

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

In the Matter of:

CLAIMANT

vs.

INLAND REGIONAL CENTER, Service Agency

OAH No. 2021040787

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 15, 2021.¹

ISSUE

Should the Service Agency continue to fund Personal Assistance Services for Claimant?

FACTUAL FINDINGS

1. Claimant is a 26-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. On January 6, 2021, an Individual Program Planning (IPP) meeting occurred; present were Claimant, his mother, and Sitlalince “Kaly” Burgos-Mesones, Claimant’s Consumer Service Coordinator (CSC). Claimant did not speak during the meeting. His mother provided the information regarding Claimant’s functional level, needs, and supports. In addition, during the IPP, the CSC completed the Client

¹ The hearing in this matter concluded on June 2, 2021. The Administrative Law Judge held the record open to allow Claimant’s representative to submit additional documents, and the Service Agency to file a response. Claimant did not file the documentation.

On June 15, 2021, the record closed, and the matter was submitted.

Development Evaluation Report. With the foregoing information, the CSC determined his level of functioning.

3. During the IPP meeting, Claimant's representative requested that he continue to receive Personal Assistance Services (PAS) at the rate of 217 hours per month from February 1, 2021 through June 30, 2021. When he transferred to the Service Agency, Claimant was receiving a similar service, coded as day care services.

4. 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; as such, it would fiscally be irresponsible to continue to fund this service.

5. Claimant's representative filed a Request for Fair Hearing, dated April 9, 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) she did not understand how Claimant's level of functioning could be ascertained during a video IPP meeting; (3) Claimant has received PAS (either as day care or respite) since the early 1990s; because he changed addresses, he is no longer eligible for the service; (4) because she could not get anyone to move into their home, Claimant's mother/representative moved into their home to assure the safety and wellbeing of her sons on the evenings and weekends; (5) until she received the Notice of Proposed Action, she believed the PAS would continue and would do so with UNI-HEALTH, the vendor who has provided services to Claimant and is a Service Agency vendor; (6) Claimant applied for, was denied, appealed, and approved for IHSS; Claimant did not receive IHSS because his mother/representative did not provide necessary forms.

6. Claimant lives in the family home with one of his brothers (also a Service Agency client), and his mother, who provides supervision. She does not plan to live there long-term. Her goal is for Claimant to reside independently.

7. He enjoys playing video games and is interested in mechanics. He would like to find employment, preferably in automotive mechanics. He might be interested in receiving supported employment through the Service Agency in the future.

8. Claimant is transported by family or friends. He holds a valid California driver's license. In the span of six months, he has "crashed" twice; therefore, he is supervised for his safety.

9. Except for the diagnosis of autism, Claimant has no other medical or psychiatric diagnosis, and does not take medication. He has no physical restriction or limitation. He is a non-conserved adult; his mother maintains power of attorney to oversee his medical care.

10. Claimant transferred into the Service Agency with 217 hours of day care services funded by the previous regional center. According to the Consumer I.D. Notes, dated December 31, 2020, the Service Agency was "to fund a similar service (personal assistance)."

Claimant has been denied In-Home Supportive Services (IHSS) on three 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 of paperwork". She offered no documentary evidence in support of her testimony.

11. Claimant can focus on a preferred task or activity for more than 30 minutes at a time. He communicates verbally with a vocabulary of more than 30 words and can formulate full sentences. He has open communication with his mother and expresses his needs, wants, and desires to her. His mother reports that he spends most of his time playing video games and does not socialize often; he will initiate conversation with others in familiar settings.

12. Claimant does not display disruptive behavior or emotional outbursts; he does not partake in physical aggression, property destruction, or self injurious behaviors. His mother reports that he "is a kind young man who is susceptible to manipulation due to his sweet nature."

13. Claimant's mother reports that he requires someone nearby during waking hours in all settings to ensure his optimal safety; he does not stay home alone; he is easily influenced which poses safety concerns; also, he is easily distracted from a non-preferred activity.

14. Claimant is ambulatory and completes activities of daily living independently, including dressing himself, but requires reminders to brush his teeth, to clean his room and "upkeep" the house.

15. The Service Agency argues that regional centers are required to provide services and supports that meet Claimant's needs and optimize independence. 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, clean his room and "upkeep" his home; 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 the services believes that he can safely provide care for himself in his home. Therefore, the Service Agency believes, given Claimant's functioning level and capability, either independent living skills (ILS) or supported living services (SLS) are more appropriate than PAS.

16. The Service Agency distinguished PAS from ILS/SLS. With PAS tasks are performed for the consumer while SLS/ILS provides training for the consumer to complete tasks; 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 independent living. 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 and the number of hours he needs.

17. 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. Claimant's mother described how difficult this is; her sons have different interests; in addition, sometimes, the men do not want to be in the same room together. 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 SLS will benefit Claimant. She has worked diligently to teach Claimant activities, such as purchasing wisely while grocery shopping, without success. Also, she is concerned about Claimant's safety if he has SLS rather than PAS. She explained that he was beaten up at a gasoline station outside a grocery store; four "rowdy kids" came in; one of them, a female, said, "if you were more of a gentleman, you would let me in front of you;" Claimant responded, "you snooze, you lose." Also, Claimant's mother is concerned that he would not know what to do under pressure; she fell down the steps at home while both sons were present; Claimant froze; her other son assisted her.

Claimant's mother inquired about whether he could be placed in a group home; she hopes Claimant can participate in the Self Determination Program 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 for many years.

18. Claimant's mother testified, during the IPP meeting in January 2021, she was led to believe PAS would continue with Uni Healthcare, the current vendor.

In February 2021, the CSC planned to discuss SLS, rather than PAS, hours with Claimant's mother/representative. SLS would "provide both teaching and assistance due to consumer's high functioning levels and independence."

The appropriate service and hours were to be determined by an assessment/intake through Pathway, an SLS vendor.

Between the IPP meeting (January 6, 2021) and the Proposed Notice of Action (April 5, 2021), the CSC contacted 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 other testimony or documentary evidence which supports her belief.

Ultimately, the Service Agency authorized 217 hours of PAS from January 1, 2021 through April 30, 2021; after filing the appeal, the Service Agency extended the service until June 30, 2021, as aid paid pending.

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.)² 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

² All statutory references are to the Welfare and Institutions Code.

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 productive 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, 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 are 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 his mother's report during the IPP and CDER, 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.

7. Claimant's representative 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 receiving PAS; as such he was entitled to receive aid paid pending. Therefore, the request for aid paid pending is granted and has been authorized by the Service Agency until June 30, 2021.

8. Claimant's representative contended the CSC could not determine Claimant's level of functioning during a video call. According to the CSC, she made the determination based on the CDER and information provided by his mother. Therefore, this argument is rejected.

9. Claimant's representative argued that he satisfied the criteria to receive IHSS services but did not receive IHSS because of "paperwork". Claimant offered no

documentary evidence to support her testimony/argument, despite being given an opportunity to provide the information after the hearing.

ORDER

Claimant's request for personal assistance services is denied.

DATE: June 28, 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.