

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021060800

DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 8, and October 26 and 27, 2021. Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel / Pomona Regional Center (SGPRC or Service Agency). Claimant was represented by his authorized representative, Elizabeth Hernandez (Representative Hernandez). Claimant's mother was present.

Testimony and documentary evidence were received. The record closed and the matter was submitted for decision on October 27, 2021.

ISSUES

1. Should SGPRC be required to compensate Claimant for 178 hours of unfunded respite?
2. Should SGPRC be required to fund extended day/year services for Claimant?
3. Should SGPRC be required to fund speech therapy for Claimant?
4. Should SGPRC be required to fund occupational therapy (OT) for Claimant?
5. Should SGPRC be required to fund interim speech therapy, interim (OT), and interim physical therapy (PT) for Claimant as continuation of Early Start services?
6. Should SGPRC be required to fund an infant program for Claimant?
7. Should SGPRC be required to fund Personal Assistant (PA) hours or COVID respite hours?
8. Should SGPRC be required to include parent's specific list of goals in the outcome section of the Individual Program Plan (IPP)?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 – 9, and Claimant's exhibits A - I. The testimonial evidence considered in this case was that of: Edith Aburto, SGPRC Family Services Department Manager; Liliana

Hernandez, Service Coordinator; Rosa Chavez, Associate Director for Family and Transition Services; Representative Hernandez; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a three-year, six-month old (born April 24, 2018) male client of SGPRC who lives with his parents and additional paternal family members. He qualifies for regional center services under a diagnosis of Autism Spectrum Disorder (ASD).

2. Claimant had previously been a client of the Service Agency under the Early Start Program.¹

¹ "Early Start" is the name used in California to refer to a federal program for children under age three who are at risk for certain disabilities. The governing law for Early Start is The Individuals with Disabilities Education Act (IDEA), Subchapter III, Infants and Toddlers with Disabilities (20 U.S.C. §§ 1431-1445) and the applicable federal regulations found in Title 34, Code of Federal Regulations (C.F.R.), section 303, et seq. Each state was given the opportunity to receive federal funds for providing services to eligible children 36 months of age and younger if the state complied with federal rules and regulations. California chose to participate, and the Legislature passed legislation necessary for that participation. The California Early Intervention Services Act is found at Government Code section 95000, et seq. California also adopted regulations to implement the statutory scheme. (Cal. Code Regs., tit. 17, §§ 52000-52175.)

3. Claimant currently receives regional center funded services including respite.

Transitioning from Early Start

4. On October 6, 2020, Claimant's mother attended an Individualized Family Service Plan (IFSP) meeting via Zoom with Claimant's Early Start (ES or EI) Service Coordinator (SC) and a Pomona Unified School District (District) psychologist. The meeting was convened, in part, to discuss Claimant's transfer out of the ES Program by age three. A full evaluation by the District was scheduled for March 18, 2021, and an Individualized Education Plan (IEP) meeting was set for April 22, 2021. Claimant was also scheduled to undergo a psychological evaluation with a SGPRC psychologist to determine Claimant's eligibility after age three to receive regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act).

5. As part of Claimant's IFSP, he had been receiving specialized education in an infant program, two hours, five times per week, and 64 hours per quarter (approximately 22 hours per month) of respite. He was also receiving speech therapy, twice a week, and OT, once a week, funded by SGPRC pending approval or denial by Claimant's medical insurance provider.

IEP PROCESS WITH DISTRICT

6A. As discussed at the ES transition meeting, Claimant's mother began pursuing services through the District. Due to the surge of COVID-19 cases in December 2020 and early 2021, the District was unable to conduct in-person assessments for incoming students. After the number of COVID-19 cases subsided, the District resumed in-person assessments on March 11, 2021. Nevertheless, the District sought to conduct Claimant's initial assessment, scheduled for March 18, 2021, by

video conference. Claimant's mother did not attend that meeting, and the District rescheduled the meeting for April 8, 2021. At that point, Claimant's scheduled April 22, 2021 IEP meeting remained unchanged.

6B. At the April 8, 2021 assessment meeting with the District, also held by videoconference, Claimant's mother appeared with Representative Hernandez. During the meeting, the District's assessment team reviewed Claimant's assessment plan and sought written consent to conduct Claimant's assessment electronically and also to schedule in-person assessment appointments. The District proposed a special education assessment plan in the areas of academic achievement, health, intellectual functioning, language/speech communication, motor development, social/emotional behavior, and adaptive behavior. The assessments were to be completed by a District school psychologist, an education specialist, a school nurse, a speech and language pathologist, and an occupational therapist. Representative Hernandez requested that several specific processing areas be added to the assessment plan, including a neuropsychiatric evaluation, but the District declined to modify the plan. The District then sent the plan to Claimant's mother for her review and signature.

6C. Rather than signing the District's assessment plan, Claimant's mother revised the plan, adding assessments and making other changes. She then re-dated and signed the plan as amended on April 15, 2021, and returned it to the District.

6D. In an April 23, 2021 letter, the District agreed to accept some of Claimant's mother's changes but declined to accept others. The District requested Claimant's mother sign and return the District's revised copy of the assessment plan to allow the District to begin the agreed-upon assessments. As part of the assessment process, the District also proposed Claimant's "diagnostic placement" in a District preschool classroom for students with ASD and related disorders, two days per week

for up to 30 calendar days. According to the District, the diagnostic placement would allow the IEP team to observe Claimant in a structured preschool setting to obtain information about his behaviors and abilities. The District's April 23, 2021 letter noted that some assessments would still need to be conducted in individual, in-person sessions.

6E. Claimant never participated in the District's recommended 30-day diagnostic placement in a structured preschool classroom to allow the IEP team to observe his behaviors and abilities.

6F. Claimant's mother signed the assessment plan on May 28, 2021. Claimant's first educational assessments were scheduled for June 22, 2021. By July 9, 2021, all assessments had been conducted except one. In August, 2021, Claimant's initial IEP was re-scheduled for September 14, 2021.

6G. As of the date of this hearing, Claimant does not have an IEP in place. At hearing, Claimant's mother testified that the creation of the IEP is "still in process." According to Claimant's mother, the District has completed all assessments for school services (including speech, OT, and PT), except for a functional assessment. However, she noted she is "not in agreement with all assessments and how they assessed him." She and the District are "still going through" the assessments with which she did not agree. She is currently awaiting the District's response to her objections.

6H. Claimant is not currently attending school.

6I. Claimant is not currently receiving speech therapy. His speech assessment was conducted by the District, but Claimant's mother is waiting for the assessment report and recommendations and "for insurance to pick it up."

6J. Claimant is not currently receiving PT. Claimant's assessment was completed by the District, but Claimant's mother is exploring services through his medical insurance and she is "still talking to his doctor."

6K. Claimant's mother refused to sign authorization forms for release of information which would allow the Service Agency to assist in the IEP process and permit a Service Agency representative to attend IEP meetings. Representative Hernandez informed the Service Agency that Claimant's mother would not sign the authorization forms unless the Service Agency agreed to fund interim speech, OT, and PT services. The Service Agency did not agree to this. Representative Hernandez testified the reason the Service Agency was "not allowed in the IEP process" was due to "lack of wanting to understand and to use their resources to help [Claimant]."

CHANGE IN MEDICAL INSURANCE

7A. Effective April 1, 2021, prior to transitioning from the ES Program, Claimant's mother changed Claimant's medical insurance coverage because the new insurance covered her preferred Applied Behavior Analysis (ABA) provider, the Center for Autism and Related Disorders (CARD). While in the ES Program, Claimant participated in an infant program, also known as an 805 program, through a provider named ACES. Claimant's mother assumed the ACES program was an ABA program, but later learned it was not. Claimant's mother was dissatisfied with Claimant's progress in that program. After changing medical insurance, Claimant's mother made appointments with new physicians to obtain referrals.

7B. After transitioning from ES, Claimant's mother informed the Service Agency that there was a delay in services funded by Claimant's new medical insurance.

7C. Claimant's ABA program was approved by his medical insurance, and he began that program on June 28, 2021. He currently receives 36 hours per week of ABA therapy funded by his medical insurance.

7D. Claimant is not receiving any speech therapy, OT, or PT through his medical insurance.

TRANSITION TO FAMILY SERVICES FOR AGES THREE AND OLDER

8A. On October 27, 2020, clinical psychologist, Thomas A. Carrillo, Ph.D., conducted a psychological evaluation of Claimant to determine his eligibility for Lanterman Act services. On December 14, 2020, Claimant was found eligible to receive regional center services after age three based on a diagnosis of ASD.

8B. Claimant continued receiving Early Start Services until his third birthday. During that time, several disputes arose, which concluded with a fair hearing on May 3, 2021, and the issuance of a Decision by an ALJ on May 13, 2021 (Prior Decision).

8C. The Prior Decision addressed several issues on appeal regarding Claimant's IFSP including whether: (1) SGPRC must increase respite hours from 64 hours per quarter (21.3 hours per month) to 64 hours per month; (2) SGPRC must provide funding for a PT assessment as part of Claimant's IFSP; (3) Claimant's IFSP must be modified to reflect certain goals and desired services specified by his mother during IFSP meetings; (4) SGPRC must fund personal assistant services as part of Claimant's IFSP; and Claimant must be allowed to continue IFSP services beyond the age of three until the District could provide services in person and develop an IEP.

8D. In the Prior Decision, the ALJ denied Claimant's appeals and found that Claimant failed to establish that SGPRC was required to: (1) increase respite hours to

64 hours per month; (2) provide a PT assessment under the Early Start program; (3) amend the IFSP to add Claimant's mother's new goals and service requests; (4) fund a personal assistant under the Early Start program; (5) to continue funding Early Start services past Claimant's third birthday, since "[b]oth the District and SGPRC initiated efforts to ensure that [Claimant] would transition to District services at [Claimant's] third birthday. . . . Any delay in completing the assessments is attributable to [Claimant]." (Exhibit I-9.)

8E. In the Prior Decision, the ALJ ordered: "As part of the IPP process, [Claimant] and [SGPRC] shall review [Claimant's] request for respite services, . . . personal assistance hours, . . . and a physical therapy assessment, in addition to any other services and supports deemed necessary and appropriate for [Claimant]." (Exhibit I-9.)

9. Claimant turned three years old April 24, 2021.

10. As Claimant was transitioning from the Early Start Program, Claimant's mother and his new SC, Liliana Hernandez, began the process of developing his initial IPP to document Claimant's status, goals, and services at that time.

11A. The initial IPP meeting took place on May 4, 2021, via videoconference. The participants included the SC, Claimant's mother, and Representative Hernandez. Representative Hernandez did not attend the full IPP meeting. Claimant's mother initially agreed to the IPP, but on May 19, 2021, she contacted the SC to request additional services (discussed in detail below) and to convene a further IPP meeting. Additionally, on May 21, 2021, Claimant's mother provided the SC with a list of her concerns to add to the IPP, along with 28 goals (discussed in detail below).

11B. The parties met again on June 1, 7, and 21, 2021. During the June 1, 2021 meeting, Claimant's mother rescinded her approval of the goals as listed in the IPP, and she submitted her own list of goals and additional requests for services. During the June 7, 2021 meeting, the parties discussed Claimant's requests for additional services including COVID hours, which the Service Agency indicated it would explore. Claimant also requested funding for speech therapy, OT, extended day services, and additional respite. Those services were denied by letter dated June 16, 2021. The letter also indicated "We are currently providing respite services in good faith without a signed IPP for [Claimant]." (Exhibit H.)

11C. In the June 21, 2021 meeting, the parties attempted again to collaborate on the goals and outcomes to include in Claimant's IPP. They also discussed additional services. However, the IPP was not finalized. Nevertheless, to provide continuity for Claimant, SGPRC continued funding respite as if Claimant had an operative IPP.

11D. Claimant's mother eventually signed the IPP signature page in August 2021, and she indicated in writing the remaining areas of continued disagreement.

11E. After June 21, 2021, the parties continued their efforts to reach an agreement as a team on all goals and outcomes to include in the IPP.² However, they have failed to reach any agreement.

² The parties also met on September 21, 2021, after the first day of this hearing, but no further agreements were reached.

Issue 1 – Unfunded Respite³

12A. According to the SGPRC Purchase of Service (POS) Policy regarding respite:

Respite care services are designed to provide family members with temporary relief from the continual care of a person with a developmental disability. [¶] . . . [¶]

The Regional Center may only purchase respite services when the care and supervision needs of the person exceed that of an individual of the same age without developmental disabilities. [¶] . . . [¶]

The number of respite care hours will vary depending upon the need of the individual and family. The need and the amount of these services shall be determined through the Individual Program Plan/Individualized Family Service Plan process with consideration to the preferences of the child or adult and the family. In determining this need, the regional center shall take into account the family's responsibilities for providing similar services to a child or adult without disabilities. [¶] . . . [¶]

³ The parties stipulated that, if SGPRC is required to fund previously unfunded respite, the deficit to be funded will be 178 hours.

The regional center shall not purchase more than . . . 108 hours of in-home respite services in a quarter (or 36 monthly hours).

The regional center may grant an exception to any of the above if it is demonstrated that the intensity of the person's care and supervision needs are such that additional respite is necessary to maintain him/her in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the person.

(Exhibit 9.)

12B. When Claimant transitioned from ES, the Service Agency had been funding 64 hours per quarter (about 22 hours per month) of respite. At the May 4, 2021 IPP meeting, Claimant's mother indicated that 22 hours per month were insufficient to meet Claimant's needs.

12C. On May 19, 2021, during a telephone conversation with the SC, Claimant's mother requested 64 hours per month of respite. (Exhibit 8.) On May 20, 2021, Claimant's mother provided the SC with the reasons for the needed increase in respite and a breakdown of how she would use the respite hours. Specifically, Claimant's mother reported she did not have In-Home Supportive Services (IHSS). She also noted Claimant "has many meltdowns and tantrums throughout the day due to his behaviors it is very challenging to have time to myself, I've been under a lot of stress and I've had emotional breakdowns, [Claimant's] dad doesn't have much patience for [Claimant] so I'm primarily my sons [*sic*] care provider." (Exhibits 8, F-2.)

Regarding the breakdown of respite hour use, Claimant's mother reported, "Monday-Friday I would use 4 hours a day; Saturday-Sunday I would use 6 hours a day." (*Ibid.*) "I will use these hours to run errands, do appointments, self care, rest, exercise, groceries shopping, shopping, go on dates with friends and family." (Exhibit F-2.)

12D. On June 17, 2021, the Service Agency sent Claimant's mother a Notice of Proposed Action (NOPA) denying 64 hours per month of respite. Claimant's mother submitted a Fair Hearing Request (FHR).

12E. In a July 13, 2021 email, Claimant's mother noted: "Respite hours are insufficient to our needs and would like to increase hours due to stress and anxiety. As of June 28th, my current request is for 36 hrs a month of respite." (Exhibit F-9). In the email, Claimant's mother noted Claimant's large size and attached a picture of them together. On July 21, 2021, the request for 36 hours per month of respite was denied, and Claimant's mother was informed a NOPA would be sent. (Exhibit F-12.) However, on July 26, 2021, Claimant's mother received an email notification from the SC stating: "I was informed that [Claimant's] respite care services 36 hours per month/108 hours quarterly have been approved under an exception. The exception is due to [Claimant] being too big for his age, maladaptive behaviors, and once he throws a tantrum, you are unable to move him." (Exhibit F-14.)

12F. Pursuant to Claimant's mother's July 13, 2021 request, effective July 1, 2021, Claimant has been receiving Service Agency funding for 36 hour per month, 108 hours per quarter.

12G. Claimant's mother seeks Service Agency funding for 64 respite hours per month moving forward and funding for the "unfunded" respite (the difference

between 22 and 64 hours per month until July 1, 2021, and the difference between 36 and 64 hours per month after July 1, 2021).

12H. Ms. Aburto's and Ms. Chavez's credible testimony established the following: To determine how many hours for which a consumer qualifies, the Service Agency conducts its respite evaluations with a Service Agency approved respite assessment tool that gathers information including the child's age, behaviors, adaptive skills, social needs, physical needs, medical conditions, and the child's environment and family situation (e.g., more than one child in household, a single-parent home, parent with medical condition or aging). In this case, Claimant came into the Family Services unit with 22 hours per month of respite being provided in ES. When Claimant's mother requested 64 hour per month, she indicated no exceptional circumstances to justify more than 22 hours per month of respite. However, when Claimant's mother requested an increase to 36 hours per month in July 2021, based on Claimant's documented size and Claimant's mother's difficulty moving him during his tantrums, the Service Agency found a basis to increase the respite hours, retroactive to July 1, 2021.

12I. Claimant's mother asserts that she needs 64 hours per month of respite because she is his primary caregiver. Due to Claimant's size and his behaviors, when she takes him into the community, her husband must accompany them in order to lift Claimant from the floor if Claimant tantrums. Claimant's mother would like to go out for "a couple of hours" per day.

12J. Claimant failed to establish an exception to the POS policy justifying 64 hours per month of respite. Claimant did not establish that the intensity of Claimant's care and supervision needs are such that additional respite is necessary to maintain

him in the family home. Nor did Claimant establish that there is an extraordinary event that impacts his family's ability to meet his care and supervision needs.

Issue 2 - Extended day/year Services

13A. On May 24, 2021, Claimant's mother requested the Service Agency fund extended day services. (Exhibit 8.)

13B. During the June 1, 2021 IPP meeting, Claimant's mother was told Claimant qualified for extended day services. (Exhibit 8.) At the June 7, 2020 IPP meeting, Ms. Aburto offered Claimant 87 hours per month of extended day services. However, when Ms. Aburto spoke to her supervisor, Ms. Chavez, she was told Claimant did not qualify for extended day hours, and she had to rescind the offer. At hearing, Ms. Chavez explained that extended day services are intended to be a continuation of a behaviorally-challenged child's school day to provide structure after school. Extended year hours are to provide structure during school breaks/vacations. However, Claimant has not yet started attending school.

13C. On June 17, 2021, the Service Agency sent a NOPA to Claimant denying extended day / year services. Claimant's mother submitted a FHR.

13D. On July 13, 2021, Claimant's mother sent the Service Agency an email that stated, "As of June 28th, I am no longer requesting extended day/year services." (Exhibit F-9.) At hearing, Claimant's mother confirmed she is no longer seeking extended day / year services.

Issue 3 - Speech therapy

14A. At the June 7, 2021 IPP meeting, Claimant's mother informed the Service Agency that Medi-Cal had approved funding Claimant's speech therapy services but

the speech assessment would not be completed until September 2021. Claimant's mother requested that the Service Agency fund speech therapy for Claimant while she continued to develop the IEP and awaited medical insurance to fund services.

14B. The Service Agency declined to fund the speech therapy because funding was being pursued through generic resources. The Service Agency noted Claimant's speech therapy had already been approved by his medical insurance, and an assessment was scheduled in September 2021. The Service Agency asserted that, to require funding of such services while the parent is pursuing insurance funding, there must be a denial letter from the insurance provider. The Service Agency also deferred to the District as a generic resource responsible for funding speech therapy. The Service Agency asserted that, as payor of last resort, the Service Agency did not fund services unless there was no generic resource in place.

14C. On June 17, 2021, the Service Agency sent a NOPA to Claimant denying funding for speech therapy services. Claimant's mother submitted a FHR.

14D. Claimant did not establish that the Service Agency was required to fund speech therapy after medical insurance approval and while he awaited his September 2021 commencement of services.

Issue 4 - Occupational Therapy

15A. At the June 7, 2021 IPP meeting, Claimant's mother also requested that the Service Agency fund OT for Claimant while she continued to develop the IEP and pursued medical insurance coverage.

15B. The Service Agency declined to fund the OT because funding was being pursued through generic resources, i.e., the District and medical insurance. The Service

Agency asserted that, to fund such services while the parent is pursuing insurance funding, there must be a denial letter from the insurance provider. As with speech therapy, the Service Agency asserted that, as payor of last resort, the Service Agency did not fund services unless there was no generic resource in place.

15C. On June 17, 2021, the Service Agency sent a NOPA to Claimant denying funding for OT services. Claimant's mother submitted a FHR.

15D. In October 2021, the District conducted an OT assessment.

15E. Claimant did not establish that the Service Agency was required to fund OT for Claimant.

Issues 5 & 6 - Interim Speech Therapy, Occupational Therapy, Physical Therapy, and Infant Program as Continued Early Start Services

16A. On May 19, 2021, during a telephone conversation with the SC, Claimant's mother requested the Service agency fund interim services for speech, OT, and PT as continued ES services. (Exhibit 8.)

16B. As noted in Factual Findings 14B and 15B, The Service Agency declined to fund the speech therapy and OT as continued ES services because funding was being pursued through generic resources, i.e., the District and medical insurance, and Claimant had not received a denial letter from his medical insurance provider. The Service Agency declined to fund PT as continued ES services on the same grounds. Claimant has already undergone a PT assessment through the school. The Service Agency reiterated that, as payor of last resort, the Service Agency did not fund services unless there was no generic resource in place.

16C. On July 22, 2021, the Service Agency sent a NOPA to Claimant denying funding for interim speech therapy, OT, and PT services. Claimant' mother submitted a FHR.

16D. During the IPP process, Claimant's mother also requested the Service agency fund an infant program as a continued ES service. The Service Agency pointed out that an infant program is an ES service that ends at age three when a child transitions out of ES.

16E. On July 22, 2021, the Service Agency sent a NOPA to Claimant denying funding for an infant program as a continued ES service. Claimant' mother submitted a FHR.

16F. In support of his requests for continued ES services, at the fair hearing, Claimant cited a Department of Developmental Services (DDS) Directive which allowed the extension of ES services under certain circumstances. The DDS Directive specifically stated:

The Department recognizes the transition to special education services for children at age three may be delayed as local schools face challenges related to the COVID-19 pandemic.

Any requirements of the [California Early Intervention Services Act (CEISA)], including Government Code section 95014(a), mandating early intervention services end at age three are hereby waived. This waiver only applies for children who have received [ES] services through regional centers and reached their third birthday during the COVID-

19 State of Emergency. Regional centers must continue to work with local schools to transition children to educational services pursuant to existing regulations.

(Exhibit I-6.)

16G. As the Service Agency witnesses credibly noted, ES services are funded through the ES unit under the CEISA. When a child transitions from ES, the Family Services unit of the Service Agency begins funding services under the Lanterman Act but does not fund ES services under the CEISA. Consequently, the Service Agency correctly ascertained that the DDS Directive (extending ES services under the CEISA while the regional centers assisted with transitioning children to educational services after their third birthday) applied to the ES units of regional centers, and not the Family Services units. Additionally, the Service Agency persuasively noted the DDS Directive should come into play only when the child is ineligible for continued regional services under the Lanterman Act, and therefore was in danger of a service cut-off before transition to school district funding.

16H. Additionally, as noted in Factual Finding 8D, an ALJ already determined in the Prior Decision that SGPRC was not required to continue funding ES services past Claimant's third birthday, since "[b]oth the District and SGPRC initiated efforts to ensure that [Claimant] would transition to District services at [Claimant's] third birthday. . . . Any delay in completing the assessments is attributable to [Claimant]."

(Exhibit I-9.)

16I. Since the ES unit is responsible for funding ES services, and not the Family Services unit, Claimant did not establish that continued ES services must be funded by the Service Agency under the Lanterman Act.

Issue 7 - Personal Assistant Hours and COVID Respite Hours

17A. On May 19, 2021, during a telephone conversation with the SC, Claimant's mother requested the Service Agency fund COVID hours. (Exhibit 8.)

17B. On May 24, 2021, Claimant's mother requested the Service Agency fund PA hours. (Exhibit 8.)

17C. Although there was no NOPA addressing these issues included in the evidence at hearing, Claimant's mother's FHR included her assertion that the Service Agency denied COVID respite hours and PA hours. The Service Agency agreed that these issues could be included in this fair hearing.

17D. Ms. Aburto's and Ms. Chavez's credible testimony established the following.

(1) COVID hours were approved by DDS to provide support for families during the pandemic. Originally COVID hours were provided to help essential workers and first responders to go to work, so at the beginning of the pandemic, COVID hours were provided to them due to the lack of daycare programs. The COVID hours were later extended to families needing additional support because their children were not attending school for all or most of the day, and instruction was provided virtually. COVID respite hours were based on school day, and if a child's school day was decreased then the Service Agency provided COVID hours. For example, since a school day for most children is six hours, if virtual classes were offered for only two to three hours, the Service Agency would provide four COVID hours per day.

(2) No DDS directive specifically authorizing COVID hours was offered into evidence. Although Ms. Aburto initially recalled such a directive, she was unable to locate it, and she later explained there was no single directive specifically addressing COVID hours. Rather, the provision of COVID hours was borne of the interpretation of several DDS directives issued during a state of emergency to provide families' additional support. Thus, the Service Agency would look at many factors involved (e.g., child's school schedule, child's behavior, family situation and parent availability, number of children in the home, generic resources available, etc.) to provide COVID hours.

17E. Although COVID hours were discussed for Claimant, the Service Agency did not fund those hours because Claimant was not attending school, and the Service Agency was already funding respite hours to provide family assistance.

17F. At the fair hearing, in support of his request for PA hours, Claimant pointed to a DDS Directive which modified the requirements of the Lanterman Act and extended "participant directed" services to include "personal assistance," independent living skills, and supported employment. The DDS Directive specifically stated: "The option to access these services through participant direction affords consumers the ability to choose workers (e.g. friends, some family members, etc.) to provide these services." (Exhibit I-6.) The DDS Directive addressed the ability of regional center consumers to choose workers to provide PA services. It did not specify how a consumer would qualify for PA hours, nor did it authorize the provision of PA hours when SGPRC deemed such services inappropriate.

17G. Ms. Aburto's and Ms. Chavez's credible testimony established the following: Ms. Aburto's Executive Director informed her that Claimant did not qualify for PA hours. Although PA hours are available to all regional center clients, they are

typically provided to adult clients of the Service Agency who require assistance with self-help and daily living skills such as getting to and from a day program or medical appointments. In contrast, parents of child clients of the Service Agency are expected, as part of their parental responsibility, to assist with such tasks.

17H. At hearing, Claimant's mother stated she sought PA hours because Claimant is a large child, and she cannot place him in a shopping cart. She also stated the PA hours would help them "be successful in the community" because she cannot handle him by herself. Claimant's mother did not explain why she could not use respite hours for grocery shopping or why her husband or other family members could not accompany her to take Claimant into the community.

17I. Claimant failed to establish that either COVID hours or PA hours must be funded for Claimant by the Service Agency under the Lanterman Act.

Issue 8 – Including Parent's Specific Goals in Outcome Section of IPP

18A. As noted in Factual Findings 10 and 11, Claimant's mother, Representative Hernandez, and representatives of the Service Agency met in May and June 2021 to attempt to finalize Claimant's initial IPP, to no avail.

18B. Although there was no NOPA on this issue included in the evidence at hearing, Claimant's mother's FHR included her assertion that the Service Agency did not agree on the "goals discussed on June 7th and the same goals submitted by email on June 10th, 2021." (Exhibit 2.) The Service Agency agreed that this issue could be addressed in this fair hearing.

18C. On May 21, 2021, Claimant's mother provided the SC with a list of her concerns about Claimant to add to the IPP, along with 28 "goals." She attached her list of goals as follows:

1. [Claimant] will express his needs and wants. He will be able to read facial cues and communication with other kids in a safe manner. He will be able to interact with groups collaboratively and/or without crying and without eloping.
2. [Claimant] will follow a structure and routine at school, summer camps and community programs.
3. [Claimant] will transition without eloping and without undesirable behaviors.
4. [Claimant] will be able to participate in group activities, attend to others, join in singing, listen and participate during story time and without eloping.
5. [Claimant] will learn to manage/develop coping skills for sensory needs.
6. [Claimant] will go to the doctor or the dentist, follow doctors and dentists' directions and allow the dentist to work on his teeth and receive medical treatment without eloping and undesirable behaviors.

7. [Claimant] will improve his ability to give others personal space. He will develop appropriate etiquette, social skills and play skills with others.
8. [Claimant] will allow us to support him with brushing and flossing his teeth, toileting (including wiping and washing his hands), brushing his hair, clipping nails, showering, putting lotion.
9. [Claimant] will dress and/or assist in dressing without running off and/or screaming and he will be able to do these things independently.
10. [Claimant] will be able to put on and keep his shoes and socks on.
11. [Claimant] will be able to follow instructions and increase his ability to attend tasks. He will be able to use a pencil purposefully, write letters, write his name, color, do math, read, cut with scissors at grade level appropriate for his age.
12. [Claimant] will develop his communication and social/emotional skills within the community, home and educational settings with adequate supports.
13. [Claimant] will stop eloping, be safe at home and in the community. He will recognize signs for community safety and will follow directions when outside of his home.

14. [Claimant] will develop safety awareness in the home, community and around pools of water.
15. [Claimant] will learn to swim and follow safety rules around water.
16. [Claimant] will learn to say his full name, his family members names, family address and phone number.
17. [Claimant] will increase his food tolerance and acceptance of new foods, vegetables and supplements given by me to improve his nutrition and wellbeing.
18. Parent will learn more about autism, IEP's, IPP's, and ABA principles and program management to best support [Claimant].
19. [Claimant] will be able to go to the beach, restaurants, zoos, museums, amusement parks and city parks with his family, join in group activities, follow directions and transition with ease including leaving when it's time to go and refrain from eloping.
20. [Claimant] will be able to recognize family members name and use them correctly when he sees them.
21. [Claimant] will be fully potty trained, he will use the toilet without removing his clothes completely.

22. [Claimant] will strengthen his sensory processing skills such as avoidance of music, oral/dental over and under stimulation, obsession with water and sand.
23. [Claimant] will have better balance, walk without tilting his head. He will learn to balance and ride a bike without training wheels while wearing protective equipment
24. [Claimant] will be open to learn new sports through the school and/or community and participate in them. He will learn to problem solve, manage winning and losing, tum taking, patience and strategy.
25. [Claimant] will participate in school or community events for holidays, by singing, dancing, wearing costumes/makeup; he will participate in or watch plays.
26. [Claimant] will learn to play musical instruments such as guitar, drums, saxophone or piano.
27. [Claimant] will have access to transportation for therapy services and community programs.
28. [Claimant] will be successful in the home and community.

(Exhibit F-4.)

18D. At the further IPP meeting on June 1, 2021, Claimant's mother again submitted her own list of "goals." In a June 10, 2021 email to the Service Agency,

Claimant's mother again attached her list of IPP goals that she wanted to be included in the IPP outcome section. (Exhibit F-7.) The list was just over nine pages long with several categories. For the category entitled Daily Living, Claimant's mother listed the same 28 goals as in her May 21, 2021 email. (See Factual Finding 18C.) In addition to the Daily Living category, Claimant's mother identified numerous categories which repeated verbatim several of the goals listed in the Daily Living category. The identified categories were as follows: "Communication" (repeating verbatim goals numbers 1, 4, 8, 12, 14, 15, 16, 18, 20, and 28); "Personal and Emotional Growth" (repeating verbatim goals numbers 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 19, 24, 25, and 26); "Behavior" (repeating verbatim goals numbers 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 19, 21, 24, 25, 26, and 28); "Getting Around Town, Having Fun, Managing Money" (repeating verbatim goals numbers 2, 4, 5, 11, 13, 14, 15, 16, 19, 23, 24, 5, 26, 27, and 28); "Social Skills" (repeating verbatim goals numbers 7, 19, 24, 25, 26, and 28); "Sensory" (repeating verbatim goals numbers 22 and 26); "Community" (repeating verbatim goals numbers 2, 4, 19, 27, and 28); "Safety/Risk Assessment" (repeating verbatim goals numbers 9, 10, 11, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 27, and 28); "Health" (repeating verbatim goals numbers 6, 8, 17, and 22); "Education" (repeating verbatim goals numbers 7, 11, 12, 18, 24, 25, and 26); "Living Situation" (repeating verbatim goals numbers 7, 8, 20, 27, and 28); "Parent Training" (repeating verbatim goal number 18); "Toileting" (repeating verbatim goals numbers 8, 21, and 28); and "Feeding" (repeating verbatim goals numbers 17 and 28).

18E. After meeting on June 7 and 21, 2021, the parties were unable to agree on the final wording of the IPP outcomes.

18F. When Claimant's mother submitted the IPP signature page in August 2021 (on which she indicted her continued disagreement with portions of the IPP), she

provided 34 handwritten “outcomes” to include in the IPP. The 34 proposed outcomes were identical to the 28 “goals” listed in her May 21, 2021 email (see Factual Finding 18C), with six added outcomes. (Exhibit B-3.)

18G. The IPP remains unfinalized because the parties cannot agree on the wording of the IPP outcomes. Claimant’s mother insisted that the exact language of the 28 “goals” she submitted be placed in the IPP outcomes section of the IPP. (See Factual Finding 18C.) The Service Agency has agreed to place all of Claimant’s mother’s listed goals in the body of the IPP so that her concerns can be documented. However, the Service Agency declined to include all the listed goals in the outcomes section, seeking instead to combine some of the repetitive language to streamline the outcomes section of the IPP and to avoid duplication. However, Claimant’s mother does not want the outcomes condensed and wants “everything to be documented like it is.”

18H. The Service Agency explained that an IPP is a snapshot of a child’s status, and the IPP is typically completed every three years, with goals, outcomes, and progress reviewed and documented annually. IPP goals and outcomes are not the same thing. A goal is something a parent wants their child or themselves to achieve, either short term or long term. An outcome identifies a specific area of concern the parent would like to prioritize and would be able to review progress toward within a one to three-year span. Supports that are identified and services that are funded (either by generic resources or the Service Agency) are typically tied to IPP outcomes, and the IPP must measure progress toward those outcomes. If a consumer is not meeting or progressing toward listed outcomes, the service tied to that outcome is scrutinized to determine if it remains effective and/or if other services are required. (See Legal Conclusion 4.) Lengthy outcomes could affect the Service Agency’s (and an

ALJ's) ability to review progress and effectiveness of services. Outcomes can be amended and added to the IPP as the child ages and progresses. Therefore, the Service Agency seeks to create a concise IPP and to prioritize outcomes.

18I. A review of Claimant's mother's 28 "goals"/proposed outcomes illustrates areas where consolidation could occur under outcomes with subparagraphs identifying specific tasks for periodic progress review. For example, as the Service Agency proposed, goals numbers 8, 9, and 10 could be consolidated under a single listed outcome of improving self-help skills, with the specific tasks identified for progress. Additionally, several of the goals could be consolidated under listed outcomes for improving communication skills, social skills, or behaviors, with specific skills/behaviors targeted for improvement under each category. While an ALJ will look to the IPP in confirming a consumer's needs and goals and to determine progress toward outcomes, it is not the province of the ALJ to formulate the wording of the IPP outcomes. The Lanterman Act requires collaboration of the parties to create the IPP. (See Legal Conclusion 5.)

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for these appeals was established.

2A. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

2B. In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. Here, Claimant is seeking funding for previously unfunded (under the Lanterman Act) extended day/year services, speech therapy, OT, interim speech therapy, OT, and PT as continued ES services, an infant program, PA hours, and COVID respite hours. Although Claimant is already receiving respite hours and it is not a new service, he is seeking an increase in funding, representing a change to the service. In seeking increased funding for additional respite hours (increased to 64 per month plus unfunded respite), Claimant bears the burden of proof that the increased funding is necessary to meet his needs. Claimant is also seeking an order requiring SGPRC to include his parent's specific list of goals in the outcome section of the IPP. Claimant has not met his burden on any of these issues.

General Provisions of the Lanterman Act

3. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPPs. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

4A. Welfare and Institutions Code section 4646.5, subdivision (a), requires the IPP planning process to include:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole[.]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing the person's needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery[.] [¶] . . . [¶]

(5) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the [IPP] goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The [IPP] plan shall specify the approximate scheduled start date for services and supports

and shall contain timelines for actions necessary to begin services and supports, including generic services[.] [¶] . . . [¶]

(8) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the [IPP] and its implementation.

(Emphasis added.)

4B. Welfare and Institutions Code section 4646.5, subdivision (b), provides:

For all active cases, [IPP's] shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, if appropriate, the consumer's parents, legal guardian, authorized representative, or conservator requests an individual program plan review, the [IPP] shall be reviewed within 30 days after the request is submitted, or no later than 7 days after the request is submitted if necessary for the consumer's health and safety or to maintain the consumer in their home.

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5. Welfare and Institutions Code section 4646 provides in pertinent part:

(a) It is the intent of the Legislature to ensure that the [IPP] and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, when appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families 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.

(b) The [IPP] is developed through a process of individualized needs determination. The individual with developmental disabilities and, when appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

(c) An [IPP] shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment[.]

(d) [IPP's] shall be prepared jointly by the planning team.

Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting. [¶] . . . [¶]

(f) At the conclusion of an [IPP] meeting, an authorized representative of the regional center shall provide to the consumer, in written or electronic format, a list of the agreed-upon services and supports, and, if known, the projected start date, the frequency and duration of the services and supports, and the provider. The authorized representative of the regional center shall sign the list of agreed-upon services and supports at that time. The consumer, or when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative shall sign the list of agreed-upon services and supports prior to its implementation. The consumer, or when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, may elect to delay receipt of the list of agreed-upon services and supports pending final agreement, as described in subdivision (g)[.]

(g) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. The list of the agreed-upon services and supports described in subdivision (f) and signed by the authorized representative of the regional center shall be provided, in writing or electronically, at the conclusion of the subsequent program plan meeting, and shall be provided in the native language of the consumer, or the consumer's parent, legal guardian, conservator, or authorized representative. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative.

(h) An authorized representative of the regional center and the consumer or, when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative shall sign the [IPP] and the list of the agreed-upon services and supports prior to its implementation. If the consumer or, when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, does not agree with all components of the individual program

plan, the consumer may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative. If the consumer or, when appropriate, the consumer's parent, legal guardian, conservator, or authorized representative, does not agree with the plan in whole or in part, the consumer shall be sent written notice of the fair hearing rights, as required by Section 4701.

(Emphasis added.)

6. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

7A. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

7B. Welfare and Institutions Code section 4646.4 provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's [IPP] developed pursuant to Sections 4646 and 4646.5. . . , 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.

7C. Welfare and Institutions Code section 4659 provides, in pertinent part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, . . . school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. [¶] . . . [¶]

(c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, . . . In-Home Support Services, . . . private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage[.]

(d)(1) Effective July 1, 2009, notwithstanding any other law or regulation, regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit[.] Regional centers may pay for medical or dental services during the following periods:

(A) While coverage is being pursued, but before a denial is made.

(B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued.

(C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan.

8. Once provided, no service or support can be continued unless the service or support has made “reasonable progress” toward identified objectives and goals. (Welf. & Inst. Code, § 4648, subd. (a)(7).)

Determination of Issues

9. **Issue 1 - Respite:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to fund 64 hours per month of respite or that SGPRC was required to fund 178 hours of unfunded respite. (Factual Findings 1 to 3 and 8 to 12.) The Service Agency completed a respite needs assessment and determined that Claimant was eligible for 22 hours per month of respite services. However, the Service Agency later decided that, based on the evidence of Claimant’s documented size, it would fund 36 hours per month of respite services. Claimant failed to establish that the Service Agency incorrectly assessed his needs. Current funding of Claimant’s respite hours conforms to SGPRC’s POS Policy, and Claimant did not establish that an exception to the SGPRC POS policy should be made to require funding of 64 hours per month of respite.

10. **Issue 2 – Extended Day/Year Services:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to fund extended day/year services for Claimant. (Factual Finding 13.) As set forth in her July 13, 2021 email, and confirmed in her testimony at hearing, Claimant’s mother is no longer seeking Service Agency funding of extended day / year services.

11. **Issue 3 – Speech Therapy:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to fund his speech therapy. (Factual Findings 1 to 11, and 14; Legal Conclusion 7.) The Service Agency noted Claimant’s speech therapy services had already been approved by his medical

insurance, and he was awaiting commencement of the services in September 2021. Additionally, the District has since conducted a speech therapy assessment, and services could be provided through that generic resource.

12. **Issue 4 – Occupational Therapy:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to fund his OT. (Factual Findings 1 to 11, 14, and 15; Legal Conclusion 7.) The Service Agency declined to fund the OT because funding was being pursued through generic resources, i.e., the District and medical insurance. Although the Service Agency had the discretion under Welfare and Institutions Code section 4659, subdivision (d)(1)(C), to fund OT while Claimant was pursuing coverage through his medical insurance, it was not required to do so, as Claimant was also able to pursue funding through another generic resource, the District.

13. **Issues 5 and 6 - Interim Speech Therapy, OT, PT, and Infant Program as Continued ES Services:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to fund interim speech therapy, OT, PT, and an infant program as continued ES Services. (Factual Findings 1 to 11, 14, 15, and 16.) Pursuant to the Prior Decision, SGPRC's ES unit was not required to continue funding ES services past Claimant's third birthday, since "[b]oth the District and SGPRC initiated efforts to ensure that [Claimant] would transition to District services at [Claimant's] third birthday. . . . Any delay in completing the assessments is attributable to [Claimant]." (Factual Finding 8D.) Moreover, Claimant did not establish that continued ES services must be funded by the Service Agency under the Lanterman Act.

14. **Issue 7 – PA Hours and COVID Hours:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to fund PA hours or COVID hours. (Factual Findings 1 to 11, 12, and 17.) Claimant did not establish that he

qualified for COVID hours. The Service Agency had the discretion to fund COVID hours, which was provided to families of school age children for after school structure and childcare. The Service Agency declined to fund COVID hours for Claimant because he was not attending school, and the Service Agency had funded respite hours to provide family assistance. Additionally, Claimant did not establish that he qualified for PA hours, which are typically provided to adult clients of the Service Agency who require assistance with self-help and daily living skills such as getting to and from a day program or medical appointments. Although Claimant's mother sought PA hours to help her with Claimant in the community, she did not explain why she could not use respite hours for grocery shopping or why her husband or other family members could not accompany her to take Claimant into the community.

15A. **Issue 8 - Including Parent's Specific Goals in Outcome Section of IPP:** Claimant failed to establish by a preponderance of the evidence that SGPRC was required to include the specific language of the 28 listed goals as part of the outcome section of the IPP. (Factual Findings 1 to 11, and 18; Legal Conclusions 4, 5, and 8.) An IPP is an important document to which the parties (and ALJs) look when making determinations regarding provision of services. Since the IPP must measure progress toward outcomes to determine if services remain effective, lengthy outcomes could affect the Service Agency's (and an ALJ's) ability to review progress and effectiveness of services. As noted above (Factual Finding 18I), the 28 "goals"/proposed outcomes could be consolidated into outcome categories with subparagraphs identifying specific tasks for periodic progress review. However, it is not the province of the ALJ to formulate the wording of IPP outcomes. Under the Lanterman Act, the process of creating an IPP requires collaboration of the parties. Consequently, it is the parties' responsibility to come to a reasonable agreement regarding the wording of the outcomes.

15B. It is also the parties' responsibility to act in an expedient manner to ensure Claimant's timely service delivery. The Lanterman Act envisions the prompt development of an IPP (Welf. & Inst. Code, § 4646, subds. (c) and (g)) so that services can be funded and there can be periodic review of whether the funded services are meeting a consumer's needs. However, Claimant's initial IPP has yet to be finalized. The parties are urged to focus on working cooperatively to formulate a mutually agreeable IPP.

16. As Claimant failed to meet his burden of proof on the eight issues raised in this hearing, his appeals must be denied.

ORDER

Claimant's appeals are denied.

DATE:

JULIE CABOS-OWEN

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.