BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022050105

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 6, 2022.

Jacob Romero, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (ELARC or regional center). Claimant's Supported Living Service (SLS) Coordinator represented Claimant, who was not present. Claimant and his SLS Coordinator's names are not used to protect Claimant's privacy.

Mr. Romero, the SLS Coordinator, Service Coordinator Jason Lee, and Mother testified. Documents marked Exhibit 1 through Exhibit 22 and Exhibit B through Exhibit

AE, Exhibit AJ through Exhibit AR, and Exhibit AT were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUE FOR DETERMINATION

Whether ELARC should grant Claimant's request for $2,624.21 to pay for SLS services provided to him during his October 2021 hospitalization.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 17, 2022, ELARC notified Claimant it denied his request for "funding for SLS services while [he was] receiving 24 hour care in the hospital from the time [he was] admitted on October 8th, 2021 until the time of [his] discharge on October 12, 2021." (Exh. 1.)

2. On April 15, 2022, on Claimant's behalf, Mother filed a Fair Hearing Request.

3. On June 7, 2022, OAH notified the parties of a state-level fair hearing by videoconference scheduled for July 5, 2022, which was continued to September 6, 2022.

4. All jurisdictional requirements are satisfied.

Claimant's Background

5. Claimant is a 38-year-old unconserved male consumer of ELARC based on his qualifying diagnoses of cerebral palsy and epilepsy. In August 2021, Claimant was diagnosed with Dravet Syndrome, a severe form of epilepsy characterized by frequent, prolonged seizures. He presents with significant global developmental delays. He has a history of swallowing difficulties, choking, aspiration pneumonia, and mercury and lead toxicity. In addition to his medications for seizure control, Claimant takes supplements.

6. Claimant makes sounds and movements to communicate his needs. He is unable to vocalize "yes" or "no." His most sophisticated form of communication is supported typing. His unsteady gait and poor balance present a risk of falling. He requires a wheelchair for safe mobility. Claimant requires total support with all self-care tasks, including showering, toileting, grooming, meal preparation and consumption, and administration of his medications.

7. The relevant Individual Program Plan (IPP) applicable to this matter is dated August 9, 2021. That IPP required the regional center to fund 24/7 "wraparound supported living service" for Claimant in his home and the community. (See Exh. 22 at p. 7 [A131].) ELARC vendored Mother to serve as the SLS program administrator. Claimant's SLS program provides for 130 training hours per month, 190 personal assistant hours per month, 73 hours per month of 2:1 personal assistant staff, and 141 overnight awake hours per month. The array of services and supports Claimant's SLS program offers includes assistance with common daily living activities such as meal preparation; routine household activities to maintain a clean and safe home; assistance interacting with governmental agencies and personnel; and advocacy to promote and protect Claimant's personal rights. Approaches and strategies for assisting Claimant

include observation of his body language, facial expressions, and vocalizations to create a communication dictionary in which his communicative acts, their meanings, and suggested responses are documented. For example, when Claimant scratches his left temple, Claimant is communicating he is sleepy, and the suggested response is to help him to bed. (See Exh. V at p.1 [B412].)

8. Claimant's SLS program requires documentation of services rendered to him and a record of each staff's working hours and specific tasks performed. Service records are required for invoicing and billing to the regional center.

Claimant's October 2021 Hospitalization

9. On October 8, 2021, Claimant presented at a hospital's emergency department with general weakness, slowness of activity, decreased oral intake, and lethargy. Mother, who accompanied Claimant, provided the attending physician information regarding Claimant's past medical history, past surgical history, family history, social history, allergies, and medications. Mother additionally informed the attending physician about Claimant's herbal or homeopathic therapies for lead and mercury poisoning. The attending physician conducted a physical examination of Claimant, who, according to medical chart notes, showed "no acute distress but appears to be restless in bed, moving all around, not following commands, minimally cooperative with exam, lying and then sitting in bed." (Exh. 16 at p. 2 [A96].) Claimant vocalized "some moaning and screaming sound[s]." (*Ibid.*)

10. The attending physician discussed with Mother the likelihood Claimant's condition was due to dehydration, renal failure, a slow heart rate or bradycardia, and hypoglycemia. A proposed Assessment and Plan, to which Mother verbalized her understanding and agreement, included intravenous hydration, swallow evaluation,

urinalysis, chest X-ray, renal ultrasound, head computed tomography (CT) scan, echocardiogram, and telemetry monitoring. The medical records indicate Claimant was seen by appropriate consultants and received appropriate medical care. (See Exhs. 16 through 21 and Exh. P.) On October 12, 2021, Claimant was discharged from the hospital against medical advice.

SLS Services Rendered to Claimant During His October 2021 Hospitalization

11. On October 8, 2021, Mother accompanied Claimant in the ambulance transporting him to the hospital in order to communicate information about Claimant to emergency responders. During Claimant's initial arrival at the hospital, Mother provided the attending physician treating Claimant with information, as stated in Factual Finding 9. Mother objected to treating Claimant with a sedative to calm his agitated state and suggested alternative methods for securing Claimant's cooperation to facilitate the healthcare professionals' assessment and diagnosis of his condition. In addition, Mother made plans for rendering SLS services to Claimant during his hospitalization. Mother made the following notation in Claimant's October 8, 2021 service records:

> When [Claimant] first got to his room, he was agitated and was trying to get out of his bed. There were at least 2 staff, 2 nurses or 1 nurse and a CNA. They were talking in high-pitched voices, and their beepers were going off constantly. A nurse said, "Is he combative?" and I said that he was resistant. One of them said, call the doctor. I knew that she wanted to get a drug to calm [Claimant]. Ativan was mentioned. I asked them to leave for about 30 minutes so

> that [Claimant] could get settled on his own. The nurses did leave, and he did settle down once they left.
>
> I was constantly watching him or standing beside his bed so that he did not get out of bed or pull out his IV. Even though the bed rails were raised on both sides, he was at risk of getting out of bed. [¶ . . . ¶]
>
> We planned for his staff to stay with him as they would if he had not been in the hospital, and we kept the same schedule. We did not want to leave him alone without someone familiar with him. The hospital needed us to tell them what he liked and didn't like, what worked and didn't work, and we needed to watch at all times to keep him from getting out of bed or moving so much that his IV came out. Given the circumstances in the hospital, he needed someone familiar with him at all times to advocate for him and provide personal assistance, including feeding him since he needs total care.

(Exh. N at pp. 2-3 [B37-B38].

12. During the evening shift, an SLS staffer took over Claimant's care from Mother. The SLS staffer brought Claimant's wheelchair and personal items to the hospital. Mother and the SLS staffer changed Claimant's clothing and seated him in his wheelchair. They assisted Claimant with toileting. That night, the SLS staffer slept on a pull-out bed in Claimant's room. Claimant's sleep was sporadic.

13. Early in the morning on October 9, 2021, the SLS staffer assisted Claimant with his hygiene and changed his soiled clothing. Mother arrived at the hospital for the afternoon shift at one o'clock. Mother brought additional clothing and toileting products for Claimant. Mother communicated with the physicians, nurse, and therapist attending to Claimant's medical care. She instructed SLS staff to bring Claimant's prescriptions and medications to the hospital. She selected foods, which she fed to Claimant. The SLS staffer arrived at the hospital at five o'clock for the evening shift. The SLS staffer and Mother accompanied Claimant for an ultrasound procedure. Afterward, the SLS staffer fed Claimant. During the evening, the SLS staffer was present when a nurse attended to Claimant's medical needs. At that time, the SLS staffer helped Claimant to drink a beverage. Claimant then slept throughout the night.

14. On October 10, 2021, Claimant awoke soiled. The SLS staffer and a nurse attended to Claimant's hygiene, and he returned to sleep. The SLS staffer communicated with a physician about Claimant's ultrasound and laboratory test results. On this day, Mother staffed the afternoon. Mother brought additional toileting products to the hospital for Claimant. She was present for the administration of an ultrasound procedure on Claimant, and she received updated information on Claimant's condition before leaving the hospital at five o'clock for a dinner engagement. The SLS staffer returned to the hospital for approximately one and one-half hours, during which time the SLS staffer fed Claimant his dinner. Mother returned to the hospital, relieved the SLS staffer, and slept in Claimant's room. After leaving the hospital, the staffer washed Claimant's laundry.

15. On October 11, 2021, Claimant awoke at 4:30 a.m. and then again at 8:30 a.m. Mother notes in Claimant's service records, "[Claimant] seemed to have a pretty good night." (Exh. N at p. 10 [B45].) Mother communicated with physicians about

Claimant's progress; they recommended an additional day of hospitalization for Claimant. Mother fed Claimant his lunch. Mother assisted a nurse with Claimant's toileting and shower. The SLS staffer appeared for the afternoon shift, and Mother left the hospital. The SLS staffer held Claimant while a nurse attempted without success to reattach his dislodged intravenous needle. The SLS staffer asked and received information from the nurse about the administration of Claimant's medication. Mother returned to the hospital for the evening shift. She brought food from her home for Claimant to eat. She slept with Claimant in his hospital room. According to Mother's notations in Claimant's service records, Claimant "had a grand mal seizure in the hospital . . . at 2:09 am, technically Oct. 12." (Exh. N at p. 12 [B47].) Claimant's medical records offered in evidence do not reflect the occurrence of a grand mal seizure. (See Exhs. 16 through 21 and Exh. P.) Among other things, a Physician Progress Note, dated October 12, 2021, states "No issue over night [*sic*]. Pt's [Patient's] mother at bedside." (Exh. 12 [A113] and Exh. P [B213].)

16. On October 12, 2021, Claimant's SLS coordinator joined Mother during the morning shift at the hospital. The SLS coordinator and Mother attended to Claimant's toileting, hygiene, and grooming before offering him the breakfast the SLS coordinator brought for him. The SLS coordinator and Mother were present when nurses administered to Claimant's medical needs. They instructed the nurses how to position Claimant when giving him his medications. They changed Claimant's clothing. They helped Claimant return to his hospital bed. At some point when Mother was not present, the SLS coordinator informed a hospital representative about their expectations Claimant would be discharged that day. When Mother returned to the hospital for the evening shift, she renewed the request for Claimant's discharge. Claimant was discharged against medical advice. The SLS staffer, whom Mother summoned to the hospital, collected Claimant's belongings. Mother ordered a take-

out meal for Claimant; she picked up the food on her way home. At home, the SLS staffer assisted Claimant with toileting. Mother served Claimant dinner.

17. Claimant's SLS Program billed ELARC $2,624.41 for SLS services rendered during Claimant's October 2021 hospitalization.

ELARC Funds Partial Payment for Claimant's SLS Services

18. The regional center does not dispute Claimant's SLS program provided the advocacy, personal care, and physical security services discussed in Factual Findings 11 through 16 to Claimant during his October 2021 hospitalization. The regional center maintained, however, the hospital is expected to attend to all of Claimant's adaptive living skills. Claimant's SLS program administrator presumed, without sufficient inquiry, the hospital was incapable of providing for Claimant's total care. According to the regional center, Claimant's SLS program administrator should have enlisted Claimant's service coordinator to interface with the hospital to determine the hospital's capabilities to support and care for Claimant prior to commencing any SLS services during hospitalization. At hearing Mr. Romero testified, "SLS did not have that collaborative effort they are supposed to promote when connecting with generics."

19. The regional center further maintained Claimant's SLS program cannot bill for SLS services provided to Claimant during his October 2021 hospitalization because Medi-Cal and Medicare funds were available to pay for his care. The evidence offered at hearing did not establish an amount Medi-Cal or Medicare paid, if at all, in connection with Claimant's October 2021 hospitalization.

20. At the conclusion of a May 5, 2022 informal conference with Mother, ELARC determined to pay Claimant's SLS program an amount totaling $1,146.45 for all

SLS services provided to Claimant on October 8 and 9, 2021. Notwithstanding its concerns discussed in Factual Findings 18 and 19, the regional center reasoned, "[Claimant's] SLS [staff] clearly had its hands full during the first 2 days getting everything to a workable point to focus on the claimant's health." (Exh. 14 at p. 12 [A92].)

The SLS Program Administrator's Position

21. Mother disagreed with ELARC's partial funding for SLS services rendered during Claimant's October 2021 hospitalization. Mother emphasized the effects of Claimant's developmental disability require "total care" by individuals knowledgeable about his condition throughout his hospitalization. In support of her position, among other things, Mother offered an April 28, 2022 letter from the physician treating Claimant since 2010. In that letter, the physician opines as follows:

> I am aware [Claimant] was admitted to [the hospital] on Oct 8-12, 2021. When [Claimant] is hospitalized, he needs a trusted, well-known family member or familiar staff with him at all times. He needs someone who knows something about his routines, how he moves, his medical history, and how he communicates.
>
> [Claimant] is non-verbal and not able to advocate for himself. He cannot speak for himself even to answer yes or no if he is in pain. He needs someone who is familiar with his body language.
>
> I would not recommend for [Claimant] to use generic personal support in the hospital. [Claimant] would be upset

and afraid if he did not have a familiar person with him when he is in the hospital.

(Exh. U [B411].) Significant weight is accorded the physician's opinion.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd*. (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Administration* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

2. A "preponderance of the evidence" is usually defined in terms of probability of truth. For example, as evidence that "when weighed with that opposed to it has more convincing force and the greater probability of truth. [Citations]." (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483.) In deciding whether a party has met his or her burden of proof, courts consider both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence, giving full consideration to the negative and affirmative inferences to be drawn from all of the evidence, including that which has been produced by the opposing party. (*Id*. at p.483.)

Applicable Law

3. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institution Code section 4500, et seq., developmentally disabled

persons have a statutory right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4620, & 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (Welf. & Inst. Code, § 4501.)

4. Services and supports for persons with developmental disabilities are defined as "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 independent, productive, normal lives. 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 program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, . . . supported living arrangements[.]" (Welf. & Inst. Code, § 4512, subd. (b).)

5. Regional centers play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing IPPs for the individual with developmental disabilities, taking into

account the needs and preferences of the individual and the family, and promoting community integration, independent, productive, and normal lives, and stable and healthy environments. Regional centers are additionally responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting the goals stated in the IPP and reflect the preferences and choices of the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, & 4648.)

6. Regional centers are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, & 4648.) Regional centers must ensure "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646, subd. (a)(2).) Regional centers must identify and pursue all possible sources of funding for consumers receiving Lanterman Act services and supports. Those sources include, but are not limited to, "Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program." (Welf. & Inst. Code, § 4659, subd. (a)(1).)

Discussion

7. Medi-Cal and Medicare coverage includes inpatient hospital services, skilled nursing services, laboratory tests, diagnostic imaging, screenings, and intravenous medication, among other things. Billing for such coverage typically does not itemize costs associated with a patient's activities of daily living (ADLs), including toileting, bathing, dressing, grooming, eating, or moving from one place to another, during hospitalization. Without proof, as is the case here, whether and the extent to

which the hospital specifically billed for and Medi-Cal or Medicare paid for personal assistance services for Claimant's ADLs is speculative.

8. Given the undisputed effects of Claimant's developmental disabilities, his hospitalization was reasonably foreseeable. Importantly, Claimant's August 9, 2021 IPP, which governs this matter, provides for 24/7 wraparound supported living care in his home and community without any exclusions for hospitalizations. The necessity of total care for Claimant during his hospitalization by individuals knowledgeable about his condition is supported by a preponderance of the evidence in this matter.

9. Claimant has met his burden establishing by a preponderance of the evidence he is entitled to ELARC funds to pay the entire costs for SLS services provided to him during his October 2021 hospitalization.

ORDER

1. Claimant's appeal is affirmed.

2. Eastern Los Angeles Regional Center shall pay the costs of SLS services provided to Claimant during his October 2021 hospitalization in an amount totaling $2,624.21.

DATE:

JENNIFER M. RUSSELL
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.