

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER, Service Agency.**

**OAH No. 2022060419**

**DECISION**

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 24, 2022, via videoconference.

Claimant's mother (mother) was present throughout the fair hearing and represented Claimant. Claimant was not present. (To maintain their privacy, the names of Claimant and family are not referenced.)

Candace J. Hein, Fair Hearing Representative, Westside Regional Center (Service Agency), represented the Service Agency.

Oral and documentary evidence was received. The record remained open to allow the Claimant to file certain specified exhibits and for the Service Agency to lodge objections to those exhibits. Claimant was provided an opportunity to file a doctor's note and the Individual Education Program (IEP) documents from the most recent IEP

meeting which she represented was held in 2022. Claimant represented a doctor's note and documents from the most recent IEP meeting would be filed no later than August 26, 2022. Claimant did not file a doctor's note or documents from the most recently held IEP. Instead, Claimant filed the previous IEP for the 2021-2022 school year, which was marked and admitted as Exhibit 25. Claimant submitted an exhibit which was an email to the Service Agency dated May 20, 2022 with attached documents, including the doctor's note dated September 13, 2021, [applicable "until 2022"], the IEP for the 2021-2022 school year, and an unintelligible attachment letter which was marked as Exhibit C-11. Service Agency objected to this exhibit and it was duplicative of other exhibits, (Exhibit C-3-A, September 13, 2021 medical note, Exhibit C-10, the September 24, 2021 IEP). One attachment was very unclear but appeared to be a duplicate of mother's written statement (Exhibit C-3-C). Claimant submitted a directive from the Department of Developmental Services dated August 26, 2022, extending the Covid-19 extension of waivers, modifications and directives, which was marked and admitted as Exhibit 27 (as official notice) over the objection of Service Agency. The Service Agency lodged objections and further closing argument which was marked and lodged as Exhibit ALJ-3. (The respective exhibit lists of Service Agency and Claimant were marked as ALJ-1 and ALJ-2.) Service Agency submitted an additional exhibit which was marked and admitted as Exhibit 18.

The record was closed, and the matter submitted on August 31, 2022.

## **ISSUE**

Is the Service Agency obligated to continue Covid-19-related specialized supervision services and support hours for remote school videoconference instruction during 2022-2023 school year and extended school year?

## **SUMMARY**

Service Agency denied Claimant's request for specialized supervision services and support hours (Covid Hours) for remote school videoconference instruction for the 2022-2023 school year and Extended School Year (ESY). Service Agency maintains it is not mandated to continue to supply these hours by the directives issued by the Department of Developmental Services to fund services for remote instruction during school closures. Service Agency has relied on Claimant's medical doctor to advise whether Claimant should remain in the home and be provided Covid Hours for a personal assistant to facilitate his access to his education remotely. After in-class instruction resumed in the fall of 2021, Claimant's medical doctor provided support for continued remote learning "until 2022." Service Agency funded Covid Hours through ESY 2022. Claimant failed to provide medical documentation to support continuation of Covid Hours after the 2021-2022 ESY. In addition, during the fair hearing Claimant failed to provide sufficient evidence of remote attendance at a school district educational program or another educational program with satisfies Claimant's high school educational requirements.

Claimant maintains Service Agency must continue to fund Covid Hours for the 2022-2023 school year because Claimant's medical condition is unchanged, and the dangers of contracting Covid-19 are more severe for him than the general population. Claimant also maintains that Covid Hours must continue as aid paid pending.

The weight of the evidence does not support the continuation of Covid Hours for the 2022-2023 school year and ESY. Claimant failed to provide support from his medical doctor for continuation of Covid Hours for remote educational instruction.

Claimant also failed to provide documentary evidence of a remote educational program that satisfies Claimant's high school curriculum requirements.

The weight of the evidence supports aid paid pending Covid Hours for 2021-2022 school year and 2022 ESY and for speech and language services provided by the school district for the 2022-2023 school year. The Individual Program Plan (IPP) provides Covid Hours for dates within the 2021-2022 school year, but not the full school year or ESY. Claimant signed a Notice of Resolution of this matter "without prejudice" to proceed to fair hearing on the issue of whether Covid Hours should be continued. As written, the fair hearing issue was not limited to the 2021-2022 school year and 2022 ESY. Under the Lanterman Act a Notice of Resolution terminates aid paid pending. Service Agency complied with aid paid pending for the 2021-2022 school year and ESY but has not funded Covid Hours for the 2022-2023 school year which started on August 22, 2022.

Based upon the evidence, Service Agency's communication to mother on May 6, 2022 stating aid paid pending would continue was consistent with its decision to fund the remainder of the 2021-2022 school year and ESY. Mother signed the notice of resolution "without prejudice." Service Agency filed the NOR with OAH, but based upon the stipulated issue at hearing, the parties proceeded to fair hearing with the understanding mother was contesting Covid Hours for the 2022-2023 school year and 2023 ESY.

Under typical circumstances, aid paid pending would apply to any service being provided in the Individual Program Plan. (IPP). However, the service in Claimant's IPP for Covid Hours were designed as emergency measures funded by the regional centers (instead of school districts) for remote instructional education when school districts were closed and were not designed to be an ongoing obligation of the regional

centers when schools reopened. Covid Hours were renewed on a periodic basis throughout Claimant's 2021-2022 school year as a way to review the status of Covid Hours. Here, the evidence established mother has withdrawn Claimant from his assigned school district classroom, and the only instruction or service Claimant is receiving remotely from the school district is speech and language. As such, the Covid Hours in the IPP were limited to remote educational instruction from the school district. Claimant is not currently accessing the classroom remotely. As such, after 2022 ESY, aid paid pending applies only to the speech and language services offered by the school district and accessed by Claimant remotely. For those reasons, Claimant's appeal is denied.

## **EVIDENCE**

The following evidence was considered in this decision, as either direct evidence or administrative hearsay as noted in the record or exhibit, whether or not the evidence was expressly cited: For the Service Agency, Exhibits 1 through 18 and the testimony of Martha Thompson, Program Manager, Service Agency and Candace J. Hein, Fair Hearing Representative; For the Claimant, Exhibits C-2(1,2,3), C-B, C-3 (A,B,C), C-4(B,C), C-5, C-6 (1,2), C-7, C-8(A),C-10,C-12 and the testimony of Claimant's mother, Rubi Saldana, family friend, Elizabeth Barrios Gomes, Director, Integrative Community Collaborative, and Dora Contreras, family friend, retired school teacher, school principal and volunteer with Integrative Community Collaborative

## **Background and Jurisdictional Matters**

1. Claimant is currently 17 years old and entering his senior year in high school. He was made eligible for services under the Lanterman Act as an individual

with diagnoses of cerebral palsy and mild intellectual disability. In addition to those diagnoses, Claimant also has obstructive hydrocephalus and a shunt that has to be monitored closely.

2. Claimant's educational placement has been in a special day program on a general education high school campus. Claimant attends a public high school and until the 2022-2023 school year had been receiving special education services through his local school district under the eligibility category of other health impaired. As reported in the IPP and IEP, and in excerpts provided by claimant of his neuropsychological independent educational evaluation (IEE), Claimant's goal is to graduate high school with a diploma and to attend college. Claimant was successful academically with distance learning. (Ex. C-10.) Nevertheless, Claimant's deficits in a range of areas are persistent and severe: communication, including initiating and maintaining conversations with peers, social skills, self-care (equivalent to five years of age), health and safety skills (household safety rules, carrying breakable items); community-independence skills (equivalent to five years of age) and independence. (Ex. C-6 (1,2) and C-6-2, and C-10.)

3. Claimant lives with his family of two parents, and two same-aged siblings who were born with Claimant as triplets. Claimant's other siblings are neurotypical and are currently attending school in-person. Claimant's father works full-time as an architect. Mother works part-time with her spouse's architect business, but otherwise is the primary caretaker. Claimant qualifies and receives In-Home Support Services (IHSS), respite services and other personal assistant services for community integration and had been receiving Covid Hours on average of six hours per day on each school day until the end of ESY 2021-2022. The Covid Hours were reported in the most recent IPP addendum. (Ex. R-17.) Mother's sister and nephew died from Covid-19 and their

death has been difficult for the family and has informed mother's concern for Claimant's health and welfare.

4. On March 24, 2022, Service Agency issued a Notice of Proposed Action (NOPA) advising Claimant it was discontinuing Covid Hours for remote school instruction within 30 days. Service Agency maintained mother did not submit proper documentation supporting the Service Agency's qualifying criteria for Covid Hours. (Ex. R-3.)

5. On April 11, 2022, Claimant timely filed a request for fair hearing.

6. In early May 2022, Claimant and Service Agency participated in an informal meeting where they discussed Covid Hours for ESY (summer2022). Service Agency continued its funding and extended Covid Hours for the 2021-2022 school to June 30, 2022. Service Agency stated it was inclined to fund Covid Hours for the 2021-2022 ESY but could not confirm Claimant's attendance. (Ex. R-4.) The Covid Hours through 2022 ESY were memorialized in an addendum IPP held on May 9, 2022. (R-10.) In addition, in a May 10, 2022 communication to mother, the Service Agency represented it would continue Covid Hours as aid paid pending. (R-18.)

7. The evidence established Service Agency paid for school year 2021-2022 and ESY 2022. (Ex. R-15.)

8. At the informal meeting Service Agency represented its commitment to Claimant was limited to the 2021-2022 school year. At that time, Service Agency represented: "For the next school year, 2022-2023, we are not able to assess the need for support hours for in-home instruction since we cannot anticipate if the pandemic will affect in-school instruction during that time." (Ex. R-4.)

9. Claimant withdrew the fair hearing request “without prejudice” and executed a Notice of Resolution (NOR) on May 6, 2022. The Service Agency filed the NOR with OAH on May 13, 2022 without the case number. The confirmation of filing stated it was the signed NOR and accurately identified the fair hearing request as “re ESY and Specialized Supervision on May 13, 2022.” (Exs. R-4, R-5, R-6 and R-7.)

10. In July 2022, the dispute was continued by agreement of the parties to August 24, 2022. (Exhibit R-2; the notice contained the wrong case number.) At the outset of the fair hearing, Claimant and Service Agency stipulated to the issue to be addressed at the fair hearing, limiting the dispute over Covid Hours to the 2022-2023 school year and ESY.

11. All jurisdictional requirements for this matter to proceed to fair hearing have been satisfied.

### **Claimant’s Request for Specialized Covid-19 Supervision for Remote Instruction**

12. The 2022-2023 school year started on August 22, 2022. (Mother’s testimony.) After the end of ESY, Service Agency no longer supplied Covid Hours to support at-home instruction on zoom. Claimant receives school-based speech and language services over zoom for approximately 60 minutes a week (Ex. C-10.) Mother has retained a private tutor and has been relying on other personal assistant services she receives from Service Agency to monitor Claimant when he is on zoom with the tutor. It was not clearly established if the tutor is providing the same instruction Claimant would have received in class or what curriculum is being used.

13. This dispute concerns the continuation of benefits to Claimant from the Department of Developmental Services “Directive on Requirements Waived Due to



Covid-19” (the Directive) which was initially distributed on March 12, 2020 but extended every thirty days. (Ex. R-8.) In the Directive the regional centers were authorized to waive certain provisions of the Lanterman Act recognizing “there may be instances where regional centers will need flexibility to support individuals at home for their safety and that of the general population.” (*Ibid.*) The Directive mentions with specificity certain categories where exemptions shall be applied, including rate Health and Safety Waiver Exemptions to allow for rate differentials in residential settings. Although the specialized services in dispute here are not expressly mentioned, the Service Agency interpreted the Directive’s above quoted guidance as providing flexibility in its dissemination of services during the Covid-19 pandemic. The waiver has been renewed over time, most recently on August 26, 2022. (Ex. C-12.)

14. Service Agency representatives provided credible testimony of its practices in using Covid Hours for remote learning. Martha Thompson, a program manager for the Service Agency, with substantial experience with Service Agency clients and services, including Covid-related services, explained the rationale for Service Agency support of remote learning. Schools were closed during the early months of the pandemic and when the school districts began offering remote learning, Service Agency clients, could access remote learning only with the additional support provided by personnel guiding them during school hours at home. Personnel were typically funded for six-hours for each school day with the funding renewed every two to three months. A sub-code was provided to fund and account for the hours. Service Agency included the school ESY hours in a budget code 28, which included other supervision hours for community socialization and admittedly could be confusing. (Exs. R-11, R-15.)

15. Service Agency provided Covid Hours during the 2020-2021 school year when Claimant's school was only providing remote learning and continued to fund the 2021-2022 school year after on-site learning recommenced in fall 2021. (Ex. R-9.) At the time of the IPP on April 19, 2021, mother still did not feel it was safe for Claimant to return to school and planned to continue remote learning. Mother admitted it was difficult for Claimant to keep up with his peers and learn from home because he requires multiple prompts to stay on task. (Ex. R-9.)

16. Service Agency's general practice is to terminate funding when school districts returned to on-campus learning. Service Agency made an exception and has continued Covid Hours for consumers whose physicians requested remote instruction continue due to a medical condition, especially conditions that compromise a patient's immune system. Service Agency did not supply a written protocol stating this requirement. However, Service Agency's practice of requiring medical documentation was consistent with documentation provided by Claimant to support Covid Hours during the 2021-2022 school year.

17. The school district resumed in-person instruction by September 2021. of the during the 2021-2022 school year. Service Agency continued to fund Covid Hours for remote instruction during the 2021-2022 school year based upon the medical note provided by Claimant's primary physician. On September 13, 2021, via a televisit appointment, Winnie Chung, M.D. of Wellkids Pediatrics wrote: "This patient needs to be excused from school until 2022 due to his multiple health condition[s]. Parent and patient do not feel safe to be in school during the pandemic." (Ex. C-3-A.) Claimant also submitted as an exhibit an additional medical note written on behalf of neurological surgeons Tien T. Nguyen, M.D. and Onechang W. Lee, M.D. of the Orange County Brain & Spine Group, by Brian Van, Physician Assistant, Neurological Surgery,

but it is unclear whether this note was submitted to or considered by the Service Agency to support Claimant's request for the 2021-2022 school year. (Ex. C-5.) In his letter dated September 14, 2021, Mr. Van, states: "He has had a history of hydrocephalus and experiences intermittent headaches. Due to his condition as well as COVID, we allow him to proceed with home schooling for the rest of the year." (*Ibid.*) Both medical notes applied only to the time period up to 2022, or through December 31, 2022. Nevertheless, as a resolution of their dispute, the Service Agency funded Covid Hours for the entire 2021-2022 school year and 2022 ESY.

18. Service Agency requested Claimant provide a doctor's note to justify Covid Hours for remote instruction during the 2022-2023 school year based upon Claimant's medical condition. In May 2022, Service Agency also requested supporting documentation from the school district confirming home schooling as an accommodation and how the district applied the recommendations from the doctor for Claimant to be home schooled. (Ex. R-18.) Service Agency never received a note from any medical professional treating Claimant for the 2022-2023 school year. Service Agency had been provided the September 24, 2021 IEP, but that IEP did not specify at-home accommodations but placement in a special day class. (Ex. C-10.) According to Ms. Thompson, Claimant may have a compromised immune system that prevents him from going to school in-person, but Service Agency requires a physician make that determination. (Thompson testimony.)

## **Claimant's Evidence**

19. Mother understood Service Agency's requirement of a physician's note but did not comply. (Exs. C-5, R-18.) During the fair hearing, she took the position she "ran out of time." Mother was given the opportunity by the administrative law judge to provide a physician's note for the 2021-2022 school year within seven to 14 days of

the conclusion of the fair hearing. Mother insisted she needed only one or two days to submit the requested documentation. However, instead of providing a physician's note for the 2021-2022 school year, Mother instead resubmitted the note of Dr. Chung which applied only to the 2021-2022 school year through December 31, 2021.

20. Mother's concern for Claimant is sincere and heartfelt. It is her position a new physician's note is not required due to Claimant's life-long medical condition of hydrocephalus. She also finds support for her position from what she views as inconsistent policies of the Service Agency, Claimant's Mexican heritage and the statistical record of Latinos being harder hit by Covid than non-Latino whites, and an alleged equitable disparity in services to Latinos by the regional centers and school districts. Although mother raised important policy concerns about equity for consideration by the Department of Developmental Services, these concerns are outside the scope of the issues to be considered in a fair hearing under the Lanterman Act.

21. Mother's testimony was consistent with her written statement dated May 19, 2022, which was admitted as direct evidence (with the date of 2021 corrected at mother's request). (Ex. C-3-C.) Mother insists Claimant's medical condition is unchanged and as such, he is entitled to the same Covid Hours for remote learning for the 2022-2023 school year as he had been receiving. Mother has been diligent with Claimant's vaccination regiment and he is up to date with vaccinations. However, Covid-19 is still prevalent and as such, Claimant's health and safety remains at-risk. Mother is concerned "attending in-person school will put him in danger of getting severely ill and potentially ending up in the hospital." (Ex. C-3-C.) She acknowledges she is forced to choose between "my son's education and protecting his health."

Mother and the family have been traumatized by the death of her sister and nephew from Covid. (*Ibid.*)

22. Mother also acknowledged Claimant was not content staying at-home while his same-aged siblings go to school. He questions why he is not going to school, especially after his siblings return from their day at school and share their experiences.

23. Mother was questioned during the hearing about Claimant's current educational status. Claimant is not receiving any formal remote instruction from the school district for the 2022-2023 school year which started on August 22, 2022. He is not receiving home-hospital instruction which is used for medically-fragile students. He is not formally enrolled in any school district-sponsored on-line educational program. Mother retained a private tutor, and Claimant is accessing the tutor through zoom. Mother is seeking another placement from the school district, possibly a nonpublic school for Claimant and, although not clear from mother's testimony, the tutor may be using the nonpublic school curriculum. At the time of the hearing mother had been using other personal assistant services she receives from Service Agency to provide assistance to Claimant during remote instruction; however, it is unclear the number of hours required for the tutor-driven remote instruction. Claimant is still receiving remote speech and language services from the school district at a rate of about 60 minutes a week.

24. Based on mother's testimony, it appeared mother had participated in an IEP team meeting held after the last IEP of September 2021 and is engaged in a dispute with the school district about Claimant's educational placement. Mother has not requested the school district provide any assistance for remote learning.

25. Mother, through the testimony of Elizabeth Barrios Gomez, a director with Integrative Community Collaborative, an organization which helps families navigate disputes with regional centers, maintained the regional center based its decision on an inconsistent policy regarding supervision services for remote learning. There is no written protocol requiring a doctor's note to support continued supervision services for remote learning and Ms. Gomez does not recall any meeting where mother was asked to provide a doctor's note. Ms. Gomez attended meetings with mother and others and noted the difficulty in dealing with Service Agency. Ms. Gomez does not recall any other person being asked to provide a new note. There were other service issues between Claimant and Service Agency which were the subject of meetings which Ms. Gomez attended and to which Ms. Thompson testified in rebuttal. These other issues were not relevant to the fair hearing issue but clearly created an environment of distrust.

26. Mother was supported by the testimony of her long-time friend and fellow volunteer at Integrative Community Collaborative, Dora Contreras, a retired school teacher and school principal with a disabled grandson in her care. She spoke of her disabled grandson, 30 years of age, who contracted Covid and whose lungs were severely compromised. She was concerned of the disparate impact of Covid on her population group. She understood mother's concern and struggle to keep her son healthy and Covid-free.

27. Mother was also supported by the testimony of Rubi Saldana, a friend of the family, who has known them for five years and shares an understanding of her struggles securing assistance from her own experience as a mother of two children with Autism. She shared her observations of Claimant as someone who is more fragile and requires Covid Hours. She shared her disappointment with the Service Agency's

position and her view from her attendance at a meeting with the Service Agency and Mother of their wrongful reduction of services. (Other services mentioned are not at issue in this fair hearing). She shared her attendance at a community meeting about regional center services where a commitment was made to the attending parents, they would get help during Covid by contacting the regional centers.

28. Overall, Claimant's witnesses attested to Mother's sincere and deep-seated concern about Claimant's safety and welfare and Claimant's disabilities. They also expressed genuine concern for the lack of written guidance or protocols for remote learning, including the requirement of a note from a medical provider. Claimant's witnesses stated valid concerns. Service Agency's NOPA of March 24, 2022, attached to Claimant's request for continued services focused on proof both parents were working. (R-3.)

29. Nevertheless, mother was well aware of the need for support from her medical providers as she had provided the note from at least one doctor to support the continuation of Claimant's remote schooling at the start of the 2021-2022 school year.

30. Claimant's witnesses were not medical providers who could attest to Claimant's exceptional physical vulnerability during the 2022-2023 school year and ESY. Mother clearly did not obtain the support of her medical providers for remote instruction due to a compromised immune system during the 2022-2023 school year.

31. As such, Service Agency appropriately exercised its discretion to terminate funding for Covid Hours for remote learning pursuant to the Directive.

## LEGAL CONCLUSIONS

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. (Code §§ 4700-4716.)<sup>1</sup> Claimant's family timely appealed the service agency's decision to terminate an existing service, and therefore jurisdiction exists for this appeal. (Factual Findings 1-10.)

2. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) Here, the service agency is seeking to change the services it offered and as such has the burden of proof. Here, the operative IPP provided Covid Hours, and as such, the Service Agency bears the burden of proof.

3. The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.) 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.) The Service Agency met its burden of proof.

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.



## **Aid Paid Pending**

4. Claimant has styled the fair hearing request as an aid paid pending request, claiming the Covid Hours for remote learning should have been continued through the fair hearing and for the 2022-2023 school year. The Service Agency disagrees based upon mother's execution of the NOR and the filing of the Notice of a Notice of Resolution with OAH on May 13, 2022. (Factual Findings 9-10.)

5. The Lanterman Act provides specific criteria for aid paid pending. Pursuant to section 4715, subdivision (a) (1), services that are being provided pursuant to the Claimant's IPP during the appeal procedure up to and including the 10th day after the receipt by the service agency, following an informal meeting, of the withdrawal of the fair hearing request pursuant to section 4710.9. Based on the evidence aid paid pending was terminated during the 2022-2023 school year, but Service Agency nevertheless agreed to fund that entire school year and ESY. (Factual Findings 6-10.)

6. Code section 4710.9, subdivision (a) provides if the consumer is satisfied with the decision of the service agency following the informal meeting, the decision of the service agency shall go into effect 10 days after the receipt of the withdrawal of the request for fair hearing by the service agency. Otherwise, if an appeal has been timely filed, and the matter proceeds to fair hearing, pursuant to section 4715, services provided pursuant to an IPP shall continue during the appeal process until up to and including 10 days after receipt of the final decision of the hearing officer (subdivision (a) (3)), unless an agreement between the parties is reached on the modification of services (subdivision (b)) or a stay of enforcement is obtained by a court of competent jurisdiction after an appeal (subdivision (c).)

7. Claimant and Service Agency reached agreement on the 2021-2022 school year and 2022 ESY at or after the informal meeting and mother executed the NOR "without prejudice." Service Agency filed the NOR with OAH. However, although Service Agency filed the NOR with OAH, the matter was not closed but proceeded to fair hearing on the stipulated issue of funding for Covid Hours during the 2022-2023 school year and ESY. Generally, under these circumstances Covid Hours would continue as aid paid pending. However, the Covid Hours in the IPP, consistent with the Directive, were directly related to remote instruction from the school district. Here, Claimant is not receiving remote educational instruction from the school district. He is only received speech and language services. As such, aid paid pending only continues for remote speech and language services.

### **Relevant Provisions of the Lanterman Act**

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

9. Services and supports "means specialized services and supports or adaptations of generic services and supports directed toward the alleviation of the developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with a developmental disability...and shall include, but are not limited to, the diagnosis, evaluation, treatment, personal care, daycare, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling... ." (Code § 451, subd. b.)

10. Other generic sources of funding including government, such as Medi-Cal, Medicare, school districts, federal supplemental security income, and other entities or programs should be used prior to accessing regional center services prior . (Code § 4659.)

11. At the beginning of the Covid-19 pandemic, the Department of Developmental Services by reason of the Directive, departed from the requirement that other sources, including school districts, should be responsible for the provision of services prior to the Service Agency. Relevant here is the school district's obligation to provide all education-related services. During the sudden school closures of the Covid-19 pandemic, educational services by necessity were remote. As such, regional centers were provided additional funding to provide emergency services including Covid Hours. As the pandemic progressed, vaccines and testing became available and more was learned about Covid-19, public schools gradually re-opened with Covid-19 procedures and protocols in place. Here, by reason of the factual findings, there is insufficient evidence Claimant has a medical condition requiring him to remain home and access his education remotely. Although mother's concern is valid, Claimant did not provide medical support for his continued isolation in his home, medical support that was forthcoming during the 2021-2022 school year, up until December 31, 2021. It was clear from Claimant's medical providers their support for continued remote learning was limited to year-end 2021.

## **Disposition**

12. Mother's concern about Claimant's health, safety and welfare, is genuine and understandable. Claimant has known and acknowledged medical conditions. Covid-19 is a continuing presence and there is always a risk of exposure and illness.

13. The Directive was designed to support remote instruction and during the early months of the Covid-19 Pandemic, supplanted the general principle of relying on other resources before using regional center resources.

14. The renewal of the Directive, by itself, does not support Claimant's request. Under the Directive, Service Agency has the discretion to use its resources: "there may be instances where regional centers will need flexibility to support individuals at home for their safety and that of the general population."

15. There is insufficient evidence the Service Agency failed to apply the Directive fairly and appropriately to Claimant's circumstances. It is true Claimant has a serious medical condition. However, once school reopened Service Agency required medical support for his continued isolation due to his medical diagnosis. This was a reasonable request which mother understood and honored during the 2021-2022 school year.

16. Service Agency was reasonable in requesting a new medical note for the 2022-2023 school year. Dr. Winnie Chung, M.D. of Wellkids Pediatrics did not issue an open-ended prohibition against in-school learning. She limited it to "until 2022," o Mother had ample opportunity to obtain another note for Dr. Chung or another treating physician but did not.

17. Mother is entitled to elect to continue to keep Claimant home and to minimize Claimant's risk of contracting Covid-19. However, without medical documentation, there is insufficient evidence his medical condition has compromised his immune response to such a degree, especially after vaccination, to justify the Service Agency's expenditure of discretionary funds to keep him educated in the home regardless of his school placement and access to other resources. Further, aside from

speech and language, Claimant's current instruction is not a remote school district program but until her dispute with the school district is resolved a private arrangement mother selected.

18. Claimant's appeal is denied.

### **ORDER**

1. Claimant's appeal is denied.
2. Claimant is entitled to aid paid pending to access the school district's speech and language services consistent with the Lanterman Act.

DATE:

EILEEN COHN

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.