

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**REGIONAL CENTER OF ORANGE COUNTY, Service Agency.**

**OAH No. 2020080560**

**DECISION**

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 26, 2020, via video conference.

Danielle Alvarado, Advocate, represented Claimant.<sup>1</sup> Claimant's mother (Mother) and father (Father) (collectively, Parents), who serve as Claimant's conservators, were present at hearing. Paula Noden, Manager of Fair Hearings and Vendor Appeals, of the Regional Center of Orange County (Service Agency or RCOC), appeared and represented the Service Agency.

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<sup>1</sup> Names are omitted and family titles are used throughout this Decision to protect the privacy of Claimant and his family.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 26, 2020.

## **ISSUE**

Must the Service Agency fund for Father to provide Claimant with 56 hours per week of personal assistance services at the same hourly rate paid to vendor No Ordinary Moment (NOM), or, in the alternative, fund for 56 hours per month of behavior intervention services under the supervision of a board certified behavior analyst (BCBA)?

## **EVIDENCE**

Documentary: RCOC's Exhibits 1 through 13, 15 through 19;<sup>2</sup> Claimant's Exhibits 5, 8, 9 through 12, 14 through 15.

Testimonial: Carrie Otto; Arturo Cazares; Christina Genter; Jack Stanton; Catherine Brown; and Mother.

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<sup>2</sup> The parties submitted position papers identified as RCOC's Exhibit 20 and Claimant's Exhibit 1.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a 22-year-old young man who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst.<sup>3</sup> Code, § 4500 et seq.), based upon qualifying diagnoses of Autism Spectrum Disorder (ASD) and moderate Intellectual Disability (ID). Claimant resides with Parents in the Service Agency's catchment area.

2. Claimant, who is nonverbal and who has a history of physical aggression toward others, self-injurious behaviors, and property destruction, receives 56 hours per week of personal assistance services provided by NOM, and 270 hours per month of in-home supportive services (IHSS) provided by Mother. Claimant is eligible to receive respite care, but is not currently receiving behavioral respite, because Parents became unsatisfied with behavioral respite services. Consequently, those hours were transferred to NOM as personal assistance hours.

3. Father works full-time outside of the home as a personal banker, and Mother is a stay-at-home mother who serves as Claimant's primary caregiver. In the last year, Mother has experienced great difficulty managing Claimant's aggressive behaviors while Father is at work. Additionally, as a result of his behaviors, Claimant has experienced a high-turnover rate among NOM's aides, resulting in Claimant

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<sup>3</sup> Undesignated statutory references are to the Welfare and Institutions Code.

receiving 37 different aides over the past 17 months. Mother testified that no one from NOM has tried to develop a rapport with Claimant.

4. Because Father is successful managing Claimant's behaviors, and because of the inconsistency of NOM aides, Parents advised RCOC on August 6, 2020, that Father wished to quit his job and become a paid personal assistant through NOM, providing 56 hours per week of personal assistance services to Claimant. Such an arrangement would result in more than a 50 percent reduction in income for the family, but Parents believe such a sacrifice is necessary for the well-being of their son. In the alternative, Parents requested RCOC to fund for a trained behavior interventionist to provide services 56 hours per week.

5. RCOC denied Parents' request, prompting them to file a fair hearing request on Claimant's behalf on August 10, 2020.

6. All jurisdictional requirements are met.

## **Background**

7. Claimant attended a program at Hillview High School (Hillview), but experienced abuse there. Specifically, Claimant, who required 2:1 support (i.e., two aides for Claimant) due to his behaviors, was held down in prone positions three to five times per day, leaving Claimant with bruises. Claimant's negative behaviors escalated. Consequently, Parents disenrolled Claimant from Hillview on February 23, 2020, and transferred him to a non-public school, specifically, Beacon Day School (Beacon), on February 24, 2020, to complete his final semester of school.

8. At Beacon, Claimant received 2:1 support (i.e., two trained behavioral specialists for Claimant). Claimant performed well at Beacon. After attending Beacon

for approximately one month, COVID-19 restrictions resulted in the conversion of Claimant's program to distance learning through remote videoconferencing, effective March 22, 2020.

9. While home, Claimant has been receiving personal assistance services from NOM, 56 hours per week. Previously, NOM had been providing 44 hours per week of personal assistance services; however, on March 30, 2020, regional centers received a directive (Directive) permitting consumers to access additional participant-directed services, such as personal assistant service hours, in response to COVID-19-related restrictions impacting consumers' ability to access services. (RCOC's Exhibit 5.) NOM has experienced difficulty providing consistent aides to Claimant, none, with the exception of one, serving more than 15 days, and none possessing behavioral intervention training expertise to help address Claimant's behavioral issues. NOM is not vendored for behavioral services and does not have any behavioral training.

### **Claimant's Functional Behavior Assessment**

10. On August 25, 2020, and August 29, 2020, Catherine Brown, BCBA, performed a Functional Behavior Assessment (FBA) of Claimant, and prepared a report dated September 9, 2020. Ms. Brown, who testified at hearing, has been a BCBA since 2016, holds a degree in special education, and has been in the field serving behaviorally challenged individuals for 10 years.

11. Ms. Brown observed Claimant at his home, reviewed records, observed videos, and more. She explained that the abuse Claimant sustained at Hillview resulted in increased negative behaviors, regression of skills, and withdrawal.

12. Ms. Brown noted Claimant had a well-documented history of challenging behaviors, including physical aggression towards others (e.g., hitting, scratching, head-

directed strikes, biting, and kicking); self-injurious behaviors (e.g., biting, pinching, and knee-to-head strikes), and property destruction (e.g., hitting or kicking blunt objects or structural surfaces, and biting seat cushions).

13. Ms. Brown described Claimant as responding well to structure and routines with consistent expectations and practice. He also appeared to enjoy adult attention, especially from those who have established a strong rapport with Claimant. Claimant demonstrates limited and narrow interests, which creates challenges in identifying effective reinforcers to establish or strengthen skill sets. His tolerance threshold for changes or communication breakdowns are low, and he has no effective coping skills.

14. Ms. Brown noted several recommendations, including identifying an individual or team of individuals with strong rapport to work consistently with Claimant; utilizing functional communication training and behavior skills training; setting behavioral expectations by reminding Claimant of replacement behaviors, reviewing likely scenarios and expected responses, and explaining what is expected of Claimant for access reinforcement; and collaborating with other members of Claimant's team, such as doctors, teachers, and other specialized health professionals or direct care staff to ensure consistency and continuity of care. Ms. Brown's initial FBA report submitted to RCOC included no recommended hours of behavioral services; however, in a later version, Ms. Brown recommended Claimant receive at least 30 hours per week of BCBA-directed, trained, and supervised services to target behavior reduction, and another 26 hours of personal assistant services from someone with strong behavioral training, or 26 hours provided by Father, given his successful interactions with Claimant.

15. Ms. Brown explained at hearing that “Father is very skilled and is very in-tune with [Claimant] and his care.” He redirects Claimant and Claimant responds to Father well. Father does a good job of acknowledging, anticipating, and meeting Claimant’s needs. Father also integrates Claimant into the community.

16. Given the above, particularly Claimant’s need for consistency and a solid rapport with individuals to maintain positive behaviors and to integrate into the community, Parents requested, on Claimant’s behalf, that RCOC fund for Father to provide Claimant’s 56 hours per week of personal assistant services. In the alternative, Parents request RCOC to fund 56 hours per week of stable and consistent BCBA trained and supervised personnel to provide personal assistance services.

### **RCOC’s Position**

17. RCOC contended that it was unable to grant Parents’ request for Father to serve as Claimant’s personal assistant, and cited several reasons: (1) RCOC has a responsibility to fund for services that will address Claimant’s needs; (2) RCOC cannot direct NOM to employ Father and even if it could, RCOC cannot pay Father the NOM rate, and cannot pay Father 16 hours of overtime (i.e., any hours beyond 40 hours per week); and (3) behaviorally-based services are more appropriate for Claimant. RCOC proffered several witnesses in support of its position.

### **CHRISTINA GENTER, BCBA**

18. Christina Genter, BCBA, has been a behavior services specialist at RCOC for 10 years, and has worked for RCOC for nearly 20 years in difference capacities, such as a service coordinator for three years, and a behavioral service resource group leader for five years. Ms. Genter earned her bachelor’s degree in psychology from California State University, Long Beach in 1996, earned her master’s degree in behavioral

psychology from the University of Judaism in 2000, and her BCBA certification in 2003. From 1996 through 2000, Ms. Genter worked as a job coach at Behavior Change Associates.

19. Ms. Genter reviewed the FBA report and agreed Claimant required behavioral services to address his behavioral issues; however, Ms. Genter recommended that Claimant receive the 30 hours per week of behavioral services at a behavioral day program, or, in lieu of a behavioral day program, Claimant could receive vendored Applied Behavior Analysis (ABA) services.

20. Ms. Genter disagreed that Father should serve as Claimant's personal assistant, as she believes Claimant would become dependent on a single person, and not generalize skills across different caregivers and situations.

### **JACK STANTON**

21. Jack Stanton is Associate Director of Housing at RCOC and has served in that capacity for four years. He has worked for RCOC for more than 20 years.

22. Mr. Stanton explained that NOM is vendored for \$41 or \$42 per hour for personal assistance services. Companies vendored after 2008 must adhere to the median rate set by the State of California. That amount is \$14.80 per hour.

23. Mr. Stanton also explained that regional centers are prohibited from funding for overtime.

### **ARTURO CAZARES**

24. Arturo Cazares is Associate Director of Employment at RCOC and has served in that capacity for three years. He has worked for RCOC for 17.5 years. In his



capacity as Associate Director of Employment, Mr. Cazares supervises adult day services. Adult day programs assist consumers who are no longer eligible for services from local public education agencies or other generic sources. Claimant, after completing his final semester of high school in June 2020, is no longer eligible for services from local public education agencies.

25. Mr. Cazares explained that regional centers have several models for adult day programs, depending on the consumer's needs, such health models, employment models, community-based models, site or center-based models, behavioral management program models, or hybrid models. RCOC's adult resource group or the service coordinator provides information about the client to adult day programs appropriate for that client, based on a thorough review and a consultation process, to ensure the client is offered appropriate referrals. A typical schedule for an adult day program is five days per week, six hours per day.

26. Mr. Cazares participated in two Individual Program Plan (IPP) meetings, on October 2, 2020, and on October 15, 2020, and discussed behavior management day programs, including site-based or hybrid models, such as Abilities Unlimited. All behavioral adult day programs provide training to staff to address clients' individual behavioral needs.

27. Mr. Cazares explained at hearing that due to the pandemic, adult day programs closed in March 2020, and were not a viable option to discuss with Parents during the beginning of the pandemic. However, adult day programs are now reopening. Thus far, Parents have declined to pursue a behavior management day program for Claimant, including Abilities Unlimited.

## **CARIE OTTO**

28. Carie Otto is Area Manager and has worked for RCOC for 21 years. She holds a bachelor's degree in developmental psychology and a master's degree in sociology. Ms. Otto serves as the assigned manager overseeing Claimant's case.

29. When Parents expressed that they wanted Father to be hired by NOM and serve as Claimant's personal assistant, Ms. Otto told Parents that NOM is a private agency and RCOC has no control over who NOM hires. Additionally, Ms. Otto explained to Parents that Father's assistance is considered a natural, unpaid support. In a July 23, 2020 letter to Parents, Ms. Otto stated, "Under Regional Center services, parents are a natural support and as such they are not typically paid to provide services to a minor or adult child residing in the family home. A potential conflict of interest exists." (RCOC's Exhibit 3.)

30. Ms. Otto advised Parents of what used to be an exception before the pandemic. Specifically, Ms. Otto told Parents about the Personal Assistance as Worker Administration (PAWA) program, which RCOC developed to increase a consumer's access to community-based, individualized pre-vocational and employment activities that are often curated by parents. In her July 23, 2020 letter, Ms. Otto stated the following:

To ensure long-term support in customized settings, a parent has been permitted to provide the [personal assistant] service. Prior to COVID-19, other Regional Centers were not utilizing self-directed staff for personal assistance. A recent [March 30, 2020] Department of Developmental Services Directive [RCOC's Exhibit 5] does permit Regional

Centers to allow self-directed workers for this service, but it does not specifically permit a parent who lives in-home to be the paid provider for any service.

(RCOC's Exhibit 3.)

31. Ms. Otto explained that while the Directive will not permit Father to serve as Claimant's personal assistant during the pandemic, PAWA will allow Parents to support Claimant by creating a program to address Claimant's needs. Ms. Otto sent Parents information regarding PAWA. To date, Parents have not pursued PAWA.

32. Ms. Otto met with Parents on October 2, 2020, along with Parents' advocate (Ms. Alvarado), Ms. Brown, Mr. Cazares, Ms. Genter, Mr. Stanton, Ms. Noden, and Jesus Ramos (RCOC Service Coordinator), and wrote a letter on October 21, 2020 summarizing the substance of the meeting. RCOC reviewed and discussed the FBA prepared by Ms. Brown (i.e., the version that did not designate specific hours for behavior services), and agreed Claimant needed ABA to help develop his skills. Ms. Otto stated the following:

A specific number of hours was not specified in the report, so RCOC recommends initiating service at 15 hours per week of ABA to develop specific goals and to develop rapport. ABA service is accompanied by Supervision and Consultation hours, which would be [in] addition to the 15 hours per week.

(RCOC's Exhibit 19.)

33. RCOC also recommended, given the needs identified in the FBA, that Claimant attend a behaviorally-based adult day program that would begin services in the home setting and gradually transition Claimant to community-based settings at a pace individually tailored to Claimant's progress, at 30 hours per week. Ms. Otto stated the following:

The proposed program, Abilities Unlimited, has offered to meet with [Parents] to discuss their program and identify the staff qualities that would best suit [Claimant].

(RCOC's Exhibit 19.)

34. At hearing, Claimant's witness Ms. Brown opined Claimant is not ready to attend an adult day program, as he has prompt dependency, does not handle transitions well, and "a variety of things that need to be addressed first before sending him to a day program." However, on cross examination, Ms. Brown admitted she did not have a lot of experience with day programs. She stated she "is not saying [Claimant] is inappropriate for a day program, if the day program is to address his challenging behavior; however, if the day program [is geared to] getting him into the community and build a new skill set, [Claimant] is not ready [for such a program] because there are behaviors he needs to address first."

35. At the October 2, 2020 meeting, RCOC also discussed reestablishing behavioral respite in order to provide Claimant with a behaviorally-trained personal assistant supervised by a BCBA. Ms. Otto stated the following:

Service Provider A.B.E.D.I. has agreed to coordinate a staff member to provide this service. They anticipate it will take more time to identify staff for personal assistance than to

coordinate the direct ABA intervention. Their focus would be on finding staff that could match Claimant's interests and needs.

(RCOC's Exhibit 19.)

36. Ms. Otto concluded by stating the following:

RCOC maintains that vendored services providers, such as A.B.E.D.I. and Abilities Unlimited, can best meet [Claimant's] needs through the development of goals and ongoing assessment of progress. These programs provide staff training and appropriate scheduling to ensure staff are refreshed and ready to perform their duties.

(RCOC's Exhibit 19.)

37. At hearing, Ms. Otto advised that RCOC's recommendations have remained the same.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Pursuant to section 4710.5, subdivision (a), "Any . . . authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." Claimant requested a hearing to appeal the Service Agency's

decision declining to fund Father to serve as Claimant's personal assistant 56 hours per week and declining to fund 56 hours per week of personal assistance service by or supervised by a BCBA. Jurisdiction in this case is established. (Factual Findings 1 through 6.)

## **Applicable Law**

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

3. The "services and supports" provided to a consumer include "specialized services and supports . . . directed toward the alleviation of a developmental disability . . . or toward the achievement and maintenance of independent, productive, and normal lives . . . ." (§ 4512, subd. (b).) The services and supports necessary for each consumer are determined through the IPP process. (§§ 4512, subd. (b), 4646.)

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

4. "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities. (§ 4512, subd. (e).)

5. "Circle of support" means a committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support. (§ 4512, subd. (f).)

6. A regional center shall not negotiate a rate with a new service provider, for services where rates are determined through a negotiation between the regional center and the provider, that is higher than the regional center's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. (§ 4691.9, subd. (a)(2).)

7. 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.) Claimant is requesting that the Service Agency fund Father to serve as Claimant's personal assistant 56 hours per week and/or fund 56 hours per week of personal assistance service by or supervised by a BCBA, which Service Agency has not previously agreed to do. Under these circumstances, Claimant bears the burden of

proving by a preponderance of the evidence that he is entitled to the requested funding.

## **Analysis**

8. Here, Claimant failed to meet his burden of establishing the Service Agency must fund for Father to serve as Claimant's personal assistant 56 hours per week and/or fund 56 hours per week of personal assistance service provided by or supervised by a BCBA. With respect to funding for Father to serve as Claimant's personal assistant, Claimant argues that although Ms. Cato expressed that Father was a natural support and thus could not be paid to provide personal assistance services to Claimant, nothing in the Lanterman act prohibits parents from serving as personal assistants. As such, Claimant asserts that absent such a prohibition, the Service Agency should fund for Father to provide personal assistance services, especially given how well Father addresses Claimant's needs and manages his behaviors.

9. However, the evidence is clear from the testimony of Claimant's witness, Ms. Brown, as well as from the testimony of RCOC's witness, Ms. Genter, that Claimant requires behavior-centered services to address his behavioral issues, particularly from an individual or team of individuals with strong rapport to work consistently with Claimant. While Father has been successful in managing Claimant's behaviors, Father is not a behavioral specialist trained to assist Claimant ameliorate negative behaviors and achieve behavioral goals. Additionally, according to the credible testimony of Ms. Genter, Claimant could become dependent on a single person, and not generalize skills across different caregivers and situations. Given these factors, it is not appropriate for RCOC to fund Father to serve as Claimant's personal assistant to address Claimant's behavioral needs. Given this conclusion, it is unnecessary to



address RCOC's lack of authority to influence who NOM hires, or the hourly rate and overtime issues raised by RCOC.

10. With respect to funding for 56 hours per week of personal assistance service by or supervised by a BCBA, Claimant failed to establish that that specific behavioral service is more appropriate for Claimant than the behavioral services proposed by RCOC. Claimant's witness, Ms. Brown, recommended Claimant receive 30 hours per week of behavioral services, with which RCOC's BCBA agreed, resulting in RCOC proposing 30 hours per week of a behavior-based adult day program, combined with reestablishing behavioral respite in order to provide Claimant with a behaviorally-trained personal assistant supervised by a BCBA. Given these factors, Claimant's request must be denied.

## **ORDER**

Claimant's appeal is denied.

DATE: 11/30/2020

CARLA L. GARRETT  
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.