

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2020090667

DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephone conference on March 17 and 18, 2021.

Aaron Abramowitz, Enright & Ocheltree, LLP, represented Westside Regional Center (WRC or Service Agency). Henry Tovmassian, Attorney at Law, represented Claimant. Claimant's parents, who also serve as her conservators, were present. (Titles are used instead of names to preserve confidentiality.)

Oral and documentary evidence was received. The record was held open for receipt of an exhibit, a reply to the exhibit, and closing briefs. Claimant's exhibit MMM was filed March 19, 2021. WRC's letter stating there was no objection to its receipt in evidence was dated March 22, 2021. Exhibit MMM is received in evidence. Closing

briefs were filed April 2, 2021 and were marked for identification as follows: Claimant's Closing Brief, exhibit NNN; WRC's Closing Brief, exhibit 30. The record closed and the matter was submitted for decision on April 2, 2021.

ISSUES

1. May the Service Agency stop funding the Enhanced Behavior Support Home services at the Ramsgate home for Claimant as those services are not meeting her needs?

2. Will Claimant have to move from the Ramsgate home in order to continue to receive services?

The ALJ determined the request in the Fair Hearing Request for an order for WRC to secure a different qualified vendor was beyond the jurisdiction of the proceedings, for the reasons set forth in the Legal Conclusions below.

EVIDENCE RELIED UPON

WRC exhibits 1-15, 17-30. Claimant exhibits E-I, L-NNN. Testimony of witnesses Cori Campbell, Rachel Taylor, Sarah Williams-Katuli, Richard Colombo, Natasha Lopez, Mary Lou Weise-Stusser, Kirk Hartman, Sandra Kaler, and Jack Darakjian.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 29-year-old woman with diagnoses of autism spectrum disorder and intellectual disability that make her eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), found in Welfare and Institutions Code section 4400 et seq. (Statutory references are to the Welfare and Institutions Code unless noted otherwise.) Claimant's parents are her limited co-conservators.

2. Claimant was diagnosed at an early age. Since April 2014 Claimant has resided at a home on Ramsgate Avenue (Ramsgate) and has received various services funded by the Service Agency. At some point she lived with others at Ramsgate. However, sometime before June 2019, Claimant became the only resident at Ramsgate.

3. As of June 2019, the Center for Applied Behavior Analysis (CABA) took over operation of Ramsgate, and operated it as an Enhanced Behavior Support Home (EBSH).

4. On September 4, 2020, WRC generated a Notice of Proposed Action (NOPA) with an accompanying letter to provide 30-day's notice to Claimant and her parents it would stop funding EBSH services at Ramsgate as the services were not meeting her needs. (Exhibit 1.) The NOPA and letter included that "Alternative placement must be discussed." (Exhibit 1, p. WRC-002.) (Subsequent references to page numbers in exhibits will eliminate prefatory letters and zeros.)

5. On September 11, 2020, parents filed a Fair Hearing Request. (Exhibit 2.) All jurisdictional requirements have been met.

History of Service Disputes

6. There is a long history of instances wherein the Service Agency issued a NOPA and Claimant's parents have challenged the NOPA and requested a fair hearing. The parties included in their exhibits some of the Decisions issued by ALJ's regarding these instances. Some portions of these Decisions will be specifically referenced below. Official Notice was taken of the following Decisions, which are incorporated herein by reference, and are summarized as relevant.

7. A. Decision in OAH case number 2015091123 dated December 20, 2015. (Exhibit 26). Claimant's parents requested replacement of People's Care Los Angeles, Inc. (People's Care), which operated Ramsgate at the time. WRC issued a NOPA denying the request. The matter was bifurcated and the Decision by ALJ Howard W. Cohen addressed WRC's motion to dismiss the fair hearing request. ALJ Cohen determined there was no authority in a fair hearing under the Lanterman Act for an ALJ to grant a consumer's request to order a regional center to terminate a service vendor. The motion to dismiss was granted.

B. In footnote 2 of the Decision, ALJ Cohen cited a lengthy list of conditions at Ramsgate that both parties included in their briefs and oral argument. ALJ Cohen concluded these matters may be pertinent to the merits of the dispute but were not material to determination of the motion. The length and nature of the listed items indicate there were several concerns raised by the parties referring to Claimant's condition, progress, and services, as well as the role played by People's Care related thereto.

8. A. Decision in consolidated OAH case numbers 2016120649, 2016120838, 2016120840, 2017010410 and 2017010411, dated April 17, 2017 (April 2017 Decision). (Exhibits 27, LLL). The issues related to transportation, enforcement of a settlement agreement resolving a prior hearing request related to a facilitator, tracking devices to address Claimant's risk of elopement, and communication issues between People's Care staff and Claimant's parents. In the current matter, both parties cite to different portions of the April 2017 Decision by ALJ Erlinda Shrenger. Some of the evidence referred to in the April 2017 Decision was also submitted in the current matter, such as the Individual Program Plan (IPP) signed August 3, 2016 (exhibit XX), which was the most current IPP at the time of the April 2017 Decision.

B. Four issues, with subparts, were submitted. ALJ Shrenger determined: WRC was to secure transportation services and supports for Claimant to attend a specific socialization program on Friday afternoons, but other aspects of Claimant's appeal regarding transportation were denied; WRC was to comply with the settlement agreement, but other aspects of Claimant's appeal related to the facilitator were denied; and Claimant's appeals were denied as to tracking devices and communication issues between People's Care staff and Claimant's parents. More specific aspects of the April 2017 Decision are included below.

9. A. Decision in OAH case number 2017070680 dated October 30, 2017 (October 2017 Decision). (Exhibit 28). The August 2016 IPP included a provision that People's Care take over from CABA the responsibility to train Claimant's residential and day program staff. The training was to be provided by a Board Certified Behavior Analyst (BCBA). However, People's Care was not present at the IPP meetings, was obligated to provide only the services in its program design and raised an objection that it does not provide training to staff of other agencies such as the day program.

WRC issued a NOPA to modify the IPP accordingly, and Claimant requested a fair hearing.

B. In the October 2017 Decision, ALJ Carla Garrett determined the IPP could be amended to eliminate the reference to People's Care, but WRC was required to contract with a qualified vendor to provide a BCBA for ongoing training to residential staff and day program staff to ensure Claimant's behavior plan was properly and consistently implemented. More specific aspects of the October 2017 Decision are included below.

Claimant's Background, Behaviors and Services

10. The April 2017 Decision and the October 2017 Decision contain factual findings that provide relevant background information and are summarized in FF 11-24 below. Most of these findings are based on information in IPP's.

11. Claimant attended The New England Center for Children in Massachusetts from 2008 to 2011, when she moved to Los Angeles, first in an apartment in Santa Monica with supported living services and later in an apartment in North Hills with 24/7 supported living services and 2:1 supervision, where she lived until April 13, 2014.

12. On April 14, 2014, Claimant moved to Ramsgate, a community placement plan home. People's Care was licensed by the California Department of Social Services, Community Care Licensing Division (DSS-CCL), to operate Ramsgate as an adult residential facility. Ramsgate has three bedrooms and is located in a residential neighborhood. Claimant lived in Ramsgate with two female housemates who were also WRC clients. Pursuant to the August 2016 IPP, WRC provided funding for 496 hours per month of supplemental support, to be provided by People's Care, in order to

maintain a 2:1 staffing ratio for Claimant. (Numerous meetings, the last of which was on July 21, 2016, preceded the signing of the IPP by 11 participants in early August 2016.)

13. In the April 2017 Decision, ALJ Shrenger made Factual Findings depicting Claimant's behaviors and services that establish a baseline as of that hearing in February 2017. Claimant was ambulatory with no physical limitations or restrictions. She enjoyed physical activities, such as swimming, dancing, walking and hiking. At times she was able to communicate her wants and needs when presented with appropriate fixed choices. Her verbal and expressive skills were limited. She spoke in three-to-five-word sentences, and a great deal of her speech is echolalia, with limited reciprocal conversation. A functional behavior assessment from April 2015 by Dr. Rachel Taylor, BCBA with CABA, found Claimant could say at least 50 recognizable words, could share some personal information such as her name, day and month of birthday, and telephone number, inconsistently communicated when she needed a break or wanted her space, was unable to consistently identify and express her emotions verbally, was able to decode reading material of at least a second-grade level, and was able to write all letters and numbers.

14. For safety purposes Claimant required 2:1 supervision while at home and in the community. Claimant engaged in challenging behaviors, including physical aggression (e.g., grab or hit the driver of the car while in transit, grab or hit children walking past her); property destruction (e.g., pick up items and throw until broken); behavioral outbursts, screaming, and/or crying; self-injurious behavior; stereotypy (e.g., rocking body, ritualistic finger movements, vocally perseverating); and leaving without supervision (e.g., running away from a location where she was supposed to be and no longer within line-of-sight of staff). Claimant required clear communication

relative to expectations. She did best when working with staff trained and competent in evidence-based practice, and who interacted with Claimant regularly, engaged her in physical activities, and listened to her. When Claimant was ignored or isolated for long periods of time, and did not receive adequate social and physical stimulation, she might act out. Claimant did not like unexpected changes in her routine or schedule or having excessive unstructured time.

15. Claimant's parents felt People's Care had been negligent and reckless in providing care for their daughter and that WRC failed to hold People's Care accountable. The positions of Claimant's parents and WRC are described in detail in Addendum A and Addendum B, respectively, to the August 2016 IPP. The parents' written statement refers to an incident on November 10, 2014, when Claimant left Ramsgate without supervision and was later found on a nearby freeway on-ramp by a California Highway Patrol officer. She was not injured. WRC and People's Care developed a Corrective Action Plan which included use of loud alarms and a tracking device, more direct supervision, and additional staff training.

16. Parents were understandably upset and in January 2015 their attorney sent letters to WRC and People's Care that were critical of People's Care employees and practices. In February 2015, People's Care sent Claimant's parents a 30-day notice that it was evicting Claimant from Ramsgate based on its conclusion it could no longer meet Claimant's needs. Later in February 2015, People's Care sent a letter rescinding the 30-day notice of eviction, but it continued to believe Claimant was inappropriately placed at Ramsgate and requested a different placement. WRC noted Ramsgate was developed as a "zero reject model," meaning there could be no eviction based on a consumer's conduct.

17. In April 2015, WRC contracted with CABA, whose BCBA, Dr. Taylor, conducted a functional behavior assessment and developed a behavior plan for Claimant. CABA trained the staff of both People's Care and Modern Support Services (Claimant's day program provider until August 1, 2016) on how to implement the behavior support plan to ensure Claimant received consistent, appropriate support in achieving the goals in her treatment plan. CABA provided behavior services until it terminated its services effective March 31, 2016. At that point, a People's Care's behavior consultant began providing behavior services.

18. In September 2015, Claimant's parents filed a fair hearing request seeking an order to compel WRC to terminate the Vendor Agreement with People's Care for Ramsgate. As noted above, in the October 2015 Decision, WRC's motion to dismiss the hearing request was granted.

19. On January 18, 2016, Claimant's parents filed a fair hearing request to appeal WRC's denial of their funding request for an outside entity to oversee Claimant's care at Ramsgate. On the second day of the hearing in June 2016, WRC and Claimant's parents agreed to a settlement whereby WRC agreed to provide funding for a programming service facilitator to provide 45 hours per month of facilitation services. The facilitator had numerous responsibilities, and submitted weekly reports for the period September 26, 2016, through January 29, 2017, that were presented at the hearing before ALJ Shrenger in February 2017.

20. In the February 2017 hearing, ALJ Shrenger heard conflicting, detailed evidence of the difficult relationship between Claimant's mother and People's Care staff. ALJ Shrenger concluded the more persuasive evidence established that Claimant's mother had engaged in hostile and harassing behavior towards the People's Care staff. It was difficult for People's Care to maintain staffing, and People's

Care was concerned its employees were subjected to a hostile work environment. WRC also reported difficulty dealing with Claimant's mother and negative effects on WRC staff. No issues were raised regarding communications with Claimant's father. ALJ Shrenger recognized all parents' rights to advocate for their children, but that mother's negative tone and demeanor had crossed a line and become counter-productive. ALJ Shrenger noted that the IPP process can be invoked when services need to be revised due to changed circumstances, there is a learning curve for both the consumer and the service provider in the provision of services, and trial-and-error is sometimes needed to determine whether or not services and supports are appropriate for a given consumer.

21. People's Care implemented a policy directing mother's contacts be forwarded to Mary Harris, the administrator at Ramsgate. Over New Year's weekend in December 2016-January 2017, there was a delay in providing over-the-counter medications and prescribed antibiotics to Claimant, in part due to communication delays resulting from this policy. WRC issued a Corrective Action Plan.

22. ALJ Shrenger determined the Claimant's requests for orders involving her day-to-day care at Ramsgate and the home's operations must be denied because they were beyond the scope of WRC's duties and obligations under the Lanterman Act.

23. In her October 2017 Decision, ALJ Garrett included findings that added some relevant information. At that time Claimant attended a day program five days a week. She had been either rejected or expelled from a number of day programs who were unwilling or ill-equipped to address her behaviors. In Dr. Taylor's functional behavior assessment in 2015, she identified the following challenging behaviors: disruption, aggression, self-injury, property destruction, elopement, and stereotypy. In April 2015, Modern Support Services began a day program for Claimant and received

training from CABA to implement the behavior plan. In January 2016, Caroline Martinez, a BCBA with People's Care, developed a positive behavior support plan that targeted Claimant's challenging behaviors. When CABA terminated services on March 31, 2016, Ms. Martinez took over provision of behavioral services and training for staff of People's Care and the day program. On June 27, 2016, Modern Support Services issued a notice terminating its services because of lack of effective collaborative efforts from agencies involved in Claimant's care. In April 2017, Claimant began attending a day program called My Life/My Day (My Day), and five weeks later My Day reported she was doing well. However, on two days in September 2017, Claimant grabbed the hair of a My Day employee, shook his head, and punched him.

24. In the October 2017 Decision, ALJ Garrett summarized two quarterly reports from People's Care that tracked certain behaviors from February through May 2017 and from June through August 2017. Behaviors were compared on a monthly basis and depict the variability of the identified behaviors in those seven months. Behavioral outbursts decreased from a monthly average of 11 to 0 in the first quarter and remained at 0 during the second quarter. Crying decreased from a monthly average of 16 to 5 in the first quarter and increased to 8.33 during the second quarter. Screaming decreased from a monthly average of 44 to 4 in the first quarter and increased to 7 during the second quarter. Physical aggression remained at a monthly average of 2.75 in the first quarter and increased to 8.66 during the second quarter. Elopement remained at a monthly average of 0 in the first and second quarters. Self-injurious behaviors increased from a monthly average of 0 to 1.25 in the first quarter and increased to 4 during the second quarter. And property destruction decreased from a monthly average of 11 to 5.75 in the first quarter and increased to 19 during the second quarter.

The June 2019 IPP and the Day Program

25. In the IPP dated June 28, 2019, it is noted CABA would begin operating Ramsgate on that date, in transition from operation by People's Care. (Exhibit 4.) It was anticipated Ramsgate would soon become an EBSH, and the IPP addressed services to be provided by CABA and other continuing services. As explained in the IPP, EBSH's are certified by the Department of Developmental Services (DDS) and DSS-CCL, to provide 24-hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision, beyond what is typically available in adult residential facilities, where such individuals are at risk of institutionalization. (See Code sections 4648.80 and 4648.81.) The enhanced services should support individuals during behavioral crises with a goal to minimize or prevent the need for acute crisis services at psychiatric facilities.

26. The June 2019 IPP includes that a day program by My Day, which began in April 2017, is available to Claimant five days per week for 5.5 hours per day. My Day takes Claimant into the community for different activities, and numerous activities Claimant enjoys are listed. However, many times her maladaptive behaviors and aggression prevent participation in scheduled activities. An increase in these behaviors was noted, along with a resulting decrease in accessing the community. CABA was to perform a functional behavior analysis (FBA) and prepare an Individualized Behavior Support Plan (IBSP) to address the behaviors and increase social opportunities and skills. It was noted Claimant was then in crisis and her behaviors had deteriorated over the prior six to eight months.

27. The June 2019 IPP includes that, in response to the October 2017 Decision, WRC contracted with JJ Bustamante, BCBA, in February 2018, who met regularly with People's Care and My Day staff to implement the People's Care behavior

plan. CABA agreed to consult with Bustamante and My Day. EBSH regulations required a Qualified Behavior Modification Professional (QBMP) to be assigned to Claimant, who would spend a minimum of six hours per month on behavior consultation. A team would meet monthly to review the IBSP and make revisions. Based on data collection and passage of time, it was expected the IBSP would more accurately reflect services and supports needed for Claimant to learn coping and other skills and achieve her goals.

28. The June 2019 IPP identified several goals, and the following goals are relevant to this matter: Claimant would participate in a meaningful day service on a regular basis five days per week; the rate of Claimant's challenging behaviors would significantly decrease; Claimant would improve her social, communication, and friendship-making skills to be able to share her interests with others and participate socially in group activities at home and in the community; she would have regular opportunities to socialize with peers, friends and family and have opportunities to engage in peer socialization among the community outside of the home; and Claimant would learn to use an iPad or other device to access the Internet and send emails.

29. Claimant's parents prepared a statement of disagreements, concerns and contentions about the June 2019 IPP which is attached to it. Generally, parents contend the services provided are often ineffective and additional services are needed. They address deficits or needs in, among other things, training, BCBA services, behavioral services, communication, and data collection. Parents disagree with the removal of certain language from the IPP. Parents wrote they were not satisfied with People's Care's operation of Ramsgate and are hopeful about the transition to CABA and an EBSH.

30. On July 25, 2019, My Day gave a 30-day termination notice, and day program services ended in August 2019. (Exhibit 24.) The reasons cited for termination were significant increases in Claimant's extremely aggressive and dangerous behaviors, from approximately once per month in December 2018 to once or twice per day. There was increased risk of injury, and situations where law enforcement became involved. A new protocol was implemented to return to Ramsgate when these behaviors occurred, as it was a controlled environment. There was, therefore, a significant decrease in Claimant's time in the community, and Claimant was not deriving benefit from My Day's community-based program. Erik Duzell, My Day's program director, wrote that his staff had developed a genuine concern for Respondent's well-being, but the program was no longer suited to her needs. He offered to return if there was a significant decrease in tantrum or aggressive/dangerous behaviors in the community.

31. Cori Campbell, Claimant's service coordinator at WRC, testified she made efforts to locate another day program and consulted with parents. As of January 2020, due to COVID-19 concerns a virtual day program was considered. However, due to recent events when Claimant had been involuntarily held for concerns for her safety (5150 holds, discussed below), Claimant's father suggested any day programs should be vetted by parents' attorney. Campbell requested an assessment for independent living services (ILS) and tailored day services, and relied upon Jesus Bernal, a WRC employee who works with vendors and ILS, to pursue the subject.

32. An IPP Addendum dated October 2, 2019, addressed Claimant's escalating behaviors. (Exhibit E.) Due to escalating behavioral outbursts, eloping, and behaviors that threatened the safety of Claimant and those around her, CABA had contacted WRC on September 6, 2019 to request specialized therapy services (STS), which were approved for three months, adding 248 hours per month for a behavior

support specialist, 40 hours per month of BCBA supervision, and 8 hours per month of specialized BCBA supervision. As explained by Dr. Sarah Williams-Katuli, who is a BCBA-D (meaning she holds a doctorate degree), the STS was to provide added hours of service to assist during the transition from People's Care to CABA, and for assessment of Claimant.

33. The STS assessment report covers the period September 8 to October 4, 2019. (Exhibit L.) The stated purposes were to monitor the behavior plan, provide coaching for consistent implementation of the behavior plan, and facilitate an appropriate day service. It was reported staff was implementing the behavior plan, STS staff was providing support (often with the goal of reducing that support), and although Claimant was able to engage in some preferred community activities, she had not demonstrated safe behavior across community settings.

CABA and Ramsgate

34. As of June 29, 2019, CABA leased Ramsgate from Brilliant Corners, a California nonprofit corporation, which develops housing for developmentally disabled individuals. (Lease, exhibit 23.) Among other things, the lease provides it may be assigned/amended to change the tenant to a new provider and that CABA may terminate the lease. Pursuant to its agreement with CABA, WRC pays CABA a monthly rate that factors in rent as well as all other expenses, with the expectation those costs will be attributable to the three clients for whom the CABA program is designed. (Exhibit H.)

35. The program design for CABA at Ramsgate is extensive. (Exhibit 22, pp. 445-494.) According to the testimony of Sarah Williams-Katuli, BCBA-D at WRC, she was a go-between with WRC, CABA and DDS in the process of designing the program

for the EBSH to be established. As relevant to this matter, the program relies on the use of evidence-based practices and the development of a positive behavior support plan. The use of Applied Behavior Analysis (ABA) is detailed. CABA staff qualifications, training and duties are listed. CABA specializes in treating clients with significant behavioral challenges, severe self-care deficits, risk of elopement and/or self-injurious behavior. Data will be collected, and behavioral support plans will be based on FBA's. CABA will make sure clients participate in a day program. Exit criteria include transition if the client has exceeded goals and may move to a less restrictive environment, or eviction, as relevant here, only if the planning team agrees all available community resources have been exhausted, or a determination made in a needs and services plan that the client's needs cannot be met by the facility and the client has been given an opportunity to relocate. (*Id.* at p. 449-450.)

Events After EBSH Started in June 2019

36. Three Individual Support Plans depict some of Claimant's activities after CABA began providing EBSH services. These Individual Support Plans are dated July 22, 2019 (exhibit S), September 15, 2019 (exhibit T), and March 2, 2020 (exhibit U). Of note, Claimant often engaged in different activities in the community and regularly met with her family and a friend. However, there were incidents of property destruction and other challenging behaviors that resulted in limitations on some activities. In the reporting period September 15 to October 21, 2019, there were 38 special incident reports noted, regarding property destruction, elopement, and aggression towards staff and visitors. Positive behaviors are noted, including some of Claimant's calm interactions with staff, improved diet, performing of chores, and activities with others. In the reporting period October 22, 2019 to February 29, 2020, there were 106 special incident reports noted, regarding property destruction,

elopement, and aggression towards staff and visitors. Positive behaviors are noted, including increased options for activities inside and outside the home, performing of chores, and activities with others.

37. CABA prepared monthly Individualized Behavioral Support Plans (IBSP) from July 5, 2019 through February 24, 2021. (Exhibits V-PP, 15.) Claimant contends these IBSP's show Claimant's problem behaviors were significantly lower than she was averaging prior to the commencement of CABA services, as noted in the first IBSP. (Claimant's Closing Brief, exhibit NNN.) To reach this conclusion, Claimant added the reported incidents of aggression, property destruction, disrobing, and elopement per day as charted over those months, and divided the result by 20. (*Id.* at pp. 7-8, and footnotes 2-5.) However, there are mathematical flaws in the analyses. For example, there are 21 IBSP's in that time period, not 20 (two IBSP's in July 2019, exhibit V [July 5] and exhibit W [July 21]). Second, although Claimant contends she began her analyses with the first July 2019 IBSP (exhibit V), in each instance her brief lists the October 2019 IBSP (exhibit Z) as the first IBSP in the group. (Exhibit NNN, pp. 7-8.) Therefore, the math is faulty, in a manner that lowers the daily averages.

38. More significantly, these 21 IBSP's include charts of these behaviors (aggression, property destruction, disrobing, and elopement) and others, such as self-injury, which demonstrate the many inconsistencies in Claimant's behavior patterns. These IBSP's also reflect changes in strategies employed and attempts to analyze the antecedents to Claimant's problem behaviors. The last IBSP covering the period before the NOPA was issued on September 4, 2020, is Exhibit KK. The charts of problem behaviors show the behaviors continued over the period from when CABA began in June 2019, with spikes and dips indicating the continuing inconsistent nature of the behaviors. One chart tracked these four behaviors (aggression, property destruction,

disrobing, and elopement) over the period of CABA's services and averaged their occurrences per day in these four reporting periods: July 2019; June 14-July 11, 2020; July 12-August 8, 2020; and August 9-September 5, 2020.

Aggression: 4/day; 8/day; 6/day; 15/day

Property destruction: .8/day; .2/day; .25/day; .3/day

Disrobing: 15 minutes/day; 92.6 min./day; 64.6 min./day; 114 min/day

Elopement: 10 min.; 2 min.; 3 min.; 3 min.

(Exhibit KK, pp. 513-514.) The lack of either consistency or improvement is stark. Instances of aggression and disrobing increased. Further, regarding some goals during community outings, there was limited success when Claimant's communication regarding specific needs changed rapidly despite staff's use of communication training (*id.* at pp. 502-503); Claimant tolerated delays differently from day to day (*id.* at p. 503); and she engaged in self-injury regardless of staff's attempts at redirection (*id.* at p. 500). The September 4, 2020 IBSP references, again, the inability or difficulty of CABA to identify the causes for some of Claimant's behaviors and reactions.

39. Richard Colombo, BCBA-D for CABA, had performed an assessment of Claimant in Spring 2019, when his position was Behavior Analyst, and performed an FBA dated November 12, 2019, when his position was Qualified Behavior Management Professional (QBMP). (Exhibit M.) As described in the CABA program design, exhibit 22, the QBMP supervises the Lead Direct Support Professionals (who supervise the Direct Support Professionals with the most direct contact with clients), conducts all assessments, oversees clinical programming, and provides support and training to caregivers. The FBA confirmed Claimant's disruptive behavior was most likely to occur

when her requests were denied or delayed. The behavior intervention plan was to be modified with coping strategies and the staff was to increase its attention to Claimant in defined ways.

40. In testimony, Dr. Colombo explained the goals of ABA for Claimant, including increasing helpful behaviors, decreasing unhelpful behaviors, and reducing the risks of some behaviors. After the November 2019 FBA and as time went on, staff was not able to keep up with Claimant's requests. Dr. Colombo believed her problem behaviors were a function of constantly changing sources of her discomfort, or Claimant not being able to express what she wanted and when. He characterized the FBA as not providing much information to identify the function of Claimant's behavior episodes, and not contributing significantly to developing a useful behavior plan. Dr. Colombo consulted with colleagues and tweaked the behavior plan, however there was no significant effect in reducing behaviors to a level beneficial to Claimant. Although CABA was able to de-escalate Claimant at times, there were other times when emergency help was needed. He noted there were months when problem behaviors decreased, but other months with increases. Even in months with lower numbers of incidents, there was injury to staff, and Dr. Colombo could not state with confidence the months with decreased problem behaviors were due to the behavior plan. He testified the decreases could have been due to CABA's work, or something else, or a combination. As of the time of his testimony, Dr. Colombo was still not able to identify the function of Claimant's behavioral difficulties. Across a great variety of Claimant's antecedent behaviors, there were times when a targeted behavior occurred and other times with no problem behavior. Although he did not say so in so many words, Dr. Colombo conveyed that Claimant defied the model of the use of FBA as a tool to identify antecedents to problem behaviors to thereby design a behavior plan to consistently improve Claimant's interactions with others and personal well-being.

41. Dr. Colombo does not believe the EBSH services at Ramsgate are meeting Claimant's needs. With respect to reducing Claimant's risk and increasing her safety, he could not state with a level of confidence what was producing more or less of her behavior, and if he did not know why, he could help Claimant maintain safe levels of behavior. He was concerned there might be a medical or psychological component to her behavior that was not being addressed in the EBSH at Ramsgate. Although CABA was able to provide care at a basic level, it could not advance the goals for Claimant to be more independent, have more access to her community, and be more able to reduce problem behaviors and deal with delays.

42. In an EBSH Progress Update dated March 2, 2020, Ben Heimann, BCBA and CABA's Director of Clinical Operations, noted several concerns. (Exhibit P.) The EBSH model is based on the home accommodating two to three consumers, using ABA as a foundation. Some of Claimant's gains are noted; however, the most significant concern was the suggestion Claimant associated the home with some unidentified trauma from her past, and remaining at Ramsgate negatively affected her success and quality of life. As Claimant's outbursts made it extremely unlikely that she could live with two or three other individuals with their own challenging behaviors, and as Claimant's parents expressed dissatisfaction with the ABA-based EBSH model, CABA recommended they evaluate other DDS residential support models for Claimant.

43. Tarik Hadzic, M.D., Ph.D., became Claimant's treating psychiatrist in August 2019. He wrote a 10-month review dated June 22, 2020, including his summary of Claimant's current situation and his recommendations. (Exhibits 5, Q.) Of significance, he wrote that, despite being on multiple potent psychotropic medications, Claimant's behavioral dysregulation had not improved. He expressed concern, due to the termination of the day program, Claimant had been excessively

isolated, lacked access to peers and structured community activities, and as a result her problem behaviors increased. Since the COVID stay-at-home order in March 2020 her aggressive episodes lengthened and injuries to staff increased. Dr. Hadzic believed the CABA behavior interventions correlated with Claimant's increased violence, mood lability and problem behaviors. He made six recommendations, including that behavior interventions addressing her rigidity be delayed until COVID restrictions were eliminated, Claimant's parents be allowed to visit immediately, staff should interact more with Claimant and reduce her time watching cartoons, to add access to natural sunlight to address insomnia, to add exercise, and use of a computer for interactive learning, games, and augmented communication.

44. Sarah Williams (later Williams-Katuli), Ph.D., BCBA-D, the head of WRC's Community Placement Plan, responded to Dr. Hadzic by letter dated June 24, 2020. (Exhibit 6.) She sought to address perceived inaccuracies in his report. Dr. Williams noted Claimant's increase in aggressive behaviors pre-dated CABA's start of EBSH services and therefore were not caused by CABA's use of ABA. The My Day day program had many years of experience with Claimant and could no longer serve her after the aggressive behaviors increased, not that the aggressive behaviors were caused by the termination of the day program. And the behavior interventions were the core of the ABA program within EBSH services, could not be delayed, and services could not be provided by CABA without ABA behavior interventions.

Communication Preceding the NOPA and the NOPA

45. On August 5, 2020, Dr. Williams co-signed a letter to Dr. Hadzic and Claimant's parents with Thompson Kelly, Ph.D., an experienced psychologist at WRC. (Exhibit 7.) She references a letter from Dr. Taylor at CABA which is not in evidence. Dr. Williams addressed further the issues of ABA services and Claimant's lack of progress.

Among other things, Dr. Williams noted Claimant had a long history of intense behaviors; this was not a new development. Dr. Williams questioned whether there may be another medical or psychiatric component and suggested that Dr. Hadzic provide input and options. In particular, Dr. Williams and Dr. Thompson suggest the team start exploring other treatment and placement options for Claimant.

46. On August 19, 2020, Dr. Williams co-signed with Dr. Kelly another letter to Dr. Hadzic and Claimant's parents. (Exhibit 8.) They reference feedback to their letter of August 3 (from the context, mistakenly referring to their August 5 letter), which feedback was not in evidence (but might be father's email August 12, referenced below). They asked for information on prior genetic testing of Claimant. The intensive ABA services for Claimant are referenced, as well as other steps to provide support. Because the expected success was not seen, they requested Dr. Hadzic's assistance in identifying any psychiatric or medical information CABA might be missing.

47. On September 3, 2020, Dr. Taylor, CEO of CABA, wrote to WRC and parents. (Exhibit 9.) She references a letter dated August 28, 2020, requesting a meeting, which is not in evidence. A summary of recent events fills some gaps, including father's email August 12, 2020, to CABA and WRC stating Ramsgate is Claimant's home and a program must be developed to meet her needs. And, on August 24, 2020, CABA sought input from WRC because all were in agreement the ABA-based services in the EBSH model were not meeting Claimant's needs. In another letter, CABA sought WRC support, as CABA and WRC believed Claimant did not meet EBSH criteria, and CABA stated Claimant met criteria to discontinue services under ethical guidelines for BCBA's. More specifically, the Behavior Analyst Certification Board Professional and Ethical Compliance Code for Behavior Analysts (exhibit 10) obligates discontinuation of services when the client no longer is benefiting from

them. Dr. Taylor wrote of communication problems with Claimant's parents and their negative effect on providing collaborative care. Dr. Taylor included a detailed timeline of events and communications regarding CABA's efforts, since March 2020, to address proper placement for Claimant, complicated soon thereafter by COVID restrictions and effects, and other events. Dr. Taylor referred to two letters from CABA to WRC dated July 23 and August 4, 2020, containing several requests, including to start the process for CABA to no longer operate Ramsgate. Dr. Taylor supported that request, citing many of the concerns noted previously, including the parents' refusal to participate in ABA-based services and dissatisfaction with those services and CABA, different aspects of the communication problems with mother and their negative effects, and the belief Claimant associated the Ramsgate location with a prior trauma and she would be better served in another location by another provider. In Dr. Taylor's opinion, efforts to schedule an IPP were not likely to be successful, and she repeated CABA's earlier offer to enter into the process to separate itself from Ramsgate so that Claimant could remain there, as desired by her parents.

48. The NOPA is dated September 4, 2020. (Exhibit 1.) In the NOPA, WRC expresses numerous concerns, including that Claimant's parents responded to a request for an immediate IPP by suggesting a date four weeks later and which conflicted with another meeting. Aspects of the EBSH model were listed, as well as the cost of about \$100,000 per month for Claimant's care. Despite all of the efforts to decrease behaviors, Claimant had injured staff, was unable to safely attend a day program, and no other residents were able to move into Ramsgate. Requests to Dr. Hadzic were met with limited cooperation. Despite modifications to the program and to medications, the EBSH services are not meeting Claimant's needs, and continuing the services was not ethical or cost-effective. Notice was given WRC would cease funding EBSH services at Ramsgate in 30 days and Claimant would have to move to

receive other services. WRC suggested parents consider other placements, with several programs suggested. As parents had previously instructed WRC not to send referral requests to other programs without permission, WRC asked for permission to send such requests.

49. In their Fair Hearing Request, parents request WRC to secure a qualified vendor to provide appropriate EBSH services for Claimant to live successfully at Ramsgate and follow her IPP in its entirety to achieve the IPP goals. (Exhibit 2.) "EBSH services remain appropriate for [Claimant] if implemented by direct service providers whose services demonstrably result in a more independent, productive, and normal life for [Claimant]." (*Ibid.*)

50. For purposes of the fair hearing, WRC and parents stipulate Claimant needs care at the level of EBSH services. Nothing in the stipulation prevents WRC from pursuing other levels of care in the future.

Other Relevant Evidence

51. Dr. Hadzic was scheduled to testify but, unfortunately, was called away for an emergency. However, some of his documentation is in the exhibits. A long series of emails from CABA to various WRC and other CABA personnel, parents, and Dr. Hadzic is comprised of summaries of daily reports of events, June 19 through July 22, 2020. (Exhibit EEE.) On July 27, Dr. Hadzic commented these reports documented Claimant's maladaptive behaviors, and he suggested an equal or greater amount of time should be spent documenting her life and positive behaviors, including an example of what might be contained in such a report. Dr. Hadzic was frustrated the reporting did not include plans to address the behaviors. He had several questions about Claimant's oral hygiene and requested more interactions with her on this

subject. Dr. Hadzic also requested information on the start and effects of a new experimental medication.

52. Dr. Hadzic visited Ramsgate on September 17, 2020 and wrote a treatment note. (Exhibit R.) As in his June 22, 2020 report, Dr. Hadzic was concerned CABA staff were not as engaged with Claimant as he would like, and he believed much of Claimant's "aggression stems from being locked in a very drab, completely intellectually unstimulating environment." (*Id.* at p. 235.) Dr. Hadzic wrote of various problems having his medication orders followed, concluding he had never experienced this level of difficulty. He noted his earlier requests for reporting of antecedents to problem behaviors and more reporting of positive behaviors had not been acted on. His prior recommendations for more intellectual stimulation were not heeded. Dr. Hadzic believed CABA staff had little training and understanding of ABA or working with autistic individuals. He noted Claimant did not have certain psychiatric or medical conditions and that further genetic testing was not indicated. Dr. Hadzic noted Claimant needed more skilled BCBA's, more dedicated staff, more exercise and more intellectual stimulation and, if provided, she could be housed at the residential level of care. "Major changes to the way her housing is currently implemented" was needed, and it would be "abusive and unjust to the patient to be locked away due to WRC/CABA's failure to properly handle her care." (*Ibid.*)

53. Sandra Kaler, R.N., Ph.D., has extensive education, training and experience assessing and treating individuals with developmental disabilities. In the past she has consulted with, and provided training for, WRC staff. Dr. Kaler evaluated Claimant at parents' request, first in 2007 (when Claimant was 15 years old) and again in February 2020 and wrote of her observation. (Exhibit N.) Dr. Kaler was perplexed by staff interactions that changed Claimant's schedule to test her frustration tolerance,

noted Claimant was quite rigid in her expectations, and she quickly lost the ability to self-regulate. Dr. Kaler recommended Claimant be in eyesight of staff at all times, Claimant was not developmentally ready to recognize schedule changes (which frustrated her and escalated her disorganization), and Claimant's behavioral plan needed to be more developmentally appropriate. Dr. Kaler was concerned that Claimant's developmental level (functioning in the three-to-five-year-old range) had not changed significantly since 2007.

54. After observing Claimant five days in October, Dr. Kaler wrote a Psychological Evaluation. (Exhibit O.) Several standardized tests were administered as well, with Claimant, mother, Dr. Colombo, and CABA staff as reporters. In the summary, Dr. Kaler noted Claimant's behavioral difficulties appeared quite self-stimulatory and ritualistic. The ABA strategy employed was rather strict. Claimant could follow two-step instructions but became overwhelmed if more steps were provided. Dr. Kaler felt the current ABA program was routinized and not developmentally appropriate, and Claimant consistently resisted it. Dr. Kaler made 10 recommendations, the most relevant of which are that Claimant: remain at Ramsgate, as relocation would increase her behavioral deterioration, and continue to receive EBSH services for the enhanced supports and environmental safety measures addressing, for example, elopement and self-injury; be offered developmentally appropriate tasks by the utilization of floor time and Relationship Developed Interventions (RDI), as she had not responded to the approaches being used; needed an occupational therapy evaluation to determine if her sensory arousal could be modulated by an approach other than ABA; needed more interaction with her parents and regular excursions in the community to increase sensory experiences so she would not tantrum for physical activity; and needed a day program which, considering COVID restrictions, could be pairing her with one peer to develop basic interaction skills.

55. In her testimony, Dr. Kaler emphasized the floor time and RDI therapies, which were evidence-based, were more client-oriented, could provide ways to make connections with Claimant, and could be used to make the ABA more effective. She believed CABA was good at de-escalation but was concerned CABA had not focused on or determined the reasons and antecedents for Claimant's behaviors.

56. Claimant's father testified to his numerous concerns about Claimant, her lack of progress, and the approaches used by WRC and CABA. After CABA started, the day program ended soon thereafter, and Claimant had fewer structured activities. When COVID restrictions were imposed, the family, which previously had regular visits, could not see Claimant for 90 days. After restrictions were revised, the process to arrange visits was complicated, inconsistent, inconvenient, and did not provide sufficient visits. Father was concerned Claimant was not able to understand the circumstances. Visits with others were also curtailed and Claimant suffered from isolation. Where she previously went out to several locations, now Claimant was very limited, for example being driven to the beach but required to stay in the car and look out the window. Father did not believe her behaviors were getting better with CABA's services, and he was not able to get a reply to his desire to meet with Dr. Taylor to adjust the program. He referenced hundreds of emails sent by the family. Father noted Claimant had undergone genetic testing many years prior and no issues had been identified. He believed he had a copy of the records somewhere in storage and had told Dr. Hadzic of the results but not given him the records.

57. Jack Darakjian is a manager for Modern Support Services (MSS) who first acted as a moderator regarding Claimant in 2015. Sometime later, for about nine months, MSS provided a tailored day program for Claimant. He has reviewed monthly reports and believes MSS could again provide a tailored day program for Claimant.

MSS has been able to work with one-on-one clients considering COVID restrictions. MSS was recently contacted by WRC generally about supported living services, but not for any specific service. MSS does not have an office in the WRC catchment area and is vendored with the Frank D. Lanterman Regional Center. It was courtesy vendored when it previously provided a day program for Claimant.

58. Cori Campbell is Claimant's service coordinator at WRC and Natasha Lopez is her manager. They both signed the NOPA, although they gave inconsistent testimony concerning their participation in its creation. Campbell has researched other service and housing options for Claimant, including crisis homes, STAR homes and other EBSH homes, and provided some information to parents. Housing options are often limited because there are no openings at some facilities, and because parents are unwilling to discuss other placements. Parents contend the information has been incomplete at times.

59. Dr. Taylor testified about her concerns that were underlying her letter of September 3, 2020. (See Factual Finding 47.) Those concerns included that, although the EBSH program design was for three residents, due to her aggressive behaviors, Claimant could not have roommates at Ramsgate; CABA was not successful in identifying the functions of Claimant's problem behaviors and, therefore, had difficulty designing and implementing an effective program; as Claimant was not progressing, the ethical guidelines for BCBA's dictated cessation of services; and parents were dissatisfied with the services and the CABA employees and requested information and access that did not align with the service model. Dr. Taylor explained these issues in detail, by reference to many of the 17 numbered paragraphs in the timeline of pertinent events in her letter. In Dr. Taylor's opinion, the EBHS services by CABA do not meet Claimant's needs. CABA did not get clear functional antecedents to Claimant's

problem behaviors or a consistent reduction of them. There was a lack of “differentiated outcomes” and CABA couldn’t clearly say why problems behaviors were occurring.

60. Dr. Williams-Katuli testified about her letters, as noted above. She also addressed the suggestion by Dr. Kaler to have floor time and RDI added to Claimant’s services. Dr. Williams-Katuli disagreed with this suggestion. She does not believe these are evidence-based practices, they are incompatible with ABA services, and it would be contrary to ethical guidelines to add them to the EBSH services. She explained the request for genetic testing was an attempt to discover any missing relevant information. Dr. Williams-Katuli testified Claimant’s problem behaviors persisted, despite medication changes, and she did not agree with Dr. Hadzic’s suggestion to delay the ABA behavior interventions. She reviewed Dr. Hadzic’s note that the CABA workers seemed untrained and replied with the nature and extent of the training required for their positions. Although parents and Dr. Hadzic suggested additional services, the EBSH model is for the highest level of residential services.

61. Mary Lou Weise-Stusser, a WRC employee, has searched state-wide for alternate residential placements for Claimant. There are other EBSH service homes in the WRC catchment area, some of which are operated by CABA. She also searched crisis homes and Desert Star, operated by DDS. An EBSH home in Kern county and Desert Star had openings. Claimant’s parents were not interested in the programs that had openings.

62. The parties submitted evidence of events after the NOPA, some of which is noted herein. Numerous Special Incident Reports (SIRs), spanning from the beginning of November 20, 2020 through the end of February 2021 (i.e., a four-month period), detail instances of extreme episodes of Claimant’s maladaptive behaviors. (Ex.

17). Dr. Williams-Katuli testified the types of behaviors that trigger SIR reporting in an EBSH home include only those which are severely problematic or which require the use of restraints. Since December 2020, Claimant had been placed on involuntary psychiatric holds on two occasions pursuant to Code section 5150, and she was arrested in February 2021 for assaulting staff in the presence of first responders. (Exhibits 18, 19, 21, WW.)

63. IPP meetings took place December 2, 2020, and January 28 and February 11, 2021, and an IPP was sent to parents for signature March 11, 2021. (Exhibit 29.) No signature of parents was submitted in evidence. In the cover letter, Cori Campbell and Natasha Lopez note: after parents expressed the desire to have MSS provide a day program, WRC requested MSS prepare an ILS assessment report, as MSS is vendored for ILS which can be a tailored day service; funding for residential services is included depending on the outcome of the fair hearing; parents rejected the STAR home recommended by DDS due to a vacancy; WRC requests parents reconsider, in part due to the need for an order from Superior Court for admission to the program; in the alternative, a crisis home in Kern is an option; or supported living services (SLS) is another option, although parents previously informed WRC they do not believe SLS is appropriate for Claimant; MSS has prepared an SLS budget; and parents should consider the Self-Determination Program, which would be available in June 2021, would provide a very large budget, and parents could choose service providers and create a program for Claimant.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, a state level fair hearing to determine the rights of the parties is authorized if a consumer is dissatisfied with a decision by a

service agency to reduce, terminate or change a service in an IPP. (Code, §§ 4710, subd. (a), 4710.5.) Claimant requested a fair hearing and therefore jurisdiction was established, based on Factual Findings 1-5.

2. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment" to "foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (Code, §§ 4502, subd. (a), 4640.7.) The Legislature intended "to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (Code, § 4646, subd. (a).)

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (Code, § 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (Code, § 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (*Ibid.*) If the parties cannot agree on the provision of a service after the IPP process, a fair hearing may be requested. (Code, §§ 4646, subd. (g), 4700-4716.)

Request for a Different Vendor

4. Regional centers are not direct service providers. (Code, § 4648, subd. (a)(1); *Morohoshi v. Pacific Home, et al.* (2004) 34 Cal.4th 482.) A regional center may purchase services or supports for a consumer from any individual or agency pursuant to vendorization or a contract. (Code, § 4648, subd. (a)(3).) "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (Code, § 4648, subd. (a)(3)(A).) The requirements for vendorization are set forth in detail in California Code of Regulations, title 17 (CCR), section 54302 et seq. Each regional center is responsible for vendorizing providers for that regional center's consumers, negotiating a contract for services with the vendors, and authorizing the provision of care to eligible consumers. (CCR, § 54320.)

5. Authority may be found in the Lanterman Act for the proposition that a consumer who finds the services offered by a particular vendorized provider to be inadequate may request the Service Agency to identify and provide access to other providers of those services through the IPP process. (See Code, § 4646.5.)

6. However, parents did not direct a request to WRC, as part of the IPP process, to change the provider to operate Ramsgate. If such a request was made, and then denied by the service agency, a fair hearing might be the correct procedure to challenge such a denial. Rather, here WRC communicated its decision to stop funding EBSH services at Ramsgate and for an alternate placement for Claimant to be discussed. (Exhibit 1.) This first step was followed by the Fair Hearing Request (exhibit 2), which had the effect of challenging that decision. In that Fair Hearing Request, parents added their request for WRC to secure a qualified vendor to provide

appropriate EBSH services for Claimant to live successfully at Ramsgate and follow her IPP in its entirety to achieve the IPP goals. (*Ibid.*) (See Factual Finding 49.)

7. Claimant cited no authority to support the proposition OAH may, upon a consumer's request in a Fair Hearing Request, order a regional center to contract with a vendor to operate a residential facility when that action was not the subject of the regional center's decision being challenged by the Fair Hearing Request. The authority for filing a request for fair hearing in Code section 4710.5, though couched in broad language, must be read in the context of other Lanterman Act statutory and regulatory provisions governing how service providers are vendored, how they are selected through the IPP process to provide services to particular consumers, and how consumers may obtain a regional center referral to alternative vendored providers through that same IPP process or, if necessary, through the fair hearing process. In that context, section 4710.5 does not provide a basis for a fair hearing on this request for a different vendor, not previously part of the IPP process but, rather, first referenced in the Fair Hearing Request. As such, the request undermines the legislative purpose undergirding the Lanterman Act.

8. Because the portion of the Fair Hearing Request requesting WRC to secure a new vendor falls outside the scope of subject matter governed by the fair hearing provisions of the Lanterman Act, that portion of the request for fair hearing must be denied.

Termination of Funding for EBSH Services at Ramsgate

9. 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.) A regional center seeking to terminate ongoing funding provided to a

consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making a charge generally has the burden of proof in administrative proceedings. (E.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

10. A consumer's family is a valued part of the IPP team. The Lanterman Act addresses the family's role in different ways. Code section 4501 states, in part, the complexities of providing services requires coordination of many state and community agencies, and a consumer and family "shall have a leadership role in service design" and should be "empowered to make choices in all life areas." Further, the Legislature specifically found the mere existence and delivery of services was not enough—those agencies must "produce evidence that their services have resulted in consumer or family empowerment." (*Ibid.*) Services and supports provided by a regional center shall be flexible and individually tailored to the consumer and family. (Code, § 4648, subd. (a)(2).) In preparing an IPP under Code section 4646.5, regional centers should determine and assess the life goals, capabilities, preferences and concerns of the consumer and family. "The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family." The regional center must consider whether the consumer and her family are satisfied with the services being offered, and whether reasonable progress is being made. (Code, § 4648, subd. (a)(7).)

11. The subject of reasonable progress is one of many considerations under the Lanterman Act that are relevant to the issues in this matter. Regional centers are encouraged to employ innovative programs and techniques (Code, § 4630, subd. (b)), find innovative and economical ways to achieve the goals in an IPP (Code, § 4651), and utilize innovative service-delivery mechanisms (Code, §§ 4685, subd. (c)(3), and 4791).

Under Code section 4646, subdivision (a), the Legislature intends that “the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan” If a service is not meeting a consumer’s needs, a regional center may not continue that service.

A service or support provided by an agency or individual shall not be continued unless the consumer or, if appropriate, the consumer’s parents, legal guardian, or conservator, or authorized representative . . . is satisfied and the regional center and the consumer or, if appropriate, the consumer’s parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

(Code, § 4648, subd. (a)(7).)

12. Therefore, the IPP process builds in periodic review, at least every three years, to make sure there is a current list of needs, services and supports, and that the services and supports are meeting the consumer’s needs. Code section 4646.5 requires the periodic review to include a “reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation. (*Id.*, subd. (a)(8).) “For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person’s achievement or changing needs” (Code, § 4646.5, subd. (b).)

13. The evidence supports the conclusion EBSH services at Ramsgate are not meeting Claimant's needs. Dr. Williams-Katuli, Cori Campbell, Dr. Colombo, and Dr. Taylor all testified Claimant had not made improvement regarding her maladaptive behaviors. The IBSP's over time establish the inconsistencies and lack of significant, or sometimes any, improvement in aggression, property destruction, disrobing, and elopement. Instances of aggression, and minutes of disrobing, increased over time. It is also significant CABA could not reliably identify the function of many of the problem behaviors. Lacking such identification, the basis of CABA's provision of ABA services was not likely to yield significant positive results.

14. Dr. Hazdic and Dr. Kaler agree the present EBSH services provided by CABA to Claimant have not been successful. Each offers opinions why and suggestions for improvement. Dr. Hazdic is critical of CABA employees, claims they lack training, yet the EBSH program, Dr. Taylor, and Dr. Williams-Katuli provided contrary evidence. Dr. Hazdic suggested a delay in ABA services, while Dr. Taylor and Dr. Williams-Katuli testified ABA was the primary basis of CABA's EBSH services. Dr. Kaler suggested the inclusion of RDI and floor time therapies, which she stated were evidence-based. Dr. Taylor and Dr. Williams-Katuli countered that these therapies were inconsistent with ABA and were not evidence-based.

15. It is not necessary for purposes of this matter to resolve these evidentiary conflicts. Their mere existence is sufficient to establish, by a preponderance of the evidence, the EBSH services presently provided are not meeting Claimant's needs.

16. Claimant offered several reasons for the perceived lack of significant improvement during CABA's service period. She contends, among other things, CABA staff was not sufficiently trained and did not properly implement the services, WRC and CABA failed to provide a day program after My Day terminated despite the

inclusion of one in the IPP and there was insufficient evidence of a valid reason, Claimant's family and friends were denied access due to COVID restrictions, and several important IPP goals were not included in CABA's monthly reports. However, and as noted above, there was evidence of training and education requirements for all levels of CABA staff. CABA consistently reported Claimant's increased aggression, which was the reason for My Day's notice it was terminating the day program; i.e., Claimant's aggression had not been reduced to a level wherein it was safe for her to interact in a day program (again, Dr. Hadzic disagreed). The effects of COVID restrictions are highly regrettable, but these restrictions were upon society as a whole and, when permitted, family interactions were reinstated, although they were limited and with conditions.

17. Dr. Taylor explained the reasons CABA sought additional information about genetic testing or other psychiatric reasons behind Claimant's behaviors. These requests were not met with cooperation that would assist CABA. Although parents relied upon genetic testing performed many years in the past, they communicated only their recollection of the negative results and not the results themselves.

18. Dr. Taylor also explained the lack of successful interactions was the basis for the ethical obligation to cease providing services. Further, although the EBSH program was designed for three residents, Claimant's behaviors never mitigated to the level allowing any other residents at Ramsgate. Claimant is correct the Ramsgate EBSH by CABA began with her as the only resident. However, this does not create an estoppel against the program design for more residents to join Claimant at Ramsgate.

19. There was other evidence of lack of cooperation that negatively affected the ability of WRC and CABA to provide services. Parents would not consider other placement alternatives for Claimant. And the evidence includes continuing references

to problems in number and type of communications by parents, despite being notified by the April 2017 Decision that a neutral review of the evidence by ALJ Shrenger supported the conclusion mother's interactions were hostile and harassing in nature.

20. It must be understood both by the parents and the Service Agency that a balance of reasonableness and cooperation must be maintained when seeking to identify and implement the service needs of Claimant. The Lanterman Act requires that all purchases of services be secured for the consumer, and calculated to meet the consumer's needs. In doing so, public funds must be spent in a program-effective and cost-effective manner. Administering the Act as intended by the Legislature includes properly assessing, identifying and providing for specifically identifiable services, in a manner which allows measurement of the effectiveness of those services against agreed-upon goals and objectives. Because it is so important that all services provided are appropriately calculated to meet a consumer's needs as planned, it is imperative that there exists the highest degree of cooperation from all IPP participants. Claimant and her parents have the right to provide WRC with input into the selection of the providers of services, consistent with Code section 4648, subdivision (a)(6). Claimant and her parents do not have the right to dictate what decisions the Service Agency must make. If Claimant or her parents believe WRC has made a bad decision, they have the right to appeal. A person who seeks benefits from a regional center must bear the burden of providing information and cooperating in the planning process. (See Civil Code section 3521: "He who takes the benefit must bear the burden.") Of course, parents can refuse to do anything that they feel works to the detriment of their child. If services cannot be effectively delivered, monitored, and measured against goals and objectives, the regional center may be under no obligation to serve that consumer.

21. The present situation must be remedied for the benefit of Claimant. It is recommended the parties continue the IPP process to identify and pursue viable options. The fair hearing process is time-consuming and labor-intensive and uses precious public resources that, in a perfect world, would be directed elsewhere.

22. While the lease allows CABA to be replaced with another vendor, no such vendor has been identified or approved by the IPP team. If such identification and approval can occur within a reasonable time, it is possible Claimant could remain at Ramsgate. Under all of the circumstances, the 30-day notice provided in the NOPA for termination of funding of EBSH services at Ramsgate is insufficient to allow the exploration of alternate service providers or locations. Therefore, the period will be extended to 90 days for those purposes. If no replacement vendor and/or location has been agreed upon by the IPP team by the end of the 90-day period, WRC may terminate funding of EBSH services at Ramsgate for Claimant.

ORDER

1. The appeal by Claimant and her parents of the Service Agency's decision to terminate funding in 30 days of the Enhanced Behavior Support Home services at Ramsgate for Claimant, as those services are not meeting her needs, is granted in part and denied in part. The funding may be terminated in 90 days. In all other respects, the appeal is denied.

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2. If a new vendor for residential services for Claimant at Ramsgate is not provided within the 90-day period noted above, Claimant will have to move from the Ramsgate home in order to continue to receive services.

3. The request of Claimant's parents for an order for WRC to secure a different qualified vendor to operate Ramsgate is denied.

DATE:

DAVID B. ROSENMAN
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.