

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017020480

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 28, 2017.

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

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

The matter was submitted on March 28, 2017.

ISSUE

Should IRC maintain claimant's 40 hours per month of special individual training services?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On January 27, 2017, IRC served claimant with a notice of proposed action denying claimant's request to maintain his 40- hours per month of specialized individual training services (SIT).

2. On February 4, 2017, claimant filed a fair hearing request objecting to IRC's decision, and this appeal followed.

BACKGROUND

3. Claimant is a 21-year-old male who resides with his parents and sister. He qualifies for regional center services based on diagnoses of autism and moderate intellectual disability. He received applied behavioral analysis services until he graduated out of those services in 2015. According to his most recent Individualized Program Plan (IPP), claimant receives 40 hours per month of SIT services. Claimant's SIT services are provided through California Psychcare.

4. According to Angelica Serrano, claimant's Consumer Services Coordinator, SIT services are designed as a service of last resort for children with severe behavioral problems. Given that the SIT staff accompany claimant into the community and assist him with being more independent, SIT also provides a form of respite for claimant's parents. IRC does not dispute that claimant needs assistance in becoming more independent at home and in the community.

5. According to claimant's January 23, 2017, IPP as well as testimony from Ms. Serrano, SIT is no longer appropriate for claimant because he no longer displays the extreme behaviors that warrant SIT services. A client development evaluation report (CDER) dated January 23, 2017, also supports that conclusion. According to Program Manager Anthony Dueñez, a person is rated, based on their specific behaviors, and the

scores for each behavior are compiled to obtain an overall score. A score of one on the CDER would mean a person lacks independents. A score of five means the person is, for all intents and purposes, practically independent. Claimant's CDER report showed claimant scored a 4.67, meaning, he is practically independent. Accordingly, SIT services were no longer warranted.

6. At the January IPP meeting, claimant's parents agreed to a phase-out plan for SIT services, and to apply for In Home Supportive Services (IHSS) in order to seek respite care. The phase-out plan for SIT services, in order to avoid any regression that might take place should claimant's services be immediately cut-off, designed a plan whereby claimant's hours of SIT would gradually decrease from 40 hours, to 20 hours, then to 10 hours, and then stop.

7. Claimant's parents did not apply for IHSS services, and instead, filed a fair hearing request.

FUNCTIONAL BEHAVIOR ANALYSIS REPORT

8. A functional behavior analysis of claimant was completed on March 18, 2017. The purpose of the analysis was to update the behavior intervention plan currently being used to provide services to claimant by California Psychcare. The parties did not have the benefit of the functional behavior analysis report prior to claimant's most recent IPP meeting or prior to the administrative hearing.

9. The report, completed by a board-certified behavior analyst, concluded claimant's current level of SIT hours appeared to be sufficient to meet claimant's training goals. The report also concluded claimant should receive services with a behavioral component to them, which is what SIT provides.

10. In light of the report, Mr. Dueñez agreed that – although SIT services are no longer appropriate because claimant's behaviors are not severe, adaptive skills services would be appropriate. Adaptive skills training also help a person become more

independent. Ms. Serrano also agreed with Mr. Dueñez, and explained that there are vendors that can provide adaptive skills services utilizing personnel that are board-certified behavior analysts. Both Mr. Dueñez and Ms. Serrano agreed that an assessment could be conducted to see how many hours of adaptive skills claimant could receive.

CLAIMANT'S MOTHER'S TESTIMONY

11. Claimant's mother testified that claimant had extreme behaviors and that she and claimant's father were concerned if no behavioral component was provided to a service, claimant would regress. The ABA treatment helped claimant very much, but he still has behavioral issues and cannot be independent. Claimant's mother testified that they believed IRC was trying to eliminate the SIT services completely and were not willing to explore anything but IHSS, which is not appropriate for claimant. Once hearing that IRC was willing to complete an adaptive skills assessment and provide adaptive skills to claimant based on the outcome of the assessment, as well as the fact that some vendors have BCBA's on staff, claimant's mother said she was amenable to a phase-out plan and transitioning claimant to adaptive skills services.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. Welfare and Institutions Code section 4643.5, subdivision (b), provides that a service agency seeking to change a service contained in a consumer's IPP has the burden of demonstrating that its proposed action to limit or eliminate a service presently being received by a consumer pursuant to that consumer's IPP is "clearly erroneous" in light of new information that may have come to light.

THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

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

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the

consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

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

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

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

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that

meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welfare & Inst. Code, § 4648, subd. (a)(2). Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welfare & Inst. Code, § 4648, subd. (a)(3).)

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

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

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

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EVALUATION

12. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the

burden of demonstrating the need for the requested service or support, funding for personal assistance services.

It is clear from the evidence presented that SIT services are no longer the services best designed to address claimant's challenges. However, adaptive skills services are an appropriate service to help claimant overcome some of his challenges and become more independent. Moreover, given the fact that claimant does still have some behavioral challenges, any adaptive skills provided should be provided by an IRC vendor who is a BCBA.

ORDER

1. Within 60 days of the effective date of this decision and order, IRC shall arrange for claimant to undergo an adaptive skills assessment for the purpose of determining how many hours of adaptive skills training claimant needs.

2. Claimant's SIT services shall remain in place in their current form – 40 hours per month – until he begins his adaptive skills training as recommended following the assessment.

3. Once it is determined how many hours of adaptive skills training claimant needs, IRC shall find a vendor that has board-certified behavior analysts on staff. Claimant's adaptive skills training shall only be provided by a person who is a board-certified behavior analyst.

DATED: April 11, 2016

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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