

**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. 2020120536

DECISION

Thomas Y. Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on June 29, 2021. Aaron J. Abramowitz, attorney at law, appeared on behalf of the Service Agency, the South Central Los Angeles Regional Center. Claimant was represented by his mother. (Family members' names are omitted to protect privacy.)

This matter is governed by the Lanterman Act, that is, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885. The proceedings were assisted by Spanish Interpreter Sonia Hernandez. Testimony and documents were received in evidence. The record was closed and the matter was submitted for decision on June 29, 2021.

STATEMENT OF THE CASE

Claimant asks for more service hours. As mother testified, she needs more help due to Claimant's many challenging behaviors and medical conditions and needs. The Service Agency maintains that mother has not pursued generic resources that would provide the help she needs, and it may not by statute approve more services, as the result would be that Claimant would benefit from fewer hours of parental care than a child without disabilities.

ISSUES

1. Whether Claimant should receive 49.5 hours of personal assistance services rather than the 25 hours the Service Agency considers appropriate, in light of the evidence that Claimant has many medical and behavioral challenges that have worsened during the COVID-19 pandemic and as he has gotten older.

2. Whether Claimant should receive other services requested in the request for a fair hearing, particularly more respite, notwithstanding that

A. Some of Claimant's needs could be met by In Home Supportive Services (IHSS), for which Claimant did not apply;

B. The extra services requested have not been a part of the Individual Program Plan (IPP) process; and

C. If these extra services were granted, mother would be free to spend less time caring for Claimant than is usual or expected for a child without disabilities.

FINDINGS OF FACT

1. Claimant timely sought a Lanterman Act fair hearing following an October 15, 2020 Notice of Proposed Action (NOPA) letter, Exhibit 2, denying mother's request for 49.5 personal assistance hours per week. Claimant had other requests at the fair hearing which were not made in the fair hearing request.

2. Claimant, now 16 years old, lives with his mother. He has been diagnosed with several medical conditions. Claimant has also been diagnosed with autism spectrum disorder (ASD), which makes him eligible for services.

3. Among other ailments, Claimant suffers from fatty liver disease (also known as hepatic steatosis), Type 2 Diabetes, and hypertension. He is morbidly obese, standing 5' 11" and weighing approximately 340 pounds.

4. Claimant is at constant risk for elopement. He will wander off at any time if no one prevents him. He does not understand danger. Claimant will wander into a street unaware that he is in danger from automobile traffic, for instance. He lives in a rough neighborhood where criminal gangs are active, but he will open the door at home to anyone who knocks. Claimant is often disruptive to others and will sometimes act out physically by destroying objects.

5. Claimant has not attended school for the past academic year during the COVID-19 pandemic. He had too much difficulty adjusting to the new circumstances the pandemic produced, as he has adjusting to any new situation or circumstances.

IHSS

6. IHSS is a generic resource, generic because it is generally available to any members of the public so long as they meet certain qualifying criteria. More specifically, IHSS is a California government program administered by the county that provides funds to pay for, as its name implies, in-home caretakers. IHSS is available to impaired elders and others, including children like Claimant with ASD or other developmental disabilities. Mother and Claimant have not had the benefit of IHSS, though the Service Agency has proposed that Claimant apply to the program.

7. The Service Agency has employed Leticia Alvarez as a Service Coordinator (SC) for approximately eight years. SC Alvarez coordinated services for Claimant from approximately October 2019 until early June 2021. As Ms. Alvarez testified, while she has been Claimant's SC, the Service Agency funded 46 hours per month of in-home respite and an additional 20 hours per month of COVID-19 respite, the respite hours specially authorized because of the pandemic. The Service Agency has authorized 25 hours per week of personal assistance for Claimant. As discussed below, Claimant also received 40 hours per week of personal assistance services from March to August 2020.

8. Usually when the Service Agency recommends IHSS, a parent or parents will apply to the program. SC Alvarez explained to mother, and expected that she would take an application to Claimant's primary physician and then submit the application and documents from the doctor's office to the IHSS program. But as Ms. Alvarez recalled, that did not happen in this case.

A. Understanding that mother was busy or preoccupied with other matters, SC Alvarez suggested and mother agreed that Ms. Alvarez would prepare the

application. Ms. Alvarez did so on October 25, 2019, submitting the application to mother for her signature. Mother did not sign the application and no IHSS was provided in 2019.

B. SC Alvarez tried again in 2020 as shown in Interdisciplinary (ID) notes, Exhibit 7, which SC Alvarez and other Service Agency personnel prepare routinely after communications with consumers and their families, As set out in Exhibit 7, page 121, SC Alvarez described her efforts regarding IHSS for Claimant on October 27, 2020:

SC [Alvarez] contacted mother to inform her that the IHSS application has been submitted. SC provided Case # 1850918. SC informed parent she should receive the application via mail within 10 business days. SC also informed mother she can down load the application in the internet. Application name is SOC873. SC forwarded mother a link to make it easier for her to obtain the application. SC encouraged mother to contact SC if she needs any assistance.

Mother did not sign or submit the application and did not ask SC Alvarez for assistance with the IHSS application in 2020.

C. As stated in a February 16, 2021 ID note, Exhibit 7, page 107, by SC Alvarez:

SC submitted IHSS application because per IHSS agent Genie reported the case was closed on December 24, 2020

because they did not receive the documents mother needed to submit. Application # is 1850918.

Claimant has not received IHSS.

Personal Assistance

9. The Service Agency approved and Claimant received 40 hours per week of COVID-19 personal assistance for six months, from March to August 2020, while schools were not available for in-person learning during the pandemic. Mother told SC Alvarez that she wanted the personal assistance to continue at the same level. SC Alvarez told mother that to make such a request, mother should prepare a calendar or schedule on the Service Agency's form entitled "Individual C-19 [COVID-19] Personal Assistance/Respite Monthly Schedule." SC Alvarez showed mother an example and helped her prepare a new calendar, Exhibit G, which mother submitted to the Service Agency's Program Manager in support of her request. The Service Agency did not approve the request, offering Claimant 25 hours per month of personal assistance instead.

10. Mother and the Service Agency have also discussed Applied Behavior Analysis (ABA) services for Claimant. Though they all consider such services advisable, ABA services have not been provided. Mother testified to her belief that Claimant would have great difficulty, if indeed he did not find completely intolerable, dealing with unfamiliar people in the home. In addition, during the pandemic, mother was concerned that anyone who came to the home might be infected with COVID-19 and she was unwilling to put Claimant at risk. Mother was especially concerned because she has relatives who have suffered from the disease and at least one who died from it.

11. Claimant's most recent IPP dates from April 2019. As SC Alvarez testified, a 2021 IPP is being prepared but not yet finalized.

12. Mother testified consistently with her written statement, Exhibit J, recalling her experience with the Service Agency since her son became eligible for services in March 2009:

... I have tried to navigate the regional center system as respectfully as possible by following every instruction and rules that the regional center has in order to carry out a good relationship as an agency that supports their consumers with disabilities. I have sent letters, emails expressing and letting them know all of [Claimant's] needs. I am just a mom and I am here to request the services that can help [Claimant] to achieve his goals safely, keep him at home and have an independent life but unfortunately I find the regional center barriers that make this more difficult and limiting the support for [Claimant].

The mission and vision of the regional center is to serve consumers in a flexible and creative way without looking at their cultural ethnicity but unfortunately I only find limits or excuses and this causes [Claimant] to miss the opportunity to benefit from his appropriate support. There are 49.50 hours of personal assistant that were offered [requested] due to [Claimant's] needs dated 03/01/2020, the reason is that the consumer requires more than one person to provide the needed care. Not anyone can handle them or

work with him so that he does not hurt himself or others and can comply with his goals.

Mother goes on to state that the personal assistant hours were denied despite that she provided the Service Agency all documents requested.

13. Mother has had to face many troubles in the last several months. As noted above, several family members became infected with COVID-19 in 2020 and one, Claimant's grandmother, to whom he was close, died of the disease. Mother is also enrolled in post-secondary classes and is having difficulty being a student and caretaker for Claimant.

PRINCIPLES OF LAW

1. The party that asserts a claim in administrative proceedings generally has the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161 ["the burden of proving . . . [disputed] conditions is on the petitioner".]) Under Evidence Code sections 115 and 500, Claimant bears the burden of proving his claims by a preponderance of the evidence.

2. Welfare and Institutions Code section 4512, subdivision (b), states in part:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a

developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . . This subdivision does not expand or authorize a new or different service or support for any consumer unless that service or support is contained in the consumer's individual program plan.

3. As set out in Welfare and Institutions Code section 4646, subdivision (a), policies under the Lanterman Act include respect for the "needs and preferences" of the family and the developmentally disabled individual; promoting community integration; and ensuring that IPP's are effective in meeting stated goals without undue expense.

4. Statutory law requires that service agencies cooperate with consumers and their families as appropriate in the care of the developmentally disabled. Welfare and Institutions Code section 4646, subdivision (d), makes consensus crucial, in that IPP's should reflect agreement between the developmentally disabled individual, including the family as appropriate, and the service agency in the purchase of services,

like respite or personal assistance from the personnel of qualified agencies, or in identifying generic resources, such as those available from non-exclusive sources, such as the government program for IHSS.

5. Under Welfare and Institutions Code section 4659, a service agency is the provider of last resort in that it is required to “identify and pursue all possible sources of funding for consumers receiving . . . services,” which, if available, must be used before the service agency provides funds.

6. Welfare and Institutions Code section 4685, subdivision (c)(6), though not directly applicable here, distinguishes between services for children with and without disabilities:

When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities.

7. Welfare and Institutions Code section 4689.05 provides:

(a) A regional center shall not purchase supportive services, as defined in Section 12300, for a consumer who meets the criteria to receive, but declines to apply for, in-home supportive services (IHSS) benefits, as set forth in Section 12300, except as set forth in subdivision (d).

(b) Consistent with Section 4648, a regional center shall not purchase supported living services for a consumer to supplant IHSS. [¶]

(d) A regional center executive director may waive the requirements set forth in subdivision (a) if the executive director finds that extraordinary circumstances warrant the waiver, and that a finding is documented in an addendum to the consumer's individual program plan.

8. Referenced in the statute quoted above, Welfare and Institutions Code section 12300, subdivision (b), provides:

Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

ANALYSIS

1. As the Service Agency acknowledged at the fair hearing, Claimant has many needs. The Service Agency's mandate under the Lanterman Act is to evaluate

those needs and alleviate them. Claimant's changing medical challenges and behaviors due to ASD have meant not only that he should receive services, but also that the services must be reevaluated periodically and updated or increased appropriately to meet circumstances such as increasing weight for a diabetic like Claimant and the external challenges of the COVID-19 pandemic.

2. The Service Agency correctly pointed out during the fair hearing that the mechanism for evaluating, reevaluating, and adjusting or providing services, is the IPP. The IPP is usually the best way to ensure that a consumer's needs and preferences, as set out in Welfare and Institutions Code section 4646, subdivision (a), are known and respected by the Service Agency. The IPP is, moreover, the legally mandated vehicle for arriving at consensus.

3. A legislative mandate, such as that supporting IPP's, cannot ensure that parties agree always. But when consensus breaks down, as in this instance, it is appropriate to analyze the underlying cause of the breakdown to see whether one side or the other or both missed steps in the dialogue, or a party's position is based on a misinformed, mistaken, or misguided premise, and generally whether each side has fairly and fully engaged in the process.

4. One sign of trouble for an IPP and its crucial, consensus-building function is when, as here, the Claimant makes demands at the fair hearing that were not previously discussed with the Service Agency, and so had no chance of being properly evaluated or included in an IPP. In sending its NOPA, the Service Agency in this case rejected only one request at issue in the fair hearing: mother's request for 49.5 hours per month of personal assistance services. The NOPA did not reject other requests because mother did not propose them in a way that would have allowed for their discussion in the IPP process, and possible inclusion in an IPP (or IPP addendum).

5. A Claimant may justifiably leave a request out of the IPP process in an emergency. (See, e.g., Welfare and Institutions Code section 4648.) But the evidence did not show an emergency in this case. There are perhaps circumstances when both parties know that agreement is so far from likely that efforts at consensus in an IPP are not worthwhile. But again, there was no such evidence in this case. Another possible reason to excuse a Claimant's not attempting to reach consensus is insufficient understanding or appreciation of the IPP process. The evidence was against Claimant in this regard.

6. Claimant has been a client of the Service Agency for several years. SC Alvarez worked on Claimant's case for several years. Her testimony showed that she was thoroughly familiar with Claimant's condition, medical and otherwise, and his changing needs. SC Alvarez spoke frequently to mother. The most pertinent example is the communications between SC Alvarez and mother regarding IHSS. Beyond verbal communications, SC Alvarez helped mother by completing paperwork necessary for mother's obtaining IHSS. SC Alvarez also provided mother an example of a calendar that would assist with mother's request for more personal assistance hours. Given these long-term dealings, it was not reasonable for mother to make requests outside the IPP process.

7. Though mother's thus proceeding with extra requests may be considered unreasonable, it may yet be proper to grant Claimant's appeal here, as part of the fair hearing process. There are at least two reasons for this. First, a representative's stance may, but does not necessarily, affect the Claimant's position adversely. The representative's position or argument may be rejected and relief may still be granted to the person represented, the claimant. Second, the Lanterman Act is for the most

part far from restrictive, allowing rather a good deal of latitude to all involved, including an ALJ called upon to decide issues not covered by consensus of the parties.

8. In this case, however, mother's stance does greatly affect Claimant and in a way that cuts against his requests at the fair hearing. The requests primarily affect mother, rather than Claimant. The requests, for more than the 25 hours of personal assistance that the Service Agency found appropriate and for more respite hours, would in effect free mother from hours of care such as parents are expected to devote to their children without developmental disabilities. The Lanterman Act rejects such outcomes. Thus Welfare and Institutions Code section 4512, subdivision (b), is concerned with *specialized* services and supports or *special adaptations* of generic services and supports directed toward the *alleviation* of a developmental disability. That is, a claimant may be in need of special care because of a developmental disability, but that does not affect a parent's general duty of care toward any child, with or without a disability. Welfare and Institutions Code section 4685, subdivision (c)(6), quoted above, should also be noted here.

9. There is every reason to believe mother that she is often overwhelmed with Claimant's care and her other activities outside the home, such as her commendable effort to become more educated. It is clear that she has Claimant's interests at heart and does not seek caregiving services to avoid providing such care of her own to Claimant as parents are obligated to provide. But it is also clear that the Service Agency has been reasonable in its offers of service. The evidence mother presented did not show that in Claimant's and mother's current circumstances the respite Claimant receives should be increased.

10. It is especially notable that mother has not taken advantage of some services that could provide both her and Claimant significant relief. Mother apparently

agreed that she should apply for the generic resource of IHSS. She had assistance with the application from Service Agency personnel on more than one occasion over the past several months. Mother's efforts to apply for IHSS did not go far enough. Under Welfare and Institutions Code section 4689.05, before mother may obtain more personal services, she should complete the application for IHSS.

CONCLUSIONS OF LAW

1. Claimant's request for 49.5 hours of personal assistance services is properly denied. The 25 hours of personal assistance hours that the Service Agency has offered Claimant are appropriate in light of the evidence. Notwithstanding that Claimant has many medical and behavioral challenges that have worsened during the COVID-19 pandemic and his adolescence, the evidence does not indicate that more services are warranted than those currently offered Claimant.

2. Claimant did not show that he is entitled to receive other services, those requested during the fair hearing and not in the fair hearing request, in that:

A. Some of Claimant's needs should be met by IHSS, for which Claimant has not completed and submitted an application;

B. The extra services Claimant requested have not been a part of the IPP process; and

C. It is inappropriate to grant extra services that, in this case, would tend to diminish mother's time caring for Claimant below that appropriate for a child without disabilities.

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ORDER

Claimant's appeal is granted in part and denied in part. The Service Agency shall provide Claimant 25 hours per week of personal assistance hours to Claimant, rather than the 49.5 hours per week requested. Claimant shall continue to receive other services previously authorized by the Service Agency.

DATE:

THOMAS LUCERO

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.