

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

In the Matter of:

CLAIMANT

vs.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2021040784

DECISION

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 2, 2021, via telephone, because of the ongoing COVID-19 pandemic, and based on the Governor's proclamation of a State of Emergency and Executive Orders N-25-20 and N-63-20.

Stephanie Zermeño, Fair Hearings Representative, represented the Inland Regional Center (Service Agency).

Claimant's mother represented Claimant.

The matter was submitted on June 2, 2021.

ISSUE

Should the Service Agency fund Personal Assistance Services for Claimant?

FACTUAL FINDINGS

1. Claimant is a 29-year-old ambulatory male, who qualifies for regional center services based on a diagnosis of autism. In December 2020, the Service Agency accepted Claimant as a consumer from the North Los Angeles Regional Center (NLARC).

2. Sitlalince "Kaly" Burgos-Mesones, Claimant's Consumer Service Coordinator (CSC) testified about issues NLARC had with Claimant's mother that were the same or like issues experienced by the Service Agency, such as difficulty communicating with Claimant's mother.

3. Claimant's mother described problems/issues she had dealing with NLARC; including that the IPP prepared by NLARC contained numerous inaccuracies; the Department of Developmental Services (DDS) instructed NLARC to correct inaccuracies in Claimant's IPP but NLARC did not; and after a Fair Hearing, an administrative law judge ordered NLARC to take certain action but NLARC did not. Claimant's representative was not specific about the IPP prepared by NLARC that was inaccurate, did not provide documentary evidence to support her testimony that DDS ordered NLARC to correct the IPP, and did not provide a copy of the decision or any other facts about the case that NLARC refused to comply with an administrative law judge's order after hearing. Furthermore, whatever issues claimant had with NLARC are not relevant to the case at hand.

4. On January 6, 2021, an Individual Program Planning (IPP) meeting occurred; present were Claimant, his mother, and his CSC. Claimant did not speak during the meeting. His mother provided the information regarding Claimant's functional level, needs, and supports.

5. During the IPP meeting, Claimant's mother requested 217 hours per month of Personal Assistance Services (PAS) from February 1, 2021, through June 30, 2021.

6. The Service Agency filed a Proposed Notice of Action, dated April 5, 2021, denying the request because PAS are inappropriate for Claimant's level of functioning.

7. Claimant's representative filed a Request for Fair Hearing, dated April 14, 2021. Claimant's representative presented several arguments including: (1) the Proposed Notice of Action issued by the Service Agency did not comply with the notice requirements set forth in Welfare and Institutions Code section 4701, subdivision (d); therefore, she seeks dismissal and aid paid pending; (2) PAS were approved during the IPP meeting on January 6, 2021, on a temporary basis, and were intended to continue until Claimant started the Self-Determination Program (SDP), which is inconsistent with the denial of PAS in the Notice of Action; as a result she seeks reimbursement for out-of-pocket costs paid to a caregiver based on the alleged representation by the CSC during the IPP meeting; (3) Claimant's level of functioning could not be ascertained during the Zoom IPP meeting; (4) Claimant has received PAS (either as day care or respite) since the early 1990s; (5) She applied for, was denied, appealed and approved for IHSS for Claimant; Claimant did not receive IHSS because she did not provide necessary forms; also, in her opinion, PAS are intended to supplement IHSS; and she did not receive a copy of the IPP.

8. Claimant lives in the family home with one of his brothers and his mother, who provides supervision.

He is musically inclined and enjoys playing guitar and writing music. His hobbies and interests revolve around music. He is part of a band and participates in band practice several times a week. His primary social group consists of his bandmates.

Claimant is transported by family or friends. He holds a valid California driver's license, can drive a short distance, and is supervised for safety.

9. Except for the diagnosis of autism, Claimant has no other diagnosis, medical or psychiatric, and does not take medication. He has no physical restriction or limitation.

10. Claimant receives Supplemental Security Income (SSI).

Claimant has been denied In-Home Supportive Services (IHSS) on two separate occasions. Claimant's mother acknowledged that he does not receive IHSS. During the hearing, she testified that she had filed for this service on behalf of Claimant and was denied; however, she appealed and won; he does not receive the service because she did not complete a required form. She offered no documentary evidence in support of her testimony.

Claimant receives no services or supports funded by the Service Agency.

11. Claimant communicates verbally with a vocabulary of more than 30 words and can formulate full sentences. His mother reports that he does not talk a lot for fear "this would show his disability." Also, his mother reports he does not express

or communicate his needs, wants, or desires; he does not communicate his emotions to anyone.

12. Claimant makes inappropriate, sometimes violent statements. However, his mother does not believe he will act on the statements. When he makes concerning statements, his mother redirects him and explains the importance of choosing his words carefully.

13. Claimant completes activities of daily living independently, including dressing himself, but requires reminders to brush his teeth. He does not cook for himself because he becomes frustrated or might forget steps. On two separate occasions, he left the gas stove on; now, he lives in a home that has an electric stove. Also, he needs assistance with household maintenance, to make sure he purchases and maintains needed items in the home. He would not know what to do if something needed repairs. For example, the sink had a broken sink handle, and Claimant did not know what to do to resolve the problem. Claimant lacks an understanding of household upkeep and therefore requires guidance to ensure a safe environment.

14. Claimant's functioning ability on January 6, 2021, is like that described in his IPP from NLARC, dated June 10, 2019, which stated:

[Claimant] reported that he is able to perform many activities of daily living on his own. For instance, he reported that he is able to complete household chores like taking the trash out, vacuuming, feeding the cats, doing the laundry and cleaning the mirrors on his own. He also completes hygiene tasks on his own, such as taking a shower, brushing his teeth and getting dressed. However,

he needs support in the areas of cooking, shopping, and money management.

For instance, with cooking [Claimant] is able to help with prepping such as cutting and measuring the ingredients. He can also use the stove though it depends on what type of food needs to be cooked. In regards to shopping, [Claimant] is able to decide on what he wants though at the cashier he needs help with buying things that usually [*sic*] five dollars or more.

15. Claimant requires someone nearby during waking hours in all settings to ensure his optimal safety. He does not often stay home alone; most times, he is with his family or friends. Claimant is easily influenced by others, which poses safety concerns. Without supervision, his mother fears Claimant would not reach out for help in an emergency.

16. The Service Agency argues that regional centers are required to provide services and supports that meet Claimant's needs. Based on Claimant's mother's description during the IPP, Claimant can perform all activities of daily living and needs prompts to brush his teeth; he does not need someone to perform tasks for him. He has a diagnosis of autism spectrum disorder but no other disability, psychiatric or medical condition. He holds a valid California driver's license. He does not receive IHSS, which implies that the agency who funds this service believes that he can provide care for himself in his home safely. As such, in the Service Agency's opinion, given Claimant's functioning level and capability, rather than personal assistance services, either independent living skills (ILS) or supported living services (SLS) are more appropriate.

17. The Service Agency distinguished PAS and ILS/SLS. PAS are performed for the consumer while ILS/SLS provides training for the consumer; SLS may include some PAS.

PAS are used to help a person with a developmental disability do tasks that he would normally do if he had no disability. These may be services provided in the home, at school, at work, and in community activities. Services generally fall into the following categories: (1) personal care, (2) domestic services, (3) related and other services, and (4) paramedical services. The services and funding for the services may be provided by IHSS, regional center and private funds. Personal assistance services are performed for the individual.

ILS provide training and assistance for adults with developmental disabilities to achieve greater independence while living with others or to acquire and maintain living independently. SLS assist individuals with developmental disabilities establish and maintain a safe, stable, and independent life in homes they own or rent. SLS can include personal assistance services.

Considering the foregoing, the Service Agency proposes to have a regional center vendor assess Claimant to determine his needs, whether he should have ILS/SLS or PAS or some combination of SLS and PAS.

18. Claimant's mother has always supervised, cared for and supported Claimant and his brother, who both have developmental disabilities. She lives in the home with her sons. She is tired and hopes to get some relief and move home with her husband. Claimant's mother's goal is for Claimant and his brother to live as independently as possible. She does not believe ILS/SLS will benefit Claimant. She and prior care providers have worked diligently to teach Claimant cooking, budgeting,

cleaning the home, and other skills, without success. Also, she is concerned about Claimant's safety if he has ILS/SLS rather than PAS. She testified that Claimant is naïve; on one occasion, he drove one of his friends "to score" drugs and did not realize what he was being asked to do, though she did.

Claimant's mother cannot imagine having her sons placed in a group home and hopes that Claimant and his brother can participate in the SDP as soon as possible. In the meantime, she believes Claimant will be safest if he has PAS. According to Claimant's mother, he has had some form of PAS since he was a child.

19. Claimant's mother testified the CSC approved PAS during the IPP meeting in January 2021, and she believed she would receive the service. Between the IPP meeting (January 6, 2021) and the Notice of Action (April 5, 2021), the CSC contacted three vendors to determine if any could provide the PAS. One vendor was able to provide the service at the rate of 40 hours a month, which was less than the hours requested; the CSC notified Claimant's representative of the foregoing. Despite Claimant's mother's belief that PAS had been verbally approved, except for her own testimony, there is no testimony or documentary evidence which supports her belief.

20. In the letter, attached to the Fair Hearing Request, Claimant's representative seeks out-of-pocket costs paid to a caregiver based on the CSC's representation. During the hearing, Claimant's representative offered no testimony in support of the foregoing.

LEGAL CONCLUSIONS

1. In the Lanterman Developmental Disabilities Services Act (Lanterman Act), the legislature created a comprehensive scheme to provide "a pattern of facilities

and services ... sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (Welf. & Inst. Code, § 4501.)¹ The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community. (§§ 4501, 4685); and (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (§§4501, 4750; see generally *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. To determine how a consumer is to be served, regional centers are directed to conduct a planning process which results in an IPP for the consumer. The IPP and provision of services and supports by the regional center system is centered on the individual with developmental disabilities and considers the needs and preferences of the individual as well as promoting community integration, independent and productive, and normal lives. The provision of services is "intended to be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (§4646, subd. (a).)

The IPP is developed by an interdisciplinary team and includes participation by the consumer and/or his representative. (§4646, subds. (b) & (d).) The IPP states the consumer's goals and objectives and delineates the services and supports the consumer needs to achieve the goals set forth in the Lanterman Act. (§§4646, 4646.5,

¹ All statutory references are to the Welfare and Institutions Code.

and 4648.) Among other things, the planning process for developing an IPP includes gathering information (§4646.5, subd. (a)(1)), developing a statement of goals based on the needs, preferences, and life choices of the consumer, and developing a statement of specific time objectives for implementing the person's goals and addressing his needs (§4646.5, subd. (a)(2)). Thereafter, the team develops a schedule of the type and amount of services to be obtained from generic resources or purchased by the service agency to obtain the goals and objectives stated in the IPP. (§4646.5, subd. (a)(4).) All decisions concerning the consumer's goals, objectives, services and supports that will be included in the IPP obtained from generic resources or purchased by the service agency are to be made by the agreement of the regional center representative and the consumer or the consumer's representative. (§4646, subd. (d).) The service coordinator or case manager is the person responsible for preparing, overseeing, monitoring, and implementing the IPP. (§4647, subds. (a) & (b).)

3. In implementing individual program plans, "regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§4648, subd. (8).)

4. Regional centers are prohibited from purchasing any services that is available from Medi-Cal, In-Home Supportive Services, private insurance, or a health care plan when the consumer meets the criteria of this coverage but chooses not to pursue that coverage. (§4659, subd. (c).)

Evaluation

5. On January 6, 2021, during the IPP meeting, Claimant's representative requested the Service Agency fund PAS. Claimant should be provided a service that is

appropriate to Claimant's skills and abilities. Claimant's mother knows him, loves him, and is concerned for his safety and well-being. She believes PAS are best suited for his abilities and needs. However, based on Claimant's report (in 2019), and consistent with his mother's report (in 2021), Claimant can perform his daily self-care tasks independently with periodic reminders to brush his teeth and can complete household chores with reminders. Also, he has a California driver's license and does not receive IHSS. Considering the facts and the law, it is more appropriate to have Claimant assessed to determine the appropriate service and number of hours he needs.

Claimant's Other Arguments

6. Claimant's representative requested dismissal of the Notice of Proposed Action, arguing the Service Agency failed to comply with Welfare and Institutions Code section 4701, subdivision (d), which states that "Adequate Notice" means a written notice informing the authorized representative of the specific law, regulation, or policy supporting the action. The foregoing motion is not supported. Attached to the Notice of Proposed Action is a letter from the Service Agency which states: "This decision is based on the following:" and thereafter identifies the sections of the Welfare and Institutions Code upon which the Service Agency relied. As such, the request to dismiss the Notice of Proposed Action is denied.

Claimant's mother requested aid paid pending. Code section 4715 governs aid paid pending and states services being provided pursuant to the consumer's IPP "shall be continued during the appeal procedure." In this case, Claimant requested the Service Agency to fund PAS; on the date of the IPP meeting until the Notice of Proposed Action, Claimant was not receiving PAS; as such he was not entitled to receive aid paid pending. Therefore, the request for aid paid pending is denied.

7. Claimant's request for out-of-pocket costs for payment to a caregiver based on the CSC's representation is denied.

ORDER

Claimant's request for personal assistance services is denied.

DATE: June 11, 2021

VALLERA J. JOHNSON
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.