

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**HARBOR REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021020816**

**DECISION**

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 16, 2021, July 20, 2021 and September 20, 2021, by videoconference.

Latrina Fannin, Manager of Rights and Quality Assurance, represented the Harbor Regional Center (Service Agency or HRC). Claimant was represented by Armida Ochoa, Advocate. Spanish interpretation was provided for Claimant's mother and Ms. Ochoa. (Titles are used to protect confidentiality.)

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 20, 2021.

The ALJ reopened the record on October 1, 2021 and set the following briefing schedule:

- HRC to file any brief or additional evidence no later than October 15, 2021.
- Claimant to file any responsive brief and additional evidence by October 25, 2021.
- HRC to file any reply or objection by October 29, 2021.

HRC submitted its brief and additional evidence, which was marked as Exhibit 24, and admitted over the objection of Claimant. Claimant submitted its brief and additional evidence which was marked and admitted as Exhibit L, without objection. HRC filed a responsive brief with objections which was marked as Exhibit 24, and considered on October 29, 2021. The record was reclosed on October 29, 2021.

## **SUMMARY**

Claimant seeks a \$14,700 increase in his Self-Determination Program (SDP) budget to fund social skills training by Holding Hands, a DIR/Floortime provider. HRC contends that it has already included funding for social skills training in Claimant's SDP budget, adaptive skills training can be addressed in insurer-paid ABA sessions, social skills training is funded in the SDP budget and additional funds available from the Financial Management Services (FMS) waiver may be used for social skills training. HRC also contends that DIR/Floortime is not an evidence-based treatment modality and as such it is precluded from funding it.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. Claimant is a 9-year-old boy eligible for Regional Center services under the category of Autism Spectrum Disorder (ASD). Claimant has also been diagnosed with Pica and Attention Deficit Hyperactive Disorder (ADHD).<sup>1</sup> Claimant has behavior, sensory processing and social skills deficits consistent with his ASD diagnosis. Claimant elected to participate in HRC's SDP.
2. Claimant lives with his parents and adult sibling. His mother works outside the home several days a week while his father is disabled and unable to work. Claimant receives special education instruction and services from his local school district including speech and occupational therapy. Claimant attended classes remotely during the previous school year due to the Covid-19 Pandemic.
3. According to his July 20, 2020 IPP, Claimant received Applied Behavior Analysis (ABA) paid by his insurer. HRC has funded financial management services (FMS), respite, an independent facilitator, community integration supports, Covid-19 supports (a maximum of 50 hours per month), social skills training provided by Pediatric Therapy Network (PTN), individual education program (IEP) support and advocacy, service coordination and Spanish-language document translation.

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<sup>1</sup> Respondent takes medication to treat his ADHD.

## Claimant's SDP Budget

4. The SDP Budget is crafted by the Individual Program Plan (IPP) team. The starting point for the SDP budget is the cost of the services and supports for the consumer over the prior 12-month period. The budget may be amended to accommodate additional needs or changed circumstances. Claimant's budget was prepared on April 13, 2020. Initially, the costs of Claimant services paid in the prior 12 month period were calculated to be \$13,796.67. After adjustments for "one-time costs," Claimant's budget was reduced to \$8571.69. Budget adjustments were made totaling \$22,812.42 bringing Claimant's SDP budget to \$31,384.11.

5. The budget adjustments included addition of the following one-time costs: childcare services Covid-19 support 3/1-6/14 (\$3,317.40), Financial Management Services (FMS) reimbursement<sup>2</sup> (\$900 Oct.-March), Child care for SDP Conference (\$331.74), FMS Reimbursement (\$150-April). Additionally, the budget lists the following as "Unmet or Changed Needs:" "Individual/Family training Shabani PEERS (\$5,134.68), child care-mom works twice per week 45 hours total per month (\$9,952) and child care Adv Tiger classes and Mariana Lenero-10 hours per month (\$3,026.40)." Claimant submitted invoices to the FMS for DIR/Floortime at Holding Hands as follows: 4/1-4/30 (4 sessions-8 hours total), \$560; 5/1-5/31 (4 sessions-8 hours total) \$560; 6/1-6/30 (5 sessions/10 hours) \$700);2/1-7/31 (210 hours 6 months \$70 per hour Floortime/DIR)."

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<sup>2</sup> As an attempt to free up more funds to assist families caring for consumers during the Covid-19 pandemic, HRC waived the \$150 per month FMS fee pursuant to a Department of Developmental Services (DDS) directive.

## **Pediatric Therapy Network (PTN) Buddy Builders Report**

6. Claimant participated for 18 weeks in the PTN Buddy Builders program focusing on social skills, community integration and generalization of skills from March 28, 2018 to August 1, 2018. Claimant worked on the following goals:

### Goal 1:

[Claimant] will demonstrate improved social awareness as seen by his ability to determine and use appropriate behavior and language for the setting (e.g. talking in the classroom versus with peers at a park), with 1 verbal cue in 4 out of 5 opportunities, as measured by charted observation.

### Goal 2:

[Claimant] will demonstrate improved conversation skills as seen by his ability to initiate and engage in simple verbal interactions with at least 1 peer (such as greeting and joining in a game), with 1 verbal cue in 4 out of 5 opportunities, as measured by charted observation.

### Goal 3:

[Claimant] will demonstrate improved body/space awareness as seen by his ability to remain in his personal space while playing with peers, keeping his hands to himself, with 1-2 verbal cues, in 4 out of 5 opportunities, as measured by charted observation.

Goal 4:

[Claimant] will improve his collaborative play skills in order to join a structured play activity with a group of peers, taking turns as needed and without disrupting the flow of the game and/or taking the lead, with 1 verbal cue in 4 out of 5 opportunities, as measured by charted observation.

Goal 5:

[Claimant] will demonstrate improved social awareness as seen by his ability to determine what is appropriate behavior and language for the setting, and use it (i.e. tone, scripting, talking off topic), with no more than 3 verbal cues, in 3 out of 4 opportunities, as measured by charted observations.

(Ex. J.)

7. Claimant met three of his goals (Goals 2, 3 and 4) and was making progress on the remaining goals. Claimant's parent also met the two parent participation goals. (Ex. J.)

### **Holding Hands Adaptive Skills Assessment dated December 4, 2020**

8. Inna Workman, B.A., assessed Claimant on November 30, 2020 and prepared a report on December 4, 2020. Ms. Workman assessed Claimant using a clinical assessment, home observation, parent interview, Functional Emotional Assessment Scale (FEAS) and Sensory Profile. The assessment revealed deficits in Claimant's expressive and receptive language skills, auditory processing, sensory processing, non-

verbal communication, social skills, play skills, eye contact, turn taking, joint attention, ability to make transitions and self-care skills. The assessment recommended that Claimant receive 35 hours per month of adaptive skills training utilizing a DIR/Floortime modality over a six-month period using direct services, social facilitation and one-to-one parent training sessions. The assessor recommended targeting adaptive skills development with goals in the areas of reciprocal communication, social boundaries, cooperative play skills and parent training. As follows:

Goal #1: "[Claimant] will express his ideas and intentions by sequencing 2 to 3 ideas (e.g. I am building the castle with my Legos so the little people can live there) while sustaining joint attention for 10-15 minutes during preferred and non-preferred activities in 4 out of 5 presented opportunities with minimum adult support."

Goal #2: "[Claimant] will learn and demonstrate appropriate social boundaries by maintaining his own personal space as well as respecting the personal space of others in 4 out of 5 opportunities with minimum adult prompting across all settings (home, school, community)."

Goal #3: "[Claimant] will display flexibility and incorporate two play ideas of his play partner into his play scenarios with minimum support in 4 out of 5 presented opportunities."

Goal #4: (A) "Parents/Care Provider will participate in 50% of DIR/Floortime sessions. Parents will be taught strategies

by observing, modeling, reading related handouts, coaching and 1:1 parent training sessions and (B) Parent/Care provider will be able to independently facilitate a minimum of 20 minutes of Floortime.”

(Exs. E and 14.)

### **Holding Hands Progress Report June 8, 2021**

9. Claimant began participating in DIR/Floortime at Holding Hands in March of 2021 using the goals recommended in the adaptive skills assessment report. Claimant received one two-hour in-home therapy session per week. According to the provider’s June 8, 2021 progress report, Claimant has “demonstrated a positive response to Floortime interventions and techniques.” The report provides that “Claimant demonstrates steady progress, he continues to require additional support in the areas of functional communication, social skills, and cooperative play skills.” (Exs. E and 14.)

### **California Psychcare Reassessment and Treatment Plan May 14, 2021**

10. Claimant receives ABA therapy from California PsychCare. In their May 14, 2021 reassessment and treatment plan, it was recommended that Claimant receive social skills training using the DIR/Floortime therapy twice a week for two hours each session. California PsychCare recommends that goals related to engaging in suitable conversation, playing properly with others and game activities including taking turns, following rules and actively participating be established. The report does not specify why DIR/Floortime is the recommended modality.

## **Social Skills Need**

11. In a June 3, 2021, letter, Claimant's pediatrician, Aline Wong, MD, recommended Claimant receive individualized therapy for social skills. (Ex. K.). HRC does do not dispute that Claimant would benefit from additional social skills training since he did not have the opportunity to generalize the skills he learned due to the Covid-19 pandemic.

## **Purchase of Service Policy**

12. The HRC Service Policy regarding "Therapy Services" include "occupational, sensory-motor, physical, speech, nutritional, psychotherapeutic services and other therapies are provided by a licensed therapist and are required to prevent deterioration of a specific dysfunction or to improve a person's adaptive functioning." (Ex. 17.) According to the policy, HRC may purchase therapy services for a client only if the following criteria are met:

1. the client requires therapy to prevent a specific deterioration in his/her condition, or to assist the client to achieve a specific desired outcome set forth in his/her Individual/Family Service Plan; **and**
2. when the client is of public school age, the desired outcome is not related to their educational plan; **and**
3. an independent assessment by a professional with a specialty in the therapy, and/or the appropriate regional center specialist, has been completed and indicates that the

therapy will assist the client to achieve a specific desired outcome; **and**

4. the client has been denied or is not eligible for Medi-Cal, California Children's Services, private insurance or another third party payor coverage; **and**

5. When the client is a child, the therapy focuses on strengthening the parents' ability to promote their child's impairment through demonstration, observation, coaching, and parent education.

(Ex. 17.)

### **Cost of Social Skills Training**

13. Claimant and HRC are at odds about the costs of social skills training and the amount that should be allotted in Claimant's SDP budget for social skills training. HRC takes issue with Claimant's expenditures of funds from the budget for non-agreed upon items such as a weighted blanket, a chrome book computer and a desk during the Covid-19 Pandemic and asserts that Claimant could have used those funds to supplement the allotment for social skills training. HRC also asserts that the assessment that Claimant provided from Holding Hands was geared toward adaptive skills not social skills. Adaptive skills can be addressed in Claimant's ABA program which is paid by his medical insurance.

14. HRC calculated the amount that it allotted Claimant for social skills training by averaging the costs of social skills training by four HRC vendors: The Switzer Center PEERS (\$1699.95 for 15 sessions at \$113.33 per session), Our Village-

PEERS (\$1699.95 for 15 sessions at \$113.33 per session), Momentum-Buddy Builders (\$2596.20 for 15 sessions at \$173.08 per session) and The Shabani Institute (\$4096.20 for 12 sessions at \$173.08 per hour and 12 hour assessment at \$81.73 per hour). According to HRC's calculation, the average cost of using HRC providers for a social skills program is \$2523.08. HRC then calculated the average cost using HRC providers and Holding Hands (\$14,700 for 210 hours at \$70 per hour over six months) to be \$4958.46. This is the amount that was included in Claimant's budget as an unmet need.

15. Holding Hands offers social skills and adaptive skills programs that are based upon the DIR/Floortime modality. DIR is a trademarked and branded program. According to Maribel Gutierrez, an HRC Board Certified Behavior Analyst, the DIR/Floortime modality is not an evidence based program. HRC takes the position that it cannot fund programs that are not evidence based. HRC declined to fund the full amount requested by Claimant for Holding Hands. The program recommended by HRC's assessment is for adaptive skills not social skills, although the company also offers social skills. The amount allotted by HRC is sufficient to fund a social skills program. It is more than any of the HRC vendors charge.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Welfare and Institutions Code (Code), § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding for social skills training using DIR/Floortime. Jurisdiction in this case was thus established.

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his funding requests.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities. and to support their integration into the mainstream life of the community." (Code, § 4501.)

4. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as regional centers, to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Code, § 4620.)

5. A consumer's needs and goals, and the services and supports to address them determined through the IPP process, are described generally in Code section 4512, subdivision (b), which 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.

6. Use of the IPP process to determine the services to meet the needs of a consumer is referenced in Code section 4646, subdivision (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, where 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.

7. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in Code section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and school districts, and private entities such as insurance. (*Id.*, subdivision (a)(1) and (2).) Code section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources and under Code section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Further, HRC is mandated to ensure the effective and efficient use of public resources and detect and prevent waste and abuse in the utilization of public funds. (Code, § 4620.3, subdivision (b).)

8. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in Code section 4659. (Code, § 4646.4, subd. (a).) HRC is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Code, § 4646.4.)

9. Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

### **The Self-Determination Program**

10. Code section 4685.8, subdivision (a), provides:

The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control

over decisions, resources, and needed and desired services and supports to implement their IPP. . . .

11. Self-determination gives the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Code, § 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (Code, § 4685.8, subd. (b)(2)(F).)

12. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Code, § 4685.8, subd. (d)(3)(B).)

13. The SDP requires participants to “only purchase services and supports necessary to implement his or her IPP . . . .” (Code, § 4685.8, subd. (d)(3)(C).)

14. When a consumer is in the SDP, the IPP team is to develop the plan, utilizing the person-centered planning process. (Code, § 4685.8, subd. (k).)

15. Code section 4685.8, subdivision (l) provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and supports pursuant to Section 4648.5.<sup>3</sup> A regional center

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<sup>3</sup> Under Code section 4648.5, regional centers’ ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended.

shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

16. Code Section 4685. 8, subdivision (m) provides:

(1) Except as provided in paragraph (4), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A)(i) Except as specified in clause (ii), for a participant who is a current consumer of the regional center, their individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant.

(ii) An adjustment may be made to the amount specified in clause (i) if both of the following occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures. When adjusting the budget, the IPP team shall document the specific reason for the adjustment in the IPP.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the Self-Determination Program.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator or the financial management services.

(B) For a participant who is either newly eligible for regional center services or who does not have 12 months of purchase service expenditures, the participant's individual budget shall be calculated as follows:

(i) The IPP team shall identify the services and supports needed by the participant and available resources, as required by Section 4646.

(ii) The regional center shall calculate the cost of providing the services and supports to be purchased by the regional center by using the average cost paid by the regional center for each service or support unless the regional center determines that the consumer has a unique need that requires a higher or lower cost. The IPP team also shall document the specific reason for the adjustment in the IPP. The regional center shall certify on the individual budget

document that this amount would have been expended using regional center purchase of service funds regardless of the individual's participation in the Self-Determination Program.

(iii) For purposes of clauses (i) and (ii), the amount of the individual budget shall not be increased to cover the cost of the independent facilitator or the financial management services.

(2) The amount of the individual budget shall be available to the participant each year for the purchase of program services and supports. An individual budget shall be calculated no more than once in a 12-month period, unless revised to reflect a change in circumstances, needs, or resources of the participant using the process specified in clause (ii) of subparagraph (A) of paragraph (1).

(3) The spending plan shall be assigned to uniform budget categories developed by the department in consultation with stakeholders and distributed according to the timing of the anticipated expenditures in the IPP and in a manner that ensures that the participant has the financial resources to implement the IPP throughout the year.

(4) The department, in consultation with stakeholders, may develop alternative methodologies for individual budgets that are computed in a fair, transparent, and equitable

manner and are based on consumer characteristics and needs, and that include a method for adjusting individual budgets to address a participant's change in circumstances or needs.

17. Code section 4685.8, subdivision (n), provides:

Annually, participants may transfer up to 10 percent of the funds originally distributed to any budget category set forth in paragraph (3) of subdivision (m) to another budget category or categories. Transfers in excess of 10 percent of the original amount allocated to any budget category may be made upon the approval of the regional center or the participant's IPP team.

(2) The amount of the individual budget shall be available to the participant each year for the purchase of program services and supports. An individual budget shall be calculated no more than once in a 12-month period, unless revised to reflect a change in circumstances, needs, or resources of the participant using the process specified in clause (ii) of subparagraph (A) of paragraph (1).

18. Code section 4685.8, subdivision (o), provides:

Consistent with the implementation date of the IPP, the IPP team shall annually ascertain from the participant whether there are any circumstances or needs that require a change to the annual individual budget. Based on that review, the

IPP team shall calculate a new individual budget consistent with the methodology identified in subdivision (m).

19. SDP participants and their families have the authority to make decisions about the services and support they need in their lives (Code, § 4685.8, subd. (z)(B)) and allow the participant to decide how they want to spend their time. (Code, § 4685.8, subd. (z)(3)(A).)

20. Code section 4686.2, subdivision (b)(1) provides in pertinent part:

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

21. Code section 4686.2, subdivision (d)(3) also provides that:

Evidence-based practice” means a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual’s characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual-or family-reported, clinically-observed, and

research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgements and facilitates the most cost-effective care.

## **Disposition**

22. HRC has agreed to fund an additional course of social skills for Claimant because he has not had the opportunity to generalize the skills learned due to the challenges of the Covid-19 pandemic and adjust his SDP budget accordingly. HRC is not required to fund Holding Hands to provide Claimant's social skills training. Holding Hands utilizes DIR/Floortime, a trademarked method to deliver social skills training. The method is not evidence-based and would not be funded under HRC's traditional model of services and similarly, cannot be funded in the SDP budget. However, Claimant may use funds from the SDP budget to purchase these services with the allotment provided, the funds available from the FMS waiver and a transfer of up to 10 percent from other categories in the SDP Budget. HRC has calculated the allotment of funds for social skills training according to the methodology required by statute and increased Claimant's SDP budget accordingly. Claimant has not proven by a preponderance of the evidence, that HRC is required to increase his SDP budget further or that his needs can only be met by Holding Hands using DIR/Floortime services.

## **ORDER**

Claimant's appeal of Harbor Regional Center's decision to deny Claimant's request for an increase in funding of his SDP budget to pay for DIR/Floortime services is denied.

DATE:

GLYNDA B. GOMEZ

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.