

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2019050419

DECISION

Kimberly J. Belvedere, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 17, 2019, in San Bernardino, California.

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

There was no appearance on behalf of claimant.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 17, 2019.

ISSUES

1. Did IRC properly deem claimant's file ineligible for failure to update claimant's Individualized Program Plan after it expired?

2. Did IRC properly deny service requests made by claimant's sister on claimant's behalf, given that she is not claimant's authorized representative for purposes of requesting services and supports?

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 15-year-old boy who qualifies for regional center services based on a diagnosis of autism.

2. On March 28, 2019, claimant's mother, claimant, and Juan Grajeda (claimant's consumer services coordinator), met to develop claimant's Individualized Program Plan (IPP). Claimant's mother speaks only Spanish. Mr. Grajeda is bilingual and served as an interpreter. In the IPP meeting, claimant's mother requested 12 hours of preferred provider respite, behavioral health treatment, and an educational advocate.

3. IRC ultimately provided the respite hours, behavioral health treatment (43 hours of direct services and eight hours per month of supervision), and funding for claimant's parents to attend an educational conference designed to assist parents in the Individualized Education Program (IEP) plan process used in schools for persons seeking special education services. The IPP was developed, agreed upon, and approved on May 28, 2019.

4. Claimant's mother also requested at the 2018 IPP meeting that claimant's 2017 and 2018 IPPs be translated into Spanish. IRC did so and sent them to claimant's mother. Claimant's mother was informed, and the IPP provides, that the next IPP date would be March 31, 2019.

5. An IPP is considered in effect and valid for one year. Prior to the expiration of the IPP, claimant's authorized representative must meet with IRC to develop a new current IPP.

6. To date, claimant's mother is the only individual authorized to speak to IRC regarding claimant's services.

7. Upon expiration of claimant's 2018 IPP, IRC contacted claimant's mother to set up a new IPP meeting. To date, claimant's mother has not made any effort to contact IRC and set up a new IPP meeting.

8. Around that same time, claimant's sister began contacting IRC to negotiate on his behalf and request services. Claimant's sister sought the following services: increased respite (amount not specified); advocacy assistance to pursue educational services; attorney services to assist claimant in pursuing special education; an interpreter for school IEP meetings; an interpreter for regional center meetings; speech pathology; applied behavioral analysis; transportation services (type not specified); and assistive technology assessment with a specific company in Santa Ana.

9. On numerous occasions between March 2019 and the hearing date, IRC contacted claimant's mother telephonically as well as via e-mail, and also contacted claimant's sister, and explained that claimant's sister – although authorized to participate and act on claimant's behalf for purposes of the administrative hearing – was not authorized to make service requests or otherwise speak with IRC on claimant's behalf without a signed authorization.

10. Due to the lack of communication from claimant's mother as well as the lack of any signed authorization permitting claimant's sister to speak on claimant's behalf, claimant's file was placed on inactive status until a new IPP could be developed.

11. On April 15, 2019, IRC sent claimant's mother a notice of proposed action, in English and Spanish, advising her of the following:

This letter is about our inability to contact you to schedule the annual Individual Program Plan (IPP). This review is necessary to keep your case active. In addition, Inland Regional Center (IRC), Consumer Services Coordinator (CSC) and IRC Program Manager have attempted to reach out to you to discuss requests made by your daughter [claimant's sister] on February 15, 2019, and March 13, 2019. Our records indicate that Consumer Services Coordinator Juan Grajeda has made the following attempts to communicate with you. A telephone call was made on February 14, 2019 . ... Carmelita Florentino Rodriguez, Program Manager made contact with you on March 11, 2019 and a phone conference was scheduled for 1:00 p.m. on Wednesday March 13, 2019. IRC received an e-mail from your daughter the morning of March 13, 2019. I called the phone number on record on four occasions the afternoon of March 13th and left voicemails, but there was no response. As of this date, IRC has not received a response from you. ...

[¶] ... [¶]

[O]ur agency is mandated to have a schedule of regular periodic reviews to ascertain that the planned services have been provided, objectives have been fulfilled, and that the

client and family are satisfied with the IPP. [Welfare and Institutions Code, section 4646.5(a)].

[¶] ... [¶]

If there is no contact, I will need to inactivate your case effective May 2, 2019. Any Inland Regional Center funded services will be suspended and/or terminated if the case is inactivated. If the case is inactivated, for any reason, you can call the Intake Coordinator for Riverside County ... and she can reactivate your case. ...

12. Claimant's mother did not contact IRC after receipt of the notice of proposed action.

13. On April 22, 2019, claimant's sister filed a fair hearing on claimant's behalf, wherein claimant's mother authorized claimant's sister to act as claimant's authorized representative for purposes of the fair hearing. The fair hearing request provided:

Inland Regional Center has not provided enough services because it will not correct the individual program plan (IPP), my mother only speaks Spanish, my brother does not speak, I only read English. I assist my mother and brother to correct errors by IRC. Case can't be inactivated it should be corrected.

We filed a complaint against Inland Regional Center. Now we believe that the notice to terminate is just another form of intimidation to harass my mother and family.

Services should not be terminated in fact services should be corrected and increased. We should meet in person at or [s/c] home within 30 days.

14. A mediation was scheduled for May 30, 2019, at 10:00 a.m., at IRC. The notice was sent by OAH, and was sent to the address of record noted on the fair hearing request. It was sent in English and Spanish. The date of the mediation, Administrative Law Judge Adam Berg and representatives for IRC appeared; but nobody appeared on claimant's behalf. ALJ Berg contacted claimant's sister, who did not answer the phone. ALJ Berg advised claimant's sister that if she wanted to request a new mediation date she needed to do so in writing by motion, and reminded her of the upcoming hearing date.

15. On June 10, 2019, IRC sent claimant's sister a letter detailing the witnesses it intended to call at hearing, and enclosed a copy of the exhibits it intended to present at hearing. The letter also included the hearing date, time, and location. The letter and enclosed documents were sent by certified mail, and signed as received by claimant's sister on June 11, 2019, at 10:24 a.m.

16. On June 17, 2019, the morning of the hearing, claimant's sister contacted OAH and advised OAH that she had an appointment and would not be attending the hearing. She further advised OAH that she did not know the hearing was on calendar; never received any notices of the hearing; and would need a continuance. OAH advised claimant's sister that the hearing would remain on calendar; that she needed to file a written request for a continuance; and that if she failed to appear at the hearing, she risked a default decision.

17. Claimant's sister did not file a written request for a continuance. IRC was advised of the oral request, and orally indicated that they would file a written opposition if a motion to continue was received.

18. At the commencement of hearing, there was no appearance on claimant's behalf. The undersigned ALJ contacted claimant's sister, and there was no answer. A voicemail was left indicating that the hearing would proceed.

19. Within minutes of leaving the message, a woman by the name of Jeanette Picasso contacted OAH and IRC indicating that she was going to be called as a witness in today's matter and could not appear, thus necessitating the request for a continuance. IRC indicated that Ms. Picasso had never been named as a witness, no documents or discovery had been provided by claimant's mother or sister regarding this matter, and Ms. Picasso had no relation to claimant. As a courtesy, Ms. Picasso was contacted from the hearing room and advised that despite her phone call, the hearing would commence.

20. Within minutes of the contact with Ms. Picasso, claimant's sister contacted IRC. Claimant's sister said she had already told IRC in the past that her mother was diagnosed with cancer and needs help handling claimant's case, and that her mother had a doctor's appointment the day of the hearing. Then she said the appointment was first made on June 14, 2019. Claimant's sister was advised the hearing would commence because good cause for a continuance had not been established.

21. A finding is made that service of the notice of hearing was proper, and claimant's sister had many other instances of notice regarding the hearing date, as detailed above. Good cause was not established to continue the hearing.

## EVIDENCE PRESENTED AT HEARING

22. Juan Grajeda is claimant's consumer services coordinator. Mr. Grajeda testified at the hearing. He has been claimant's consumer services coordinator since 2013. He confirmed that he, claimant's mother, and claimant met for claimant's 2018 IPP and that he acted as a Spanish interpreter. Claimant's mother was informed at the IPP meeting, and also in the IPP, that in order to keep claimant's case active, a new IPP meeting would be conducted the following year, in 2019. Claimant's mother signed the IPP that she understood the contents.

Around March 2019, claimant's sister began contacting IRC and requesting services, previously mentioned above. Mr. Grajeda advised claimant's sister on numerous occasions, in writing and orally, that she was not authorized to speak with IRC regarding claimant's services or make requests on his behalf, and a signed authorization from claimant's mother was needed. Nonetheless, claimant's sister continued to call IRC and make requests and claimant's mother never provided a signed authorization. Ultimately, claimant's case was inactivated due to claimant's mother not contacting IRC as she had been advised to do so, and because claimant's sister is not authorized to act on his behalf (other than for purposes of the fair hearing).

23. Carmelita Florentino-Rodriguez is the IRC Program Manager assigned to oversee claimant's case. Ms. Florentino-Rodriguez testified at the hearing and corroborated the testimony of Mr. Grajeda. Ms. Florentino-Rodriguez also pointed to several exhibits which contained e-mail and letter communications from IRC to claimant's mother and sister explaining the need for an authorization for claimant's sister to speak on his behalf, as well as the fact that claimant's file would be inactivated if claimant's mother did not set up an IPP meeting.



Due to the fact that neither of the above occurred, IRC had no choice but to send out the notice of proposed action, and inactivate claimant's file.

## LEGAL CONCLUSIONS

### BURDEN AND STANDARD 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.)

2. In a proceeding to deem a claimant's file inactive due to claimant's authorized representative's failure to meet and agree on an IPP, the burden is on IRC to prove by a preponderance of the evidence that they took all necessary steps to make contact with claimant's authorized representative prior to inactivating the file, and claimant's authorized representative did not meet with IRC. (Evid. Code, §§ 115; 500.)

### THE LANTERMAN ACT

3. 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.

4. 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.

5. 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.)

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 provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

8. 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.

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

10. 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).)

11. 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.)

## EVALUATION

12. Claimant's mother is well-aware of the need to contact IRC to set up an IPP meeting in order to keep claimant's file, and therefore his services, active. Claimant's mother was also made aware, as was claimant's sister, that claimant's sister is not authorized to act on claimant's behalf for purposes of requesting services without a signed authorization. To date, claimant's mother has not set up an IPP meeting, and similarly has not authorized claimant's sister to make service requests for claimant. Accordingly, IRC properly inactivated claimant's file and also properly denied the unauthorized service requests made by claimant's sister.

## ORDER

1. Claimant's appeal from Inland Regional Center's determination that claimant's file should be inactivated is denied.

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2. All service requests made by claimant's sister (increased respite [amount not specified]; advocacy assistance to pursue educational services; attorney services to assist claimant in pursuing special education; an interpreter for school IEP meetings; an interpreter for regional center meetings; speech pathology; applied behavioral analysis; transportation services [type not specified]; and assistive technology assessment with a specific company in Santa Ana) are denied.

DATE: June 25, 2019

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 90 days.