

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020090700

DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 6, 2021. Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant was represented by her mother, who is also her conservator.

Testimony and documentary evidence were received, and argument was heard. The record closed and the matter was submitted for decision on January 6, 2021.

ISSUE

Should ELARC be allowed to discontinue funding Claimant's participant directed day care services?

EVIDENCE

Documentary: Service Agency exhibits 1 through 13.

Testimonial: Cristina Ontiveros, ELARC Consumer Services Supervisor; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 25-year-old female client of ELARC. She qualifies for regional center services under diagnoses of Mild Intellectual Disability (Mild ID) and Autism Spectrum Disorder (ASD). She also suffers from anxiety and panic attacks.

2. Claimant currently lives in a home with her mother, younger sister, and maternal uncle. She helps complete chores with verbal reminders. She can wash clothes and bath towels, clean her room, and take out the trash.

3. Claimant has a high school completion certificate, and a California driver's license.

4. Claimant has health insurance coverage through Blue Cross PPO and Medi-Cal, and she receives \$869 per month in SSI benefits. She pays \$400 per month

in rent, \$45 per month for her cell phone bill, and varying monthly payments for retail clothing store credit cards.

5. Claimant currently receives regional center services in the form of respite (20 hours per month), independent living skills services (30 hours per month), and day care (66 hours per month).

6. At Claimant's most recent psychological evaluation, conducted on October 25, 2017 (at age 21 years, 11 months), Licensed Clinical Psychologist Wendi Jordan, Psy.D., noted that Claimant is assigned chores at home. However, she does not complete them independently except for cleaning her room and occasionally washing towels. Claimant can also "complete activities of daily living like self-help and hygiene tasks, [but] she requires assistance in the form of reminders, prompts, and supervision to ensure they are completed appropriately." (Exhibit 4.) Dr. Jordan also noted Claimant's mother's concern about Claimant's lack of safety awareness when using the Internet and her "chatting online with people she does not know." (*Ibid.*)

7. Claimant is five feet, four inches tall. Her weight has fluctuated over the years. In 2007, she weighed 126 pounds, but steadily increased until 2011, when she weighed 168 pounds. Thereafter, she began losing weight, and in 2014, she weighed 122 pounds. In December 2015, when Claimant weighed 128 pounds, her health care provider documented a "risk of eating disorder." (Exhibit 12.) However, in 2016, Claimant's weight increased to 139 pounds, and in March 2017, she weighed 158 pounds. Claimant's last documented weight in her medical records was 138 pounds on February 27, 2019.

8A. In January 2019, ELARC began funding Independent Living Skills (ILS) services for Claimant, provided by Turning Point Living Skills, Inc. (TPLS). In its initial

assessment, TPLS determined that Claimant required ILS assistance to work on: money management and budgeting; food management and meal preparation; health management and awareness; transportation and mobility; educational planning and lifelong skills; job readiness skills; emergency preparedness and awareness; community resources and awareness; and social, communication, and self-awareness.

8B. In the January 2019 assessment, TPLS documented Claimant's weight at 135 pounds and noted, "She has history of anorexia, three years ago, but no new reports of eating disorder. [Claimant] is reported to have normal eating habits and tries to eat healthy." (Exhibit 8.)

8C. Regarding Claimant's transportation skills, TPLS noted that she "is dependent on her mother and grandmother for all transportation needs. She has a valid Driver's License but does not have a car. Her mother does not want her to drive at this time because she is afraid [Claimant] is not ready and may have an accident. The plan for [Claimant] is to get a job, practice driving and once she is ready, she can have her mother's car. Until [Claimant] gets a car, she will benefit from learning about Tap Card and Access Services in order to determine which service will best fit her needs and ability." (Exhibit 8.)

8D. Regarding Claimant's educational planning, TPLS noted Claimant's interest in pursuing a career in cosmetology. TPLS documented the following:

[Claimant] is not sure if she wants to attend college but would like to look into vocational program related to cosmetology. She wishes to learn how to do professional make-up. She enjoys learning to do her make-up by watching tutorials on YouTube and Instagram. [Claimant]

will require assistance to look up cosmetology classes within the local community center, beauty schools, and East Los Angeles College. The ILS instructor will assist her to research what requirements and documentation is needed for the different types of programs. ILS instructor will provide her assistance to research and go through registration process and the break down the total cost for the different programs. . . . The ILS instructor will also provide her with guidance and assistance navigating through the college life and resources offered. Department of Rehabilitation will be contacted to apply for their services in relation to pursuing a college academic program.

(Exhibit 8.)

8E. Regarding Claimant's job readiness, TPLS documented Claimant's desire to obtain employment in a clothing store. To facilitate this goal, TPLS noted the following:

[Claimant] has been working with Ability First for vocational services. They have assisted her to submit job applications to numerous places. She has applied at Wal-Mart, Target, In & Out and Chick-A-fillet but has not gotten a call back. She is interested in applying for other retail stores.

She has only had one interview but was not offered a job. She still feels unprepared for the interviews and her mother feels that Ability First has not done a good job at helping [Claimant]. She is not sure she wants to continue with

Ability First. Once the Ability First services are cancelled, ILS instructor will start working with [Claimant] in job readiness and job search. The ILS instructor will teach [Claimant] to update her resume to keep it up to date. Also, [Claimant] will prepare for future job interviews by practicing with the ILS instructor through mock interviews and constant practice. The ILS instructor will assist [Claimant] to identify different companies and locations where she would like to work. The ILS instructor will assist her in completing job applications and following up on the status with a telephone call.

(Exhibit 8.)

8F. Regarding Claimant's safety awareness, TPLS noted: "The ILS instructor will work with [Claimant] to increase her personal safety skills and overall safety awareness. . . . Her mother expresses concern over [Claimant's] lack of safety understanding when using the Internet. ILS instructor will work with [Claimant] to review and understand Internet safety guidelines, recommendations, and personal privacy." (Exhibit 8.)

9A. Claimant's most recent Individual Program Plan (IPP), dated November 2019, documents Claimant's status, goals, and services at that time.¹

¹ A more recent IPP meeting transpired in about December 2020. However, the IPP had not been finalized and signed as of the date of this hearing.

9B. According to the IPP, Claimant's mother reported "[Claimant] had lost weight [previously] due to inadequate calories and-sometimes refuses to eat. She was previously diagnosed with anorexia 3 years ago and Mother suspects that she is not eating again due to her losing about 12 lbs." (Exhibit 5.) Claimant's reported weight was 122 pounds.

9C. Regarding Claimant's socialization domain, the IPP noted: "[Claimant] is not enrolled in any social/recreational programs. She can initiate and maintain interactions in familiar settings only. . . . [Claimant] does not really have any friends but talks to many people online, mainly males. She also has a boyfriend but she does not see him regularly and only [F]acetimes him." (Exhibit 5.)

9D. Claimant does not have significant behavioral issues. However, Claimant's mother noted that, while Claimant will not typically elope, "she is easily influenced and would possibly elope if pressured by others to do so. Mother mentioned that [Claimant] is active on social media and that she may have a boyfriend. Mother expressed concerns over her understanding of internet safety. [Claimant] was previously referred to sex education program Connecting Dot-by-Dot but she was uncomfortable with topics discussed at program and decided to no longer attend." (Exhibit 5.) Since regional center consumers are at higher risk of being taken advantage of, Connecting Dot-by-Dot's sex education program offers a variety of courses ranging in topics from physical changes, appropriate interaction with the opposite sex, and how to remain safe.

9E. Regarding Claimant's career and education goals, the IPP noted:

[Claimant] is not attending any day or vocational program.
She was receiving services with Ability First but Mother

decided to cancel services because she was unhappy with the program and didn't like that they were unable to help her find employment. They got her multiple job interviews, but she never obtained anything other than a temporary job that lasted a month.

Mother stated that [Claimant's] self-esteem became low due to being rejected from so many jobs. . . . [Claimant] continues to express interest in working in a beauty/fashion store or even a store like Target. [Service Coordinator (SC)] provided Mother with a list of vocational programs and requested that she call when she decides on a program.

(Exhibit 5.)

9F. Around the time of the November 2019 IPP meeting, ELARC Consumer Services Supervisor (CSS) Cristina Ontiveros had noticed Claimant was receiving what CSS Ontiveros considered two contradicting services – daycare, which is typically provided to consumers needing complete care and supervision, and ILS, which is provided to consumers preparing to live independently. CSS Ontiveros instructed SC Vasquez to discuss termination of day care services with Claimant's family at the 2019 IPP meeting. CSS Ontiveros knew the day care services had been funded for many years, and she wanted to give the family time to understand the change and to prepare for the transition. At the November 2019 IPP meeting, the participants discussed the possible termination of funding Claimant's daycare services. The November 2019 IPP notes: "ELARC will continue to fund for 66 hours/month of daycare for now, per daycare policy and regulations. Consumer's case and service to be reviewed by supervisor, as service may be terminated." (Exhibit 5.)

10A. Claimant continued receiving ILS services which were focused on her educational and career planning, among other things. In February 2020 and August 2020, TPLS provided progress reports for Claimant's ILS services.

10B. Regarding Claimant's Educational planning, TPLS noted the following updates:

Update February 2020: In the last six months, the ILS instructor and [Claimant] have discussed her goal to look for a cosmetology program but she wants to wait until she moves to a new house. The ILS instructor has taken [Claimant] for a tour of East Los Angeles College and to find out about their cosmetology program. However, [Claimant] does not feel like a community college is somewhere she wants to attend and rather look for programs outside of the community colleges. The ILS instructor has talked to [Claimant] about the benefits of going to a community college including the many resources she will have access to[.] For the next six months, the ILS instructor will work with [Claimant] to identify cosmetology programs that are offered through private institutions and help her compare the cost and requirements to that of a community college[.]

Update August 2020: With the assistance of the ILS instructor, [Claimant] continues to go over her educational opportunities to get into a cosmetology program. The ILS instructor advises that [Claimant] also look into online classes, especially with the current COVID-19 conditions

and schools being closed. The ILS prompts [Claimant] to look at the general requirements to get into a beauty program, and the mandatory responsibilities in completing the program. [Claimant] expressed interest in creating makeup tutorials on YouTube. . . . [Claimant] also uses YouTube to teach herself how to perform new hobbies, and watch other educational videos. . . . [Claimant] and the ILS instructor will continue to look into local classes and programs by her new neighborhood in Whitter, so she can apply once the COVID conditions improve for in class settings.

(Exhibit 9.)

10C. Regarding Claimant's job readiness, TPLS noted the following updates, including Claimant's brief employment at an aerospace company:

Update February 2020: Since her short time working at Monogram Aerospace, [Claimant] has not been able to secure employment. [Claimant] is passionate about finding a job and is eager to start working. In the last six months, the ILS instructor has been working with [Claimant] on job readiness skills to prepare her for and encourage her to apply for jobs. Job readiness includes updating her resume, searching possible job openings, filing out applications, and practicing interview skills. With the ILS instructor's assistance, [Claimant] applied to a few jobs within her community. Because most jobs require online applications,

[Claimant] was provided assistance to review the application process and submit the correct information. The ILS instructor assisted in completing paper applications required by a couple of companies. [Claimant] required directions, reminders and prompts to complete the applications. . . . The ILS instructor has worked with [Claimant] on job interviewing skills and appropriate communication and attire. Recently, H&M called [Claimant] back for an interview, but the interview was within the hour, and [Claimant] was not prepared and did not take the interview. [Claimant] stated her family is looking to move and wants to wait on applying to new jobs until she knows where they will move. For the next six months, the ILS instructor will continue to work on job readiness skills. Once [Claimant] moves, the ILS instructor will resume the job search.

Update August 2020: [Claimant] continues to need assistance in searching for jobs in the community of Whitter, where she will soon relocate with her family. [Claimant] is aware and open about her job preferences, but needs help in using her internet browser to find her exact job interests filtered to her local community. [Claimant] is eager to get a new job, because she is bored and frustrated at home. Due to COVID-19, [Claimant's] mom does not want her to get a job and worries that she will be exposed to the virus; [Claimant] is in agreement with this safety

concern. The ILS instructor and [Claimant] will continue to practice job readiness, so she will be prepared once the conditions improve.

(Exhibit 9.)

10D. Regarding Claimant's safety skills, specifically regarding online safety, TPLS noted the following updates:

Update February 2020: [Claimant] and the ILS instructor review and discuss online safety, privacy, and social media. She is reminded not to share personal information to anyone online, even if she is a friend with the person. . . . [Claimant] has been recently staying home alone more often, and sometimes watches her little sister when mom is away for a short amount of time, the ILS instructor went over the ways to keep her sister safe as well as herself. The ILS instructor will continue to work with [Claimant] on personal, community, and online safety and awareness.

Update August 2020: In the last six months, [Claimant] and the ILS instructor reviewed the importance of practicing and understanding the importance of safety measures, inside the home and outside in the community. . . . [Claimant] does communicate with the ILS instructor that she is using social media more, so the ILS instructor reviewed safety precautions to use on the internet. With prompts and reminders, [Claimant] displays capability of using the internet with safety precautions[.]

(Exhibit 9.)

11A. On August 21, 2020, ELARC issued a Notice of Proposed Action (NOPA). The stated reason for the action was:

After review of [Claimant's] current situation, it is determined that she is highly capable and no longer in need of Day Care Services. ELARC currently funds Independent Living Services which are preparing [Claimant] for gainful employment and residing independently. She is also learning how to navigate her community and utilize public transportation until she gets her driver's license. Based on [Claimant's] progress, ELARC believes she no longer meets the criteria for Day Care Services.

(Ex. 1, p. 4.)

11B. As authority for its action, the Service Agency cited Welfare and Institutions Code sections 4512, subdivision (b), 4646, subdivisions (a) and (d), 4646.4, subdivision (a), 4646.5, subdivision (a), and 4648, subdivision (a).

11C. Claimant's mother filed a Fair Hearing Request appealing the Service Agency's denial.

12A. After the NOPA was sent, Claimant's SC continued focusing on Claimant's employment goals.

12B. (1) On October 7, 2020, SC Vasquez spoke to Claimant's mother by telephone regarding possible options for Claimant's employment. Claimant's mother informed SC Vasquez that she is not interested in the Ability First program because

they wasted Claimant's time. SC Vasquez inquired if Claimant would be interested in any other option for supportive employment or work/vocational programs. Claimant's mother informed him she contacted all of the referrals he had given her previously, and none of them were a match for Claimant. SC Vasquez recommended that Claimant's mother give another vendor a try, such as Almansor. Claimant's mother said she called Almansor, and they told her that they could not work with her, although she could not recall what reason was given. Claimant's mother agreed that SC Vasquez could contact Almansor to determine what options they could provide for Claimant.

(2) Claimant's mother emphasized that she does not want Claimant to be in a program offering only seasonal or temporary jobs. She wants Claimant in a program that guarantees a permanent job. Claimant's mother also stated she wants a program "that will be with [Claimant] throughout the entire job applying process." (Exhibit 6.) She noted that Ability First only helped Claimant with her resume, but she "wants a program that will assist [Claimant] with resume, completing a job application, preparing for the interview, and attending the interview with her." (*Ibid.*) SC Vasquez informed Claimant's mother that most programs can assist with most of those tasks but cannot necessarily attend the actual job interview with Claimant. He noted that the goal of these programs is to teach Claimant how to complete tasks (including the job interview) independently and without any assistance.

(3) SC Vasquez inquired if Claimant would be interested in a work/vocational program. Claimant's mother said Claimant is open to that idea, including doing warehouse work, but Claimant's mother does not want Claimant doing janitorial work or working at a hotel. Claimant's mother emphasized that she is only interested in "a program that has guaranteed jobs set up" for Claimant. (Exhibit 6.) She

stated she "is tired of wasting her time and will not allow [Claimant] to attend any of these programs if they don't absolutely guarantee her a job." (Exhibit 6.)

(4) SC Vasquez informed Claimant's mother he would compile a list of vocational/work programs and list of supportive employment programs for her to contact and subsequently inform him where she would like a referral sent. SC Vasquez also planned to contact Almansor to discuss possible options for Claimant.

12C. SC Vasquez contacted Almansor to discuss employment options for Claimant. On October 20, 2020, SC Vasquez spoke with a representative of Almansor named Karissa who instructed him to provide Claimant's mother with her contact information so they could discuss the Almansor program and services. Karissa informed SC Vasquez that Almansor attempts to have consumers working in the community in about three months.

12D. On October 20, 2020, SC Vasquez also contacted two other vendors, Lincoln Training Center and Innovative Rehab Services. SC Vasquez left voicemail messages requesting calls back to obtain more information about their programs and employment opportunities.

12E. On October 15, 2020, SC Vasquez sent an email to George De La Loza, ELARC employment specialist, and informed Mr. De La Loza that he needed assistance regarding employment opportunities/options for Claimant. SC Vasquez provided background information regarding Claimant's employment efforts. On October 22, 2020, Mr. De La Loza sent a responsive email to SC Vasquez, noting the following:

1. Most, if not all employment opportunities for all of us, including those we serve, are temporary by their very nature; we are all subject to losing our jobs if we don't

perform or for other reasons. . . . [B]oth the consumer and family must understand that there are NO certainties that any of the employment opportunities we may be able to facilitate . . . will ever start out, or end up, as permanent; they are all temporary by nature. In fact, most, if not all, employers we work with use our [Paid Internship Program (PIP)] as a way to observe our consumer in an actual work setting to see if our consumer can do the work. We believe the opportunity to showcase one's talents is a good thing and represents an opportunity that many of our consumers would never have if not for programs such as PIP[.]

2. Of course, the goal and intent of PIP, and other employment programs such as those offered at [the California Department of Rehabilitation (DOR)], is to secure "permanent" employment for all program participants. However, the fact remains that only about thirty (30) percent of our program participants receive an offer for permanent employment[.]

3. We strongly believe that any, even those that last only a few weeks, employment experiences are valuable as they provide our consumers with "real" work experiences and they also provide our consumer with a real work experience to add to their resume (this is a very important issue)[.]

4. Additionally, the skills our consumers may learn at their work sites, regardless of the temporary nature or their placement, is invaluable.

5. Ideally, I would love to tell all of our consumers considering employment, that our programs absolutely lead to permanent employment but that would be misleading. I [always make this clear, as well as] all the previous points I enumerated, when I first meet with a family.

Moving forward this is my recommendation:

1. I would be happy to participate in a meeting with your consumer and family to address the issues I've enumerated for you and to develop a plan to secure a job[.]

2. I believe it is important to clearly explain the differences in the employment programs we offer and those offered by DOR and other employment agencies. A referral to DOR for supported employment services is a good idea so long as the family understands exactly how that program works.

(Exhibit 7.)

12F. On October 29, 2020, Sebastian, a representative from Lincoln Training Center (Lincoln) contacted SC Vasquez by telephone. Sebastian informed SC Vasquez about Lincoln's group supported employment which includes group placement with a job coach (with a ratio of three consumers to one coach). Sebastian also informed SC

Vasquez that Lincoln's individual supported employment currently has a waiting list. After referral of consumer to their program, Lincoln conducts interviews by telephone, and if the consumer is a "good fit," they request that the consumer visit their facility for a tour. If the consumer likes their facility, Lincoln begins providing services and tries to find employment for the consumer.

12G. On October 29, 2020, SC Vasquez, Mr. De La Loza, Claimant, and her mother met via Zoom videoconference. According to SC Vasquez's notes documenting that meeting, the parties discussed the following:

[Mr. De La Loza] explained to Mother how any sort of employment that is provided to consumer usually starts off as temporary (as a trial period) and eventually can become permanent. [Mr. De La Loza] informed Mother that this trial period is for both employer and consumer to decide if it is a good fit. [Mr. De La Loza] explained to Mother that with supported employment, consumer will be provided with a job coach that will assist consumer throughout the entire job search and on the job once employed. [Mr. De La Loza] informed Mother that he thinks that a paid internship program with Lincoln Training Center would be a good fit for consumer. Mother and consumer agreed to try out Lincoln Training Center due to not wanting to work with Ability First ever again. . . . [Mr. De La Loza] George informed Mother that through PIP, consumers can earn up to \$10,400/year. Any job that consumer may get may start off from 3 months up to 1 year. [Mr. De La Loza] explained

how some consumers get employed permanently but can also be part time if they choose to be. [Mr. De La Loza] explained how there may be a waitlist [for Lincoln], which means that if Mother and consumer do not want to wait for too long, they can try supported employment in a group setting. . . . Mother stated that she is open to trying either program, whether it be PIP or supported employment in a group setting. . . .

[Mr. De La Loza] inquired with consumer what some of her interests are. Consumer stated that she enjoys shopping at the mall, going to the stores, folding, etc. She also stated that she is open to working at a retail store. . . . Consumer informed [Mr. De La Loza] that she is also interested in makeup. [Mr. De La Loza] requested that consumer and Mother take some time to go to Cerritos College website and look up makeup certificate program. [Mr. De La Loza] informed Mother and consumer that if possible, she may even be able to land a part time job and attend this certificate program as well. Once she completes the makeup certificate program, we can ask [Lincoln] to try and search for a job related to cosmetology.

(Exhibit 6.)

12H. On October 29, 2020, SC Vasquez left a voicemail message for Sebastian at Lincoln requesting a call back to discuss a paid internship program and the waitlist.

13A. At the fair hearing, the Service Agency asserted that terminating funding for daycare services was appropriate since that service is no longer necessary to meet Claimant's current needs.

13B. The Service Agency pointed to ELARC's purchase of service policy for Daycare Services, which states in pertinent part:

[D]ay Care is defined as care and supervision for a child who is residing at home and is unable to care for her or himself when both parents or a single parent (primary care-provider) is employed full/part time outside the home or for a parent(s) to attend an educational program directed toward gainful employment. [¶] . . . [¶]

[I]n-Home Day Care Services - Family Member: [This] category refers to parents who have received prior authorization from ELARC to be reimbursed to employ a private care provider for non-medical day care services. This option will only be available if the individual is unable to be served in the community due to severe behavior deficits that require him or her to be in a structured environment after school to prevent out of home placement. Evidence to support the need for a structured environment and severity of behaviors should be well documented throughout the chart in Special Incident Reports, Medical records, school records etc. Should it be identified that an In Home Day Care Service Family Member / Vouchered Vendorization will be used for the day care service, a Financial Management

Service Fiscal/ Employment Agent or a Financial Management Service Co-Employer shall be required to assist with the administration of employees. [¶] . . . [¶]

CRITERIA

The regional center will only consider funding for day care when the planning team determines that specialized services are required. Specialized services are those that a consumer requires to meet his or her supervised needs that are beyond those of a non-disabled child WIC 4659 & WIC4685. According to Title 17 Section 54326 (d)(1) regional centers shall not use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities WIC 4646.4 subd. (a)(4). [¶] . . . [¶]

Adult consumers attending a public school program (18 to 22) may be eligible for an after school day care or extended day care program during school breaks based on individual needs and parent's work schedule. It is expected that all adult consumers eventually will transition into inclusive community placement programs that will provide age-appropriate activities. As with children, all alternative funding resources must be explored and exhausted. [¶] . . . [¶]

AMOUNT OF SERVICE

The interdisciplinary team will determine the number of hours per day for day care based on the level of natural support resources available to the family, to the consumer, and on the family's and consumer's needs.

(Exhibit 3.)

13C. At hearing, CSS Ontiveros testified credibly on behalf of the Service Agency. She is aware of Claimant's mother's asserted safety issues regarding Claimant's befriending inappropriate individuals online and Claimant's history of an eating disorder. The Service Agency maintains that there is no current evidence of an eating disorder and that Claimant's healthful eating can be addressed via the ILS services she is currently receiving. Claimant's online safety has been, and will continue to be, addressed via her ILS services. CSS Ontiveros acknowledged that Claimant was provided daycare funding when she was younger because she required more supervision than she does now. CSS Ontiveros pointed out that Claimant held a temporary job without daycare supervision, and she earned a driver's license which allows her to drive independently. CSS Ontiveros credibly noted that daycare is more suitable for an individual with significant adaptive needs, unlike Claimant. She also credibly noted that daycare services "are not meant to last forever, and adults are expected to transition." Claimant is currently receiving ILS services to help with that transition, and the Service Agency is engaging in efforts to assist Claimant in obtaining employment.

14A. Claimant's mother testified at the fair hearing on Claimant's behalf. She is Claimant's conservator, and she monitors her online activity, including emails and

Facebook. Claimant's mother is not asking for daycare "to continue forever," and she realizes that, at some point, Claimant will transition and have a job. However, Claimant is still waiting for an employment program "for transition." Claimant's mother indicated she is "not opposed to reduction" of daycare hours, but she did not specify what number of hours remained necessary.

14B. Claimant's mother asserted that continued funding of daycare is warranted "due to safety issues," which she identified as Claimant's history of eating disorder and her lack of online safety awareness. Regarding Claimant's online safety, Claimant's mother has "issues with her talking to strangers on the Internet," because Claimant has given them their home address, and strangers have come to their house. Claimant's mother asserts she cannot leave Claimant alone because she fears she will give strangers their address, and Claimant "is capable of letting someone into our house" who can harm her. Claimant's mother acknowledged that TPLS "is helping with [the] safety" issue, but it remains a problem. Claimant's mother also asserts that Claimant's eating disorder is "still active," and she needs someone to monitor her eating.

14C. Claimant's mother works full time. Before she goes to work, she drops Claimant off at Claimant's maternal grandmother's home for the day. Claimant's grandmother is her daycare provider, and she is paid for three hours of the full day she watches Claimant (up to 66 hours per month). She is 67 years old and does not know how to use a computer, so she is unable to limit Claimant's Internet usage or to eliminate the risk of Claimant inviting strangers online to visit her. However, Claimant's grandmother monitors when Claimant leaves the house. She can also monitor what Claimant eats. Nevertheless, there was no evidence that, should daycare funding be

terminated, Claimant would discontinue going to her grandmother's home while her mother works.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for these appeals was established.

2A. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

2B. In terminating funding for Claimant's 66 hours per month of daycare services, the Service Agency bears the burden of proving by a preponderance of the evidence that the termination is appropriate. The Service Agency has met its burden of proof.

General Provisions of the Lanterman Act

3. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPPs. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

4. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

5. Additionally, when purchasing services and supports, service agencies are required to ensure the “utilization of generic services and supports when appropriate.” (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

Service Agency’s Cited Bases for Denial

6A. Welfare and Institutions Code section 4646.4 provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer’s individual program plan developed pursuant to Sections 4646 and 4646.5. . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

6B. Welfare and Institutions Code section 4646, subdivisions (a) and (d), provides:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, when appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature 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. [¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased

by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

6C. Welfare and Institutions Code section 4648, subdivision (a)(8) provides: "In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following: (a) Securing needed services and supports. [¶] . . . [¶] (8) Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

7. Claimant has been receiving funding for daycare for many years, but ELARC's purchase of service policy does not envision continued funding for a 25-year-old like Claimant who does not have severe behaviors nor needs a structured, supervised environment. Claimant has been able to hold a temporary job without daycare supervision, and she earned a driver's license allowing her to drive independently. Moreover, the evidence did not establish that continued funding for day care is necessary to address Claimant's current needs. Claimant is currently receiving ILS services to help her transition to independent living, and those ILS services are addressing Claimant's online safety. Although there is no current medical evidence that Claimant is currently suffering from an eating disorder, Claimant's healthful eating can be addressed via the ILS services she is currently receiving (in conjunction with any medical or psychiatric treatment if such a diagnosis is made).

Given the foregoing, the Service Agency's termination of funding for Claimant's day care services is appropriate.

ORDER

Claimant's appeal is denied. Eastern Los Angeles Regional Center's discontinuation of funding Claimant's participant directed day care services is upheld.

DATE:

JULIE CABOS-OWEN

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.