

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020100885

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by videoconference on March 2, and April 6, 2021.

Julie A. Ocheltree, Attorney, Enright & Ocheltree, LLP, appeared on behalf of South Central Los Angeles County Regional Center (Regional Center or Service Agency).

Armida Y. Orchoa, Orchoa's Consulting LLC, appeared on behalf of Claimant, who was not present at hearing. Claimant's mother was present for both hearing days

and testified. Claimant's father was present during the second day of hearing on April 6, 2021.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the second date of hearing on April 6, 2020.

ISSUES

1. Whether Regional Center should fund intensive behavioral services at a rate of 40 hours per month of direct service and 8 hours per month of supervision from September 2020 through the end of January 2021.

2. Whether Regional Center should continue to fund intensive behavioral services at a rate of 40 hours per month of direct service and 8 hours per month of supervision from Claimant's transition to the Self-Determination Program.

EVIDENCE

Documentary: Service Agency exhibits 1-13; Claimant's exhibits A-M.

Testimonial: Naomi Hagel, Program Manager, Service Agency; Zainul Gowani, MSC, BCBA, Behavior Consultant, Service Agency; and Claimant's mother.

¹ Claimant and his family are identified by party designation and relationship, not by name, in order to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a seventeen-year-old Service Agency consumer by reason of his diagnosis of Severe Intellectual Disability and Down Syndrome. He resides with his parents. Parents provide Claimant with all necessary supports to complete his daily tasks. In the past, Claimant attended private Special Education School at Wayfinder Family Services. Claimant has not attended school during the 2020-2021 school year due to COVID-19 pandemic-related school closures. Claimant's mother does not intend to have Claimant resume attending school once his school reopens.

2. Claimant's most recent Individual Program Plan (IPP), prepared after a meeting via Zoom, dated January 28, 2021, notes his continuing challenging behaviors. Those behaviors include disruptive social displays; sitting down, yelling, kicking, and pouting during outings and trips to doctors; throwing items at home when frustrated; self-injurious behaviors of biting his thumb; emotional outbursts; and aggressive and destructive behaviors, such as pulling his mother's hair. Claimant's behavior adversely affects his access to the community. The parties' disagreement regarding the best method of addressing these needs and the changes in circumstances since the Notice of Proposed Action (NOPA) was issued by Service Agency in September 2020 are set forth in this document.

3. Since approximately 2013, Service Agency had funded Applied Behavior Analysis (ABA) services through California Psychcare in order to assist Claimant with decreasing challenging behaviors. The specific services provided to Claimant fall into the category of Discrete Trial Training (DTT). Parents requested that these services continue at the rate of 40 hours per month of direct services and 8 hours per month of supervision. Service Agency, however, proposed to fade out the services of California

Psychare over the span of one year and then terminate the services after Claimant completes a year in the Self-Determination Program (SDP).

4. SDP is a pilot program being implemented by Service Agency. While a list of SDP definitions was submitted into evidence and general testimony regarding the program was presented, the specific regulatory guidelines of how the program functions in conjunction with the Lanterman Act were not submitted into evidence by Service Agency. (Exhibit 11.)

5. Based on the parties' disagreement about the level of needed DTT services of Claimant, a NOPA, dated September 24, 2020, was issued to parents notifying them that "[I]ntensive behavioral services with California Psychare are no longer necessary to meet [Claimant's] needs, and the services they are providing are not specifically addressing behaviors." (Exhibit 1, p. 4.) Service Agency's intended proposed modification of services was a fade out plan for behavioral services with California Psychare that would terminate after Claimant had been enrolled in SDP for one year. The NOPA did not clearly specify when the fade out plan was to begin. Service Agency originally intended the fade out plan to begin in July 2020 with services terminating at the end of June 2021. (Exhibit 3, p. 41.) At hearing, Service Agency admitted that the NOPA was not clear as to the intended time period of the fade out plan and clarified their intent and the time period of the fade out plan.

6. Specifically, Service Agency proposed that, for the first three months after Claimant transitioned from traditional services to SDP, Claimant would receive the rate of DTT services of 40 hours direct services and 8 hours per month of supervision. For the next three months, Claimant would receive 30 hours per month of direct services and 6 hours per month of supervision. For the following six months,

Claimant would receive 20 hours per month of direct services and 5 hours per month of supervision. After those six months, services would be terminated.

7. On October 16, 2020, Claimant, through mother, filed a Fair Hearing Request (FHR), stating disagreement with the fade out plan and requesting that ABA services continue at the rate of 40 hours per week and 8 hours per month “while they are recommended by Professionals.” (Exhibit 1, p. 38.)

8. The parties subsequently met for an informal meeting, pursuant to Welfare and Institutions Code section 4710.7, to attempt to resolve their disagreement. Based on a Service Agency report, at the informal meeting, Claimant’s representative indicated Claimant needs ABA and Adaptive Skills Training using the vendor SEEK. Claimant’s mother further indicated that a fade down to 20 hours a month and 5 hours was acceptable if, in June 2021, Claimant could receive an evaluation from SEEK. (Exhibit 3, p. 41.) SEEK is not a Service Agency vendor. Accordingly, Service Agency proposed alternative behavioral services vendors pending SEEK’s potential vendorization by Service Agency.

9. By letter dated December 16, 2020, Service Agency notified Claimant’s mother that it had decided to deny Claimant’s request to continue funding for ABA services, 40 hours per month, and uphold its previous decision to fade out ABA services for Claimant. (Exhibit 3, p. 41.)

10. In February 2021, Claimant transitioned from traditional services to the SDP. Claimant’s mother also elected to stop receiving ABA services from California Psychcare at the end of January 2021. When Claimant transitioned to the SDP, Service Agency budgeted \$25,000 in ABA services for Claimant from February 2021 through January 2022 through a provider chosen by Claimant. The \$25,000 budget was based

on a fade out of ABA services consistent with Service Agency's original intended modification of services as outlined in the NOPA. Namely, ABA services would fade out per the NOPA timeline and then terminate after Claimant's first year in the SDP, i.e., by the end of January 2022.

11. At hearing, Service Agency's evidence in support of a fade out plan primarily consisted of the expert testimony of Regional Center's Behavioral Consultant Zainul Gowani. Based on her review of the longtime intensive behavioral services provided to Claimant, the California Psychare's June 29, 2020 Claimant progress report, the July 27, 2020 Howard Chudler (LMFT) and Associates, Inc. Behavior Treatment Plan, and the parental report, Ms. Gowani opined that Claimant no longer needed intensive behavioral services and that his current needs would be better met by Speech and Language Therapy (ST) and Occupational Therapy (OT).

12. Mother challenged the validity of Howard Chudler's Behavioral Treatment July 2020 Plan, which recommended a fade out of ABA services. According to mother, Chudler's assessment, which was conducted on June 1, 2020 using Telehealth due to COVID-19, included at most two minutes of remote observation of Claimant and therefore was too brief to provide an accurate picture of Claimant's behavioral issues and to determine whether continuing intensive ABA services was warranted.

13. At hearing, Service Agency indicated that after issuing the NOPA, it had agreed to fund ABA services by California Psychare at the original rate of 40 hours per month and 8 hours of direct supervision per month from September 2020 through January 2021. Accordingly, based on the parties' resolution of Issue 1, the question of whether Regional Center should fund California Psychare from September 2020 through January 2021 is moot, as Claimant received ABA services from California Psychare during this period with the consent of Service Agency.

14. Claimant's chosen vendor to provide ABA services and adaptive skills services to Claimant going forward, SEEK, has yet to perform an evaluation of Claimant. A potential April 2021 evaluation date has been discussed but has yet to be scheduled. As of April 6, 2021, Claimant has received no ABA services since California Psychcare's last session with Claimant on January 29, 2021. Mother testified that Claimant's behavioral issues, however, are ongoing and have not improved.

15. Mother reported that while Claimant has received behavioral services for approximately ten years; he presents with behaviors that adversely impact his ability to engage socially and access the community. Mother reported that based on Claimant's behavioral issues, the family's engagement in social situations is significantly limited, including going to church, the store, or on vacation. Claimant's issues have become more problematic since the imposition of COVID-19 related closures and restrictions.

16. In support of ongoing ABA services at the current level, Claimant submitted an independent Functional Behavior Assessment (FBA), conducted by Elizabeth Gallardo, M.A. Ed, M.A., CCC-SLP, BCBA, funded by Claimant's parents, dated February 19, 2021. (Exhibit C.) Claimant's parents sought the assessment after a December 2020 incident in which Claimant engaged in maladaptive behaviors lasting up to one hour, including crying, screaming, throwing himself on the floor, and biting his hands while attending a doctor's appointment.

17. Gallardo assessed Claimant on February 13, 2021, by direct observation for a total of 20 minutes and by viewing videos taken by parents of Claimant in various settings from February 15 to 19, 2021. In sum, she observed various maladaptive behaviors exhibited by Claimant and recommended continuing ABA services at the current level.

18. Service Agency parental training classes have been offered to Claimant's parents to better help them address Claimant's behavioral issues. However, Claimant's parents have yet to be pursue this training based on the parties' attempts to resolve their differences through the fair hearing resolution process.

19. Claimant's mother testified that she has had Claimant evaluated for the Service Agency-recommended OT and ST services, but that the evaluations have not yet been provided by the evaluators.

LEGAL CONCLUSIONS

1. The Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities by enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., (Welf. & Inst. Code, § 4501.)

2. According to the Lanterman Act, regional centers play a vital role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) As a result, regional centers, such as Service Agency, are responsible for developing and implementing individual program plans, for considering consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and

service agency representatives. "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option. ..." (*Id.*)

4. In this case, the parties agree that Claimant exhibits maladaptive behaviors, but disagree regarding the types of services and supports needed to achieve the desired outcomes. The NOPA issued was unclear as to when and how the fade out plan was to be instituted. Between the issuance of the NOPA and the hearing, circumstances changed and the ABA vendor in question, California Psychare, was terminated by Claimant's mother. At hearing, Service Agency clarified that it had agreed to fund ABA services at their current level from September 2020 through the end of January 2021.

5. The remaining issue to be resolved is whether Service Agency should fund ABA services at their current level now that Claimant has transitioned into the SDP or whether Service Agency should institute a fade out plan with ABA services terminating in January 2022. Based on the change in circumstances since the September 2020 NOPA was issued, including the termination of the ABA vendor California Psychare and the lack of evaluation of Claimant by the intended vendor SEEK, insufficient evidence was presented by Service Agency to justify the institution of a fade out plan beginning February 2021, with services terminating at the end of January 2022. In addition, little evidence was presented that Service Agency considered COVID-19 related closures in its ABA service needs analysis for Claimant.

Accordingly, based on Claimant's current level of maladaptive behavior and the logistical issues inherent in providing services and obtaining relevant evaluations during COVID-19, ABA services should continue to be funded for nine months at their current level of 40 hours per month of direct intensive ABA services and 8 hours per month of supervised behavior services from when ABA services resume with Claimant's chosen ABA service provider, presumably SEEK. Continuing ABA services is also necessary to allow time for SEEK and the OT and ST providers to complete their evaluations and for a potential fade out plan, including adaptive services, to be enacted in the future with greater parental involvement.

ORDER

1. Claimant's appeal is sustained in part, as set forth in this Order. The issue regarding Regional Center's obligation to fund intensive behavioral services at a rate of 40 hours per month of direct service and 8 hours per month of supervision from September 2020 through the end of January 2021 is moot as Regional Center agreed to provide and fund such services to Claimant.

2. For a period of nine months, from when ABA services resume with Claimant's chosen ABA service provider, presumably SEEK, Regional Center shall fund Claimant's intensive behavioral services at a rate of 40 hours per month of direct service and 8 hours per month of supervision. Service Agency's proposed fade out plan shall not be enacted during the nine-month period Claimant receives the foregoing intensive behavioral services.

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3. During the coming nine-month period Claimant continues to receive intensive behavioral services, Regional Center, with the involvement of the family and the service provider, shall evaluate the effectiveness of the existing ABA program. In this review, the role of adaptive skills training, in-home parent training behavior intervention, speech and language therapy, and occupational therapy, may be examined.

DATE:

IRINA TENTSER

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.