

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2019051299

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 28, 2019, in San Bernardino, California.

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

Claimant appeared on his own behalf.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on October 28, 2019.

ISSUE

Is IRC required to continue funding claimant's participation in the Teaching Individuals Meaningful Employment Community Integration Program (TIME)?

FACTUAL FINDINGS

Background¹

1. Claimant is a 36-year-old man who qualifies for regional center services based on cerebral palsy and unspecified intellectual delay.

2. Claimant has been employed at Vons for 11 years. He receives job coaching up to 21 hours per month from Vocational Improvement Program (VIP) and 25 hours per month of supportive living services (SLS) through Doorways, both funded by IRC.

3. According to an October 1, 2018, Individual Program Plan (IPP) addendum, claimant expressed his desire to have IRC fund his attendance at TIME. Unbeknownst to IRC, claimant had already been attending the program since August 2018, without obtaining prior approval from IRC. TIME also did not request prior approval from IRC to fund claimant's attendance. IRC agreed to fund TIME retroactively from August 2, 2018, through November 30, 2018. Claimant was provided

¹ The background information pertaining to claimant's services and the procedural history were obtained from the testimony of claimant's consumer services coordinator, Beth Scott, and documentary evidence supporting her testimony.

with a Notice of Proposed Action and his appeal rights in the event he wished to continue funding past November 30, 2018.

4. TIME is an IRC-vendored as an employment agency. Because claimant was already receiving work-related services from VIP, IRC requested information from TIME regarding the program and its policies to see how it differed from VIP. TIME sent IRC various documents, including a program design and consumer intake policy. According to TIME's consumer intake policy, TIME is supposed to develop an individual service plan (ISP) and submit it to IRC prior to an individual enrolling in TIME.

5. On September 5, 2018, IRC received a document from TIME purporting to be claimant's ISP. The document was very generic and used the word "consumer" rather than claimant's name. It was not signed. It did not discuss goals for claimant or any other information relevant for IRC to determine suitability of TIME for claimant. IRC expressed its concern; TIME sent another ISP dated October 1, 2018. The second ISP was similarly defective. Although it contained claimant's name, it was only one-page long. It listed things claimant might be able to explore, but was not specific and was very broad. It did not list goals. It did not list barriers to goals. It did not list any kind of plan to achieve goals. IRC again expressed its concern to TIME.

6. On November 5, 2018, the director of TIME, Joe Prior, faxed a document to IRC giving 30-days' notice for claimant to discontinue services with VIP. The document was signed by claimant. Prior to that date, claimant had never before indicated that he was unhappy with VIP or otherwise wished to terminate VIP services. A meeting was scheduled between VIP, claimant's consumer services coordinator, claimant, and a program evaluator from IRC's quality assurance unit to discuss any concerns claimant might have and how to meet claimant's needs. At the meeting,

claimant represented that he thought TIME could provide job coaching. It was agreed that at that time, services with TIME, VIP, and SLS would continue, but more information was needed from TIME.

7. On December 10, 2018, a mediation was held concerning claimant's continued funding for TIME. An interim mediation agreement was reached, which required Mr. Prior to work with Andrew Burdick, an IRC employment specialist, and develop a proper ISP for claimant reflective of claimant's goals that would not overlap with services provided by VIP or SLS.

8. A December 31, 2018, e-mail and consumer ID notes between December 2018 and March 2019 show attempts by IRC to obtain a proper ISP.

9. IRC identified another concern regarding the semi-annual report TIME submitted for claimant. Minerva De La Rosa, a program evaluator in the quality assurance unit at IRC, sent Mr. Prior a lengthy e-mail on January 2, 2019, regarding what should be included. She wrote:

Please be reminded that your program is an 055, a community integration training program. Training should be happening in the community in an integrated setting. In the ISP most of the training is happening at TIME, TIME is not a center-based program therefore your programming should not be done at the site. Please refer to your program design, pages 37 to 39, sample schedules. Please ensure that the training is occurring in the community in an integrated setting.

Please also note that a semi-annual report should include the evaluation of consumer's performance, from the last six months. In this area it is important to report consumer's progress and the data that has been collected in the previous six months. In this case, what has claimant worked on since August [2018], if he has made progress and the data used to collect this information. Please keep in mind that program goals should be in measurable terms.

Lastly, in reviewing program goal four, you mention his placement at Vons. You are overlapping services as VIP provides job coaching already and has done so for the last ten years. His placement at Vons, should not interfere with your program. Any concerns in relation to Vons should be addressed with VIP. Please remove/update goal, so that there is no overlapping of services.

10. On January 7, 2019, in a final mediation agreement, IRC agreed to fund TIME for three days per week until March 31, 2019. The final mediation agreement also specifically stated that Mr. Prior was to submit an updated ISP that would include progress claimant had made, any barriers to claimant's progress, specific goals to be met, why goals were chosen, and what claimant had learned in TIME. It also specified that all services were to be provided in the community with proper supervision. If TIME did not comply with the final mediation agreement, IRC would serve claimant with a new Notice of Proposed Action.

11. On January 18, 2019, TIME provided claimant's semi-annual ISP. It was only three pages. It listed the "summary of plan" as claimant expressing an interest in

attending TIME to learn to work in an office by using office machines. Goal Number One was listed as expressing a desire to learn computer skills. Goal Number Two was listed as "enhancing social skills in the workplace." Goal Number Three was listed as "claimant expresses the desire to learn how to work office phones, fax, and copy machines." There was no measurable data or information regarding how those goals would be achieved in the community, as opposed to the TIME office, and no information concerning claimant's progress over the past six months. In other words, it did not comply with what Ms. De La Rosa told TIME it needed to do, nor with the interim or final mediation agreement.

12. Over the ensuing months, IRC continued to work with Mr. Prior and TIME to ensure compliance with its program design and that the ISP and semi-annual reports would contain the necessary information.

13. On April 11, 2019, IRC Program Manager Alexander Rubio sent claimant a Notice of Proposed Action informing claimant that it would no longer fund TIME services. The letter stated:

[Y]our community Integration Program through TIME will be terminated April 30, 2019, because you receive employment services through [VIP] and you also receive [SLS], which are both able to meet your needs and goals outlined in your TIME ISP. TIME has not demonstrated the ability to provide you with supports and services that are different from what you are already receiving. The service TIME is providing is duplicative in nature and therefore not cost-effective or a good use of public funds. . . .

14. According to consumer ID notes in claimant's IRC file, claimant has not attended TIME since June 2019.

TIME's Program Design

15. TIME's Program Design was approved by IRC on March 21, 2018. Services to be provided are described as a "community based adult day program without walls." Consumers will access the community to obtain vocational training, work, life skills, and social development. Community partners are listed as the Special Olympics, the local parks and recreation department, and community businesses. The TIME statement of purpose and services indicates that the community based program is intended to help consumers engage in paid work, community social development, and friendship-building activities.

Evidence Presented by IRC

16. In addition to the above background, which was obtained through documentary evidence and testimony, several other witnesses for IRC testified. Their testimony, and documents they referred to in their testimony, are summarized below.

17. Jennifer Barclay is a case manager at VIP. VIP is a work services program that provides work support services for consumers. Claimant receives 21 hours per month from VIP. He has a job coach through VIP. VIP was the agency that obtained his job at Vons. Claimant's VIP services plan is very extensive and covers claimant's strengths, abilities, progress, and rehabilitation needs. It contains measurement standards and services to be provided to meet claimant's employment goals. It provides claimant's current level of functioning in certain tasks. The services plan also provides claimant with his rights and documents his career planning and advancement

desires. It is very extensive and appears to meet any and all employment goals claimant may have.

When Ms. Barclay received notification from IRC regarding the November 5, 2018, fax that Mr. Prior sent to IRC seeking to terminate claimant's VIP services, she was very surprised because claimant had been doing well with their services for years. Ms. Barclay attended the subsequent meeting on November 13, 2018, between herself, claimant, claimant's consumer services coordinator, and Ms. De La Rosa. Ms. Barclay said it did not appear claimant was clear regarding the fax and that he did not really understand what it meant to cancel VIP's services. Claimant expressed he was happy with VIP and the job coach provided by VIP. At the end of the meeting, claimant expressed his desire to stay with VIP.

18. Minerva De La Rosa is a program evaluator in IRC's quality assurance unit. She explained that IRC audits consumer and vendor files on a regular basis to make sure they are in compliance with law, policy, and contract. A program design is required by all programs in order to become an IRC vendor. Vendors must also maintain consumer files which have to contain .the consumer's IPP, CDER, medical information, and a new ISP every six months.

On May 20, 2019, Ms. De La Rosa conducted an unannounced visit to TIME. The reason she did so was because it had been reported that two consumers were left at the local park during service hours. It was determined that they were, in fact, left alone because police had been called and found them alone. When Ms. De La Rosa reviewed consumer files, there were no consumer notes or consumer activities located in various consumer files. Following the incident, Ms. De La Rosa sent TIME a letter regarding the incident. She reminded TIME that under the law, they are required to have a 1:3 staff to consumer ratio, and they are to maintain supervision at all times during service

hours. Ms. De La Rosa listed five additional items in a plan of correction that TIME needed to complete. Those items were:

1) training for all direct support staff on consumer supervision as per your program design and regulations; 2) please review program design to ensure that all areas of the design are being implemented by management and staff; 3) TIME staff to receive SIR training by IRC; 4) training for all TIME direct support staff on proper record keeping, including consumer notes and schedules; and 5) please ensure that you have a policy and procedure in place to [ensure] consumer documentation is available for review as per your program design and regulations.

On August 8, 2019, Ms. De La Rosa made a second visit to TIME and reviewed three consumer files, one of which was claimant's file. She brought with her a consumer record checklist that was developed from Title 17 regulations regarding what must be kept in consumer files. In claimant's file, there was no admission agreement; no face sheet containing emergency and personal information; no current medical examination; no authorization for medical treatment; no current copy of claimant's CDER; no current copy of claimant's IPP; no copy of claimant's psychological evaluation from IRC; no personal rights confirmation; no internal grievance procedure notification; no current semi-annual ISP; and no case notes showing claimant's activities or progress at TIME, all of which are required documents. The other files Ms. De La Rosa reviewed were also lacking in required documentation.

When Ms. De La Rosa conducts an audit, she also requests consumer schedules so she can ascertain if the consumers are where they are supposed to be. A program

design is a sample that shows how the program will run. TIME submitted a program design that indicated it was a community based program to help with employment and socialization. It is not a recreational vendor. The schedule TIME provided for various consumers, however, did not show they were in the community obtaining employment related skills. Instead, they were engaging in recreational activities like going to the park or mall, which was not specified in the program design.

Based on her audit, TIME has been placed on a six-month review, as it is still not in compliance with the plan of correction.

Ms. De La Rosa does not believe TIME is appropriate for claimant to meet his employment goals because the services he seeks from TIME are provided by VIP and SLS.

19. Andrew Burdick is an employment specialist at IRC. He explained that TIME is a service that is provided by IRC under a "generic services" code. It is a day program that is community-based in order to help consumers obtain employment and skills. TIME, however, did not document in claimant's ISP how it is providing anything helpful to claimant. TIME has not documented anything in claimant's file to show he is gaining anything from the program. IRC has meet with Mr. Prior many times since December 2018 using TIME's own program design to show how things need to be documented and what kind of things should be done in order to meet a consumer's goals. To date, Mr. Prior has not implemented the recommendations at TIME because claimant's ISP does not list goals; does not explain goals will be met; does not provide progress claimant has made in the program; does not indicate any barriers to goals; and does not provide a path for success. Consequently, IRC is unable to evaluate the program effectiveness as it relates to claimant's needs.

20. Alexander Rubio is a program manager at IRC, and wrote the Notice of Proposed Action in this matter. Mr. Rubio explained that IRC initially decided to fund TIME because claimant expressed an interest in attending the program. IRC wanted to give TIME an opportunity to show IRC something different than what VIP and SLS were doing for claimant. Mr. Rubio testified consistent with the other witnesses regarding the defects in claimant's ISP and the fact that consumers must receive their services in the community, and not in TIME's office. Mr. Rubio noted that when TIME submitted claimant's most recent ISP in April 2019, it contained even less information than the January 2019 ISP.

Mr. Rubio stated that the SLS claimant receives can help him with just about anything: going out into the community, scheduling, helping him look for jobs, computer skills, self-care, paying bills, etc. VIP provides a job coach and other employment services. To date, TIME has not indicated any service being provided that does not duplicate what is already being provided to claimant by SLS and VIP.

Evidence Presented by Claimant

21. Claimant testified that he enjoys TIME. The program helps him with his work schedule. They go out into the community, specifically, the park and the mall. Sometimes they play football. They do not stay at the TIME office because the director told them that IRC does not want them to stay at the job site all day. TIME has helped him set up his schedule for work and look for additional jobs at the mall. TIME has showed him how to make copies of things, check his e-mail, and answer phones. Claimant would like to stay in TIME.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether IRC may discontinue funding for an existing service, the burden of proof is on IRC to show by a preponderance of the evidence that the service should be discontinued. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

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. That section states:

[T]he Legislature finds that the mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness. It is the intent of the

Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served. It is further the intent of the Legislature that the Department of Developmental Services, through appropriate and regular monitoring activities, ensure that regional centers meet their statutory, regulatory, and contractual obligations in providing services to persons with developmental disabilities.

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. A preponderance of the evidence established that IRC should not continue funding claimant's participation in TIME.

First, after audits and communication with the director of TIME, TIME has failed to rectify the problems it has in the development of consumer ISPs. The mere existence or delivery of services is, in itself, insufficient evidence of program effectiveness. IRC has an obligation to continuously monitor its vendors to ensure statutory, regulatory, and contractual compliance, and also that the service is effective for a particular consumer. The ISPs developed by TIME, specifically pertaining to claimant, fail to show claimant's goals; barriers to achieving his goals; and how TIME is meeting those goals, among other things. Multiple personnel from IRC have worked diligently with TIME to rectify the defective ISPs, yet the problem still has not been rectified. As a result, IRC cannot evaluate program effectiveness as it pertains to claimant.

Second, it does not appear that TIME is adhering to the requirements of its program design, which requires it to be a community based program and not an office based program. Claimant's participation in TIME was predicated on the description provided in the program design.

Third, the services being provided to claimant are duplicative of the services being provided by VIP and SLS. VIP provides a job coach and employment related services. SLS provides a broad array of services, both in the home and the community. Funding duplicative services is neither a cost-effective use of public resources nor a fiscally responsible act.

Accordingly, IRC is not required to not continue funding claimant's participation in the TIME program at this time.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will no longer fund his participation in TIME is denied.

DATE: November 1, 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.