

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency

OAH Nos. 2019010690 and 2019050963

DECISION

Administrative Law Judge Eileen Cohn, Office of Administrative Hearings, State of California, heard this matter on May 30, 2019, in Culver City, California.

Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (WRC or Service Agency).

Claimant's mother (mother) and conservator represented claimant¹, who was not present.

The parties stipulated to the consolidation of the two matters for hearing and for decision. Oral and documentary evidence was received at the hearing. The record was left open until June 17, 2019, to allow mother an opportunity to submit invoices in support of her claim for reimbursement for facilitative communication, and for the WRC

¹ Titles are used to protect the family's privacy.

to review and file objections, if any, to the invoices. Mother timely submitted the invoices and the WRC did not lodge any objections thereto. The invoices are marked and admitted as claimant's Exhibit D. The record was closed and the matter submitted for decision on June 17, 2019.

ISSUES

1. Is claimant entitled to reimbursement for facilitative communication services?
2. Should an exception be made to the approved contracted rate for Level 7 Services so that claimant's personal assistant can be paid an hourly rate of \$30?

EVIDENCE RELIED UPON

Documents: WRC's Exhibits 1 through 12; claimant's exhibits A through D.

Testimony: Lisa Basiri, Fair Hearing Coordinator; Mother.

SUMMARY

WRC admitted that it failed to timely respond to Mother's repeated requests for payment for facilitative services and did not dispute the need for the services or the accuracy of Mother's representations of her payments. Mother provided receipts for all the payments she made for claimant's facilitative communication services through May 29, 2019. The WRC is ordered to reimburse mother and to continue to reimburse her on a monthly basis, at the current rate and duration, no more than five hours per week, until Service Agency enters into a vendor agreement for facilitative communication services which includes payment to claimant's current service provider in the amount of \$30 per hour.

The Service Agency agreed that the unique needs of the claimant supported Mother's request for payment of his personal assistant, also trained in facilitative communication, at the rate of \$30 per hour, 40 hours per week, which is an exception to the hourly rate set for Level 7 personal assistant services.

BACKGROUND

1. Claimant is a 28-year-old individual and client of the Service Agency who has been eligible for services due to his diagnosis of Autism.

2. Claimant is an only child. He lives with his mother, his sole caretaker, who has been appointed as his limited conservator. Mother is a special education teacher and speech therapist who has provided claimant with a rich learning and supportive environment, and has taken advantage of every available generic resource. Nevertheless, claimant has unique challenges due to his physical presence, behaviors and communication skills, and cannot navigate through the community without a personal assistant. Claimant is 6' 8" tall and is of large build. He has a history of demonstrating poor body boundaries, cannot gauge dangerous situations, and his physical size and behavior presents a realistic possibility that he will be harmed by either civilians or law enforcement who will not know of his disability and perceive his behavior as an imminent threat to the public. As he ages it has become increasingly difficult to take him into the community due to his size and social-emotional challenges, which include his extreme fear of animals, his escape from animals in any direction, even the street, his pushing people who find themselves in his way, his jumping and flapping of his arms, and his overall behavior which is unpredictable. In the past it was difficult to secure providers who did not fear claimant. He requires supervision at all times, in both the home and community, to protect himself and the

public. It is undisputed that claimant is developmentally disabled under the Lanterman Act.

3. Claimant has communication challenges in addition to his other challenges which require specialized interventions. His ability to engage in expressive communication is severely limited. Claimant had earlier been diagnosed as intellectually disabled, but this diagnosis is now questionable, especially after facilitative communication services were instituted and claimant was able, for the first time, to fully communicate his thoughts, emotions and viewpoint about a range of topics, which demonstrated his depth of analytical thought and emotional awareness.

4. With close supervision of a personal assistant with specialized skills and the use of facilitative communication, claimant is able to attend college, and enjoy a range of activities which have included listening to music, swimming, yoga, meditation and art classes. With the help of his personal assistant and his use of facilitative communication, he has become more engaged in daily life, is optimistic about his future and is preparing to be an advocate for the autism community.

JURISDICTIONAL MATTERS

5. On December 8, 2018, claimant filed a fair hearing request with the Service Agency for reimbursement for facilitative communication services based upon her request for authorization of those services she made more than a year before. The Service Agency had not responded to claimant's request or issued a Notice of Proposed Action (NOPA) confirming the request had been denied until November 30, 2018. During the hearing, Basiri conceded that the Service Agency, for an unknown reason, and without excuse, had not timely addressed mother's request. In its NOPA of November 30, 2018, the Service Agency denied reimbursement for facilitative communication services on the ground that it was prohibited from funding treatments

or services that have not been clinically or scientifically proven. On May 24, 2019, Service Agency filed claimant's fair hearing request with the Office of Administrative Hearings, which designated it as Case No. 2019010690. The parties executed a waiver of time on April 2, 2019, which was filed with the fair hearing request.

6. On May 16, 2018, claimant filed a fair hearing request with the Service Agency to obtain an increase to \$30 per hour for personal assistant services required to accompany claimant, at all times, during his daily program, his college classes and in the community, 40 hours per week. The case was designated as Case No. 2019050963. On May 16, 2019, Service Agency issued a NOPA refusing the increase on the ground that the proposed hourly rate exceeded the contracted rate the Department of Developmental Services approved for Level 7 services, the level of care provided to claimant.

7. On May 22, 2019, Service Agency filed a request to consolidate the two fair hearing matters, which was unopposed and granted effective May 29, 2019. Case No. 2019010690 was designated as the primary case and Case No. 2019050963 was designated as the secondary case. During the hearing, the parties stipulated to a consolidated decision.

8. All jurisdictional requirements have been satisfied for this consolidated matter to proceed to hearing.

REIMBURSEMENT AND RATES

9. By the time the parties attended the fair hearing, they no longer disputed claimant's unique circumstances and need for specialized services in the area of facilitative communication and personal assistance, or the evidentiary support for claimant's two fair hearing requests. Basiri represented the Service Agency and testified

on its behalf. Basiri had the opportunity to personally observe claimant and thoroughly review his file. Basiri has 45 years' experience with the Service Agency addressing the needs of individuals with developmental disabilities and their families. She has worked in a range of service areas including programs for the infant and child, the center-based program, working with families as a special education advocate, and has been a fair hearing specialist for 12 years where she has addressed the full range of disability-related eligibility, service and placement issues. Although not a clinician, her job has required her to observe clients or prospective clients as part of the Service Agency team and in the field where claimants attend school or participate in the community. Based upon Basiri's experience and observations of claimant, which was supported by the exhibits and consistent with mother's testimony, her testimony was given great weight.

10. Claimant learned to type and uses the typewritten word to express his thoughts, including his emotions. He has been trained to use typing for expression by applying the techniques of facilitative communication. Facilitative communication refers to "a form of alternative or augmentative communication in which people with disabilities and communicative impairments can express themselves by pointing (e.g. at pictures, letters, or objects) and, more commonly, by typing." (Ex. B, Facilitated Communication Institute publication.) "The method involves a communication partner ("facilitator") who may provide emotional encouragement, communication supports (e.g., monitoring to make sure the person looks at the keyboard and checks for typographical errors) and a variety of supports, for example to slow and stabilize the persons movement,...[¶] the facilitator should never move or lead the person (Biklen, 1993; Crossley, 1994). This method is often referred to as Facilitated Communication Training to emphasize that this is a skill that can be learned, with the goal of physically

independent typing with minimal physical support (i.e., a facilitator's hand on the shoulder) or a combination of speaking and typing." (*Ibid.*)

11. (a) Basiri expressed her deep appreciation and even amazement at the personal transformation of claimant through the use of facilitative communication. Before she observed claimant, she was skeptical because facilitative communication in her view has not always been applied effectively or in a manner where the individual's thoughts or actions could be distinguished from that of the facilitative communication specialist. With claimant, it was clear that the facilitative communication specialist was applying techniques to maintain claimant's focus, stop him from perseverating on one thought or word, and remind him to move on to completion of his writing task. Basiri found no evidence that the facilitator was substituting her thoughts for claimant's or communicating on his behalf. On the contrary, she saw the facilitator lightly apply a touch or a word only as encouragement to claimant.

(b) Research supports the application of facilitative communication, but more importantly, the effectiveness of the method is supported by clinical observations of claimant by Basiri, his mother and the facilitative communication specialists working with him.

12. Mother considered facilitative communication "life-changing" for claimant. Mother is an educator and speech therapist by training and has worked hard to expose claimant to a variety of opportunities to maximize his potential, but never in her "wildest dreams" did she think "anyone would understand him," that he would attend college or that the "fortress" that was his mind would be unlocked. (Mother's testimony.) Claimant attends Pierce College and based upon mother's observations and his communication to her through his writings, claimant works hard to prove

himself and intends to make it his life's work to be an advocate for autism, with a specific focus on educating the public to look at autism in a new way.

13. The Service Agency expressed no objection to the qualifications of the individuals providing facilitative communication training, currently Stephanie Lewis, or claimant's current personal assistant, Shay Birwadker, who received training from Lewis in facilitative communication. Basiri endorsed their qualifications based upon their resumes, experience, claimant's needs and their special rapport with claimant. During the hearing mother also elaborated on these individuals' close relationship and bond with claimant.

14. Claimant's personal transformation through the application of the facilitative communication method was supported by his writings. Claimant expressed a desire through his writings to devote himself to helping other individuals with autism by representing the public face of autism to the community in an effort to normalize autism and encourage broader acceptance of individuals in society.

15. Mother provided examples of claimant's writings which revealed his extraordinary depth of thought and expression. (Ex. C.)

(a) The following excerpt of his communication on March 15, 2019, illustrates the benefits of the facilitative communication service for claimant.

I am doing well everyone is welcome here. I know that everyone is expecting much today. I have thought about it and actually life's beginning is something in my mind often. I think that it's most amazing thing that it starts right there in a mothers belly and just that we are equipped to live and help others live. I have thought that there was nothing

before being born but really all of us have been born from mothers love. I know that all of us have love but some people go bad. I have to think really that this is the foundation of my thoughts on life. I just feel that as we look at the simple things in life that is when we learn the big things. I am good at looking at the simple things. I know that mom taught me to be kind and to let people into the life you have and those are important too....I am grateful to you always accepting me always making me feel as you would treat me no different than anyone else and for being a friend to mom. I have enjoyed this I still would rather have a television show than a book. My life is enough for a show. This was nice you can come any time.

(Ex. C.)

(b) The following excerpt is from an undated communication where claimant speaks about his interests in a music program.

My name is [claimant]. I am a young man with autism. I am still learning about myself and how to be the person I want to be. I am very excited to learn about this program as I see myself learning about some things that I am very interested in. I am very eager to learn about my interests. My passion is singing and to be specific I am a performer. I have found confidence on a stage and as a person who cannot so easily express my thoughts it is a very special thing to be able to share through music. I am a person who loves music in most

forms. I truly enjoy being in the presence of people who have interests close to my own. I am hopeful to have a friend who has some of my interests....¶ I am very dedicated to learning and I think I actually would like to tell you about typing. I am a person who types to best express myself. I am doing all that I can to be a person who uses typing in all areas of my life....

(Ex. C.)

(c) Claimant also provided abundant examples of his communication with his facilitative communication trainer (Exhibit 5) and current personal assistant (Exhibit C), where he expresses his candid view on subjects and his heartfelt appreciation for their work.

16. The Individual Program Plan (IPP) developed for claimant, as of October 2018, acknowledged the benefit of both facilitated communication training, twice weekly, and a one-on-one personal assistant, 40 hours per week. (Ex. 8.) As of the date of the hearing, in addition to one-on-one personal assistance, Service Agency provided additional services, including in-home respite and extended year services. (Ex. 7.) Although facilitated communication training was listed as a benefit, it was never delineated as a service, and mother's repeated requests for reimbursement were never included or acknowledged in the IPP.

17. Mother submitted invoices and receipts for the cost of claimant's facilitative communication training. (Exhibits A, and D.) Mother sought coverage from her health insurance carrier, but was denied. (Exhibit A.) Between September 2017 and December 2017, previous facilitative communication trainer, Lindsey Goodrich provided 14 sessions at a rate of \$120 per hour, for total amount of \$1,680. Mother

paid the invoices. (Ex. A.) In 2018, up to and including June 2018, claimant received 29 hours of services from Goodrich at a rate of \$75 per hour, and one session at a rate of \$115, for a total payment of \$2,290. Mother paid the invoices. (Ex. D.) Thereafter, until the present, claimant received facilitative communication training services from Stephanie Lewis at a rate of \$50 per hour, for a total payment of \$550. Mother paid the invoices. (Ex. D.) Beginning in January 2019 through May 29, 2019, claimant received a total of 20, one-and-a-half hour sessions of facilitative communication services from Lewis at a rate of \$50 per hour, or \$75 a session; for a total payment of \$1,500. Mother paid the invoices. (Ex. D.) The total amount of reimbursement claims between 2017 and May 29, 2019 is \$6,020. There is an additional unknown amount mother may be advancing for payment to Lewis pending the decision and the implementation of the new rate structure described below.

18. In addition to her direct services, Lewis has been providing training and guidance to claimant's personal assistant, Birwadker. After a review of Lewis's background and experience, on April 2, 2019, Basiri inquired whether Lewis would work for the proposed personal assistant hourly rate of \$30 instead of her current \$50 dollar an hour rate. (Ex. 4.) The Service Agency agreed to authorize Lewis to work at the hourly rate of \$30, and stated a preference for her to work through an Agency or an individual to provide oversight. (*Ibid.*) Mother represented that Lewis is prepared to work at the personal assistant rate of \$30 an hour.

19. Lewis provided a status report of claimant's progress and offered recommendations for continued facilitative communication services as of February 2019. She reported claimant's "considerable" progress and confirmed his service of 1.5 hours per week of typing. She reported claimant's typing style. She reported the dominant support from the application of facilitative communication is support at the

back of the elbow and some “applied resistance” (pulling *away* from the tablet).” She recommended claimant receive three hours per week of typing, plus additional time to train additional communication partners. (Ex. 4.) She reported as future goals, fading support to just the back of the elbow, and continuing to fade support by moving from the elbow to the shoulder and then back until eliminating support entirely. (*Ibid.*)

20. It is not clear from the evidence whether the parties’ agreed to the number of one-on-one hours of facilitative communication training required going forward, and any additional hours required to advise and train claimant’s personal assistant. Based on Lewis’s status report of February 2019, no more than five hours per week is appropriate initially with a reduction in hours as the goal of fading is achieved, and claimant’s personal assistant increases his proficiency in the method. The latest IPP does not include a specific plan for both one-on-one facilitative communication training with claimant and training for the personal assistant.

21. On May 7, 2019, the Service Agency confirmed in writing its approval of the rate increase for Birwadker. “Please know that while we support your request, we cannot move forward without DDS approval. There is no reason for [claimant] not to start the Jazz Hands program unless his participation is contingent on Shay making \$30 an hour. In that case, you may need to consider paying the difference until this can be resolved. As you may know, the rates are set by DDS and it does require approval from them which is far above what WRC can do at this level.” (Ex. 3, e-mail from service coordinator Marissa Barredo to mother.)

22. On May 22, 2019, the Service Agency approved a change of vendor beginning on June 1, 2019 to Premier Healthcare Services through which personal assistants, including Birwadker, are retained and paid. (Ex. 6.) The Service Agency agreed with mother that 40 hours per week of personal assistant services were

required after consideration of mother's representation of the allocation of the personal assistance hours between his day program, Jazz Hands, claimant's college classes, and computer-related training. (Ex. 6.) These hours did not include facilitative communication services provided by Lewis.

23. Birwadker will not continue employment as a one-on-one personal assistant unless his wage rate is raised to \$30, the rate more in line with one-on-one behavior aides. Mother has had difficulty over the years finding vendors with staff to handle claimant's dangerous behaviors, especially due to his size, sensory, developmental, communication and social-emotional challenges. Birwadker expertly addresses the broad range of claimant's challenges. Currently, the Service Agency pays vendors a set amount per hour for personal assistant services from which the vendors pay the personal assistants. At one vendor Birwadker was paid about \$17.14 an hour, and at the time of the hearing, it was anticipated, based upon Service Agency's confirmation with the new vendor, Premier Healthcare Services, that Birwadker would pay him the Level 7 rate of \$18.42 per hour as of his start date of June 3, 2019, pending the proposed raise to \$30. The hourly rate paid to each vendor is much higher than the individual rate paid to the individual service provider, including Birwadker. (Ex. 6.) The current hourly rate of payment for services to be provided to claimant at a Level 7 (Sv 062, Sub-code V69R, Exhibit 11) by vendor Premier Healthcare Services is \$28.18. The Service Agency pays the higher hourly rate to offset the vendor's overhead expenses, as well as any costs of supervision. The hourly rate for the individual service provider of \$18.42 is the maximum hourly rate the Service Agency is authorized to approve unless an exemption is obtained. If an exemption is ordered, the vendor shall receive an hourly rate higher than \$28.12 which includes the \$30 hourly rate for the individual service provider and the same overhead for the vendor.

(Ex. 11, January 6, 2017 memo to regional centers from the Department of Developmental Services.)

24. Substantial documentary and testimonial evidence supports the grant of an exception to the maximum hourly rate for personal assistant services for claimant. In a memo to Regional Center Executive Directors dated January 6, 2017, the Department of Developmental Services provided guidelines for requesting health and waiver exemptions. When preparing an exemption for an enhanced rate for one-on-one services, the Department of Developmental Services provides that the higher rate may be justified where the current rate is "insufficient to ensure the health and safety of the consumer(s)." (Ex. 11.)

25. Basiri prepared a comprehensive draft response to the Department of Developmental Services. (Ex. 11.) Her response addressed the criteria for an exemption to the cost limitations. She set forth the unique needs of claimant and the exceptional qualifications of Birwadker, particularly his combination of skills in facilitative communication training, behavior, and his special rapport with claimant, which she maintains will ultimately reduce the number of providers and services required, more fully integrate claimant into the community and result in a cost savings. There are no time limitations imposed on the Department of Development Services to consider the Service Agency's request. The circumstances of claimant's case require immediate action to retain his one-on-one personal assistant.

26. Claimant is fortunate to have found a uniquely qualified one-on-one personal assistant, Birwadker, without whom he would not have progressed, and with whom he can navigate the community without risking his or the public's safety. Birwadker's exceptional rapport with claimant, his use of facilitative communication and his overall ability, has succeeded in mitigating claimant's challenges so that

claimant can navigate successfully throughout the day, attend college and access the community. Birwadker has also broadened claimant's exposure to physical fitness. Claimant has also been challenged by his large size. With Birwadker's guidance and encouragement, claimant is losing weight and exercising daily at a gym; he also does meditation, yoga and Tai-Chi. Claimant has wholeheartedly accepted Birwadker's assistance.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's proposed denial of reimbursement for facilitative communication services and a funding exception for claimant's personal assistant so that he can receive \$30.00 per hour for their services. Jurisdiction in this case was thus established. (Factual Findings 5 through 8.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes 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 proof regarding his request for reimbursement for facilitative communication services and for payment of the hourly rate in the amount of \$30.00 to his personal assistants, as an exception to the rate limitation imposed by the Department of Developmental Services. Claimant has met his burden of proof. (Factual Findings 1 through 26.)

3. A developmental disability is a disability that originates before an individual turns 18 years old. This disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, autism, an intellectual disability, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with an intellectual disability. Developmental disabilities do not include other handicapping conditions that are solely physical in nature. (§ 4512, subd. (a), Cal. Code Regs., tit. 17, § 54000.) There is no dispute that claimant is an individual with a diagnosis of autism.

4. A substantial disability is the existence of significant functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency. (§ 4512, subd. (f); Cal. Code Regs., tit. 17, § 54001, subd. (a).) There is no dispute that claimant's autism has resulted in significant functional limitations in three or more areas, and is a substantial disability.

5. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

6. Code section 4646, subdivision (a), states:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the

regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Code section 4512, subdivision (b), states in part:

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.

8. Regional Centers are prohibited from funding experimental treatments, services and/or devices that have not been clinically or scientifically proven. (§ 4648, subd. (a)(16).)

9. Claimant met his burden of proof that facilitative communication as a service, given his unique circumstances, is a clinically proven method of intervention and a necessary and effective service. (Legal Conclusions 6 through 8; Factual Findings 1 through 4, 9-26.)

10. Claimant met his burden of proof that he is entitled to reimbursement for his facilitative communication services. The Lanterman Act does not specifically authorize retroactive reimbursement of costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Service Agency admitted that it failed to address the services that were requested until late 2018, and offered no excuse for the delay, agreed that the service not only addressed claimant's developmental disability, but was transformative by affording him the opportunity to attend college and prepare for a future, not possible before the service. Claimant's mother moved forward with facilitative communication despite the Service Agency's delay, and kept careful records. Claimant's mother is entitled to reimbursement based upon her records, made

part of Exhibit D in the amount of \$6,020. (Factual Finding 17.) In addition, Service Agency shall be responsible for continued payment of facilitative communication services that are separate and apart from the personal assistant services in an amount no greater than \$50 per session for no more than five hours per week, until a vendor contract is secured which pays Lewis or another agreed-upon qualified facilitative communication trainer \$30 per hour.

11. Claimant met his burden of proof that an exception to the hourly rate for his personal assistant is required based upon claimant's unique needs and circumstances in order to protect his health and safety, which requires specialized training to implement facilitative communication, and manage claimant's behaviors. The Legislature and the Department of Developmental Services imposed contract and rate limitations on regional centers as a cost-saving method beginning in or around 2008, but also acknowledged that exemptions may be required under certain circumstances. (See e.g., § 4691., subd (a)(1); 17 Cal. Code Regs, tit 17, § 50609.) The Department of Developmental Services provided instructions and guidelines to the regional centers to review and approve exemptions. (Ex. 11.) By reason of the Legal Conclusions and Factual Findings, the Service Agency has satisfied the criteria for securing an exemption and an exemption is warranted for the one-on-one personal assistant services of Birwadker.

ORDER

1. Claimant's appeals are granted.
2. The Service Agency shall reimburse mother, within 30 days of this decision, for the cost of facilitative communication services in an amount of \$6,020, or in an amount supported by the packet of invoices made part of the record as Exhibit D and further referenced in Factual Finding 17.

3. The Service Agency shall reimburse mother for additional facilitative communication services for claimant with Stephanie Lewis after May 29, 2019 at a rate of no more than \$50 per hour for no more than five hours per week, until a vendor is secured who will be responsible for providing payment for her services at a rate of \$30 per hour.

4. The Service Agency shall convene an IPP within 30 days of this decision to establish with mother the total number of facilitative communication service hours to be provided to claimant, which shall include the number of direct one-on-one hours with claimant, hours used to train or advise claimant's personal assistant, claimant's goals and status, and a fading plan. Mother shall request a progress report and plan from Lewis.

5. The personal assistant services provided by Shay Birwadker are exempted from the hourly rate limitations for Service Agency vendors providing Level 7 personal assistant services. Beginning June 1, 2019, the Service Agency shall pay \$30 dollars per hour for 40 hours per week, for the personal assistant services of Shay Birwadker.

DATE:

EILEEN COHN

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.