

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT,**

**vs.**

**REGIONAL CENTER OF ORANGE COUNTY,**

**Service Agency.**

**OAH No. 2021100079**

**DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconference, on December 17, 2021, and January 7, 2022. The record was closed, and the matter submitted for decision at the conclusion of the hearing.

Claimant was represented by her mother, who was assisted by a family friend, Maria Aguilar. Claimant's mother and Ms. Aguilar participated in the hearing by telephone, and were assisted by a Spanish interpreter. The names of claimant and her family are omitted to protect their privacy.

Paula Gray, Fair Hearings Manager, represented Regional Center of Orange County (service agency).

## **ISSUES**

1. Was service agency permitted to terminate funding for claimant's family to receive 30 hours per week of COVID-19 support, effective September 17, 2021? If not, shall service agency increase the COVID-19 support funding to 35 hours per week?

2. Shall service agency provide funding for claimant to receive six hours per week of personal assistance when she is out in the community with her mother?

3. Was claimant's family improperly denied continued funding of the 30 hours per week of COVID-19 support while this appeal was pending?

## **EVIDENCE RELIED ON**

In making this Decision, the ALJ relied on service agency exhibits 1 through 11 (exhibit 12 was withdrawn); claimant exhibits A through E and I (exhibits F-H were excluded); as well as the testimony of Vanessa Pulido, Carie Otto, Christina Genter, and Ms. Aguilar. Claimant's mother did not testify.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a 14-year-old female eligible for services under the Lanterman Act based on her diagnosis of Unspecified Intellectual Disability. (Ex. 5.)

3. Beginning in 2020, and continuing through 2021, service agency provided funding for claimant's family to receive 30 hours per week of in-home respite when school was closed to in-person classes and only virtual learning at home was being provided due to the COVID-19 pandemic (COVID-19 support). (Ex. 2.)

4. During a planning team meeting held on August 5, 2021, claimant's mother requested the COVID-19 support funding be extended indefinitely, as well as increased by an additional hour each day for a total of 35 hours per week. (Ex. 2.) Claimant's mother also requested the initiation of funding for six additional hours per week of personal assistance on Saturdays while out in the community with claimant doing errands. (*Ibid.*) Claimant's mother requested other services during this meeting which are not pertinent to this appeal.

5. By a letter and a Notice of Proposed Action (NoPA) dated August 9, 2021, both written in Spanish and English, service agency advised claimant's mother the COVID-19 support funding would be terminated, effective September 17, 2021; her

request for additional hours of COVID-19 support was denied; and her request for six hours of personal assistance was denied. (Ex. 2.)

The letter and NoPA were sent to claimant's mother by first class and certified mail. Both documents specified claimant's appeal rights, including that she had 10 days to file an appeal in order to maintain the 30 hours per week of COVID-19 support while a hearing was pending, also known as "aid paid pending." (*Ibid.*)

6. By a letter dated August 13, 2021, service agency again advised claimant's mother it intended to terminate the 30 hours per week of COVID-19 support, effective September 17, 2021. (Ex. 3.) Spanish and English versions of the letter were sent to claimant's mother by first class and certified mail. (*Ibid.*)

7. On September 20, 2021, the parties held another planning team meeting. During the meeting, claimant's mother requested resumption of the COVID-19 support, and reiterated her requests for that funding to be increased to 35 hours per week and for the funding of six hours per week of personal assistance. (Ex. 4.)

8. By a letter and NoPA dated September 24, 2021, claimant's mother was advised her requests described in Factual Finding 7 were denied. Spanish and English versions of the letter and NoPA were sent to claimant's mother by first class and certified mail. The letter and NoPA contained the same description of appeal rights stated in the prior letter and NoPA described above. (Ex. 4.)

9. By a Fair Hearing Request (FHR) signed on September 23, 2021, claimant's mother appealed service agency's termination of the 30 hours per week of COVID-19 support, as well as service agency's denials of her additional funding requests. (Ex. 1.) Service agency received the FHR on September 29, 2021.

## **Aid Paid Pending**

10. The FHR stated the appeal of the COVID-19 support termination was late because the NoPA dated August 9, 2021 did not come with a blank FHR form to fill out, claimant's mother did not receive one until September 9, 2021, and service agency staff denied her request for help in completing the FHR form she later received. Claimant's mother therefore requested continued funding of the COVID-19 support as aid paid pending the appeal. (Ex. 1.)

11. Ms. Aguilar testified claimant's mother received the NoPA dated August 9, 2021, but an FHR form did not come with it, nor any instructions as to how to secure aid paid pending. Ms. Aguilar testified an unidentified service agency employee brought an FHR form to claimant's mother "several days later." Ms. Aguilar also testified claimant's mother's request for assistance in filling out the FHR form was rejected. Ms. Aguilar concluded those are the reasons the FHR was filed so long after the initial NoPA was issued.

12. On balance, Ms. Aguilar's testimony was not convincing. She did not explain how she knew of these events. In any case, her version of events is second-hand, presumably based on hearsay statements from claimant's mother, who did not testify. Moreover, Ms. Aguilar's version of events is problematic. Apparently claimant's mother timely received the NoPA dated August 9, 2021 (Ex. 2), which clearly stated the 10-day aid paid pending deadline; she did not need the FHR form to tell her that. Also, according to Ms. Aguilar, claimant's mother received the missing form several days later, yet inexplicably she waited to submit the FHR until September 29, 2021.

13. Under these circumstances, the evidence indicating service agency, on August 9, 2021, mailed to claimant's mother by first class and certified mail the NoPA

advising of the proposed termination of COVID-19 support, her rights to aid paid pending, and an FHR form, is more persuasive than Ms. Aguilar's unconvincing denials to the contrary.

14. Ms. Aguilar also testified aid paid pending was warranted because the FHR was received by service agency just a few days after it issued the second NoPA, dated September 24, 2021, which also concerned the COVID-19 support.

### **Claimant's Background Information**

15. Claimant lives at home with her parents. (Ex. 5.)

16. She receives special education services from her local school district. Claimant now is in junior high school. (Ex. 5.)

17. Claimant's operative individual program plan (IPP) is dated April 2020. According to the operative IPP, and subsequent purchase of service authorizations, claimant and her family receive service agency funding for the following services:

- 24 hours per month of in-home respite (Exs. 5 & 8); and
- 20 hours per month of parent mentoring/family training (Exs. 5 & 7);

18. In addition, claimant and her family receive funding from generic resources for In-Home Supportive Services (IHSS) (Los Angeles County), applied behavioral analysis (ABA) training (Medi-Cal), and speech and language therapy (Medi-Cal).

## **Withholding Information from the Service Agency**

19. Claimant's mother does not trust service agency, which has led her to withhold information from it.

20. The above-described dynamic has contributed to the parties' inability to update claimant's IPP, which was supposed to be done in April 2021.

21. Although service agency knew claimant's family received IHSS funding, claimant's mother refused to disclose details. Only recently has service agency learned the family receives funding for 195 hours per month of IHSS protective supervision of claimant. It was not until Ms. Aguilar testified that service agency learned claimant's family also receives funding for 59 hours per month of IHSS domestic services, such as food preparation, laundry, cleaning, etc. Claimant's mother is the compensated IHSS worker. (Testimony [Test.] of Aguilar.) Ms. Aguilar testified that information was not provided because the family does not believe service agency has a right to it.

22. Although service agency knows claimant receives ABA, claimant's family has provided no specific information about the program or copies of reports. It was not until the parties filed their exhibits for this hearing that service agency received a copy of claimant's September 2021 ABA progress report from provider Jade Behavioral. (Ex. D.) Ms. Aguilar testified the delay was caused by translating the report to Spanish and a dispute claimant's mother has with the provider over some of the goals specified in the report.

23. Claimant's family also has withheld information from service agency concerning claimant's special education program. Service agency has not been provided with a copy of claimant's operative individualized education program (IEP),

nor have staff been invited to attend and assist claimant's mother at IEP meetings. Ms. Aguilar testified claimant's mother does not have copies of recent IEP reports to share.

24. In December 2021, claimant's mother also decided to withhold consent from service agency obtaining or sharing information concerning claimant, unless service agency first makes a written request which specifies the solicited information, why it is needed, and any law supporting the request. (Ex. 6.) This request has complicated the process of procuring services for claimant. (Test. of Pulido.) For example, claimant's mother is dissatisfied with the current parent mentoring provider and would like a replacement. However, without a signed consent form in place, service agency cannot send out referrals to potential new providers. (*Ibid.*)

## **COVID-19 Support**

25. After the outbreak of the COVID-19 pandemic in March 2020, service agency decided to provide COVID-19 support to families of children who lost access to in-person learning in the classroom. Service agency views in-person learning as a valuable generic resource because it provides parents a daily break from caring for their children. The COVID-19 support came in the form of in-home respite, in which a respite worker would watch the child in his/her home during school hours. This funding was consistent with, and supported by, Department of Developmental Services (DDS) directives. (Exs. 2-4; Test. of Pulido.)

26. Based on the above, in March 2020, after claimant's school stopped in-person learning in response to the COVID-19 pandemic, service agency began funding 30 hours per week of COVID-19 support when school was providing virtual learning. This funding for claimant's family continued through the end of the 2020-2021 school year. (Ex. 2.)



27. During the above-described planning team meeting of August 5, 2021, service agency staff learned claimant's school would return to in-person classes on August 11, 2021, the beginning of the 2021-2022 school year. (Ex. 2.)

28. Because claimant would be able to attend school in person, service agency concluded continued COVID-19 support was no longer warranted. Staff also were aware the DDS directives supporting COVID-19 support would end on September 5, 2021. Therefore, service agency decided to terminate claimant's COVID-19 support. (Exs. 2-4.)

29. During the planning team meeting, however, claimant's mother told service agency staff she still needed the COVID-19 support because she had decided to keep claimant home for independent study and virtual learning when school reopened. This was because she was concerned about claimant being exposed to COVID-19 at school. The record indicates claimant has not been vaccinated, but the reason for that is not clear. Claimant's mother also told service agency staff she believes school workers will not be as careful as she is safeguarding claimant from COVID-19. Claimant's mother also indicated an unspecified family member at home is at higher risk for serious illness from COVID-19, but she did not elaborate. (Ex. 2.)

30. During the planning team meeting, claimant's mother told service agency staff she needed an additional hour of support each school day helping to transition claimant to and from her virtual learning. Claimant's mother therefore requested the COVID-19 support be increased to 35 hours per week.

31. As demonstrated by Independent Study Master agreements presented during the hearing by Ms. Aguilar, claimant has indeed been kept at home this school year for independent study and virtual learning. (Ex. A.)

32. Ms. Aguilar testified COVID-19 support is necessary because claimant needs constant supervision due to her poor judgment, inability to follow commands, and lack of safety awareness. Ms. Aguilar presented photographs showing claimant's proclivity for doing unsafe things at home. (Ex. E.) Ms. Aguilar also presented IHSS certification forms from 2020 and 2021 signed by two of claimant's treating physicians indicating claimant needs to be closely supervised at home. (Exs. B & I.)

33. Ms. Aguilar testified the COVID-19 support is needed while claimant is at home during school hours because claimant's mother needs that time to do her homemaking chores, such as cooking, cleaning, and laundry, as well as going to her own medical appointments. Ms. Aguilar testified claimant's mother would be unable to do those things if left alone at home with claimant during school hours because claimant needs constant supervision.

## **Personal Assistant**

34. During the planning team meeting of August 5, 2021, claimant's mother also requested funding for six hours per week of personal assistance on Saturdays when she and claimant are in the community. Claimant's mother explained she needs another person with her to supervise claimant while doing errands. For example, sometimes claimant wanders off while the two are in stores or when claimant's mother is using the restroom. Claimant's mother also mentioned taking claimant with her into the community while doing errands provides claimant with the opportunity to develop independent living skills, such as shopping for groceries. (Exs. 2 & 4.)

35. Service agency denied the request because the family has not shared information with staff that would allow them to properly evaluate it. For example, staff did not know how many IHSS hours the family had been awarded or whether it was

already enough to meet this need. In addition, staff believed claimant's independent living skills in the community could be addressed, in part, by her special education program, and should be discussed with her IEP team. However, staff had little information concerning claimant's special education program.

36. Carie Otto, service agency's West Area Manager, testified there are few qualifications needed to be a personal assistant. Ms. Otto is concerned a personal assistant would be unable to respond to claimant's maladaptive behaviors in the community. Ms. Otto believes claimant's ABA provider or special education staff may be of more assistance in this regard than a personal assistant. Given the lack of information provided by the family, Ms. Otto believes it is not clear a personal assistant would be helpful. (Test. of Otto.)

37. Christina Genter, service agency Behavioral Services Specialist, testified a better solution for claimant's behavior problems in the community may be the assistance of a board certified behavior analyst (BCBA). Such a person is trained to identify and resolve behavior problems, as well as work with parents on strategies to avoid or mitigate them. Ms. Genter reviewed the recently discovered ABA report from Jade Behavioral, but the report does not sufficiently describe claimant's maladaptive behaviors. Given the lack of information available, Ms. Genter testified she cannot determine if a personal assistant or a BCBA is needed.

## **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 Act to appeal a contrary regional center

decision. (Welf. & Inst. Code, §§ 4700-4716.) Any undesignated statutory reference is to the Welfare and Institutions Code. Claimant's mother appealed service agency's proposed actions and therefore jurisdiction exists for this appeal. (Factual Findings 1-9.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) On the other hand, when one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, service agency has the burden of proving by a preponderance of the evidence that terminating the COVID-19 support was warranted, while claimant has the burden of proving by a preponderance of the evidence that her requests for a funding increase and the initiation of a new service are warranted. Claimant also has the burden of proving she was entitled to aid paid pending.

## **Aid Paid Pending**

4. Section 4715, subdivision (a), provides that "if a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of the

notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, services that are provided pursuant to a recipient's individual program plan shall be continued during the appeal procedure. . . ."

5. Claimant's FHR, filed with service agency on September 29, 2021, was received by service agency well more than 10 days after it had notified claimant's mother, on August 9, 2021, of its intention to terminate funding for the COVID-19 support. The family's proffered excuse for the untimely filing of the appeal related to the first NoPA was not persuasive. Service agency's second NoPA, dated September 24, 2021, was in response to claimant's mother's request to reauthorize the COVID-19 support, not service agency's prior notice of termination of that service. Therefore, the timing of the second NoPA relative to the FHR is not relevant for purposes of aid paid pending. (Factual Findings 1-14.)

### **Applicable Provisions of the Lanterman Act**

6. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, DDS, is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

7. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services based upon the consumer's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-

limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

8. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a consumer may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.)

9. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or other "generic resource." Regional centers are required to "identify and pursue all possible sources of funding." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a consumer's IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§§ 4648, subd. (a)(1), 4659.) These cost control measures are in place so as to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659.)

10. The above provisions of the Lanterman Act allow regional centers discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4630, subd. (b), 4651, subd. (a).)

11. The IPP process is supposed to be a collaboration among the regional center, consumer, and parents. (§§ 4646, 4646.5, subd. (a)(4).) This is because, in part, the responsibility for and towards a consumer is shared between the regional center and the consumer's parents. (See Fam. Code, §§ 3900, 3910; Welf. & Inst. Code, §§ 4620, 4685, subd. (a).) An important goal of the Lanterman Act is to foster improved coordination and cooperation between system participants, including regional centers and families. (§ 4511, subd. (b).) Thus, a fair reading of these provisions is that consumers and their parents have the reciprocal obligation to assist the regional center in meeting its mandate, especially in sharing information. Put another way, a person who seeks benefits from a regional center should also bear the burden of providing information and cooperation. (See, e.g., Civ. Code, § 3521: "He who takes the benefit must bear the burden.")

## **Disposition**

### **COVID-19 SUPPORT**

12. Claimant's family was provided COVID-19 support because it had lost the generic resource of in-person classroom teaching at claimant's school. The impetus for that funding went away when claimant's school reopened for in-person learning. Service agency reasonably decided to terminate that funding for that reason. In that regard, service agency met its burden of establishing by a preponderance of the evidence that continued funding of the service was no longer warranted. (Factual Findings 25-28.)

13. Claimant's stated reasons for continuing the COVID-19 support do not establish by a preponderance of evidence a continuing need for the funding. The family's decision to keep claimant at home while school is open does not warrant this

extraordinary funding. This is especially so in light of the lack of information the family has provided concerning claimant's special education program or whether claimant's school can safely accommodate her during this pandemic. The family's desire to safeguard claimant and an unidentified family member from the risk of illness during this pandemic has not been ignored; but neither has the fact claimant and her mother are in the community for at least six hours each week. (Factual Findings 25-33.)

14. Moreover, claimant's family is currently receiving funding for 24 hours per month of traditional in-home respite, as well as 195 hours per month of IHSS protective supervision. The IHSS hours alone can replace the COVID-19 support during school hours while claimant is at home. The family's decision to have claimant's mother be the compensated IHSS worker is a voluntary one that can be modified if need be. Claimant's parents would still have a substantial amount of remaining IHSS hours and in-home respite to provide them a break from the constant care for their daughter. (Factual Findings 15-18.)

15. Under these circumstances, service agency's denial of the family's request to reinstate the COVID-19 support and increase the number of weekly hours, was a proper exercise of its discretion under the Lanterman Act, considering the above-described mandates of being cost-effective, not duplicating funding of generic resources, and trying to conserve precious resources among the families of developmentally disabled children statewide.

### **PERSONAL ASSISTANT**

16. Service agency reasonably denied the request for initiation of personal assistant hours each week in light of the family's failure to cooperate in updating claimant's IPP or share required information. In seeking services from service agency,



the family was required to provide critical information. Included in the required missing information is the kind and number of IHSS hours, claimant's special education services (if any), and her ABA program. That information would have allowed service agency to determine if another generic resource is available to provide what the family is requesting. In addition, Ms. Otto and Ms. Genter both explained how the service agency could not determine if the requested service would be helpful to claimant and her family, since her maladaptive behaviors in the community are not known, and it is not clear a personal assistant could help. (Factual Findings 19-24, 34-37.)

17. Claimant's operative IPP is outdated and does not contain required and critical information that would allow service agency to properly analyze this service request. Should the family update claimant's IPP, including but not limited to information pertaining to her IHSS hours, special education program, and ABA services, claimant's mother, if she still believes it necessary, may again request this service funding.

## **ORDER**

Claimant's appeal is denied in its entirety.

Service agency properly terminated the COVID-19 support funding, effective September 17, 2021, and it shall not reauthorize that funding.

Service agency shall not provide funding for claimant to receive six hours per week of personal assistance.

Claimant's family was properly denied continued funding of 30 hours per week of COVID-19 support while this appeal was pending.

DATE:

ERIC SAWYER

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.