

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

In the Matter of the Request for Services of:

CLAIMANT

and

INLAND REGIONAL SERVICES, Service Agency

OAH No. 2021040962

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter by telephone and videoconference on June 10, 2021, and November 9, 2021,¹ due to the ongoing COVID-19 pandemic.

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

¹ As noted below, claimant's request to continue the second day of hearing was denied.

Claimant's mother (Mother) appeared and represented claimant on the first day of hearing; she did not appear on the second day. Claimant did not appear either day.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 9, 2021.

ISSUES

Is IRC required to fund Specialized Care services, or a comparable service, that claimant was receiving when he lived in another regional center's catchment area? Alternatively, is IRC required to fund additional respite hours for claimant?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, currently an 11-year-old male, was a consumer of Harbor Regional Center (HRC) until he moved to IRC's catchment area. On December 15, 2020, HRC executed an Inter Regional Center Transmittal documenting claimant's transfer from HRC to IRC effective January 1, 2021. HRC identified claimant's eligibility for services based on his diagnosis of autism, provided identifying information about claimant, described the services he received at HRC, and identified the vendors who provided the services.

2. On January 29, 2021, IRC executed an Inter Regional Center Transmittal in which IRC agreed to "accept case management/fiscal responsibility" of claimant effective February 1, 2021.

3. On March 23, 2021, IRC notified claimant via a Notice of Proposed Action (NOPA) and an accompanying letter that his request for Specialized Care services at IRC was denied. IRC identified the services HRC had funded for claimant as 427 hours of Specialized Care services and 30 hours per month of in-home respite care. IRC referenced the Individual Program Plan (IPP) meeting held on February 22, 2021, with Consumer Services Coordinator Rachel Garcia (CSC Garcia), and informed claimant that IRC cannot provide Specialized Care services to him, citing various applicable laws in support of its decision. Of note, IRC merely listed the code sections but failed to explain to claimant how they pertained to his case or were used by IRC to reach its decision. In the future it would be helpful to consumers if IRC provided that explanation.

IRC further advised in its letter that because claimant transferred to IRC with Specialized Care services, IRC would "temporarily fund alternative services and supports that best meet [claimant's] needs pending the finalization of the new IPP and to allow time for you to receive this notice with your appeal rights." (Underline in original.) IRC agreed to increase claimant's in-home respite from 30 hours per month to 214 hours per month from March 1, 2021, to April 30, 2021, "to cover the number of hours that would have been covered if IRC continued funding Specialized Care services." Effective May 1, 2021, IRC would then reduce claimant's in-home respite hours to 30 hours per month.

IRC's letter also noted that during the IPP meeting, claimant requested "Personal Assistant services in lieu of Specialized Care services to provide childcare in the home while [Mother is] at work." IRC explained that Personal Assistant services cannot be provided because of the following reasons: those services are to "provide support for the consumer to participate in structured community services with

typical/non-disabled peers;" "Community Center programs and activities that are not supported by a disability program [*sic*]; "those services are not to be used in lieu of school services or during school service hours; generic resources are available"; IRC is "not legally authorized to cover the full cost of day care" and the circumstances that allow for the partial funding for day care do not apply here; and parent responsibility must be taken into account. IRC advised claimant of his appeal rights.

4. On April 21, 2021, claimant submitted a Fair Hearing Request appealing IRC's decision. Claimant sought "Complete restoration of Respite and Specialized Care or (Comparable) Service."

CLAIMANT'S REQUEST FOR CONTINUANCE

5. The matter was noticed and heard on June 10, 2021. It was set for a second day of hearing to take place on November 9, 2021. On the morning of November 9, 2021, Mother sent an email to OAH, that she did not copy to IRC, advising that she could not participate in the hearing "due to Covid-19." Mother apologized for any inconvenience and claimed she has "been overwhelmed with concern for my health and failed to contact anyone sooner." She requested to be contacted so that the parties could "continue at a later date." Mother's email did not specify that she had COVID-19 nor did she provide any documents supporting her claim. IRC was ready to proceed, asserted that the date had been approved by Mother, and objected to a continuance. IRC also asserted that Mother notified IRC in July that she relocated back to HRC's catchment area and requested the file be transferred to HRC, but IRC informed Mother it cannot transfer the matter because of this pending appeal. IRC stated that it advised Mother of her options, Mother was going to seek legal advice, but IRC has heard nothing more from Mother despite its attempts to contact her.

Welfare and Institutions Code section 4712, subdivision (a), allows a fair hearing to be continued for good cause. Granting a continuance is discretionary and if there is no showing of good cause, an administrative law judge does not abuse his or her discretion in denying the request. (*Dresser v. Board of Medical Quality Assurance* (1982) 130 Cal. App. 3d 506, 518.) Continuances should be granted sparingly and only on a proper and adequate showing of good cause. (*Arnett v. Office of Administrative Hearings* (1996) 49 Cal. App. 4th 332, 342-343, quoting *County of San Bernardino v. Doria Mining and Engineering Co.* (1977) 72 Cal. App. 3d 776, 781.) A continuance for an indefinite amount of time without a showing of good cause is an abuse of discretion. (*Arnett*, supra at p. 342.)

Claimant provided no information regarding for whom or when the COVID-19 diagnosis was made. Claimant's email contained no facts that would support a finding of good cause. Claimant also failed to comply with California Code of Regulations, title 1, section 1020. Having considered the request, and applicable laws, claimant's request was denied as lacking good cause. IRC's objection was sustained and the second day of hearing proceeded as noticed.

Documents Introduced at Hearing

6. A May 20, 2020, IPP from HRC listed claimant's eligibility diagnosis as Autism Spectrum Disorder and several facts about him. Claimant is a "very sweet young man" who is unable to hold a conversation and communicates using two and three words and gestures. His speech can be difficult to understand and he becomes overstimulated in unfamiliar environments. There are no other natural supports and Mother works part time, from 5:00 p.m. to 10:00 p.m., outside the home. Claimant's biological father was released from prison and visits claimant once or twice per month. Claimant's paternal half-brother visits once a month and his paternal half-sister visits

once a year. Extended family members are not visiting due to COVID-19. Claimant's Mother "continue[s] to feel overwhelmed with [claimant's] high demands of care/supervision." Claimant lacks safety and stranger awareness and could not attend school unless Mother was in close proximity. He is currently being home schooled. The IPP listed claimant's numerous behaviors and daily living needs. HRC funded 90 hours per quarter of respite and 294 hours of Specialized Care services. Claimant's "Other Funded Services" were 240 hours per month of In-Home Supportive Services (IHSS) with claimant's Mother identified as the IHSS provider.

7. IRC's IPP, dated February 22, 2021, was signed by Mother. It referenced claimant's needs, behaviors, and HRC services previously provided. His behaviors include needing assistance with activities of daily living, elopement, property destruction, aggression, and emotional outbursts. Claimant received Specialized Care services Monday through Friday, from 2:00 p.m. to 10:00 p.m., so Mother could work because there were no other natural supports. Claimant is being home schooled and Mother will download worksheets for him from the internet. While at HRC, claimant's school district funded his private placement at a learning center. Claimant last attended school at the end of the 2019 school year. He does not have a current Individualized Education Plan (IEP) and no IEP meetings were held after 2019. Claimant is not receiving any behavioral services and Mother is aware she can request them. Claimant received these services from his school district until 2019 and Mother is not interested in receiving them now. She reported that ABA services are "harmful not helpful."

8. A Progress Report from Autism Spectrum Therapies (AST) for January 24, 2017, to May 19, 2017, noted that claimant has been receiving AST since January 24, 2017, which was "funded to provide 15 hours per week of ABA services supported by

[HRC]. His total program (school + home) is 25 hours per week.” The report contained the program goals attempted and met. Claimant’s behaviors were referenced, which were consistent with those or similar ones reported in his IPPs. The report contained various domains addressed, the goals, progress and strategies used. In the “Domain: Parents [*sic*] Education” section, the report stated:

Note: [Mother] has been actively observing and participating throughout all sessions. She is provided the opportunity to target goals independently with support and feedback from the interventionist. During this reporting period, AST has worked with [Mother] on providing instruction only once and waiting 3-5 seconds for [claimant] to respond throughout the sessions. [Mother] participated at an average of 43.09% of sessions. AST had team meeting with her and HRC service coordinator to discuss parent participation and [claimant’s] program on May 11th, 2017. Additional strategies that have not been mastered will be introduced in the future.

[Claimant’s] parents have mastered and maintained 0% (0/28) strategies.

9. Time cards for June 2020 through March 2021 from the respite vendor documented the respite hours claimant received, as well as claimant’s activities, behaviors, nutrition, and personal care. The time cards noted that claimant needs personal care, housekeeping, and companionship services.

10. Claimant's February 22, 2021, Client Development Evaluation Report (CDER) has a rating score of 1 to 5, with a 1 indicating a most dependent consumer and a 5 indicating a most independent consumer. Claimant's CDER indicated that he received scores of 4.00 for practical independence, 2.40 for personal/social skills, 2.17 for challenging behaviors, and 2.17 for integration level. No score was listed for well being. Claimant's CDER was consistent with the notes in the HRC and IRC IPPs.

11. A May 20, 2021, email from IRC advised claimant that 24 hours had not been utilized by claimant in February "due to an unforeseen delay in processing the transfer-in authorization." As such, IRC was increasing his hours for the month of June from 30 to 54 hours. Of note, the email did not specify which service these hours referenced, but presumably it was for respite hours IRC was funding.

12. IRC "Consumer I.D. Notes" documented the contacts between IRC, Mother, and vendors. The notes indicated Mother was informed she needed to sign the IPP before services could be requested; that the vendor was advised regarding the status of IRC's authorization for services; and that the Specialized Care vendor explained how HRC billed and coded the service. There were notes documenting pending authorizations for services and discussions regarding Specialized Care services, including that IRC "is not contracted for" Specialized Care services so additional respite would be funded until an alternative service was identified. The notes also referenced that Mother was uncooperative in answering many of CSC Garcia's questions at the IPP meeting, particularly regarding Mother's work schedule. Other notes documented that the IRC team determined that personal assistant and daycare services funded by IRC were not comparable to the Specialized Care services funded by HRC. The IRC team decided to fund additional respite during the COVID-19

emergency period declared by Governor Newsom and to send a NOPA to the family regarding IRC's decision about Specialized Care services.

13. An excerpt from "Case Management Guidelines" was introduced by IRC. The excerpt contained Chapter 3's Table of Contents and portions of "3.2 Case Management Procedures." Of note, these Guidelines have not gone through the formal scrutiny required to become a regulation and are not entitled to be given the same weight as regulations (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 558-559, 570). Section 3.2.2 of the Guidelines, "Securing Daycare Services," noted that regional centers fund day care to "cover the extra cost of specialized care due to the exceptional needs of a child with a developmental disability when day care is not available through usual resources in the community at prevailing community costs. It is not intended to cover all costs." This excerpt also provides as follows: "Parents are expected to pay the typical cost of day care for a child without disabilities until the child reaches age 13," with regional centers funding the incremental difference between typical cost and actual cost. The parents' responsibility to pay and the child's needs are factors to consider, but the number of day care hours "may not exceed 6 hours per day." In addition there are several factors that must be considered when determining if the child requires specialized day care, including behaviors, physical and medical needs, and self-care needs. "The need and amount of day care services shall be determined through the [IPP]/Individualized Family Service Plan (IFSP) process." The excerpt additionally contains an entry advising that due to COVID-19, IRC will fund day care regardless of age and up to age 18 because "day care services/providers are very difficult to obtain" during the pandemic.

14. A March 30, 2020, directive from the Department of Developmental Services (DDS) Director, to regional center executive directors, advised that pursuant

to the Governor's proclamation of a state of emergency, Executive Order N-25-20, and the difficulties caused by COVID-19, personal assistance, independent living skills, and supported employment would be added to the list of participant-directed services, which currently were respite, day care, transportation, nursing, and day services. The directive further stated that in order to temporarily access the additional participant-directed services, families and consumer must follow certain enumerated steps.

15. An IRC program description of personal assistance services for minors explained that the intent of the service was "to provide support for the consumer to participate in structured community activities with typical/non-disabled peers."

16. An excerpt from the IHSS manual detailed 10 domestic services that may be purchased, none of which would be considered the Specialized Care service HRC funded. An eleventh domestic service, "Miscellaneous domestic services," under which Specialized Care services might fall, states that this service "shall not exceed 6.0 hours total per month . . . unless the recipient's needs require an exception." No such exception was established at this hearing.

17. Other IHSS publications provided general information about the program.

18. A June 10, 2021, email from claimant's respite care provider stated that CSC Garcia advised that claimant was accepted by IRC on January 15, 2021, but there was no current purchase of service in place because IRC was "waiting for the family to turn in documents."

Witness Testimony

RACHEL GARCIA

19. IRC assigned CSC Rachel Garcia as claimant's CSC and her job duties included getting services authorized for claimant. As she explained, when claimant transferred to IRC, IRC needed to put services in place for him, he did not transfer with services already authorized by IRC. HRC previously funded eight hours per day, Monday through Friday, excluding holidays, of Specialized Care services while Mother was at work. When CSC Garcia first contacted the respite vendor, claimant was continuing to receive services. CSC Garcia explained to the vendor that claimant was now an IRC consumer and there was no current IRC authorization in place for respite or Specialized Care services. CSC Garcia refuted Mother's claims that she told the vendor to cease services and no reliable evidence supported Mother's contention that CSC Garcia did so.

IRC temporarily authorized alternative services for claimant because IRC does not vendor Specialized Care services. IRC offered temporary additional respite in lieu of that service. IRC is now proposing to reduce claimant's respite hours because the increase was offered as a temporary service/alternative service to the Specialized Care services that IRC does not vendor and claimant does not meet the criteria for any other services IRC funds and/or claimant has not provided information demonstrating he qualifies for those services.

CSC Garcia attempted to complete claimant's IPP, which was conducted over the telephone because of COVID-19, she never met claimant in person. During the telephonic IPP meeting, when CSC Garcia tried to get information from Mother, Mother would often direct CSC Garcia to HRC's IPP claiming, "all the information

needed is on that report.” Mother did provide information regarding claimant’s activities of daily living, explaining he cannot complete tasks independently, and he has challenging behaviors including tantrums, self-injurious behaviors, and elopement.

Claimant is not receiving psychological or ABA services through his Medi-Cal insurance. Mother believes ABA services are “harmful not helpful” for claimant. Mother told CSC Garcia about the issues she had with ABA services, including a therapist who abused claimant. Mother homeschools claimant, purchasing worksheets she downloads online. Despite CSC Garcia’s attempts, Mother did not provide any information regarding claimant’s grade level. Although Mother claimed to have relayed other information during the IPP meeting, CSC Garcia denied those claims. No reliable evidence supported Mother’s contentions and the detailed Consumer I.D. Notes supported CSC Garcia’s testimony.

CSC Garcia acknowledged that she sent a few copies of the IPP to Mother because one version was cut off, and one had an error. CSC Garcia wanted the IPP to accurately state what services IRC was willing to fund. Contrary to Mother’s suggestions, there was nothing untoward about CSC Garcia’s actions in this regard. Mother signed and returned the IPP. Although there is a place on the IPP for signers to note their disagreements, Mother did not mark off that section. After sending the signed IPP, Mother claimed she signed it under duress and “abruptly removed her signature.” CSC Garcia explained to Mother that she had to sign the IPP or they “could not continue.” CSC Garcia denied telling Mother that IRC would immediately cease providing services that day unless Mother signed the IPP, denied calling the respite vendor after the IPP meeting and telling the vendor not to provide services, and denied telling Mother that she would call the vendor and have the services restarted if Mother signed the IPP, credibly explaining she lacks that power. The vendor stopped

services February 21, 2021, which CSC Garcia assumes they did on their own, she did not direct them to do so. CSC Garcia was working on authorizing services and does not know why the vendor ceased providing services. No credible evidence contradicted CSC Garcia's testimony in this regard.

IRC requested verification of Mother's employment and hours worked, but when it did not receive that information and no other services were appropriate, IRC served its NOPA one month after the respite vendor ceased providing services; it was not served before the vendor stopped services.

Of concern, CSC Garcia testified that Mother not providing the requested information was a factor in IRC's decision. She pointed to the NOPA as IRC's way of requesting information to determine if daycare and other services were still needed and appropriate. A NOPA is not intended to be used in this manner; a NOPA should be sent after IRC reviews all available information and makes a decision. While a claimant may provide additional information during the post-NOPA process that causes IRC to change its position, a NOPA should not be used as a discovery tool.

FELICIA VALENCIA

20. IRC Program Manager Felicia Valencia explained the services HRC was funding for claimant when he transferred to IRC: 427 hours of Specialized Care services from January through March 2020 and 90 hours per quarter of respite services. The Specialized Care services were authorized by HRC as a "one time use" service which meant it was not an ongoing service, it was a service offered for a specific period of time; when that time expires, the service is reviewed to determine if the consumer still requires it. Cambria was providing the Specialized Care services HRC authorized. Cambria is not vendored with IRC to provide Specialized Services; it is only vendored

to provide respite. Since IRC does not offer Specialized Services, it determined that the “easiest and quickest thing” to do was to authorize an increase in respite services for claimant, which it did. Ms. Valencia explained the services IRC authorized and how it made those decisions, as well as the notices IRC gave claimant about them.

Since IRC does not offer Specialized Services, Ms. Valencia requested CSC Garcia contact HRC and determine what the Specialized Services were and why they were being offered. IRC learned that these were day care type services offered in the home when Mother was at work. Ms. Valencia explained that Mother did not respond to IRC’s inquiries regarding day care services, which was why IRC could not move forward with offering those services. Ms. Valencia explained that IHSS services would also address claimant’s needs that Mother can use.

Ms. Valencia explained that IRC denied claimant’s request for Specialized Care services because: it is not a service IRC offers; IRC tried to find an appropriate service or replacement service and offered daycare services but could not move forward due to Mother’s failure to cooperate; respite services are intended to provide temporary breaks to caregivers, and they are not intended as a replacement for childcare services; claimant’s behavior issues would be best met by ABA services; and IRC must first look to generic resources for funding and claimant’s insurance would fund ABA services and his IHSS would fund domestic services.

PAMELA HUTT

21. Ms. Hutt is an IRC Behavioral Specialist whose duties include overseeing behavior specialists and compliance review. Having reviewed the records, a better service to address claimant’s issues of “elopement, self-injurious and mal-adaptive behaviors,” as Mother claimed were his issues in her Fair Hearing Request, would be

Applied Behavior Analysis (ABA) services, which IRC offers. Ms. Hutt explained the importance of the family participating in behavior services. Ms. Hutt also oversees Personal Assistant (PA) services offered by IRC which Mother also requested be provided in claimant's home. However, IRC offers PA services in the community for its consumers, to support the consumer in his or her environment, it is not a service offered in the home. The service offered in home to watch consumers and give caregivers a temporary break is respite, which IRC offered and funded for claimant. Respite is an appropriate service for claimant as is ABA, but Mother was not interested in receiving ABA services.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Act is 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." (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden and Standard of Proof

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that IRC should fund Specialized Care services or a similar service.

3. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act and Regional Centers

5. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is found at Welfare and Institutions Code section 4500 *et seq.*

6. 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, the 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.)

7. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

8. IRC is one of 21 California regional centers. IRC provides advocacy for and assistance to a large developmentally disabled population living in Riverside and San Bernardino counties. To qualify for IRC services, a person must live within one of these counties and must be diagnosed with a substantial developmental disability.

Applicable Statutes

9. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

[¶] . . . [¶]

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

10. Welfare and Institutions Code section 4643.5,² subdivision (c), states:

Whenever a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer's individual program plan (IPP) shall be authorized and secured, if available, pending the development of a new IPP for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new IPP within 30 days. Prior to approval of the new IPP, the regional center shall provide alternative services and supports that best meet the IPP objectives in the least restrictive setting. The department shall develop guidelines that describe the responsibilities of regional centers in ensuring a smooth transition of services and supports from one regional center to another, including, but not limited to, pretransferring planning and a dispute resolution process to resolve disagreements between regional centers regarding their responsibilities related to the transfer of case management services.

11. Welfare and Institutions Code section 4646 requires that the Individual Program Plan (IPP) and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and

² IRC incorrectly referred to this section as Welfare and Institutions Code section 4643 in the NOPA.

preferences of the individual and the family. The provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

12. Welfare and Institutions Code section 4646.4 provides in part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan . . . Or of an individualized family service plan . . . The establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies . . .

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers

shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

13. Welfare and Institutions Code section 4646.5 sets forth the IPP development process which must include a statement of goals and the sources of the funded services.

14. 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. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(8) prohibits the regional center from using its funds "to supplant the budget of an agency that has responsibility to serve all members of the general public and is receiving public funds for providing those services."

15. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental entities and prohibits them from purchasing services available from generic resources, including other governmental entities, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage."

Regional Center's Purchase of Services

16. A regional center's purchase of service (POS) identifies what services the regional center will fund for its consumers. The POS is approved by a regional center's board of directors and the DDS.

17. Welfare and Institutions Code section 4434 provides:

(a) Notwithstanding preexisting rights to enforce the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), it is the intent of the Legislature that the department ensure that the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of this division.

(b) The department shall take all necessary actions to support regional centers to successfully achieve compliance with this section and provide high quality services and supports to consumers and their families.

(c) The contract between the department and individual regional centers required by Chapter 5 (commencing with Section 4620) of Division 4.5 shall include a provision requiring each regional center to render services in accordance with applicable provisions of state laws and regulations. In the event that the department finds a regional center has violated this requirement, or whenever

it appears that any regional center has engaged in or is about to engage in any act or practice constituting a violation of any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder, the department shall promptly take the appropriate steps necessary to ensure compliance with the law, including actions authorized under Section 4632 or 4635. The department, as the director deems appropriate, may pursue other legal or equitable remedies for enforcement of the obligations of regional centers including, but not limited to, seeking specific performance of the contract between the department and the regional center or otherwise act to enforce compliance with Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

(d) As part of its responsibility to monitor regional centers, the department shall collect and review printed materials issued by the regional centers, including, but not limited to, purchase of service policies and other policies and guidelines utilized by regional centers when determining the services needs of a consumer, instructions and training materials for regional center staff, board meeting agendas and minutes, and general policy and notifications provided to all providers and consumers and families. Within a reasonable period of time, the department shall review new or amended purchase-of-service policies prior to implementation by the regional center to ensure

compliance with statute and regulation. The department shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

18. Welfare and Institutions Code section 4646.4 provides:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(b) At the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the consumer, or, where appropriate, the parents, legal guardian, or conservator, shall provide copies of their health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center.

(c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

(d) Final decisions regarding the individual family support plan shall be made pursuant to Section 95020 of the Government Code.

(e) By no later than April 1, 2009, the department shall provide the fiscal and policy committees of the Legislature with a written update regarding the implementation of this section.

Evaluation

19. As allowed by the Lanterman Act, IRC does not fund Specialized Care services. In its POS with DDS, those services are not funded by IRC. As such, IRC's denial of claimant's request for those services was appropriate.

As an alternative, IRC examined other services, namely day care and personal assistance, but neither was appropriate. Claimant failed to provide requested information which would allow IRC to evaluate his request for day care, such as verification of Mother's employment and hours worked. Even if she had, claimant is currently being home schooled by Mother because of issues at school and it was not established that he can participate in a day care setting. In any event, even if he could, there are six hour limits on the services IRC may fund absent exceptions which were not shown.

Personal assistance services are also not appropriate as those are intended for structured community activities with non-disabled peers, and there are limitations on the hours funded. This service is not to be used as respite or as a way to fund supervision of claimant while Mother works. Claimant also failed to establish that IRC

should fund respite services beyond 30 hours per month. IRC's decision to fund 30 hours per month of respite is upheld.

A preponderance of the evidence did not establish that IRC funds a service like Specialized Care that would supervise and care for claimant while Mother works, even if Mother had provided the requested information. A preponderance of the evidence did not establish that there is a comparable service IRC funds. A preponderance of the evidence did not establish that IRC should fund day care services or personal assistance services. A preponderance of the evidence did not establish that IRC should fund more than 30 hours per month of respite services. Based on this record, claimant's request for services must be denied.

ORDER

Claimant's appeal that IRC fund Specialized Care services, or a comparable service, is denied. Claimant's appeal that IRC fund additional respite hours is denied. IRC shall fund 30 hours per month of respite services for claimant.

DATE: November 15, 2021

MARY AGNES MATYSZEWSKI
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.