimant's progress or lack thereof, and reviewing Claimant's ILS assessment funded by the Service Agency, Ms. Lorah concluded Claimant possessed basic skills to complete daily activities, and could learn more in a home environment than in a day program. Ms. Lorah recommended that Claimant receive ILS and adaptive skills training six hours a day, five days a week, in order for him to meet the goals set forth in this ISP.

40. Ms. Lorah had not visited Cole or any other day program when reaching her conclusion that Claimant could learn more in a home environment than in a day program.

B. TRANSLATION REQUEST

41. As Claimant's conservator and in order to make informed decisions concerning Claimant, Mother requested that "critical assessment reports" be provided to her in a language she can understand, to wit, Korean. Specifically, Mother requested that the FBA report, as well as a nursing assessment conducted on December 16, 2015, be translated to Korean.

42. At hearing, Mother explained she can neither read nor write English. To Mother, it is not sufficient for someone to simply read or interpret documents to her in

Korean, but rather she needs the written translation in order to read documents again and again for understanding.

43. While Father can read and write English, Mother explained that he is very busy because of the demands of his job. Additionally, because of his poor hearing, Mother experiences great difficulty communicating with Father. Given these factors, Mother finds Father unavailable to interpret and translate documents for her.

44. In response to Mother's request, the Service Agency stated in its March 18, 2016 NOPA that the Lanterman Act only required the professional translation of specific documents, namely the IPP and the NOPA. The Service Agency also advised that the Lanterman Act required the use of natural supports whenever possible, and that Father, as one bilingual in Korean and English, could interpret and/or translate documents for Mother. The Service Agency further advised that if Father was unavailable, Ms. Min was available to interpret documents from English into Korean.

C. REQUEST FOR INCREASE IN RESPITE HOURS

45. Claimant received 30 hours of respite services per month for Mother. When respite workers arrive, Mother uses that time to go to the grocery store, the bank, or to run other errands. She also uses that time to get some sleep in her bedroom or in her car because she is so exhausted from taking care of Claimant all day and all night. At hearing, Mother explained she does not get much sleep at night because she is required to change Claimant's diaper two or three times a night, and to shower him if he has a bowel movement during the night. Mother contends that because of Claimant's toileting issues and because Claimant has ceased attending Cole during the day, Mother cares for Claimant 24 hours a day.

46. Mother further contends that until Claimant is able to return to a day program on a regular basis for increased socialization and community integration activities, the intensity and supervision of Claimant's needs are such that additional

respite is necessary to maintain Claimant in the family home. In that regard, Mother requested an additional 18 hours per month of respite care, for a total of 48 hours.

47. In the March 18, 2016 NOPA, the Service Agency denied Mother's request for additional respite, reasoning that, because the Lanterman Act mandates that generic resources be utilized first, Mother could use some of the 293 hours of IHSS to provide some relief from caring for Claimant. The Service Agency also reasoned that Claimant could return to his day program which would provide Mother relief for approximately five hours per day (i.e., four hours of his day program and one hour of transportation time), five days per week.

LEGAL CONCLUSIONS

The Service Agency is not required to (1) fund for Claimant to receive ILS services in his home in lieu of funding for Claimant to attend a day program fund, (2) provide professional written translation services to translate "important documents" from English to Korean, or (3) increase respite hours from 30 hours per month to 48 hours per month, as discussed in more detail below:

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). A consumer's choice plays a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for

all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . .

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which determines the content of the IPP and the services to be purchased, is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

7. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

8. Section 4688.05 provides:

Regional centers shall provide independent living skills services to an adult consumer, consistent with his or her individual program plan, that provide the consumer with functional skills training that enables him or her to acquire or maintain skills to live independently in his or her own home, or to achieve greater independence while living in the home of a parent, family member, or other person.

9. Section 4646, subdivision (h), provides, in pertinent part:

(1) A regional center shall communicate in the consumer's native language, or, when appropriate, the native language of his or her family, legal guardian, conservator, or authorized representative, during the planning process for the individual program plan, including during the program plan meeting, and including providing alternative communication services, as required by Sections 11135 to 11139.7, inclusive, of the Government Code and implementing regulations.

(2) A regional center shall provide alternative communication services, including providing a copy of the individual program plan in the native language of the consumer or his or her family, legal guardian, conservator, or authorized representative, or both, as required by Sections 11135 to 11139.7, inclusive, of the Government Code and implementing regulations.

10. Government Code sections 11135 to 11139.7, inclusive, prohibit discrimination in state-supported programs and activities, and bars the unlawful denial of full and equal access to the benefits of any program or activity conducted, operated, or administered by the state or by any state agency funded directly by the state.

11. California Code of Regulations, title 22, section 98210, subdivision (a), provides:

“Alternative communication services” means the method used or available for purposes of communicating with a person unable to read or speak or write in the English language. “Alternative communication services” include, but are not limited to, the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English.

12. California Code of Regulations, title 22, section 98211, subdivision (c), states that it is a discriminatory practice for a Service Agency to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries, except where the Service Agency determines that such a requirement would place undue hardship on it.

13. Section 4686.5 provides, a more recent statute also governing respite services, contains a definition that can be applied in this case. The statute states, in pertinent part:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

(3) (A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

(B) For purposes of this section, 'family member' means an individual who:

(i) Has a consumer residing with him or her.

(ii) Is responsible for the 24-hour care and supervision of the consumer.

(iii) Is not a licensed or certified residential care facility or foster family home receiving funds from any public agency or regional center for the care and supervision provided. Notwithstanding this provision, a relative who receives foster care funds shall not be precluded from receiving respite.

14. Here, Claimant failed to meet the burden of establishing that the Service Agency should be compelled to (1) fund for Claimant to receive ILS services in his home in lieu of funding for Claimant to attend a day program, (2) provide professional written translation services to translate "important documents" from English to Korean, or (3) increase respite hours from 30 hours per month to 48 hours per month.

ILS SERVICES

15. The evidence shows that Mother requested in-home ILS services primarily because of Claimant's resistive, non-compliant, and aggressive behaviors associated with Mother preparing Claimant to attend his day program. Because Mother interpreted those behaviors as evidence of Claimant's desire not to attend his day program, Mother arbitrarily elected not to return Claimant to his day program in lieu of exploring alternatives to interpret and address Claimant's behaviors. Specifically, Mother failed to take advantage of multiple offers to permit Cole's behavior consultant to observe Claimant's behavior during his morning routine, and develop a plan or strategies to address the negative behaviors. Notwithstanding this, the evidence shows that when the Service Agency provided Claimant with 40 hours of behavioral services in response to an FBA report recommending such services to address Claimant's toileting and non-compliance issues, Claimant made significant improvement, prompting the Service Agency to initiate the authorization process to provide additional hours of behavior services, in the hope of remediating behaviors interfering with Claimant's routine in getting ready to attend his day program. Until these reasonable efforts have been

exhausted, it is premature to forfeit Claimant's attendance at a day program in lieu of receiving in-home ILS services.

16. Nevertheless, in consideration of Mother's request, the evidence shows the Service Agency arranged for Claimant to undergo an ILS assessment to determine whether Claimant possessed the requisite skills to benefit from ILS services. The results of this assessment showed Claimant failed to achieve minimal ratings in independent skills categories of money management, meal preparation, housekeeping, and community access. As such, Ms. Flores, who conducted the assessment, concluded Claimant lacked the requisite skills to participate in an independent living skills program. Instead, Ms. Flores recommended Claimant acquire basic independent living skills by attending his day program.

17. The results found by Ms. Flores were buttressed and confirmed by the independent assessment completed by Roman Empire. Specifically, Ms. Lorah found that Claimant needed a lot of assistance and support in the areas of money management, food management and food preparation, personal appearance and hygiene, health, housekeeping and organizational skills, transportation/accessibility and mobility, and interpersonal communications, primarily because of his heavy prompt dependence and his lack of understanding of basic information underlying these independent skills categories. Despite this, Ms. Lorah concluded Claimant possessed basic skills to complete daily activities and could learn more receiving ILS services in his home than in a day program.

18. Ms. Lorah's conclusion is not afforded much weight. In her report, she repeatedly stated Claimant lacked basic knowledge and understanding underlying each living skills category and was heavily prompt dependent, but then concluded Claimant possessed requisite skills to benefit from ILS services. As such, it is unclear how and why Ms. Lorah reached this conclusion. Additionally, Ms. Lorah concluded Claimant could

learn more receiving ILS services in his home than in his day program, yet Ms. Lorah had not first visited Claimant's day program or otherwise observe the manner in which a day program could help Claimant develop some basic skills. Finally, Ms. Lorah's only contact with Claimant was during the assessment, as she had no prior history with him, unlike staff at Cole. These factors collectively serve to discount Ms. Lorah's conclusions and recommendations.

19. While Mother argues that Claimant did not learn much at Cole and failed to meet all of his goals, and, therefore, ILS services in the home would serve as a more fruitful alternative, the evidence shows that Claimant made progress during the period in which he attended his day program and demonstrated no aggressive behaviors while there. Claimant only regressed after Mother kept Claimant out of the program for extended periods of time. Given this, it is reasonable to conclude that Claimant will regain his skills when he returns to the program, and will continue to progress and develop basic independent skills as he attends on a more consistent basis, all in furtherance of the goal of Claimant eventually achieving greater independence.

TRANSLATION SERVICES

20. Mother, as Claimant's conservator, has requested that "critical assessment reports" be provided to her in a language she can understand, to wit, Korean. Specifically, Mother requested that the FBA report, as well as a nursing assessment conducted on December 16, 2015, be translated to Korean. In fact, she has requested that all "important documents" be translated to Korean. As set forth in Legal Conclusion 9, the law is clear that regional centers must provide alternative communication services for consumers and their families in their native language, including the translation of a consumer's IPP. However, as set forth in Legal Conclusion 11, "alternative communication services" includes "the services of a multilingual employee" and do not necessarily require written translations of documents, including assessments. As such,

and as the evidence has established, Claimant's service coordinator, Ms. Min, has and will continue to interpret documents for Mother, in compliance with the statute.

21. While Mother contends that verbal interpreter services are insufficient as she requires written translation of "important documents" in order to be able to review them again and again for better understanding, and to better represent Claimant's needs during the IPP process, the Service Agency, as set forth in Legal Conclusions 4 and 7, is mandated to control costs as far as possible and utilize available generic resources. In that regard, and as established by the evidence, Father, who can read and write English, and who also serves as Claimant's conservator, can provide such translations, thereby adhering to cost-containment requirements.

RESPIRE HOURS

22. Mother contends that until Claimant is able to return to a day program on a regular basis for increased socialization and community integration activities, the intensity and supervision of Claimant's needs are such that additional respite is necessary to maintain Claimant in the family home. In that regard, Mother requested respite hours in addition to the 30 hours per month Claimant currently receives. As set forth in Legal Conclusion 12, regional centers are prohibited from purchasing more than 90 hours of in-home respite services in a quarter unless a consumer meets exemption requirements. Specifically, Claimant must show that the additional respite hours are necessary to maintain him in the family home or that an extraordinary event has impacted the family member's ability to meet Claimant's the care and supervision needs. Claimant failed to proffer persuasive evidence to establish that one of the exemption criteria exists. As such, Mother failed to demonstrate that an increase of respite hours from 30 hours to 48 hours per month is warranted.

ORDER

Claimant's appeal is denied.

Date: September 27, 2016

CARLA L. GARRETT

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 90 days.