

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

**In the Matter of:**

**CLAIMANT**

**v.**

**INLAND REGIONAL CENTER,**

**Service Agency**

**OAH No. 2020010622**

**DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 18, 2020, in San Bernardino, California.

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

Claimant's mother appeared on behalf of claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on February 18, 2020.

## **ISSUE**

Is IRC required to fund claimant's Applied Behavioral Analysis (ABA) hours with a service provider who is not currently vendored with IRC?

## **SUMMARY**

Claimant's most recent individualized program plan (IPP) provides that claimant is entitled to receive 38 hours per month of direct ABA services, in addition to 12 hours of "supervision<sup>1</sup>." The amount of ABA hours is not at issue in this matter. California Psychcare (CPC) has been providing claimant's ABA services since November 2018. As early as June of 2019, CPC expressed concern about providing services to claimant moving forward because of significant challenges posed by claimant's mother. Those challenges include claimant's mother cancelling sessions at the last minute, terminating staff, not being present during ABA sessions, being verbally argumentative and confrontational with ABA staff, and most important, not reinforcing the techniques taught in ABA. Claimant's mother also told CPC in January 2020 that they were terminated. Another vendor began providing services and experienced the same challenges.

Claimant's mother requested claimant's ABA services be provided by the Center For Autism Related Disabilities (CARD). CARD is not a vendor with IRC and has not requested to be vendored by IRC. IRC has many vendors that provide excellent and

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<sup>1</sup> Nobody explained in the hearing what constitutes "supervision."

high-quality ABA services. IRC is therefore prohibited from purchasing ABA services from CARD. Claimant's appeal is therefore denied.

## **FACTUAL FINDINGS**

### **Procedural History**

1. Claimant is a 23-year-old woman who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder (autism).

2. According to claimant's September 26, 2019, IPP, she qualifies for 38 hours of direct ABA services per month and 12 hours of supervision, among other services. Claimant's eligibility for 38 hours per month of ABA services and 12 hours of supervision is not at issue in this matter. Claimant's ABA services have been provided by CPC since approximately November 2018.

3. In approximately October 2019, claimant's mother requested claimant's ABA services be provided by CARD. CARD is not vendored with IRC.

4. On November 7, 2019, IRC sent claimant's mother a notice of proposed action denying her request for CARD to provide ABA services because CARD is not a vendor. IRC offered other options for ABA services.

5. On December 30, 2019, claimant's mother filed a fair hearing request. In the request, claimant's mother stated, "no ABA program that can provide effective ABA for her . . . ." In order to resolve her fair hearing request, claimant's mother stated she wanted a "full ABA program 35 hours per month with supervision . . . ." Attached to her fair hearing request, claimant's mother wrote:

Claimant has not had ABA program as per her IBA since early December. California psych care coordinator quit in November and she also has not had one of the therapist. She only received 3 hours of service every week instead of required ABA hours of 9 hours with therapist and 2 hours supervision. She shows aggressive behavior toward her sister and me and has struggle to be on time. During her last meeting in early December there was no body from California psych care and no report about her ABA was presented. I would like a transition to another ABA program as soon as possible to prevent regression of learned behavior. I saw someone from [the Institute of Behavioral Health] 3 weeks ago and if that program cannot provide her enough service then would like to request again CARD. . . .  
[all errors in original]

6. On January 21, 2020, OAH sent the parties a notice of hearing. The notice of hearing indicated that the hearing would commence at IRC on February 18, 2020, at 10:00 a.m. The notice of hearing provided pertinent sections of the Lanterman Act relating to the procedure of the administrative hearing, including statutes applicable to continuances. That provision stated:

A continuance of this hearing may be granted **only for good cause** as defined by law. (Welf. & Inst. Code, § 4712, subd. (a).) A continuance **request** must be made to OAH. The request should be in writing and a copy sent to the other party. The request may be mailed, or electronically

submitted to OAH at [www.applications.dgs.ca.gov/oah/oahsftweb](http://www.applications.dgs.ca.gov/oah/oahsftweb). If time does not permit a written **request**, you may **request** a continuance by telephone. The san Diego OAH number is (619)525-4474. A continuance may require you to waive statutory timelines for the hearing and decision. A waiver form is available from OAH, the OAH website, or your service agency. [Emphasis added.]

7. On February 13, 2020, as required by and in accordance with applicable law, IRC sent claimant's mother a letter identifying the witnesses it intended to call. The letter also had IRC's hearing exhibits enclosed.

8. Claimant's mother did not disclose any witnesses to IRC and did not send any hearing exhibits to IRC.

9. February 20, 2020, was President's Day, a state holiday. OAH was closed. Claimant's mother left a message indicating that she would not be coming to the hearing the next day because she had to take her daughter to school. OAH did not receive the message until approximately one hour before the commencement of hearing. OAH staff contacted IRC, which opposed the continuance request. OAH staff contacted the undersigned, who tentatively denied the continuance request and ordered claimant's mother to appear in accordance with the notice of hearing.

10. At 10:00 a.m., IRC was present with its witnesses and claimant's mother was not present. IRC called claimant's mother who said she was on her way. Claimant's mother arrived at 10:30 a.m.

11. Claimant's mother, prior to going on the record, requested that she be able to record the proceedings. Her request was denied, as OAH proceedings are recorded by the administrative law judge (ALJ).

12. After going on the record, claimant's mother then expressed another request for a continuance. Claimant's mother was informed it was already denied. Every time the ALJ would attempt to begin opening statements, claimant's mother would interrupt and provide a separate excuse to justify her request for a continuance. Among them were: she had to take her daughter to school; she didn't have time to get claimant ready for the hearing; claimant had a right to be present; claimant has autism and is entitled to a continuance; claimant's mother wanted to call witnesses who were not present; claimant's mother wanted the hearing to happen "over several days"; and claimant's mother wanted the hearing transferred to Riverside. Claimant's mother was advised, multiple times, that none of the bases for her late request to continue the hearing constitutes good cause, as required by Welfare and Institutions Code section 4712.

13. The ALJ again attempted to proceed with opening statements. Claimant's mother continuously interrupted and again stated the same requests for a continuance. The ALJ again told claimant's mother the requests were denied. The ALJ advised all parties to turn off or silence their cell phones and told IRC to proceed with opening statements. Claimant's mother interrupted and said she would not silence her cell phone and would be taking calls during the hearing because she was a doctor. Claimant's mother was advised that would not be permitted.

14. After approximately 20 minutes of claimant's mother constantly impeding the commencement of the hearing, a 10-minute break was ordered. Claimant's mother was ordered to be back at precisely 10:54 a.m., as the hearing

would commence at that time. Claimant's mother was escorted out by security. When security attempted to bring claimant's mother back into the hearing room, she refused, and said she would not be returning to the hearing room until she finished making some phone calls.

15. The ALJ commenced the hearing and IRC made its opening statements. The ALJ began admitting IRC's exhibits. At the end of this process, claimant's mother came into the hearing room and sat down. The hearing ensued.<sup>2</sup>

## **Claimant's Background**

16. According to claimant's September 26, 2019, IPP, claimant enjoys shopping at the mall, cooking, being on the computer, jogging, making jewelry, eating out, and watching movies. Claimant is working towards saving her money and learning the difference between luxury and non-luxury items. Claimant attends college. Claimant receives independent living services to help her learn independence. Claimant can dress herself, feed herself, and has complete bowel and bladder control. Claimant knows how to use her ATM card. She assists with household chores such as vacuuming, doing the dishes, and sweeping. Claimant initiates and maintains interactions with others, her speech is not difficult to understand, and she can focus on a preferred task for more than 30 minutes.

Claimant's mother (in the IPP) reported claimant displays challenging behaviors. She reports claimant will display disruptive social behaviors, act verbally aggressive, and is noncompliant with commands. Claimant becomes upset when claimant feels her

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<sup>2</sup> Despite orders not to do so, claimant's mother did accept phone calls during the hearing and engaged in text messaging.

mother is “tattle tailing” about behaviors to claimant’s ABA provider. Physical aggression occurs less than once per month. Claimant has hit, kicked, punched, and slapped family members. Claimant has temper tantrums twice per month. Claimant had displayed self-injurious behavior in the past, but as of the date of the IPP, she had not displayed any self-injurious behavior in the past year.

According to claimant’s Client Development Evaluation Report, which reports skill level on a scale of 1 to 5, with 5 being the highest and most independent, claimant’s scores are as follows: practical independence, 5; personal/social skills, 4.33; challenging behaviors, 4.17; integration level, 4.17; and well-being level, 4.67.

## **Evidence Presented by IRC**

### **CLAIMANT’S ABA PROGRESS REPORTS WITH CPC AND SERVICE PROVIDER NOTES/COMMUNICATIONS WITH IRC**

17. A February 18, 2019 progress report from CPC showed claimant was initially approved for their services in approximately March 2018. At that time, IRC had authorized 52 hours of ABA and 12 hours of supervision.

According to the report, claimant met or partially met most of her goals. The report further stated:

Since the beginning of services, claimant has benefitted from adaptive skills training as evidence by: engaging in appropriate classroom behavior . . . , engaging in conversations [on] a single topic up to 10 conversational exchanges, and engaging in a conversation without interrupting the speaker. Claimant’s parents continue to



accept the recommendations from the team and will continue to support claimant's success. Instances of aggressive behavior and taking items that do not belong to her have been reduced . . . . These goals will continue to be targeted until claimant meets mastery criteria on all goals in place.

Claimant was authorized for 52 hours of direct services hours and 12 hours of supervision. The Clinical Supervisor met with claimant's mother and claimant to discuss the authorized hours and hours they were available for. Claimant and claimant's mother reported that sessions beyond 1.5 hours per day were overwhelming for claimant. The Clinical Supervisor, claimant, and claimant's mother came to an agreement that direct services will be provided Monday through Friday for 1.5 hours and one 2 hour weekend session on Sundays to address community integration goals (total direct hours available per month = 38) . . . .<sup>3</sup>

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<sup>3</sup> The reduction in ABA hours from 52 to 38 hours per month was later memorialized in claimant's September 26, 2019, IPP which was signed by IRC and claimant's mother.

18. On June 18, 2019, Natalie Gonzalez, CPC Clinical Supervisor, MA, BCBA, e-mailed Alicia Terry, claimant's consumer services coordinator at IRC. Ms. Gonzalez wrote:

I am e-mailing you to update you that I am working on claimant's progress report. . . . What concerns me is parent involvement with signing up claimant for her classes at school and organizing her schedule. She relies on our ABA team to complete this when it is out of our job description. I have reminded claimant's mother 3 times already that it is out of our description and she insists we help each semester. There have been instances when claimant is upset with her family emotionally and engages in crying. At these times, her mother requests that I call claimant to help deescalate her. That is also not in my job description to deescalate family feuds. No instances of hitting or behavior were reported outside of crying. The family was advised to seek a counselor or a psychologist that would better assist with claimant to talk about her emotions and struggles with the family earlier this year by Dr. Cake. I am going to provide that option to parents again because I feel that service would be much more beneficial for claimant in regard to her emotional outbursts.

I am finding it more difficult to justify ABA services for claimant due to the necessary parent involvement that is not occurring (checking on progress behavior contracts,

providing reinforcement in a timely manner, and dropping off claimant to appointments on time). Most instances of claimant being late is due to her mother arriving late per claimant's report. When I meet the family in the home for clinic meetings the parents pass off my services to claimant as if I was providing direct services to her. I would attempt to redirect to talk to them to discuss goals and plans to address barriers but they would turn the conversation to being solely claimant's fault when it is a team effort. This is a barrier to claimant's progress . . . .

19. A July 2, 2019, progress report from CPC showed claimant's continuing difficulties were in the following areas: taking other's perspectives before acting; difficulty adjusting behavior to fit social context; aggression towards self or others<sup>4</sup>; unaware of common environmental deficiency; and property destruction. The report noted that claimant's mother and father displayed difficulty following recommendations provided by the behavioral health team because they were not providing reinforcement, praise, or limiting vocal threats. Claimant's parents were also not abiding by CPC's cancellation policy. CPC also attempted to provide services to claimant at school to reinforce appropriate classroom behavior. However, some professors would deny the request to be present in the classroom so services were sometimes not provided.

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<sup>4</sup> This information contradicts claimant's September 26, 2019, IPP, wherein claimant's mother had indicated she had not been self-injurious in the past year.

20. Multiple e-mails from other CPC staff providing ABA services to claimant, dated from June 2019 through October 2019, show claimant's mother continued to engage in the same type of behavior raised in the June 18 2019, e-mail, presenting a barrier to claimant's ABA goals. In an October 23, 2019, e-mail, CPC Clinical Supervisor Cassandra Atlas, MS, BCBA, wrote:

[C]PC's intensive ABA does not include academic functioning . . . . It was also explained to the parent during the IPP meeting that IRC has people available to help with academic endeavors (i.e. Pathways, Maggie, etc.).

[¶] . . . [¶]

I am bringing this to your attention because although I left her this in a voicemail, [claimant's mother] is still contacting me repeatedly to argue the point. I am hoping that perhaps you can get through to her and remind her of what her options are if she wishes to have academic assistance for claimant.

[¶] . . . [¶]

Clinically I do not recommend further ABA treatment as the parent has repeatedly refused to generalize goals, maintain goals, take data outside of session, and has rejected parent training. Aside from parent training, I do not foresee any future goals claimant needs with intensive ABA. Although recently her ABA hours reduced due to scheduling conflicts (again, parent changes availability), claimant is doing well

and working toward mastering her goals for this authorization period. . . .

A November 20, 2019, e-mail from Ms. Atlas to Ms. Terry similarly stated:

[The] parent is fully aware of all goals worked on by the entire team and approved of all of them before they commenced. Although parent previously complained about using Uno for the “3 step reading instructions and explaining them to others” goal, parent followed up with a group text offering to provide the game Monopoly to be played in sessions. I told Krystalyn over the phone (and again in person on Monday) that we would not be using any games (such as Monopoly) that not only take a long time to complete, but have no social significance since her peers are not engaged in those games during leisure time. Although parent complained to me on Monday that there “shouldn’t be anything fun done in sessions” I reminded her that without any fun, nobody would do the work. She didn’t like the idea, but stopped complaining about it after I told her some fun is required for motivation to be present in sessions.

I said the team is working on “some of the goals” because unfortunately, due to parent removing the program coordinator from the case before my arrival, there is no one to write new goals as needed. As I have mentioned before, I am doing my best to keep up with the demand, but this is

in addition to my already full schedule and is outside my job requirements. Therefore, there may be a delay in starting the rest of the goals the parent initially requested. I would like to mention that the parent removed the PC due to her reminding the parent of CPC's policy which requires the parent to be involved in sessions, generalize skills taught during sessions, and maintaining skills taught in session by including them in her daughter's regular routine. PC reported to CPC that parent also harassed the PC, calling her after-hours at night and insulting her for taking family time . . . instead of talking about the parents repeated complaints and questions (which were already answered in earlier meetings). The previous BCBA, PC, and current staff all complained about the excessive number of phone calls/texts from parent (up to 20 texts per day). As you recall from the last IPP meeting, attempts to schedule recurring time to discuss parent concerns were rejected by the parent.

I bring this up because the parent has a history of repeatedly asking for change in personnel instead of recognizing her concerns are with policy instead of people. Continuing in that vein, she is asking once again for a change in personnel. I would like to share with you that after interviewing previous staff . . . the same complaint . . . is shared by our current staff: parent is hostile and argumentative with a bad temper . . . Current staff have

also shared with me a deep concern about the parent's temper, and are frightened when having to deliver potentially upsetting news. Staff in our Riverside office have also complained of the parent yelling at them, insulting them, and making them feel uncomfortable as well. . . .

[¶] . . . [¶]

[S]ince it is clear to us that the parent is unhappy with us and is a barrier to continued progress, it is best for us to leave sooner rather than later.

CPC's last day of services with claimant will be Friday, December 6, 2019. An exit report will follow . . . .

21. Voluminous notes documented by CPC staff between the dates of September 2019 and December 2019 provide detailed and date-specific incidents supporting all the behaviors noted above with respect to claimant's mother's treatment of CPC staff as well as constantly removing staff, being late, refusing to attend sessions, and not reinforcing ABA skills at home.

22. A February 3, 2020, exit report stated the following:

Barriers to progress include frequent changes in personnel (50 percent of the occurrences were due to claimant's mother's request; 50 percent of the occurrences were due to staff's resignation due to harsh treatment by claimant's mother). Due to low availability of frequently adding new staff to the case, goals that were worked on were limited to

what could be performed at home in the afternoons, in the community on Sundays, and at Riverside City College. Therefore, no goals for time management during her morning routine were targeted. Furthermore, due to claimant's mother's removal of the latest program coordinator on September 9, 2019, there was no team member to create new goals for the case. The BCBA supplied few goals due to time constraints and filled in for direct staff cancellations when available. In addition, claimant's mother declined parental involvement in session, generalization of goals outside of session, and the offer of one-on-one parent training. Therefore, it is highly unlikely that goals taught during sessions will generalize to the natural environment and will result in maintenance during her daily hours.

CPC recommends termination of intensive ABA services. . . .

23. The discharge report also noted that claimant's mother told CPC they were "fired" on January 16, 2020 (even though it appeared CPC had already indicated it was not interested in providing services after December 6, 2019).



## **INSTITUTE OF BEHAVIORAL HEALTH ASSESSMENT AND INTERVENTION PLAN<sup>5</sup>**

24. After claimant stopped receiving services from CPC, IRC authorized the Institute of Behavioral Health (IBH) to conduct an assessment. Claimant's mother initially refused to agree to an assessment unless IBH would agree to provide a specific number of hours of ABA services. IBH explained they could not make a recommendation as to hours needed or goals to be addressed without an assessment. Eventually, IBH convinced claimant's mother to agree and the assessment was completed on December 21, 2019. The functional behavior assessment and intervention plan concluded:

Claimant is a sweet 23 years [*sic*] old young lady diagnosed with autism spectrum disorder. Claimant can generate very sophisticated sentences and use informal language when communicating with others. She is independent in all areas of self-help skills including self-hygiene routines, laundry, and cooking for self. She attends Riverside Community College and has earned a certificate in web design. She is very social and very active on social media. She lacks in a sense of value in money and requires multiple prompts in using and saving her own money. Based on assessment results, goals have been selected to address skill acquisition of community use, functional academics, home living, self-direction, and work. In addition, parent goals, such as

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<sup>5</sup> The following information was obtained from multiple letters and assessment documents from the IBH.

increase skill acquisition of behavioral concepts, consistent implementation of behavior intervention strategies, and daily data collection have been selected to increase parents' ability to teach new skills and manage behaviors. Behavioral strategies have been discussed with claimant's mother, and she is looking forward to being a part of her daughter's therapeutic team. Because of claimant's current level of skill deficits, an intensive behavioral health programming is recommended including 9 hours of direct services per week. Additional supervision (non-billable) will be provided for treatment planning, regular review of behavioral data, revisions of behavioral plan as needed, and parent training, but also for close coordination of care with the appropriate specialist.

25. Even before the commencement of services, IBH began experiencing the same type of barriers that had been experienced by CPC with respect to interactions with claimant's mother. Claimant's mother wanted IBH to accompany claimant to and from school and spend time in her classes, which they explained, was not a part of ABA services.

Services began on January 21, 2020. Claimant's mother refused to sign the services contract, which required her to be present during the entirety of all ABA sessions. Claimant's mother told IBH that claimant was 23 years old and could sign for her own services. Claimant's mother also told IBH she would not be present for all sessions. IBH agreed to modify the contract, even though parental non-involvement is an impediment to success with ABA services.

Part of the contract, and IBH services, also includes spending the first 10 minutes and last 10 minutes of the ABA session taking notes (preparing/inputting data). On January 23, 2020, when IBH again tried to provide services, claimant's mother argued with IBH about the data collection period. Claimant's mother told IBH she was terminating their services.

### **WITNESS TESTIMONY**

26. Ms. Terry, claimant's consumer services coordinator, testified at the hearing. Ms. Terry authenticated the documents referenced above, and explained the difficulties the ABA providers have had in working with claimant's mother. Ms. Terry explained that IRC is not opposed to providing ABA services, and is searching for a new ABA provider.

27. Eric Hamler, a program manager at IRC, testified at the hearing. Mr. Hamler explained that CARD is not a vendor and has not requested to be a vendor. If they do so, there is a process to go through. CARD did apply to be a vendor back in 2014, prior to him becoming a program manager, but decided not to pursue vendorization because the rates IRC and the Department of Developmental Services (DDS) authorize are far below what they want for their services.

28. Pamela Hutt is an IRC Behavioral Specialist and Senior Program Manager. Ms. Hutt was very familiar with claimant's case and background. She has also met claimant. Ms. Hutt believes claimant will benefit from some level of ABA services, but noted that ABA is intended to be short term and parent participation is crucial to success. A parent needs to be present during ABA sessions because the parent is needed for follow through, generalization, and applying ABA techniques in the community. Ms. Hutt explained that IRC has done a wonderful job at layering services

when claimant needed them, including crisis intervention services. However, the continued problem with providing ABA services is because the problems experienced by CPC and IBH regarding parental involvement and claimant's mother's conduct has been a barrier. Both CPC and IBH are high quality ABA providers, and there are many other ABA providers that provide high quality services. IRC will continue working with claimant's mother to identify another ABA provider, however, parental involvement will be crucial to success of any ABA program.

### **Evidence Provided by Claimant's Mother**

29. Prior to her testimony, claimant's mother packed up all her belongings and answered a cell phone call during the hearing (and during Ms. Hutt's testimony). Claimant's mother said she needed to leave. Nonetheless, she provided the following brief testimony after being asked to do so: she understands IRC is trying to provide ABA services for her daughter. ABA services started in March 2018 at a level of 52 hours plus 12 hours of supervision. She had "issues" with CPC because of the lack of staff. She never agreed to reduce hours from 52 to 38, even though she signed the September 26, 2019, IPP. She disliked the e-mail communications and notes provided by CPC to IRC because she had not seen them before and felt like they were "tattle tailing" on her. Claimant received ABA services through her school from CARD in 2012. The services were provided at school. The services helped. She would like ABA services from CARD again.

## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the

alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

9. A regional center is authorized to purchase services and supports for a consumer pursuant to vendorization or a contract in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3); Cal. Code Regs., tit. 17, § 50612, subd. (a).)

10. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

11. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

## **Evaluation**

12. A preponderance of the evidence did not establish that IRC must fund ABA services for claimant with CARD. A regional center may only purchase services and supports pursuant to vendorization or contract. CARD is not a vendor. IRC has many vendors that provide ABA services, and no evidence established that CPC, IBH, or any of the other ABA providers cannot meet claimant's needs.

Additionally, the evidence established a long and tumultuous history between claimant's mother and ABA providers. Although claimant's mother expressed unhappiness with CPC and IBH, the detailed letters, emails, and reports showed that it was not the ABA providers that were a barrier to services; rather, they were simply trying to provide services consistent with well-established ABA techniques. Those techniques include parental participation, generalization, reinforcement, and support.

IRC is obligated to continue working with claimant's mother to seek out a vendored ABA provider that is able to provide the hours designated in claimant's IPP, which IRC does not dispute. However, adherence to the policies and procedures utilized by whatever ABA provider is selected is critical for claimant to benefit from



ABA. Claimant's mother clearly wants the best for her daughter. Going forward, therefore, claimant's mother is encouraged to consider working in a more collaborative manner with the selected ABA provider and engaging in the necessary parental participation in order to ensure ABA success.

## **ORDER**

Claimant's appeal from Inland Regional Center's determination that it will not fund Applied Behavioral Analysis Services with the Center for Autism Related Disabilities is denied.

DATE: February 25, 2019

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

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