

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019080733

DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 2 and 21, 2019, in San Bernardino, California.

Keri Neal, Consumer Services Representative, Inland Regional Center, represented the regional center.

Claimant's mother represented claimant.

A certified Spanish language interpreter interpreted the proceedings.

The matter was submitted for decision on October 21, 2019.

ISSUE

Is claimant entitled to indoor cameras, a Google Home Hub, and a Nest Aware home security system?

SUMMARY

Claimant is 17 years old. Challenging behaviors include destruction of property and self-injurious behaviors.

Claimant's mother asked the regional center to provide eight indoor cameras, a Google Home Hub, and a Nest Aware security system. She contends the system will help her and other caregivers prevent claimant from destroying property, engaging in self-injurious behaviors, and being at risk of wandering away.

Regional center evaluated the request and denied it. Regional center contends that a camera system is not directed toward the alleviation of a developmental disability and is not a specialized service or support provided for in claimants individual program plan (IPP).

Claimant appealed, i.e., filed a fair hearing request.

It is determined that claimant failed to prove that he is entitled to have regional center fund a security camera system.

FACTUAL FINDINGS

Background

1. Claimant, a 17-year-old male, receives services from the regional center under a diagnosis of autism spectrum disorder.¹ He lives in the family home with his mother and three siblings, a brother and sister who are younger than claimant and a sister who is older. Challenging behaviors include: disruptive behaviors, physical aggression, destruction of property, and self-injurious behaviors. He hits, kicks, and punches his mother and siblings. He has destroyed valuable household items and has broken iPads. Claimant bites and picks at his skin. He engages in pica behaviors, eating substances that are unfit to eat; claimant has a history of eating cosmetics, toiletries, and other unfit things.

He needs supervision at home and in the community.

2. Claimant receives \$650 per month in Supplemental Security Income (SSI). His mother is the payee. San Bernardino County provides 243 hours per month of In-Home Support Services (IHSS). His mother is the IHSS provider. Claimant receives approximately 12 hours per week of Applied Behavioral Analysis (ABA) services in his home. Claimant's health is generally stable; his primary medical care is provided

¹ In claimant's mother's opening statement, she said complainant has severe autism and intellectual disability. However, a Client Development Evaluation Report (CDER) dated August 30, 2019, provides that intellectual disability is not a disability that qualifies respondent for regional center services. According to the CDER, claimant's only qualifying disability is autism spectrum disorder.

through Park Tree Community Health in Ontario. Claimant's parents are divorced. His father pays child support of \$1,000 per month for claimant and his siblings. Claimant receives 100 hours per month of Specialized Individual Training (SIT) through California Psychcare. Regional center funds the SIT and provides claimant with Uplift Family Services.

3. Claimant attends school. Through the school, he receives transportation, speech therapy, occupational therapy, adaptive physical education, and a one-on-one aid.

Request That Claimant's Medical Insurance Provide a Security Camera System

4. Claimant's mother asked Inland Empire Health Plan (IEHP), claimant's medical insurance provider, to provide eight indoor cameras, a Google Home Hub, and a Nest Aware security system. The Google Home Hub would allow one to control the cameras remotely.

5. In a letter dated February 21, 2019, IEHP denied the request. IEHP said the camera security system is not covered by claimant's insurance "because it is a convenience item. It is not used to treat a medical condition."

Request That Regional Center Provide a Security Camera System

6. Claimant's mother asked the regional center to provide the camera system. Claimant's mother contends the system is necessary to keep claimant safe and prevent him from becoming ill.

7. Regional center evaluated the request and denied it. Regional center sent claimant's mother a notice of proposed action (NOPA) dated July 30, 2019. The NOPA

provides that a regional center can fund specialized services only if they are directed toward the alleviation of a developmental disability or directed toward meeting a service specified in an IPP. Claimant filed a request for fair hearing.

Claimant's Mother's Testimony and Exhibits

8. Claimant's mother wrote a letter dated July 19, 2019, explaining why regional center should provide a camera security system with sensors. She also testified in support of the request.

9. In the letter, Claimant's mother wrote: Claimant has no safety awareness. If he wants to eat something, he will, with no concern for whether it is edible. For years, he has been sneaking out of his room at night to eat things and do things. He destroys property. He has destroyed window screens and furniture. Claimant's mother wrote that she sleeps in the hall, outside claimant's bedroom door, to prevent him from doing things he should not do in the middle of the night. She said she is concerned that claimant may start trying to get out and wander away. She has been trying to teach claimant how to use toilet paper, but he will not permit her to be in the bathroom with him. If they had camera technology, she could prompt him on how to wipe himself, and he would learn. Also, he likes to flush things down the toilets – things that clog them. Having the cameras could help stop this. Claimant's mother wrote that she no longer has a place where she can keep things out of claimant's reach; in the past, she had a locked storage closet in the garage, but claimant broke the lock. Claimant's mother worries about him so much.

10. In claimant's mother's testimony, she reiterated much of what she wrote in her letter. She testified, further, as follows: The family lives in a two-story home, and she needs a camera system to protect claimant's safety and health. Claimant has not

attempted to wander away, but he would if he were not supervised at all times. Claimant locks himself in the bathroom, and his mother does not know what he is doing. In spite of being supervised constantly, claimant has accidents and destroys valuable things. He has destroyed iPads.

11. Complainant's mother introduced a Special Education Psychoeducational Assessment dated February 19, 2019. In support of her contention that claimant has an intellectual disability, she referred to page 14, which provides "Symptoms interfering with academic functioning appear to be consistent with the Individual with Disabilities Educational Improvement Act (IDEIA) special education categories of: Autism (AUT) and Intellectual Disability (ID)." In support of claimant's mother's contention that claimant eats things that are not fit to eat, she referred to page 13, which provides that claimant puts objects such as leaves and paper in his mouth. In support of claimant's mother's contention that claimant injures himself and is at risk of wandering away, she referred to page 13, which provides that claimant picks at his eyebrow and scratches himself and that there was one incident of his being "AWOL to the street."

12. Claimant's mother introduced a note by J. Mazzacane, a board-certified behavior analyst, that provides as follows:

[Claimant] has been observed engaging in eating non-edible items. For example, he was observed on 08/20/2019 attempting to lick his hand after applying a quarter size pump of hand sanitizer while in the community. [Claimant] was also observed in September 2019 attempting to eat from a bottle labeled "Melatonin" containing pills that was on the counter; this behavior was blocked, and he was directed to wait for Parent. Parent removed the bottle from

the environment, and it has not been available during session since.

13. As an example of claimant's injuring himself in spite of having close supervision, claimant's mother referred to a school Incident Report dated August 30, 2019, which says, "Staff also noticed [claimant] scratching a scab on his left arm. He was redirected to stop. Reported to teacher."

14. Claimant's mother testified that claimant kicks his siblings and that, on June 10, 2019, he kicked a provider who was working with him in the home. She said this is an example of claimant's acting out in spite of being under the supervision of someone trained to deal with the developmentally disabled.

15. Claimant's mother testified that these are the reasons she needs a camera system.

16. She said claimant's behaviors are exhausting – for her, for him, and for his siblings. She said, "I know my son. I want to take care of him. The cameras are not for the family; they are for my son."

Testimony of M.O.

17. M.O.² testified by telephone. M.O. is claimant's aunt. She provided care for him under the respite program, starting when he was seven years old; she knows him well. M.O. reiterated much of claimant's mother's testimony concerning claimant's behaviors that put him in danger. She said he is very fast and can do whatever he

² Claimant's three aunts are identified here simply by their initials rather than with the curtesy title *Ms.* because two of them are Ms. D.

wants. M.O. testified that claimant's mother keeps everything locked. Even the refrigerator is locked. Claimant flushes things down the toilet and clogs the toilet – things such as socks, toys, and paper. He destroys telephone screen-protectors. He has destroyed iPads, plates, lightbulbs, plants, credit cards, money, electrical outlets, extension cords, locks, spoons, and everything. He scratches furniture and bites it.

18. M.O. testified, "They need to watch him with cameras. The camera system is needed for [claimant's] safety and for the safety of other people."

Testimony of M.D.

19. M.D. testified by telephone. M.D. is claimant's aunt. For 10 years she lived next door to claimant and his family. M.D. reiterated much of claimant's mother's testimony and M.O.'s testimony. She testified that she has seen claimant eat salt, vanilla, chili powder, cinnamon, medicines, hand sanitizer, tooth paste, and deodorant. He does this in spite of the fact that his mother locks everything in cabinets; claimant's siblings unlock the cabinets and sometimes forget to lock them again. "Kids are kids." M.D. testified that claimant visits in her home, and recently, he drank her perfume.

20. M.D. testified that the ABA training will not prevent claimant from hurting himself.

21. M.D. testified, "So far as I know, the camera system would be appropriate so we can monitor him twenty-four, seven."

Testimony of S.D.

22. S.D. testified by telephone. S.D. is claimant's aunt. She reiterated much of the testimony of claimant's mother, M.O., and M.D.

23. S.D. testified that cameras are appropriate to help claimant's mother observe claimant's behaviors and, perhaps, learn about new behaviors.

Testimony of Claimant's Older Sister

24. Claimant's older sister testified. She lives in the family home. She reiterated much of her mother's testimony and her aunts' testimony. She said, "We must go to extremes to take care of him." In their former home, they put up extra doors so that claimant could not get into the kitchen. Everything in the kitchen was locked up. In the bathroom, all the toiletries were locked in a box. Other things were locked in her room.

25. Claimant's sister testified, "The two smaller children are not as careful as I am."

26. Claimant's sister testified, "[Claimant] kicked Andrew, one of the SIT workers. [Claimant] kicks me and my siblings. He punches my mom. I was surprised that he kicked Andrew, who is not a family member."

27. Claimant's sister testified, "Once, [claimant] ate a bead, and we had to take him to the hospital to have it taken out." Recently, they had to take claimant to the hospital because he had lost a lot of weight. Finally, after a week, they discovered that something was stuck in his intestines. "If we had cameras, we could have told the doctor that he ate something."

28. Claimant's sister testified that, in their new house, they have a locked toolbox in her closet in which they keep toiletries, medicines, and other things claimant might try to eat. She said she no longer buys nail polish remover. "The two smaller children are not mature enough to put things away consistently. They are still

very childlike. I try to protect them from having to give up their childhood. They try to learn to lock things away.”

29. Claimant’s sister testified they need cameras because of claimant’s habit of eating things and destroying things.

30. On cross-examination, claimant’s sister said, “Sometimes we forget to lock things up.” She said they could put an alarm on claimant’s door, but an alarm would not be as good as cameras because it would disturb the younger children’s sleep.

Letters in Support of Claimant’s Request

31. Claimant’s mother submitted a letter dated June 13, 2019. It is not clear who the author is. The signature block says: “Completed by: Nurse, Visit, 06/13/2019 5:10 PM.” Below that is a note that the “[d]ocument [was] generated by Erica Newkirk, [Nurse Practitioner],” which probably means she printed the document. It is possible, though it is not certain, that Ms. Newkirk also wrote the letter. The letter says:

[Claimant] is currently under my care.

It is my recommendation that the parent/child be provided with a camera system that has a monitor sensor. The child has a history of elopement, pica, and aggressive behavior and requires a camera in order to monitor activity in order to alert parents should these behaviors occur, both for his safety and the safety of other family members.

32. Yvonne Chan, MD, wrote a letter dated September 4, 2019, as follows:

[Claimant] is currently under my medical care.

[Claimant] is autistic and requires constant monitoring. He also has PICA (eating non-food items). Mother has to sleep on the floor in the hallway to prevent him from leaving his room because he will go eat non-food items such as deodorant in the middle of the night. I feel that he would benefit greatly if surveillance cameras are installed in the home.

33. Yra Manzano, Education Specialist, Leroy Haynes Educational Center, wrote a letter dated September 27, 2019, to Whom It May Concern. She wrote:

As [claimant's] teacher, it is my opinion that [claimant] would benefit from an additional form of supervision in his home due to his inclination to eat non-food items, including potentially toxic items. Cameras and/or sensors around the house would serve to assist the parent in monitoring him throughout the day more efficiently and thus ensuring his safety.

Testimony of Pamela Hutt

34. Pamela Hutt has been a program manager with the regional center since 1995. She is a behavior specialist and oversees behavioral support services at the regional center. Ms. Hutt holds a master's degree in social work and has taken courses in applied behavior analysis.

35. Ms. Hutt reviewed claimant's records, including his ABA program. She testified that ABA is a structured behavioral support program. A clinical team assesses an individual's needs and designs a program for him or her. The team monitors the individual's progress and modifies the program from time to time. Therapists work directly with the individual and his or her family in an effort to reduce negative behaviors. An ABA program includes a design for replacement behaviors, intervention strategies, and training for parents and siblings.

36. Ms. Hutt visited claimant's home on April 18, 2019. She observed claimant. Claimant's mother and his older sister gave behavioral histories. Claimant's younger siblings said it was hard to play with claimant. Claimant's mother said she was afraid of him. Complainant's older sister said she knew how to redirect claimant and connect with him. Claimant's mother said she did not participate with the ABA providers and that, when they came, she usually was in her room. Ms. Hutt testified that she told claimant's mother it was important for her to become involved in the ABA program and training. Ms. Hutt and claimant's mother talked about claimant's mother's health problems, and Ms. Hutt said Uplift Family Services could address those issues and find ways for claimant's mother to become involved with the ABA providers in spite of her health issues.

37. Ms. Hutt testified that claimant's ABA program addresses pica behaviors, identified in the ABA program as "mouthing." A report dated December 12, 2018, by Autism Learning Partners, the ABA provider, says, in part:

Baseline: Per parent report, [claimant] places non-edible things in his mouth during his down time and requires constant supervision.

Progress: In Progress, this goal was on a temporary hold during the majority of the reporting period due to further concerns with repetitive behaviors. The team focused on the more invasive repetitive behaviors; the number of incidences was limited to an average of approximately 2 instances per session before it was put on hold, and the incidences of repetitive behavior were challenging to separate since they seemed to be part of the course of the mouthing behavior. The team has since better defined the repetitive behaviors and separated out the mouthing behavior. Parent also reported that [claimant] has been displaying mouthing more frequently at school over the last month (November to early December). The team has decided to reintroduce this goal, now that repetitive behaviors are under control and will report on it further in the next reporting period. This goal will continue.

38. Ms. Hutt pointed to the current report, which is dated June 5, 2019, and provides, in part:

Progress: In Progress, [claimant] has been observed to engage in zero instances per session in the last few months. Parent reports that this is occurring more outside of session. The team primes [claimant] and engages in response blocking when attempts do occur. When the behavior does occur, it particularly revolves around semi-

liquid or gel materials that are beauty related (i.e. hair gel, soap, shampoo, toothpaste, etc.). This goal will continue.

39. Ms. Hutt testified that claimant's family should not allow these things to be accessible. They should put them in a secure place where claimant cannot get them.

40. Ms. Hutt testified that claimant's mother could request the ABA providers to add a goal to address sleep problems.

41. In Autism Learning Partners' various reports, they never recommended installing a camera system. In California Psychcare's various reports, they never recommended installing a camera system. And in Uplift Family Services' September 25, 2019, report, they did not recommend installing a camera system.

42. Ms. Hutt testified about SIT; it provides training to support consumers and their families. It provides relief for a family so that a family can leave the home while the SIT providers are there if the family wants time away. However, SIT does more than just provide the family with respite; a SIT team provides services and supports to reinforce a consumer's various programs. The SIT team works with other service providers, such as ABA providers, in order to try to achieve consistency across various programs. As noted above, regional center is providing 100 hours per month of SIT. Ms. Hutt pointed to a California Psychcare report dated July 30, 2019, that lists SIT goals for claimant. Seven categories of goals are listed: Communication, Socialization, Self-Help, Daily Routines; Community Access; Behavioral Excesses; and Safety Concerns. Ms. Hutt testified that the ABA goals and the SIT goals could be more consistent with each other. She has recommended a comprehensive, interdisciplinary meeting among claimant's mother, other family members, California Psychcare, the SIT

provider, and Autism Learning Partners. But claimant's mother was not interested in such a meeting. Nevertheless, Ms. Hutt finds the July 30, 2019, California Psychcare report encouraging. Under the safety concerns category, the report says "Eating inedible objects and meals too quickly also presents a safety concern. Coordination of care between Autism Learning Partners and [California Psychcare] has occurred during outings to develop instructional control." Ms. Hutt testified that this indicates the ABA providers and the SIT providers are starting to work together.

43. Ms. Hutt testified that Uplift Family Services, which as noted above, is another service regional center is providing, is a crisis management support service to bring stability to a family. Regional center is providing Uplift Family Services in order to bring claimant's various service providers together and in order to identify other supports that may be available to address claimant's needs. An Uplift Family Services team includes behavior analysts and behavior technicians, and they are on call for crisis intervention. After an initial reluctance, claimant's mother agreed to receive help from Uplift Family Services.

44. Ms. Hutt said safety plans for autistic persons are common. She noted an entry in an Uplift Family Services report dated September 25, 2019. The entry is dated September 17, 2019, and provides, in part, "Caregiver will increase the number of meals [of edible food claimant] has during the day." Ms. Hutt said a safety plan might also include educating family members to know when to call 911, teaching family members to provide first aide, and arranging the home environment to reduce opportunities for negative behaviors. That last element would require consistently locking beauty products and dangerous items in a secure place.

45. Ms. Hutt testified concerning the letter dated June 13, 2019, that Ms. Newkirk may have written. Ms. Hutt testified that the letter does not explain how the

author came to the conclusion that claimant's behavior history requires a camera to monitor his activity. There is no indication that the author is a behavior specialist. A nurse practitioner who is not also trained as a behavior specialist is not qualified to perform behavior analyses and not qualified to determine whether a camera is an appropriate means for dealing with a particular negative behavior. Cameras cannot prevent pica behavior, aggressive behavior, self-injurious behavior, or property destruction. To the extent the letter suggests otherwise, it is mistaken.

46. Ms. Hutt testified concerning Dr. Chan's letter. Ms. Hutt testified that there was nothing about the letter that suggested Dr. Chan investigated claimant's behaviors. The letter is consistent with Dr. Chan's knowing only what claimant's mother told her. Also, there is no indication that Dr. Chan is a behavior specialist. A physician who is not also trained as a behavior specialist is not qualified to perform behavior analyses and not qualified to determine whether a camera is an appropriate means for dealing with a particular negative behavior.

47. It is possible there are other services available that might address claimant's needs. "We do not know because we have not had a comprehensive, interdisciplinary meeting."

48. After claimant's mother presented claimant's evidence, Ms. Neal recalled Ms. Hutt as a witness, and Ms. Hutt testified as follows: In providing treatment, one must apply evidence-based practices that have been demonstrated to be effective over both a short and long term. Practices need to be applied consistently, and there needs to be follow-through across the environment. Ms. Hutt referred to the Special Education Psychoeducational Assessment dated February 19, 2019, that claimant's mother offered in evidence. The assessment recommends that the communication device and strategies used at home be the same as those used at school. The

assessment includes a number of suggestions regarding matters from which [claimant] might benefit: A highly structured environment. Behavioral strategies applied consistently at school and at home. The use of research-based strategies to address functional or adaptive deficits. The use of research-based strategies such as social narratives and video modeling. And daily use of primary strategies. Ms. Hutt endorsed those recommendations. In the recommendations, there is no mention of security cameras.

49. Ms. Hutt testified that it is important to be proactive rather than reactive in addressing claimant's negative behaviors. Observing a behavior and responding is not sufficient. The goal is to minimize behaviors before they occur. Consistent responses over time and among providers and caregivers is essential. The emphasis should be on things that will reduce claimant's desire to engage in negative behaviors, e.g. things that will reduce his desire to eat things that are non-edible. Cameras will not reduce his desire to engage in negative behaviors. Also, one needs to create an environment that is safe for respondent. Put alarms on doors and windows. Lock cabinets consistently. "We know what claimant's behaviors are; we don't need cameras to tell us that." A behaviorist can address behaviors. Claimant will always require supervision and a behavioral practitioner to support him in an evidence-based manner.

Testimony of Anthony Dueñez

50. Anthony Dueñez is the program manager for the transition unit, a unit that works with consumers 16 to 25 years old who are transitioning from the public-school system to other programs.

51. Mr. Dueñez testified about a National Autism Association publication, Wendy Fournier (May 18, 2012) *5 Quick, Easy and & Inexpensive Ways to Help Keep Your Child Safe*, retrieved from <https://nationalautismassociation.org/5-quick-easy-inexpensive-ways-to-help-your-child-safe/>. Mr. Dueñez endorsed the suggestions, which include: Install door and window alarms. Have your child wear an identification bracelet. If he or she cannot tolerate a bracelet, attach identification tags to shoes. Take a guardian lock with you when you go out with your child; it can be used on any door. Apply colorful and fun temporary identification tattoos.

52. Mr. Dueñez also testified about a National Autism Association article entitled "Safety in the Home." The article can be found at <https://www.autism-society.org/living-with-autism/how-the-autism-society-can-help/safe-and-sound/safety-in-the-home/>. The article is divided into a number of subjects, as follows: Arrange the furniture appropriately. Use locks and alarms where appropriate. Make electrical outlets and appliances safe. Lock hazardous items away. Label everyday items. Organize everyday items. Institute appropriate seating. Use visual signs. Secure eating utensils and place-settings. Safeguard bath items and toys. Remember fire safety. Consider identification options. Introduce intervention techniques to teach safety. Under the subject heading "Lock Hazardous Items Away," the article says, in part:

Secure items that are dangerous if ingested, such as detergents, chemicals, cleaning supplies, pesticides, medications, and small items a child might mouth or chew. It is easy for an individual with autism to confuse a bottle of yellow cleaning fluid with juice based on appearance or to pour/spill liquids (some of which may be poisonous or

toxic) out of a bottle. Also, pills that look like candy can easily be eaten by mistake. Place such items out of reach or in cabinets with locks. Keep the poison control phone number in a permanent place that is clearly in view.

53. Under the subject heading "Introduce Intervention Techniques to Teach Safety" the article says, in part:

In addition to the physical modifications to your home, you will want to introduce behavior modification techniques to teach your child how to be safe and act appropriately. There is a wide variety of augmentative interventions that can be employed to do this. These interventions include: social stories, activity schedules, visual rules, signs/charts, peer and adult modeling, reinforcement for safe and appropriate behavior, consistent consequences for unsafe or inappropriate behavior.

54. Mr. Dueñez noted an entry in an Uplift Family Services report dated September 25, 2019. The entry is dated September 17, 2019, and provides, in part, that Uplift Family Services will work to "provide a safety plan for the home."

55. Mr. Dueñez testified that, pursuant to Welfare and Institutions Code section 4512, subdivision (b), the regional center provides specialized services and supports if they are directed toward the alleviation of a developmental disability or directed toward meeting a specialized need identified in an IPP. The implication of his testimony is that regional center does not provide specialized services and supports directed toward other goals.

56. Mr. Dueñez testified that, in deciding to deny the request for a security camera system, he considered cost effectiveness. He testified that he considered the array of services claimant receives that address his safety and health needs, including: SSI, IHSS, ABA services, SIT, and Uplift Family Services.

57. Mr. Dueñez emphasized that none of claimant's service providers have recommended a security camera system.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Claimant has the burden of proof. (Evid. Code, §§ 115 & 500.) Claimant is seeking an order requiring the regional center to provide a service or support that is not provided for in claimant's IPP and that is not currently being provided.

2. The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.)

Overview of a Regional Center's Obligation to Provide Services

3. The Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500, et seq. (Lanterman Act), is an entitlement act. People who qualify under it are entitled to services and supports. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

4. 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. (*Association for Retarded Citizens, supra*, 38 Cal.3d, at p. 388.)

5. Persons with developmental disabilities have “a right to dignity, privacy, and humane care,” and services and supports, when possible, should be provided in natural community settings. (Welf. & Inst. Code, § 4502, subd. (b).) Persons with developmental disabilities have “a right to make choices in their own lives” concerning “where and with whom they live.” (Welf. & Inst. Code, § 4502, subd. (j).)

6. Regional centers should assist “persons with developmental disabilities and their families in securing those services and supports . . . [that] maximize opportunities and choices for living, working, learning, and recreating in the community.” (Welf. & Inst. Code, § 4640.7, subd. (a).) Regional centers should assist “individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices.” (Welf. & Inst. Code, § 4648, subd. (a)(1).)

7. In *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233), the court of appeal addressed the Lanterman Act and said:

In order for the state to carry out many of its responsibilities as established in this division, the Act directs the State Department of Developmental Services to contract with “appropriate private nonprofit corporations for the establishment of a “network of regional centers.” (§§ 4620, 4621.) Regional centers are authorized to “[p]urchase . . . needed services . . . which regional center determines will best” satisfy the client's needs. (§ 4648.) The Act

declares: "It is the intent of the Legislature to encourage regional centers to find innovative and economical methods" of serving their clients. (§ 4651.) The Act directs that: "A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region." (§ 4652.)

[¶] . . . [¶]

[T]he Regional Center's reliance on a fixed policy is inconsistent with the Act's stated purpose of providing services "sufficiently complete to meet the needs of each person with developmental disabilities." (§ 4501.) The Act clearly contemplates that the services to be provided to each client will be selected "on an individual basis."

(Association for Retarded Citizens v. Department of Developmental Services, supra, 38 Cal.3d 384, 388.)

A primary purpose of the Act is "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family." *(Association for Retarded Citizens v. Department of Developmental Services, supra, 38 Cal.3d 384, 388.)* In strong terms, the Act declares: "The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families" requiring the state to "give a very high priority to the development and expansion of programs designed to

assist families in caring for their children at home.” (§ 4685, subd. (a).) In language directly applicable to the present case, section 4685, subdivision (b), states that “regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child.” (§ 4685, subd. (b).)

The Lanterman Act “grants the developmentally disabled person the right to be provided at state expense with only such services as are consistent with its purpose.”

(Association for Retarded Citizens v. Department of Developmental Services, supra, 38 Cal.3d 384, 393.) As noted previously, a primary purpose of the Act is to “minimize the institutionalization of developmentally disabled persons and their dislocation from family.”

8. The Act provides examples of services and supports that should be considered.

“Services and supports for persons with developmental disabilities” means specialized 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. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-

term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (Welf. & Inst. Code, § 4512, subd. (b).)

Requirement that Regional Centers Be Cost Conscious

9. While the Lanterman Act emphasizes the services and supports to which consumers are entitled, the act also requires regional centers to be cost conscious.

10. It is the 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. (Welf. & Inst. Code, § 4646, subd. (a).)

11. When selecting a provider of consumer services and supports, the regional center, the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall consider, "the cost of providing services or supports of comparable quality by different providers, if available." (Welf. & Inst. Code, § 4648, subd. (a)(6)(D).)

12. The Lanterman Act requires regional centers to do a number of things to conserve state resources. For example, it requires regional centers to "recognize and build on . . . existing community resources." (Welf. & Inst. Code, § 4685, subd. (b).)

13. None of these provisions concerning cost-effectiveness detracts from the fact that eligible consumers are entitled to the services and supports provided for in the Lanterman Act. These provisions concerning cost-effectiveness do teach us, however, that cost-effectiveness is an appropriate concern in choosing how services and supports will be provided. There is a tension between the requirement that services and supports be cost effective and the proposition that entitlement is determined by what is needed to implement a consumer's IPP. The cost-effectiveness of a particular service or support must be measured against the extent to which it will advance the goal specified in the IPP, and consideration must be given to alternative means of advancing the goals.

Regional Center's Contention Regarding a Limitation on Goals for Which Specialized Services Can be Provided

14. As noted above, Mr. Dueñez testified that, pursuant to Welfare and Institutions Code section 4512, subdivision (b), the regional center provides specialized services and supports if they are directed toward the alleviation of a developmental disability or directed toward meeting a specialized need identified in an IPP. The implication of his testimony is that regional centers do not provide specialized services and supports directed toward other goals. The July 30, 2019, NOPA, which Mr. Dueñez signed says the same thing. Also, in Ms. Neal's opening statement, she said something similar to that. However, Welfare and Institutions Code section 4512, subdivision (b), provides for other goals that can entitle a consumer to specialized service and supports. The subdivision provides for other goals as follows:

Services and support . . . means specialized services and supports . . . directed . . . 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, and normal lives.

15. Thus, regional center's contention concerning the extent of the goals that can entitle a consumer to specialized services is too restrictive.

Analysis

16. Lanterman Act provisions concerning entitlement to services focus on a consumer's need. Claimant failed to prove he is entitled to a security camera system because he failed to prove that he needs one. In regional center's NOPA, the regional center said it was denying the request because a regional center could not provide a specialized service that was not directed toward the alleviation of a developmental disability or directed toward meeting a specialized need identified in an IPP. But that statement is too restrictive. A regional center can also provide a specialized service if it is directed toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of an independent, productive, and normal life. However, claimant failed to prove that a security camera system would be directed toward any goal specified in the Lanterman Act.

17. What claimant needs is, first, coordination among his various service providers, caregivers, and family members and, second, everyone's dedication to consistently implementing his programs. Ms. Hutt's testimony was persuasive. Consistent responses over time and among providers, caregivers, and family members is essential. Also, one needs to create a safe environment. Put alarms on doors and windows. Lock cabinets consistently. Those are the things claimant needs.

18. No evidence was presented that a qualified behavioral specialist has recommended a security camera system.

19. Claimant has multiple services in place to address his need to change his negative behaviors. He has multiple services in place to address his need for a highly structured, safe environment.

ORDER

Claimant's appeal of regional center's decision not to provide a security camera system is denied.

DATE: November 4, 2019

ROBERT WALKER

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.