

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Nos. 2016120649,
2016120838,
2016120840,
2017010410, and
2017010411

DECISION

The above consolidated matters were heard by Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on February 6, 8, and 13-15, 2017, in Culver City.

Damian D. Capozzola and Timothy R. Laquer, Attorneys at Law, represented Claimant. Claimant's mother was present for all days of the hearing.¹ Claimant's father was present for one day of the hearing. Claimant appeared briefly on February 8, 2017.

Aaron Abramowitz, Judith A. Enright, and Julie A. Ocheltree, Enright & Ocheltree, LLP, represented Westside Regional Center (WRC or Service Agency).

Jan Tansil, Esq., is counsel for People's Care Los Angeles, Inc., which is the provider of Claimant's specialized residential program. Ms. Tansil was present at the hearing only during the testimony of People's Care witnesses Michael Kaiser, Tony Kueter, and Mary Harris.

¹ Claimant and her family members are referred to by titles and/or initials to protect their confidentiality.

At the start of the hearing, Claimant withdrew the fair hearing request filed in OAH case number 2016120838. A Notification of Resolution, signed by the parties, was presented at the hearing and marked and admitted as Exhibit 66. The fair hearing request filed in OAH case number 2016120838 is hereby dismissed.

The hearing proceeded on the remaining four consolidated matters. The parties requested the ALJ issue one decision for the four consolidated matters.

The documentary and testimonial evidence described below was received. The record was held open for the parties to simultaneously file written closing briefs by March 1, 2017, and response briefs, if any, by March 7, 2017. The parties timely filed their briefs. Claimant's closing brief was marked as Exhibit 328, and her response brief was marked as Exhibit 329. Service Agency's closing brief was marked as Exhibit 73, and its response brief was marked as Exhibit 74.

On February 27, 2017, while the record was held open for closing briefs, Claimant filed a supplemental request for official notice, which was marked as Exhibit 330. Claimant requested official notice of a January 6, 2016 letter by the California Department of Developmental Services denying a complaint made by Claimant's parents against WRC pursuant to Welfare and Institutions Code section 4731. Service Agency filed an opposition to the request for official notice, which was marked as Exhibit 75. The request for official notice is denied on the grounds that permission was not sought nor granted by the ALJ prior to the filing of the request. The ALJ held the record open only for the filing of closing briefs and reply briefs, and not for the submission of additional evidence.

The record was closed and the matter was submitted for decision on March 7, 2017. On March 20, 2017, the ALJ re-opened the record and held a telephone conference with the respective counsel for the parties regarding the issuance date for the decision. During the telephone conference, counsel for the parties stipulated to extend the due date for

issuance of the decision to April 17, 2017. Thereafter, the record was re-closed and the matter re-submitted for a decision to be issued by April 17, 2017.

ISSUES

Based on the fair hearing requests filed by Claimant's parents on her behalf (Exhs. 318-321), and the Joint Issue List submitted at the hearing (Exh. 67), the issues presented for decision are summarized as follows:

Issue 1: For case number 2016120649, should WRC be ordered to require People's Care to provide transportation for Claimant to attend the Leaps N Boundz program every Friday from 3:30-5:30 p.m.? (Exh. 319.) Should WRC be ordered to require People's Care to modify or revise the van schedule at the Ramsgate home to accommodate Claimant's activity schedule, and provide Claimant's parents with a van schedule that includes the times that the van is assigned to each of Claimant's two housemates? (Exh. 67.)

Issue 2: For case number 2016120840, should WRC be ordered to abide by the "letter and spirit" of the settlement agreement regarding the programming service facilitator? Should WRC be ordered to require People's Care to abide by the settlement agreement? Should WRC be ordered to terminate People's Care's vendor contract for the Ramsgate home if People's Care refuses to abide by the settlement agreement? Should WRC be ordered to credit back the facilitator hours that were wasted as a result of People's Care's refusal to abide by the settlement agreement? (Exh. 318.)

Issue 3: For case number 2017010410, should WRC be ordered to require People's Care to charge and insert the GPS insoles in Claimant's shoes at all times Claimant is awake? Should WRC be ordered to continue to purchase additional GPS insole units as they become lost, damaged, or malfunction? (Exh. 321.)

Issue 4: For case number 2017010411, should WRC be ordered to require People's Care to require its direct support staff to communicate directly and in real time with Claimant's parents? (Exh. 320.)

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-75; Claimant's exhibits 101-330.

Testimonial: Carmine Manicone, WRC Executive Director; Mary Lou Weise-Stusser, WRC Director of Community Services; Michael Kaiser, People's Care Chief Executive Officer; Tony Kueter, People's Care Chief Operating Officer; Romina Ilunga; Mary Harris; Diane Lippstock; Katricia Zuniga; and Claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 24-year-old woman who has a regional center qualifying diagnosis of autism spectrum disorder and moderate intellectual disability. She was diagnosed at an early age by a neurologist in New York. Claimant is a conserved adult. Her parents are limited co-conservators. Claimant has two sisters; one sister lives on the East Coast and the other sister lives with Claimant's parents in the family home.

2. Claimant's parents filed the fair hearing requests that are the subject of this consolidated hearing in December 2016 and January 2017. (Exhs. 318-321.) In general, Claimant's parents seek orders to compel WRC to comply with the settlement agreement entered into between WRC and the parents in June 2016 to resolve a previous fair hearing; to require that People's Care comply with the settlement agreement; and to require that People's Care take certain actions regarding Claimant's transportation, use of her GPS insoles, and the manner of communications with Claimant's parents.

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CLAIMANT'S BACKGROUND

3. Claimant's operative individual program plan (IPP) was agreed to and signed by Claimant's parents and WRC representatives on August 3, 2016.² The IPP was the result of IPP planning team meetings held on March 18, 2016, and July 21, 2016.

4. Claimant is ambulatory with no physical limitations or restrictions. She enjoys physical activities, such as swimming, dancing, walking and hiking. She is, at times, able to communicate her wants and needs when presented with appropriate fixed choices. Claimant's verbal and expressive skills are limited. She speaks in three to five word sentences, and a great deal of her speech is echolalia, with limited reciprocal conversation. A functional behavior assessment from April 2015 by Dr. Rachel Taylor, BCBA, found that Claimant can say at least 50 recognizable words and can share personal information (e.g., first and last name, day and month of birthday, telephone number), she inconsistently communicates when she needs a break or wants her space, she is unable to consistently identify and express her emotions verbally, she is able to decode reading material of at least a second grade level, and she is able to write all letters and numbers.

5. Claimant requires significant supervision in all environments for safety purposes. She currently requires 2:1 supervision while at home and in the community. Claimant engages in challenging behaviors, including physical aggression (e.g., grab or hit the driver of the car while in transit, grab or hit children walking past her); property destruction (e.g., pick up items and throw until broken); behavioral outbursts, screaming, and/or crying; self-injurious behavior; stereotypy (e.g., rocking body, ritualistic finger movements, vocally perseverating); and leaving without supervision (e.g., running away from a location where she is supposed to be and no longer within line-of-sight of staff).

² Copies of the IPP were admitted as WRC's exhibit 6 and Claimant's exhibit 126.

Claimant requires clear communication relative to expectations. She does best when working with staff who are trained and competent in evidence-based practice, and who interact with Claimant regularly, engage her in physical activities, and listen to her. When Claimant is ignored or isolated for long periods of time, and does not receive adequate social and physical stimulation, she may act out. Claimant does not like unexpected changes in her routine or schedule or having excessive unstructured time.

6. Claimant attended The New England Center for Children in Massachusetts from 2008 to 2011. When she returned to Los Angeles in 2011, Claimant lived in an apartment in Santa Monica with supported living services. In August 2012, she moved to another apartment in North Hills with 24/7 supported living services through My Life Foundation and 2:1 supervision. Claimant lived in North Hills until April 13, 2014.

7. On April 14, 2014, Claimant moved to a community placement plan home on Ramsgate Avenue in Los Angeles, where she currently resides. People's Care Los Angeles, Inc. (People's Care) is a California corporation that is licensed by the California Department of Social Services, Community Care Licensing Division (DSS-CCLD), to operate the home as an adult residential facility. The home is owned by a non-profit organization which leases it to People's Care to operate as an adult residential facility. The home has three bedrooms and is located in a residential neighborhood. Claimant currently lives in the Ramsgate home with two female housemates who are also WRC clients. Pursuant to the IPP, WRC provides funding for 496 hours per month of supplemental support, to be provided by People's Care, in order to maintain a 2:1 staffing ratio for Claimant at the Ramsgate home.

VENDOR AGREEMENT BETWEEN WRC AND PEOPLE'S CARE

8. Pursuant to a written agreement between WRC and People's Care dated June 30, 2015 (Vendor Agreement), People's Care provides the specialized residential program at the Ramsgate home for WRC clients. (Exh. 118.) People's Care is vendored

by WRC to provide such program and services at the Ramsgate home. The Vendor Agreement provides, in part, that People's Care agrees to provide services as specified in its Program Design and/or other program documentation. The term of the Vendor Agreement is from July 1, 2015, through June 30, 2018, subject to the provision for early termination. The Vendor Agreement is subject to renewal annually, based on People's Care's satisfactory performance during the previous term and WRC's continued receipt of funding from the California Department of Developmental Services (DDS) for the purchase of the services and supports provided by People's Care.

9. The Vendor Agreement identifies People's Care as "CONTRACTOR" and WRC as "REGIONAL CENTER." Paragraph 3 of the Vendor Agreement provides: "CONTRACTOR understands there is no guarantee that REGIONAL CENTER, families or Clients will chose to utilize CONTRACTOR'S services or that families or Clients will want to continue to receive CONTRACTOR'S services for any particular period of time. This Agreement does not guarantee that any clients will be referred to CONTRACTOR'S program or services." (Exh. 118, p. 46.)

10. Paragraph 7 of the Vendor Agreement sets forth "General Provisions," including the following provisions that People's Care is an independent contractor and not an employee or agent of WRC, and is solely responsible for the manner of operating its business:

"The CONTRACTOR agrees that the CONTRACTOR and any agents and employees of the CONTRACTOR, in the performance of this Agreement shall act in an independent capacity, and not as officers or employees or agents of the State of California or the REGIONAL CENTER. The CONTRACTOR is solely responsible for the manner of operation of its business. CONTRACTOR will not hold itself

out as or claim to be an officer or employee of the REGIONAL CENTER or of the State of California, for any purposes including, but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security benefits, State Disability Insurance benefits, or retirement membership or credit.

"The CONTRACTOR agrees to indemnify, defend and save harmless the REGIONAL CENTER, the State of California, and their officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other person, firm or corporation which or who may be injured or damaged in any way by the CONTRACTOR or its agents or employees in the performance of this Agreement." (Exh. 118, p. 48.)

NOVEMBER 10, 2014 INCIDENT

11. Claimant's parents disagree with having People's Care included as a service provider under Claimant's IPP. The parents feel that People's Care has been negligent and reckless in providing care for their daughter, and that WRC has failed to hold People's Care accountable. The parents' dissatisfaction with People's Care is described in detail in a written statement attached as "Addendum A" to the IPP; WRC's response is attached as "Addendum B." (Exh. 126, pp. 111-117 and 118-119.) Both addendums are to remain attached to the IPP in perpetuity unless both parties agree to removal of either or both of the Addendums. (Exh. 126, p. 77.) The parents' written

statement refers to an incident on November 10, 2014, when Claimant's left the Ramsgate home without supervision and was later found on a nearby freeway on-ramp.

12. On November 10, 2014, at 4:00 p.m., Claimant was in the living room of the Ramsgate home with staff having a snack and watching YouTube. Claimant asked to use her bathroom. Staff Charles followed Claimant to the bathroom. When Claimant asked for "some space" in her bathroom, Charles returned to the living room. When Charles went to check on Claimant about 10-12 minutes later, Claimant was still in the bathroom. Seven minutes later, staff Babatunde went to check on Claimant and found that a door leading to the exterior of the home was wide open. Other staff saw that the side walkway door on the exterior of the home was also wide open. Staff did not find Claimant in the home and did not know her whereabouts. The staff reported Claimant missing to the Ramsgate home's Assistant Administrator at 4:33 p.m. and the Administrator at 4:45 p.m., but they did not notify law enforcement. At about 4:45 p.m., a California Highway Patrol officer located Claimant on an on-ramp to the 405 freeway. She was not injured. Claimant was able to phone her father, and the officer contacted the Ramsgate home. The Ramsgate Administrator at the time picked up Claimant at a nearby gas station and brought her back to the Ramsgate home. (Exh. 103.)

13. On November 12, 2014, WRC met with People's Care Administrators and staff at the Ramsgate home and developed a Corrective Action Plan. (Exh. 105.) The Corrective Action Plan sets forth corrective actions and the timeline for People's Care to complete the corrective actions. The Corrective Action Plan required that, starting immediately, Claimant was to remain in the line-of-sight of People's Care staff at all times, and staff would be stationed outside the door whenever Claimant was in her bathroom or in her bedroom. In addition, the Corrective Action Plan required People's Care to install louder, more sensitive alarms on the doors, hold an in-service for all staff regarding oversight and supervision, explore the possibility of locking Claimant's

bedroom exit door, and explore a tracking system that could be placed in her shoes. As of January 14, 2015, People's Care completed all of the elements outlined in the Corrective Action Plan, except for the tracking system and a lock for Claimant's bedroom door, which required approval from DSS-CCLD.

14. Claimant's parents were understandably upset by the November 10, 2014 incident. On January 30, 2015, the personal attorney of Claimant's parents sent letters to WRC's counsel and to People's Care Chief Executive Officer, Michael Kaiser, that included accusations of numerous incidents where People's Care employees have not followed Claimant's schedule and then lied to cover up those failures, and that People's Care failed to maintain the required staff-to-resident ratio for Claimant and her housemates, and those failures have placed an enormous burden on Claimant's parents to constantly monitor her care at the Ramsgate home. (Exhs. 108, 109.)

15. On February 3, 2015, People's Care sent Claimant's parents a 30-day notice that it was evicting Claimant from the Ramsgate home because People's Care came to the conclusion that it could no longer meet Claimant's needs. (Exh. 110.) On February 20, 2015, People's Care sent Claimant's parents a letter stating that it was rescinding the 30-day notice of eviction and that People's Care continued to believe that Claimant was "inappropriately placed at the home on Ramsgate" and requested that they continue to search for an appropriate placement. (Exh. 112.)

16. The reason for People's Care rescinding the 30-day eviction notice was not clearly explained by the evidence. However, a pleading filed by WRC's counsel provides some explanation. The Ramsgate home was developed as a "zero reject model," which means that there can be no evictions of consumers based on the consumer's conduct. WRC asserted that the eviction notice sent on February 3, 2015, was not based on any act done by Claimant, but, rather, due to the behavior of Claimant's mother. The eviction notice was rescinded after Claimant's counsel objected. (Exh. 216, p. 709.)

17. In March 2015, GPS insoles were shipped from the manufacturer and People's Care staff began using the GPS insoles with Claimant. The GPS insoles enable tracking of Claimant's location by tracking data accessible on the internet. On March 17, 2015, WRC's Quality Assurance Specialist, Jolene Sagan, requested People's Care's assistance to make sure that all staff working with Claimant are aware of the requirement that staff maintain line-of-sight supervision at all time. WRC was made aware that People's Care staff were not consistently maintaining line-of-sight supervision since use of the GPS insoles was recently implemented. (Exh. 114, 312.) On June 25, 2015, WRC requested that People's Care develop a plan for its staff to ensure that the GPS insoles were placed in Claimant's shoes.

18. In April 2015, WRC initiated a contract with the Center for Applied Behavior Analysis (CABA) to develop and implement a behavior plan with goals and strategies to support Claimant. Dr. Rachel Taylor, BCBA for CABA, conducted a functional behavior assessment and developed a behavior plan for Claimant. Dr. Taylor and her associate trained the staff of both People's Care and Modern Support Services (Claimant's day program provider until August 1, 2016) on how to implement the behavior support plan to ensure that Claimant received consistent, appropriate support in achieving the goals in her treatment plan. CABA continued to provide behavior services until it terminated its services for Claimant effective March 31, 2016. At that point, People's Care's behavior consultant, Caroline Martinez, BCBA, took over the provision of Claimant's behavior services.

19. In September 2015, Claimant's parents filed a fair hearing request seeking an order to compel WRC to terminate the Vendor Agreement with People's Care for the Ramsgate home. WRC's motion to dismiss the fair hearing request on jurisdictional grounds was granted following a bifurcated hearing held on December 2, 2015, before ALJ Howard Cohen. Official notice was taken of ALJ Cohen's Decision in OAH case

number 2015091123 granting WRC's motion to dismiss. (Exh. 72.) ALJ Cohen's decision was based, in part, on the grounds that "Claimant cited no authority that supports the proposition that OAH may, in the fair hearing process, upon a consumer's request, order a regional center to terminate a contract with a vendor that operates a residential facility. Nor did claimant cite authority to show that OAH may limit the discretion of regional centers as to which service providers they may vendorize, or may otherwise enforce provisions governing the relationship between regional centers and their vendors in the fair hearing process." (Exh. 72.)

SETTLEMENT AGREEMENT

20. On January 18, 2016, in another fair hearing proceeding, Claimant's parents filed a fair hearing request by which they appealed WRC's denial of their funding request for an outside entity to oversee Claimant's care at the Ramsgate home. (Exh. 317.) A hearing on the matter was scheduled in June 2016. On the second day of the hearing, WRC and Claimant's parents agreed to a settlement of the fair hearing request. WRC agreed to provide funding for a programming service facilitator (Facilitator) to provide 45 hours per month of facilitation services as detailed in the document entitled, "Claimant's Proposal for Programming Service Facilitator" (Settlement Agreement). (Exh. 5.) The Settlement Agreement is attached to and incorporated by reference in Claimant's IPP. (Exh. 6, pp. 103 and 165-170.)

21. The Settlement Agreement summarizes the Facilitator's responsibilities as follows:

The Programming Service Facilitator (the "Facilitator"), which has also been described as a "watchdog," shall independently facilitate Claimant's receipt of services and supports, as well as her rights under the Lanterman Act. The

Facilitator will also actively facilitate progress towards her Individual Program Plan ("IPP") and Person Centered Plan ("PCP") goals, and shall verify the effectiveness of services rendered and the accuracy of data provided by Claimant's service providers. The Facilitator shall have demonstrated aptitude and knowledge commensurate with Claimant's disabilities and level of need, shall be an active participant in meetings concerning Claimant, and shall issue regular written updates concerning the validity and efficacy of Claimant's services and supports as well as recent developments and future plans affecting said services and supports, all as further described in this document. (Exh. 5, p. 91.)

22. The Settlement Agreement provides that the Facilitator shall make facilitation visits (announced and unannounced) to observe Claimant at the Ramsgate home and off-site during different scheduled activities. The Facilitator is responsible for providing weekly updates summarizing and detailing observations from the visits, offering recommendations and guidance for scheduling and supports, and assessing the status of previous recommendations.

23. The Settlement Agreement requires that the Facilitator "shall be at least twenty-one years old and shall have a Bachelor's degree from an accredited college or university with coursework or direct experience relevant to working with the disabled." (Exh. 5, pp. 94-95.) The Settlement Agreement provides that WRC and Claimant's parents shall collaborate on the selection of the Facilitator.

24. The Settlement Agreement provides that Mary Lou Weise-Stusser, WRC Director of Community Services, shall serve as the contact person between Claimant's

parents and the Facilitator. Communications between the parents and the Facilitator will be copied to Weise-Stusser, and communications between the Facilitator and Weise-Stusser will be copied to Claimant's parents. The Settlement Agreement provides that Weise-Stusser "will substantively respond to communications from Claimant's parents and the Facilitator within two (2) business days." (Exh. 5, p. 93.)

25. The Settlement Agreement provides that the Facilitator shall make recommendations in the weekly update reports. If the Facilitator makes a recommendation that is not acted upon in the immediately following week, "WRC must issue a written update within seven days from the Facilitator's finding of a recommendation not acted upon," and the written update must set forth the reasons why the recommendation was not acted upon. (Exh. 5, p. 94.)

26. In August 2016, Romina Ilunga was hired as the Facilitator to carry out the facilitator duties in accordance with the Settlement Agreement. Facilitator Ilunga is a BCBA, although that is not one of the required qualifications for the Facilitator stated in the Settlement Agreement. Prior to assuming her duties as Facilitator, Ilunga was and is vendored through WRC as a service provider. WRC funding for Ilunga's services as Facilitator began on August 3, 2016. She prepared her first weekly update report as Facilitator in September 2016. Her weekly update reports for the period September 26, 2016, through January 29, 2017, were presented at the hearing. (Exhs. 19-37.)

DIFFICULT INTERACTIONS WITH CLAIMANT'S MOTHER

27. It was established, by a preponderance of the evidence, that Claimant's mother has engaged in hostile and harassing behavior towards the People's Care staff at the Ramsgate home. This finding is based on the credible testimony of Michael Kaiser, Chief Executive Officer of People's Care, and Mary Harris, Administrator at the Ramsgate home. Claimant's mother denies engaging in the conduct as reported by People's Care staff and contends that it is People's Care staff who have engaged in a pattern of hostile

and abusive behavior towards her. After reviewing the testimonial and documentary evidence, the ALJ finds that the more persuasive evidence supports the version of events proffered by People's Care.

28. Michael Kaiser has been the Chief Executive Officer of People's Care for 19 years. He has received reports that Claimant's mother is abusive and harassing to People's Care staff working at the Ramsgate home. Claimant's mother has reportedly screamed at the staff, belittled them, called them names, and made harassing phone calls to the Ramsgate home, sometimes pretending to be another person when she called. Kaiser contends that Claimant's mother's behavior has created a hostile workplace for many of his employees at the Ramsgate home. As a result, Kaiser hired a lawyer to help protect the company from potential liability, in that, as the employer, Kaiser has an obligation to provide his employees with a work environment free from hostility. According to Kaiser, the Ramsgate staff are "on edge" as a result of Claimant's mother's routine abuse. Kaiser has had a hard time keeping employees at the Ramsgate home; and others have threatened to quit because of the situation in the Ramsgate home.

29. (A) Mary Harris has worked at the Ramsgate home since 2014. She has been the Administrator of the Ramsgate home for one year. Prior to that, she also worked at the Ramsgate home as House Manager and as a DSP.

(B) According to Harris, staff have reported feeling harassed, abused, and threatened by Claimant's mother during their interactions with her. Claimant's mother has questioned the staff about Claimant's activities in a manner and tone that is accusatory and feels like an interrogation. Claimant's mother has accused the staff of stealing Claimant's clothing and using Claimant's funds for their own use (e.g., using Claimant's money to get manicures for themselves instead of for Claimant). Claimant's mother has made abusive telephone calls to the staff. According to Harris, she has seen

her staff visibly upset as a result of interacting with Claimant's mother. Staff reported that interacting with Claimant's mother is stressful because of her disrespectful, rude, and demeaning behavior.

(C) In or about December 2016, Harris implemented a protocol which directed the Ramsgate staff to direct all communications from Claimant's mother to Harris, who would respond. Harris felt this protocol would prevent further negative interactions between the staff and Claimant's mother.

(D) The protocol only applied to communications from Claimant's mother. Harris did not implement a similar communication protocol regarding Claimant's father. According to Harris, People's Care staff have no problem communicating with Claimant's father, who Harris described as "quite pleasant."

30. (A) Weise-Stusser is WRC's Director of Community Services and has been involved in Claimant's case. Weise-Stusser testified credibly that it has been particularly challenging working with Claimant's mother.

(B) Over the three years that People's Care has worked with Claimant, Claimant's mother has hurled accusations against Weise-Stusser, People's Care staff, and WRC staff, charging them with ineptness in the performance of their jobs. Weise-Stusser testified she receives dozens of emails every day from Claimant's mother. Weise-Stusser testified that there is a "constant criticism" by Claimant's mother that the services offered or provided to Claimant are inadequate. Claimant's mother has requested changes to Claimant's assigned WRC service coordinator and has rejected proposed replacement service coordinators.

(C) According to Weise-Stusser, WRC staff have left or resigned because of their dealings with Claimant's mother. One case manager went on stress leave due to the overwhelming nature of dealing with Claimant's mother. Claimant has had six different case managers assigned to her case over the past two years.

31. (A) Facilitator Ilunga testified credibly that she has raised concerns with Weise-Stusser that the number of telephone calls and emails that she was receiving from Claimant's mother was becoming "excessive."

(B) Claimant's mother denies engaging in the harassing and abusive conduct reported by People's Care staff. The denial is not persuasive.

(C) People's Care staff and Weise-Stusser have no incentive to lie about their negative interactions with Claimant's mother. Lying serves no apparent productive purpose and would subject them to negative consequences, such as loss of employment or disciplinary action by their employer. On the other hand, it is no secret that Claimant's mother does not trust and does not want People's Care as a service provider for Claimant. She is critical of People's Care staff in the performance of their duties, and of WRC for not holding People's Care accountable.

(D) As Claimant's parent and co-conservator, Claimant's mother is entitled to advocate for her daughter. But it has now come to the point that, because of her negative tone and demeanor towards People's Care staff and WRC staff, her advocacy has crossed a line and is now counter-productive. The Lanterman Act contemplates that consumers and their families, and regional centers will work collaboratively in the IPP process. Claimant's mother must realize that her constant criticism of People's Care and WRC is not conducive to having a productive working relationship with the agencies charged with providing services for her daughter. The November 10, 2014 freeway incident, the medication incident occurring over the 2017 New Year's weekend, and other missteps, are regrettable. However, the Lanterman Act recognizes that mistakes and missteps will happen. There are regulations for corrective action plans. The IPP process can be invoked when services need to be revised due to changed circumstances. Providing services for developmentally disabled persons is complicated. There is a learning curve for both the consumer and the service provider in the provision

of services. Trial-and-error is sometimes needed to determine whether or not services and supports are appropriate for a given consumer.

COMMUNICATION WITH CLAIMANT'S PARENTS

32. Claimant's parents seek an order to compel WRC to require that People's Care direct support staff communicate with them directly and in real time. (Exh. 320.) As noted in Finding 29, above, Mary Harris instructed People's Care staff that they were not to engage in direct communication with Claimant's mother; instead, staff are told to advise Claimant's mother that she should direct all communications and questions by email to Mary Harris, other than in an emergency. (Exh. 2, p. 32.)

33. Claimant's parents contend that the policy of no direct communication between People's Care staff and Claimant's mother violates the People's Care Program Design. For example, the Program Design states that the Administrator's duties include maintaining "regular communication with conservators," and the House Lead must, regarding medical and dental appointments, "communicate all issues with family." (Exh. 283, pp. 1985, 1988.) Claimant's parents also note that the policy is contrary to the IPP, which provides that "People's Care must immediately inform [Claimant's parents] about any health concerns that might require medical attention, so that her parents/conservators can attend any medical or dental appointments." (Exh. 126, p. 88.) Claimant's parents also contend the policy is discriminatory because it applies only to Claimant but not her two housemates.

34. (A) Claimant's parents contend the policy is harmful. They cite to an incident during New Year's weekend in December 2016-January 2017. According to the parents, Claimant was ill and had been prescribed antibiotics by her doctor. When Claimant's parents called the Ramsgate home to check on Claimant's condition, the People's Care staff who answered the telephone told the parents to "ask her yourself," and handed the telephone to Claimant. Because of the policy of having all

communications with the parents go through Mary Harris, there was delay in getting over-the-counter medications and prescribed antibiotics to Claimant.

(B) On January 19, 2017, WRC issued a Corrective Action Plan in response to the medication incident. The "inadequacies" identified in the Corrective Action Plan were that Claimant's medication Cedfinir was not filled and dispensed from December 30, 2016 to December 31, 2016; her medication Flonaze was not filled and dispensed from December 30, 2016, to January 2, 2016; and People's Care did not submit a special incident report regarding these medication errors as required by California Code of Regulation, title 17, section 54327. The Corrective Action Plan stated that WRC required a commitment from People's Care to comply with the list of nine corrective actions. Item 1 of the corrective actions stated: "Submit a written protocol who will be responsible for reviewing and logging the medications when delivered by the pharmacy and what steps they need to ensure all clients medication has been received and all medication are correct on the MAR." (Exh. 327.) Item 2 of the corrective actions stated: "Submit a protocol for medical management. RN and LVN should have a clear internal process as to who to notify of their recommendations, which staff will continue to follow up and provide RN and/or LVN with updates on client's progress." (*Id.*)

35. Claimant's parents also contend the policy interferes with Claimant's mother's ability to effectively communicate with Claimant on the telephone. Before she has a conversation with Claimant, Claimant's mother wants to ask questions of the People's Care staff about what Claimant did that day. Claimant's mother contends her questions to staff are normal questions that any parent would ask and expect answers. Claimant's mother feels that she needs information from the People's Care staff about Claimant's activities in order to be able to prompt Claimant and encourage a reciprocal telephone conversation.

TRANSPORTATION FOR FRIDAY AFTERNOON SOCIAL SKILLS PROGRAM

36. The Vendor Agreement between People's Care and WRC provides, in part, that People's Care will provide specialized residential services for WRC clients as specified in People's Care's Program Design. (Exh. 118, p. 47.) The Program Design states, in part, that People's Care will provide services according to its contract with WRC, individual program plans, individual service plans, and other plans developed by consultants and professionals involved in supporting the residents. (Exh. 283, p. 1986.) The Ramsgate home has one van used to provide transportation for the residents. The Program Design states, in pertinent part:

"Specialized Residential Ramsgate will utilize one vehicle at the home to transport up to three residents to and from scheduled medical and dental appointments, school, work and day program, as needed, as well as the home's scheduled community outings. Since Specialized Residential Ramsgate provides support to three residents, planned community outings will be scheduled daily and/or weekly as requested by the residents and/or through the leadership of the Administrator and DSP. Shared interests and group participation will be encouraged, however, if an individual chooses not to participate in the planned activity and selects another activity which requires transportation, alternate resources will be explored." (Exh. 283, p. 1906.)

37. According to the IPP, Claimant is transported by People's Care in their company van with 2:1 staff support. There is a seating plan in place for when Claimant

travels with her housemates, in order to ensure that no aggression occurs between them during transit. When Claimant attended the day program with Modern Support Services from April 2015 to August 2016, Modern Support Services provided her transportation to community sites. Claimant is not considered a good candidate for ACCESS services due to her challenging behaviors. (Exh. 6, pp. 102, 106.) The IPP further indicates that Claimant's community integration cannot be safe and enhanced by the use of public transportation, and that generic transportation services are not available and accessible for Claimant. (Exh. 6, pp. 106-107.)

38. In May 2015, Claimant began attending the Leaps N Boundz adult social skills program on Sunday mornings from 11:30 a.m. to 1:00 p.m. People's Care provided transportation in the Ramsgate van for Claimant and her accompanying staff. According to the IPP, Claimant worked on goals such as responding to safety cues of "stop" and "wait" independently, sharing joint attention in a social setting, appropriately expressing her own emotions, recalling the names of her peers, and following group directives. (Exh. 6, p. 104.) Claimant was reportedly making good progress on these goals, appeared to enjoy attending the program, and appeared to be developing a friendship with two of her peers in the program. (*Id.*) Claimant's attendance in the Leaps N Boundz social skills program on Sundays was included in her IPP as Desired Outcome 9, with funding provided by WRC through at least March 31, 2017. (Exh. 6, pp. 124-125.)

39. Subsequently, Leaps N Boundz changed the day of the adult social skills program from Sunday mornings to Friday afternoons from 3:30 to 5:30 p.m. Claimant's parents requested that People's Care provide Claimant's transportation to the Friday afternoon program in the Ramsgate van. Administrator Mary Harris denied the request, claiming that the van could not be committed to Claimant every Friday afternoon. In an email to Claimant's mother on December 9, 2016, Harris explained:

"We are unable to provide transportation to [Claimant] for the 3:30-5:30 Leaps N Boundz program on Fridays due to a scheduling conflict. From 4-6 p.m. on Fridays, all three residents participate together in Fun Friday activities that usually involve use of the van for transportation. This is a special bonding time for them, and the process of selection of activities is a group decision. Both the process of selection and the activities themselves are intended for bonding and skill building, in addition to being a fun time for them to be together at the end of the week. Fun Friday is also part of Steve Millers [sic] Person Center[ed] Plan for [Claimant]. [¶] There are some Fridays where other things, like family plans of one or more of the girls, will interfere with full participation in Fun Friday. Because of this, I contacted Leaps N Boundz to see if it would be possible for [Claimant] to attend on a drop in basis. Leaps N Boundz staff let me know that was not possible. [¶] Unfortunately, the timing of this class will not work. If there is another class on a different day that does not have a scheduling conflict, please let me know and I will try to make it work." (Exh. 244.)

40. Claimant's parents contend there is no reason why the Fun Friday activity cannot be rescheduled so that Claimant can attend the Leaps N Boundz program on Friday afternoons. They contend that People's Care's explanation that the van may be needed on Fridays for a Ramsgate resident that goes home for the weekend shows that the other resident's needs are given preference over Claimant's needs. The parents

contend that the tracking data from Claimant's GPS insoles from October 2016 to December 2016 indicate that Claimant has been at the Ramsgate home on Fridays when Fun Friday activities are supposed to be happening. They contend that since Fun Friday activities have typically involved going to a restaurant for dinner or to a movie, and the Leaps N Boundz program is from 3:30 to 5:30 p.m., the Fun Friday activities can still be held on Fridays after Claimant returns to the Ramsgate home from the Leaps N Boundz program.

41. Claimant's parents contend that Claimant is not being provided equal access to van transportation and they have demanded that People's Care provide them with a complete and accurate schedule of the van usage for all of three residents of the Ramsgate home, suggesting that the names of the other two Ramsgate residents can be appropriately redacted replaced by anonymous names or titles. People's Care has not provide the parents with the van schedule for Claimant's two housemates on the grounds that the two housemates are regional center clients and their information cannot be disclosed without their consent. (Welf. & Inst., § 4659.10.)

GPS INSOLES

42. The use of GPS insoles in Claimant's shoes was proposed in the Corrective Action Plan implemented in response to the November 10, 2014 freeway incident. Item 6 in the list of corrective actions reads: "People's Care is also exploring, if deemed appropriate by conservators and [DSS-CCLD], a tracking system that could be placed in [Claimant's] shoes. It is our understanding that [Claimant] does not like to wear bracelets or other jewelry, so something that can be attached to her shoes would be more effective." (Exh. 105.)

43. The IPP includes Desired Outcome #4 that "[t]he rate in which [Claimant] engages in challenging behaviors will significantly decrease, so that she can live a more independent and inclusive life." (Exh. 6, p. 118.) The IPP states that WRC will support

Claimant in achieving this desired outcome by providing 496 hours per month of supplemental support to be provided by People's Care in order to maintain a 2:1 staffing ratio for Claimant, with this level of supplemental staff report to be assessed on a quarterly basis to determine whether it is effective and continues to be needed. (Exh. 6, p. 120.) In addition, WRC agreed to "purchase two new GPS insoles from Global Trek Xploration and provide funding for the insoles and monthly service fees by August 31, 2016," and that WRC was "responsible for returning damaged or malfunctioning insoles back to Global Trek Xploration." (Exh. 6, p. 121.)

44. WRC purchased two pairs of GPS insoles in accordance with the IPP, and the GPS insoles were shipped from the manufacturer in March 2015. In the ensuing few months, Claimant's parents and People's Care staff learned how to use the insoles and to access the GPS tracking data on the internet. The IPP states: "People's Care will follow the instructions provided by the GPS provider to charge the GPS insoles and insert the GPS insoles into [Claimant's] shoes each morning and swap them when the battery is low." (Exh. 6, p. 120.)

45. Part IV of the IPP, entitled "Progress on Previous IPP," includes paragraph 3.6 which summarizes the use of the GPS insoles as follows:

[Claimant's] GPS tracking insoles were funded by [WRC], and People's Care assisted her in recharging them nightly and placing them in her shoes each morning. However, they often appeared not to be working, and the protocol for monitoring them over the internet was very difficult to navigate. In October 2015, the insoles were returned to the manufacturer for repair for a third time, and have not been replaced. WRC is of the opinion that using insole inserts with [Claimant] was most likely problematic because she is a

physically active individual, and is very hard on her shoes. In the meantime, [Claimant] has had no episodes of wandering away, with her present level of supervision. (Exh. 6, p. 127.)

46. In or about December 2016 or January 2017, while Claimant was out hiking with People's Care staff, she took out an insole and threw it where it could not be found. The remaining insole stopped working in December 2016, and WRC was informed by the manufacturer that it is not repairable.

47. Claimant's parents have requested that WRC continue to purchase GPS insoles for Claimant as they become lost, damaged, or malfunction. WRC denied the request on the grounds that the GPS insoles are no longer needed. The initial purpose of the GPS insoles was to ensure Claimant's safety due to her history of elopement, including the November 10, 2014 freeway incident. WRC notes that there have been no other incidents of elopement after Claimant's supervision protocol was changed so that two People's Care staff are required to maintain line-of-sight supervision over Claimant at all times. WRC contends that the line-of-sight requirement has alleviated the need for the GPS insoles. WRC contends that the purpose of the GPS insoles was never for Claimant's parents to remotely spy on Claimant's activity, which is how WRC contends that Claimant's parents are using the insoles. (Exh. 4.) WRC will not agree to purchase GPS insoles beyond the two pairs it has already purchased.

48. Claimant's parents contend that the GPS insoles are necessary because the family needs to be able to track Claimant's location at all times. Claimant's mother complains about instances where Claimant is not at the location indicated on her activity schedule. Claimant's mother is suspicious that People's Care staff are not adhering to Claimant's week activity schedule and Claimant is missing out on those activities. In addition, Claimant's parents contend that People's Care staff lie about Claimant's whereabouts on a regular basis, and the GPS insoles are needed to ensure that Claimant

is actually doing what People's Care says she is doing. Claimant's parents contend the GPS insoles are needed for "independent verification of [Claimant's] location and the additional safety provisions of the GPS devices." (Claimant Closing Brief, p. 16.)

49. In response to Mother's complaints, Mary Harris testified that Claimant is a 24-year-old woman. The staff accommodates Claimant's wishes when she does not feel like going to an activity, or she changes her mind. Plans or activities are modified because of Claimant's wishes or preferences or if she engages in problematic behavior. But that does not mean that People's Care staff are not complying with the schedule.

50. Mary Lou Weise-Stusser testified that Service Agency purchased the GPS insoles as an added precaution in the event Claimant eloped from her support staff so they could pinpoint her location. The GPS insoles were not intended to be used to verify Claimant's location on a regular basis. Weise-Stusser testified she did not believe that the GPS insoles were to be used that way. According to Weise-Stusser, the GPS insoles purchased for Claimant are designed for persons with dementia, who tend not to be very active. Claimant, on the other hand, is very active and her activity is hard on the insoles and causes them not to work. The insoles are designed to "ping" from a cell tower every 10 minutes, so it's not locating the person in real time but in 10 minute intervals.

COMPLIANCE WITH SETTLEMENT AGREEMENT

51. WRC has complied with the Settlement Agreement in that it has funded 45 hours per month of services by the Facilitator, Ms. Ilunga, starting August 3, 2016. In its February 1, 2017 Notice of Proposed Action, WRC stated that it intended to continue to comply with the Settlement Agreement.

52. The Settlement Agreement requires that all communications between Weise-Stusser, Claimant's mother, and the Facilitator be copied to all three persons. The documentary evidence included numerous emails by and between these three persons.

Weise-Stusser admitted that at least one email she sent to Facilitator Ilunga, was not copied to Claimant's mother. Weise-Stusser testified that the purpose of this provision was to have one central point of contact. Weise-Stusser testified that, regarding the medication protocol issues, it was possible that she did not respond to Claimant's mother within two days, noting that the emails she received from Claimant's mother were voluminous and overwhelming.

53. Claimant's parents feel that WRC and People's Care are not complying with the "letter and spirit" of the Settlement Agreement. For example, the Settlement Agreement requires that three days before the commencement of a given week, People's Care shall coordinate with the Facilitator to finalize Claimant's schedule for the week, which will enable the Facilitator to plan the facilitation visits for the upcoming week. (Exh. 5, p. 92.) Facilitator Ilunga testified, and emails confirm, that on some occasions, People's Care did not timely provide Claimant's schedule to her. Facilitator Ilunga testified she attempted to make, but was unable to complete, unannounced facilitation visits on at least two occasions when Claimant was not at the location shown on her weekly schedule and Facilitator Ilunga was not informed of any deviation from Claimant's schedule. Claimant's parents contend that WRC should credit back the facilitator hours for the occasions Facilitator Ilunga was unable to complete a facilitation visit because Claimant was not at the location on her schedule. There is no such provision in the Settlement Agreement for crediting back facilitator hours.

54. People's Care has worked with Facilitator Ilunga regarding Claimant's schedule and providing behavioral data, as required by Claimant's IPP. For example, paragraph 1.10 of the IPP requires the People's Care House Administrator and BCBA to collaborate with the Facilitator to identify appropriate, meaningful, and productive activities and create a schedule comprised of those activities. (Exh. 6, p. 115.) Paragraph 7.5 of the IPP requires the People's Care House Administrator to collaborate with the

Facilitator in researching community activities, identifying three new activities for Claimant, and incorporating those activities into Claimant's weekly schedule. (Exh. 6, p. 123.)

55. The Settlement Agreement provides that Ilunga, as Facilitator, will make recommendations, which are to be implemented and, if not implemented, WRC is to provide a written explanation within seven days of the recommendation. All of the recommendations were not implemented, evidenced by the number of recommendations not acted up that were included in an on-going list in Facilitator Ilunga's weekly update reports.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested fair hearings and therefore jurisdiction for this case was established. (Factual Findings 1 and 2.)

2. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan (IPP). (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP, and the cost-

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

effectiveness of each option. (§ 4512, subd. (b).) If the parties cannot agree on the provision of a service after the IPP process, a hearing officer shall make the decision after a fair hearing. (§ 4646, subd. (g).)

3. A regional center may purchase services or supports for a consumer from any individual or agency pursuant to vendorization or a contract. (§ 4648, subd. (a)(3).) "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).) The requirements for vendorization are set forth in detail at California Code of Regulations, title 17 (CCR), section 54302 et seq.

FRAMEWORK FOR ANALYSIS

4. The parties' contentions in this case have focused on whether or not WRC may compel People's Care to comply with the Settlement Agreement and whether WRC has authority to exercise control over certain aspects of the day-to-day operations of the Ramsgate home and Claimant's care. The Settlement Agreement cannot be enforced against People's Care because People's Care is not a party to the agreement and was not a party to the negotiations that resulted in the agreement. A general principle of contract law is that one must be a party to a contract in order to be bound by its terms. (See, e.g., *DMS Services, Inc. v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352.) This, however, does not end the inquiry. The resolution of the dispute in this case requires analysis of whether the matters that are the subject of the orders requested in Claimant's fair hearing requests fall within the scope of the various duties and responsibilities imposed on WRC under the Lanterman Act. As explained below, WRC has an obligation, as the payer of last resort, to provide Claimant's transportation to the Friday afternoon socialization class. WRC also has a continuing obligation to comply with the Settlement Agreement, which it does not dispute. However, the matters that

are the subject of Claimant's requests for orders involving her day-to-day care at the Ramsgate home and the home's operations must be denied because they are beyond the scope of WRC's duties and obligations under the Lanterman Act.

SCOPE OF WRC'S DUTIES AND RESPONSIBILITIES

5. WRC has various duties and responsibilities imposed by the Lanterman Act, including coordinating services, preparing and implementing IPPs for its consumers, and selecting and periodic monitoring of service providers. However, those responsibilities do not include exercising direct control over People's Care day-to-day operations of the Ramsgate home.

6. Under the Lanterman Act, the function of regional centers is to secure needed services for consumers by "purchasing or by obtaining them" from qualified direct service providers. (§ 4647, subd. (a); 4648, subd. (a)(3).) Regional centers themselves are not direct service providers. The California Supreme Court, in *Morohoshi v. Pacific Home, et al.* (2004) 34 Cal.4th 482, rejected the argument that a regional center has authority to provide care for a consumer itself in lieu of contracting with a provider. The Supreme Court held that direct provision of care is not a responsibility of regional centers, explaining:

[T]he responsibility of a regional center is to "secure," not provide, care. (§ 4648, subd. (a)(1).) To read the list of services a regional center may be required to secure for a developmentally disabled individual [set forth in § 4512, subd. (b)] is to understand that a regional center could not possibly be expected to provide those services itself. Indeed, "[e]xcept in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall

utilize appropriate public and private community agencies and service providers to obtain those services for its consumers." (§ 4648, subd. (f).)

(*Morohoshi, supra*, 34 Cal. 4th at p. 482.)

7. In the *Morohoshi* case, the California Supreme Court held that regional centers are responsible for only periodic monitoring, not day-to-day monitoring, of service providers. The *Morohoshi* court recognized that regional centers "have important but limited monitoring responsibilities" and the Legislature did not require regional centers to engage in continuous "hour-by-hour" monitoring. (*Morohoshi, supra*, 34 Cal.4th at p. 490.) A regional center "is required to establish a 'schedule of regular *periodic* review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and implementation.'" (*Id.* [italics in original].)

8. (A) In this case, the subject of the orders requested by Claimant (i.e., charging and inserting GPS insoles in Claimant's shoes, communicating directly and in real time with the parents, and modifying the van schedule to accommodate Claimant's activities) are the types of services that are the responsibility of the People's Care staff who work with Claimant on a day-to-day basis. To make WRC responsible for monitoring those services on a day-to-day basis would, in effect, place WRC in the position of a direct service provider, which is beyond WRC's obligations under the Lanterman Act.

(B) Furthermore, imposing such an obligation on WRC is contrary to the Vendor Agreement between WRC and People's Care for the Ramsgate home. The Vendor Agreement provides that People's Care and its staff are not officers, agents or employees of WRC. The Vendor Agreement makes clear that People's Care acts in an

"independent capacity" and "is solely responsible for the manner of operation of its business." The Vendor Agreement contains no provision allowing WRC to exercise control over People's Care and its staff as contemplated by Claimant's requests. People's Care is a separate legal entity with its own responsibilities and obligations.

9. Based on the foregoing, Claimant's requests for orders requiring WRC to ensure that People's Care staff charge Claimant's GPS insoles and place them in her shoes, that staff communicate directly and in real time with Claimant's parents, and that People's Care modify the van schedule to accommodate Claimant's activities, must be denied.

ISSUE 1 – TRANSPORTATION TO FRIDAY SOCIALIZATION PROGRAM

10. (A) WRC has an obligation, as the payer of last resort, to arrange for Claimant's transportation, as needed, for the Friday afternoon socialization program. The socialization program (which was previously held on Sunday mornings) is included in Claimant's IPP and WRC agreed to fund the program through at least March 31, 2017. People's Care (Claimant's residential services provider) cannot commit to providing transportation every Friday afternoon due to scheduling commitments for the entire Ramsgate home. Generic services, such as ACCESS and public transportation, are not available and/or not appropriate for Claimant due to her disabilities.

(B) Under section 4512, subdivision (b), the services and supports that may be included in a consumer's IPP include "transportation services necessary to ensure delivery of services to persons with developmental disabilities." Section 4501 states that "[t]he complexities of providing services and supports . . . requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports." Based on provisions such as section 4501, it is said that regional centers are the "payers of last resort."

Section 4659.10 provides, in part, that regional centers "shall continue to be the payers of last resort" consistent with the provisions of the Lanterman Act.

11. (A) The Ramsgate van was assigned to Claimant on Sunday mornings. After the program changed to Friday afternoons, Mary Harris inquired about whether Claimant could attend the socialization program on a drop-in basis, suggesting that the Ramsgate van might be available on some Fridays, just not every Friday. The Leaps and Boundz program told Harris drop-ins were not allowed.

(B) Under these circumstances, WRC, as the payer of last resort, shall be ordered to secure transportation services for Claimant to attend the Leaps N Boundz program on Friday afternoons when the Ramsgate van is not available to do so. The socialization program, which is an identified service in Claimant's IPP, cannot be accessed by Claimant unless she is provided transportation to the program on Friday afternoons.

12. (A) As set forth in the Joint Issue List (Exh. 67), Claimant's parents also request orders that WRC be ordered to require People's Care to provide Claimant with equal opportunities to access transportation to facilitate community integration and peer socialization outside of the home; to modify or revise the Ramsgate van schedule to accommodate Claimant's attendance at meaningful and appropriate activities; and to provide a complete and accurate van schedule for Claimant and the two housemates. The requests for such orders are denied.

(B) The request for a complete van schedule that includes information about Claimant's two housemates is denied. Information regarding the housemates, who are WRC clients, or their services is confidential and may not be disclosed without written consent of the housemates and/or their families. (§ 4514.) The request for an order the WRC must compel People's Care to modify the van schedule is denied for the same reasons set forth in Legal Conclusions 5-8, above. The request for an order that

WRC require People's Care to provide Claimant equal opportunities to access to transportation is denied because the request is overbroad, vague, and indefinite that a proper order cannot be crafted consistent with Claimant's IPP goals.

ISSUE 2 - COMPLIANCE WITH SETTLEMENT AGREEMENT

13. The gist of Claimant's parents' complaints about WRC's compliance with the Settlement Agreement is that WRC and People's Care are not cooperating or supporting Facilitator Ilunga in performing her facilitator duties under the Settlement Agreement. This contention is not supported by the evidence. Mary Harris testified credibly that she has no problem working with Facilitator Ilunga regarding Claimant's schedule, providing behavioral data, and locating new activities and programs for Claimant. Although there has been some problems in the interactions between People's Care and Facilitator Ilunga, the involved parties have collaborated to address and/or resolve the problems. Facilitator Ilunga also testified credibly that she and Mary Harris have been working cooperatively. People's Care has cooperated with Facilitator Ilunga as required by Claimant's IPP.

14. Under the Settlement Agreement, WRC is required to provide a substantive response to emails from Claimant's mother and/or Facilitator Ilunga within two days, and provide a written report within seven days when the recommendations in Facilitator Ilunga's weekly reports are not implemented the following week. Locating activities and programs for Claimant is a challenge due, in part, to her behavioral issues. Claimant's behavioral issues, including her physical aggression and property destruction, have resulted in her termination from programs. Weise-Stusser admitted there have been occasions when she did not timely respond to emails from Claimant's mother. WRC's non-compliance with the Settlement Agreement have been minor and reasonable under the circumstances and timely addressed by WRC.

15. WRC is not required to credit back some of the Facilitator's hours for the occasions when she attempted to make a facilitation visit but was unable to do so because Claimant was not at the location indicated on her schedule. There is no provision in the Settlement Agreement for crediting back hours. No evidence was presented to establish the amount of time sought to be credited back. Weise-Stusser testified that an inherent problem with unannounced visits is that the person visited may not be at the location of the visit.

16. The request of Claimant's parents for an order that WRC terminate the Vendor Agreement with People's Care if People's Care fails to comply with the Settlement Agreement must be denied. The request is barred by *res judicata* and the decision by ALJ Howard Cohen in OAH case number 2015091123. (Exh. 72.) Claimant argues that *res judicata* does not bar the current request because, unlike the previous case where Claimant sought immediate termination of the Vendor Agreement, in this case, she seeks termination of the contract only if People's Care refuses to comply with the Settlement Agreement. Claimant's argument is not persuasive. The timing of the requested termination does not change the fact that the same issue is presented, namely, whether WRC can be ordered to terminate the Vendor Agreement with People's Care at the request of a consumer's family. The answer is no.

17. Based on the foregoing, WRC shall be ordered to comply with the Settlement Agreement by continuing to authorize funding of 45 hours per month for facilitation services as provided by the Settlement Agreement, and to provide responses and reports according to the timelines set forth in the Settlement Agreement.

ISSUE 3 - GPS INSOLES

18. Claimant's parents have requested that WRC continue to purchase additional GPS insole units for Claimant as they become lost, damaged, or malfunction. Pursuant to the IPP, WRC agreed to purchase two pairs of GPS insoles, which it did. One

pair of insoles was malfunctioning and returned to the manufacturer, who, in turn, notified WRC that the pair was not repairable. The other pair of insoles was lost when Claimant threw the insoles away when she was out hiking with People's Care staff.

19. The request that WRC continue to purchase additional GPS insoles as they become lost, damaged, or malfunction, must be denied. There is no requirement in Claimant's IPP that WRC continue to purchase GPS insoles beyond the two pairs required by the IPP. Moreover, the GPS insoles are no longer needed to meet Claimant's needs. The use of the GPS insoles was in response to the November 10, 2014 elopement incident when Claimant left the Ramsgate home without supervision and the Ramsgate staff were unable to locate her whereabouts. At the time of the November 10, 2014 incident, Claimant was under 2:1 supervision by People's Care staff, with no requirement that staff maintain line-of-sight supervision at all times. The GPS insoles were intended to be used to locate Claimant in the event she left her location without supervision. Subsequently, the protocol for Claimant's supervision was changed to require that staff keep Claimant in their line-of-sight at all times. Since the implementation of the line-of-sight requirement, Claimant has had no other incidents of elopement and there has been no need for using the GPS insoles to find her location.

20. Claimant's parents contend that there is continuing need for the GPS insoles because of the need for independent verification of Claimant's location. For example, Facilitator Ilunga has used the GPS tracking data to verify that Claimant is where she is supposed to be as shown on her weekly activity schedule. Facilitator Ilunga discovered inconsistencies between Claimant's weekly schedule and the GPS tracking data. The use of the GPS tracking data as a verification of Claimant's minute-by-minute location was not the purpose of the GPS insoles. The evidence presented indicated that the tracking data from GPS insoles were not consistently accurate.

21. Based on the foregoing, WRC is not required to purchase additional GPS insoles beyond the two pairs it has already purchased as required by the IPP.

ISSUE 4 – COMMUNICATION WITH CLAIMANT'S PARENTS

22. As discussed in Legal Conclusions 5-9, above, the request for an order to compel WRC to require People's Care staff to communicate with Claimant's parents directly and in real time is denied. Further, there is no obligation for WRC to provide additional services to enhance communications with Claimant's parents. There is insufficient evidence that direct communication in real time is required to meet the goals of the IPP. The one instance of mismanagement of medication administration is unfortunate. However, it has been corrected. There is substantial evidence that Claimant's mother has interacted with People's Care staff in a manner that is abusive and harassing and counter-productive to the IPP. The protocol instituted by Mary Harris was a reasonable response to protect further negative interactions between Claimant's mother and the Ramsgate staff, so that the staff could focus on providing services for Claimant.

DISPOSITION

23. Based on the foregoing, Claimant's appeals are granted in part, denied in part, or denied in their entirety, as set forth in the Order below. (Factual Findings 1-55 and Legal Conclusions 1-22.)

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ORDER

1. For Issue 1, Claimant's appeal in OAH case number 2016120649 is granted in part. Westside Regional Center shall secure transportation services and supports for Claimant to attend the Leaps N Boundz socialization program on Fridays from 3:30 to 5:30 p.m. and only on the Fridays that the People's Care van assigned to the Ramsgate home is unavailable to provide such transportation. In all other respects, Claimant's appeal is denied.

2. For Issue 2, Claimant's appeal in OAH case number 2016120840 is granted in part. Westside Regional Center shall continue to comply with the Settlement Agreement. In all other respects, Claimant's appeal is denied.

3. For Issue 3, Claimant's appeal in OAH case number 2017010410 is denied.

4. For Issue 4, Claimant's appeal in OAH case number 2017010411 is denied.

DATED:

ERLINDA G. SHRENGER

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.