

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016070522

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 24, 2017, in Pomona, California.

Aaron Abramowitz, Attorney at Law of Enright & Ocheltree, LLP, represented the San Gabriel Pomona Regional Center (SGPRC).

Wendy Dumlao, Attorney at Law, represented Claimant. Claimant was not present at hearing. Claimant's mother (Mother) was present throughout the hearing.

Oral and documentary evidence was presented on April 24, 2017. The record remained open until May 12, 2017 for the submission of written closing briefs. Claimant's closing brief was marked and received as exhibit 54 and SGPRC's closing brief was marked and received as exhibit R17. The record closed on May 12, 2017 and the matter was submitted at that time.

ISSUE

Whether SGPRC should fund Applied Behavior Analysis (ABA) services for Claimant for three years using the goals set forth in the Functional Behavior Assessment (FBA) conducted by his ABA vendor Sunny Days of California, LLC (Sunny Days).

SUMMARY

Claimant contends his ABA services should continue for three years and should incorporate the goals proposed by his service provider, including several adaptive living skills goals. SGPRC contends that the ABA services must be reviewed every six months and that several of the proposed goals have already been met or are not appropriate. For the reasons set forth below, Claimant's appeal is granted in part and denied in part.

FACTUAL FINDINGS

JURISDICTION AND ISSUE.

1. On June 27, 2016, SGPRC notified Claimant in a Notice of Proposed Action (NOPA) that it intended to terminate Claimant's ABA services based upon a lack of overall progress by Claimant, that some of the goals were educational and should be addressed by the school district and others should be addressed by an occupational therapist. Claimant timely appealed and this matter proceeded. Before the hearing, Claimant and SGPRC agreed to have an FBA conducted, to retain Sunny Days as an ABA services provider, and to maintain the same level of direct service hours and supervision hours. At the hearing the parties stipulated to modifying the issue for hearing from the original Notice of

Proposed Action (NOPA) and Request for Fair Hearing based upon agreements reached by Claimant and SGPRC.

BACKGROUND

2. Claimant is a 11 year-old boy eligible for regional center services based upon his diagnosis of Cerebral Palsy and Intellectual Disability. Claimant also has been diagnosed with Cerebral Dysgenesis, Pierre-Robin Sequence and a non-operable brain tumor. Claimant uses a wheelchair and a walker for mobility. Claimant has had 13 recent spinal surgeries and has suffered several recent infections requiring hospitalization. Claimant's neurologist has also diagnosed him with autism. However, the service agency has yet to confirm autism as an additional category of eligibility for Claimant.¹ He is nonverbal, uses a G-tube for feeding and, according to most reports, functions in the intellectual range of a two year old age equivalent or below in all areas. Claimant has deficits in his daily living skills and has behavioral challenges including tantrums and self-injurious behaviors. Currently Claimant attends a special education school through his local county office of education.

3. Claimant's individual program plan (IPP), dated June 30, 2016, provides seven desired outcomes:

¹ Due to scheduling issues, Claimant has not been available for SGPRC's autism clinic review. Because Claimant is already eligible for regional center services based upon his cerebral palsy and intellectual disability. SGRCPC continues to provide services that have been deemed appropriate for Claimant's disabilities. (Exhibits 5 and 6.)

(1) Mother would like (Claimant) to maintain good physical health and dental care.

(2) Parents would like for (Claimant) to indicate his wants and needs by using the PECS system, iPad, and functional communication.

(3) Mother would like (Claimant) to increase his compliance in all areas in situations such as, being around others he does not know, in large crowds, and in different community settings.

(4) Mother would like for (Claimant) to initiate play with others and learn how to socialize appropriately with others.

(5) Mother would like for (Claimant) to be toilet trained.

(6) Mother would like for (Claimant) to dress, bathe, and brush his teeth as independently as he can.

(7) Parents would like for (Claimant) to learn how to express his emotions and frustrations without displaying aggression towards others and himself.

4(a). Claimant has received services from Sunny Days since the age of two when he was a client of SGPRC's early intervention program. The parties have stipulated that Sunny Days is an appropriate provider for claimant and that the number of therapy and supervision hours are appropriate for Claimant. Claimant

currently receives 52 hours per month of direct service ABA behavior intervention/adaptive skills training and eight hours per month supervision hours.

4(b). Claimant now seeks a three-year commitment from SGPRC to fund his services with Sunny Days at the current level and utilizing the current goals. SGPRC agrees that Claimant continues to need a behavior program and behavior intervention to prevent maladaptive and self-injurious behavior. However, SGPRC contends that it must continue to monitor services and review its appropriateness every six months. SGRCPC also contends that Claimant has not made reasonable progress on his adaptive skills goals due to his limited cognitive abilities.

SGPRC'S HOME OBSERVATION

5. SGPRC behavioral analyst Elizabeth Annamraju made home visits on July 9, 2015 and July 10, 2015. Ms. Annamraju is a licensed marriage and family therapist. Ms. Annamraju interviewed Claimant's mother and spoke to the ABA services supervisor and therapist. She also reviewed some of Claimant's records. After her observation, she concluded that:

Due to cognitive and fine motor limitations, increased independence with self-help skills is not probable. He may always need hand-over-hand assistance.

Therefore, the interventions for these services can be faded over the next six months with emphasis on parent training.

Self-injurious behaviors and occasional aggressive incidents are still concerns although (Claimant's) ability to comply with tasks/demands has increased,

improving his overall quality of life. Additional BI services may be needed to ensure his safety.

Additional psychological testing may be needed to update his current diagnosis and cognitive abilities.

6. Ms. Annamraju was concerned that Claimant might be pushed to attempt things beyond his capability and become frustrated and engage in self-injurious behavior. (Exhibit R9)

SUNNY DAYS' OCTOBER 2016 PROGRESS REPORT

7. Sunny Days issued its October 20, 2016 progress report. The report provided that Claimant was working on goals in six domains: behavioral functioning, communication/language, social- emotional, self-help, fine and visual motor, and community. There was also a parent training and family involvement goal. (Exhibit 15.)

8. Claimant has had some delays in gaining foundational adaptive skills. He has also had setbacks and interruptions in service due to several spinal surgeries, complications from surgery and a life-threatening infection. His special education teacher and his behavioral therapist have seen progress and do not believe that he has reached the ceiling of his abilities yet. (Testimony of Schneider and Estrada and Exhibit 53.)

9. Sunny Days' most recent social and adaptive behavioral intervention progress report, dated October 20, 2016, demonstrates that Claimant made progress on his goals and notes the toll his surgeries and illness took on his progress. According to the progress report:

(Claimant) is able to throw a small ball with the forward cast independently. He is now working on throwing larger balls that have more weight to them. (Claimant's) eye contact continues to improve and (Claimant) is able to demonstrate appropriate eye contact during an activity with his therapist. When told to "cleanup" or "give me ____" (Claimant) was able to cooperate and attempt to put finished items into a bag or bowl or hand items to his therapist. (Claimant) is cooperating with washing his hands and is able to independently turn on and off the water and dry his hands without prompting. He is attempting to reach for the soap and rubbed his hands together. (Claimant) is now able to independently wipe down a small table with a paper towel upon request. (Claimant) is able to brush his hair up to 10 brushstrokes. (Claimant) continues to learn several different games and activities on his iPad. He is able to wave "high" and "bye" by lifting his arm into the air and bringing it back down. When asked to walk to the bathroom he is able to walk with assistance and will stop walking when he gets to the bathroom door. He is learning to walk to other rooms his in-house [sic] upon request with physical assistance. (Claimant) is learning to identify boy/girl gender. He is able to identify happy and sad emotions with the use of

pictures. (Claimant) is able to answer yes/no questions by shaking or nodding his head but is not yet consistent with answering in 100% of opportunities. (Claimant) continues to respond well to his therapist. Mom is happy with the goals that are being implemented and (Claimant's) overall progress with them. (Exhibit 15.)

10. With respect to behavioral functioning, Claimant has an ultimate goal of decreasing his maladaptive self-injurious behavior. According to the report, Claimant engages in self-injurious behavior at a rate of .94 times per hour. The function of his self-injurious behavior is hypothesized to be escape/avoidance or access to preferred activities. Claimant is working to decrease his self-injurious behavior to a near zero level or no more than one time per week during a session. Currently, the goal is in progress. Claimant continues to engage in self-injurious behavior on a consistent basis; e.g., he hits the side of his head or pokes his eyes five to 10 times per hour. (Exhibit 15.)

11. With respect to communication/language, Claimant has an ultimate goal of increasing his developmental level in the area of language and communication through use of speech and the iPad. The ultimate goal is addressed by using two instrumental goals: (1) Claimant will request to stop an activity by using a sign and (2) Claimant will answer "yes" or "no" to questions by nodding his head yes or shaking his head "no" for 80% of the opportunities during three consecutive sessions. Claimant is working on the first of the two instrumental goals. He now engages in a modified sign to indicate that he is done with an activity at a rate of two times per hour across three consecutive sessions. He is learning to set his iPad down when he is done with it instead of

throwing it on the floor. According to the report, Claimant is able to nod his head "yes" and shake his head "no" but he is not yet consistent with this goal. Claimant has frequent headaches due to his brain tumor. When he is not feeling well he does not want to move his head to answer "yes" or "no." (Exhibit 15.)

12. With respect to social emotional domain, Claimant has an ultimate goal of increasing his developmental level in the area of social and emotional functioning. To that end, Claimant has three instrumental goals: (1) Claimant will attend to the iPad by allowing the behavior specialist to prompt him using a full or partial physical prompt for two minutes without engaging in maladaptive behavior across 80% of opportunities in three consecutive sessions. (2) Claimant will identify familiar people when asked "where is ____?" and (3) Claimant will engage peekaboo by lifting a small blanket over his face with one verbal prompt across 80% of opportunities in three consecutive sessions. Claimant met the goal using the iPad and is very interested in playing games on the iPad. He currently requires physical and verbal reminders not to engage in self-injurious behaviors. The other two goals are new and progress has not yet been measured. (Exhibit 15.)

13. With respect to self-help, Claimant's ultimate goal is to increase his developmental level in the area of self-help skills. To that end, he has three instrumental goals: (1) washing hands, (2) brushing teeth and (3) brushing hair. With respect to washing his hands, Claimant's current goal requires him to stand over the sink with assisted support and with partial physical prompting to wash his hands with 80% accuracy in three out of five trials. Claimant made progress on this goal. He is able to accomplish the required action in 55% of trials. Currently, he is able to turn on and off the water while washing and drying his hands independently. He requires assistance to get the soap and to rub his hands

together. With respect to brushing teeth, the goal requires Claimant to cooperate with putting a toothbrush in his mouth for 10 seconds without getting upset with 100% accuracy, with partial physical prompts. This is particularly difficult for Claimant because he is not accustomed to having things in his mouth. He receives his nutrition via a G-tube. Claimant has made progress on the goal. Between December and March 2016 he has been able to accomplish 68% to 76% of the required activity, but has not been consistent. With respect to brushing his hair, Claimant met his goal and is able to bring the brush to his head and brush his hair. (Exhibit 15.)

14. With respect to fine and visual motor, the ultimate goal is to improve Claimant's fine and visual motor skills to an age-appropriate level. There are three instrumental goals of imitation, visual-motor skills, and stacking blocks. With respect to imitation, Claimant has made progress and is now able to imitate the action of patting the table. With respect to all motor skills, Claimant has made progress. He is learning to orient his eyes towards materials and familiar objects when asked. With respect to stacking blocks, Claimant has made progress as he is able to stack two blocks and is learning to stack three blocks. (Exhibit 15.)

15. With respect to the community, the ultimate goal is to increase Claimant's development in the area of community outings. The instrumental goal for achievement is when asked where he would like to go in the community, Claimant will respond with the iPad or PECS to either of two options in 80% of opportunities. Claimant has made progress on the goal. (Exhibit 15.)

16. Parent training and family involvement goals were met as of October 2016. (Exhibit 15.)

PROPOSED GOALS FROM THE FUNCTIONAL BEHAVIORAL ASSESSMENT

17. By agreement between Claimant's family and SGPRC in October of 2016, a functional behavioral assessment (FBA) was conducted by Sunny Days board-certified behavior analyst (BCBA) Alisha Fleming. (Exhibit R3) Ms. Fleming interviewed Claimant's mother on September 8, 2016 and conducted a home observation of Claimant with his mother on December 21, 2016. The Vineland II adaptive scales assessment was administered and a clinical observation using the Functional Analysis Screening Tool (FAST) was conducted. According to the FBA report dated December 22, 2016, Claimant scored in the low range on all aspects of communication, daily living skills, socialization, and in the clinically significant and elevated areas in maladaptive behaviors. The FBA assessed behavior excesses and recommended that three targeted categories of behaviors: mild self-injury, aggression and severe self-injury. The FBA also recommended goals in functional communication, recreation/leisure and play, self/help and daily living skills and parent training goals. (Exhibit 1.)

18. SGPRC agrees that the that the behavior goals related to mild self-injury, aggression and self-injury are appropriate goals for Claimant.

19(a). SGPRC also agrees that the functional communication goals are appropriate except the "following directions" sub-goals contained therein. Specifically, the three "following directions" sub-goals call for Claimant to follow simple directions in increasing percentages generalized to two people and across two settings. SGPRC asserts that the "following directions" goals were already mastered as of March 4, 2013, as set forth in the Sunny Days' progress report. (Exhibit 19.) However, an examination of the "following directions" goals referenced in the March 4, 2013 report (Exhibit 19) reveals that they differs

significantly from those proposed in the FBA that require that Claimant generalize the mastery over two settings with two people. (Exhibit 1.)

19(b). SGPRC also objects to the functional communication goals requiring Claimant to respond when his name is called by looking at the person calling his name and to generalize the skill to two people and across two settings. A similar goal was noted as partially met in a March 4, 2013 progress report (Exhibit 19). However, the proposed goal is significantly different in that it also requires generalization across two people and two settings. Similarly, Claimant was noted as making progress on a goal of waving "hi" and "bye" in March of 2013, but significantly, there was no requirement for generalization in 2013. The proposed goal requires that the skill be generalized across two people and two settings. SGPRC also asserts that a goal requiring Claimant to imitate a gross motor action when told to "do this" has been previously mastered. Again, the proposed goal requires generalization and the prior goal did not. (Exhibits 1 and 19.)

20. SGPRC objects to the "Receptive ID" goals which require Claimant to select the object named because the goals do not serve to reduce maladaptive behavior. Claimant failed to demonstrate that the receptive ID goals were germane to the behavior program.

21. SGPRC similarly asserts that the goals requiring Claimant to tolerate novel play activity do not serve to reduce maladaptive behaviors. SGPRC's assertion is not persuasive. Some of Claimant's maladaptive behavior includes throwing objects and engaging in self-injurious behavior when presented with novel play activity. Accordingly, the goal is directed to reduce maladaptive behavior.

22. SGPRC also questioned whether goals for brushing teeth and wiping his face should be targeted through a behavior plan instead of as adaptive skills because the behavior plan would allow Claimant to take a break from the activity. There was no assertion that the goals were inappropriate.

23. Claimant's mother, his behaviorist Jill Campbell, and his behavior supervisor Suzanne Schneider, testified credibly and persuasively about his progress and challenges in meeting these goals. Ms. Schneider was Claimant's behaviorist for several years before she was promoted to a supervisory position and Ms. Campbell has been his behaviorist for approximately five years. (Testimony of Mother, Schneider and Campbell.) Claimant's special education teacher testified that he has continued to learn despite his challenges. (Testimony of Estrada and Exhibit 53.)

24(a). Claimant established through documentary evidence (Exhibits 1,15-25, and 53) and testimony (testimony of Campbell, Schneider, Fleming and Mother) that Claimant is capable of meeting his goals. Claimant also established that he has not yet reached the ceiling of his abilities. (Exhibits 1, 15-25, and 53, and testimony of Campbell, Schneider, Fleming, Estrada and Mother.)

24(b). Upon careful consideration, the testimony of behaviorist Jill Campbell, behavioral supervisor Suzanne Schneider, BCBA Alisha Fleming, special education teacher Susan Estrada and Claimant's mother is more persuasive on the issue of Claimant's abilities and progress than that of any of the SGPRC witnesses due of the depth and breadth of their experience with Claimant, his unique circumstances and their routine contact with him.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code (Code), § 4500 et seq.) An

administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Code §§ 4700-4716.)

2. The burden of proof is on the party seeking to terminate the service or change the status quo. In this case, that burden is on SGPRC as the party seeking to terminate a service. The standard of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

3. Cause exists to grant Claimant's appeal in part, as set forth in Factual Findings 1 through 24, and Legal Conclusions 1-15.

4. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally-disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Code, § 4501.) The Lanterman Act is intended to prevent or 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 nondisabled persons of the same age, and to enable them to lead more productive and independent lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. The Lanterman Act was intended to ensure the rights of persons with developmental disabilities, including a right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. (Code, §§ 4502, subd. (a) and (b), 4640.7.)

6. Code section 4512, subdivision (b), defines services and supports for persons with developmental disabilities as 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.

7. Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Code §§ 4646, 4646.4, 4646.5, 4647, and 4648.)

Regional Centers must ensure that the IPP and provision of services and supports by the regional center system is centered on the individual and the family of the individual with 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. The provision of services to consumers and their families must be effective in meeting consumer needs, and maintain a balance between reflecting consumer and family preference on the one hand while being cost-effective on the other hand. (Code, § 4646.5.)

8. Regional Centers are responsible for coordinating services provided to consumers. "[S]ervice coordination shall include those activities necessary to implement an IPP, including, but not limited to, ...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; . . .and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary." (Code §4647, subd. (a).)

9. Regional centers must identify and pursue all possible generic resources and other sources of funding for consumers receiving regional center services, including private insurance and may not fund services that are covered by a consumer's insurance. These sources shall include, but not be limited to, governmental or other entities or programs required to provide or pay the cost of providing services, such as Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program and private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. (Code §4659, subd. (a).)

10. Effective July 1, 2009, Regional centers' authority to purchase educational services for children three to 17 and Non-medical therapies was suspended. (Code § 4648.5, subd. (a)(3) and (4).)

11. Code section 4686.2, provides:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services, or intensive behavioral services or both, as defined in subdivision (d) shall:

(1) Conduct a behavioral assessment of each consumer to whom the vendor provides these services.

(2) Design an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer's goals

and objectives, as set forth in the consumer's individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer's progress shall be evaluated and reported.

(3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase 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) Only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers receiving services participate in the intervention plan for the consumers, 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 the 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, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objective are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

(5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention 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.

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

(c) For consumers receiving ABA or behavioral intervention services on July 1, 2009, as part of their

IPP or IFSP, subdivision (b) shall apply on August 1, 2009.

(d) For purposes of this section the following definitions shall apply:

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

(2) "Intensive behavior intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individuals' needs and progress. Interventions can be delivered in one-to-one ratio or small group format, as appropriate.

(3) "Evidence-based practice" means a decision-making process that integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment interpretation, integration, and continuous evaluation

of valid, important, and applicable individual or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

(4) "Parent participation" shall include, but shall not be limited to, the following meanings:

(A) Completion of group instruction on the basics of behavior intervention.

(B) Implementation of intervention strategies, according to the intervention plan.

(C) If needed, collection of data on behavioral strategies and submission of that data to the provider for incorporation into progress reports.

(D) Participation in any needed clinical meetings.

(E) Purchase of suggested behavior modification materials or community involvement if a reward system is used.

12. Here, the parties agreed on much more than they disagreed on. Specifically, it was agreed by all that: Claimant needs ABA services; Sunny Days is an appropriate provider; and that the current frequency and duration of service

hours is appropriate. There are two points of disagreement : (1) Claimant's request for a three year approval of the ABA services subject to review and (2) whether certain functional communication, recreation/leisure and play, and self-help and daily living skills goals are appropriate.

13. SGRCP established by a preponderance of the evidence that it is required to review ABA and intensive behavioral intervention services every six months for the purposes of reviewing a consumer's progress on goals and objectives and the effectiveness of the service. (Code §4686.2, subd.(b)(4).) While Claimant is understandably unsettled by the multiple times that SGPRC has given notice of its intent to terminate ABA services over the course of several years, the law does not support issuance of an order that SGRCP fund ABA services for three years.

14. With respect to the disputed proposed goals, all of the goals set forth in the FBA (exhibit 1) with the exception of the "Receptive ID" goal are calculated to promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions as required by Code §4686.2, subd.(b)(4). The Lanterman Act does not support an arbitrary cut-off of ABA services and specifically provides that the service may be discontinued "for a consumer when the consumer's treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objective are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services." (Code §4686.2, subd.(b)(5).) In this case, the evidence presented demonstrates that Claimant has low cognitive function and substantial physical limitations and challenges. However, it has not been

established that the Claimant cannot achieve the goals set forth in the FBA or that the goals are in any way inappropriate for him, with the exception of the "Receptive ID" goals, as set forth above. (Factual Findings 1-24)

15. While the law requires SGPRC to review Claimant's progress every six months, there is no requirement that the service be discontinued after six months. In fact, the Code provides that the criterion for discontinuing the service is achievement of goals. This must be read together with Code §4648, subd. (a)(7) which requires that all funded services must result in "reasonable progress" by the consumer towards his goals and objectives, and with Code § 4646.5 which requires that determinations about supports and services are to be made by the IPP team and are subject to service coordination monitoring pursuant to Code § 4647, subd. (a) for effectiveness. Because of the nature of the goals and the timeframes set forth for the achievement of each goal, it is reasonable that the ABA services as currently constituted, with the goals set forth in the FBA, with the exception of the "Receptive ID" goals, remain in place for a minimum of one year unless the IPP team, including Claimant's parents, agree that the goals have been met. This would guarantee a continuity of the program while allowing SGRCPC to conduct the required six month reviews to evaluate the effectiveness of the program in meeting Claimant's goals. (Factual Findings 1-24)

ORDER

1. Claimant's ABA services shall remain in place at the current frequency and duration with the current provider, unless the parties agree otherwise, for a minimum of one year from the date of this decision.

2. The ABA service provider shall implement the proposed goals set forth in the December 22, 2016 Functional Behavioral Assessment and

Intervention Plan created by Sunny Days of California, Inc. except the Receptive ID goals.

3. SGCRP shall review Claimant's progress towards the goals set forth in the December 22, 2016 Functional Behavioral Assessment and Intervention Plan created by Sunny Days of California, LLC. on six month intervals.

DATED:

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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