

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

In the Matter of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency.

OAH No. 2019070902

DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, conducted a telephonic fair hearing on June 22, 2020, in Sacramento, California.

Matthew Bahr, Attorney at Law, represented Valley Mountain Regional Center (VMRC or Regional Center).

Cathy Stone-Carlson, Family Advocate, represented claimant's parents, who were also present.

Evidence was received on June 22, 2020. The record was held open to allow the parties to file closing briefs. Claimant's closing and reply briefs were labeled as Exhibits 20 and 21. VMRC's closing and reply briefs were labeled as Exhibits R and S. The briefs

were admitted, the record was closed, and the matter submitted for decision on July 15, 2020.

ISSUES

Is VMRC required to fund compensatory services for claimant's deficit hours of Applied Behavior Analysis (ABA), services¹ under the Early Start program?²

Is VMRC required to reimburse claimant for advocacy fees?

FACTUAL FINDINGS

1. Claimant is a four-year-old boy, born May 13, 2016. He lives at home with his mother, father, and brother in Pine Grove, California, about an hour's drive from Stockton. He qualified for services under the Early Start program following a November 2016 referral to VMRC because his parents suspected developmental

¹ Claimant requested "to be awarded a compensatory education fund for the 100 missed hours (ABA hours) in the amount of \$7,500." Claimant did not set forth any legal basis for establishing a trust account for claimant to purchase services. The appeal is read to request 100 compensatory hours, rather than a compensatory fund.

² "Early Start" is another name for the California Early Intervention Services Act (Gov. Code, § 95000 et seq.), described more specifically in the Principles of Law section below.

delays. His eligibility was based on: "medical diagnosis that is likely to lead to developmental delay: Diagnosis of [Autism Spectrum Disorder] (ASD)."

2. In February 2018, claimant began attending Little Oaks preschool in Stockton, California. He attended two days per week for four hours, and one day per week for two hours. He was accompanied by a Behavioral Therapist from the Central Valley Autism Project's (CVAP) Early Start Autism Intervention Program (ESAIP). A Behavioral Therapist also provided in-home sessions, for a total of 15 hours per week (10 hours in preschool and five hours at home).

November 2018/January 2019 IFSP

3. The Early Start program provides early intervention to infants and toddlers from birth to 36 months. Prior to claimant "aging out" of the program, VMRC conducted an Individual Family Service Plan (IFSP) meeting on November 16, 2018, and January 30, 2019.³ The report claimant's service coordinator from VMRC prepared contained behavioral observations from the meeting, his parents' ongoing concerns and struggles, his progress in the behaviors and tasks addressed in his prior IFSP, and a plan to transition out of the Early Start program. Claimant had been diagnosed with ASD, but no eligibility determination had been made under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code § 4400 et seq.) for on-going services.

4. Claimant had nearly five months remaining in the Early Start program at the time of the January 2019 IFSP. The report listed several goals claimant was still

³ Generally, an IFSP meeting is conducted in one day. This meeting was continued to an available date, and spread over two days.

working toward and a plan to achieve them. Regarding transitioning out of the program, the report provided: "Services and/or activities to help child and family achieve transition steps: . . . Continue ESAIP 15 hours per week, make up hours as available, weekly [occupational therapy], weekly feeding, weekly speech."

5. The report did not state how many hours had been missed or were to be made up. But it provided for ESAIP hours "not to exceed" 15 per week. The location for these hours were "home." There was no designation for hours at Live Oak preschool.

ESAIP Exit Report

6. On April 26, 2019, CVAP prepared an "ESAIP Exit Report," which CVAP's Clinical Director and Clinical Assistant signed on May 6, 2019, one week prior to claimant's third birthday. The report offered an overview of claimant's success in meeting the objectives set for him in January 2018. It also suggested next steps for claimant as he transitions out of the Early Start program.

7. Initially, the ESAIP Exit Report summarized claimant's time with CVAP. Claimant began working with CVAP in March 2017. In December 2017, he was referred to the ESAIP. In February 2018, he began attending Little Oaks Preschool. Between November 2018 and March 2019, claimant participated in an average of seven hours per week of intervention with a behavioral technician, which was below the recommended hours. The explanation for the deficit was:

Deficit hours are due to client decline and limited staff availability within the service area (136.75) and client cancelation (13). From November 2018-January 25th [2019], [claimant] had limited availability (Wednesday-Thursday 2:45-5, Friday 8:15-12) that accounted for the low average

of hours received. On January 29th, staff began attending daycare with [claimant] Tuesday-Friday 8:15-12 and make-up sessions were scheduled on March 28th, 2018⁴ (Mondays 4:30-6, Tuesdays 2-6, Thursdays 2:45-6, Fridays 4:30-6) to help with the deficit hours that were missed.

8. Claimant was assessed in October 2017, January, May, and October 2018, and April 2019, using the Hawaii Early Learning Profile (HELP), which is a “family-centered, curriculum based assessment process that links assessment with intervention to identify a child’s current Developmental Age Level (DAL) and areas of need.” The results of the assessment directed his behavioral therapy plan.

9. Claimant was assessed in the following areas: Cognitive, Language, Gross Motor, Fine Motor, Social-Emotional, Self-Help, and Behavior. For all categories other than Behavior, claimant was assigned a DAL each time he was assessed in subtests within each category, and for the overall DAL-range of months. His overall DALs as of the date of his final assessment, when he was 35 months old, were:

Cognitive: 27 to 33 months;

Language: 24.4 to 31.4 months;

Gross Motor: 24 to 30 months;

Fine Motor: 23.5 to 30.5 months;

Social-Emotional: 24 to 33 months; and

⁴ Context suggests this should have read “2019.”

Self-help: 25 to 30.3 months.

10. Claimant was then scored for his behaviors, which were largely observed at preschool. Information regarding method, reasoning, and scoring was not provided. The report then detailed claimant's goals and objectives that were set out in his January 2018 IFSP, and whether he had met them at the time of his final assessment. Forty-one objectives were listed, including verbal and nonverbal interactions with peers, fine motor skills, following instructions, processing information, and many others. Of the 41 objectives, claimant "met" 37 of them. At the time of the assessment, he was working on and close to achieving, but had not yet met these goals: playing with his parents in a structured activity for up to three minutes, receptively identifying three pronouns (he had two), following a two-part command, and imitating 10 two-word phrases (he had nine).

11. There was no meeting held with the parents to discuss the Exit Report because this was the final assessment that was to be provided to claimant's school district for his transition.

12. By the time claimant turned three and aged out of the Early Start program, he had not made up the hours referred to in the November 2018/January 2019 IFSP. As the ESAIP Exit Report explained, the reasons for the deficit hours were multiple, and fault lay with both CVAP and claimant's family.

Claimant's Request for Hours

13. On May 1, 2019, VMRC sent claimant's parents a Notice of Action stating that following an assessment, claimant was found ineligible for on-going services from the Regional Center. On May 7, 2019, claimant's mother received an email from CVAP stating claimant's sessions would end on the Friday prior to his third birthday. She

called VMRC to ask why the sessions were not being made up over the summer as had been suggested at the IFSP meeting. Emily Orth, Senior Service Coordinator, replied by email on May 8, 2019, stating that because claimant was not eligible for on-going services, Early Start services end at his third birthday, and could not be made up over the summer. The suggestion that hours would be made up following claimant's third birthday, was "contingent on [claimant's] eligibility for VMRC services over the age of three."

14. Claimant's representative responded to Ms. Orth by email later on May 8, 2019. She wrote that claimant was owed make-up hours, and VMRC had been aware of the deficit hours for several months. Rather than filing a complaint against VMRC, claimant's parents relied on VMRC's statements that the hours would be made up. Claimant's representative formally requested the deficit hours be made up, and asked Ms. Orth to respond by May 15, 2019.

15. On May 9, 2019, Tricia Simmons, VMRC Program Manager, replied by email, reiterating Ms. Orth's conclusion. Ms. Simmons wrote: "Understandably, I cannot agree with your service request."

16. The only Notice of Proposed Action (NOPA) submitted at fair hearing was VMRC's denial of eligibility for services under the Lanterman Act. That denial is not at issue here. On July 18, 2019, claimant's father signed and thereafter filed with OAH a Request for Fair Hearing. OAH received the request on July 22, 2019. On July 25, 2019, VMRC filed a Request to Set a fair hearing with OAH, and attached claimant's Request for a Fair Hearing and VMRC's NOPA regarding eligibility. This hearing followed.

Claimant's Evidence

17. Claimant's mother testified at hearing. She began working with the VMRC service coordinator when claimant was deemed eligible for Early Start. She requested an autism screening at that time, but was denied because claimant was too young.

18. Claimant was approved to receive 15 hours per week of ESAIP services. Even at the beginning, however, he did not always receive the full 15 hours. She believes CVAP had difficulty finding qualified, available staff who were willing to travel to the rural area where claimant lives. While she admitted there were times she may have cancelled appointments, she provided many text messages from CVAP scheduling on days they were unable to provide a behavioral therapist, the therapist cancelled, or a same-day appointment was offered when claimant's mother had other engagements.

19. Prior to claimant's third birthday, his mother was concerned CVAP would not make up the hours. She had difficulty with CVAP because for many months there was no supervisor assigned to claimant's case, and the only access she had was through the schedulers or the therapists. At the November 2018/January 2019 IFSP meeting, claimant's mother discussed the issue of missed behavioral therapy hours and shared her tally of 168 missed hours with CVAP and VMRC. No one at the IFSP meeting objected to the number of hours, and the report specifically stated: "Additional hours with CVAP will be authorized to make up hours of intensive program that were missed over the past six months." The report did not state how many hours would be made up.

20. Claimant's mother also recalled that at the IFSP meeting, VMRC stated the hours could be made up during the summer following claimant's third birthday. She also believed another Purchase of Services (POS) was issued to purchase additional ESAIP hours from CVAP. That POS was not produced at hearing. CVAP began scheduling make-up hours about two months after the IFSP meeting, at the end of March or beginning of April 2019.

21. When claimant was receiving ESAIP services, a behavioral therapist accompanied him to preschool and came to his home. Issues arose regarding the therapists assigned to claimant. For example, the therapist who went to Little Oaks preschool required preapproval by the preschool.⁵ Additionally, claimant's mother expressed concern to CVAP about several of the therapists, and stated they required further training. Claimant's mother also explained that because they live in a small town, she wanted CVAP to tell her the name of the therapist before CVAP released claimant's information so the family could maintain privacy. Also, because of claimant's location in a town an hour outside of Stockton, the therapists who were able to visit him were limited.

22. Claimant's mother was continually unable to obtain schedules in advance or the name of the CVAP supervisor, if any, assigned to claimant's case. She requested the weekly or monthly schedule for claimant's therapy hours several times in 2018. The schedule changed frequently.

⁵ There is some reference to a requirement that the therapist who went to the preschool be female. It is not clear whose requirement this was.

23. Claimant's mother disputes VMRC's log of missed appointments. The log shows the family cancelled appointments more frequently than they actually did. It also treats CVAP's last-minute appointment offers as "parent cancellations" if claimant was unable to take the appointment. Despite the characterization of claimant having "limited availability," claimant's mother averred she made him as available as possible for therapy. Claimant's mother also disputed 26 hours CVAP charged VMRC for a behavioral therapist because those appointments, as evidenced by text messages she produced, did not occur.

24. Claimant's mother also requested that VMRC be ordered to reimburse her and her husband for advocacy fees. VMRC agreed to provide a service which it did not provide, and the result has been a great expense for claimant's family. Claimant's advocate estimated those costs to be \$5,130.

PRINCIPLES OF LAW

25. Jurisdiction for this case is governed by Part C of the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et seq.), which supplements the IDEA and which is commonly referred to as the "Early Start Program." Each act is accompanied by pertinent regulations. Thus, both federal and state law apply to this case.

26. The CEISA sets forth criteria for eligibility for early intervention services. The CEISA provides that an infant or toddler under three years of age is eligible if the child demonstrates, or is at risk of, a developmental delay. (Cal. Gov. Code, § 95014, subd. (a); 20 U.S.C § 1432, definition (1); see also Cal. Code Regs., tit. 17, § 52020.) Early

intervention services are defined as those services “designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant or toddler’s development.” (20 U.S.C. § 1432(4)(A); Cal. Code Regs., tit. 17, § 52000, subd. (b)(12).)

27. The California Legislature has found that early intervention services represent an investment, “in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization.” (Gov. Code, § 95001, subd. (a)(2).) The Legislature has recognized that “[t]he earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities.” (*Ibid.*)

28. The Department of Developmental Services (DDS) is the state agency charged with implementing the Early Start Program. DDS delivers Early Start services through regional centers. (Gov. Code, § 95004; Welf. & Inst. Code, § 4620.) Early Start services are provided in accordance with an IFSP, which must address the infant’s or toddler’s developmental needs. (Cal. Code Regs., tit. 17, §§ 52100, 52106.) Regional centers must arrange, provide, or purchase early intervention services required by the IFSP as soon as possible. (Cal. Code Regs., tit. 17, §§ 52106, subd. (d), 52109, subd. (b).) A regional center service coordinator shall continuously seek the appropriate services necessary to enhance the development of each infant or toddler being served for the duration of the infant’s or toddler’s eligibility. (Cal. Code Regs., tit. 17, § 52121, subd. (a)(6).)

29. The IDEA provides guidelines for states to adopt or directs states to adopt their own in accordance with the federal statutory scheme. Code of Federal Regulations, title 34, section 303.430 states:

(a) General. Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.

[¶] . . . [¶]

(d) Due process hearing procedures. Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in § 303.421(a), by either adopting -

(1) The part C due process hearing procedures under section 639 of the Act that -

(i) Meet the requirements in §§ 303.435 through 303.438; and

(ii) Provide a means of filing a due process complaint regarding any matter listed in § 303.421(a); or

(2) The part B due process hearing procedures under section 615 of the Act and §§ 303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in § 303.440(c)).

Pursuant to the IDEA, California adopted regulations regarding due process hearings. California Code of Regulations, title 17, section 52172 provides:

(a) A parent may request a mediation conference and/or a due process hearing under any of the following circumstances:

(1) A regional center or LEA⁶ proposes to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services;

(2) A regional center or LEA refuses to initiate or change the identification, evaluation, assessment, placement or provision of appropriate early intervention services; . . .

[¶] . . . [¶]

(d) All requests for a mediation conference and/or due process hearing shall be in writing and filed with the contractor that the Department of Developmental Services uses for mediation and due process hearings. If a parent is unable to make a request for mediation or a due process hearing in writing, the service coordinator shall assist the parent in filing the request.

30. If a dispute arises, a parent may request a due process hearing by filing an appeal with the "contractor that the Department of Developmental Services uses for mediation and due process hearings." (Cal. Code Regs. tit. 17, § 52172, subd. (d).)

⁶ Local Educational Agency.

31. Early Start provides services for eligible infants and toddlers under certain circumstances. Specifically, Government Code section 95021 provides, in pertinent part:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services or intensive behavioral intervention services, or both, as defined in subdivision (d), shall:

(1) Conduct a behavioral assessment of each infant or toddler to whom the vendor provides these services.

(2) Design an intervention plan that shall include the service type, number of hours, and parent participation needed to achieve the goals and objectives of the infant or toddler, as set forth in his or her [IFSP]. The intervention plan shall also set forth the frequency at which the progress of the infant or toddler shall be evaluated and reported.

(3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

(2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of an infant or toddler receiving services participate in the intervention plan for the infant or toddler, given the critical nature of parent participation to the success of the intervention plan.

(3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

(4) Discontinue purchasing ABA or intensive behavioral intervention services for an infant or toddler when his or her treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

(5) For each infant or toddler, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six

months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.

(6) Not reimburse a parent for participating in a behavioral services treatment program.

[¶] . . . [¶]

32. When a regional center has failed to provide appropriate services and a consumer's parents obtain such services privately, reimbursement is an appropriate remedy. (*School Committee of Town of Burlington, Mass. v. Dept. of Educ. of Mass.* (1985) 471 U.S. 359 (*Burlington*); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141 (decided under Part C); *Still v. DeBuono* (2nd Cir. 1996) 101 F.3d 888 (decided under former Part H, now Part C).) Because Congress did not intend the IDEA to benefit a disabled child only if the child's parents are able to pay for private placement, courts have extended *Burlington* to provide for compensatory services as an alternative to reimbursement to remedy violations of the IDEA. (See, e.g., *Pihl v. Massachusetts Dept. of Educ.* (1st Cir. 1993) 9 F.3d 184, 188-190 (*Pihl*).)

33. Compensatory services have not been limited to cases in which the consumer remains under the age limit for entitlement to services, whether under Part B or Part C of the IDEA. (*Pihl, supra*, 9 F.3d 184, 189; *Wagner v. Short* (D. Md. 1999) 63 F.Supp.2d 672, 676-677; *Still v. DeBuono, supra*, 101 F.3d 888, 892.) "To give meaning to the state's obligations under part C of the IDEA, compensatory education must be an available remedy for children who establish Part C violations but have since reached the age of three. Otherwise, . . . agencies could abrogate their responsibilities under

the IDEA and escape any accountability simply by relying on the time-consuming appeals process." (*Wagner v. Short, supra*, 63 F.Supp.2d at p. 677.)

34. California Code of Regulations, title 17, section 52112, subdivision (f), authorizes regional centers to "continue providing or purchasing services for a preschooler who has been determined eligible for regional center services: (1) Until the beginning of the next school term after the toddler's third birthday during a period when the LEA special education preschool program is not in session; and (2) When the multidisciplinary team determines that services are necessary until the LEA special education program resumes."

ANALYSIS

Burden of Proof

35. The party seeking to change the status quo has the burden of proof. (Evid. Code, § 500.) Claimant was found to be eligible for 15 hours per week of behavioral services. VMRC seeks to be relieved from responsibility for the hours claimant has not yet used. VMRC has the burden of proof in this matter, and must meet that burden by a preponderance of the evidence. (Evid. Code, § 115.)

36. VMRC put forth four arguments: claimant's appeal was not timely; OAH does not have jurisdiction over Early Start appeals; this is an improper subject for an Early Start appeal; and claimant is not entitled to behavioral therapy hours because: he turned three and aged out of Early Start; his mother rejected many available hours or providers; and he met his goals as set forth in his IFSP.

Jurisdiction

37. VMRC argued OAH does not have jurisdiction over this matter because OAH hears only requests for fair hearing under the Lanterman Act, and claimant appeals from his IFSP under Early Start. As set forth in Paragraph 30, and as claimant correctly argued, Early Start appeals are conducted by a body with which DDS contracts. That body is OAH. OAH has jurisdiction over this appeal.⁷

Timeliness

38. VMRC then argued that even though this matter does not arise under the Lanterman Act, claimant's appeal should be dismissed as not timely under the Lanterman Act. Under the Lanterman Act, specifically Welfare and Institutions Code section 4710.5, an applicant or claimant who is dissatisfied with any decision or action of the service agency, "shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing." The Lanterman Act does not apply here. Neither Early Start nor the IDEA has a 30-day requirement for a claimant to file a request for a due process hearing. Moreover, VMRC did not produce a NOPA denying claimant's request and setting the date that would start a timer. Claimant's appeal was timely.

Subject of Appeal

39. VMRC argues claimant's appeal is not proper under the CEISA. California Code of Regulations, title 17, section 52172 provides, however, that a parent may

⁷ Furthermore, both DDS and VMRC list OAH as the proper venue to file a request for a due process hearing under Early Start.

request a due process hearing if a regional center “proposes to initiate or change the . . . provision of appropriate early intervention services.” In claimant’s final IFSP, VMRC stated it would provide “make-up hours as available.” It now seeks to abrogate that responsibility. Claimant’s is a proper request for a due process hearing.

Deficit Hours

40. Substantively, VMRC argued claimant cannot receive compensatory services under Early Start for three reasons. First, claimant has aged out of early start. Claimant turned three on May 13, 2019. In his November 2018/January 2019 IFSP, which claimant’s parents signed, the section explaining the transition out of Early Start stated Early Start applied to infants and toddlers from birth to three years of age, and Early Start services would terminate on May 13, 2019. VMRC argued making up hours beyond claimant’s third birthday could not be upheld because it contradicted the other statement in the IFSP that services would terminate on May 13, 2019.

41. Though VMRC staff represented to claimant’s parents that hours could be made up during the summer following claimant’s third birthday, that assertion is not supported by the law. California Code of Regulations, title 17, section 52112, subdivision (d), allows regional centers to continue providing services once a child has turned three and over the summer prior to the beginning of the school year, but only if that child is eligible for on-going services under the Lanterman Act. (¶ 33.) VMRC determined claimant is not eligible for regional center services under the Lanterman Act.

42. VMRC’s argument is not persuasive, and not supported by case law. If reaching the age of three automatically cuts off services (unless an exception applies), as the *Wagner* court succinctly stated, “agencies could abrogate their responsibilities

under the IDEA and escape any accountability simply by relying on the time-consuming appeals process." (*Wagner v. Short, supra*, 63 F.Supp.2d at p. 677.) Claimant is not barred from compensatory services to address the deficit hours he was due based on his reaching the age of three.

43. VMRC also argued claimant cannot receive compensatory services because the amount of make-up hours was never specifically identified and the deficit hours were largely due to claimant's family. The IFSP stated deficit hours would be made up as available. Ms. Orth testified she authorized additional hours in the POS she provided to CVAP. The POS, which may show the number of authorized hours, was not produced at hearing.

44. The evidence showed claimant's behavioral therapy appointments were cancelled for a variety of reasons. The blame lay with both CVAP and claimant's family. Claimant persuasively argued CVAP charged VMRC for appointments they did not keep, cancelled appointments at the last minute, and offered same-day appointments and marked them as "client decline" if claimant's mother was not available. CVAP delayed scheduling make-up hours until the end of March 2019, about six weeks before claimant's third birthday. Conversely, VMRC established claimant's mother brought up issues regarding certain therapists, cancelled appointments, and had scheduling limitations that impacted sessions. Whether CVAP or claimant's family cancelled appointments is immaterial to whether claimant should receive the benefit of the deficit hours, but would bear on the number of hours to be made up. VMRC's argument is not persuasive on this point.

45. Finally, VMRC argued claimant cannot recoup the make-up hours because more than 15 hours of behavioral therapy for claimant would not have had a therapeutic benefit and claimant met his IFSP goals. Government Code section 95021

limits the behavioral services a regional center may purchase. Specifically, subdivision (b)(4) directs the regional centers to discontinue purchasing intensive behavioral intervention services when his treatment goals and objectives as set forth in the IFSP are achieved. (¶ 30.) As detailed in CVAP's ESAIP Exit Report, claimant met the goals set forth in his IFSP in 37 of 41 categories, and was close to meeting others. (¶ 10.) At that point, the regional center was legally obligated to discontinue purchasing behavioral therapy services for claimant.

46. Claimant did not argue he has not met his goals or that the deficit hours impeded his progress. Rather, claimant argued VMRC allotted a certain number of hours, and he only received a partial amount. Claimant argued VMRC caused claimant a "harm," but did not articulate what the harm was, other than the deficit hours. Given the Early Start program's mission and limitations, this argument is not persuasive.

47. When all the evidence and arguments are considered, VMRC met its burden of proving it is not responsible to purchase compensatory services for claimant. Claimant's appeal must be denied.

Advocacy Fees

48. Claimant requested VMRC be ordered to reimburse him for advocacy fees. Generally, California follows the "American rule" for attorney fees, which is that each party bears his own costs unless there is a statute saying otherwise. (Civ. Proc. Code, § 1021.) There is no provision for reimbursement of attorney's fees under Part C of the IDEA. (See, e.g., *Andrew M. v. Delaware County. Office of Mental Health and Mental Retardation* (2007) 490 F.3d 337, 350 [ruling District Court's award of attorney fees under Part C was in error].) Nor did claimant cite any other applicable fee-shifting

provision. Additionally, claimant did not prevail on his appeal. Claimant's request for reimbursement of his advocacy fees must be denied.

ORDER

Claimant's appeal is DENIED. VMRC shall not provide claimant with 100 hours of compensatory behavioral therapy services or an educational fund to pay for those services.

Claimant's request for reimbursement of his advocacy fees is DENIED.

DATE: July 28, 2020

HEATHER M. ROWAN

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.