

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018011162

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DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 28, 2018.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Toni DeAztlan, Attorney at Law, represented claimant, who was present at the proceedings.

The matter was submitted on March 28, 2018.

ISSUE

Should IRC increase claimant's Supported Living Services (SLS) from 190 hours to 541.8 hours per month?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 20-year-old female who receives regional center services based on a diagnosis of cerebral palsy, mild intellectual disability, and epilepsy. Claimant is able to walk unassisted for at least 20 feet but has an unsteady gait. She has mild seizure activity occurring one to six times a year, and is able to engage in self-care activity with assistance. She can engage in conversations and convey her desires, although her speech is often hard to understand.

2. On December 20, 2017, IRC served claimant with a Notice of Proposed Action stating that IRC partially approved claimant's request for SLS hours and would fund 190 hours per month (85 hours per month of training and habilitation and 105 hours per month of personal support services). An attached letter sent by IRC is summarized as follows: Claimant requested that IRC provide SLS through Personalized Arrangements for Living Services, LLC. (PALS). PALS completed an assessment and recommended a total of 541.8 hours per month of SLS (240.8 hours per month of training and habilitation services and 301 hours per month of personal support services). IRC noted that the proposed schedule would provide claimant with 18 SLS hours every day, which would only leave six hours for claimant to sleep. IRC's position was that 190 hours per month of SLS is sufficient to support claimant's needs. Finally, IRC noted that IRC would be conducting quarterly progress reviews. Because services would become

effective immediately, IRC required PALS to provide a detailed progress report to be reviewed prior to a quarterly meeting to be held in February 2018.<sup>1</sup>

3. On January 25, 2018, claimant's attorney filed a Fair Hearing Request, in which claimant requested IRC fund an additional 162 hours of SLS per month. The request stated that claimant had requested IRC provide a total of 352 hours of SLS per month but IRC only agreed to fund 190 hours. The 162 hours was the difference between the 352 hours per month requested and the 190 hours per month IRC agreed to fund. This hearing ensued.

4. At the beginning of the hearing, it was noted that claimant, in the Fair Hearing Request, only sought a total of 352 hours per month, whereas the Notice of Proposed Action stated claimant had requested a total of 541.8 hours per month. Claimant's attorney, Ms. DeAztlan, indicated that the Fair Hearing Request she submitted was in error. Thus, all parties agreed that the issue to be decided at hearing was whether IRC should fund the 541.8 hours per month as specified in the PALS assessment. Additionally, IRC requested that a decision include a finding that progress meetings should be conducted at claimant's home and not at the vendor's office.

#### EVENTS LEADING TO CLAIMANT'S REQUEST FOR SLS

5. Claimant's first Individualized Program Plan (IPP) meeting was held on June 29, 2016, and was attended by claimant, her parents, and IRC Consumer Services

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<sup>1</sup> IRC indicated that a quarterly meeting should occur in February 2018. However, IRC approved claimant for SLS in December 2017. Thus, the meeting should have occurred after three months, in March 2018, not February.

Coordinator Gilbert Ruiz.<sup>2</sup> At that time, claimant was 18 years old and living in her parents' home. She attended a special education program offered by the Riverside County Board of Education. Claimant did not request any services from IRC at this time, although IRC indicated it would fund dental services.

6. On February 14, 2017, Mr. Ruiz visited claimant's school regarding an issue she was having with her teacher. On May 24, 2017, IRC received a letter signed by claimant and claimant's father. The letter stated that claimant was no longer attending her special education program and requested "services" through PALS and that an IPP meeting be scheduled.

7. An IPP meeting was held on June 15, 2017, at the PALS offices. In addition to claimant, claimant's family, and Mr. Ruiz, Ms. DeAztlan, and Wilmer Rivas, a PALS case manager, attended the meeting. Mr. Ruiz testified that the family discussed claimant's desire to live independently. A summary sheet of the IPP was prepared and signed the day of the meeting. It stated that claimant's parents requested "ILS/SLS" through PALS and a draft IPP would be forwarded to PALS for referral.<sup>3</sup> A notation by Ms. DeAztlan indicated that this would occur by June 23, 2017, a week later.

8. On June 20, 2017, Mr. Ruiz called claimant's father to inquire whether claimant was going to move out of the home after SLS and ILS started. Mr. Ruiz testified that claimant's father said that it was not an immediate goal but he wanted claimant to learn to care for herself.

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<sup>2</sup> Claimant initially qualified for IRC services when she was an infant, but her first IPP was conducted in 2016.

<sup>3</sup> "ILS" is Independent Living Services, which is provided in a consumer's home and designed to teach skills related to living independently.

9. On June 22, 2017, Ms. DeAztlan sent an email to Mr. Ruiz stating that claimant and her family had requested Independent Living Services (ILS) to begin as soon as possible. Ms. DeAztlan wrote that claimant's father requested her to answer any questions IRC might have.

10. On June 23, 2017, Mr. Rivas, emailed Mr. Ruiz inquiring as to the status of the referral packet. Mr. Ruiz responded that a Monthly Expense Summary and SLS Standardized Assessment Questionnaire needed to be completed by the parents before a referral could take place. Mr. Rivas responded, "Please be clear, what is the standard operating procedure for an ILS referral packet? Please advise today."

11. On Monday, June 26, 2017, Ms. DeAztlan sent an email to Mr. Ruiz and IRC Program Manager Olivia Gutierrez. The email requested IRC provide her with its policy for SLS and ILS referrals. Ms. DeAztlan also stated that the family has requested all communication to be directed through her, noting that it was claimant's consumer preference to be represented by counsel. Ms. DeAztlan stated that IRC should not be reaching out to the parents directly and any documents should be sent to her. Mr. Ruiz responded by providing the Monthly Income and Expense Summary and SLS Assessment Questionnaire. Mr. Ruiz testified that he also dropped off a copy of the documents at claimant's home after unsuccessfully trying to contact claimant's father by phone.

12. The next day, Ms. DeAztlan responded that claimant was only requesting ILS and not SLS, thus she did not understand why the SLS forms needed to be completed. Ms. DeAztlan again asked what the "hold-up" was in providing an ILS referral. Mr. Ruiz responded that he needed the forms to continue with the ILS/SLS process and he would direct her inquiry to the IRC's legal department. Ms. DeAztlan again responded that claimant was only seeking ILS and not SLS. She requested that if IRC insisted that the SLS forms be completed for ILS, it provide the policy and

procedure. Mr. Ruiz stated that he would advise Ms. DeAztlan of the next step. Having received no response, on July 5, 2017, Ms. DeAztlan emailed Mr. Ruiz and Ms. Gutierrez to inquire about the status.

13. Mr. Ruiz completed an IPP on June 29, 2017, that was approved by Ms. Gutierrez on July 17, 2017. The IPP indicated that at the meeting the parents requested ILS because claimant lived in the parental home.

14. On July 20, 2017, Mr. Ruiz called Ms. DeAztlan to advise her that PALS was not vendored with IRC to provide any services and asked if the family wished IRC to refer claimant to another vendor in the area. Mr. Ruiz also left a message on claimant's father's cell phone advising him of this information. Mr. Ruiz testified that he never received a completed SLS packet from claimant, so he completed it based on information that he had in order to obtain referrals for three ILS providers who were vendored with IRC.

15. On July 25, 2017, claimant emailed Mr. Ruiz asking him to send paperwork to her attorney, Mr. Rivas, her dad, or her as soon as possible. This was the only direct communication between claimant and IRC since the IPP meeting. Mr. Ruiz responded asking what documents claimant was seeking. He noted that he completed the SLS questionnaire without her input and provided her a list of three vendors claimant could choose from to begin ILS.

16. On August 7, 2017, IRC approved PALS to provide SLS. The letter advised there would be further communication to complete the vendorization application process.

17. On August 22, 2017, Ms. DeAztlan sent Mr. Ruiz a letter outlining a number of corrections the family wished to see in the IPP.<sup>4</sup> She also wrote that at the meeting, “the family was extremely clear” that claimant was requesting SLS from PALS and that a transition to PALS SLS should be reflected in the IPP.

## PALS ASSESSMENT

18. On September 23, 2017, Mr. Rivas completed a SLS Assessment for claimant that was sent to IRC on October 2, 2017. According to the assessment, claimant’s family contacted PALS after PALS had conducted an information session at claimant’s school district that the family attended. The assessment was based on “observations, interactions, and meeting” with claimant and her family, as well as information from her IEP’s and IPP. There were no other details regarding how the assessment was performed, such as whether claimant was observed in the home or whether she was timed performing any specific tasks. According to the assessment, claimant “moved out of her parents’ house and was living independently.”<sup>5</sup> The assessment concluded that claimant would require 18 hours per day of support, with 10 hours per day provided at the personal care rate and eight hours per day provided at the training and rehabilitation rate.

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<sup>4</sup> The issue of corrections to the IPP remain an on-going dispute and are beyond the scope of the issue in this case. However, the “corrections” identified by Ms. DeAztlan were considered in determining claimant’s needs.

<sup>5</sup> This statement is factually incorrect. Claimant did not move out of her parents’ home until December 2017.

19. An IPP meeting regarding the SLS request from PALS was held on November 16, 2017. The meeting was attended by claimant's father, Ms. DeAztlan, PALS CEO Rod Mojarro, Mr. Ruiz, and Christine Slaughter, IRC's Behavioral Coordinator. Neither claimant, nor Mr. Rivas, who prepared the assessment, was at the meeting. At the time of the meeting, claimant had not yet moved out of her family home and the family had not applied for Supplemental Security Income (SSI) or In Home Supportive Services (IHSS) benefits. Mr. Mojarro indicated his belief that claimant required 24 hours per day assistance. Following the meeting, IRC requested that PALS provide a breakdown of how the training and habitation hours and personal support hours would be delivered per each goal specified in the PALS assessment.

20. On December 5, 2017, PALS provided IRC with the hours per week requested for each goal. The goals, objectives, and plan for services are summarized as follows:

- Autonomy/choice/self-advocacy:

Objective: Claimant will engage others in conversation to express her opinions, wants, and needs.

Plan for Service: PALS will assist and encourage claimant in communication; explore adaptive technology to aid communication; and explore potential speech therapy.

- Domestic Skills (42 hours/week):

Objectives: Participate in the maintenance of the home, go shopping for household necessities; PALS will assist with cooking and planning meals.



Plan for Service: PALS will assist in creating inventories of depleted household items, assist in opening and responding to mail, help plan meals by determining necessary ingredients before weekly shopping trips, promote a balanced diet, and assist in gathering and using simple recipes.

- Personal Finances (1 hour per week):

Objective: Claimant will learn appropriate banking, budgeting, and spending skills.

Plan for Service: PALS will assist with preparing a monthly budget; assist with reviewing billing statements and mail; assist claimant in learning banking skills; assist with identifying appropriate and trustworthy individuals to share financial information; and develop a better understanding of the value of money.

- Housing (.25 hours per week):

Objectives: Claimant will need assistance with obtaining Section 8 housing vouchers or subsidies and need assistance maintaining a relationship with her landlord.

Plan for Service: PALS will assist claimant with finding a new apartment; assist in completing paperwork, assist in understanding rules and requirements of the landlord; communicate with apartment manager or roommate; assist

in monthly payment of rent; and assist in obtaining any needed repairs.

- Physical/Dental Health (11.5 hours per week):

Objective: With assistance, claimant will participate in scheduling and attending medical appointments and focus on maintaining healthy diet and exercise.

Plan for Service: PALS will prompt claimant to make healthy choices regarding diet and exercise; help claimant schedule all doctor appointments; transport claimant to the appointments; coordinate with medical team; monitor claimant's mood regarding stress and anxiety; and assist in following doctors' orders.

- Self-Help (17.5 hours per week):

Objective: Claimant will shower and groom herself on a daily basis.

Plan for Service: PALS will assist claimant with showering and maintain personal hygiene, prompt claimant to complete hygiene tasks daily; and assist claimant with various personal hygiene routines.

- Generic Resources (3 hours per week):

Objective: Claimant will seek out available generic resources.

Plan for Service: PALS will assist claimant in acquitting any and all generic resources.

- Community Interaction (16.5 hours per week):

Objective: Claimant will participate in social and recreational activities, including any events of interest such as family gatherings.

Plan: PALS will assist claimant to plan and organize community integration and understand her community; transport claimant to activities pertinent to her schooling and otherwise; and assist her in the community.

- Safety (.25 hours per week):

Objective: Claimant will develop an emergency preparedness plan of action.

Plan for Service: PALS will assist claimant to develop a natural disaster response plan, ensure she has access to emergency first aid kit, and develop emergency contacts and resources.

- Career/Employment/Education (34 hours per week):

Objective: Claimant will be assisted in maintaining quality employment or volunteer activities.

Plan for Service: PALS will assist claimant with financial aid documentation; transportation to school or related activities, scheduling presentations and work related activities,

documentation required to apply to school, note taking, school preparation, scheduling and transporting to interviews; and all generic resources related to her profession.

21. PALS did not provide IRC with a break-down of what hours would be spent on training and habitation and personal support services.<sup>6</sup> PALS did attach a sample schedule. The schedule indicated PALS staff would provide support from 6:00 a.m. to 12:00 a.m., seven days a week. The schedule is notable because it only provides claimant with six hours of sleep each day and no time for any leisure activities at home.

22. A conference call was held on December 6, 2017, between Ms. DeAztlan and IRC staff in an attempt to resolve some of the communication issues. At the request of Ms. DeAztlan, a representative from Assemblyman Eduardo Garcia's office was also on the call.<sup>7</sup>

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<sup>6</sup> IRC funds each category differently. Training and habilitation services are funded at \$30.39 per hour and personal support services \$20.46.

<sup>7</sup> After IRC issued its Notice of Proposed Action, Kimberly Barraza, a district representative for Assemblymember Garcia, emailed Ms. Cummings and requested claimant's case be reconsidered and for Ms. Cummings to provide information "on what basis/formula this decision was made and a comparison of hours offered to other IRC consumers in similar situations." She concluded, "We are optimistic an agreement with IRC can be reached to increase the amount of hours offered." Ms. Cummings responded with information regarding the fair hearing process.

23. On December 6, 2017, Ms. DeAztlan emailed IRC with a signed request by claimant's father that a new consumer services coordinator be assigned. Ms. Cummings responded that the letter was insufficient to make any changes because claimant is an un-conserved adult and IRC management needed to speak with the consumer directly about changes made to her consumer services coordinator. IRC again noted that although it recognized Ms. DeAztlan's request that all communication go through her, any discussions related to service or service delivery needed to be discussed directly with the consumer.

Ms. DeAztlan responded that claimant's father has power of attorney for claimant and has the right to make decisions for claimant. Ms. DeAztlan wrote, "If you were to fully review the file and email correspondence, you would find that [claimant's father] has sent several letters or emails to SC Ruiz and emails to Olivia Gutierrez, expressing that he does not trust SC Ruiz and was not appreciative of the type of communication SC Ruiz was having with his daughter."<sup>8</sup> Ms. DeAztlan again stated that IRC does not have the legal right to decide who can coordinate and relay information to a client, and IRC is obligated to respect claimant's consumer choice.

24. As a result of a meeting with claimant's father and Elizabeth Tagle, IRC assigned a new consumer services coordinator for claimant.

25. On December 12, 2017, IRC created an addendum to the IPP to reflect some, but not all, of the changes Ms. DeAztlan identified in her August 2017 letter, and to reflect the role PALS would assume.

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<sup>8</sup> Extensive email correspondence was provided by IRC documenting communication between it and Ms. DeAztlan. There was no evidence that claimant's father ever expressed that he did not trust Mr. Ruiz or questioned the manner in which Mr. Ruiz interacted with claimant.

26. On December 20, 2017, IRC issued the Notice of Proposed Action in which it agreed to fund 190 hours per month of SLS through PALS.

#### TESTIMONY OF CHRISTINE SLAUGHTER

27. Christine Slaughter is IRC's behavior coordinator but was also IRC's supported living liaison, where she coordinated services for individuals receiving SLS. In this position, she was involved in reviewing SLS plans from vendors and for clients. Ms. Slaughter discussed the requirements of SLS program and the differences between the training and habilitation component and the personal services component. Ms. Slaughter believed that the PALS assessment was not sufficient to justify the number of hours PALS requested. Moreover, the report still did not contain a breakdown between the training and habilitation hours and personal service hours for each objective. For example, the report requests 42 hours per week for domestic skills. However, there is no breakdown of what time is being spent training claimant to perform these skills and the time the service worker is performing the chore his or her self.

#### TESTIMONY OF ELIZABETH TAGLE

28. Elizabeth Tagle has been a program manager with IRC's Riverside transition unit for the past 17 years. Ms. Tagle testified that when she received the PALS assessment, she had never in her time at IRC seen so many hours requested. For example, she felt that 42 hours per week of domestic skills was highly excessive. IRC determined that funding SLS for six hours a day was sufficient to meet claimant's needs. This decision was based on claimant's natural support and available generic resources. At the time IRC approved the hours, claimant was still living in the family home. She noted that IRC conducts quarterly reviews to monitor a consumer's progress, and IRC is able to reassess a consumer's needs and adjust hours accordingly. IRC was not

immediately advised that claimant had moved out of her parents' home in early December 2017 and was now living in her grandmother's home.

### PALS PROGRESS REPORT

29. Mr. Rivas prepared a progress report on February 23, 2018. The report outlined how many hours a week were funded for each of the goals identified in the PALS assessment. According to the report, PALS has funded 3 hours for domestic skills, 1 hour for personal finances, 0 hours for housing, 9 hours for physical/mental/dental health, 0 hours of self-help, 14 hours per week for generic resources; 16.5 hours for community integration, 0 hours for safety, 0 hours for career/employment/education. For each goal that PALS did not provide the full requested hours, Mr. Rivas wrote that the goal and objective could not be fully addressed due to lack of funding.

The report also indicated that claimant is now living with her grandmother. The report indicated that PALS assists her in communicating with her grandmother/landlord and paying the rent in a timely manner.

30. Ms. Slaughter testified that IRC is required to conduct progress reviews of SLS programs quarterly. Ms. Tagle testified that the progress report lacked specific details. She emphasized the importance of conducting quarterly meetings and discussing the plan directly with the consumer.

### TESTIMONY OF CLAIMANT'S FATHER

31. Claimant's father's testimony is summarized as follows: After respondent turned 18, she enrolled in a transitional day program provided by claimant's school district. Initially the program was good for claimant, but claimant got a new teacher with whom claimant had some problems. She also had an increase in seizure activity. Claimant's father contacted Mr. Ruiz who said he would go to the school to investigate if there was a problem. Mr. Ruiz reported that he spoke to the teacher and everything

was fine, except claimant did not want to follow the rules. Claimant's father felt that Mr. Ruiz did not appropriately follow-up to try and resolve the problem. Claimant and her family went to a presentation conducted by PALS, where they met Ms. DeAztlan and hired her.

32. Claimant's father identified several errors in the IPP that Mr. Ruiz drafted following the June 16, 2017, meeting. At the meeting, the family expressed that claimant wanted to live independently, but did not state when and where claimant would be moving. In the follow-up meeting with IRC in November, after the PALS assessment, claimant's father informed IRC that claimant would be moving out of the family home. Claimant moved out the first week of December and now resides with her grandmother in her trailer. Claimant pays her grandmother \$200 in rent, which is provided by claimant's father. Claimant's grandmother has been involved with claimant growing-up. She provides assistance to claimant now that claimant is living in her home.

33. Claimant's father previously tried to apply for IHSS and SSI, but claimant did not qualify because she lived with her parents who did not have a qualifying income. He said he asked for assistance with applying again for these benefits. After PALS service began, they helped claimant apply for IHSS and SSI. They are now awaiting a determination.

34. Claimant's father indicated at the IPP meeting that claimant was interested in taking classes at the local community college. Claimant did not attend this semester because there was not a class she was interested in taking. Claimant sees a neurologist for her seizures.<sup>9</sup>

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<sup>9</sup> A letter from Antoine Elhajjar, M.D., that simply stated, "[Claimant] needs continuous supervision in order to perform activities of daily living, takin her medicine and in case of seizure recurrence."



35. Claimant's father claimed that he did not receive the SLS questionnaire Mr. Ruiz said he provided to him, although it had been sent to Ms. DeAztlan as well. He said he asked for IRC to communicate to him through Ms. DeAztlan because he felt he did not get much help from Mr. Ruiz, and after the first IPP meeting with Mr. Ruiz, he felt Mr. Ruiz was "aggressive." He did not feel Mr. Ruiz tried to help her out and asked that communication go through Ms. DeAztlan.

36. Since claimant began working with PALS, they take her shopping, take her to the gym two times a week, and help her around the house. When asked what assistance claimant needs that PALS is not providing, father said claimant would like to have her own place one day and not be dependent on her family. Claimant would like to take classes at the community college next semester. However, no information was provided on what steps were actively being taken to pursue this goal.

#### TESTIMONY OF ROD MOJARRO

37. Rod Mojarro is CEO and director of client services for PALS. PALS is a company that provides SLS and ILS. He has owned the organization for over 20 years. He has had approximately 80 SLS clients. Mr. Mojarro testified that Mr. Rivas, who performed the assessment, visited claimant in her parents' home and also claimant's grandmother's home. Mr. Mojarro went through the assessment to explain how PALS determined the hours claimant required. His testimony on this matter did not meaningfully expand on the information that was contained in the assessment. He said the hours were calculated based on the average daily time spent on the task. He testified that the proposed daily schedule submitted to IRC was just a projected schedule that was subject to change, but it was given to IRC to provide a general indication of what types of things would be delivered on a daily basis.

38. Mr. Mojarro testified that he believed the 18 hours of daily SLS was appropriate for someone with claimant's "dual diagnosis." He said claimant requires 24

hours per day of support, but PALS did not request the additional 6 hours because he believed that would be the maximum IHSS would fund and he wanted to save IRC from having to fund those hours. PALS said it has consulted with a "third party" to obtain IHSS for claimant. When asked how PALS determined the breakdown for training and habilitation hours and personal assistance hours, Mr. Mojarro said PALS tried to determine on a daily basis how much physical assistance hours were needed. He said claimant is capable of learning at all times, thus most hours are training and habilitation. PALS elected to request the personal assistance hours, which are funded at a lower rate, based on "business considerations." He explained that PALS decided not to request all of the training and habilitation hours, which are funded higher rate, as a cost-saving measure for IRC. Thus, even though PALS requested personal support hours, most of the hours will be training and habilitation. Mr. Mojarro testified that PALS submitted two incident reports to IRC to notify IRC that claimant had seizure activity, which he believed has increased over the last year. There was no evidence that claimant has returned to her neurologist as a result of this increase in seizure activity.

39. Mr. Mojarro said the progress report reflects the hours a week PALS has devoted to each goal. The hours funded by IRC were a lot less than requested, so PALS had to prioritize where it spent its time. He noted that 14 hours a week are being provided for seeking generic resources when only three were originally requested. PALS referred the family to a "consultant" who helps with IHSS and SSI. Mr. Mojarro said PALS acts as a liaison between the family and the consultant, obtaining paperwork and information from the family. Although Mr. Mojarro testified generally about difficulties obtaining IHSS and SSI, there was no evidence that IHSS or SSI had denied claimant's request and neither Mr. Mojarro, nor the progress report, provided any specifics about problems claimant has faced in obtaining benefits, other than to say that PALS would not have brought in a consultant if there had not been problems.

40. Mr. Mojarro testified that it is very reasonable for a person who has a physical limitation to spend 42 hours per week on domestic chores. Mr. Mojarro testified that the goal of education and employment, for which 34 hours per week were requested, was not completed for lack of funding. Thus, he implied that claimant was not going to school or working because there was no funding.

## LEGAL CONCLUSIONS

### THE BURDEN AND STANDARD OF PROOF

1. The burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should increase the hours funded for SLS. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) 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. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (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; *Assn. for Retarded Citizens v. Dept. 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 Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the

goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

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

7. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

9. 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.

10. In implementing IPPs, 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 IPP. (*Id.* at subd. (a)(3).)

11. 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 IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

12. 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.)

13. An "authorized representative" means the conservator of an adult, the guardian, conservator, or parent or person having legal custody of a minor claimant, or an agency or court appointed representative. (Welf. & Inst. Code, § 4701.6.)

14. Provisions related to SLS are set forth in California Code of Regulations, title 17, section 58610 et seq.

15. California Code of Regulations, title 17, section 54349 outlines the components of SLS, which are summarized as follows:

Personal Support Services are provided to meet the consumer's need for assistance with common daily living and routine household activities, accessing medical services, and animal companions. Personal Support Service must be tailored to meet those specific needs of an individual consumer which cannot be met by the unassisted consumer because of the nature or severity of the consumer's physical or developmental challenges. Personal Support Service differs from Training and Habilitation Service in that the immediate result of the service (e.g., successful preparation of a meal) is the primary objective of the service, while any training or

habilitation that may result is an incidental and unanticipated consequence. (*Id.* at subd. (a).)

Training and Habilitation Service is tailored to the specific training and habilitation needs and capacities of an individual consumer, and is intended to result in an increased ability on the part of the consumer to establish and maintain constructive human relationships, assume and exercise membership in the community, and meet his/her needs without assistance. Training and Habilitation Service is accessed only in accordance with the determination made through the consumer's IPP process of its appropriateness in consideration of the consumer's cognitive or physical challenges, and only when any corresponding Personal Support Service alternative, as defined in (a), is determined to be less appropriate in consideration of the consumer's cognitive or physical challenges. Training and Habilitation differs from any corresponding Personal Support Service in that the immediate result of the service (e.g., successful preparation of a meal) is always consequential to, but never the primary objective of, the training. (*Id.* at subd. (b).)

A regional center shall authorize a SLS vendor to provide a service only if such service is cost-effective and cannot feasibly be provided without cost, or at a lesser cost, through generic or natural supports available in the community. (*Id.* at subd. (g).)

#### CAUSE DOES NOT EXIST TO INCREASE CLAIMANT'S SLS HOURS

16. The burden was on claimant to show by a preponderance of the evidence that IRC should increase the number of SLS hours from 190 to 541.8 per month. Claimant failed to meet her burden.

The assessment by PALS indicating claimant should receive 541.8 hours per month of SLS, which amounts to 18 hours per day, is patently excessive and does not reflect claimant's actual needs and current living situation residing with her grandmother. It is of course understood that claimant has physical limitations that

require her to take extra time performing certain tasks and she is new to living independently, albeit with her grandmother. However, the very notion that PALS would have claimant engaged in activities 18 hours a day, seven days a week, with no leisure or rest at home, borders on the absurd. The breakdown of the hours is equally difficult to comprehend: 42 hours per week for domestic skills, 17.5 hours per week for personal hygiene, 11.5 hours per week for health and wellness, 16.5 hours per week for community integration, and 34 hours per week for education or employment. The very fact that PALS requested 34 hours per week to assist with school or work, when she does neither, suggests that the PALS assessment was not tailored for claimant, but instead was created to maximize PALS's funding. In fact, the progress report noted that the education/employment goal could not be achieved for lack of funding, which is disingenuous in light of claimant's father's testimony that claimant did not attempt to enroll in any community college courses because there were none available that interested her.

The assertion that PALS is spending 14 hours *per week* to "liaison" with an advocate, who the parents are presumably independently paying, to assist in obtaining IHSS and SSI benefits, is also troubling. The progress report in general was notable for its lack of concrete examples of what PALS accomplished over the past three months. The PALS assessment failed to provide a breakdown of what time was spent on training and habilitation versus personal assistance. In sum, Mr. Mojarro and the PALS assessment were not credible in reflecting claimant's actual needs and claimant's request for additional hours not justified.

The 2017 IPP meeting was held at the PALS office, because claimant purportedly did not feel comfortable having the meeting at her house. As a result of the meeting, claimant indicated her desire to live independently and requested ILS/SLS services from PALS. Within a week after, Ms. DeAztlan began pushing IRC to submit a referral to PALS.



When Mr. Ruiz requested the family complete an SLS questionnaire, which is required to be completed under IRC's policies, Ms. DeAztlan was argumentative and responded that she did not believe the family should be required to fill out the questionnaire. She insisted that claimant was only seeking ILS and not SLS, despite the fact that the IPP summary Ms. DeAztlan and claimant signed indicated a desire for ILS/SLS. IRC continued to express that it wished to communicate directly with claimant and claimant's father. But this was expressly disallowed by Ms. DeAztlan, who did not forward the questionnaire to claimant's father to be completed. Curiously, in an email sent on August 22, 2017, Ms. DeAztlan wrote "the family was extremely clear" that claimant was requesting SLS from PALS at the IPP meeting – when a month before Ms. DeAztlan refused to complete the SLS questionnaire stating that the family had only requested ILS. So at the very least, Ms. DeAztlan was not clear herself about exactly what services claimant was seeking. In the end, the family did not complete the form as requested, which left Mr. Ruiz to do the best that he could.

The irony of the situation is that Ms. DeAztlan began to immediately send emails to Mr. Ruiz demanding he send PALS a referral packet, excoriating IRC for trying to communicate directly with claimant, explicitly stating that Mr. Ruiz was incompetent - the whole time PALS had not yet been vendored by IRC to provide either ILS or SLS. Thus, it was completely appropriate for IRC not to have sent PALS a referral for services for which they were not vendored. Indeed, IRC did in fact provide claimant a list of three other vendors providing ILS, to which no response was made.

This interaction between Ms. DeAztlan and IRC is referenced to highlight a larger issue; Ms. DeAztlan's assertion that Mr. Ruiz and IRC should not contact the family directly and send all communications through her. At this point, it is noted that claimant is an un-conserved adult. Regardless of having signed a medical power of attorney, for purposes of the Lanterman Act, neither Ms. DeAztlan nor claimant's family are

authorized representatives entitled to make decisions on behalf of claimant. (Welf. & Inst. Code, 4571.6.) In multiple emails, Ms. DeAztlan claimed that it was claimant's "consumer preference" not to communicate directly with IRC. First, it was not clear that having IRC direct all communication through Ms. DeAztlan was in fact *claimant's* actual preference. As previously noted, there is little to no objective evidence that Mr. Ruiz had done anything to so upset claimant that she felt uncomfortable speaking to him directly. Even if he had, at no time did claimant or her family attempt to speak to Mr. Ruiz's supervisor or anyone else at IRC to address the situation. Second, although the preferences of a consumer are a central factor to be considered in IRC's decisions, it is not the only factor. By availing herself to IRC's services, claimant is seeking the expenditure of public funds. With this, come certain restrictions and requirements that must be followed. One such requirement is that she must be a full participant in the process. Ms. DeAztlan's attempts to prevent direct communication between IRC and claimant have hindered IRC's ability to provide service to claimant.

The issue of communication between IRC and claimant is raised because going forward, IRC must be able to assess claimant's progress, desires, goals, and be part of the collaborative process to determine what services and supports are appropriate. Up to this point, claimant has had very little personal involvement in the decision-making process because of the involvement of Ms. DeAztlan. IRC asked that it be ordered that progress meetings be conducted in claimant's natural environment, her house, and not the PALS office. Although it might be preferable that IRC be afforded the opportunity to observe a consumer in her home, there is no legal requirement of such, and any such order would be outside the scope of this hearing. However, as previously noted, it is claimant's interest in working *with* IRC to develop her plans and goals, rather than simply imposing demands on IRC.

In conclusion, there are serious concerns about PALS's credibility. There may be additional vendors who would be able to provide claimant with more appropriate and cost-effective services. Regardless of the SLS vendor, it is hoped that claimant will work directly with IRC to become a full participant in the decision-making process regarding her future.

## ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund additional Supported Living Service hours is denied.

DATED: April 10, 2018

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ADAM L. BERG

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.**