

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2018040577

DECISION

Administrative Law Judge Chantal M. Sampogna of the Office of Administrative Hearings heard this matter on August 9 and September 14, 2018, in Lancaster, California.

Aaron Abramowitz, Attorney at Law, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant was present and represented herself.¹

Oral and documentary evidence was received. The record was held open until October 5, 2018, for the parties to submit closing briefs, which were timely received and marked for the record as Exhibits 9 and I. The record was closed and the matter was submitted for decision.

¹ Titles are used to protect claimant and her family's privacy.

ISSUE

Whether the Service Agency must fund claimant's therapist to provide training and consultation with claimant's supportive living services (SLS) providers so claimant may access this service.²

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 3 and 6; Claimant's exhibits A-H.

Testimony: Gabriela Eshrati, Lizette Ortiz, Dr. Arpi Arabian, Dr. Trisha Lee Rich-Thurm, Desiree Remy, and claimant.

FACTUAL FINDINGS

1. Claimant is a 49-year-old woman who resides with her two children, ages thirteen and fourteen years old. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)³ based on her diagnosis of Autism Spectrum Disorder (ASD). (§ 4512, subd. (a).)

² Though the Service Agency named these requested services "behavioral services" in the Notice of Proposed Action (NOPA), claimant's request for services, which the NOPA denied, clearly requests Service Agency fund claimant's therapist to provide training and consultation with claimant's SLS service providers so they can understand and accommodate her trauma and diagnosis in their delivery of services. In claimant's request for services communications with NLACRC, she repeatedly clarified she was not requesting behavioral services. (Ex. E, pp. 148-150.)

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

Claimant has a comorbid diagnosis of ASD, Trauma Based Dissociative Identity Disorder (DID), and Complex Post-Traumatic Stress Disorder (PTSD). Claimant's children also have ASD.

CLAIMANT'S SERVICE REQUEST

2. On November 8, 2017, claimant requested via email to her consumer service coordinator, Lizette Ortiz, that her therapist meet with her SLS providers to educate them on her comorbid diagnoses and "help guide them with issues that aren't typical." (Ex. D, p. 19.) She sent a follow-up email on November 17, 2017:

Lizette, Can you help me. [sic] I have to have a way to help my service providers be trained so they can understand and help. I keep it together and keep it together for as long as I can but when I melt down or am overwhelmed, I'm [sic] can't make everything look fine and perfect. Then it blows up and when I need help the most people are engrossed in deep misunderstanding. It is too painful and makes everything worse. It's like I can only get help when I need it the least. When I need help the most no one knows what I'm saying or what I need and their human reactions trigger worse feeling [sic]. ¶ Please I'm begging you. My therapist understand [sic] and offered to help my services providers. Can regional please please find a way to get extra training for my service providers so they can help. Please. Please. I can't keep having this experience. It's excruciating. Please. Jen (Ex. D, p. 20.)

3. On December 5, 2017, Ms. Ortiz informed claimant that the Service Agency would provide her behavior services by training her SLS providers on a behavior plan to implement when it is needed.

4. Prior to the Service Agency issuing its NOPA, claimant and her therapist, Trish Rich-Thurm, Psy.D., specified that the service requested would be provided at first weekly, with a decrease to bi-weekly and monthly, as appropriate. Claimant communicated with Ms. Ortiz on multiple occasions between November 2017 and March 2018, explaining that she was not asking for behavior services; that Applied Behavioral Analysis (ABA) services could not address her comorbidity of ASD and DID; and that ABA usually resulted in her complete regression and withdrawal (physically and communicatively). She informed Ms. Ortiz she was open to a different therapist providing the requested service. On March 12, 2018, and subsequent occasions, claimant asked Ms. Ortiz for the contact information of the Department of Developmental Services' (DDS) mental health liaison. (Ex. E, p. 162.) Claimant never received this information, and the Service Agency witnesses acknowledged this liaison had never been contacted.

5. Dr. Rich-Thurm also communicated and clarified claimant's request to the Service Agency. In January 2018, Dr. Rich-Thurm had two short phone conversations with Ms. Ortiz (though Dr. Rich-Thurm conveyed her availability for additional discussions), in which she explained claimant's need for the requested service and why ABA services were not comparable.⁴

⁴ Dr. Rich-Thurm also provided this information in writing to the Service Agency in May 2018 and confirmed her intention and plan in her testimony at hearing.

6. A. Claimant's Service Agency clinical team members included the following: Dr. Koran, a consulting psychiatrist; Dr. Arpi Arabian, the Service Agency's Behavioral Services Supervisor, and a Clinical Psychologist and Board Certified Behavioral Analyst (BCBA); Ms. Ortiz; and Gabriela Eshrati, Consumer Services Supervisor. No member of the clinical team has experience with DID or its comorbidity with ASD, has treated an individual with this comorbid diagnosis, or were familiar with DID treatment standards.⁵ Neither Dr. Koran nor Dr. Arabian ever consulted with Dr. Rich-Thurm. No member of the team ever assessed claimant, and the team recommended ABA services without conducting a Functional Behavior Assessment (FBA).

B. Ms. Ortiz informed the clinical team assigned to claimant's case of claimant's request. Based on Ms. Ortiz's notes of her conversations with Dr. Rich-Thurm, the clinical team interpreted claimant's request to be for behavioral services, but Dr. Rich-Thurm would be training the SLS providers to provide therapy to claimant, and that Dr. Rich-Thurm was not qualified to provide ABA services. On February 7, 2018, the clinical team decided that claimant would benefit from behavior services so "they can work together with her SLS staff to put together a plan for her daily life to deescalate her meltdowns." (Ex. E, p. 158.) Ms. Ortiz informed claimant that the Service Agency would not provide the requested service, and that it would provide behavioral services to claimant, such as Applied Behavior Analysis (ABA), which it considered to be an equivalent of the service requested by claimant, and a service that Dr. Rich-Thurm was not qualified to provide as she is not a BCBA.

7. On February 20, 2018, claimant requested the Service Agency issue a denial of her service request so she could file an appeal and have a hearing.

⁵ Dr. Arabian did receive education in DID in her doctorate program.

8. In the NOPA dated March 14, 2018, the Service Agency denied claimant's request.

9. Claimant filed a Fair Hearing Request on April 4, 2018, requesting the Service Agency fund claimant's therapist to provide training and consultation with claimant's SLS providers so claimant may access this service.

CLAIMANT'S NEED FOR REQUESTED SERVICE

10. As of January 2018, claimant's Individual Program Plan (IPP) provides among other services that claimant will receive 132 hours per month of SLS training through Future Transitions to assist claimant with meeting the objectives of her IPP. (Ex. F, p. 196.)

11. A. Dr. Rich-Thurm provided the following information in testimony at hearing, and previously in phone calls and a letter to the Service Agency.

B. Claimant struggles with the two major overlapping and challenging diagnoses of ASD and DID. "The impact of the trauma experiences along with difficulty with social interactions (Autism related) present often in interactions with her SLS workers." (Ex. 3, NLACRC 000013.) When service providers have no consultation or education on her comorbid needs from someone experienced, the service providers often trigger claimant and cause great distress, resulting in claimant's withdrawal due to pain, resulting in claimant's inability to access the service she needs.⁶

⁶ Service Agency service providers are aware that claimant's challenges impede her access to SLS services, as well as other services, such as parenting support services which have been put on hold because of claimant's obstacles to receiving services from service providers. (See ex. 6.)

C. “To fully access her supporting living services, claimant needs a therapist trained in both Autism and Trauma Related Dissociative Identity Disorder to offer consultations and training to her support staff so that she can successfully access her Support Services.” (Ex. 3, NLACRC 000014.) Claimant’s DID symptoms cause claimant to switch to a child’s level of development and capacity, and to initiate a fight or flight response. At any moment, a trauma can be triggered, and claimant will regress in all of her capacities to the age at which claimant experienced that trauma; at the same time, claimant’s ASD challenges may or may not similarly regress. It is important for all service providers to understand that when claimant regresses, claimant does not have the capacity of an adult; it is not that claimant can and is resisting, it is that she cannot. Dr. Rich-Thurm believes ongoing consultation is needed because claimant has not resolved her trauma, and it will present itself in new ways as claimant progresses in her DID treatment.

D. Dr. Rich-Thurm’s purpose is not to train SLS providers on how to provide therapeutic services to treat claimant; rather her purpose is to empower these service providers so they can be successful in providing the service, without sabotaging its delivery and receipt. Her request is not that service providers recognize if claimant has transitioned, for example, into a three-year-old child experiencing trauma, just that the service providers would understand that was possible. Dr. Rich-Thurm does not feel ABA services would help claimant resolve the issues she is confronting because she has not found claimant has a behavior problem. In addition, Dr. Rich-Thurm understands that the ABA model was overwhelming for claimant, caused her emotional and physical pain, and triggered a fight or flight response.

Efficacy of Requested Service

12. Based on repeated breakdowns of trust and communication between claimant and SLS providers, claimant requested Dr. Rich-Thurm work with her SLS

providers to help them understand how her DID affects her ability to access the service. Dr. Rich-Thurm has been providing, without compensation, the requested service to claimant's SLS providers for over six months and it has transformed how claimant can access her SLS.

13. A. Desiree Remy is the area coordinator for Future Transitions, an agency which provides supportive living services to persons with ASD. Ms. Remy manages this program, oversees claimant's case, and is also one of claimant's SLS providers. She receives ongoing training in ASD and developmental disabilities. The services and behavioral approaches they use to work with clients with ASD include providing support to change a client's motivation and explaining to a client why she would want to do what needs to be done (e.g., take a shower, or go to an appointment); but this approach was not successful with claimant.

B. When Future Transitions first worked with claimant, the providers encountered unsurmountable challenges delivering SLS to claimant. Prior to consultation and training, providers would show up at claimant's house and she would retreat to her room and be incapacitated. This is not behavior Future Transitions had experienced with their clients with ASD. The SLS providers' consultation with Dr. Rich-Thurm regarding DID, and follow-up communications addressing in-the-moment challenges, have enabled them to provide services in a way that claimant can access. For example, Dr. Rich-Thurm has consulted with them on how claimant's trauma may be presenting, how they can allow claimant to step away and reenter their service provision, and how not assuming claimant's capacity can avoid triggering claimant into complete withdrawal from the SLS providers.

Claimant's Response to ABA Services

14. A. Between 2015 and 2016, claimant received ABA services from Nurture & Nature, Applied Behavioral Analysis and Consultation, after being referred by

Apurva Vinaykant Shah, M.D., of Kaiser Permanent, for a FBA. Kristine D. Dickenson, BCBA, was claimant's primary ABA service provider. Ms. Dickenson wrote the June 6, 2016 ABA Termination Report. In this report, Ms. Dickenson explained that claimant's ABA program outcomes included two target behaviors, emotional outbursts and avoidant behavior. Ms. Dickenson reported that claimant made progress on, or met, these goals during service provision, decreasing emotional outbursts from six-times weekly to one or two-times weekly, and decreasing her avoidant behavior from one to three times daily, to three to six times, weekly.

B. Despite the progress made, and though claimant was willing to participate with services and had been "100 percent cooperative, and on time for every scheduled appointment," Ms. Dickenson concluded that on at least five occasions claimant had not allowed staff to enter her home when staff arrived at her door, and that claimant's anxiety was a barrier to overall treatment and scheduling hours, as well as social situations and being in public. These issues were prohibitive of claimant receiving the services, and Ms. Dickenson recommended claimant "not receive ABA Direct Intervention services as scheduling and interaction with people make treatment very difficult." (Ex. 6.)

SERVICE AGENCY'S REASONS FOR DENYING CLAIMANT'S REQUEST

15. Dr. Arabian testified that claimant had requested Dr. Rich-Thurm train SLS providers in DID so they could provide professional counseling services to claimant. She explained that the SLS providers were not treating professionals and could not provide such a service, and that the appropriate service was ABA so claimant could change her behaviors. Dr. Arabian acknowledged Ms. Dickenson's conclusion that ABA services were not indicated for claimant, but made the distinction that the ABA services Service Agency was offering were consulting services, whereby a BCBA would consult with the SLS providers and so would not be providing the ABA services directly. Dr. Arabian

acknowledged that whomever was so trained would ultimately provide those strategies directly to claimant, without supervision of the ABA provider. Dr. Arabian also acknowledged that were the Service Agency's recommended services to be ordered, claimant's clinical team would need to consult with Dr. Rich-Thurm regarding claimant's comorbid diagnosis of ASD and DID so that any service delivery would be adjusted for those needs.

16. Though it may have been its interpretation of claimant's and Dr. Rich-Thurm's communications, the Service Agency's evidence did not establish by a preponderance of the evidence that claimant requested the Service Agency to fund Dr. Rich-Thurm to train the SLS providers to provide professional counseling to claimant, nor that claimant requested behavioral services. Rather, the evidence established by a preponderance of the evidence that what claimant requested, and the services Dr. Rich-Thurm had already provided without compensation, were not behavioral services or training for the SLS providers to provide professional counseling to claimant.

VENDORIZATION

17. In addition to informing the Service Agency about her proposed services and why ABA services would not meet claimant's needs, in her testimony and in her May 10, 2018 letter to the Service Agency, Dr. Rich-Thurm explained her efforts towards vendorization. By April 12, 2018, she had submitted two vendor applications. The first one was denied because she had listed psychologist as her title. Dr. Heike Ballmaier, a psychologist with the Service Agency, informed Dr. Rich-Thurm that that title was for a service provider who would perform psychological testing and ABA type services. Dr. Rich-Thurm sent another application on April 12, 2018, identifying that she would be providing individual and family counseling. She received a July 2018 email from Dr. Ballmaier stating she was not so qualified. Dr. Rich-Thurm has sent subsequent

communications to the Service Agency asking for directions as to how to be approved in the vendoring process and has received no directions.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal a denial of her request to have Service Agency fund claimant’s therapist, Dr. Rich-Thurm, to provide claimant’s SLS service providers so claimant may access this service. Jurisdiction was established. (Factual Findings 1-9.)

//

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that claimant requires the requested service. (Evid. Code, § 115.)

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, quoting from § 4620 [*ARC v. DDS*].)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§§ 4501, 4512, subd. (b).) Regional centers are

responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

5. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, each regional center is to assist consumers and families with services and supports that "maximize opportunities and choices for living, working, learning, and recreating in the community."

6. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), 4791).

7. Reliance on a fixed policy "is inconsistent with the Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities.' (§ 4501.)" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer will be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at p. 388.)

//

//

8. Although regional centers are mandated to provide a wide range of services

to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

9. Section 4648, subdivision (a), provides the following:

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in *positive, meaningful ways*. (Emphasis added.) [¶]...[¶]

(3) A regional center may, *pursuant to vendorization or a contract*, purchase services or supports for a consumer from any individual or agency that the regional center and consumer ... determines will best accomplish all or any part of that consumer's program plan. (Emphasis added.)

(A) *Vendorization or contracting is the process for identification, selection, and utilization of service vendors or*

contractors, based on the qualifications and other requirements necessary in order to provide the service. (Emphasis added.)

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency *has a rate of payment for vendored or contracted services* established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures *or has entered into a contract with the regional center* and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization. (Emphasis added.)

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; and the procedure for an individual or an agency to appeal any vendorization decision made by the department or regional center. [¶]...[¶]

(6) The regional center and the consumer, ... shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

(E) The consumer's choice of providers [¶]...[¶]

10. Claimant established by a preponderance of the evidence that her request for funding for Dr. Rich-Thurm to provide training and consultation with claimant's SLS service providers so claimant may access this service is required under the mandates of the Lanterman Act cited above. Claimant established that Dr. Rich-Thurm has been and is able to deliver quality services and supports that can accomplish all or part of the consumer's IPP by providing the consultation and training to her SLS service which enables claimant to access this service. She has been a Doctor of Psychology for nine years, licensed as a clinical psychologist for six years, has experience providing services to clients with DID and ASD, and has been claimant's therapist for over two years. The cost of providing services or supports of comparable quality by different providers was not provided by the Service Agency. (Factual Findings 1-16.)

11. The Service Agency failed to establish that its proposal to offer ABA services to claimant, directly or indirectly, was a comparable service. The Service Agency did not assess claimant for ABA services, and no one on the clinical team had met with claimant or consulted with Dr. Rich-Thurm. Ms. Dickenson did perform an ABA assessment of claimant and determined that, though claimant made progress on her goals, ABA direct services were not recommended and they were terminated. The evidence established that though the Service Agency's proposed ABA service plan would consist of SLS service providers receiving training and consultation from ABA service providers, the claimant's experience and role in this consultative model would be the same as if she were receiving a direct provision of ABA services. Further, the evidence established the claimant does not have behaviors and is not in need of, nor would she benefit from, ABA services. (Factual Findings 1-16.)

VENDORIZATION

12. The Department has promulgated a set of regulations governing the vendorization process, including the application and appeals process if an application is denied. (Cal. Code Regs., tit. 17, § 54380.)

13. The vendor appeal regulations anticipate the possibility of fair hearing rulings and subsequent administrative mandate judgments that order the payment of rates above the established scale. (*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 315-316 [*Harbor*].)

14. The vendoring regional center shall approve vendorization within 45 days of receipt of all information which specifies that the applicant is in compliance with California Code of Regulations, title 17, section 54320, subdivision (a). "A vendoring regional center shall deny an application for vendorization within 45 days of receipt of a completed vendor application if the applicant fails to comply with the requirements of Section 54320(a) of these regulations, as applicable." Upon such a denial, the vendoring regional center shall notify the applicant, in writing, of the denial pursuant to subdivision (e) and the reason for such denial. The notification shall also include a "statement that the applicant may appeal the action, a statement that failure to file an appeal within 30 days shall result in denial of the appeal pursuant to Sections 54380 (b) and (d) of these regulations, and an explanation of the appropriate appeal procedures pursuant to sections 54380 through 54390 of these regulations" (Cal. Code Regs., tit. 17, § 54322, subds. (a), (e), and (f).)

15. An applicant for vendorization may appeal the denial of a vendorization application to the director of the vendoring. (Cal. Code Regs., tit. 17, § 54380, subd. (a)(1).)

CLAIMANT'S REMEDY

16. In *Harbor*, a mother had developed a service model which had been funded by the regional center to provide for the minor's rare condition that required extraordinary

care. Claimant sought a temporary rate increase for a caregiver. The regional center argued that OAH lacked jurisdiction to resolve the dispute because only the DDS has authority to set vendor pay rates, and because DDS's regulations allow only vendors to bring pay rate appeals that only the DDS director may decide. "As part of this contention, Harbor asserts that section 4706, subdivision (b), which defines a claimant's fair hearing rights, applies only to the right to receive services, not the right to set the pay scale for those who provide services." The court found the dispute in the case not to be a vendor pay rate dispute, but instead to be "a battle to maintain the services that are required by Harbor's obligation under the Act to be flexible and innovative when providing the services called for by Hannah's extreme disabilities and the unique program Sandra devised to ameliorate their effects." (*Harbor, supra*, 210 Cal.App.4th at p. 310.)

17. The ratesetting provisions of the Lanterman Act are designed to allow DDS to set rates for the general population of consumers. The court found that because the minor's needs did not "fall into that vast middle," but rather, due to her disabilities and unique program made the minor more of an outlier, and because the program allowed the minor to thrive, ordering the requested increased pay was the only way that the minor could receive the services "she needs and to which she is legally entitled, and is fully in line with the high priority the Act places on keeping disabled children at home, and its mandate to be flexible and creative and consider every possible way of doing so." (*Id.* at p. 313.)

18. "Adopting Harbor's construction of these provisions would leave claimants in unusual cases such as this, who believe a regional center is not fulfilling its duty to provide necessary services, without a remedy." The right to advocate for unique needs and service requirements "would effectively be converted to an option to be exercised by vendors ... who might have conflicting interests in mind when deciding whether to challenge a decision by their regional center benefactors." (*Id.* at p. 312.) A claimant's fair hearing rights

do not end where DDS's rate setting authority begins. (*Id.* at p. 313.)

19. A. In this case, Dr. Rich-Thurm made two applications to the Service Agency to become a vendor, and has repeatedly requested contact with the Service Agency to determine how to achieve vendorization. The evidence did not establish that the appeal process and notice regulations were provided to Dr. Rich-Thurm, or that either application was deficient. Rather, the evidence shows that the Service Agency determined the classification Dr. Rich-Thurm identified was incorrect, but that the Service Agency provided no assistance or direction with identifying the appropriate classification. (Factual Finding 17.)

B. Claimant's unique needs do not "fall into that vast middle," but rather, due to her disabilities and resulting challenges to accessing services, her service needs make her more of an outlier. Claimant established that she needs and is legally entitled to the service requested, which is in line with the Lanterman Act's mandate to be flexible and creative and consider every possible way of achieving the Lanterman Act's purpose. Claimant is not without remedy in this process, and must not wait, or be dependent upon, the proposed vendor to appeal the denial, or the Service Agency to comply with denial regulations. It is clear from section 4648, subdivision (a), that Dr. Rich-Thurm can provide the service by either being a vendor with the Service Agency or by contract. As the Service Agency will not vendor with Dr. Rich-Thurm, it must contract her. (Factual Findings 1-17.)

C. The requested services are so ordered. The service is first to be provided weekly, for a period determined by Dr. Rich-Thurm, then decreased to bi-monthly, and then monthly, as appropriate and as determined by Dr. Rich-Thurm.

ORDER

1. The appeal by claimant is granted. The Service Agency is ordered to provide funding for claimant's therapist, Dr. Trish Rich-Thurm, to provide training and

consultation with claimant's supportive living services SLS service providers so claimant may access this service.

2. The service is first to be provided weekly, for a period determined by Dr. Rich-Thurm, then decreased to bi-monthly, and then monthly, as appropriate and as determined by Dr. Rich-Thurm.

DATED:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; all parties are bound by this decision. Any party may appeal this decision to a court of competent jurisdiction within 90 days.