

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022020404**

**DECISION**

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 3, 2022.

Claimant was represented by his mother (Mother). Claimant and his family members are identified by titles to protect their privacy.

Candace Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency).

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on August 3, 2022.

## **ISSUE**

Should WRC be required to fund specialized supervision hours for Claimant?

## **EVIDENCE**

The documentary evidence considered in this case was Service Agency's exhibits 2 through 9. The testimonial evidence considered in this case was that of Candace Hein, Fair Hearing Specialist, and Mother.

## **FACTUAL FINDINGS**

1. Claimant is a 12-year-old boy who lives with his twin sister (who is also a regional center client) and his parents in the family home. He qualifies for regional center services under diagnoses of autism and epilepsy.

2. On January 19, 2022, Service Agency sent a letter and a Notice of Proposed Action to Claimant's parents informing them that their request for specialized supervision hours for Claimant was denied. Service Agency stated that Claimant's family does not meet the eligibility standards for the service based on WRC's service standards.

3. On January 31, 2022, Claimant's parents filed a Fair Hearing Request disagreeing with Service Agency's decision and requesting "Specialized Services hours that we have been receiving for the last [five] years." (Ex. 3, p. A11.)

4. WRC conducted a first level appeal on March 11, 2022. On March 23, 2022, Mary E. Rollins, the Director of WRC's Designee, sent Claimant's parents a letter stating:

Based on the information you provided; review of [Claimant's] case files; consultation with your attorney; and consultation with WRC staff I find by exception that WRC will continue to fund [120] hours per month of school support . . . and 87 hours per month of specialized supervision . . . until June 10, 2022. This decision will not be extended and was only granted because you are in due process with the Culver City School District.

(Ex. 4, p. A15.)

5. This hearing on Claimant's Fair Hearing Request ensued.

### **WRC's Service Standards for Day Care Services**

6. Candance Hein, WRC's Fair Hearing Specialist, testified that day care and specialized supervision services "mean the same thing." Accordingly, the terms specialized supervision services and day care services are used interchangeably throughout this Decision.

7. WRC's Service Standards for Day Care Services provides, in part:

. . . Day care services are provided to school-aged children with a developmental disability while family caregivers are at work or attending a vocational/educational program leading to future work, and have no other means to provide

care and supervision. This service is designed to provide basic care and supervision only. It is provided to those whose health and/or safety would be in jeopardy without such care because of the nature of their disability or at risk status.

Day care may be provided to those who meet all of the following criteria:

1. Alternative resources for supervision have been ruled out;
2. The individual resides in a single parent household with parent working or attending a vocational/educational program full-time, or a two-parent household with both parents working or attending a vocational/educational program full-time;
3. The person is in need of constant supervision or total support due to severe physical and/or mental challenges; or
4. The individual has severe behavior challenges that constitute a threat to the health and safety of the individual, to the safety of the environment, or a threat to property;
5. Or other circumstances which the IPP team and Regional Center management deem qualify the individual for these services.

Normal parental responsibilities will be considered in determining eligibility for day care services. Under most circumstances, when funding day or after-school care services for a child under the age of 13, [WRC] may pay only the cost of care that exceeds the cost of normally providing day/after-school care to a child without disability of the same age.

(Ex. 5.)

### **Claimant's IPP**

8. In the "Strengths" section of Claimant's November 11, 2021, Individual Program Plan (IPP)," it is noted that Claimant is nonverbal; he does not use sign language to communicate and only communicates by typing. (Ex. 8, p. A28, A29.) Claimant "is described as being driven by impulse," and will walk into dangerous situations. (*Id.* at p. A29.) Claimant is further described as aggressive and easily frustrated because he cannot use words to communicate. Under the "Social-Emotional/Recreation/Leisure/Plan Community" section, the IPP states that Claimant hits, punches, kicks, and pushes others when he is frustrated or wants attention. He will also punch himself for attention and make himself throw up when he is frustrated or wants something. Claimant also has a history of eloping when out in the community.

9. Claimant's IPP states that Claimant "requires someone nearby during waking hours to prevent injury and harm in all settings." (Ex. 8, p. A29.) To emphasize Claimant's need for supervision, Claimant's IPP notes that he must always be closely supervised. During the IPP meeting, Claimant's parents explained that their main

concern is having staff that provide services to Claimant be able to communicate with him.

10. Under the "Living Arrangement/Home" section, Claimant's IPP notes that Claimant's family moved to the WRC catchment area from the San Gabriel/Pomona Regional Center (SGPRC) catchment area in October 2021. (Ex. 8, p. A30.) Mother works full time and Claimant's other mother is a homemaker and stays home with Claimant and his sister. Claimant's parents noted that Claimant was previously approved for 87 hours per month of specialized supervision hours provided by Aveanne Healthcare (Aveanne). Claimant's service coordinator provided Claimant's parents with an after-school care application, which, once completed, was presented to WRC's Purchase of Service committee. Claimant's request was denied because the family did not meet the eligibility requirements as stated in WRC's Service Standard on Day Care, because one of his parents does not work and is present in the home.

11. Claimant's IPP notes that a desired outcome is for Claimant to continue to live at home in a loving and supportive environment. Part of the plan to reach the desired outcome was for WRC to fund 87 hours per month of specialized supervision hours from October 1, 2021, to February 28, 2022.

12. WRC prepared an IPP Progress Report dated March 22, 2022. The IPP planning team reviewed Claimant's November 11, 2021, IPP and amended the IPP to include a re-authorization of 87 hours per month of specialized supervision provided by Aveanne from October 1, 2021, to May 31, 2022. The IPP Progress Report notes that the services have been denied, but the services were being provided pending Claimant's appeal.

13. On July 14, 2022, WRC re-authorized 42 hours of respite services per month to be provided by Aveanne from July 1, 2022, to April 30, 2023. On July 28, 2022, WRC also re-authorized 87 hours per month of specialized supervision provided by Aveanne from July 1, 2022, to August 31, 2022.

## **Hearing Testimony**

14. Ms. Hein explained that Claimant's specialized supervision services were "brought over" from SGPRC. Those services have been funded by WRC since October 2021, when Claimant began receiving services from WRC.

15. Ms. Hein explained that WRC understands there is a period of transition for services that must occur when a consumer moves from one regional center catchment area to another. In response to the assertion of Claimant's family that there is a need for supervising Claimant and his sister in the home, WRC notes that in the fall, both children will be in school six hours per day. In addition, where supervision is needed and one parent is home, support may be authorized in the form of behavior intervention and/or some other service since Claimant is not eligible for day care services. Specifically, WRC suggests behavior intervention services such as Floortime (relationship-based play therapy) or applied behavior analysis (ABA) services (therapy geared toward increasing helpful behaviors and decreasing maladaptive behaviors) for Claimant. Floortime and ABA are accepted, evidence-based practices that help children with autism build social, communication, and emotional skills.

16. WRC's position is that there has been sufficient time for behavior intervention services to have been put into place for Claimant, and now that schools are open, specialized supervision hours are no longer available, notwithstanding the

fact that Claimant is ineligible for day care services under WRC's Service Standards for Day Care Services.

17. Mother described Claimant as very aware of his limitations, smart, brave, athletic, and strong. Claimant is nonverbal and communicates by typing on a printable QWERTY keyboard. Claimant is scheduled to start school on August 19, 2022.

18. Claimant previously participated in UCLA's 20-week ABA program. According to Mother, Claimant struggled and became depressed during the first 10 weeks of the program but did "a little better" during the last 10 weeks. Claimant also previously received 40 hours per week of in-home ABA services. Mother asserted that after receiving the ABA services for eight months, Claimant's behaviors increased. She also asserted ABA is not a successful therapy for children like Claimant with apraxia (difficulty saying what one wants or wants to say).

19. Claimant's family has found Floortime to be successful for Claimant when the provider uses typing as a form of communication. Mother's experience from speaking with behavior intervention service providers is that not all of them use or are experienced in typing to communicate with consumers.

20. According to Mother, WRC recommended "Verdugo Hills" as a Floortime vendor. However, their employees were not certified in providing Floortime services, and they did not have employees who are "typers." Mother contacted Holding Hands, a behavior intervention company recommended by WRC. According to Mother, Holding Hands did not understand Claimant's communication issues. There is no evidence that Mother requested assistance from WRC with communicating Claimant's communication needs to Holding Hands. Mother testified she was not interested in



Step by Step, another service provider recommended by WRC, for reasons not made clear by the record.

21. Currently, Claimant's family utilizes two providers who engage Claimant using typing by playing games, keeping him on task, working with Claimant on getting dressed, eating and hygiene, reading to Claimant, and helping Claimant with homework.

22. For Mother, communication is the main issue for any regional center service or support because Claimant is nonverbal. Claimant's family is starting the process to be approved for the Self Determination Program (SDP). The SDP is an alternative service delivery model designed to provide participants with increased flexibility in purchasing the services and supports necessary to implement their IPP. In the meantime, Mother is aware that WRC has agreed to provide courtesy vendorization for To Live and Play in L.A., Claimant's first Floortime provider whose employees use typing as a form of communication. However, the vendorization process will not be completed by August 31, 2022, when Claimant's specialized supervision services are scheduled to end. WRC has not recommended any Floortime services agency that uses typing as a form of communication.

23. Mother expressed concern that regional centers appear to have different interpretations of the Lanterman Act and that Claimant's specialized supervision hours are being taken away. Mother asserted that because Claimant and his sister need 24/7 supervision and are nonverbal, and in light of their behaviors, it is impossible for both of Claimant's parents to work. There are no relatives who can assist Claimant's parents. Mother works outside the home 14 hours per day. The severity of the children's behavior and the fact that they are nonverbal and lack safety awareness, make it difficult for one person to supervise them.

24. Mother stated Claimant needs more than specialized supervision hours because it is not robust enough for Claimant's needs, but the services will "get them through" until Floortime services with the appropriate communication component is authorized and funded.

25. Claimant last received Floortime services through SGPRC in 2016 and 2017.

26. Mother would like services that WRC will authorize and fund in place of specialized supervision that include the appropriate communication tools for Claimant. Mother does not want to experience a delay in the services or lose the two providers that have been successful in working with Claimant.

## **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter pursuant to Welfare and Institution Code section 4710 et seq., based on Factual Findings 1 through 5. All further undesignated statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (See Evid. Code, §§ 115 & 500.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) Therefore, Claimant bears the burden of proving is entitlement to the requested specialized supervision services.

3. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. Section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, which is a collaborative process involving the consumer and service agency representatives. "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option . . . ." (*Ibid.*)

5. Section 4512, subdivision (b), provides a list of services that may be provided, in appropriate circumstances, to a regional center consumer. The services and supports that may be provided are not limited to those set out in the statute. The list is extensive, running the gamut from diagnosis to advocacy to supported and sheltered employment to paid roommates. Day care services is listed as a service or

support that may be included in an IPP, and the statute defines “services and supports for persons with developmental disabilities” broadly, as meaning

specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life.

6. Section 4643.5, subdivision (c) provides that “[w]hen a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer’s individual program plan (IPP) shall be authorized and secured, if available, pending the development of a new IPP for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new IPP within 30 days.”

7. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the individual with developmental disabilities, their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

8. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist consumers with developmental disabilities in "achieving the greatest amount of self-sufficiency possible . . . ." In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

9. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs identified in their IPP must be met. (See, e.g., §§ 4501, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (2), 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, subdivision (a), each regional center is to assist consumers and families with services and supports that "maximize opportunities and choices for living, working, learning, and recreating in the community."

10. Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those services and supports should foster "the developmental potential of the person and be directed toward the achievement of the most independent, productive and normal lives possible." (§ 4502, subd. (b)(1).) There is also a right to dignity, privacy and humane care. (§ 4502, subd. (b)(2).)

11. Regional centers are obligated to assure that IPP's conform to the regional center's purchase of service policies as approved by the Department of

Developmental Services. (§4646.4, subd. (a)(1).) Further, the regional center must consider the “family’s responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer’s service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer’s need for extraordinary care, services, supports and supervision, and the need for timely access to this care.” (§4646.4, subd. (a)(2).)

## **Discussion**

12. It is undisputed that Claimant previously received 87 hours per month of specialized supervision services while an SGPRC consumer. WRC timely completed an IPP after Claimant’s move to the WRC catchment area. Claimant’s IPP states that Claimant is nonverbal and uses typing to communicate. Section 4512, subdivision (b), authorizes day care services, and section 4646.4, subdivision (a)(1), requires a regional center, when purchasing services, to conform to its approved service policies. Here, the WRC Service Standards for Day Care Services does not allow the provision of day care services if both parents do not work outside the home. However, this is not the end of the inquiry.

13. Claimant established that he has a need for constant and close supervision during after school hours and when school is not in session. Claimant’s need for supervision is more than that needed for a child without disabilities. WRC recommends Floortime and ABA services to address Claimant’s supervision needs, but the parties have been unable to locate a provider who can communicate with Claimant using a typing method with a printable QWERTY keyboard or similar device.

14. A regional center's reliance on a fixed policy "is inconsistent with the [Lanterman] Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities. (§ 4501.)'" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer are to be selected on an individual basis. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), 4791).

15. Claimant established, by a preponderance of the evidence, that an exception to the Service Standards for Day Care Services exists based upon his circumstances. Namely, Claimant established that he requires close and constant supervision 24 hours per day and his providers must be able to communicate with him using the typing method. Behavior intervention services in the form of Floortime are appropriate and necessary to meet the goals stated in Claimant's IPP and should be authorized instead of specialized supervision services; however, the Floortime agencies recommended by WRC do not have the capacity to communicate with Claimant in a meaningful way. Claimant's participation in therapy without being able to communicate will not be effective in assisting him in reaching the goals and outcomes listed in his IPP. Claimant also established, by a preponderance, that ABA therapy has been unsuccessful for him.

16. Accordingly, WRC shall be required to continue funding specialized supervision for Claimant through December 31, 2022. During this period. WRC shall reassess the number of specialized supervision hours needed, taking into account that Claimant will be attending school for six hours per day beginning August 19, 2022. In addition, WRC and Claimant's parents shall work collaboratively to locate a behavior intervention or other appropriate service provider who can effectively communicate with Claimant. The parties shall reconsider providers previously recommended by WRC regarding their availability and ability to provide the reassessed specialized supervision hours.

17. Based on the record in this matter, Claimant's appeal is granted in part, and denied in part as set forth in the Order below.

## **ORDER**

1. Claimant's appeal regarding the WRC's funding of specialized supervision services is granted in part, and denied in part.

2. WRC shall fund 87 hours per month of specialized supervision services for Claimant until December 31, 2022. WRC shall reassess the number of specialized supervision hours needed, taking into account that Claimant will return to school on August 19, 2022.

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3. WRC and Claimant's parents shall work collaboratively to locate a mutually agreed to behavior intervention or other appropriate service provider who can effectively communicate with Claimant.

DATE:

CARMEN D. SNUGGS-SPRAGGINS

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.