

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018010985

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on May 9, 2018.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance by or on behalf of claimant.

The matter was submitted on May 9, 2018.

ISSUES

Should IRC fund claimant's requests for the following services: 1) an educational rights attorney to act as claimant's legal educational advocate; 2) Legal representation services to help claimant with claims/appeals with California Children's Services (CCS); 3) Legal representation services to help claimant with claims/appeals with the Social Security Administration (SSA); 4) an increase in respite hours; 5) personal assistant

services; and (6) consumer services coordinator presence at Individualized Education Plan (IEP) meetings with claimant's school district.

FACTUAL FINDINGS

BACKGROUND

1. Claimant is eligible for regional center services based on a diagnosis of Autism Spectrum Disorder. Claimant's mother is her authorized representative.

2. On December 20, 2017, IRC served claimant, through her mother, with a notice of proposed action denying claimant's request for 1) an educational rights attorney to act as claimant's legal educational advocate; 2) Legal representation services to help claimant with claims/appeals with CCS; 3) Legal representation services to help claimant with claims/appeals with the SSA 4) an increase in respite hours; 5) personal assistance services; and 6) consumer services coordinator presence at IEP meetings with claimant's school district.¹

The Notice of Proposed Action noted the following:

Regarding the request for an educational rights attorney and legal representation services for claims/appeals with CCS and the SSA, IRC stated that the provision of an attorney or other legal representation is not authorized under the Lanterman Act. The

¹ The Notice of Proposed Action did not actually deny claimant's request for consumer services coordinator attendance at claimant's IEP meetings; rather, it sought clarification on why claimant's mother would like the consumer services coordinator to attend and wanted claimant's mother to give adequate notice, which she had not done in the past.

letter to claimant's mother identified multiple other sources for legal assistance to assist her with finding legal services.

Regarding the request for an increase in respite hours, IRC noted that claimant already has 120 hours of respite in place, and her mother is the provider. Claimant's mother could hire a third party to provide respite services and therefore provide her with a break. There has also been no change in claimant's situation to warrant additional respite hours.

Regarding the request for a personal attendant, IRC stated that the reason for the denial was because the request was to use a personal attendant to help with travel to and from medical treatment and educational programs. This is not the purpose of a personal assistant, and generic resources – such as Medi-Cal – are available to transport a consumer to and from medical appointments. Further, claimant has In Home Supportive Services (IHSS) in place, and one of the services offered by IHSS is transportation for a variety of things, including medical appointments.

Regarding the request for claimant's consumer services coordinator to attend claimant's IEP meetings, IRC noted that it was not denying her request, but that 30 days advanced notice would be required because in the past, claimant's mother had not given sufficient notice and when the consumer services coordinator did take time to attend the IEP, claimant's mother would not let her participate, speak, view documents, or otherwise take any meaningful part in the IEP.

3. On April 7, 2010, claimant's mother filed a Fair Hearing Request on claimant's behalf objecting to IRC's decision not to provide the above-referenced services. She wrote:

Services were requested [throughout] 2017 have been denied. Said denials are causing unnecessary duress, stress, hindering [sic] the consumer's access to educational services,

community based programs, financial stability and require immediate attention as it is further hindering [sic] consumer's ability to exercise their rights.

Mediation/Arbitration and/or Administrative hearing officer must hear request/reasoning and provide assistance in filing complaints (as requested) and warrant [sic] exceptions and acceptance of all requested services to be provided and/or immediate resolution to alleviate duress, stress, and ensure consumer's denied rights.

4. OAH sent claimant's mother a Notice of Hearing on January 26, 2018, noticing a mediation date of February 15, 2018, and a hearing date of March 7, 2018. The notices were sent to the same address claimant's mother identified on the Fair Hearing Request, and where IRC had been corresponding with her.

5. Mediation was held on February 15, 2018, and did not result in settlement. The parties were advised the hearing would proceed on March 7, 2018.

6. Between the mediation and the March 7, 2018, hearing date, claimant's mother neither requested nor was granted a continuance. The Administrative Law Judge opened the record and began the hearing. IRC advised the administrative law judge that it had received an e-mail from claimant's mother, one hour before the hearing was to begin, claiming multiple reasons why she could not appear. Among them were: childcare issues, personal struggles, poor health of claimant's mother's mother in law, poor health of claimant's father, appointments, transportation issues, financial issues, etc. The administrative law judge felt it constituted good cause to continue the hearing, and did so. He also consolidated this matter, and claimant's sister's matter (OAH No. 2018010990), for hearing but not decision, on his own motion.

7. On March 13, 2018, OAH sent a Notice of Continued Hearing and Order of Consolidation (Notice and Order) to IRC and claimant's mother, noticing the continued hearing for May 9, 2018. The Notice and Order was sent to the same address that had been previously used in connection with legal documents sent to claimant's mother.

8. Extensive e-mail communications provided by IRC show that claimant's mother is constantly in e-mail communication with IRC about both the proceedings and issues concerning claimant. In one rather terse e-mail to IRC dated May 2, 2018, claimant's mother mentions that she would like to reach an amicable resolution so that the burden of hearing is eliminated. At no point during any e-mail communications did claimant's mother indicate that she was unaware of the impending hearing date.

9. On May 7, 2018, claimant's mother sent an e-mail to IRC stating the following:

please be reminded, as indicated at mediation on February 15, 2018, I am unable to attend a hearing. On February 15, 2018, I informed all parties that I was unavailable [to attend a hearing] because the children . . . attend a Riverside County Office of Education (RCOE) funded program and said program is released every Wednesday at 12 noon.

Claimant's mother further included in the e-mail a list of reasons why she claimed she could not attend the hearing two days from the date of her e-mail. As with her last request for continuance regarding the March 7, 2018, hearing, claimant's mother alleged illness of claimant's father that had occurred at least a month prior to the hearing, childcare issues, transportation problems, and financial problems. In this e-mail respondent **refused** to attend the hearing unless someone agreed to provide her with

childcare both prior to the hearing in order to prepare for it, and she also demanded that the hearing be continued.

10. Program Manager Jennifer Cummings e-mailed claimant's mother on May 7, 2018, informing her that the hearing would proceed on May 9, 2018, and attached the Notice and Order. She also reminded claimant's mother that a continuance request may be made, but only granted for good cause.

11. On May 8, 2018, claimant's mother sent Ms. Cummings an e-mail that was rather unintelligible and difficult to follow. It did not mention anything about the hearing. However, claimant's mother did express an objection to one hearing date for both this case and claimant's sister's case. Claimant's mother again informed IRC that she simply was not available for the May 9, 2018, hearing.

12. On May 8, 2018, claimant's mother called OAH and stated that she did not have time to attend the hearing and could not send documents through OAH's secure e-file server. OAH staff asked claimant's mother if she could attend a telephonic status conference and she stated she did not have time for that either. OAH staff informed claimant's mother that she would have to request a continuance in writing. At no point in her discussion with OAH nor in any communications with IRC did claimant indicate that she was unaware of the hearing date.

13. Claimant's mother waited until an hour before the May 9, 2018, hearing commenced, to file her request to continue the hearing. That request, received at the hearing, alleged a variety of reasons why she could not attend the hearing that were identical to the reasons she alleged as a basis for the first continuance, and in the e-mail communications she had with IRC in the two days prior to the hearing. Among them were medical appointments that occurred two days prior to the hearing and an appointment that occurred a day prior to the hearing. Claimant's mother also stated she did not have the time to prepare for a hearing. She stated she has had many IHSS

appointments, social security appointments, and other matters to attend to. Nowhere did she allege an appointment that made her otherwise unavailable on May 9, 2018. As an addition, for the first time, claimant's mother alleged she did not receive notice of the hearing date.

14. Claimant's mother has made two requests for continuance utilizing the same bases for a continuance, and also stated in at least one e-mail that she simply does not have time to attend a hearing unless someone provides her with childcare so she can both prepare for a hearing and attend it. It is not IRC's responsibility to provide for childcare or any other services so claimant's mother can prepare for a hearing she requested; the onus is on claimant's mother to make adequate arrangements to attend the hearing. It is also highly suspect that claimant's mother contacted OAH the day before the hearing, claimed not to know about the hearing, yet said nothing to either OAH or IRC in any communications in the two days prior to the hearing that she had not been served.

15. Based on the record, a determination was made that service of the Notice and Order was proper. Further, a determination was made that good cause did not exist to continue the hearing. Finally, a determination is made that claimant's mother's failure to attend the hearing, despite the lack of an order continuing the hearing, was not the product of mistake, surprise, or excusable neglect.

16. IRC elected to proceed with a prove-up hearing.

EVIDENCE PRESENTED BY IRC

17. Karina Peterson, claimant's former consumer services coordinator, testified at the hearing. Ms. Peterson's testimony corroborated what IRC wrote to claimant as its reasons for denial of claimant's requests in the Notice of Proposed Action. Ms. Peterson also noted that no changes have occurred with claimant to justify additional respite; that claimant had an educational advocate available who was unable to fulfill her role

because of claimant's mother's unavailability (which was corroborated by supporting exhibits); and that claimant had 234 hours of IHSS hours available. The IHSS hours could be used to bring in a third party provider if claimant's mother wanted a break. Moreover, IHSS provides transportation to and from medical appointments and also provides protective services, if needed. Ms. Peterson stated that claimant's mother did not provide a reason for her increase in respite. Finally, IRC does not provide legal services to help appeal or file claims with CCS, social security, or advocate at IEP meetings.

18. Program Manager Carmelita Florentino-Rodriguez testified at the hearing. Her testimony corroborated the testimony of Ms. Peterson. Ms. Florentino-Rodriguez said that claimant's mother wanted a personal assistant to accompany her and claimant to and from medical appointments and other educational programs. However, that is not the purpose of a personal assistant; a personal assistant is meant to help around the home to achieve independence. Further, there are generic resources available to transport claimant to and from medical appointments such as insurance and public transportation. Regarding the request for additional respite hours, Ms. Florentino-Rodriguez stated that claimant already has 120 hours of respite and records show claimant's mother has not been using the full amount of hours available. Therefore, there is no need for additional respite. Ms. Florentino-Rodriguez also testified that IRC never denied the request that claimant's consumer services coordinator attend claimant's IEP meetings, however, it serves no purpose for the consumer services coordinator to do so if claimant's mother will not let her view documents, ask questions, or otherwise participate in the IEP meeting. Typically, when a consumer services coordinator attends an IEP meeting, they are at least allowed to participate in order to help IRC provide better needed services.

19. As claimant's mother did not appear, there was no evidence provided to meet claimant's burden.

20. All documents provided at the hearing were reviewed. They included the Notice of Proposed Action letter, a variety of e-mail communications between claimant's mother and IRC, consumer ID notes, claimant's Individualized Program Plan, a letter from the educational advocate funded by IRC regarding her inability to reach claimant's mother to provide services, and an e-mail from Program Manager Leigh-Ann Pierce referring claimant's mother to various legal service programs that may be able to provide the legal services she is requesting.

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.) 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. (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).)

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. (Welf. & 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. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage. As the family is eligible for IHSS, but has not chosen to pursue it, IRC cannot fund the requested services.

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 supports, and claimant did not meet that burden.

It is not the responsibility of IRC to provide an attorney or legal services to assist a claimant with the filing of claims, or litigation of appeals, from denials of services from

CCS or the SSA. Similarly, an educational rights attorney is not a service or support authorized under the Lanterman Act; legal services are typically the responsibility of the family. Moreover, there are many organizations that provide low or no cost legal services, so generic resources are available to assist claimant with filing claims and pursuing appeals with private entities and the SSA.

Regarding the request for an increase in respite hours, the evidence showed that claimant's mother is not maximizing the 120 hours of respite claimant already receives, and nothing in the record justifies increasing the respite beyond 120 hours. Claimant also receives almost the maximum number of IHSS hours, and claimant's mother is the IHSS provider. If claimant's mother would like an additional break, she could hire a third-party to provide IHSS services.

Regarding the request for personal assistant services, the reason claimant's mother wants personal assistant services is for the purpose of transportation to and from medical appointments and other educational programs. Transportation is typically the responsibility of the family. Further, there are generic resources available; Medi-Cal can assist with transportation to and from medical appointments or public transportation can be utilized. A personal assistant is meant to assist a consumer with achieving independence in the home (i.e. cooking meals, bathing, etc.).

Finally, regarding the request for claimant's consumer services coordinator to be present at IEP meetings with claimant's school district, IRC explained that it did not deny the request. However, claimant's mother must give adequate notice and permit the consumer services coordinator to participate, or there is no basis for the consumer services coordinator to attend the IEP meeting.

ORDER

1. Claimant's appeal from Inland Regional Center's determination that it will not fund an educational rights attorney to act as claimant's legal educational advocate is denied;

2. Claimant's appeal from Inland Regional Center's determination that it will not fund legal representation services to help with claims/appeals with California Children's Services is denied;

3. Claimant's appeal from Inland Regional Center's determination that it will not fund legal representation services to help with claims/appeals with the Social Security Administration is denied;

4. Claimant's appeal from Inland Regional Center's determination that it will not increase claimant's respite hours is denied;

5. Claimant's appeal from Inland Regional Center's determination that it will not fund personal assistant services is denied;

6. Claimant's request for her consumer services coordinator to attend IEP meetings with claimant's school district is granted, in part. Claimant's consumer services coordinator may attend claimant's IEP meetings. If claimant's mother wishes for claimant's consumer services coordinator to attend any of claimant's IEP meetings with claimant's school district, however, claimant's mother shall provide a minimum of 30 days advanced notice to IRC, in writing, directly to claimant's consumer services coordinator. If claimant's consumer services coordinator attends claimant's IEP, he or she shall be able to meaningfully participate to the extent the consumer services coordinator determines is necessary to assist with the provision of services and supports under the Lanterman Act. If any IEP meeting claimant's mother refuses to permit claimant to meaningfully participate, IRC may, at its discretion, refuse to permit the consumer services coordinator to attend any future IEP meetings.

DATED: May 18, 2018

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.