

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

In the Matter of:

CLAIMANT

vs.

GOLDEN GATE REGIONAL CENTER, Service Agency.

OAH No. 2019090577

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on October 16, 2019, in San Mateo, California.

Claimant was represented by her mother.

Lisa Rosene, Director of Regional Center Services, represented Golden Gate Regional Center (GGRC), service agency.

The record was left open to allow for submission of written closing arguments. Claimant's written closing argument was received on October 23, 2019, and was marked for identification as Exhibit IV. GGRC did not file a written closing argument. The record closed and the matter was submitted for decision on October 25, 2019.

ISSUE

Has GGRC improperly failed to make a decision regarding the number of Independent Living Skills (ILS) training hours that will be allotted to claimant?

FACTUAL FINDINGS

Background

1. Claimant is a young adult who lives with her parents. She is a GGRC consumer based on a diagnosis of autism.

2. ILS training is focused on helping a person learn how to perform tasks necessary for independent living, such as budgeting, shopping, meal planning, cooking, grooming, and housekeeping. ILS services are typically home-based, although certain ILS training activities may take place outside the home (for example, trips to the grocery store).

3. Claimant's most recent Individual Program Plan (IPP) is dated February 22, 2018. The IPP includes an objective that claimant will have access to ILS training. The IPP indicated that claimant's mother would complete the application to become a vendor for ILS training, and that claimant's social worker would request GGRC funding for ILS training after claimant's mother had been vendorized.

4. Claimant's mother has been approved as a GGRC vendor to provide ILS training to claimant, with an initial vendorization date of December 1, 2018.

5. Claimant has not yet begun to receive ILS services funded by GGRC.

Parties' Contentions

6. GGRC contends that it has not received the information from claimant's mother that is needed to complete a purchase of service (POS) funding request for ILS services. GGRC needs to know the number of hours of all services that claimant is receiving, including personal assistance (PA) hours, in-home supportive services (IHSS) hours, and respite hours, and the days and times claimant receives those services each week, to ensure that there is no overlap or duplication between ILS services and other services, and to determine the number of hours of ILS services that are needed weekly.

7. Claimant's mother contends that she has already provided GGRC staff with the information they need in order to request ILS funding.

Communications Regarding ILS Services

8. GGRC staff Julie Gin (social worker), Sarah Shafton (Resource Developer), and Lisa Rosene (Director of Regional Center Services) testified credibly at hearing about the actions taken regarding claimant's request for ILS training and GGRC's communications with claimant's mother. Claimant's mother did not testify at hearing; she submitted documentary evidence.

9. On February 21, 2019, an annual review of claimant's IPP was conducted by telephone conference between social worker Gin, supervisor Christine Catabay, and claimant's mother. ILS services were discussed, among other topics.

10. Prior to the annual review telephone conference, claimant's mother sent an email to Gin and Catabay containing a number of requests. She requested 30 hours per month of ILS services. (Later communications indicate that claimant is requesting 30 hours per week of ILS services.)

11. Gin responded by email on March 18, 2019 regarding the requests and IPP annual review. Regarding the request for 30 hours per month of ILS services, Gin noted that more information was needed.

12. GGRC is ready and willing to fund ILS services for claimant, as soon as GGRC staff has the information needed to complete the funding request.

13. Gin explained at hearing that in order to complete the POS funding request, she needs to know the number of ILS hours requested, how those hours will be utilized (for example, 10 hours per week for meal planning and 5 hours per week for budgeting), and the days and times the ILS hours will be provided. Gin also needs a weekly schedule showing all of the other services that claimant receives, including personal assistance (PA) hours, in-home supportive services (IHSS) hours, and respite hours, to ensure that the ILS hours do not duplicate other services, that multiple services are not scheduled for the same times, and that no more than 24 hours of services are scheduled for a single day.

14. Claimant's mother is approved as a vendor by GGRC to provide parent-coordinated PA hours in lieu of a traditional day program, including activities at community programs. Claimant has been approved to receive 138 PA hours per month (six hours per day, Monday through Friday, between 9:00 a.m. and 3:00 p.m.). These PA services differ from ILS services. While a consumer can receive both PA and ILS services funded by the regional center, the services cannot be duplicative.

15. In-home supportive services (IHSS) are provided through the county, with a monthly allotment of hours for a parent or other person to provide personal care, among other things. IHSS is considered a generic resource under the Lanterman Developmental Disabilities Services Act (Lanterman Act). Gin has not received

information about the number of IHSS hours that claimant currently receives, or when those hours are provided.

16. GGRC staff made multiple requests to claimant's mother that she provide the information needed to complete the POS funding request for ILS services.

(a) On April 12, 2019, Gin requested that claimant's mother provide a weekly schedule for claimant.

(b) On May 19, 2019, Rosene sent claimant's mother an email stating that the mother needed to talk to the IPP team about what claimant needs for ILS training, how many hours per week, and that she also needed to provide a calendar of all the hours of service claimant is currently receiving to avoid an overlap. Gin would then submit the POS funding request with the agreed-upon volume of ILS hours.

(c) On June 13, 2019, Gin sent claimant's mother a letter that addressed ILS services, among other things. Gin wrote: "I will need a calendar schedule from you for the amount of hours that are needed for [claimant's] ILS services. Please put on the calendar all the personal assistance hours and when they are provided, all IHSS hours and when they are provided, and the hours of ILS you are requesting. Please be sure not to exceed 24 hours in a day. The calendar schedule from you is necessary to determine the service hours needed."

17. Claimant's mother has provided some information to GGRC staff in response to their requests.

(a) On May 20, 2019, claimant's mother sent an email to Gin, Rosene, and other GGRC staff stating that she was requesting 30 hours of ILS services per week (six hours per day, five days per week).

(b) On June 24, 2019, claimant's mother sent email to Gin, providing the following information about claimant's PA hours (totaling nine hours per week):

- Academic Trainers, 1 hour: Monday, Tuesday, Wednesday and Thursday, 3:00 p.m. to 4:00 p.m.
- Gym Arrillaga Center, 1 hour: Tuesday, Friday and Sunday, 9:15 a.m. to 10:15 [a.m.]
- BOK Ranch, 1 hour: Saturday, 11:30 a.m. to 12:30 p.m.
- Swimming Pool Menlo Park or YMCA, 1 hour; Sunday around 2:00 p.m.

This email did not provide information about IHSS hours or respite hours provided to claimant.

18. Gin wrote a case note on June 25, 2019, indicating that she had received the above information about claimant's schedule, but that it did not encompass the entire day and included some weekend activities, and did not show when IHSS or other PA hours were used. Gin also noted that claimant's mother is utilizing the full authorization of 138 PA hours per month.

19. On September 7, 2019, claimant submitted a fair hearing request, stating the issue as whether GGRC failed to make a decision regarding the number of ILS hours that will be allotted to claimant.

20. Rosene responded by email on September 8, 2019, confirming that the fair hearing request was received, and stating: "This matter can be resolved easily, however; all that is needed [is] the weekly schedule of [claimant's] activities including

all the services she currently receives such as IHSS, respite, etc. or ILS. We must account for all hours in the day so we can determine how many hours are available. I am willing to help you with this if you want.”

21. On September 9, 2019, claimant’s mother responded by email to Rosene, Gin, and other GGRC staff. She did not answer the question regarding IHSS hours received. She stated that claimant does not sleep eight hours per night, and often wakes up. Regarding PA hours, she stated claimant does not get six hours per day. She also reiterated the request for six hours per day, five days per week, of ILS services.

22. In her written closing argument, claimant contends she has met her burden to show “that GGRC failed to provide timely ILS services.”

Ultimate Findings

23. GGRC has not failed to provide ILS services to claimant. The evidence established that claimant’s mother has not provided to GGRC all the information necessary for GGRC to determine the hours of ILS services that will be funded, and for claimant’s social worker to submit a POS request for such funding.

LEGAL CONCLUSIONS

1. In the Lanterman Act, the Legislature created a comprehensive scheme to provide supports and services to meet the needs of people with developmental disabilities. (Welf. & Inst. Code, § 4501.)¹ The Lanterman Act mandates that “[a]n array

¹ All statutory references are to the Welfare and Institutions Code.

of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (*Ibid.*) The purpose of the scheme is to prevent or minimize the institutionalization of persons with developmental disabilities and their dislocation from family and community; and enable persons with developmental disabilities to approximate the pattern of everyday living of nondisabled persons of the same age and lead more independent and productive lives. (§§ 4501, 4685; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services (Department) is the state agency charged with implementing the Lanterman Act. It contracts with regional centers that are responsible for providing developmentally disabled individuals with access to services and supports best suited for them. (§ 4620, subd. (a).)

3. To determine how a consumer is to be served, regional centers conduct a planning process that results in development of an IPP. (§ 4646.) The IPP is developed by an interdisciplinary team with participation by the consumer and/or the consumer's representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of supports and services, and reflect the consumer's desires and preferences. (§§ 4646, 4646.5.) The Legislature intends that the services be effective in meeting the goals of the IPP, reflect the consumer's preferences and choices, and reflect the cost-effective use of public resources. (§ 4646, subd. (a).)

4. A regional center "may, pursuant to vendorization or a contract, purchase services or supports for a consumer." (§ 4648, subd. (a)(3).) Vendorization is the "process for identification, selection, and utilization of service vendors . . . based on the

qualifications and other requirements necessary in order to provide the service.”

(§ 4648, subd. (a)(3)(A).) A regional center may reimburse an individual for providing services to a consumer if the individual has completed the vendorization procedures.

(§ 4648, subd. (a)(3)(B).)

5. When purchasing services and supports, regional centers are mandated by the Lanterman Act to conform to their purchase of service policies as approved by the Department, and to utilize generic resources where appropriate. (§ 4646.4, subd. (a).) In securing needed services and supports to implement an IPP, regional centers are prohibited from using regional center funds “to supplant the budget of any agency that has a legal responsibility to serve all members of the public and is receiving general funds for providing those services.” (§ 4648, subd. (a)(8).)

6. It has not been established that GGRC has violated the Lanterman Act. Claimant’s IPP provides that she will receive ILS services. Claimant’s mother has been approved as an ILS vendor. GGRC is ready and willing to fund ILS services for claimant. However, claimant’s mother has not provided all of the information needed by GGRC staff in order to determine the number of ILS hours needed by claimant and to complete the POS funding request needed to put those hours in place. Without knowing the details about how the requested ILS hours will be utilized and on which days and times, and the schedule of other services claimant receives, GGRC staff cannot ensure that ILS services do not duplicate other services, that multiple services are not scheduled for the same times, and that no more than 24 hours of services are scheduled for a single day.

ORDER

Claimant's appeal is denied.

DATE:

HOLLY M. BALDWIN

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. (Welf. & Inst. Code, § 4712.5, subd. (a).)