

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

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2021060538

DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 17, 2021, from Sacramento, California.

Claimant's mother represented claimant.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Evidence was received, and the record was left open to allow the parties to submit simultaneous written closing arguments. Claimant's closing argument is included in the record as Exhibit L, and ACRC's closing argument is included as Exhibit 12. Exhibit 12 was untimely and was not considered. The record was closed and the matter submitted for written decision on September 27, 2021.

ISSUE

Is ACRC required to increase claimant's Self-Determination Program (SDP) budget to pay for Personal Attendant (PA) services for support, direction, and supervision while performing Activities of Daily Living (ADLs), participating in virtual school at home, and participating in the community?

FACTUAL FINDINGS

Background

1. Claimant is a 16-year-old boy who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder, mild. His condition causes a substantial disability in the areas of receptive and expressive language, self-direction, and capacity for independent living. Claimant also suffers from anxiety, which often manifests as severe stomachaches.

2. Claimant lives at home with his loving and devoted mother. She retired early from her career as a schoolteacher, sold the family home, and moved into an apartment so she could care for claimant. She drives him to Stockton every weekend to visit his biological father.

3. Claimant's mother describes claimant as an intelligent and persistent person who is very routine-oriented and thrives when busy. He enjoys swimming, riding his tricycle, horseback riding, skating on his "RipStik,"¹ and watching television.

4. Claimant struggles with communication and socialization. He also has trouble with articulation, often engaging in repetitive and restrictive dialogue. When talking to others, he often focuses obsessively on specific tasks or topics of conversation or engages in inappropriate sexualized commentary. He often struggles with comprehending social cues and requires prompting to stay engaged and on topic.

5. Claimant can perform ADLs independently, but needs prompting to complete self-care tasks. He also needs prompts and reminders to transition from one task to another throughout the day, such as attending virtual school or completing homework. He is noncompliant when asked to transition away from a preferred activity or topic of conversation, which often manifests as perseveration² and extreme anxiety. The current COVID-19 pandemic and resulting quarantine have caused claimant's

¹ A device similar to a skateboard but that has two platforms connected by a torsion bar that houses a strong spring. A polyurethane wheel is mounted on the bottom of each platform with a caster that allows each wheel to steer independently. Movement is provided by the rider moving his feet, separately or simultaneously, on the platform, as opposed to pushing off the ground with his foot.

² Perseveration is a repetitive and continuous behavior, speech, or thought that occurs due to changes in cognitive skills such as memory, attention, and mental flexibility.

anxiety and perseverative behaviors to increase dramatically, and his resulting stress levels “have become nearly unmanageable.”

Current Services and Supports

6. Claimant is in the 10th grade at California Virtual Academy at Sutter (CAVA), an accredited, full-time online public charter school affiliated with the Meridian Elementary School District in Sutter County. He currently receives special education services in the form of specialized academic instruction, college awareness, career awareness, language and speech, and counseling and guidance. Additionally, claimant’s mother requested Independent Educational Evaluations by evaluators of her choosing in the areas of psychoeducational, occupational therapy, speech and language, assistive technology, and adaptive physical education. The request was approved and the evaluations are pending.

7. Claimant transferred to CAVA in the middle of the 2019/2020 school year when he was in the eighth grade. He completed the sixth and seventh grades and the first part of eighth grade at Martin Luther King, Jr., School and then Albert Einstein Middle School in the Sacramento City Unified School District (SCUSD). He attended a private school for fifth grade, and he attended schools in the Stockton Unified School District for kindergarten through fourth grade.

8. Claimant’s mother tirelessly advocated for special education services for claimant from SCUSD, but they provided only 30 minutes of speech therapy in a group setting each week. When he began the seventh grade at Albert Einstein, his mother requested that he be allowed to take an elective class with his general education peers. She also asked that he be assigned to a class with a support person. The school denied her request for a support person and assigned him to a general education

classroom with another special education student, which was a new situation for him. This caused his anxiety to worsen and he began misbehaving. He was suspended from school numerous times, and his mother was called to pick him up on several occasions. Sometimes when he misbehaved, the teacher kept him in her classroom to play checkers or knit instead of attending his other classes. He began to persevere over having to stay in the same classroom and miss his other classes, resulting in his mother transferring him to CAVA on February 1, 2020.

9. Claimant receives applied behavioral analysis (ABA) services two times each week, for three hours each, through his private health insurance. Additionally, Sacramento County approved him for 48 hours of In-Home Support Services (IHSS) each month, effective March 11, 2020.

10. ACRC funds claimant's membership in Medic Alert so he remains safe in the community in the event he gets separated from his mother. It also funds 260 hours of respite care per quarter to provide claimant's mother well-deserved breaks from caring for him. The planning team initially agreed to 160 hours per quarter, but claimant's mother requested an additional 60 hours the following month because the pandemic had increased claimant's anxiety and behavior and she had no time to take care of herself. The planning team amended claimant's Individual Program Plan (IPP) to provide funding for 260 hours per quarter. Funding will be provided through December 31, 2021, at which time claimant's needs will be reassessed.

Enrollment in the SDP

11. Claimant is in the process of enrolling in ACRC's SDP. The SDP is an alternative method of providing regional center services and supports that provides "participants and their families, within an individual budget, increased flexibility and

choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP.” (Welf. & Inst. Code, § 4685.8, subd. (a).) The budget for a participant currently receiving regional center services and supports is equal to the regional center’s expenditures for those services and supports during the previous 12 months. (*Id.*, subd. (m)(1)(A)(i).) That amount may be changed if: (1) the planning team determines the consumer’s circumstances, needs, or resources have changed, and (2) “the regional center certifies . . . that regional center expenditures . . . would have occurred regardless of the individual’s participation in the Self-Determination Program.” (*Id.*, subd. (m)(1)(A)(ii).)

12. Claimant selected Ochoa’s Consulting LLC (Ochoa) as his “independent facilitator” for the SDP. An independent facilitator helps the participant decide what should go in his SDP budget and locate, access, and coordinate the services and supports identified in his IPP.

13. Ochoa prepared a Person-Centered Plan (PCP) identifying various services and supports it asserts claimant needs. The PCP identifies the need for PA services as follows:

With the support of a personal assistant, that can assist him to monitor a balanced and nutritious diet, the personal assistant will assist and support him in the educational distance learning model at home so that he can participate, learn and follow up on his assignments and academic tasks, as well as to help him go for a walk or run in the park or go out to the community to places that allow him to learn appropriately in participation, inclusion and integration to

the community such as restaurants, shopping centers, churches, parks, etc.

The PCP also identifies the need for PA services “to provide the support or service of a person who teaches [claimant] to follow up on how to learn about buying and selling animals.”

14. Claimant’s proposed budget for the SDP is \$24,035.38. That amount consists of ACRC’s total expenditures for services and supports provided from April 2020 through March 2021 (\$9,944.32) and the annualized cost of those services and supports that were paid for less than 12 months or not at all (\$14,091.06). The current IPP does not identify a need for PA services, ACRC did not fund such services during the applicable 12-month period, and no funding is provided for such services in the proposed budget.

Additional Evidence

LINDI HOUSER’S TESTIMONY

15. Ms. Houser has been claimant’s service coordinator at ACRC since February 9, 2021. She was not part of claimant’s planning team when his current IPP was created September 8, 2020, but has familiarized herself with the document. Additionally, she was part of the planning team that met September 3, 2021, for an annual review of the IPP. She prepared an updated IPP and circulated it for claimant’s mother’s signature. She is waiting for the outcome of this appeal to determine how to move forward.

16. Ms. Houser first learned claimant’s mother wants PA services when she received Ochoa’s PCP. The PCP identifies the need for approximately 243 hours of PA

services each month. Ms. Houser explained that the IPP, not the PCP, “drives” the SDP, and claimant has not been assessed as needing PA services. Claimant’s mother told Ms. Houser PA services are needed to help claimant with schoolwork, socialization, and ADLs.

17. Ms. Houser is familiar with ACRC’s Service Policy Manual and Procedures Manual for PA services, but has not used either because she works in ACRC’s Children’s Unit. She explained that PA services are for adult consumers because a minor consumer’s parents are available as a “natural” support in lieu of PA services.

ACRC’S SERVICE POLICY MANUAL AND PROCEDURES MANUAL FOR PA SERVICES

18. The Service Policy Manual “recognizes that some consumers require additional support for medical and/or daily living skills in order to participate in age [*sic*] appropriate and community [*sic*] based activities.” PA services may be funded “when natural supports and/or generic resources are insufficient to minimize the risks to the health and safety of the consumer”

19. The Procedures Manual provides that “non [*sic*] medical personal assistant services are intended to promote living in the least restrictive setting which is age-appropriate, and community-based.” PA services provide help with ADLs. Prior to ACRC funding such services, “all appropriate generic resources must be explored and integrated into the developed IPP plan.” “[A]ll contacts with generic services and natural supports must be documented.” PA services “shall not be used to supplant natural supports offered by . . . parents . . . residing in the same home.”

20. The Procedures Manual expressly identifies IHSS as “the primary generic resource available to clients.” It specifies “in order to maintain the service IHSS must be

maximized.” If the consumer is not receiving the maximum number of IHSS hours, “a redetermination assessment shall be requested and documented as part of the plan for purchasing personal assistance hours from ACRC.”

JOHNNY XIONG’S TESTIMONY

21. Mr. Xiong has been ACRC’s Associate Director of Client Services, Adult Unit, for approximately one month. Prior to that, he was a Client Services Manager in ACRC’s Children’s Unit for five years. He signed the May 25, 2021 Notice of Proposed Action denying claimant’s request to increase his SDP budget to pay for PA services.

22. Mr. Xiong learned about claimant’s mother’s request for PA services when he reviewed Ochoa’s PCP. He concluded claimant was not eligible for such services because claimant has not exhausted all available generic resources and natural supports. Specifically, CAVA is responsible for providing claimant any needed academic support, and claimant receives 48 hours of IHSS each month to pay someone to assist with ADLs. Additionally, claimant may qualify for additional “protective supervision hours.” Lastly, claimant receives 260 hours of respite each quarter, which is substantially more than the 120 hours typically awarded a consumer in ACRC’s Children’s Unit. Mr. Xiong explained that respite hours can be used to provide support when claimant is out in the community. Additionally, claimant’s mother is available as a natural support.

CLAIMANT’S MOTHER’S TESTIMONY

23. Claimant’s mother lives alone with claimant. She is his IHSS worker. Claimant’s father does not live with them and does not help care for or support claimant.

24. Claimant receives respite services from Pacific Homecare Services. Pacific Homecare Services told claimant's mother that services could be provided only in the home, so she is the only one who takes him out into the community. He does not have any friends, and he is often anxious around strangers. This results in him approaching strangers to discuss whatever he wants, regardless of the appropriateness of the topic.

25. Claimant experienced a lot of anxiety at school during the seventh and the first half of eighth grades. This often manifested in his misbehaving and led to multiple suspensions. Other times, his anxiety would cause severe stomachaches, and his mother would have to pick him up from school early. She ultimately decided to remove him from in-person learning and enroll him in virtual learning with CAVA. She would like him to return to in-person learning so he can make friends with people his own age.

26. Claimant's mother requested that claimant be enrolled in mostly general education classes at CAVA because she wants him to make friends with his general education peers. He is currently struggling in all his classes, has several incomplete and overdue assignments, and is behind one grade level. His mother believes he needs PA services to help access the virtual platform. She can help him, but doing so takes time away from her cooking, going to the grocery store, and running other errands. Pacific Homecare Services told claimant's mother that a respite worker will not help with schooling.

Discussion

27. It is undisputed that claimant's mother is a loving and devoted mother who is doing her best to advocate and provide for her disabled son. This was clearly demonstrated by her handling of claimant's anxiety at the end of hearing when he

began to persevere about the hearing lasting longer than claimant's respite worker was scheduled to work. Claimant's level of anxiety was palpable.

28. Nonetheless, neither claimant's mother's love and commitment to her son nor the quality of her care is at issue on appeal. Instead, claimant's mother requested funding for PA services to assist with ADLs, virtual learning, and accessing the community. ACRC denied her request.

29. Claimant's mother is his IHSS worker. She is paid for assisting him with ADLs for 48 hours per month. There was no evidence of his eligibility for additional protective supervision hours, nor did he demonstrate that he applied for, and was denied, the maximum number of IHSS hours available. Therefore, claimant has not exhausted all generic resources available for assisting with ADLs.

30. Claimant attends virtual school at CAVA. CAVA currently provides some special education services, and assessments are pending to determine if claimant qualifies for more. Therefore, claimant has not exhausted all generic resources available for accessing virtual learning at home.

31. Claimant receives 260 hours per quarter of respite services. Mr. Xiong persuasively explained that those services may be used when claimant goes out into the community. Additionally, claimant lives at home with his mother and she is available as a natural support when he goes out into the community. Therefore, claimant has not exhausted all generic resources and natural supports available when he goes out into the community.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Claimant has the burden of proving by a preponderance of the evidence that ACRC is required to increase his SDP budget to pay for PA services for support, direction, and supervision while performing ADLs, participating in virtual school at home, and participating in the community. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not that ACRC is required to increase his budget. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” in order to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “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 [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more

independent and productive lives in the community [citations]." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 389.) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).) Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP, but must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) They must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).)

4. Regional centers are not required to provide all the services a consumer may require, but are required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.) They are specifically prohibited from funding services that are available through another publicly funded agency. (Welf. & Inst. Code, § 4659, subd. (c).) This prohibition is often referred to as "supplanting generic resources." When a consumer elects to participate in the regional center's SDP, he may receive services "only when generic services and supports are not available." (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).) One generic resource available to children is the public-school system, which is required by law to provide a free and appropriate education to disabled students pursuant to the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).

Conclusion

5. The Lanterman Act prohibits ACRC from funding services and supports available through generic resources and/or natural supports. As the party seeking additional funding, claimant has the burden of proving his entitlement to PA services for support, direction, and supervision while performing ADLs, participating in virtual school at home, and participating in the community. This includes the burden of demonstrating that the services requested are not available through generic resources and natural supports. He did not meet his burden for the reasons explained in Factual Findings 27 through 31.

ORDER

Claimant's appeal from Alta California Regional Center's May 25, 2021 Notice of Proposed Action denying his request to increase his Self-Determination Program budget to include funding for Personal Attendant services is DENIED.

DATE: October 6, 2021

COREN D. WONG

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. (Welf. & Inst. Code, § 4712.5, subd. (a).)