

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021030941**

**DECISION**

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 12, 2021.

Claimant appeared and was represented by Claimant's Mother (Mother).<sup>1</sup> Kelly Kulzer-Reyes, Independent Facilitator, was present as support for Mother.

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<sup>1</sup> Names are omitted and family titles are used to protect the privacy of Claimant and his family.

Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Jacob Romero, ELARC Fair Hearing Coordinator.

Testimony and documentary evidence was received in evidence. The record closed and the matter was submitted for decision on July 12, 2012.

On July 26, 2021, the ALJ, on her own motion, re-opened the record and ordered ELARC to file and serve the Individual Program Plans (IPPs) that were generated following the 2018 and 2019 IPP meetings by July 28, 2021, and to allow parties to file and serve written comments/argument regarding the documents by July 30, 2021. ELARC submitted the 2018 and 2019 IPP reports on July 29, 2021, explaining that the delay in its submission was due to the fact Mr. Romero was out of the office until July 28, 2021, and had been participating in another fair hearing on that date. The record was re-opened, the 2018 and 2019 IPP reports were marked respectively as Exhibits 17 and 18, and Claimant was provided until August 2, 2021, to provide further comments/argument regarding the documents. No objection or further comments were received by Claimant and Exhibits 17 and 18 were admitted into evidence. ELARC's written comments/argument was marked as Exhibit 19.

The record was re-closed and the matter was submitted for decision on August 2, 2021.

## **ISSUE**

Whether the Service Agency should be required to fund 40 hours per month of Personal Assistance Services.

## **EVIDENCE**

Documents: Service Agency: Exhibits 1-19; Claimant: Exhibits A-M

Testimony: Erika Rosas, Service Coordinator; Mother

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a 21-year-old male consumer who qualifies for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> based upon a diagnosis of autism spectrum disorder (ASD).

2. On March 2, 2021, ELARC issued a Notice of Proposed Action (NOPA) denying Claimant's request for: (1) 40 hours per month of personal assistance hours; and (2) 232 hours of personal assistance services (58 hours per month for four months) during the COVID-19 pandemic. ELARC's stated reason for the denial is that "ELARC feels that [Claimant's] current services and supports provided by ELARC and generic resources suffice [*sic*] his current needs." (Exh. 1, p. 4.)

3. Mother filed a fair hearing request on Claimant's behalf on March 9, 2021, appealing ELARC's decision.

4. All jurisdictional requirements have been met.

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **Service Agency's Contentions**

5. Claimant currently receives 283 hours of In-Home Supportive Services (IHSS) and 30 hours per month of In-Home Respite Services. Service Agency has also approved 40 hours per month of Independent Living Skills and 60 hours per month of Community Activity Support Services to be included in Claimant's Self-Determination budget. Service Agency also currently provides 40 hours per month of Personal Assistance Services (PA) and an additional 25 hours per month of In-Home Respite Services. Service Agency maintains that the funding for PA and additional respite is temporary and intended to assist Claimant and his family during the COVID-19 pandemic.

## **Claimant's Contentions**

6. According to Claimant, Service Agency agreed to fund PA hours during the July 19, 2018 IPP meeting to assist him with his ongoing medical issues and to support his attendance at Los Angeles City College (City College) but had not provided him with those hours until 2020. Claimant asserts that approval of the PA hours was not COVID-related and that funding for the PA hours should continue once COVID-19 restrictions are lifted.

## **2018 IPP and ELARC Communications**

7. On July 19, 2018, an IPP meeting was held with Claimant, his parents, his younger sibling, and ELARC service coordinator (SC) Marisol Jimenez. After the meeting, SC Jimenez prepared an IPP report and Service Provision Agreement reflecting the resolutions reached by the parties during the IPP meeting.

8. The IPP report addressed Claimant's current status, desired outcomes, and the supports he was given or needed to reach his goals in the following categories: (1) Living Arrangement; (2) Wellness; (3) Psychiatric/Behavioral; (4) Work/Career/Education; (5) Self Care; (6) Safety/Risk Management; (7) Financial /Money Management; and (8) Transportation.

9. The most notable changes from Claimant's prior IPP report were in the areas of "Wellness" and "Work/Career/Education." In the area of "Wellness," it was noted that Claimant had undergone surgery for appendicitis in May 2017. Following the surgery, Claimant experienced complications and the abdominal scar from the surgery began "weeping" in December 2017 which needed to be cleaned everyday by an adult. In the area of "Work/Career/Education," Claimant had received a certificate of completion from Early College Academy for Leaders and Scholars earlier that year and was planning on attending City College as a fulltime student. Services were requested to support Claimant's transition from high school to college.

10. The Service Provision Agreement reflects that Service Agency agreed to fund the following supports: (1) music therapy at five hours per month; (2) respite at 22 hours per month; (3) AST (adaptive skills training) with hours being provided "per assessment;" (4) PA "pending ELARC vendor" with hours being provided "per assessment;" and (4) CASS (community activity support services) with hours being provided "per assessment." (Exh. 17.) Contrary to Service Agency's contention, PA and CASS services are not listed as alternative services but are listed as two separate services Service Agency agreed were necessary to support Claimant's IPP goals.

11. On October 24, 2018, Mother contacted the ELARC service coordinator on duty. A Consumer I.D. note was generated of the call, stating that ". . .[M]other still waiting for the [Personal Assistant] services to take place." (Exh. A.) It was not

established by the evidence whether the Service Agency followed up on this request for PA services.

12. Claimant subsequently emailed SC Jimenez on January 3, 2019. One of the issues Claimant addressed in his email was his request for PA services. SC Jimenez responded by email on January 7, 2019. In response to his request for PA services, SC Jimenez asked Claimant for a copy of his school schedule "to determine the hours needed for PA." (Exh. B.) The evidence did not establish if the Service Agency ever determined how many PA hours Claimant needed following the January 2019 email.

13. Though PA was not one of the services mentioned in the 2018 IPP report, the Service Provision Agreement and the subsequent email communications establish that the Service Agency agreed to fund PA during the 2018 IPP meeting.

## **2019 IPP and Communication with ELARC**

14. On June 11, 2019, an IPP meeting was held with Claimant, his parents, his younger sibling, and SC Fausto Villanueva and an IPP report was generated.

15. Like the 2019 IPP, the 2019 IPP addressed Claimant's current status, desired outcomes, and the supports he was provided with or needed to reach his goals. In the area of "Wellness," Claimant's status was unchanged. He was continuing to experience complications from his 2017 surgery. Though Claimant had been scheduled to receive surgery to correct this issue, the surgery was cancelled because he had lost his medical insurance. In the meantime, Claimant's abdominal scar was still weeping and still required care.

16. In the area of "Work/Career/Education," Claimant had successfully completed his first year at City College. Claimant, however, had only taken music

classes during his first year and Parents expressed their belief that "Claimant [would] struggle with the core classes once he start[ed] taking those." (Exh. 5, p. 20.)

Accordingly, services were again requested to support Claimant's attendance. Per the 2019 IPP, SC Villanueva agreed to put AST services in place.

17. The Service Provision Agreement for the 2019 IPP was not submitted into evidence.

18. On January 3, 2019, Mother forwarded SC Villanueva a copy of Claimant's June 14, 2019, email to SC Jimenez.

## **2020 IPP**

19. On June 12, 2020, an IPP meeting was held over the phone with Claimant, Mother and SC Villanueva and an IPP report of the meeting was generated.

20. The 2020 IPP contained numerous errors. One of these errors was the fact the Claimant's information in the area of "Wellness" and ""Work/Career/Education" had not been updated from the 2019 IPP. The 2020 IPP was not signed or approved by Claimant.

## **2021 IPP Addendums**

21. Though there were subsequent IPP addendums on January 28, 2021, February 5, 2021, these addendums were related to Claimant's participation in a paid internship program and decision to develop a micro-enterprise in online/remote guitar instruction.

22. On March 9, 2021, a third IPP addendum was issued. The addendum did not indicate that there had been any changes since the 2020 IPP had been developed.

(Exh. 8, p. 1) The Service Agency, however, agreed to provide Claimant with additional funding as follows: (1) 40 hours per month of independent living services (ILS); (2) 125 hours out of home respite for 21 days per fiscal year; (3) 30 additional hours for COVID respite per month; and (4) 40 hours of PA per month. The IPP addendum provided no explanation as to which of Claimant's goals were being supported by PA hours.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Pursuant to Code section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." Claimant requested a hearing to appeal the Service Agency's refusal to continue PA hours once COVID restrictions are lifted, and therefore, jurisdiction for this appeal was established.

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

2. As the party seeking to terminate or reduce ongoing funding provided to a consumer, the Service Agency has the burden to establish by the preponderance of the evidence that its position is correct. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Service Agency has failed to meet its burden.

### **Applicable Law**

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. 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.” (§ 4501.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

4. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports that: meet the individual needs and preferences of consumers (§§ 4501 and 4646, subd. (a).); support their integration into the mainstream life of the community (§§ 4501 and 4646, subd. (a).); “foster the developmental potential of the person” (§ 4502, subd. (a).); and “maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4640.7, subd. (a).)

5. The consumer’s needs are determined through the IPP process. (§ 4646.) The process “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.” (§ 4646, subd. (a).)

6. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer’s developmental needs), and reflect the consumer’s particular desires and preferences. (§§ 4646, subd. (b), and 4646.5, subd. (a).)

## **Analysis**

7. Here, it was determined through the 2018 IPP meeting that Claimant required PA hours to support Claimant’s needs and goals. Mother asserted that the PA

hours were to assist Claimant with his medical needs and to support him as he attended City College. No explanation was provided as to why the Service Agency failed to provide Claimant with the PA hours.

8. Following the approval for funding, two additional IPP meetings took place in 2019 and 2020. Neither IPP report documented any demonstrable progress or change in Claimant's medical or schooling needs which would indicate that Claimant no longer needs PA hours.

9. On March 9, 2021, the Service Agency determined that Claimant required 40 PA hours per month. Though the Service Agency attempted to categorize these hours as "COVID-related," there was no COVID related reason provided in the addendum for the PA hours.

10. As Claimant was found to require 40 PA hours per month through the IPP process, there is no basis to discontinue funding for PA hours once COVID restrictions are lifted.

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## **ORDER**

Claimant's appeal is granted. The Service Agency shall continue to provide Claimant funding for 40 PA hours per month until such time as changed circumstances or a new IPP warrants otherwise.

DATE:

NANA CHIN

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.