

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

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2021040270

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 24, 2021.

Paula Noden, Manager of Fair Hearing and Vendor Appeals, represented the Regional Center of Orange County (RCOC or service agency). Mother, with assistance from a Spanish language interpreter, represented Claimant, who was not present. Mother and Claimant are not identified by name to preserve their privacy and maintain confidentiality.

Testimony and documents were received in evidence, the parties made arguments, the record closed, and the matter was submitted for decision at the conclusion of the hearing.

ISSUE FOR DETERMINATION

Whether the service agency should fund eight hours per week of personal assistant services for Claimant.

FACTUAL FINDINGS

Jurisdictional Matters

1. During a March 26, 2021 videoconference with RCOC staff, Mother requested the service agency to fund personal assistance services to support Claimant with her self-care needs, daily living activities, and social interactions to achieve her integration in the community.
2. By letter and Notice of Proposed Action dated April 1, 2021, the service agency informed Mother "RCOC is not in agreement with authorizing personal assistance services at 8 hours/week." (Exh. 2 at p. 3.)
3. On April 7, 2021, Mother filed a Fair Hearing Request.
4. All jurisdictional requirements are met.

Claimant's Background

5. Claimant is a 13-year-old consumer of RCOC based on her qualifying diagnoses of Autism and Intellectual Disability (Mild). She is additionally diagnosed with Major Depressive Disorder (Recurrent, Moderate), Generalized Anxiety Disorder, and Learning Disorder (NOS). Claimant resides with Mother and two younger siblings who are also RCOC consumers.

6. Claimant's most recent Individual Program Plan (IPP), dated December 8, 2020, documents she requires prompts for and assistance with her self-care needs, including bathing, toileting, and grooming. She requires assistance with her daily living activities, including meal preparation and laundry. She requires reminders to hydrate and to take her medications. She requires assistance with purchases and money management when she is in the community. She does not initiate conversations with peers. She does not engage in basic reciprocal conversations. She lacks danger awareness. She engages in self-injurious behaviors and she elopes.

7. Claimant's school district provides Claimant with Specialized Academic Instruction and language and speech services twice per week.

8. The service agency funds 24 hours per week of in-home respite care service through Respite Connection during school hours; 24 hours per month of in-home respite care service necessitated by the COVID-19 pandemic emergency through Respite Connection; and six hours per month of personal safety awareness training through Get Safe for Claimant.

9. Medi-Cal, a generic resource, funds 32 hours per month of In-Home Supportive Services (IHSS) for Claimant. As of February 10, 2021, Medi-Cal preauthorized 53.75 hours per month of Applied Behavior Analysis (ABA) through

CalOptima Behavioral Health “to systematically increase self-help skills using task analysis, use of a variety of reinforcers to increase social interactions, and increase motivation to help [Claimant] become independent.” (Exh. 9 at p. 13.) An Initial Treatment Plan identifies “elopement” and “tantrum” as Claimant’s target behaviors and notes areas for intervention includes “communication,” “pragmatic/social,” and “self-help/independent living.” (Exh. 9, *passim*.)

Claimant’s Request for Personal Assistant Services

10. Mother maintains a personal assistant is required to facilitate Claimant’s integration in the community. Mother explained, “She needs a personal assistant so she can go into the community to be independent, to do shopping. [Claimant] likes to go to the mall. I would like a personal assistant to go with us to direct her behaviors; to reassure her.” Mother additionally maintains a personal assistant is needed “to remind [Claimant] about her safety; to socialize; to learn self-care.”

11. The service agency asserts personal assistant services are inappropriate for Claimant because she is a minor and such services are limited to adult consumers. The *Regional Center of Orange County Purchase of Service Guidelines (POS Guidelines)* does not support the service agency’s assertion since it expressly lists “Personal Assistance” as one of several types of services comprising its “Child Care Service” category. (See Exh. 11 at p. 23.)

12. The service agency additionally asserts personal assistant services are inappropriate for Claimant because “there is a higher risk when a minor is placed in the care of a non-family individual. . . . During those hours of services, parents are not present.” This assertion is supported by the *POS Guidelines*, which expressly provides for “an aide to support a child placed in a licensed day care site or an after-school

program” and specifies “a trained aide.” (*Ibid.*) In this case, Mother’s request for personal assistance services contemplates delivery of services to Claimant in the community beyond the circumscribed environment of a licensed day care site or an after-school program. The service agency expressed concern about untrained persons who are ill-equipped to manage Claimant’s maladaptive behaviors in the community.

13. The service agency further asserts it is unknown whether Claimant satisfies the eligibility requirements for personal assistance services because Mother declined any assessment to determine Claimant’s eligibility. Pursuant to the *POS Guidelines*, “Personal Assistance may be provided only when a child has been assessed in a proactive manner to be in need of such assistance, or for a child who has been rejected or ejected from a child care program and had a subsequent assessment conducted to determine what resources might be applied to enable the child to return to an inclusive child care program.” (*Ibid.*) Mother disputes declining assessment of Claimant noting she provided the service agency with videos she made of Claimant’s activities. The service agency deemed the videos, which were not produced at the hearing, inadequate substitutes for a proper assessment of Claimant’s eligibility for personal assistant services. None of the evidence offered at the hearing suggests Claimant was ever rejected or ejected from a childcare program.

14. The service agency maintains generic resources, IHSS and ABA, are available to satisfy Claimant’s request for personal assistant services. The service agency maintains, for example, it is possible Claimant is eligible for additional IHSS hours, which could be used to assist Claimant with her self-care, daily living tasks, socialization, and eventual community integration. The maximum IHSS hours awarded an eligible individual is 283 hours per month. The service agency has therefore counseled Mother to apply for an award of additional IHSS hours, and it has offered to

assist Mother with advocacy during the application process. Mother has not yet begun the IHSS application process. Nor has Mother consented to the service agency advocacy on Claimant's behalf during the application process. Mother contends, even if Claimant were awarded additional IHSS hours, use of those additional IHSS hours is limited to providing Claimant with supports and protective supervision services within the home.

15. According to the service agency, ABA services adequately address Claimant's needs for safety in community. In particular, the service agency maintains the accompanying Initial Treatment Plan for Claimant's ABA services notes Claimant's elopement behaviors are more likely to occur in "community outings," are "maintained by denied access to tangible," and "[w]hen elopement occurs, caregivers will follow and request [Claimant] to explain why she is upset." (Exh. 9 at p. 6.) In other words, Claimant's ABA Treatment Plan requires Claimant to use functional communication skills to ask for what she wants or desires while in the community. Claimant's ABA Treatment Plan also provides Claimant with safety instructions, including following traffic light signals and instructions to stop or to not enter. Mother noted Claimant's ABA Treatment Plan does not focus on Claimant's interaction in the community.

16. At the hearing, the service agency represented Claimant and her family have been selected for and are in the process of entering the Regional Center Self-Determination Program (SDP), which provides a budget and spending plan for Claimant and which allows Mother to choose or employ qualified person(s) to provide eligible services and supports to Claimant for her inclusion in the community. (See Exh. 14.) Although the service agency did not specify whether the particular type of personal assistance services Mother seeks for Claimant are eligible for SDP funding, an SDP Orientation Workbook lists, among other things, a service code for "Community

Integration Supports,” thereby suggesting a category under which Claimant’s community integration needs may be met. (See Exh. 14 at pp. 115 and 124.) The SDP Orientation Workbook, in pertinent part, defines “Community Integration Support” as follows:

This service is provided to participants tailored to their specific personal outcomes related to the acquisition, improvement and/or retention of skills and abilities to prepare and support the participant in community participation, interdependence, and independence.

This service supports the full access to engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving these services. In addition, this service assists the participant to learn the skills needed to participate in the community during integrated activities with individuals who are non-disabled.

(Exh. 14 at p. 124.)

17. With respect to Claimant’s current SDP status, Mother affirmed she was “in the business management phase” and she was “moving forward.”

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) regional centers, including RCOC, play a critical role in the coordination and

delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including RCOC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including RCOC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. To those ends, the Lanterman Act specifically obligates regional centers, including RCOC, to purchase services and supports in conformity with purchase of service policies approved by the Department of Developmental Services. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) Regional centers, including RCOC, must ensure “[u]tilization of generic services and supports when appropriate.” (Welf. & Inst. Code, § 4646, subd. (a)(2).) Regional centers, including RCOC, must identify and pursue all possible sources of funding for consumers receiving regional center services. Those sources include, but are not limited to, “Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.” (Welf. & Inst. Code, § 4659, subd. (a)(1).)

3. It is undisputed Claimant presents with deficits and maladaptive behaviors requiring habilitation to ensure her successful integration in the community. The Lanterman Act recognizes adolescents with developmental disabilities, including Claimant, should achieve community integration just like their peers without developmental disabilities. (See *Association for Retarded Citizens—California v. Department of Developmental Services*, (1985) 38 Cal.3d 385, 388.)

4. The successful integration of Claimant in the community necessarily begins with assessments to identify appropriate services and supports commensurate with Claimant's needs. Mother has not yet followed through on the service agency's recommendation to apply for an award of additional IHSS hours. Consequently, it is indeterminate whether Claimant is eligible for additional IHSS hours or, even if eligible, whether it is permissible to use the additional IHSS hours to achieve Claimant's community integration. Mother is in the middle of the business management phase in SDP. Until Mother completes all phases of SDP, it is indeterminate whether the services of a personal assistant are among the type of services available to Claimant through SDP to achieve community integration. Claimant's ABA services are nascent. Therefore, their efficacy providing Claimant with skills to facilitate her integration in the community is yet to be determined. In sum, assessment processes for identifying and implementing appropriate services and supports, particularly personal assistant services, to integrate Claimant in her community have yet to run their full course. Until the relevant assessments occur, Claimant is not entitled to the requested personal assistant services under the Lanterman Act.

5. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence her entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has not met her burden.

6. Based on Factual Findings 5 through 17 and Legal Conclusions 1 through 5, cause does not exist for the Regional Center of Orange County to fund personal assistance services for Claimant.

ORDER

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL

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.