

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

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

**CLAIMANT,**

**v.**

**REGIONAL CENTER OF ORANGE COUNTY,**

**Service Agency.**

**OAH No. 2022010339**

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on May 16, 2022.

Paula Gray, Manager of Fair Hearings, represented Regional Center of Orange County (RCOC or Service Agency). Claimant's mother, who is claimant's guardian and authorized representative, represented claimant, who was not present. Family titles are used to protect the privacy of claimant and his family.

Testimony and documents were received in evidence. The record was closed, and the matter was submitted for decision on May 16, 2022.

## **ISSUE**

Does the Lanterman Developmental Disabilities Services Act (Lanterman Act) require the Service Agency to provide additional funds for social recreational services, including art classes, swimming lessons, and a gym membership for claimant, through the Self-Determination Plan (SDP) budget?

## **EVIDENCE RELIED UPON**

Documents: Service Agency's exhibits 1-12, 15, 18, 21-23; claimant's exhibits A-K, O-Q.

Testimony: Carie Otto, Cathy Furukawa, Peter Himber, M.D., claimant's mother, and Tien Nguyen.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant is a 24-year-old man. He is an eligible consumer of RCOC based on his diagnosis of Autism Spectrum Disorder (ASD). He lives at home with his parents and an older brother who is also a consumer of RCOC services; his younger sister lives outside the home.

2. Claimant's Individual Program Plan (IPP) dated January 25, 2022, states claimant takes a college continuing education course for students with disabilities. He likes school but sometimes finds it difficult. Claimant enjoys independence when possible, but he requires supervision to help him with his tasks, daily routine,

registering for classes, and accessing resources. He does not have sufficient safety awareness to be in the community on his own. (Ex 4.)

3. The January 2022 IPP shows that RCOC provides funding for 30 hours per week of Personal Assistance Worker Administration Program (PAWAP) services in lieu of an adult day program, parent-vendored transportation for the PAWA, 32 hours per month of in-home respite services, Independent Living Services (ILS), and case management.

4. Claimant also receives 252 hours per month of In-Home Supportive Services (IHSS), for which claimant's mother is the provider; \$943 per month in Social Security Income; and Medi-Cal health benefits.

5. Claimant's mother filed a fair hearing request to appeal the Service Agency's determination not to provide additional funding for social recreation activities for claimant.

6. By letter dated February 8, 2022, after an informal meeting with claimant's mother, the Service Agency notified claimant's mother it was denying claimant's request because it already funds outings and activities for claimant and it may only fund for services in a cost-effective manner, citing Welfare and Institutions Code sections 4640.7, subdivision (b), and 4646, subdivision (a). (Ex. 2, pp. A4-A5.) (Except where noted, further statutory references are to the Welfare and Institutions Code.)

### **Respite, Day Program, and Social Recreational Services**

7. In early 2018, claimant's mother asked RCOC to increase respite service funding from 16 hours to 32 hours per month, because claimant was spending too

much time gaming online and was depressed. Claimant's mother wanted claimant "to engage with his peers out in the community and make friends, while still providing [claimant's mother] with some form of respite." (Ex. 7, p. A29-A30.)

8. RCOE suggested claimant's mother explore services through YMCA New Horizons and possibly transfer some of her respite hours to pay for that service. Claimant's mother wished to keep the 16 respite hours in place to provide her with a break; caring for her two developmentally disabled sons, "2 young adults who hate each other," was tiring and frustrating. (*Id.* at p. A30.) Claimant's mother reported she used respite hours "during the weekends to go grocery shopping and [to] attend various workshops in the community. [She] identified [her] niece . . . as being the respite provider for both . . . sons." (*Ibid.*) Claimant's mother asked, instead of shifting hours, that RCOE fund for an additional 16 hours per month of respite so claimant could attend the YMCA New Horizons program and go on field trips with them.

9. In a letter dated March 16, 2018, RCOE denied claimant's mother's request for 16 additional respite hours. RCOE maintained the additional respite hours were not necessary. Claimant was attending college classes on his own, one of his classes was a supervised social group, he received 10 hours per week of Applied Behavioral Services, he did not exhibit challenging behaviors, and claimant's family was already receiving a total of 32 respite hours per month, 16 for claimant and 16 for his brother.

10. In a Fair Hearing Request dated March 29, 2018, claimant's mother requested a hearing to require RCOE to increase claimant's respite hours to 32 per month. The matter was resolved without a hearing. According to a Notice of Resolution dated May 7, 2018, RCOE increased claimant's respite hours to 32 per month, and an IPP was set to be held in January 2019 to determine future respite

needs. Since the matter resolved, claimant has been receiving funding for 32 hours of respite per month.

11. Claimant was receiving RCOC funding for a day program when claimant's mother proposed the PAWA in a Request for Personal Assistance in Lieu of Day Program in May 2021. Using the PAWA program, claimant's mother would be paid to conduct oversight or participate with claimant in activities according to a plan she created with RCOC approval. She submitted a proposed sample weekly schedule for claimant, listing activities including attending class, taking walks in the community, and playing basketball.

12. Claimant's mother developed an SDP through which RCOC would fund claimant's services. For the PAWA program, RCOC would pay an agency, in this case Premier Healthcare, to work with and pay the support provider, in this case, claimant's mother. If the program stopped being effective for claimant, claimant's mother could have claimant receive traditional adult day program services again, through an RCOC-vendored agency. Cathy Furukawa, RCOC's Self-Determination Program Coordinator, testified that whether a consumer uses an SDP or a traditional means of regional-center funding, the Lanterman Act requires the parties to use the IPP process to identify the consumer's service needs.

13. The SDP budget for claimant dated August 12, 2021, developed by Keli Radford, RCOC's Director of Services and Supports, and Cathy Furukawa, RCOC's Self-Determination Program Coordinator, reflects the following expenditures: ABA Behavioral Analyst, 7,057.75, for September and October 2021; adding a PAWA program, \$31,390.37 (30 hours per week for one year); In-Home Respite Agency, \$2,498.72, with the annotation, "Due to COVID-19, community-based respite agency was not providing services. This was 16 hours per month over a period of seven (7)

months. 100% of authorized hours to be added for a total of 112 hours.” (Ex. 10, p. A44.)

14. The proposed total annual SDP budget was \$50,154.64. The budget document noted, citing various sections of the Welfare and Institutions Code, that “The participant shall [utilize] the services and supports available within the Self-Determination Program only when generic services and supports are not available. SDP is cost neutral.” (§ 4685.8.) “The participant shall manage Self Determination Program services and supports within [his] or her individual budget.” (§ 4685.8, subd. (d)(3)(D).) Adjustments may be made only if certain specified statutory conditions are met. (§ 4645.8, subd. (n)(1), (11).) (Ex. 10, p. A43.)

15. Claimant’s mother refused to agree to the proposed August 12, 2021 SDP budget.

16. On October 27, 2021, RCOC and claimant’s mother agreed that all RCOC-funded ABA services for claimant would terminate on December 31, 2021. (Ex. 21.)

17. At a videoconference on December 17, 2021, claimant’s mother requested that RCOC increase claimant’s respite funding from 32 hours per month to 65 hours per month. She told RCOC that the additional hours would be used for claimant’s social recreation activities. Her goals for claimant were that he socialize more and get exercise to help him lose weight.

18. In a letter dated December 21, 2021, RCOC denied the request. Noting that claimant was already receiving “exception level respite” of 32 hours per month, RCOC wrote that any increase would have to be based on “extraordinary circumstances or crisis situations,” would be time-limited, and would be followed by a

plan to reduce the hours, all in accordance with RCOC's Purchase of Service (POS) Guidelines adopted under section 4624. The letter continued,

Based upon [claimant]'s current needs, an increase in respite is not justified beyond the current 32 hours per month allotted. [Claimant] does not exhibit challenging behaviors. He is not dependent upon others to complete activities of daily living for him. [Claimant] is able to be successful upon attending YMCA's community outings which are provided in a 1 to 6 ratio of support. He was able to go to Catalina Island, Disneyland, Big Bear, and an overnight stay in San Diego. [Claimant] currently receives 30 hours per week of personal assistance which can be utilized to support his desire to spend more time out in the community and be integrated in social activities on a daily basis (WIC 4646.5). Per the program design you have created for your son for the 30 hours per week of personal assistance, hours have been allotted for [claimant] to participate in weekly exercise, outings in the community, playing basketball at the park, drawing, doing art work, and visiting various community libraries (Huntington Beach Public Library, Westminster Library, and Central Park) for social reading opportunities (WIC 4646.5).

Per the Person Centered Plan you created for [claimant], it is identified that [claimant] will participate in weekly tennis lessons, water safety classes, and martial art classes. When

specifically asked about these services during our face to face video conference, [claimant] stated he was not interested in doing any of these activities, rather he wished to return back to YMCA. You shared that his previous YMCA contract of 192 hours only allowed him to attend maybe one long weekend per year, as events lasting several days over night usually exhausted about 100 hours. As you have done on multiple occasions, you are able to direct the current funds (32 hours per month, which equates to 384 hours per year) to YMCA, which [claimant] stated he is interested in attending (WIC 4646).

Based upon the information above, respite hours would not be increased to allow [claimant] to participate in social recreational activities as the current hours can be utilized for that purpose. Also, RCOC is unable to authorize your request for an increase in respite to 65 hours per month, as there is no immediate crisis situation or extraordinary circumstance to warrant an increase beyond exception level respite for your family at this time.

(Ex. 3, p. A8.)

19. YMCA's New Horizons program issues a monthly calendar of social recreation activities, specifying the number of regional center hours required to fund the activity for regional center consumers. The calendar for May 2022 identifies a social club, a trip to an arcade, a diner dinner, bowling, and hiking, each requiring four

hours of regional center funding. Other activities on the calendar include concerts, dinners, and baseball games, requiring five to nine hours. (Ex. 11.)

20. An SDP Budget Worksheet dated December 23, 2021, reflects an annual budget amount of \$53,497.87. The December 2021 SDP budget differs from the August 2021 SDP budget. Omitted is the \$7,057.75 in funding for an ABA behavioral analyst. Added is \$9,600 for an ILS program. The PAWAP budget was increased to \$32,026.80 from \$31,390.37. A POS Authorization dated January 29, 2022, reflects RCOC funding for PAWAP in the amount of \$33,997.68 for July 1, 2021, to January 31, 2023.

21. Claimant's mother attended a workshop in January 2022, and learned that regional centers could again fund social recreation services because the suspension of funding for those services expired. Workshop materials dated January 7, 2022, related that, "Your IPP must explain why you need these services," which must relate to the consumer's disability, must tend to lessen the effects of the disability, and must help the consumer live an independent life. (Ex. 22, p. A241.) The materials advised parents to ask their regional center to review its POS policy regarding social recreation services, which should be posted online. The materials also advised parents that they must first exhaust generic sources of funding before the regional center is obliged to fund social recreation services, citing section 4659. The advocacy group recommended requesting an IPP meeting to address social recreation services for the consumer.

22. One week later, on January 13, 2022, claimant's mother filed the Fair Hearing Request in this matter, asking for RCOC to fund social recreation activities for claimant through the SDP budget.

23. Claimant's January 25, 2022 IPP does not mention any discussion of claimant's mother's request for additional social recreation funding. In a section headed, "How I Have Fun," the IPP recites that claimant enjoys playing video games, watching movies online, and going on trips with YMCA New Horizons. (Ex. 4, p. A18.) Claimant's "Desired Outcome" in this area is "to participate in one age-appropriate activity per week." (*Ibid.*) The "Plans" are for claimant's family to continue taking claimant on outings and for "SSI to fund for all social/recreational activities for [claimant]." (*Id.* at p. A19.)

24. RCOC's POS Guidelines address various services that may be funded by the regional center. The POS Guidelines define social and recreational activities as services that provide the consumer with an opportunity to develop socialization skills and participate in family group activities in the home and community. "Those services may be provided by Parks and Recreation, Special Olympics, church, school, circles of support, or other resources available to the consumer. RCOC staff will provide consumers, families and service providers with information regarding available resources in the community." (Ex. 18, p. A122.)

25. The POS Guidelines for social recreation services were in effect before the funding suspension was eliminated and have not yet been modified. Thus, the Guidelines read,

RCOC will not normally purchase social or recreational services, as these should be provided by the family, community, or generic resources, including SSI. If RCOC staff are not able to authorize the requested service given regulations, best practice or difference of opinion, then RCOC staff will discuss with the consumer and/or family any

concerns or identify other options. RCOC staff may authorize social and recreational services on an exception basis: 1. *If it is provided to the family under previously stated respite guidelines.* 2. If an appropriate day program or supported work program is not available. 3. A social or recreational activity shall not be used in lieu of an appropriate available day program.

(Ex. 18, p. A122, italics added.)

26. The POS Guidelines state that funding for a social recreation program “shall be based on the needs of the consumer as determined by the Multidisciplinary/Planning Team and authorized by RCOC staff.” (Ex. 18, p. A122.) “Purchase of Service renewals for activities used as respite shall be authorized upon agreement by the consumer, family and other Multidisciplinary/Planning Team participants that services have been provided and have been beneficial to the consumer and family.” (*Id.* at p. A123.)

27. RCOC’s POS Guidelines still reflect RCOC’s funding practices during the long period when the social recreation funding suspension under section 4958.5 was in effect. RCOC represented at hearing that, with the repeal of section 4958.5, it submitted proposed new POS guidelines for social recreation activities to the Department of Developmental Services (DDS) but they have not yet been approved or put into effect. Apparently because the soon-to-be-replaced POS Guidelines allow certain social recreation services to be funded as respite, claimant’s mother requested additional respite funding to cover new social recreation activities for claimant.

28. Carie Otto, RCOC's Area Manager, testified that RCOC worked with the DDS to be able to fund YMCA social recreation programs as respite, even before section 4958.5 was repealed. The YMCA programs cost the same as other respite services, provide consumers the opportunity to engage in community activities, and provide respite to parents, who do not attend the YMCA programs with the consumer.

29. Ms. Otto testified RCOC will continue to fund claimant's 32 hours of respite per month, including social recreation services at the YMCA New Horizons program, through January 31, 2023, which is claimant's next birthday and the date of his next annual IPP review.

### **Additional Evidence**

30. Claimant's mother testified she did not agree to the most recent proposed SDP budget because it does not include the social recreation services for which she has requested additional respite hours. She also complained that RCOC correspondence to her is always in English rather than in Vietnamese, her first language.

31. Claimant's mother understands the proposed SDP budget includes \$9,600 for ILS. RCOC asked her whether she wants to be the ILS provider, but she is not yet sure; RCOC offered to fund an RCOC vendor, outside the SDP, to provide the services until claimant's mother decides. Claimant's mother acknowledged that RCOC has been paying all the PAWAP bills for claimant every month. She would like RCOC to fund a gym membership for claimant, including the gym's annual up-front fee.

32. Peter Himber, M.D. RCOC's Medical Director, testified that, given claimant's medical conditions, claimant would benefit from any form of exercise, including walking, playing basketball, or exercise provided through the YMCA New

Horizons program, in order to reduce his weight. Dr. Himber agreed with Lalita Pandit, M.D., claimant's physician, who wrote in a January 3, 2022 letter that claimant, who has a condition causing his body to produce excess red blood cells and who has sleep apnea, would benefit from a healthy diet and exercise. (Ex. D.) Dr. Himber also thinks claimant should access a dietitian through his health plan.

## **DISCUSSION**

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of his request for increased funding for social recreation services through his SDP budget. Jurisdiction in this case was thus established. (Factual Findings 1-6.)

2. Because claimant seeks benefits or services, he bears the burden of proving he is entitled to the benefits or services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) DDS, the state agency charged with implementing the Lanterman Act, 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.)

4. 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 client, contain provisions for the acquisition of services based upon the client'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 client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. 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 client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.)

6. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or some 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 client'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); see also, e.g., § 4659.)

7. The Lanterman Act defines "services and supports" to include respite, recreation, social skills, and community integration services. (§ 4512, subd. (b).)

8. As a result of legislation effective in 2009, codified at section 4648.5, funding for social recreation activities, camping, and nonmedical therapies including specialized recreation, art, dance, and music, was suspended. The statute became inoperative on July 1, 2021, and was repealed by its own terms, thereby eliminating the funding suspension, effective January 1, 2022.

9. RCOC is currently seeking DDS approval for new POS Guidelines for social recreation services to replace those in effect during the funding suspension. In the meantime, RCOC continues to fund certain social recreation activities as respite, with DDS's approval, when, as here, the consumer's parent does not participate in the activity and is thereby provided some actual respite time. In any event, claimant's needs for additional social recreation services, other than services available from generic sources, must first be addressed in an IPP. No IPP meeting to assess claimant's needs in this regard has been convened. The next regularly-scheduled IPP meeting will take place about eight months from now. Claimant's mother may request an earlier IPP meeting to address the issue raised here.

10. Claimant failed to establish that the Lanterman Act requires RCOC to provide additional funding for social recreation services for claimant through his SDP.

## **LEGAL CONCLUSION**

Claimant did not establish by a preponderance of the evidence that the Service Agency is required under the Lanterman Act to provide additional funding for social recreation services for claimant through his SDP at this time.

## **ORDER**

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN

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.