

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017101138

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on December 19, 2017.

Stephanie Zermeño, 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.

The matter was submitted on December 19, 2017.

ISSUE

Should IRC be required to fund up to \$500 of conference related expenses such as lodging, meals, and airfare for a conference attended by claimant's parents on June 22-25, 2017, entitled "Down Syndrome Research and Retreat"?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 12 year-old child who qualifies for regional center services based on a diagnosis of chromosomal abnormality, specifically Down Syndrome.

2. On June 21, 2017, claimant's mother contacted Chelaine Taylor, claimant's consumer service coordinator at IRC, and requested that IRC fund tuition and other costs, such as lodging and airfare, for a conference being held in Colorado from June 22, 2017, through June 25, 2017, titled "Down Syndrome Research and Retreat." At the time of her request, claimant's mother had already paid the tuition and most of the related costs for the conference. In response to her request, Ms. Taylor informed claimant's mother that she (Ms. Taylor) first needed to complete a form requesting that IRC fund the conference and related expenses. After completing the form, Ms. Taylor would present the issues to her supervisor for further guidance regarding whether IRC would reimburse claimant's mother.

3. After claimant's mother returned from the conference, she submitted an e-mail to IRC with a summary of the costs of the conference, including tuition of \$60, airfare, lodging, meals, and rental car. Claimant's mother requested reimbursement of these amounts.

4. In a Notice of Proposed Action dated September 29, 2017, IRC agreed to reimburse the cost of the conference tuition for the primary caregiver or designee upon receipt of confirmation of the cost of the tuition for one person. IRC denied claimant's request for reimbursement of all other conference related costs. IRC further wrote that in order to expedite any further requests for conference reimbursement, the request must be made 30 days prior to the event. IRC enclosed a copy of IRC's conference attendance and reimbursement policy. The basis of the denial was that "IRC does not provide reimbursement for travel, hotel, meals, or other related expenses."

5. Claimant disagreed with IRC's decision to deny reimbursement for the conference up to \$500, and she submitted a fair hearing request received by IRC on October 23, 2017.

TESTIMONY OF CHELAINE TAYLOR

6. Chelaine Taylor is a consumer services coordinator at IRC. She has held that position for one year and two months. Her duties include assisting families with developing Individual Program Plans (IPP) for individuals receiving services from IRC, evaluating support services that may benefit those individuals in their homes, and assisting families with funding for those services. Ms. Taylor is claimant's current consumer services coordinator at IRC and has been for the past one year and two months.

7. Ms. Taylor testified she first received a phone call from claimant's mother on June 21, 2017, wherein claimant's mother inquired whether or not the cost of attending conferences was included in claimant's IPP. Ms. Taylor testified she told claimant's mother she was not sure, but she would fill out the appropriate forms to see if reimbursement for conference could be included in claimant's IPP through an addendum. Ms. Taylor testified that claimant's mother told her the conference began the next day on June 22, 2017, and she had already paid for the expenses related to the conference. Ms. Taylor testified she informed claimant's mother she was not sure if the costs related to the conference would be reimbursed, but would inquire further.

8. On July 24, 2017, claimant's mother sent documentation to IRC regarding the costs incurred for the conference. Ms. Taylor testified that on July 26, 2017, she met with her program manager, Gabriela Hernandez, to discuss claimant's mother's request for reimbursement of conference related costs. Ms. Taylor stated Ms. Hernandez informed her of IRC's policy that any request for costs related to a conference must be made 30 days in advance of the event. Ms. Hernandez stated the reason for the 30-day

advance notice is that it provides time for IRC to determine if the conference is a vendor of IRC or if another arrangement can be made with the conference regarding reduction of costs. Ms. Taylor and Ms. Hernandez agreed to discuss the issue of conference reimbursement in this matter with their director.

9. On August 2, 2017, Ms. Taylor and Ms. Hernandez met with their director at IRC to discuss reimbursement of conference related costs for claimant. The director informed them that because claimant's mother did not provide the required 30 day advance notice, the request for reimbursement of all conference related costs should be denied.

10. On August 8, 2017, Ms. Taylor had a telephone call with claimant's mother wherein she informed claimant's mother that all conference related costs would be denied and that she would receive a notice of action reflecting that decision. Ms. Taylor informed claimant's mother that the reason for the denial was her failure to provide a 30 day advance notice of the request. During that telephone call, claimant's mother informed Ms. Taylor that she had read IRC's policy on its website regarding reimbursement of conference expenses, and the policy stated IRC would pay up to \$500. Accordingly, claimant's mother intended to appeal the decision of IRC to deny funding for the conference costs.

11. On August 14, 2017, Ms. Taylor met with Ms. Hernandez again regarding claimant's mother's request for reimbursement of conference costs. At that meeting, Ms. Hernandez informed Ms. Taylor that their director would approve reimbursement of the conference tuition once IRC received a receipt for the tuition, but would not approve any other related expenses. Later that day, Ms. Taylor contacted claimant's mother to inform her that IRC would reimburse the cost of the conference tuition after she provided a receipt for that tuition. Ms. Taylor testified that claimant's mother did

provide a receipt for the conference tuition at a later date, which showed \$60 for the conference plus \$30 for the kid's day camp at the conference, totaling \$90.

12. On September 29, 2017, IRC sent the Notice of Proposed Action letter to claimant's mother stating that the conference tuition would be reimbursed, but no other related costs would be reimbursed. Claimant's mother appealed.

13. On November 13, 2017, a telephonic conference meeting was held with claimant's mother and IRC representatives including Ms. Taylor. During the telephone meeting, claimant's mother stated she relied on the IRC policy published on IRC's website that stated conference costs would be reimbursed up to \$500. Claimant's mother informed the IRC representatives that she paid for the conference on her own and relied on the reimbursement policy despite the fact she did not inform IRC of the conference until the day before on June 21, 2017. IRC informed claimant's mother that its policy requires that requests for conference reimbursement be made at least 30 days prior to the event and that all services provided by IRC, aside from emergencies, must be approved in advance for payment. IRC also stated it does not reimburse for the costs of travel, hotel, meals, or other related expenses. Claimant's mother agreed to provide IRC with itemized receipts for her expenses related to the conference.

14. IRC determined it was not permitted to reimburse for the conference related expenses such as travel, meals, lodging, and car rental as requested by claimant and as advised in its decision in the Notice of Proposed Action described above.

TESTIMONY OF LEIGH-ANN PIERCE

15. Leigh-Ann Pierce is a program manager at IRC and has held that position for the past four months. She has worked at IRC for a total of 14 years. Her position requires that she supervise a team of consumer services coordinators and, as part of her position, review requests from family members to determine whether requested services can be funded by IRC. Ms. Pierce is not Ms. Taylor's program manager, but was familiar

with this matter. Ms. Pierce stated that Ms. Hernandez was on vacation and not able to attend this hearing.

16. Ms. Pierce testified that IRC does not fund any services retroactively, except in cases of emergency. She stated this policy includes funding for attendance at conferences. Ms. Pierce testified that IRC has a revised policy regarding funding for conferences and that the policy was revised on August 25, 2016. Ms. Pierce testified she did not know if the revised policy is available on IRC's website or otherwise publicly available. However, she stated that IRC consumer service representatives provide the policies to consumers upon request. Ms. Pierce testified that the revised policy, as well as the old policy which was in effect as of May 29, 2012, requires that any conference be supported by an IPP objective and that all services, including conferences, be approved in advance of the event.

17. Ms. Pierce testified that, because claimant's mother paid for the conference and first asked for reimbursement the day before the conference began, the request was retroactive in nature and the conference was not an emergency. Accordingly, IRC is prohibited from reimbursing for the conference. However, Ms. Pierce stated that IRC wanted to give claimant's mother the "benefit of the doubt" regarding the conference expenses and make sure that there were no misunderstandings regarding the request for reimbursement. Accordingly, IRC agreed to reimburse claimant's mother for the conference tuition of \$60 plus the \$30 cost for the kid's day camp at the conference.

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TESTIMONY OF CLAIMANT'S MOTHER

18. Claimant's mother testified that parents of children with special needs find it difficult to get information from IRC regarding services available. She typically relies upon other parents of children receiving services from IRC for information about IRC's

funding of those services. Claimant's mother stated that, while she was at a support group for parents of children with special needs, one parent informed her there was a conference related to Down Syndrome that could be helpful for claimant. After claimant's mother looked into the conference, she determined it was costly to attend. Another parent from the support group informed claimant's mother that IRC will reimburse her for the costs of the conference. Claimant's mother stated her daughter has been a client of IRC for 12 years, and she was not aware that IRC would reimburse for such a conference. Claimant's mother then went to IRC's website and obtained a copy of the older version of the IRC policy from May 29, 2012, regarding conferences, which states as follows under the title "Conferences":

Parents, legal guardians, conservator or surrogates are eligible for reimbursement by Inland Regional Center.

Conferences [*sic*] reimbursement is up to \$500.00 per family, per fiscal year. All requests must be supported by an Individual Program Plan objective for conferences.

19. Claimant's mother testified she relied upon the IRC policy she obtained from its website when she paid for the travel and conference expenses for the conference. She stated that, after she paid those expenses, another parent from her support group asked if conferences were covered in claimant's IPP. Claimant's mother was not sure if that was the case and, as a result, called Ms. Turner on June 21, 2017, the day before the first day of the conference, to inquire about whether claimant's IPP included conferences. Claimant's mother stated that, after this phone conversation with Ms. Turner, claimant's IPP was amended to include conferences. Thereafter, claimant's mother submitted the receipts from the conference for reimbursement.

20. Claimant's mother stated she first received a phone call from Ms. Taylor at the beginning of August 2017, after she had attended the conference, informing claimant's mother that IRC did not reimburse for conferences. During that telephone call, claimant's mother informed Ms. Taylor that the IRC policy on the website stated otherwise and allowed for reimbursement up to \$500. Claimant's mother agreed to, and participated in, a subsequent telephone conference with IRC to discuss the issues. During that telephone conference, claimant's mother explained she went to the conference in Colorado instead of one closer to home because its focus was to support children with Down Syndrome who don't quite fit into the standard parameters of that syndrome, and her daughter was one of those children. Claimant's mother stated the conference she attended was very helpful for her and claimant.

21. Claimant's mother testified that the old IRC policy regarding conference does not specifically state there is a requirement that a 30 day notice be provided prior to the event. She agreed that the new policy provided to her at the hearing did have that requirement. However, claimant's mother also argued that the new IRC policy is not publicly available and was not available on IRC's website. Accordingly, she feels misled by IRC regarding the current policy for reimbursement of conference expenses.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is entitled to a specific service, the burden of proof is on the claimant to establish that he or she requires the additional services. (Evid. Code, § 500.) The standard of proof required is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to

whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. The Lanterman Act is intended to provide an array of necessary services and supports sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, at each stage of life and to support their integration into the mainstream life of the community. (Welf. & Inst. Code, §§ 4501, 4512, subd. (b).) Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (Welf. & Inst. Code, §§ 4642 – 4643); and, on an individual basis, selecting and providing services to meet such needs. (Welf. & Inst. Code, §§ 4646 – 4647.) 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 (Welf. & Inst. Code, §§ 4501, 4509, 4685), 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. (Welf. & Inst. Code, §§ 4501, 4750.)

4. Welfare and Institutions Code section 4512, subdivision (b), defines “services and supports” and describes how one should determine which supports are necessary.

“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, and 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. Services and supports listed in the individual program plan may include, but are not limited to . . . recreation, . . . behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, . . . social skills training, . . . training for parents of children with

developmental disabilities, 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.

5. In order to be authorized, a service or support must be included in the consumer's IPP. (Welf. & Inst. Code, § 4512, subd. (b).)

6. On August 25, 2016, IRC implemented a revised policy entitled "Policy on Parent/Legal Guardian Conference Attendance." This policy specifically states that "IRC will provide tuition payment only, for parent(s)/legal guardian(s)/adult consumers to attend appropriate conference(s) related to consumer's disabilities . . . [m]aximum cost per fiscal year is \$600." The policy specifically states that IRC will not reimburse for travel, hotel or meals. Additionally, the policy specifically provides, in part, as follows:

Requests for conference attendance must be submitted, through the IRC Consumer Services Coordinator, at least 30 days in advance of the conference, and the service must be approved through IRC's regular process for encumbering funds.

Under no circumstances will IRC approve retroactive payment for conference attendance. . . .

EVALUATION

7. Claimant seeks reimbursement of the cost of claimant's mother's attendance at a conference in Colorado related to claimant's disability. Claimant's mother first made IRC aware of the conference only one day before the start of the conference and after claimant's mother had already incurred the expenses of travel to,

and attendance at, the conference. At the time claimant's mother first inquired about conference reimbursement from IRC, claimant's IPP did not specifically provide for conferences. Only after an addendum to claimant's IPP were conferences addressed in the IPP.

8. Regardless of the undisputed value to claimant of claimant's mother's attendance at the conference, IRC is prohibited from retroactively funding services already received, which includes retroactive payments for conference attendance. Additionally, the revised IRC policies expressly prohibit reimbursement of travel, meals, and lodging related to conference attendance. While claimant's mother was frustrated because she relied upon an older version of IRC policies, claimant's mother made no effort to obtain the current IRC policy regarding conference attendance from IRC until the day before the conference began.

9. The evidence did not support a finding that claimant's mother's attendance at the conference was an emergency service for which IRC must fund retroactively. Claimant's mother made no effort to seek approval from IRC for the conference attendance prior to paying for the travel and related expenses for the conference. Therefore, claimant failed to establish by the preponderance of the evidence that she is entitled to reimbursement of the expenses she incurred when she attended the conference, such as travel, lodging and meals. In an abundance of caution to avoid any misunderstanding regarding the communications with claimant's mother related to the conference attendance, IRC agreed to fund the cost of the conference tuition of \$60 plus the cost of the kid's day camp at the conference of \$30, totaling \$90. However, the remaining \$410 request exceeds the scope of permissible expenses, and IRC may not reimburse that amount.

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ORDER

Claimant's request that IRC reimburse for the costs associated with claimant's mother's attendance at a conference on Down Syndrome, such as travel, lodging and meals, up to \$500 is denied. IRC shall reimburse claimant's mother for the conference tuition and kid's day camp fee in the amount of \$90, pursuant to its agreement with claimant's mother.

DATED: January 2, 2018

DEBRA D. NYE-PERKINS

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.