

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request  
of:

OAH Case No. 2017051363

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,  
Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 18, 2017, in Culver City. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by her mother.<sup>1</sup>

Westside Regional Center (service agency) was represented by Lisa Basiri, M.A., Fair Hearing Specialist.

ISSUE

Shall the service agency compensate claimant's mother for 400 hours of personal assistance provided to claimant from February 9, 2017, through April 19, 2017?

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<sup>1</sup> Names are omitted to protect the privacy of claimant and her family.

## EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits 1-8 (claimant submitted no additional documents); as well as the testimony of Ms. Basiri, Service Coordinator Walter McDonald, Program Manager Michael McAllister, and claimant's mother.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. The service agency determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup>

2. Claimant is a 29-year-old female who is a service agency consumer based on her qualifying diagnoses of cerebral palsy, seizure disorder, and profound intellectual disability.

3. On June 17, 2008, letters of limited conservatorship of claimant's person were issued to claimant's parents pursuant to Probate Code section 2351.5, granting claimant's parents with various powers, including those allowing them to act as claimant's authorized representative in this case.

4. As explained in greater detail below, in April 2017 claimant's mother and claimant's service coordinator engaged in correspondence and discussions concerning claimant's mother's request that she be compensated for time spent acting as claimant's personal assistant from February 9, 2017, through April 19, 2017. (Ex. 4.)

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

5. In May 2017, the service agency issued a written Notice of Proposed Action, in which claimant's mother was advised that the service agency denied her compensation request because a prior authorization had not been in place prior to provision of the service and retroactive authorization would not be provided in the absence of an emergency. (Ex. 2.)

6. On May 23, 2017, a Fair Hearing Request was submitted to the service agency by claimant's mother, which appealed the denial of the request for compensation and requested a hearing. (Ex. 2.)

7. On June 12, 2017, the parties participated in an Informal Conference to discuss the matter. No resolution was reached. (Ex. 3.)

#### CLAIMANT'S BACKGROUND INFORMATION

8. Claimant is described in a prior individual program plan (IPP) as a very pleasant young woman who requires complete care for all of her needs but is rarely resistive. (Ex. 7, pp. 4-5.) She is non-verbal, non-ambulatory, and requires a wheelchair in order to get around. (*Ibid.*) Claimant requires a gastrostomy tube (G-tube) for feedings and requires full assistance for all of her other daily living skills. (*Ibid.*)

9. Claimant lives at home with her parents, who are both employed. She also has a strong natural support network, in that her two adult brothers and many extended family members live in the area. (Ex. 7.)

10. Following claimant's graduation from high school in 2010, she began attending a day program provided by United Cerebral Palsy (UCP). She has attended the UCP program five days a week since that time. (Exs. 6-8.)

11. Because claimant needs complete and total assistance, the service agency has provided funding for claimant to be accompanied to the UCP program by a personal assistant (PA), as well as during her transportation provided by Access Paratransit to and from the UCP program. By 2017, funding was provided for claimant to receive 168 hours

per month of that PA service.

12. In addition, claimant and her family also receive funding from the service agency for 30 hours per month of in-home respite and 138 hours per month of in-home PA services provided by Premier Healthcare Services (Premier). Claimant's family also receives county funding for 266 hours per month of In-Home Supportive Services (IHSS). (Ex. 6.)

### THE COMPENSATION REQUEST

13. For the past several years, the PA service for claimant's access to the UCP program was provided by service agency vendor Caring Connection. Claimant's mother testified that she was initially dissatisfied with Caring Connection employees assigned to her daughter. Claimant's mother testified that she recruited and helped train Raina Loper to provide the one-to-one PA service for claimant at UCP and her transportation there, which was satisfactory to her. (See also ex. 8.)

14. Unfortunately, in 2016 Ms. Loper became ill and was unable to continue working as claimant's PA at UCP. By the time of claimant's July 2016 IPP meeting, Caring Connection had replaced Ms. Loper with another employee. According to the IPP created after the change in PA personnel, the "day program remains stable and appropriate to meet [claimant's] needs." (Ex. 6, p. 3.) However, claimant's mother testified that despite her best efforts to train the new worker, she remained dissatisfied with the new worker's performance. Claimant's mother testified she asked Caring Connection for a replacement and even asked Premier if they knew of a replacement worker. Premier told claimant's mother to contact claimant's service coordinator and ask if My Life Foundation (My Life) could provide a PA at UCP. Although not entirely clear, it appears from the testimony of claimant's mother that she only contacted the service agency about her dissatisfaction with the new Caring Connection worker when prompted to do so by Premier.

15. At the time in question, claimant's service coordinator was Walter McDonald.

He had replaced claimant's prior service coordinator in December 2016.

16. According to transaction notes created by Mr. McDonald, he was first contacted by claimant's mother about the situation on February 17, 2017. At that time, claimant's mother advised Mr. McDonald that she was dissatisfied with the new Caring Connection worker and had decided to no longer send claimant to the UCP program. (Ex. 4, p. 3.)

17. Throughout February 2017, Mr. McDonald worked with Caring Connection staff to find a suitable replacement worker, with no success. By early March 2017, Mr. McDonald contacted My Life and sent them information about claimant and the UCP program. Because claimant needs total care and assistance, including using a G-tube, the search for an appropriate PA worker was complicated. In addition, My Life had to research the situation before it could make a decision. By April 14, 2017, My Life agreed to provide the PA service at UCP and transportation there, and it was authorized by the service agency to do so. Claimant's mother was satisfied with the My Life PA worker and claimant returned to the UCP program on April 20, 2017. (Ex. 4.)

18. It was established by the persuasive testimony of Mr. McDonald, as well as his supervisor, Program Manager Michael McAllister, that once apprised of the situation by claimant's mother, service agency staff acted reasonably and with due speed to find a new PA worker.

19. According to Mr. McDonald's transaction notes, claimant's mother first requested compensation on April 3, 2017. At that time, she advised Mr. McDonald that since claimant had been pulled from the UCP program due to the lack of a suitable PA worker, she had been required to supervise claimant at home. She asked to be compensated for that time. (Ex. 4, p. 8.) As mentioned above, through April and May 2017, claimant's mother and Mr. McDonald discussed and corresponded about such compensation. According to e-mails she sent to Mr. McDonald, claimant's mother cared

for claimant eight hours per day for 50 days during the time period of February 9, 2017, through April 19, 2017. During the hearing, claimant's mother testified she was not sure if she spent seven or eight hours per day with her daughter; she spent the same time with claimant at home that claimant had previously spent going to and attending the UCP program. Claimant's mother provided no corroborating evidence documenting the time she spent with claimant or what they did together during those times.

20. During the hearing, claimant's mother expressed appreciation and gratitude for the service agency's case coordination and funding of services for her daughter. However, she expressed some frustration with the difficulty in finding suitable PA workers to accompany claimant to UCP. This difficulty is undoubtedly related to the extraordinary needs of claimant, as well as the family's high standards and expectations of service workers. Claimant's mother testified she spent more than two months caring for her daughter due to this situation and is entitled to compensation for her time. She fears more episodes like this will cause her and her husband to "burn out." She is also frustrated that the service agency did not tell her earlier that there were vendors other than Caring Connection that provide PA services. She would like the service agency to advise her of "all options all the time."

## LEGAL CONCLUSIONS

### JURISDICTION AND BURDEN OF PROOF

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant's mother requested a hearing to contest the service agency's proposed decision to deny her compensation request, and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

2. The standard of proof in this case is the preponderance of the evidence,

because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, claimant's mother requests funding the service agency has not before agreed to provide, i.e., compensating her for personal assistant services rendered to claimant at home, and therefore she has the burden of proving by a preponderance of the evidence that she is entitled to that funding.

#### THE COMPENSATION REQUEST

4. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. Regulations suggest that funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. (See, e.g., Cal. Code Regs, tit. 17, § 50612, subds. (a), (b) & (c).) Claimant's mother was not preauthorized to provide the PA service in question, nor did she present any evidence indicating this was an emergency situation.

5. A. The consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).)

B. The process of creating an IPP, by its nature, is collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or her family, service agency representatives and other appropriate participants. (§§ 4646, 4648.) If the consumer or her parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (§ 4646, subd. (g).) If the consumer or her parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as

required by Section 4701.” (§ 4646, subd. (g).)

C. The issue of retroactive compensation must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed or compensated.

6. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . .” (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Otherwise, the general requirements that services should be funded through the IPP process (§§ 4646, 4646.5, and 4648) would be made superfluous. Thus, prior Fair Hearing decisions in other cases have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted.<sup>3</sup>

7. A. In this case, the equities do not weigh in favor of claimant’s mother being compensated for time spent caring for claimant while a new PA provider was located. As of July 2016, when claimant’s last IPP was created, no concern was voiced by claimant’s mother about Ms. Loper’s replacement. Claimant’s mother thereafter gave the service

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<sup>3</sup> Prior OAH decisions pertaining to other consumers are only advisory, not binding.

agency no warning or notice of any problems. However, claimant's mother took her daughter out of the UCP program on her own initiative and without advising the service agency. Once she advised the service agency of the situation, claimant's service coordinator reasonably responded, taking into consideration the difficulties posed by claimant's extraordinary needs and the family's high standards and expectations. No evidence was presented indicating that claimant or her family was put in jeopardy by this situation or that an emergency existed.

B. Denying retroactive authorization and compensation in this case also will not thwart the purposes of the Lanterman Act. As discussed above, the funding and provision of services and supports to a regional center consumer is supposed to be collaborative. Yet, claimant's mother did not include the service agency in this situation until after she had pulled claimant from the UCP program. She should have immediately advised claimant's service coordinator of her concerns with Ms. Loper's replacement once they arose, and certainly before taking such drastic action. Moreover, the PA funding in question was not to provide care and supervision of claimant at home; that service is already funded by the service agency and provided by Premier. The service in question is to allow claimant to access the UCP program. By keeping claimant at home, it is not apparent how or why claimant's mother should be compensated for a completely different service. Finally, parents of a regional center consumer are known as "circles of support" and "natural supports" and are expected to provide care and supervision for their disabled children from time-to-time, especially in situations like this one. (§ 4648, subds. (c) & (e)(3).) While not ideal, having to care for claimant at home for a few months while a replacement PA vendor could be identified is not inconsistent with the family's occasional need to provide such natural support. (Factual Findings 1-20; Legal Conclusions 1-6.)

## ORDER

Claimant's appeal is denied. The Westside Regional Center shall not be required to compensate claimant's mother for personal assistant hours provided to claimant from February 9, 2017, through April 19, 2017.

DATED:

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ERIC SAWYER  
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.