

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

In the Matter of the Fair Hearing Requests of:

CLAIMANT,

V.

EASTERN LOS ANGELES REGIONAL CENTER

OAH No. 2019120044

OAH NO. 2019120045

DECISION

These consolidated matters were heard by Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on March 12, 2020, in Alhambra, California and June 25, 2020, by videoconference.¹ The parties stipulated to have both matters consolidated for decision.

¹ The parties agree one decision should be prepared for these consolidated cases. (Cal. Code Regs., tit. 1, § 1016, subd. (d).)

Claimant was represented by her mother and father (collectively, parents), temporary conservators, and authorized representatives.²

Eastern Los Angeles Regional Center (ELARC) was represented by Jacob Romero, Fair Hearing Coordinator. Also present was Becky Ly, ELARC Service Coordinator.

Oral and documentary evidence was received. The record remained open until July 10, 2020, for claimant to supply a court docket. The documents referencing the court docket were timely submitted and marked and admitted as Exhibit O. Claimant also submitted additional documents which were not related to the court docket. ELARC objected to the admission of these documents. With one exception, ELARC's objection was sustained on the ground that these were not documents for which the record was left open and were outside the scope of the ALJ's order to submit the court docket. Claimant also provided the individual program plan dated April 6, 2018, which was marked and admitted as Exhibit P because it is relevant to the extent it provides background to claimant's status. The record was closed and the matter was submitted for decision on July 10, 2020.

During the last day of the hearing, evidence was submitted of the parties' most recent communications involving a supported living service vendor, which had the capability of providing supported living services, and possibly transition services. The progress of these communications and the vendorization of these services are pertinent to the determination of the issues.

² The names of claimant and claimant's family are omitted to protect their privacy.

On July 24, 2020, the record was reopened for ELARC to provide the assessment of Roman Empire Living Skills (Roman Empire), the proposed vendor, an update on the progress of vendorization and the provision of supported living services referenced in ELARC's testimony on June 25, 2020, and the implementation, if any, of interim independent living services in the home prior to the transition to supported living services and during the Covid-19 epidemic. The ALJ's Order Reopening the Record is marked as Exhibit ALJ-1. ELARC timely provided a detailed letter of the status of vendorization the following attachments: the assessment performed by Roman Empire Living Skills Inc. in March 2020 (ELARC's 1), the contract with Roman Empire (ELARC's 2), a copy of California Code of Regulations, title 17, section 54326 governing regional centers' practices with vendors (ELARC's 3), and the current independent living services (ELARC's 4). ELARC's supplemental exhibit including the letter and attachments shall be collectively marked as Exhibit 34. The letter and attachment's ELARC's 1, ELARC's 2 and ELARC's 4 are admitted. Attachment ELARC's 3 shall be marked only.

The record was reclosed and the matter resubmitted on August 10, 2020.

ISSUES

1. Shall ELARC provide Independent Living Services (ILS) or Supported Living Services (SLS) at a 2:1 or 1:1 staff ratio? (OAH Case No. 2019120044.)³

³ ELARC filed a motion to dismiss Issue One on the ground that claimant's fair hearing request only referenced ILS services, not SLS services. ELARC's motion to dismiss is marked as Exhibit 35. ELARC's motion to dismiss is denied. During the hearing parents provided testimony, which was supported by the operative

2. Shall ELARC provide Crisis Behavioral Training (CBT) services in addition to the Crisis Response Project (CRP) services provided? (OAH NO. 2019120045.)

EVIDENCE RELIED UPON

In reaching this Decision, the ALJ relied upon claimant's exhibits A-M(1)-(18) and N-P⁴, and exhibits 1-34 submitted by ELARC, as well as the testimony of Becky Ly, and claimant's father and mother.

SUMMARY

Claimant requests the continuation of SLS and ILS services on a 2:1 ratio due to claimant's violent behavior, which resulted in a charge and criminal conviction for assault with the intent to inflict great bodily harm in 2019. ELARC maintains 1:1

independent program plan (IPP) and other exhibits, which made it clear that the parties had initially agreed to SLS services and those services were modified to ILS due to claimants changed circumstances. The evidence established that ILS services were in place as an interim service, pending claimant's intended move to her own apartment where ELARC, as part of the operative IPP, agreed to provide SLS services. As such, the number of caregivers providing support is part of the claimant's issue regardless whether the service is ILS or SLS.

⁴ ELARC's Purchase of Service Guidelines, Exhibit 5 was admitted without objection pursuant to official notice. (Gov't. Code § 11515.)

services may have been justified at the time of the assault but are no longer justified, and has offered instead 1:1 services as part of SLS and/or ILS.

Claimant also requests the continuation of twice-weekly CBT services with its applied behavioral analysis (ABA) component, which were reduced by ELARC to twice monthly services. ELARC maintains that the CBT services were temporary and were not meant to be ongoing, and that the crisis intervention services, which provide 24-hour support in the event of claimant's threatened or actual violent behavioral outburst, have not been terminated and will continue with ILS and SLS.

Claimant and her family have faced extraordinary challenges due to the Covid-19 pandemic. The stress of maintaining their disabled adult child in the home with their younger neurotypical child, with interruptions in services, understandably has taken its toll. During the course of this hearing, which was further delayed by the pandemic, and extended to capture evolving circumstances, ELARC and the family moved closer to resolution and to the provision of necessary and agreed-upon services. However, the parties decided to proceed with the fair hearing to reach a final determination of the issues through the fair hearing process.

With regard to Issue One, based upon the evidence provided, claimant does not require supervision on a 2:1 ratio, but the 1:1 ratio of service must be supported by ABA oversight and the crisis intervention services currently provided by CRP.

With regard to Issue Two, based upon the evidence provided, there is not an ongoing need for CBT services twice weekly. The initial training was necessary to provide the family and claimant with tools to manage or reduce the escalation of claimant's behaviors, especially after the assault, but not ongoing support. With 1:1 supervision during SLS, which has a built-in training and management component for

claimant, there is no further need for CBT. It would be beneficial to keep in place twice monthly CBT consultation services with the transition ILS services. There is an ongoing need for crisis behavior intervention services, which ELARC has not terminated.

Background and Jurisdiction

1. Claimant is a 22-year-old consumer of ELARC based upon her qualifying diagnosis of autism. She also has been diagnosed with schizophrenia. Further complicating her behavior is claimant's diagnosis of Type 1 Diabetes/brittle diabetic, which requires limitations on her choice of foods and supervised care per her endocrinologist to manage and monitor her condition. Claimant must inject insulin daily, a number of times not established by the evidence. Claimant is verbal, fully ambulatory and able to perform self-help tasks independently, but needs prompts or assistance to complete them. She is prone to aggression and wandering away on her own, which has also required her to be supervised at all times. Claimant lacks the necessary boundaries to keep her safe in the community without assistance.

2. Claimant currently lives with her younger sister and her parents. She enjoys being with her family. Prior to the Covid-19 pandemic, she saw her extended family on holidays or when she went swimming at her relative's pool. By court order dated January 21, 2020, parents have been appointed claimant's limited conservators.⁵ Claimant enjoys listening to music, participating in her church's teen group, applying make-up, cooking, and going to the mall and movies with her mother. Claimant's mother would like her to attend a cosmetology school.

⁵ Parents may have been appointed earlier, as suggested by the evidence, but this court order is the clearest evidence of their appointment.

3. Between June 11, 2018 through February 21, 2019, Claimant lived in an apartment separately from her family and received SLS at the rate of 24 hours, seven days a week. Parents removed claimant from her apartment due to their concerns about her safety after they observed a deep bruise on her calf. The SLS agency filed a report with Adult Protective Services (APS), but there is no evidence that a report was prepared summarizing its investigation, if any. Parents were told by APS to keep claimant with them at their home until the investigation was completed, but they were never informed whether it was completed. Claimant was examined by her own doctor who concluded that there was no evidence of abuse or trauma, and the bruise was the result of a fall claimant sustained in January 2019.

4. Based upon the IPP dated April 29, 2019 (2019 IPP), it was the intent of the parents and ELARC to fund SLS for claimant when she returned to her apartment from her parent's home. Claimant's apartment is located one-half mile from the family's residence, within the jurisdiction of another regional center. Claimant's assault of an in-home personal assistant, followed by her arrest and conviction, delayed her move to the apartment and the implementation of the SLS services. In the interim, during the time claimant continued to live with her parents, ELARC had agreed to provide ILS. The Covid-19 pandemic, problems with existing ILS providers, and issues related to the vendorization of SLS providers, created obstacles to both the provision of ILS services and claimant's transition to SLS.

5. During the 2019-2020 school year, claimant was placed by her school district in Almanson Learning Center, where she focused on skills to prepare her for independent living and employment. Through the school district, claimant received services to access her education, including one-on-one assistance throughout the school day, psychological counseling, and a behavior support plan. Her educational

program and related supports officially terminated at the end of the end of the 2019-2020 school year, in or about May or June of 2020, after claimant reached 22 years of age in March 2019. Due to the pandemic, the services and supports she received during the school day terminated a few months prior to her graduation.

6. While claimant continued to live with her parents, it was their expectation that CBT, which helped them manage claimant's behaviors, would continue. Instead, at some point, it was terminated.

7. These consolidated cases arose from disputes between the parties concerning the scope of support services required either in the family home (i.e., ILS) or in claimant's apartment (i.e., SLS), and family training to ensure a consistent approach to addressing claimant's behaviors.

8. On November 12, 2019, ELARC issued a Notice of Proposed Action informing claimant and parents that ILS services provided by Buena Vida Learning Services (BVLS) would be reduced from a 2:1 to a 1:1 staffing ratio. This decision was based on information from claimant's schools and BVLS, as well as the observations of claimant by ELARC's personnel. ELARC confirmed it would continue to fund ILS on a 1:1 staffing ratio. (Issue One.) The issue was expanded to include both ILS and SLS services

9. On November 12, 2019, ELARC issued a Notice of Proposed Action informing claimant and parents that ELARC was reducing CBT services provided by the CRP. The reason provided was that the program for weekly visits concluded. ELARC confirmed it would continue to conduct behavioral management visits twice monthly for six months, and continue providing CRP crisis support services "24/7." (Issue Two) (Ex. 20.)

10. Claimant timely appealed the Notices of Proposed Action. Issue One was designated as OAH No. 2019120044 (primary case), and Issue Two was designated as OAH No. 2019120045 (secondary case).

11. All jurisdictional requirements have been met for this consolidated matter to proceed to hearing.

Claimant's Disputed Services

12. Claimant must be supervised at all times due to her behaviors. Claimant must be encouraged by a personal assistant to apply techniques she has learned through behavior modification training to redirect these behaviors so they do not escalate. The personal assistant is directly responsible for managing claimant's behaviors, and if claimant's behaviors escalate such that she is a danger to herself or others, the personal assistant is required to request assistance crisis support services from the CRP.

13. After February 2019, claimant returned to the family home and ELARC funded a 1:1 personal assistant to provide assistance to her in the home. Those services fall under the category of ILS services.

14. In determining the ILS services required, ELARC is guided by its Purchase of Service (POS) Guidelines for ILS (October 4, 2018). The POS Guidelines are consistent with the goals of the Lanterman Act to provide specialized services to consumers so that they can access their community, and to provide those services once generic resources are used. The POS Guidelines provide that ILS services

may be purchased for adult consumers, consistent with his or her individual program plan, that provide the consumer

with functional skill training that enables him or her to acquire or maintain skills to live independently in his or her own home, or to achieve greater independence while living in the home of a parent, family member or other person. ILS training focuses on teaching functional skills to adult consumers who generally have acquired basic self-help skills or who have attendant care and require additional skills to maintain themselves in their chosen living arrangement. Training areas may include, but are not limited to: cooking, cleaning, menu planning, meal preparation, shopping, money management, parenting, sexuality training, health care appointment management, homemaking skills, community inclusion training, community/emergency resource awareness.

(Ex. 5.)

15. An assessment by ELARC or its vendor precedes the beginning of services and is used to determine the services and number of hours required. The POS Guidelines state that the ILS hours are "typically arranged for six months, but an additional six months may be authorized after a review of claimant's progress." (Ex. 5.)

16. On March 26, 2019, claimant assaulted her personal assistant, who shared her bedroom in the family home, after the personal assistant entered the bathroom to tell claimant to turn off the water and stop drinking from the faucet. The personal assistant had been working and living with claimant in her room for only two weeks.

17. One of claimant's atypical behaviors is to attempt to take showers multiple times during the day, take excessively long showers, and keep the water running in the bathroom. Behavior modification efforts have focused on redirecting her from this behavior. Claimant was triggered by what she considered the personal assistant's intrusion on her personal space.

18. Once back in the bedroom and in their beds, the personal assistant reminded claimant that drinking sink water was bad for her. Claimant became angry, climbed down from her bed, which was the top bed of a bunk bed, dragged the personal assistant from her lower bunk bed to the floor, and physically assaulted her by kicking her head.

19. At some point after claimant stopped her assault, the personal assistant was able to run out the door and outside the home, where claimant's mother waited for her in the family car. Claimant's mother called the police. Claimant admitted the personal assistant had not tried to physically hurt her and that claimant had lost control of her emotions.

20. Claimant was arrested and charged with assault likely to produce great bodily injury under Penal Code section 245, subdivision (a)(4). During claimant's detention in jail after her arrest, parents agreed to keep her away from the family residence. ELARC and claimant's parents agreed to place her in a group home. ELARC, with parents' agreement, funded claimant's temporary placement at College Hospital until a group home was identified. (Ex. 4.) There is no evidence claimant qualified for and was placed in a group home at any time.

21. Claimant's 2019 IPP was conducted at College Hospital. Claimant participated in the IPP with her parents and signed it. In that IPP, ELARC agreed to

provide the following services relevant to the proceeding between April 2019 and March 2020, pursuant to ELARC's POS Guidelines: SLS services at a 2:1 ratio, 24 hours per day, seven days per week; if SLS was not an option, residential placement with 1:1 supplemental support, seven days per week; crisis services, including CBT and immediate crisis support by CRP, as needed. (Ex. 4.) The staff assigned to the SLS were also required to implement behavior interventions to de-escalate claimant's behaviors; request support from CRP in the event of a crisis, assist claimant in accessing generic resources, e.g., Medi-Cal, to explore anger management services, and to assist her with monitoring her blood sugar levels and implementing the recommendations of her endocrinologist. ELARC encouraged parents to participate in CBP to assist claimant with her behaviors and to train the staff working with claimant so that they can address behavior episodes without contacting the police. ELARC represented that the services can be provided initially at the family home and then at claimant's apartment. (*Ibid.*)

22. The intent of the IPP planning team members, including claimant and her family, was to provide SLS to support claimant when she returned to her own apartment. In the interim, however, ELARC agreed to provide ILS services to support claimant at home in order to "facilitate independence." (Ex. 9.)

23. These services were provided by the vendor BVLS. On August 7, 2019, BVLS assessed claimant at her parents' home to evaluate her skills and to establish specific objectives in the following ILS skill areas: daily life, challenging behaviors, physical and social environment, and health and safety. (Ex. 9.) The assessment did not reveal any new deficits or previously unknown deficits. The assessment confirmed that claimant has the basic skills to perform most functions of daily living, including self-care, basic food preparation, household chores, and transportation, but she needs

assistance or prompting to complete them. Claimant needs more direct assistance in the area of money; she does not know the value of money or how to count money. She requires eye glasses, but does not like to wear them. Her cognitive skills are not at the level of her same-aged peers; she reads and comprehends at a fifth-grade level. The BVLS assessment noted her disruptive behavior by history, but reported that most of the "behaviors are directed towards her mother." (*Ibid.*) Her perseverative behaviors not only include her repetitive showers and running the water in the bathroom, but also her fixation on her blemishes or bruises which result in bleeding. She also breaks or damages property, e.g., she broke a window, a wall switch, and locked kitchen cabinets to access snacks, which she should not have because of her diabetes. (*Id.*)

24. The BVLS assessment also provided in detail the specific support and tasks necessary to support claimant's ILS in a wide variety of areas. BVLS recommended 992 hours per month in ILS in the following areas, with a program update within six months after initiation of services to implement strategies in the community to facilitate ILS: domestic skills (100 hours); social skills (100 hours); education (100 hours, which included school, generic resources, but also training at home); financial management (92 hours); safety awareness (100 hours); physical fitness (75 hours); medical (125 hours to appreciate preventive health, sugar levels, scheduling of medical appointments, communication with medical providers); and behavior support (300 hours). (Exh. 9.)

25. Beginning on June 17, 2019, after claimant returned home from College Hospital, she was provided ILS services on a 2:1 ratio each day of the week.

26. At home claimant was provided CBT from the CRP, which also provided 24-hour crisis intervention services. The IPP stated that the rate and frequency of the services would be twice weekly through March 2020. On August 23, 2019, the CBT

program prepared a progress report, which identified persistent problems with claimant's ability to communicate, her becoming upset with not being allowed access to preferred snacks, her caregivers' reliance on CRP to obtain face-to-face support for her verbal aggression, her continued verbal aggression with caregivers when she is reminded of punctuality and time management, and her daily behavior of talking to herself, losing focus on her tasks, and failing to remember what triggered her behavior. Goals were reviewed and recommendations made, including claimant's mother being consistent. The CBT trainer and program coordinator recommended an extension of the program until October 31, 2019. (Ex. 22.)

27. Claimant's continued participation in her school-based educational program was considered in the IPP. Her educational program at that time was the same as set forth in the individualized education program (IEP) dated October 10, 2019, prepared by the West San Gabriel Valley Special Education Local Plan Area (SELPA). (Ex. 10.) Claimant's school program was five days a week and focused on vocational training and independent living skills. To access her education, claimant was provided with a 1:1 aide throughout the school day and a transportation aide to accompany her on her round-trip to and from school. Claimant had difficulty interacting with peers, exhibited some socially inappropriate behaviors, such as hugging them without their permission and becoming angry when rejected. However, no incidents of violence were reported. (Exs. 4, 10.) In addition to claimant's parents, in attendance at the IEP meeting were a full range of specialists from the SELPA, two certified behavior analysts, and two ELARC representatives, including Becky Ly, claimant's service coordinator, who testified at the hearing.

28. On July 12, 2019, in Case No. GA10608, in the Superior Court of California, County of Los Angeles, a criminal complaint was filed against claimant for

violating Penal Code section 245, subdivision (a)(4) (assault with force likely to produce great bodily injury), a felony. The court released claimant on her own recognizance on the condition she cooperate with her parents and caregivers.

29. By the summer of 2019, and through early 2020, there was considerable turmoil with the ILS service providers from BVLS, despite the 2:1 ratio. Claimant's parents observed the caretakers to be either inattentive, e.g., spending time talking to each other or on their cell phones, or lacking the behavior management experience necessary to effectively provide the support claimant required to modify her behaviors and acquire the skills needed for independent living. BVLS accused the parents of engaging in verbal arguments with each other, claimant's mother interfering with or undermining their efforts to exercise supervision over claimant, having the caretakers wait for her and claimant when she decided to take claimant out of the home, or claimant's mother living with claimant at the apartment or moving claimant to the apartment prior to the institution of SLS. The complaints of the service provider, BVLS, were not established by the evidence, because the service provider did not testify and claimant's parents disputed the service provider's accounts as a defense to their legitimate concerns. Nevertheless, the weight of the evidence established that the behavior component, not the 2:1 ratio, is the significant factor in determining the appropriateness of ILS or SLS services.

30. On October 24, 2019, after the court reduced the felony to a misdemeanor, claimant entered a plea of guilty to assault. The court, finding a factual basis for claimant's plea, suspended claimant's sentence and placed claimant on summary probation for a period of 36 months under terms and conditions including serve eight days in custody with four actual days served and four good time/work time credit, successful completion of a 52-week approved anger management program with

proof of completion to be filed no later than November 11, 2020, continue with the counseling and programs set out in an attached e-mail and incorporated within the court file, and remain in and complete the program with BVLS.

31. The e-mail was never produced as part of the court docket, and the parties did not submit the e-mail. Nevertheless, the parties generally acknowledged during the hearing that, as part of the plea agreement, claimant agreed to continue with supervised care on a 2:1 ratio and crisis intervention services on a twice-weekly basis. She also agreed to maintain existing support services with BVLS. Her criminal defense attorney provided the following explanation in a letter dated November 6, 2019, addressed "To Whom It May Concern:"

Part of [claimant's] agreement with the court was that she continue receiving the same level of care that she was on October 24, 2019. Namely, this includes [claimant] being supervised by two caregivers at a time and that she receives treatment from Crisis Intervention Services on a twice weekly basis.

Essentially, [claimant's] successful completion of probation relies upon maintaining the current status quo of her treatment. Discontinuing the current services would place [claimant] at risk of being in violation of court-ordered conditions of probation.

(Ex. 7.)

32. ELARC was first notified of the terms of claimant's probation after the plea had been reached, and it is undisputed that ELARC did not participate in the

criminal proceeding. There is no evidence that the court exercised jurisdiction over ELARC as a means of enforcing the terms of probation. As such, claimant was bound by the terms of the plea agreement, but not ELARC.

33. Soon after claimant's conviction, twice-weekly CBT services were terminated on October 31, 2020. There was a dispute as to whether the twice-weekly CBT program should have terminated on October 31, 2019, given that the IPP provided it would not terminate until March 2020. ELARC concedes it erred in the IPP. According to the vendor, the program was designed as a three-month program, but was extended to five months. Claimant maintains the parents never received notification of the program's early termination, However, the evidence established that CRP notified claimant's parents. According to the communication with ELARC, CRP was of the opinion that "claimant made significant improvements during the five months and there is no need for extension of the CBT Program." (Ex. 23.)

34. Despite CRP's report of claimant's improvements, claimant's mother advised CRP of behavioral concerns which were not adequately being addressed by her caregivers from BVLS, who she thought "triggered" claimant's behaviors and were inexperienced. (Ex. 23.) Claimant's mother insisted claimant required the twice weekly visits, which were in the IPP and court order, and authorized through March 2020. CRP responded that claimant has come a long way, that caregivers must be consistent in applying the techniques taught, and that her concerns about the caregivers were more appropriately communicated to the BVLS supervisor. (*Ibid.*)

35. After the CBT services terminated, CRP committed to conducting behavioral management visits for an additional six months, twice monthly to check on claimant's well-being. (Ex. 23.) These services were provided.

36. In an effort to resolve the IPP error ELARC made in offering CBT services until March 2020, it reached out to CRP to extend the twice-weekly program until March 2020. CRP stated that its contract with ELARC is limited to nine clients, and that another opening would not be available until January 2020. However, ELARC never followed through with CRP and ultimately determined the twice-monthly services were sufficient. (Ex. 24, and Ly Testimony.)

37. At or after the termination of CBT twice-weekly services, ELARC was informed of the plea agreement which essentially required the continuation of all services in the 2019 IPP. On November 20, 2019, ELARC's counsel sent a letter to the Judge presiding over the criminal matter, providing detailed information about its lack of notice, the nature of claimant's relationship with ELARC as a consumer eligible for services⁶, and the overall role of the regional centers in California. In its counsel's letter, ELARC advised the court that it was not "provided notice regarding any disposition which included terms and conditions of probation linked to supports and services provided by Regional Center and its vendors," the process and laws related to the determination of services, the individual program planning process, and the dispute-resolution process between consumers and regional centers through an administrative fair hearing. (Ex. 8.) ELARC's counsel recommended the court modify the probation to "reflect that she shall continue to avail herself of those agreed-upon supports and services provided by Regional Center and its vendors pursuant to her Individual Program Plan (IPP)." (*Id.*) In the alternative, ELARC requested to be heard by

⁶ The letter incorrectly identified intellectual disability as the basis of claimant's eligibility for regional center services.

the court regarding any agreement that “compels ELARC or its vendors to provide supports and services not otherwise agreed upon through the IPP process.” (*Id.*)

38. Claimant may be held responsible for the services she agreed to as part of her plea; however, there is no evidence that the court exercised jurisdiction over ELARC to enforce claimant’s agreement to continue with services ELARC provides. There is no evidence the court responded to ELARC’s letter, modified the probationary terms to reflect its counsel’s letter of November 20, 2019, or held a hearing as requested by ELARC’s counsel.

39. Claimant provided no evidence that the court found her to be in violation of her probation. Due to the pandemic, claimant’s compliance with her anger management program may be delayed.

40. In January 2020, parents and ELARC continued their communications about the transition to SLS training and claimant’s return to her apartment. Claimant’s parents wanted assurances about the training of the providers and their ability to implement approved crisis management strategies, as well as “sophisticated intervention procedures,” in addition to a continuation of the 2:1 staffing ratio “currently in place be continued, at least for her transition out of the family home, and until she is acclimated to her new living environment. Based on how [claimant] adapts, it is likely that this level of staffing can be decreased to 1:1 fairly quickly, but should be done systematically, starting with the time of least activity and least likelihood of outburst behavior (perhaps sleep hours).” (Ex. 19A.)

41. At the end of February 2020, claimant was doing fairly well according to with her bi-weekly management visits and had made some improvements, including expanding her ability to express her emotions. (Ex. 31.) On February 25, 2020, the

behavioral management consultant visited with the family and reported that claimant's mother wanted claimant to continue with anger management courses, but overall she was doing very well, utilizing positive self-talk to de-escalate and stabilize her mood, identifying her feelings, and engaging in her workability program (at school) by working at Old Navy and with the prospect of working at another store on February 27, 2020, once a week for two hours. (*Ibid.*) Despite these improvements, the weight of the evidence established that claimant still has deficits and requires daily interventions in all the areas identified in her BVLS and CRP assessments.

42. On February 28, 2020, BVLS provided ELARC and claimant with a 30-Day Notice to Terminate Services, effective March 27, 2020. In that letter, BVLS detailed its many accusations against claimant's mother, in the areas of staff favoritism, interfering with the implementation of interventions and services, and making unfounded accusations against the staff manager, which according to BVLS, created a "hostile working environment." (Ex. 19B.) During the hearing, claimant's mother denied these accusations as nothing but retaliation for her identifying problems with their staff and the management of claimant's case.

43. Claimant continued to have incidents through the time of the hearing, where her parents needed to call CRP for its 24/7 crisis intervention. In one recent incident claimant's mother described, claimant was arguing with her sister and threatened to harm her. Claimant's mother had to remove her younger daughter to the car and call crisis intervention. The service provider was able to speak with claimant, confirm from claimant that she had no intent to harm her sister, and de-escalate the situation without physically coming to the home. In a May incident, claimant had escalated after refusing to watch a school assignment, which required her to view a news program on television. (Ex. 33.) However real and frightening these

and other incidents were to the family, the crisis support was provided, claimant's behaviors de-escalated, and the intervention was effective. (See *Ibid.*)

44. Becky Ly, claimant's service coordinator, testified on behalf of ELARC. She had either directly been involved in the communications with claimant's parents or vendors, had been informed of the communications, or established she understood the practices of ELARC and its vendors. She was able to provide a foundation for the exhibits and the chronology of events. Her testimony generally was limited to the exhibits and was credible. Ly admitted to the error in the IPP with regard to the full year of CBT services, and attempted to correct it with the vendor by extending it, even though the data from the vendor and the family showed that she no longer required twice weekly services. Ly never followed through once the vendor stated it had no availability or it had attempted to work with ELARC personnel for an exception.

45. Claimant's parents questioned the vendor's motivations in terminating ILS services, or the expertise of particular individuals to evaluate services provided by the vendors, or claimant's ongoing needs, when ELARC personnel were not trained to provide those services. Claimant's parents maintained that cost-saving was behind ELARC's motivation to limit services. Ly capably explained ELARC's reliance on the reports of vendors and the deference ELARC gives to its vendors' relationships with claimant and the reports of the vendors about claimant's progress and deficits, which are memorialized in any assessment performed by ELARC personnel. Ly also persuasively discounted claimant's parents' doubts about the motivations of claimant's service providers by stating that ELARC's oversight has not found any systematic complaints about the provision of services.

46. Claimant's parents provided heartfelt, detailed and compelling evidence of their struggles to provide claimant with adequate services to protect her, provide

her the skills for independent living, and to have her move to her own apartment which is paid for by her SSI funds. Claimant's parents detailed delays and errors made by ELARC which ELARC largely does not dispute, but their claims that ELARC's decisions were based on a lack of information, or its errors were based on a desire to save funds, with one important exception, was not supported by the evidence.

47. Claimant's parents correctly noted that ELARC was misguided in its reliance on the school district's IEP in determining to reduce ILS or SLS supervision from 2:2 to 1:1. As claimant's parents correctly note, claimant's relatively benign behavior at school was due to its structured environment and support from highly-trained and educated 1:1 aides with applied behavior analysis training. Her school aide is a registered behavior technician "which is a level of certification with the Behavior Analyst Certification Board (BACB) which requires a certain level of training and on-going supervision of which she regularly receives in order to maintain her certification." (Ex. 13.)

48. Claimant's parents provided ample exhibits and testimony to support their contention that their interactions with the service providers and ELARC were based upon well-founded concerns. Their concerns are genuine, but overall it is not material to the determination of the issues whether the parents or the vendors were correct in their accusations of wrongdoing, misconduct, or negligence, but to determine, based on the evidence of claimant's current status, what is required to provide her with the best opportunity for independent living. From their own experience living with claimant, the parents established continuing issues with behavior and instances where behavior has escalated to the point where CRP's crisis intervention services were required.

49. A long time has passed since claimant's conviction, and due to the circumstance of Covid-19, the fair hearing proceeded over a period of time which resulted in an evolution of the service model desired by claimant and acceptable to ELARC. As a result of BVLS' termination of services and the Covid-19 pandemic, the continuation of ILS services or the transition to SLS services has been delayed and, for a variety of reasons, the parties struggled to resolve their disputes. Parents were not ready to have anyone inside their home to due risks associated with Covid-19 and wanted to have a hybrid approach to ILS or SLS services, where transition services would be provided at claimant's apartment during the day. ELARC offered hours of transition services to be provided at parent's home outside, but parents did not accept the number of hours offered or the location. ELARC maintained ILS had to be kept distinct from SLS services, and that the transition services offered at one time, of up to 30 hours a month, were appropriate.

50. By the last day of the fair hearing, the parties appeared to be approaching a resolution to achieve the goal outlined in the 2019 IPP of transitioning claimant to SLS and her own apartment. The parties had agreed to a vendor, Roman Empire, but during claimant's parents' discussions with Roman Empire, they discovered that a component they insisted on, oversight/training of the providers in ABA by a board certified behavior analyst (BCBA), was missing, and required an additional authorization. Due to the complexities of vendorization, and the location of Roman Empire's ABA services in another catchment area, Roman Empire required authorization from another regional center, North Los Angeles Regional Center (NLARC), to provide these services. (Cal. Code Regs., tit. 17, § 54326(a)(14).)

51. In response to the request of the administrative law judge for additional information after the last day of the fair hearing, ELARC provided a status of the

progress made in securing and initiating SLS services and the assessment provided by Roman Empire, required before services can be started. (Ex. 34.) Based upon Roman Empire's assessment, (Exhibit 34(1)), the service shall include skills training and personal assistance, seven days per week, with support at a 1:1 ratio (16 hours per day of skills training and 8 hours per night of personal assistance). Skills training refers to the specific objectives described throughout the assessment and covers the full range of her deficits in adaptive skills addressed in previous assessments, and additional age-appropriate services including money management, self-care, health, community resources and safety skills, and self-advocacy and legal aid. (Ex. 34.)

52. ELARC and Roman Empire finalized and executed the contract for providing this support to claimant on June 6, 2020. (Ex. 34(2).) ELARC negotiated an amount of \$21, 256 per month for Roman Empire's services which includes: 411 hours per month of training habilitation, 138 hours per month of personal assistant support, and 155 hours per month of overnight support. The negotiated rate also includes an administrative cost of 15 percent. The contract in ELARC 2 enumerates the rate for each of the services that totals to the negotiated amount. (Ex. 34.)

53. ELARC reported that Roman Empire is currently in the process of vendorizing their ABA program with NLARC as required, that NLARC has made recommendations to align Roman Empire's program design to ABA and the applicable regulations, and that NLARC is waiting for Roman Empire to respond so that the contract can be completed. The timeline for the completion of the contract is not within the direct control of ELARC. (Ex. 34.)

54. In the interim, ELARC, beginning on July 15, 2020, has implemented ILS services in the home with the same service provider, Roman Empire, eliminating the

need for other transition services. The service is scheduled to terminate no later than December 31, 2020. In its letter dated [date], ELARC wrote:

From July 15, 2020 the IPP team has implemented 8 hours per day, 5 days per week Independent Living Services with Roman Empire. See the authorization in ELARC 4. This amounts to 184 hours per month. Communication with the vendor has shown that Roman Empire has been working with the claimant in the home and that Roman Empire is learning about the family nuances and client's needs prior to transitioning into the SLS placement. Throughout the proceeding, the claimant representatives have contended that they will not have the claimant move into independent SLS placement without the ABA component. The regional center and vendor have executed their agreement for rendering SLS. At this time, ELARC is committed to maintaining the authorization in ELARC 4 with the hope that Roman Empire can satisfy vendorization requirements for their ABA program within that time period. Once the ABA component is in place, the claimant should be able to move into her home with the full support of SLS because Roman Empire will have been providing ILS services full-time, 5 days per week.

(Eh. 34 (Letter and 34(4).)

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Lanterman Act), found at Welfare and Institutions Code section 4500 et seq.⁷ An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) However, a regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this instance, ELARC is proposing the change in services; therefore, it has the burden of proving its decision is correct.

3. Under section 4620, subdivision (c), regional centers are responsible for providing services and supports for individuals with developmental disabilities. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the

⁷ All references are to the Welfare and Institutions Code unless otherwise specified.

social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (§ 4512, subd. (b).) Among the services and supports that may be provided are supported living services, under section 4512, subdivision (b), and independent living services under section 4688.05, as well as other services, including here, CBT and crisis intervention services by CRP. In doing so, a regional center must respect the choices made by consumers and their families under section 4502.1.

4. The Lanterman Act addresses the collaborative nature of the decision-making process regarding those services that are to be supplied or funded by the regional center. This is accomplished by the IPP process, which is described and referred to in numerous sections of the Lanterman Act. Statutory guidance for the process of developing an IPP can be found, among other places, in sections 4512, subdivision (b), 4646, 4646.5, 4647 and 4648.

5. In emphasizing the collaborative nature of the IPP process, the Lanterman Act does not disregard the need for cost-effective services. Flexibility and cost effectiveness of services is described in many places. One example is section 4648, subdivision (a)(2), which provides that services and supports must be flexible and individually tailored to the consumer, and where appropriate, his or her family. Section 4648, subdivision (a)(6)(D) provides, in part: “The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer’s individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected.” Cost effectiveness is also

addressed in sections 4512, subdivision (b), 4640.7, subdivision (b), 4648, subdivision (a)(11), 4651, subdivision (a), 4669.2, subdivision (a)(2), 4685, and 4697, subdivision (b)(2).) There is also a reference to cost effectiveness in California Code of Regulations, title 17, section 54349, subdivision (g)(1), which provides that a regional center "shall authorize a SLS vendor to provide a service only if such service . . . is cost-effective." "Cost-effective" is defined as "obtaining the optimum results for the expenditure." (See Cal. Code Reg., tit. 17, § 58602, subd. (f), and § 58501, subdivision (6).)

6. During the hearing, claimant challenged ELARC's reliance on its POS Guidelines, and suggested that the services in dispute were modified or terminated due to cost considerations. ELARC is required to consider cost-effectiveness in the provision of services. Effective September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Nevertheless, the evidence established that ELARC's offered services in the areas of SLS, ILS and CBT were not chosen merely on the basis of cost but based upon claimant's needs as set forth in the 2019 IPP.

7. There are numerous provisions of the Lanterman Act and its regulations governing SLS services. Under section 4354, SLS "means a range of appropriate supervision, support, and training in the consumer's place of residence, designed to maximize independence." Further specifications are found in California Code of Regulations, title 17, section 58614, subdivision (a), which states that SLS consists of individually designed services which assist an individual consumer to live in her own home, "with support available as often and for as long as it is needed," and to "make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable

relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home." SLS must be "tailored to meet the consumer's evolving needs and preferences for support so that the consumer does not have to move from the home of choice." (*Id.*)

8. Under California Code of Regulations, title 17, section 58617, the list of services under SLS includes, inter alia, assistance with common daily living activities such as meal preparation, including planning, shopping, and cooking; performing routine household activities to keep a clean and safe home; locating and scheduling medical services; acquiring household furnishings; becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community; managing personal financial affairs; recruiting, screening, hiring, training, supervising, and dismissing personal attendants; dealing with governmental agencies; asserting civil and statutory rights through self-advocacy; building and maintaining interpersonal relationships, including a circle of support; participating in community life; and 24-hour emergency assistance. Further, a regional center is obligated to assess the projected annual costs of the consumer's supported living assistance, as determined through the IPP process, before SLS is provided.

9. In contrast to SLS services, ILS Services are provided to adult consumers, consistent with their IPPs, for the purpose of providing functional skills training which enable them to acquire or maintain skills to live independently in their own homes, or to achieve greater independence while living their family's home. (section 4688.05.) As set forth in the POS Guidelines and in the BVLS assessment, the functional skills training provided to claimant addressed the similar areas of deficits identified by Roman Empire in its most recent assessment.

10. With regard to Issue One, it is clear from the 2019 IPP that it was always the intent of ELARC and claimant and her family for claimant to return to the apartment she had secured with her SSI and for ELARC to support her independent living with SLS services. Claimant was also advised by the district attorney in her criminal case to remove herself from the family home, which she did by going to College Hospital, also as an interim measure, before placement in another setting.

11. Claimant's plans to become independent and live separately from her family were delayed by her conviction in 2019 and further delayed in 2020 by the Covid-19 pandemic. ELARC provided claimant with ILS services from BVLS on a 2:1 ratio, which was required after the assault and her arrest.

12. Claimant's parents were not satisfied with the ILS services provided, despite the 2:1 ratio. The weight of the evidence established that claimant's parents were willing to consider 1:1 support after a time of transition, and that their primary concern was the provision of services provided by experienced staff trained in behavior interventions. Further, the staff who was assaulted by claimant in March 2019 had only been with claimant a short time.

13. ELARC met its burden of proof that a 2:1 ratio of staffing is not required to currently manage claimant's behaviors. The critical component of claimant's services is not the 2:1 staff ratio but having staff trained in behavior interventions. Claimant received effective 1:1 services in the school setting. These services were provided by individuals trained as or supervised by certified behaviorists. There was substantial evidence of problems with the BLVS service providers despite the 2:1 ratio, and claimant's parents attributed those problems to lack of training or negligence. Claimant will continue on occasion to exhibit more aggressive behaviors. These behaviors have been effectively handled, without police intervention, by CRP on a 24/7

basis. This support shall continue. Although claimant agreed to continue 2:1 services as part of her plea agreement in the criminal case, ELARC is not bound by her agreement, and the evidence established that 2:1 services are not directly related to reducing or eliminating claimant's more violent reactions, or to the protection of the public.

14. ELARC met its burden of proof that CBT on a twice-weekly basis is no longer required, but not its burden of proof that CBT services are no longer required at all. This service was established to train all caregivers and claimant with consistent strategies to enhance her adaptive skills and to reduce maladaptive behaviors. The training was not meant to be long-term. Claimant's parents' main concern was the persistence of claimant's behaviors and the need to continue reinforcing consistent strategies. Although ELARC erred in the IPP by stating the service would continue for a full year, it was provided on a twice-weekly basis for five months, and then reduced to a twice-monthly basis for another six months, which CRP maintained was sufficient. The evidence established that CBT services are no longer required twice weekly. Claimant's family received instruction about interventions and by now should understand the interventions and be using them consistently.

15. During the period of time ILS services are provided by Roman Empire, the family is in a position to observe close-up interventions used by the staff and their work assisting claimant directly, and can ask questions of staff to ensure consistency of interventions when the caregiver leaves at night and on weekends. Nevertheless, claimant's family will remain in the household without assistance at night and on weekends, and twice monthly CBT service consultations have been shown to be of assistance to the family in the absence of other providers.

16. With SLS claimant shall be assisted throughout the day by staff every day to become more responsible in applying behavior tools to enhance her adaptive skills in a variety of areas and to de-escalate her more violent reactions to events, and will have staff 24/7 from the same vendor. As such, CBT services are not necessary when SLS services commence.

ORDER

Claimant's appeal from the action proposed by the Service Agency is granted in part and denied in part, as follows:

1. Claimant's request for a 2:1 staff ratio for ILS or SLS services is denied.
2. Claimant's request for the continuation of CBT services, twice weekly is denied; However, ELARC shall continue to fund CBT consultation services twice monthly during the time claimant is receiving ILS services and remains in her family home. CBT services shall terminate when Roman Empires' contract for SLS services with the ABA component is finalized.
3. ELARC shall continue to fund CRP crisis intervention services.
4. ELARC is required to implement the ILS and SLS services set forth in Exhibit 34 and the attachments. ELARC shall actively monitor the progress with NLARC and Roman Empire to effectuate a contract so that the SLS services with an ABA component can be implemented as soon as the contract is finalized.

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5. Claimant and her family shall cooperate fully with ELARC and Roman Empire to effectuate the transition to SLS services once they are notified that the contract with NLARC and Roman Empire has been finalized.

DATE:

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.