

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2021040776

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 21, 2021, by video/telephone conference due to the COVID-19 pandemic.

Claimant's mother appeared on behalf of claimant as her authorized representative.

Keri Neal, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

The record was closed, and the matter submitted for decision on September 21, 2021.

ISSUE

Whether claimant's current Applied Behavioral Analysis (ABA) vendor should be changed from Autism Spectrum Therapies (AST) to A Change in Trajectory (ACT) for ABA therapy and whether IRC's decision to authorize ACT and another IRC vendor to assess claimant has rendered claimant's fair hearing request moot.

SUMMARY

Claimant filed a fair hearing request in which she disagreed with IRC's Notice of Proposed Action to deny her request to change her ABA provider from AST to ACT. At the hearing, IRC agreed to authorize ACT and a second IRC vendored ABA provider to assess claimant so that IRC can authorize ACT or this second provider to provide ABA services to her depending on which provider claimant selects. As claimant framed her dispute with IRC in her fair hearing request, IRC's willingness to refer claimant to these providers has rendered her disagreement with IRC's proposed action moot. Her fair hearing request is granted, and IRC is ordered to transmit referral packets to ACT and a second vendored ABA provider within two weeks from the date of this decision.

FACTUAL FINDINGS

Background and Procedural History

1. Claimant is a 24-year-old unconserved woman who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder. Claimant receives 24 hours of independent living services (ILS) through Advanced Resources for Independent Living and 16 hours of community support services. Effective February 12,

2020, IRC approved crisis intervention services for claimant through Creating Behavioral and Educational Momentum (CBEM), which ended on December 31, 2020, due to the termination of CBEM's contract with IRC. Claimant declined to have another provider and instead wanted ABA services. She applied for SSI benefits and was denied. She is appealing that denial.

2. On April 13, 2021, in response to claimant's March 30, 2021, request for ABA services, IRC issued a Notice of Proposed Action that denied her request to change her ABA provider from AST to ACT. IRC approved claimant for ABA services with AST on February 1, 2021. She previously was receiving ABA services through California Psychcare (CPC) since November 2018, according to OAH's February 25, 2020 Decision (OAH Case No. # 2020010622). Claimant's mother stated that she was not happy with AST delivering services virtually to claimant by tele-health and she disagreed with the goals AST is working on with claimant.

3. On April 15, 2021, claimant's mother, as claimant's authorized representative, requested a fair hearing. OAH in an order dated May 11, 2021, initially ruled that claimant's mother could not serve as claimant's authorized representative under Welfare and Institutions Code sections 4701.6 and 4703. However, at the August 16, 2021, hearing, the undersigned reconsidered OAH's ruling on his own motion and consistent with Welfare and Institutions Code sections 4701, subdivision (f)(3), and 4541, subdivision (a)(2), determined that claimant has the right to choose the representative of her choice.¹ At the start of the August 16, 2021, hearing, claimant

¹ At the August 16, 2021, hearing, after the record was opened, claimant moved to continue the hearing. The motion was granted and OAH, after consulting with the parties, set the hearing for September 21, 2021.

said she wanted her mother to represent her. Her mother accordingly was permitted to represent her as her authorized representative.

4. Claimant in her April 15, 2021, fair hearing request stated as the reason for her request that claimant is a high functioning person with autism who engages in self-harm and does not respect the property of her mother and sister. She wants ABA services that claimant stated she requested in September 2020. To resolve her complaint, claimant's mother stated that she needed an ABA program to address claimant's self-harming behavior and her behavior of not respecting the property of others so she can function in the community and be successful. As noted, IRC approved claimant for AST services on February 1, 2021. Soon afterwards, claimant's mother asked that the provider be switched to ACT.

5. At the time IRC issued its Notice of Proposed Action, it took the position that AST provided the appropriate treatment for claimant and did not approve authorizing ACT to serve as claimant's ABA provider. At the start of the hearing on August 16, 2021, however, IRC stated it changed its position. IRC represented that as a first step for ACT to provide services, IRC would send ACT a referral packet so that ACT can complete a functional behavioral assessment of claimant. IRC would also send a referral packet to a second IRC ABA vendor for this second vendor to also perform a functional behavioral assessment. The completed functional behavioral assessments are a necessary first step for IRC to fund ABA services for claimant. If these providers determine that ABA services are appropriate, IRC will fund the service. IRC stated it would transmit the referral packet to the two vendors so that claimant would have a choice and can approve one of these vendors as her ABA provider.

IRC's Motion to Dismiss and Issue of Mootness

6. Based on IRC's decision to transmit the referral packet for these ABA providers to conduct assessments, IRC moved to dismiss claimant's fair hearing request because the issue as claimant framed it is moot. Thus, the threshold question is whether based on IRC's willingness to refer claimant to two ABA providers, claimant's appeal can be deemed moot. Mootness describes the doctrine under which courts decline to hear a case because it does not present an existing controversy by the time for decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.)

7. Claimant's mother disagreed that the matter is moot. But she offered no cognizable reason that a dispute remains in light of IRC's decision to authorize ACT and a second provider to assess claimant for ABA services. She said she wants an order from OAH that prevents IRC from interfering with claimant's ABA therapy. Without such an order, she stated the matter is not resolved. IRC responded that its role is to simply transmit the referral packet to the ABA providers so the functional behavioral assessments can be done, and IRC does not interfere with a claimant's ABA therapy.

8. Accordingly, because IRC has now agreed to authorize ACT and a second service provider to conduct functional assessments of claimant as a necessary first step to approve ABA services, claimant's dispute as framed in her April 15, 2021, fair hearing request is deemed moot. IRC's motion is granted in part. Claimant's fair hearing request is not dismissed, but IRC is ordered to transmit referral packets to ACT and a second IRC approved ABA vendor for these providers to conduct functional behavioral assessments of claimant. Once these assessments are completed, and ABA services are deemed appropriate, claimant can select one of the two providers and IRC

will authorize the ABA services from this provider for her. Claimant's request for an order barring IRC from interfering with claimant's ABA therapy is denied.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of persons with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. 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 lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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 independent, productive, normal lives. 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (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.

(Welf. & Inst. 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.” (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4646 requires that the Individualized Program Plan (IPP) and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

6. Welfare and Institutions 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. This section also requires regional centers to be fiscally responsible.

7. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*)

Evaluation and Disposition

8. As determined above, because IRC is now willing to transmit referral packets to ACT as a first step to approve claimant for ABA services with ACT, claimant’s disagreement with IRC’s proposed action to not authorize ACT as claimant’s ABA provider is moot.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund Applied Behavioral Analysis Services with ACT is granted.

Within two weeks of this order IRC will transmit to ACT and a second IRC approved vendor a referral packet for these providers to perform functional behavioral assessments of claimant so that IRC may authorize ABA services to the provider claimant selects.

DATE: September 24, 2021

ABRAHAM M. LEVY
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.