

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021010199**

**DECISION**

Administrative Law Judge Chantal M. Sampogna, Office of Administrative Hearings (OAH), State of California, heard this matter on May 10, 2021, by videoconference.

Claimant's mother (Mother) appeared by telephone and represented Claimant, who was not present.<sup>1</sup> Court-certified Spanish interpreter Sonia Hernandez appeared by video conference and provided translation assistance to Mother.

---

<sup>1</sup> Titles are used to protect the family's privacy.

Fair Hearing Specialist Daniel Ibarra appeared by videoconference and represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency)

Testimonial and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 10, 2021.

## **ISSUE**

Whether Service Agency must fund an additional 40 hours per week of respite services and Covid respite hours for Claimant.

## **EVIDENCE RELIED UPON**

Documents: Service Agency's Exhibits 1 through 10; Claimant's Exhibits A through C.

Testimony: Arianna Costa, Service Coordinator; Melissa Ybanez, Manager; and Mother.

## **SUMMARY**

Claimant's Individual Program Plan (IPP) provides that claimant will receive 36 hours per month of parent choice respite services (respite services). During 2020, due to Covid-19 restrictions and Claimant's increased maladaptive behaviors, Claimant did not receive or participate in Regional Center services or educational services. In October 2020, Claimant requested an additional 40 hours per week of respite services and Covid respite hours (Covid hours) to assist with this change of structure and

service provision. Service Agency denied the request and Claimant requested a fair hearing.

Claimant established by a preponderance of the evidence that the intensity of his care and supervision needs are such that Claimant requires additional respite services of 35 hours per week to be provided through and until the beginning of his 2021-2022 academic year, and that such services are warranted under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.).<sup>2</sup> Claimant did not establish that he requires 40 hours per week of additional respite services or that he requires Covid hours.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Claimant is a 14-year-old boy who resides with his mother and three siblings, in Rowland Heights, California. Claimant is eligible for services under the Lanterman Act based on his diagnosis of Autism Spectrum Disorder (ASD). (§ 4512, subd. (a).) Claimant has been a consumer of services funded by Service Agency for approximately five years.

2. Effective March 1, 2018, Service Agency provided Claimant 36 hours per month of respite services. On October 12, 2020, Claimant requested an additional 20 hours per month of respite due to Claimant's severe behaviors. Service Agency

---

<sup>2</sup> Statutory references are to the Welfare and Institutions Code, unless otherwise specified.

approved this request on a time-limited basis, through January 2021 (extended to March 2021), to provide Mother assistance while Claimant's services were being linked, e.g., Applied Behavioral Analysis (ABA), Peer Mediated Intervention (PMI) services, In-Home Supportive (IHSS) services, and mental health services.

3. On October 23, 2020, Claimant requested to receive 40 hours per week of respite services and Covid hours, a supplemental respite service.

4. On October 29, 2020, Service Agency issued a Notice of Proposed Action (NOPA) and denied Claimant's request. Service Agency cited, among others, sections 4512, subdivision (b), 4646.4, subdivision (a), 4648, subdivision (a)(1), and 4659 of the Lanterman Act and denied the request because it determined that the request did not conform with the Service Agency's purchase of service policy, that Claimant had failed to utilize generic or other available services and supports when appropriate, and that it was family's responsibility to address the identified need.

5. On December 21, 2020, Claimant requested a fair hearing.

## **Claimant's IPP History**

### **JULY 2018 IPP**

6. A. Claimant's most recent IPP occurred on July 11, 2018. At that time, claimant was almost 12 years old, 63 inches tall, and weighed 203 pounds. Claimant's IPP documents the following information. Claimant has encopresis and insomnia. He requires assistance bathing and toileting, wears diapers, and he usually falls asleep at 3:00 a.m., which significantly limits his morning preparedness for school or other services. Claimant's absences from school were, and continue to be, so prevalent that Claimant has a School Attendance Review Board (SARB) contract. Claimant has no

safety awareness, e.g., he will cross a street without looking for vehicles and wander when in public.

B. Claimant is verbal and ambulatory and enjoys playing video games with family members. In 2018, Claimant demonstrated some maladaptive behaviors approximately weekly, including using profanity, throwing items and causing damage, and aggression, e.g., punching his sister or Mother if he did not get what he wanted. Claimant had recently been assessed for ABA therapy through Autism Spectrum Therapies (AST) to assist with his noncompliant behaviors and resistance to attending school.

7. The following information is a summary of Claimant's IPP Outcome Goals, and associated plans or services, as well as progress, if any, Claimant had made on his goals as of July 2018, that is relevant to claimant's request for additional respite care:

A. Outcome Goal 1: Claimant will maintain good health by visiting his doctor and dentist yearly.

B. Outcome Goal 2: Claimant will brush his teeth, use the bathroom, shower, and dress himself independently.

C. Outcome Goal 3: Claimant will not have tantrums or hit when he is frustrated. Service Agency funded for 12 units for an assessment through AST effective June 1, 2018. Claimant had not made progress on this goal and continued to require assistance to complete all self-help tasks.

D. Outcome Goal 4: Claimant will learn to socialize appropriately with other children his age. Service Agency was to assist parents in researching appropriate social skills training programs through the community, and other social skills

assistance. The record did not establish what, if any, assistance Service Agency provided to Mother to achieve this outcome goal. Claimant had made no progress on this goal and continues to display maladaptive behaviors.

E. Outcome Goal 5: Mother would like a break from Claimant's daily care. Service Agency funded respite services for 30 hours monthly provided by ComForCare, effective August 1, 2016, through February 28, 2018. Service Agency funded respite for 36 hours monthly through ComForCare effective March 1, 2018.

F. Outcome Goal 6: Mother would like to learn more about Claimant's disability and how to support him as he develops. Service Agency was to inform Mother of upcoming conferences.

G. Outcome Goal 7: Claimant will learn how to read simple sentences. Mother will inform the service coordinator of scheduled IEP meetings she would like the service coordinator to attend.

H. Outcome Goal 8: Mother would like Claimant's IPP translated to Spanish. Mother will communicate Claimant's needs.

I. For reasons not addressed by Service Agency, the Outcome Goals provided in section III of the IPP do not match the Progress in Outcomes (Progress) information provided in section IV. Outcome 8 in the Progress section states the following:

Parents would like to maximize generic supports and resources based on [Claimant's] needs.

MET Parent was assisted by vendor A. Nakaishi to provide IHSS advocacy support for mother when [Claimant's] IHSS was reduced. This objective will not continue.

(Ex. 3, p. 34.) Service Agency's Exhibit 7, an IHSS September 30, 2019 Closing Statement, references the fact that Claimant had received IHSS services which were later terminated. The letter documents that Mother appealed the termination of services, requesting that Claimant's Protective Supervision services be restored, but the denial was upheld. IHSS confirmed Claimant's maladaptive behaviors, including physical aggression, foul language, and manipulation, e.g., refusing to attend school unless Mother took him to Jack in the Box for breakfast food, but determined these behaviors did not make Claimant eligible to have his Protective Supervision hours restored.

8. On February 20, 2020, AST terminated Claimant's ABA services that had been initiated in June 2018, a service identified in Claimant's IPP. There was a lapse in services between August 2019 and December 2019, because AST could not offer Claimant a time slot that did not conflict with his school schedule. When services resumed in December 2019, AST service providers noted that Claimant was not attending school and would lock himself in his room, refusing to participate in services. AST providers found Mother did not adhere to, or agree with, AST's plan for decreasing Claimant's avoidance behaviors, such as removing the lock on his bedroom door or establishing a better sleep time and morning routine. Based on the lack of agreement on a service plan and Claimant's unavailability to receive services, AST terminated ABA services.

## **JULY 2020 IPP ANNUAL PROGRESS REPORT**

9. On July 9, 2020, the IPP team participated by phone in an Annual Progress Report meeting. Notably, this review occurred four months after many Covid-19 restrictions were in place and in-person school attendance and service delivery had ceased. At that time, Claimant continued to not make progress on outcome goal numbers 2, 3, and 4, self-care, maladaptive behaviors, and socialization, respectively.

10. Mother continued to provide full support to Claimant for all of his daily living needs, including brushing his teeth, toileting, and hygiene (Outcome Goal 2). Claimant's maladaptive behaviors had worsened, with more frequent aggression, disruption, oppositional defiance, emotional outbursts, temper tantrums, and wandering off. Claimant had been receiving ABA through AST, but, as stated, it was terminated due to non-compliance. Claimant was receiving counseling through Enki Health Services, but later refused to meet with his psychiatrist or take medications. (Outcome Goal 3.) Claimant had limited contact opportunities to socialize or interact with peers and refused to go outside or leave home. (Outcome Goal 4.) In addition, Mother had not attended any workshops (Outcome Goal 6), and, once Claimant's school changed to distance learning, Claimant could not attend school because the school district failed to provide him with a laptop necessary to participate in distance learning (Outcome Goal 7).

## **OCTOBER 2020 PROGRESS REPORT**

11. On October 19, 2020, the IPP team met to discuss services for Claimant. Outcome Goal 9 was added to Claimant's IPP:

Parent would like to maximize generic supports and resources for [Claimant's] needs. ¶...¶



[Mother] will communicate needs to [Claimant's] service coordinator. ¶ . . . ¶

[Service Coordinator] will work with family to maintain clear communication and updates on [Claimant's] progress.

Regional Center will fund for 10 hours of assessment for IHSS support through vendor Alicia Nakaishi effective 09/01/19.

(Ex. 4, p. 43.) In addition, the October 2020 Progress Report provided the following regarding respite hours:

Mother will have a break for the constant care of Kevin to provide her a break while Kevin is supervised for his own safety. Increase of respite hours is time limited due to providing assistance for mother while services are being linked, example, ABA services, PMI services, IHSS and mental health services. Authorization to be reviewed at the end of expiration date to determine need for ongoing services. ¶ . . . ¶

SGPRC to authorize funding for 20 hours per month of parental choice respite through ComforCare [*sic*] effective 10/20/20 - 1/31/21. Time limited only. To be reviewed at the end of authorization to determine need for ongoing services.

(Ex. 4, pp. 36, 40.)

## **Claimant's Request for Additional Respite Services**

12. Mother testified at hearing. She is a single mother and is the sole provider for her four children. Claimant has not been attending school during this academic year. Mother attended Claimant's March 2021 Individualized Education Plan (IEP) meeting, at which Claimant continued to be eligible for special education services under the category of Specific Learning Disability and Other Health Impairment and was also found eligible under the category of Emotional Disturbance. A Service Agency representative did not attend the IEP meeting and has not reviewed Claimant's March 2021 IEP. The evidence did not establish why a Service Agency representative was not at the IEP meeting or whether Mother informed Service Agency of the meeting.

13. Other than during respite hours, Mother provides care for Claimant all day, as he is not attending school or receiving services. Mother was seen in February 2021 by David T. Chen, M.D., and will be scheduled for pulmonary care once her insurance provider authorizes treatment. Mother attends therapy twice per week, for one-hour sessions. Mother also volunteers at her church on the weekend. Mother is requesting additional respite hours to provide her support when Claimant would otherwise be attending school or services, and support that would allow her to attend to all of her parenting responsibilities, and to her own health and self-care. Mother specifically requested 40 hours of respite services and Covid hours because she heard from other parents of regional center consumers that they are receiving that amount of respite support from Service Agency.

## **Service Agency's Purchase of Service Policy**

14. Service Agency's Purchase of Service Policy provides the following rules for the provision of respite care:

The Regional Center may only purchase respite services when the care and supervision needs of the person exceed that of an individual of the same age without developmental disabilities.

. . . The number of respite care hours will vary depending upon the need of the individual and family. The need and the amount of these services shall be determined through the Individual Program Plan/Individualized Family Service Plan process with consideration to the preferences of the child or adult and the family. In determining this need, the regional center shall take into account the family's responsibilities for providing similar services to a child or adult without disabilities. As well, the regional center shall take into account other services and/or activities that are provided that may also provide family members with relief from the responsibilities of continual care. These may include, but are not limited to, school, . . . work, . . . extended day/year programs, and In-Home Support Services (IHSS) hours that meet a respite need, such as protective supervision hours.

The regional center shall not purchase more than . . . 108 hours of in-home respite services in a quarter (or 36 monthly hours).

The regional center may grant an exception to any of the above if it is demonstrated that the intensity of the person's

care and supervision needs are such that additional respite is necessary to maintain him/her in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the person.

(Ex. 10, p. 100.)

### **Service Agency's Denial of Claimant's Request**

15. Arianna Acosta, Service Coordinator in the transition unit, testified at hearing. She was assigned to Claimant's case six months ago. She has little to no personal knowledge of the case and has not met with Claimant or had conversations with Mother about her request. Ms. Acosta referred Claimant to Therapeutic Behavioral Services in January and February of this year. However, when she informed Mother the services were virtual, rather than in-person, Mother declined the service.

16. Melissa Ybanez, Service Agency Manager of the transition services unit, testified at hearing. Like Ms. Acosta, Ms. Ybanez has reviewed Claimant's file and is familiar with the case, but she has not met Claimant or Mother. Ms. Ybanez confirmed that Claimant is receiving 36 hours of parent choice respite per month, and that he received an additional 20 hours respite per month between October 2020 and March 2021. This additional respite was provided so Mother could follow-up with services that Service Agency wanted her to put in place. Based on her file review, these services were ABA services, to assist Mother with Claimant's behaviors at home; a parent mentor; a referral for use of an iPad for Claimant to use at home; and a referral to a housing specialist to assist Mother with finding an improved living situation.

17. A. Service Agency discontinued the additional respite hours because Claimant is not attending school, and because Claimant and Mother did not participate in ABA services to the point the services were terminated, e.g., Claimant locked himself in his room and Mother did not, despite AST's request, remove the lock from Claimant's door. However, based on the evidence presented, this reasoning is faulty. The additional respite hours were provided even though Claimant had not attended school for over one year, and his school attendance was not made conditional to the receipt of the additional respite hours. In addition, Service Agency did not present evidence of a new ABA referral; the evidence only established that Service Agency made an ABA referral in 2018 and the service terminated in February 2020.

B. Further, the evidence did not establish Service Agency provided new referrals to Claimant in October 2020 for the services set out in the October Progress Report that it wanted Mother to pursue. Ms. Acosta provided one referral for TBS services, which Mother declined because they were virtual. Had Mother accepted the TBS virtual services, it was not clear that Claimant had the internet or computer capacity to receive the service, or how Mother was expected to guide him through the proposed service. As to the housing assistance, during Ms. Ybanez's testimony Mother made a spontaneous utterance questioning what housing referral Ms. Ybanez was referring to. During Mother's testimony, she clarified she had not been provided any information about a service to assist her with finding new housing.

18. In regard to Claimant's request for additional respite care services, Ms. Ybanez explained that participating in ABA is not required for Claimant to be eligible for Covid hours. However, Service Agency does not provide Covid hours if Claimant is not attending school, either virtually or in-person. Ms. Ybanez checked to see if

Claimant was accessing all generic services and confirmed that IHSS had declined to offer hours to Claimant. Nonetheless, Ms. Ybanez explained that Claimant is not eligible for increased respite hours because Service Agency concluded that the intensity of the Claimant's care and supervision needs were not such that additional respite was necessary to maintain him in the family home, or that there was an extraordinary event that impacted Mother's ability to meet Claimant's care and supervision needs.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. The Lanterman Act governs this case. An administrative fair hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal Service Agency's denial of his request to have Service Agency fund 40 hours per week of respite services and Covid hours. Jurisdiction was established. (Factual Findings 1-5.)

### **Burden and Standard of Proof**

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162) In this matter, Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant requires the requested service. (Evid. Code, §§ 115, 500.)

## Regional Center Responsibilities

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’ and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter ARC, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must provide the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible and exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

7. Though regional centers have wide discretion in how to implement the IPP, “they have no discretion in determining whether to implement: they must do so.” (ARC, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

## **Service Requirements**

8. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

9. Section 4512 provides the following:

A. 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 consumer's achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).)

B. The IPP team determines a consumer's necessary services and supports on the basis of the consumer's needs and preferences, and must consider a range of service options proposed by IPP participants, the effectiveness of each option in meeting the IPP goals, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

C. Services and supports may include respite services. (§ 4512, subd. (b).)

10. At the time of development or modification of a consumer's IPP, regional centers must ensure that generic services and supports are utilized when appropriate and that the family's responsibility for providing similar services and supports for a minor child without disabilities is considered, taking into account the consumer's need



for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

## **Respite Services**

11. “In-home respite services” are defined in the Lanterman Act as “intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client’s own home for a regional center client who resides with a family member.” (§ 4690.2, subd. (a).) Subdivision (a) of section 4690.2 provides that respite services are provided to do the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision in maintaining the client’s safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client’s basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members.

## **Executive Order N-25-20**

12. On March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California as a result of the threat of Covid-19. On March 12, 2020, in

Executive Order N-25-20, Governor Newsom identified the needs of individuals with developmental disabilities as paramount:

Whereas, many individuals who have developmental disabilities and receive services through regional centers funded by the Department of Developmental Services also have chronic medical conditions that make them more susceptible to serious symptoms of COVID-19, and it is critical that they continue to receive their services while also protecting their own health and the general public; [¶] . . . [¶]

IT IS HEREBY ORDERED THAT:

1. All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19. [¶] . . . [¶]

10. To ensure that individuals with developmental disabilities continue to receive the services and support mandated by their individual program plans threatened by disruptions caused by COVID-19, the Director of the Department of Developmental Services may issue directives waiving any provision or requirement of the [Lanterman Act] . . . and the accompanying regulations of Title 17, Division 2 of the California Code of Regulations. A directive may delegate to the regional centers any authority granted to the Department by law where the Director believes such

delegation is necessary to ensure services to individuals with developmental disabilities.

## **Department of Developmental Disabilities Directives**

13. The Director of the Department of Developmental Services (Director) has issued many directives pursuant to Executive Order N-25-20, all based on the Director's finding that to ensure the health, safety, and welfare of consumers and the general population, consumers, regional centers, and service providers will need flexibility to receive and provide services and supports. Relevant to Claimant's appeal, the Director issued Department Directives 02-032520: Requirements Waived Due to COVID-19 and Department Directive 01-033020: Additional Participant – Directed Services.

14. Though these Directives do not directly modify a regional center's respite guideline assessment tool to account for the change in respite needs due to Covid-19, these Directives do: 1) in order to support consumers and families at home, waive the requirement under California Code of Regulations, title 17, (Regulations) section 56792, subdivision (e)(3)(A), for in-home respite workers to possess first aid and cardiopulmonary resuscitation training prior to employment, and 2) highlight that the flexibility called for during the Covid-19 emergency includes the fact that participant direction allows consumers the option to exercise more authority over how, and by whom, services are provided, including the coordination of respite services, and that the intent of Directive 01-033020 is to provide regional centers the greatest flexibility to support consumers and their families.

## **Consideration of Costs**

15. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

16. When selecting a provider of consumer services or supports, the regional center and the consumer, or conservator, must, pursuant to the IPP, consider the following: a provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's IPP; and a provider's success in achieving the objectives set forth in the individual program plan. "The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, . . . who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected." (§ 4648, subd. (a)(6).)

17. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC*, supra, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort. (*ARC*, *ibid.*)

## **Analysis**

18. The following was established by a preponderance of the evidence.

A. Claimant's IPP services are not meeting his needs. Claimant has not made progress on primary outcome goals related to self-care, maladaptive behaviors, and socialization. Instead, Claimant's challenges in these areas have

increased. Despite the July and October 2020 Progress Reports, the evidence did not establish that Service Agency has provided Claimant his IPP services over the past year, other than a referral to TBS and respite services.

B. Mother and Service Agency have not been communicating about Claimant's education, as seen by Service Agency's absence from Claimant's IEP and Mother's failure to provide Service Agency with Claimant's March 2021 IEP. As well, Service Agency has failed to monitor whether Claimant is receiving educational services.

C. Though the Respite Guidelines provide Service Agency with discretion to consider information significantly impacting Claimant and his family, Service Agency failed to factor the following into its determination of respite hours: how Covid-19 restrictions have limited Claimant's access to educational and IPP services, and whether Claimant has the resources available to consistently access virtual education and services; the physical and emotional impact parenting Claimant during Covid-19 is having on Claimant and Claimant's family; and how, if at all, Claimant's increasing age, size, and weight, limits Mother's ability to comply with her responsibilities contained in the IPP.

D. Though Claimant is non-receptive to, and avoids services and school attendance, the evidence did not establish that this is caused by a failure of Mother or Claimant to act. Rather, the evidence established that it is a consequence of the confluence of Claimant's disabilities and age, a seeming absence of school services, failures of all involved to communicate, and Covid-19 restrictions.

19. Service Agency has not been implementing Claimant's IPP, though it must do so. Service Agency is not providing specialized services and supports toward

the achievement of Claimant's independence. Within the bounds of the law, Claimant's particular needs must be met. Neither the Lanterman Act, nor the Regulations or Covid-19 related Executive Orders or Department Directives, prohibit Service Agency from providing Claimant additional respite service hours. (Factual Findings 6-18; Legal Conclusions 3-17.)

20. A. Claimant established that the intensity of his care and supervision needs are such that additional respite is necessary to maintain him in the home and to address the impact that Covid-19 and related restrictions have had on Claimant and Mother, and on Claimant's receipt of services and access to education. The additional hours would not supplant Claimant's family's responsibility for providing similar services and supports for a minor child without a disability. The additional hours will meet the Directives' call for flexibility in the provision of services during the Covid-19 emergency when the traditional modes of IPP service delivery are not available.

B. Claimant did not establish that he requires an additional 40 respite service hours per week. However, the evidence established that Claimant requires an additional seven hours of respite service hours per school day, or 35 hours per week, until the start date of the 2021-2022 academic year. These additional hours are required for Service Agency to meet its responsibilities under the Lanterman Act. Service Agency did not establish that there was another service provider available to meet Claimant's service needs or that the additional respite hours would not be cost effective. (Factual Findings 6-18; Legal Conclusions 3-11.).

C. Claimant did not establish that he is eligible for Covid hours.

## **ORDER**

Claimant's appeal is granted in part and denied in part.

1. Service Agency is ordered to provide Claimant an additional 35 hours of respite services per week until the first day of Claimant's 2021-2022 academic school year.
2. Service Agency is not ordered to provide Claimant Covid hours.

DATE:

CHANTAL M. SAMPOGNA  
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.