

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2017070680

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on September 26, 2017, in Culver City, California.

Damian D. Capozzola and Christopher Knauf, Attorneys at Law, represented Claimant.<sup>1</sup> Claimant's mother (Mother) and father (Father) (collectively, Parents), who serve as Claimant's conservators, were present at hearing.

Aaron Abramowitz, Attorney at Law, represented the Westside Regional Center (WRC or Service Agency). Mary Lou Weise-Stusser, Director of Community Services, was present at hearing.

Oral and documentary evidence was received. The record remained open to give the parties an opportunity to submit written closing briefs by October 10, 2017, and responsive briefs by October 17, 2017. Claimant and WRC submitted timely closing briefs, which were marked and lodged as Exhibits 136 and 14, respectively, and timely responsive briefs, which were marked and lodged as Exhibits 137 and 15, respectively.

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<sup>1</sup> Party title is used to protect the privacy of Claimant and his family.

The record was closed on October 17, 2017, and the matter was submitted for decision.

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## ISSUE

May the Service Agency eliminate language in Claimant's IPP requiring a Board Certified Behavior Analyst (BCBA)<sup>2</sup> of her residential service provider, People's Care, to provide ongoing training to Claimant's day program staff that is operated by a service provider other than, and unaffiliated with, People's Care?

## FINDINGS OF FACT

1. Claimant is a 25-year-old woman, and a consumer of the Service Agency. Specifically, Claimant has been diagnosed with Autism Spectrum Disorder and Moderate Intellectual Disability and is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.<sup>3</sup>

2. Claimant's parents reside within the Service Agency's catchment area, and since April 2014, Claimant has resided at a licensed residential facility managed and operated by People's Care called the Ramsgate Home (Ramsgate). In the admission agreement between the Service Agency on behalf of Claimant and People's Care for residence at Ramsgate, paragraphs 7 and 8 provided the following:

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<sup>2</sup> A BCBA is a board certified individual who is trained to provide behavior therapy and supervise behavior analysts.

<sup>3</sup> All statutory references are to the Welfare and Institutions Code.

7. [People's Care] and [the Service Agency] shall participate in review and amendment as needed of [Claimant's] IPP (Individualized Program Plan) within thirty (30) days of move-in. [People's Care] agrees to provide the care, services and training required under the agreement and the IPP.
8. [People's Care] agrees to participate in developing and updating [Claimant's] . . . IPP.

(Exhibit 133, Page 1540.)

3. At Ramsgate, Claimant receives 2:1 supervision and support. Claimant also attends a day program five days a week. Claimant has either been rejected by or expelled from a number of day programs, because the day programs are either unwilling or ill-equipped to address Claimant's behaviors.

4. In April 2015, the Service Agency initiated a contract with the Center for Applied Behavior Analysis (CABA) to develop and implement an appropriate behavior plan, with identified goals and strategies to support Claimant. Dr. Rachel Taylor of CABA conducted a functional behavior assessment of Claimant and identified the following challenging behaviors: disruption, aggression, self-injury, property destruction, elopement, and stereotypy in the form of body rocking, ritualistic finger movements, and vocal perseverations. (Exhibit 4, page 176.)

5. The Service Agency also contracted with CABA to provide ongoing training for Claimant's residential and day program staff to ensure that the behavior plan was implemented consistently and correctly. Modern Support Services (MSS) began providing Claimant with supported day programming in April 2015. Dr. Taylor and her associate trained People's Care and MSS "on how to properly implement [a] behavioral support plan to ensure that [Claimant] receive[d] consistent, appropriate support in achieving the goals identified in her treatment plan." (Exhibit 4, page 176.)

6. In January 2016, Caroline Martinez, a BCBA of People's Care, who

developed a positive behavior support plan for Claimant to address her challenges, began providing services to target the following behaviors: property destruction; behavioral outbursts, screaming and/or crying; self-injurious behavior in the form of hitting herself in the head with her hand; stereotypy; and leaving without supervision. (Exhibit 4, pages 176-177.)

7. On March 31, 2016, CABA terminated its services, and Ms. Martinez of People's Care took over the provision of behavioral services to Claimant, as well as the provision of ongoing training for Claimant's residential and day program staff to ensure that the behavior plan was implemented consistently and correctly. Ms. Martinez also took over the provision of Crisis Prevention Institute (CPI) training to Claimant's residential and day program staff to use proactive behavioral approaches to minimize the need for any CPI holds. (Exhibit 4, page 176.)

8. On June 27, 2016, MSS issued a notice stating it was terminating its services in 30 days, because of a "[l]ack of effective collaborative efforts from corresponding agencies involved in [Claimant's] case." (Exhibit 4, page 175; Exhibit 135.)

#### INDIVIDUAL PROGRAM PLAN (IPP)

9. After meetings on February 26, 2015, September 4, 2015, March 18, 2016, and July 21, 2016 to develop Claimant's IPP, the Service Agency, Parents, and the remainder of the IPP team, a total of 11 individuals, signed Claimant's IPP in August 2016. At this time, Claimant was not receiving day program services, as MSS had already terminated its services, and the IPP named no new day program. Consequently, People's Care provided Claimant with extra activities while the Service Agency located another day program.

10. People's Care was neither consulted nor invited to the last IPP meeting prior to the finalization of Claimant's IPP. People's Care was not informed of the content of the IPP before it was finalized and signed. No one from People's Care signed the IPP.

11. The IPP provided the following:

In April 2015, Westside Regional Center initiated a contract with CABA to develop and implement an appropriate behavior plan, with identified goals and strategies to support [Claimant]. CABA was also contracted to provide ongoing training for [Claimant's] residential and day program staff to ensure that the behavior plan is implemented consistently and correctly. People's Care BCBA has now taken on these responsibilities. Westside Regional Center continues to fund for 2:1 staff support for [Claimant] to ensure her health and safety. However, [Claimant's] parents/conservators maintain that [Claimant] can successfully be supported by 1:1 staff if that staff is trained appropriately commensurate with [Claimant's] needs, and properly supervised.

(Exhibit 4, pages 183-184.)

12. Michael Kaiser, Founder and Chief Executive Officer of People's Care, testified at hearing and explained that had he been consulted or invited to the IPP meeting, he would have advised the IPP team that People's Care has had more than 1,000 clients and has never agreed to train outside staff for its residents, as People's Care does not have the resources to implement such a provision, given the limited number of BCBA's employed by People's Care. Mr. Kaiser also stated he would have advised the IPP team that while People's Care has no interest in training other agencies, it will collaborate with other agencies. (See Factual Finding 14 below.)

13. Mr. Kaiser testified that while part of People's Care's duties is to do their best to comply with the terms of a client's IPP, at no time was People's Care obligated to

provide training to outside staff or to third parties after CABA terminated its services on March 31, 2016. People's Care's services and duties were delineated in its program design, which People's Care was obligated to follow pursuant to a contract between the Service Agency and People's Care, commencing on July 1, 2015 and terminating on June 30, 2018.

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#### PEOPLE'S CARE PROGRAM DESIGN FOR RAMSGATE<sup>4</sup>

14. The program design provides that People's Care "works in collaboration with the individual, the family/guardian, the [Service Agency] and all other involved service providers in developing the Individual Program Plan (IPP) . . . ." (Exhibit 3, page 79.)

15. The program design for Ramsgate provides consultant services for residents based on their individual service needs, and ensures that a minimum of four ongoing consultant hours per resident per month are provided by a qualified behavior consultant under the supervision of a BCBA.

16. The program design set forth the duties of the behavior consultant as follows: (1) must develop behavioral treatment plans and positive behavioral support plans; (2) must work in collaboration with the BCBA to complete a comprehensive functional behavioral assessment after the first 30 days of placement into the home; (3)

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<sup>4</sup> For purposes of this proceeding, the parties have stipulated that the People's Care January 2017 program design is the applicable version.

assess individual progress monthly; (4) meet with the administrator monthly to discuss behavioral issues; (5) update ongoing behavioral treatment plans annually; (6) provide in-service training bi-monthly and as needed; (7) update behavioral assessments on a regular basis and maintain an accurate log of consulting hours; (8) design and implement behavior modification intervention plans and provide staff training on the implementation of individual behavior plans; (9) physically attend all meetings that occur prior to placement into the home; (10) exchange information during team meetings on behaviors and behavior plans; (11) ensure staff is trained on preliminary behavior intervention plans and interim crisis emergency intervention plans prior to an individual moving into the home; (12) conduct inter-observer and procedural reliability; and (13) coordinate and collaborate with other members of the resident's team including health care providers, marriage and family therapists, psychiatrists, day program/school, families, etc. (Exhibit 3, pages 132-133.)

17. The program design also set forth the duties of the administrator, who is required to ensure the health, well-being, and safety of residents, maintain regular communication with conservators and other outside agency representatives, and manage staffing and labor hours in order to provide high quality supports and services. The program design listed one of the administrator's duties as "[p]roviding services in accordance with [the Service agency's] contract, program design, individual program plans, and other plans developed by consultants and/or other professionals involved in supporting the residents." (Exhibit 3, page 124.)

18. The program design neither contemplated nor included a specific provision stating that People's Care would provide training to outside staff or the staff of third party vendors.

#### AFTER THE FINALIZATION OF CLAIMANT'S IPP

19. A few weeks after the IPP team signed Claimant's IPP in August 2016, Mr.

Frasier learned about the contents of Claimant's IPP. This prompted Mr. Frasier to send messages to the Service Agency in protest of the provisions obligating People's Care to provide training to outside staff or the staff of third party vendors. Mr. Frasier objected to the IPP team's attempt to compel People's Care to take on tasks it is not in the business of doing. Additionally, on June 21, 2017, People's Care's Clinical Director of Behavior, Selena Rauenzahn, MA, BCBA, emailed the Service Agency and stated the following:

[I]t's not standard to train individuals who are not our staff. It's not in our program design to train outside staff. Our expertise is within the home and community environment for the resident, not the day program. Per our program design, our behavior consultant is to provide four hours of behavior consultation per month/per resident at Ramsgate. This four hours per month is allocated to direct observation, residential staff consultation, and data analysis.

(Exhibit 5.)

20. Given the above factors, People's Care has refused to share its BCBA's training services with outside staff, including the staff of third party vendors.

21. Mary Kou Weise-Stusser, the Service Agency's Director of Community Services, testified at hearing. Ms. Weise-Stusser has worked for the Service Agency for 34 years and was present at the final IPP meeting held on July 21, 2016. Despite her signature on the final IPP developed for Claimant, Ms. Weise-Stusser, after learning of People's Care's protest, concluded that the Service Agency cannot order services outside of the vendor's program design.

22. The Service Agency issued a Notice of Proposed Action (NOPA) on June

27, 2017, proposing to “modify [Claimant’s] Individual Program Plan (IPP) so that it does not indirectly or directly provide that a People’s Care’s BCBA will ‘train’ staff employed by someone other than People’s Care on the behavioral plan that has been developed by the People’s Care BCBA.” (Exhibit 2, page 2.) On July 7, 2017, Claimant filed a Fair Hearing Request.

23. On August 29, 2017, Karen Nohelty, M.Ed., BCBA, at the Center for Autism and Related Disorders (CARD), at Claimant’s behest, conducted a records review and prepared a written report summarizing her evaluation findings. Specifically, Ms. Nohelty reviewed Claimant’s IPP and its addenda. She also reviewed the proposal for programming service facilitator, People’s Care annual behavior plan, and People’s Care residential quarterly reports. Ms. Nohelty recommended that all individuals working with Claimant follow Claimant’s behavior intervention plan to ensure that strategies are implemented consistently across people and settings.

#### CLAIMANT’S CURRENT STATUS

24. Claimant began attending a day program on April 17, 2017 called My Life.<sup>5</sup> My Life provides tailored services to Claimant. On September 9, 2017, the Director of My Life, Tim De Haven, provided a written update concerning Claimant’s progress at My Life. Mr. De Haven, who stated that he had been working with Claimant directly for five weeks, advised that Claimant “ha[d] been doing great!” (Ex. 123, page 000376.) Additionally, Mr. De Haven stated that Claimant suffered one minor behavioral incident a few weeks prior, which consisted of Claimant crying and throwing a few items; but Claimant was easily re-directed and was able to go forward with her day as scheduled. (*Id.*)

25. On September 18, 2017, My Life submitted a “Special Incident Report” to

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<sup>5</sup> My Life is also known as My Day.

the Service Agency stating that during an outing in the community, specifically in a Santa Monica parking structure near the mall, Claimant grabbed the hair of "Tim," a male My Life staff member, and shook his head, and punched him in the face and head. After verbal attempts to redirect Claimant failed, My Life staff members administered a CPI hold to keep Claimant from attacking Tim. The Special Incident Report noted that Claimant had experienced an increase in behavioral outbursts since the reduction of Claimant's medication.

26. On September 19, 2017, My Life submitted another Special Incident Report stating that during a drive on an outing, Claimant reached over and grabbed Tim's hair and began shaking his head. After Claimant released her grip, My Life staff drove to the My Life office and escorted Claimant inside. While in the office, Claimant began kicking and punching Tim. My Life staff conducted a CPI hold to calm Claimant and to protect Tim. .

27. To assist with the process and delivery of Claimant's IPP services, the Service Agency funded Tim Medeiros to serve as a programming service facilitator, effective April 17, 2017. Mr. Medeiros' responsibilities included acting as a "watchdog" over Claimant's receipt of services and support, actively facilitating progress toward Claimant's IPP and Person Centered Plan (PCP) goals, and issuing regular written updates concerning the validity and efficacy of Claimant's services support and future plans affecting her services and support.

28. On June 2, 2017, People's Care prepared a residential quarterly behavioral report concerning Claimant for the reporting period of February 1, 2017 through May 31, 2017. The report charted Claimant's behavior data in the areas of behavioral outbursts, crying, screaming, physical aggression, elopement, self-injurious behaviors, and property destruction. Claimant's behavioral outbursts decreased from a monthly average of 11 to 0; crying decreased from a monthly average of 16 to 5; screaming

decreased from a monthly average of 44 to 4; physical aggression remained at the same monthly average of 2.75; elopement remained at the same monthly average of 0; self-injurious behaviors increased from a monthly average of 0 to 1.25; and property destruction decreased from 11 to 5.75.

29. On September 4, 2017, People's Care prepared a residential quarterly behavioral report for the reporting period of June 1, 2017 through August 31, 2017. Claimant's behavioral outbursts remained at the same monthly average of 0; crying increased from a monthly average of 5 to 8.33; screaming increased from a monthly average of 4 to 17; physical aggression increased from a monthly average of 2.75 to 8.66; elopement remained at the same monthly average of 0; self-injurious behaviors increased from a monthly average of 1.25 to 4; and property destruction increased from a monthly average of 5.75 to 19.

30. On September 11, 2017, Claimant's psychiatrist, Dr. Mark DeAntonio, reduced Claimant's daily dosage of behavior medication. Specifically, Dr. DeAntonio reduced Claimant's dosage of Risperadol down to 0.5 milligrams.

31. Mr. Medeiros prepared a facilitator weekly update report for the week of September 11, 2017 through September 17, 2017. Specifically, Mr. Medeiros made unannounced visits to observe Claimant on September 11, 2017 at Ramsgate for one and one-half hours during the dinner routine; on September 12, 2017 at Ramsgate for one and one-half hours during the morning routine and breakfast; on September 14, 2017 at Ramsgate for one and one-half hours during board games and writing exercises; and September 17, 2017 at Farmer's Market for one hour. Claimant did not display any maladaptive behaviors during any of these visits. Mr. Medeiros recommended that People's Care's Ramsgate staff continue to provide Claimant with the necessary support in furtherance of her goals. Additionally, Mr. Medeiros recommended that People's Care's BCBA provide Ramsgate staff with on-going training on a monthly basis to ensure

that all Ramsgate staff is able to comprehend and implement Claimant's behavior plan.

## LEGAL CONCLUSIONS

### JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's proposed action to "modify [Claimant's IPP] so that it does not indirectly or directly provide that a People's Care's BCBA will 'train' staff employed by someone other than People's Care on the behavioral plan that has been developed by the People's Care BCBA." (Exhibit 2, page 2.) Jurisdiction was therefore established.

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that its proposed action to eliminate language from Claimant's IPP requiring People's Care's BCBA to provide ongoing training to Claimant's day program staff that is operated by a service provider other than, and unaffiliated with, People's Care, is correct.

### PARTIES' CONTENTIONS

3. The Service Agency contends that People's Care is not required to take on CABA's responsibilities to provide ongoing training to day program staff, and that any such provision in the IPP should be eliminated. The Service Agency argues that this tribunal has no jurisdiction to order People's Care, a non-party to the instant action and a non-signatory to the IPP, to perform ongoing training to any day program vendor that serves Claimant. It further argues that the Service Agency has no authority to force

People's Care to provide the service. Additionally, the Service Agency contends that this tribunal has no jurisdiction to order any day program that Claimant attends to accept training from People's Care, and that the Service Agency cannot force any day program to accept training from People's Care. Finally, the Service Agency contends that ongoing training by a People's Care BCBA to day program staff is not required by the Lanterman Act, because Claimant has demonstrated, in essence, that she does not need it.

4. Claimant contends the Service Agency can compel People's Care to honor the provisions of Claimant's IPP, as the entire regional center system hinges on regional centers and their vendors adhering to consumers' IPPs. Claimant further contends that she is not doing well as the Service Agency argues, given the increase in frequency of her negative behaviors. As such, Claimant argues that she requires the implementation of her IPP provisions that guarantee the assurance of consistent application of her behavior plan across settings, which necessitates training from a People's Care BCBA to all staff that work with Claimant, including staff from third-party vendors. In the alternative, Claimant asserts that the Service Agency should identify a suitable replacement vendor to provide a BCBA to train all residential and day program staff that work with Claimant to implement her behavior plan consistently and correctly.

#### APPLICABLE LAW

5. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the consumer's Individual Program Plan (IPP). Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

6. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be

met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

7. Section 4512, subdivision (b), of the Lanterman Act states in part:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . behavior training

and behavior modification programs, . . .community  
integration services, . . . daily living skills training, . . . .

8. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part, because it is obligated to meet the needs of many disabled persons and their families.

9. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased, is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

10. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and modification, particularly in response to a consumer's changing needs or achievements.

(§ 4646.5, subds. (a)(7) and (b).)

11. 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, section 54302 et. seq.

12. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

## ANALYSIS

13. The Service Agency established that People's Care is not required to take on CABA's responsibilities to provide ongoing training to day program staff, notwithstanding language in Claimant's IPP providing that People's Care would do so. The evidence showed that, despite a requirement that People's Care would participate in the review and amendment of Claimant's IPP as set forth in its April 2014 agreement with the Service Agency, People's Care was neither consulted nor invited to the last IPP meeting prior to the finalization of Claimant's IPP. Additionally, People's Care was not informed of the IPP contents before it was finalized and no representative from People's Care was invited to sign Claimant's IPP along with the other 11 individuals who signed it.

Moreover, while People's Care's general duty involved its compliance with Claimant's IPP, such compliance only pertained to the tasks the Service Agency and People's Care enumerated in their contract. Their contract required that People's Care provide services in accordance with People's Care program design, however, nothing in the program design demonstrated that either People's Care or the Service Agency contemplated, anticipated, or specifically provided for People's Care training third party vendors. Given these factors, People's Care is not obligated to provide ongoing training to Claimant's day program staff or any other outside staff.

14. But the inquiry does not end there. Notwithstanding the Service Agency's lack of authority in obligating People's Care to perform services that fall outside of the scope of People's Care's program design and contract with the Service Agency, the Service Agency contests Claimant's continuing need for the kind of service outlined in her IPP. In other words, the Service Agency denies that Claimant still requires a BCBA to train staff that work with her to implement her behavior plan consistently and correctly. The Service Agency contends that Claimant does not need such a service because Claimant is attending a day program and is "doing great," according to the director of the day program. Additionally, the Service Agency asserts Claimant's behaviors have decreased, as evidenced by the report of the facilitator, Tim Medeiros, stating that he observed no maladaptive behaviors during his unannounced visits to Ramsgate. Additionally, People's Care quarterly behavioral report dated June 2, 2017 showed that Claimant's negative behaviors had decreased, particularly in the areas of behavioral outbursts, crying, screaming, and property destruction.

15. However, the record does not support the Service Agency's assertion that Claimant no longer requires a provision in her IPP requiring training by a BCBA of her residential and day program staff. Specifically, People's Care quarterly behavioral report dated September 4, 2017, that covered the period of June 1, 2017 through August 31,

2017, showed that Claimant's negative behaviors had increased in the areas of crying, screaming, physical aggression, self-injurious behaviors, and property destruction. Additionally, on September 18, 2017 and again on September 19, 2017, Claimant physically attacked a My Life staff member, prompting staff to administer a CPI hold. While the Service Agency asserts that a reduction of Claimant's medication could have caused the increase in behaviors as opposed to a lack of BCBA training across settings, the Service Agency proffered no expert testimony or other credible evidence demonstrating that the increase in behaviors was due to a decrease in the dosage of Claimant's medication. On the contrary, the evidence shows that Claimant's psychiatrist reduced her dosage on September 11, 2017, days after the September 4, 2017 behavioral report that showed an increase in negative behaviors.

16. While a definitive cause has not been established that explains the increase in Claimant's negative behaviors, the fact remains that the parties included language in the IPP calling for consistent BCBA training to residential and day program staff for one obvious reason: to help reduce or remediate Claimant's negative behaviors through a uniform implementation of her behavior plan. As such, given the lack of authority the Service Agency has over People's Care to require it to provide BCBA training to residential and day program staff, it logically follows that if the Service Agency cannot reach an agreement with People's Care to augment its contractual obligations to provide BCBA training to outside staff, the Service Agency must provide a replacement vendor to provide BCBA training to residential and day program staff much like CABA did before it terminated its services, as set forth in the Order below.

## ORDER

Claimant's appeal is affirmed in part and denied in part as follows:

1. The Service Agency shall eliminate language in Claimant's IPP requiring the BCBA of People's Care to provide ongoing training to Claimant's day program staff, unless the Service Agency enters into an additional or an amended contract with People's Care as described in Paragraph 2 below.
2. Within 30 days of this Order, the Service Agency shall contract with People's Care or another qualified vendor to provide a BCBA to deliver ongoing training to both residential and day program staff to ensure Claimant's behavior plan is implemented consistently and correctly.

DATED:

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CARLA L. GARRETT

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.