

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the continued funding for  
behavioral services of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017031030

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on June 5, 2017.

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

Matthew Pope, Attorney at Law, represented claimant, who was not present. Claimant's mother appeared at the hearing and required the assistance of a Spanish interpreter, Daniel Villalobos, from Hanna Interpreting Services.

The matter was submitted on June 5, 2017.

ISSUE

Should IRC continue to fund claimant's behavioral services from California State University San Bernardino's University Center for Developmental Disabilities (UCDD) now that claimant is receiving behavioral services from Medi-Cal?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is an 18 year-old-male who is eligible for regional center services based on a diagnosis of autism spectrum disorder and intellectual disability. He has been receiving services from IRC for two years, which include respite and behavioral services through UCDD.

2. According to his most recent Individualized Program Plan, claimant resides with his parents and siblings at home. Although claimant is able to focus on activities for a short time, he will not initiate interactions with others and speech can be difficult for him. He can become aggressive at times. Claimant engages in repetitive behaviors such as fidgeting and grinding his teeth. Claimant needs to be supervised at all times and his mother will accompany him out into the community as he enjoys going for walks. There is no evidence of self-injurious behaviors.

According to claimant's UCDD plan, he has difficulty understanding personal boundaries. He performs better with structured activities and his teacher at school will use structured group games to increase his participation in a group setting. When faced with familiar activities, claimant will exhibit more appropriate interactions.

3. Program Manager Roberto Garcia testified on behalf of IRC. Mr. Garcia has been a program manager for almost three years; prior to that, he worked as a service coordinator for 10 ½ years. According to Mr. Garcia, the UCDD program is considered an applied behavioral analysis program. An applied behavioral analysis program is the provision of "systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction." (Welf. & Inst. Code, § 4686.1, subd. (d)(1).) Mr. Garcia explained that, when IRC was notified that claimant began receiving applied behavioral analysis services in December 2016 through his private insurance (Kaiser program), IRC

decided to discontinue the UCDD program since the UCDD program was duplicative of the Kaiser program. Mr. Garcia further explained that both programs involve behavior modification and are very similar; the UCDD program is provided on campus while the Kaiser program is provided at home. Moreover, the Kaiser program is more intense than the UCDD program; thus, the services provided in the UCDD program can be addressed as goals in the Kaiser program. Both programs provide: one-on-one training, parent training, socialization training, and overall behavioral management. Mr. Garcia concluded the Kaiser program was therefore a duplicative program and generic resource that addressed claimant's behavioral needs. As a result, the UCDD program was no longer necessary.

4. On February 16, 2017, IRC sent claimant a Notice of Proposed Action explaining why it was terminating claimant's services through UCDD. Specifically, IRC stated in its letter that behavioral services through UCDD were being terminated because claimant's behavioral services were now being funded through his private insurer, a generic resource.

5. Claimant's mother disagreed with IRC's determination and filed a fair hearing request. This hearing ensued.

#### EVIDENCE PRESENTED AT HEARING

6. Consumer Services Coordinator Carolina Castro testified at the hearing. She has served in her position for 10 years; she has been claimant's case worker since 2015. Her testimony is summarized as follows. Claimant receives 250 hours of In Home Supportive Services, special education services (occupational and speech therapy per his IPP), 30 hours of respite, the behavioral services through Kaiser, and the behavioral services through UCDD. Claimant's mother made Ms. Castro aware in December 2016 that he was receiving behavioral services through the Kaiser program while discussing claimant's goals. Ms. Castro also noted that claimant turned 18 years old in December

2016, at which time private insurance usually begins paying for ABA treatment. Ms. Castro said that although the programs are different because the UCDD program is provided in a clinic and the Kaiser program is provided in the home, both address behavior problems. She also stated that any goals and objectives are provided in the Kaiser program, but she is familiar with the UCDD program, and knows that the same behavioral goals can be addressed by the Kaiser program. Ms. Castro's testimony corroborated Mr. Garcia's testimony.

7. Claimant's mother testified at the hearing. Claimant's mother believes both programs have helped claimant. She explained that the Kaiser program has helped claimant work on things like tying his shoes, brushing his teeth, how to do chores, things he needs to know to survive, how to communicate with her, how to learn and retain his personal information, his directions, and a "lot" of other things. Claimant's mother said the Kaiser program "works on everything" and provide "strategies for making [claimant] do things he does not want to do." Claimant's mother said the teacher for the Kaiser program will sit down with them and ask what skills they want to work on and has even went out into the community with them (to a party) to help with claimant. Claimant's mother said she has never asked the teacher to accompany them anywhere else in the community. In sum, claimant's mother described the Kaiser program as an "intense one-on-one" program with claimant but one which also provides the parents with assistance in helping claimant redirect his behaviors.

Claimant's mother explained that the UCDD program teaches claimant how to reduce inappropriate touching and to reduce his aggressiveness. She is also not with him at the UCDD program. It is a one-on-one program but sometimes they do a group session so he can learn to socialize with other people. There is a mandatory parent group participation meeting while claimant attends his session so claimant's parents can learn how to help claimant's behaviors.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

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

### THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & 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.)

3. 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.

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. 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.

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

7. 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.

8. 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.

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

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

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources.

## EVALUATION

A preponderance of the evidence established that IRC should not continue to fund the behavioral services through UCDD, as similar services are available through the Kaiser program, a generic resource. Although the programs are not identical, they both address behavioral problems. They both provide one-on-one services. They both provide the family with skills to redirect claimant's behavior. Indeed, the main difference between the programs is that the UCDD program is provided in a clinical setting while the Kaiser program is provided at home. Although it is arguable that the UCDD program might help claimant more with his social skills given that sometimes there is a group setting, the Kaiser program also apparently can help claimant with his social skills in the community. By claimant's mother's own testimony, the types of things the Kaiser program can teach and can provide far exceed that which he receives in the more restrictive UCDD program. Finally, the behavioral concerns noted in claimant's IPP can be addressed by the Kaiser program, along with other goals and objectives claimants' mother may raise with the teacher.

On this record, it would be inconsistent with the Lanterman Act to require IRC to continue to fund the UCDD program when the services he is receiving from the Kaiser program address the same behavioral goals.



## ORDER

Claimant's appeal from Inland Regional Center's determination that it will not continue to fund behavioral services through the UCDD program is denied.

DATED: June 14, 2017

---

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.**