

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

In the Matter of the Fair Hearing Request of

CLAIMANT,

and

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022070212

DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 30, 2022, by videoconference.

Claimant was represented by his mother, and his authorized representative, Marlene Lueck, StandOut Advocates. North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Christine Aguirre, Fair Hearing Representative.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on August 30, 2022. Thereafter, on September 9, 2022, the

ALJ ordered the record re-opened until September 16, 2022, so that the Service Agency could place Claimant's Individual Program Plan (IPP) from 2021 in the record. That document is received as exhibit SA 22, there being no objection to it.

The record again closed, and the matter was submitted for decision on September 16, 2022.

ISSUES PRESENTED

At the outset of the hearing, and after discussion with the parties, the ALJ posited three issues, interrelated, raised in this matter. First, is the 2021 IPP binding on the parties. Second, should it be modified, including by the addition of Adaptive Skills Training (AST). Third, should reimbursement be ordered for Claimant's parents, who have been paying for Claimant's services since the parties could not agree on an IPP or on a Self Determination Program budget. These three issues are related to the Service Agency's action of not funding services for Claimant under the SDP, which Claimant desires for a second year.

EVIDENCE RELIED ON

In reaching this decision, the ALJ relied on documentary evidence, which includes Service Agency's exhibits 1 through 22, and Claimant's exhibits 1A through 20. Because both parties used numerals, citations to the documents in this decision will be preceded by the prefixes SA or CL. Further, Claimant submitted two exhibits numbered 1, two exhibits numbered 2, and two exhibits numbered 3. Those will be further identified as exhibits CL 1A and CL 1B, etc.

Testimony of witnesses was also relied upon, specifically Verena De Muro, Sylvia Renteria-Haro, Arpi Arabian, Ph.D., Mellisa De Conza, Ph.D., and Claimant's parents.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant is a boy who recently turned 16, who receives services from NLACRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act or the Act), California Welfare and Institutions Code, section 4500 et seq. (All further statutory citations are to the Welfare and Institutions Code unless otherwise noted.) He is eligible for services because he has Autism Spectrum Disorder (ASD), an eligible condition under the Act.

2. On or about June 9, 2022, the Service Agency issued a Notice of Proposed Action (NOPA) to Claimant. It proposed denial of SDP, and it stated that the reason for the action was "proper documentation for review of services." (Ex. SA 1, p. A10.) The NOPA stated the effective date of the action was June 1, 2022.

3. On the same day that the NOPA issued, Claimant's service coordinator sent a letter to Claimant's parents (the NOPA letter). It stated the NOPA letter was in response to the parents' request, during a May 3, 2022, IPP and SDP meeting, to continue certain services through SDP. Those services were stated to be In Home Personal Assistance, 15 hours per week for a year; In Home Day Care Services 25 hours per week for a year; In Home Day Care services eight hours per day for non-school days for one calendar year; Social Skills Training services six hours per month for one year, and Respite Services, 48 hours per month. The letter noted that Mother asserted, during the IPP meeting, that there was an unmet need for AST and Summer Camp

services. The NOPA letter stated further that it was meant to inform Mother that the Service Agency was “not in agreement to add the following services for a full year.” (Ex. SA 1, p. A8.)

4. The NOPA letter then discussed the issue of the Service Coordinator’s request for documentation to support the need for continued services. The letter noted that at a follow-up meeting on May 23, 2022, Mother provided documentation pertaining to Claimant’s receipt of In-Home Supportive Services (IHSS), and it was noted Mother was using the IHSS services at night. The Service Coordinator stated that she had requested medical documentation from Mother that would support the need for overnight supervision.

5. On June 15, 2022, the Service Agency received Claimant’s Fair Hearing Request (FHR). In the section of the FHR that asks for the reasons for the hearing request, Claimant’s mother stated the Service Agency was refusing to certify Claimant’s budget unless she signed a budget that removed “almost all the supports and services my son currently has. I do not agree and my sons (sic) budget is being withheld unless I sign. We asked for Adaptive skill at our 2021 budget meeting and yet they have done nothing to support that goal.” (Ex. SA 1, p. A7.)

6. The remedy sought by Claimant was to have Claimant’s 2021 budget carried over to 2022 until the Service Agency had the adjusted amounts approved for the AST services to become part of the package of services.

7. The Service Agency submitted the FHR and related documents to OAH so that the matter could be set for hearing, and this proceeding ensued. All jurisdictional requirements have been met.

Claimant's Background

8. As previously found, Claimant suffers from ASD. The record also indicates he has Attention-Deficit-Hyperactivity-Disorder, combined type (ADHD), reportedly diagnosed in 2012. (Ex. SA 3, p. A214.) Claimant lives within the Service Agency's catchment area with his parents, younger sister and younger brother. Father works for a finance services company, and his job requires a significant amount of travel, taking him away from the home several days at a time, often week after week. For example, during Claimant's 2021 IPP meeting, Father was travelling in the United Kingdom (Ex. SA 22, p. A224.) Father participated in the Fair Hearing from the mid-west, first from a car, and then from a hotel in Chicago. He testified to being in some 23 cities in a three-month period. Mother is self-employed as an advocate for developmentally delayed and other disabled persons, such as those in need of special education services.

9. Claimant's history was set out in a December 5, 2021 AST assessment report. It states the diagnoses noted above, and that Claimant had 10 years of behavioral interventions, which ended in 2019 due to a desire for a break in the services, and the interference of the pandemic.

10. In March 2019 the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3) was administered to Claimant, with Mother as the reporter. (Ex. CL 3B.) The Vineland-3 is a standardized measure of adaptive behavior, relied upon by psychologists, educators, and others to gauge a person's adaptive behavior skills and level.

11. The results of the Vineland-3 showed Claimant's overall level of adaptive functioning, or his composite score, was a 68, placing him in the second percentile. On

the three specific behavior domains, his scores were 77 for communication; 65 for daily living skills; and 62 for socialization. The score for communication placed Claimant in the sixth percentile, while the other scores each placed him in the first percentile. (Ex. CL 3B, p. B42.) The subdomain scores were low as well. For example, in the daily living skills domain, domestic skills had a raw score of 9, with an age equivalent of less than three years. In the three subdomains of the socialization domain, Claimant's age equivalency for interpersonal relationships and play and leisure were three years, eight months, while the subdomain for coping skills was less than two years. (*Ibid.*, at p. B44.)

The 2022 Multidisciplinary Testing by Claimant's School District

12. Claimant has been provided special education services by his school district for many years. According to Mother, he was being bullied when he attended a public school, and he is now provided such services at a non-public school. Between March and early May 2022, his school district conducted a multidisciplinary assessment of Claimant, and issued a report. The report is Claimant's exhibit 18. While the assessment date is stated to be May 5 on the first page, no report date is filled in on that page. Various parts of the report show testing or assessment before May 5, 2022. For example, the section of the report pertaining to occupational therapy (OT) shows a testing date of March 14, 2022. (*Id.* at p. B124.) The speech/language section refers to an email sent to Mother on May 10, 2022. (Ex. CL 18, p. B133.) It is inferred the report was issued sometime after May 10, 2022, but in any event, the assessments are recent, and they are illuminating.

13. An IQ test was administered to Claimant, the Wechsler Intelligence Scale for Children-V (WISC). Claimant's full-scale IQ was 102, solidly average. The verbal comprehension score was 95, the perceptual reasoning score was 102, the score for

processing speed was 94, and working memory was a strong point, with Claimant scoring 120, which is very high. (Ex. CL 18, pp. B118-B119.)

14. In the area of self-help and adaptive skills it was reported, based on observations, interviews, and documents, that Claimant's ability to care for his needs at school was age-appropriate, and he was able to follow school routines, take care of personal hygiene, and ask for help. The author of the report stated Mother related that at home Claimant sometimes needed reminders about hygiene and dressing appropriately. (Ex. CL 18, p. B122.)

15. The report assessed social-emotional and behavioral issues, the author relying on some test instruments, interviews with members of Claimant's team for his Individualized Education Plan (IEP), an observation of Claimant and an interview of Claimant. His teacher's responses on some test instruments yielded scores closer to average than Mother's responses, which indicated, for example, significant atypicality and withdrawal at home, while his teacher rated such as average. (Ex. CL 18, p. B124.) Mother related a situation where Claimant began perseverating on a favored computer game character becoming a demon, which impacted Claimant's sleep and ability to play games alone in his room. (Playing computer games in his room is indicated to be a favored activity in other parts of the record.) Increasing Claimant's medication improved his condition. Mother did report that Claimant had a core group of friends at school, and that he was doing well there. His greatest challenge was meaningful pragmatic language and thought rigidity. (*Id.*) On one rating scale, his teacher described behaviors often associated with ASD, such as Claimant insisting on certain routines and doing things the same way each time, and Claimant becoming upset if routines were changed.

16. Tests designed to assess depression and anxiety were administered. Claimant's scores fell into the "not problematic" range. (Ex. CL 18, pp. B125-B126.)

17. Notwithstanding the teacher's observations that Claimant tended to adhere to routines, during the OT evaluation the evaluator noted Claimant transitioned easily to testing, was talkative throughout, and initiated conversation with the evaluator. (Ex. CL 18, p. B128.) The evaluator's observations in the classroom showed Claimant worked with his teacher, and used his computer independently, typing with both hands. At the end of the class, Claimant packed his backpack and walked with other students to lunch, where he sat with two other students and watched videos on a phone. (*Id.*)

18. The OT assessment revealed Claimant's fine-motor skills are average, and he has superior visual motor skills, along with average visual spatial skills. His handwriting is legible, and he can type at speeds from 26.6 to 40.6 words per minute. His sensory processing needs are met through accommodations which allow for frequent breaks, warning for changes, earbuds to cancel out noise, and flexible seating. And, it was found Claimant is independent with all self-care tasks involved in the school setting. (Ex. CL 18, p. B130.)

19. A speech/language pathologist, Missy Coe, M.S., CCC-SLP, observed Claimant on March 31, 2022, both during a break in classes and in the classroom. During the break, Claimant sat with another student, watching something on his laptop, and the two were speaking and commenting on what they were watching; after three to five minutes another student joined them. The boys' comments appeared appropriately tied to the video they were watching. After the video ended, the boys continued talking until the break was over, and Claimant got up right away and went to class. Ms. Coe reported "the observation was considered typical of what would be

expected of a student with his/her peers during a break between classes.” (Ex. CL 18, p. B131.)

20. Ms. Coe conducted testing on April 5, 2022. The speech/language pathologist used standardized test instruments and made observations. She noted that Claimant was polite, cooperative, followed directions, thought about his answers, and made eye contact during the testing process. He would ask her for clarification or repetition if he needed it. He demonstrated the ability to initiate and maintain short conversations. (Ex. CL 18, p. B132.)

21. One of the test instruments used by Ms. Coe was the Comprehensive Assessment of Spoken Language, Second Edition, or CASL-2. It is used to evaluate oral language skills. One part of the test measured Claimant’s ability to recognize synonyms, another measured Claimant’s ability to recognize the meaning of an unknown word from its context. Other language skills were assessed as well. Claimant’s overall language ability index yielded a standard score of 93, in the average range. (The mean on the test is 100.) The synonyms score was 102, and Claimant’s score for sentence expression was 105. The lowest scoring index, pertaining to ability to take meaning from context, was 91, still in the average range. (Ex. CL 18, p. B133.)

22. However, Claimant’s performance on a different test, the Social Language Development Test was not as strong as his performance on the CASL-2. The total index score was an 88, deemed below average, in the 21st percentile. His scores on the parts of the test that focused on making inferences, and interpreting social language, were low, placing him in the ninth and sixteenth percentiles, respectively. Claimant’s strong suit was interpreting ironic statements, where he was in the 63rd percentile. (Ex. CL 18, p. B135.) Overall, the test results indicated Claimant is mildly impacted in the areas of making inferences and interpreting social language. It was noted that in 2019,

Claimant had scored 102 on the Social Language Development Index, in the 55th percentile. Thus, his overall score on this test had declined nearly a standard deviation between 2019 and 2022. (*Ibid.*, at p. B137.)

23. Another test instrument utilized by Ms. Coe was the Clinical Evaluation of Language Fundamentals, Fifth Edition, or CELF-5. On the Pragmatics Profile, which measured culturally appropriate use of language for conversation, to ask, give, or respond to information, and to demonstrate and interpret nonverbal communication, Claimant's scores were well below average, falling in the first percentile, or lower. (Ex. CL 18, pp. B 137-138.) His articulation and fluency were within normal limits.

24. Ms. Coe wrote a summary of her testing where she stated that the low score on the CELF-5, and another test, along with teacher input, showed Claimant continued to be eligible for speech and language services from the school district to address social/pragmatic language issues. (Ex. CL 18, p. B139.)

25. Claimant's academic functioning was assessed. It is noteworthy that the assessor described Claimant as "very cooperative and charming during the testing. He worked hard and asked clarifying questions when necessary. Between tests he chatted with the examiner regarding school, he explained that he really disliked math and especially his Algebra teacher, and was quite funny in his descriptions. He was never mean or harsh, but had a very colorful descriptions of his life at school." (Ex. CL 18, p. B140.)

26. The Kaufman Test of Educational Achievement, Third Edition (Kaufman) was used to assess Claimant's academic achievement. His Reading Composite standard score was 96, average. One component of that composite, Reading Comprehension, yielded a score of 81, below average. His Reading Fluency Composite score was 99, in

the average range. Claimant's score for the Math Composite was 95, an average score. His Written Language Composite standard score was 101, in the average range.

27. The assessor expressed concern that Claimant's scores in Reading Comprehension and Letter Word Recognition had dropped from earlier scores generated by testing in 2018; the scores dropped from 114 to 96. (Ex. CL 18, p. B140.) It must be noted that in that same four-year period, the Math Composite score had dropped from 106 to 95, and the Written Language Composite score had dropped from 124 to 101. (*Id.*)

28. Claimant was deemed to remain eligible for special education services due to his ASD and because he has a language disorder, making him eligible for speech and language services. (Ex. CL 18, pp. B148-B150.) Speech and language services were recommended to address social/pragmatic language abilities. The record indicates such services have been provided to Claimant by his school.

The April 2021 IPP

29. On April 27, 2021, an IPP meeting took place. Mother and Claimant's advocate represented him. During the hearing, the parties stated that the 2021 IPP had never been signed. Service Agency pointed to problems executing documents during the pandemic. At bottom, both parties adhered to the IPP as developed, and it was funded through the SDP; this was the first year that SDP had been utilized. As noted by the ALJ during the hearing, the 2021 IPP is essentially an executed oral agreement.

30. During the April 2021 meeting, Mother reported on Claimant's situation, i.e., that he needed some reminders and verbal supports to complete personal care activities, and his tendency to not choose appropriate clothing or to put the clothing on improperly. He needed supervision or assistance with some tasks, such as making

meals or snacks, and using the appliances. He sometimes needed reminders to complete tasks, especially non-preferred activities, such as doing homework. (Ex. SA 22, p. A244.) For some chores, such as cleaning his room or picking up after dinner, Mother reported that Claimant needed constant reminders to complete the chore. (*Id.* at p. A245.)

31. Mother related that Claimant's behaviors had improved, but he was still engaging in emotional outbursts, and some self-injurious behavior. His parents were continuing to work on safety awareness; he needed to be supervised when taking his medications, he did not understand fully stranger danger, and had not understood that he was being bullied by classmates. The IPP stated that such concerns would be "reviewed by the Social Skills component of [Claimant's] SDP program to increase his awareness of some of these social situations in the future." (Ex. SA 22, p. A246.) Later in the IPP, it is reported that Claimant would engage in disruptive behavior at least weekly, in the form of verbal aggression or cursing in response to non-preferred activities. He would sometimes hit himself, and he would pick at his acne and scabs. (*Id.*, at p. A249-A250.)

32. The IPP lists medications Claimant was then taking. They included Prozac for his ASD, anxiety, and depression; Concerta for ASD and ADHD; Trazadone for ASD and to assist with sleep due to the Concerta side effects; Guanfacine for the Concerta side effects and for heart rate; and, Accutane acne cream. (Ex. 22, p. A248.) It appears that Claimant's medication regimen has changed somewhat since then. According to a message from Mother to Claimant's service coordinator dated May 31, 2022, Claimant's medications are now Concerta, Fluoxetind, and Guanfacine in the morning, and Guanfacine, Trazadone, and Melatonin in the afternoon or evening, the Melatonin on an as needed basis. (Ex. SA 14, p. A79.)

33. The IPP does not clearly set out what services were to be provided by the Service Agency, though it does provide that the family was going to participate in SDP. A budget was approved.

The Services Provided Prior to the NOPA and FHR, and Their Utilization

34. The record indicates that as of May 2022, the Service Agency was funding respite care at 48 hours per month, and in-home daycare five hours per day, five days per week. The 25 hours per week of day care had been authorized for 43 weeks, plus eight hours per day for minimum school days, holidays, and ESY (Extended School Year) summer break, for four weeks. (Ex. CL 1B, p. B12.) Parents pay \$3.00 per hour toward the day care. Mother uses some of the respite time to go to markets where she can obtain kosher products, as the family keeps kosher. Personal assistance was being funded for three hours per day, five days per week. Social skills training was provided at one and one-half hours per week. At the same time, IHSS was funding 230 hours per month. (Ex. SA 10, p. A56; Ex. SA 4, p. A26.) Funding was through SDP. The annual budget was \$61,763.60. (Ex. SA 8, pp. A34-35.)

35. Mother has been using the IHSS funding for nighttime supervision; she is the provider of the services. Mother testified that 195 hours of the IHSS allotment are for protective supervision.

36. When Mother provided the IPP team with calendars showing how services were utilized, or would be utilized, it revealed that Claimant has a nearly "24/7" program, in that when he is not in school, the other services are filling much of the day, with the IHSS services covering the period from approximately midnight to seven in the morning.

The Adaptive Skills Training Assessment

37. Mother testified that she first raised the issue of obtaining AST in 2019. Parents requested AST during the workup of the 2021 IPP and SDP budget. An assessment was performed in October 2021, and a report was issued on or about December 5, 2021. (Ex. SA 3.) The Assessment was performed by a Service Agency vendor, Holding Hands. The firm utilizes the DIR Floortime modality.

38. The AST report set three goals: Behavior, Impulse Control; Social Skills, Flexibility and Compromise; and, Communication, Multi-Causal Thinking. The report recommended 40 hours per month of AST, over a six-month period, which would include direct services, social facilitation, and one-to-one parent training. (Ex. SA 3, p. A225.) Another stated goal was to give parents the tools to continue providing services after Holding Hands would leave the scene. (*Id.*)

39. Mother testified that she transmitted the AST assessment report to the Service Agency in January or February 2022. She was advised that the Service Agency was short staffed, and staff was not clear when the report would be evaluated.

40. When the parties began working on the second year of SDP, in late April 2022, the Service Agency had not yet reviewed the AST assessment. Mother raised the need for AST in a telephone conversation with Claimant's then-new service coordinator on April 27, 2022. (Ex. SA 11, p. A60.) Eventually, in mid-June 2022, the AST report was reviewed by Arpi Arabian, Ph.D., BCBA, and Annette Sinanian, BCBA, who are behavior consultants at NLACRC. (Ex. SA 10, p. A57.) By that time, the parties' relationship had unraveled.

41. Dr. Arabian testified at the hearing regarding her review of the AST assessment and her opinions about it. One of her issues with the assessment is that

only three goals are set, and to achieve those goals Holding Hands proposes 40 hours of services per month, which Dr. Arabian contends is more than is necessary to work on three goals. Further, and central to the issue, is that the goals tend to focus on socialization, and not on activities of daily living (ADL), where there is a reported need for improvement. Deficits in ADL are not a focus in the report, and in Dr. Arabian's opinion they should be.

42. Melisa DeConza, Ph.D., a psychologist and BCBA testified on Claimant's behalf. She tended to agree with Dr. Arabian about the lack of focus on ADLs, and she agrees with Dr. Arabian that there should be more than three goals for AST intervention. Dr. DeConza is of the opinion that AST services should be provided, but the focus should be different, on ADLs.

The Breakdown of the IPP and SDP Process

43. In late April 2022, Claimant's service coordinator contacted Mother about the need to work on a new budget, as the SDP budget established in April 2021 was reaching the one-year mark, and budgets are supposed to be in 12-month increments. The parties agreed to meet on May 3, 2022.

44. Mother and Claimant's advocate met with Service Agency staff on May 3, 2022; staff included the service coordinator, Jimena Martinez, and Dianne Lotivio, an SDP specialist. According to the ID notes, the team found the 48 hours of respite care to be appropriate. Because Claimant was back in school, in person, Mother was told that a new work schedule would be needed to determine the day care need. (When attending school, Claimant was gone from 7:30 a.m. to 3:30 p.m.) Because the family income had not changed, Ms. Lotivio told Mother that the \$3.00 per hour share for day care would remain in place. The service coordinator asked for a progress report for

the social skills training, and asked for medical documentation that supported Claimant's need for use of IHSS hours at night. AST services were requested by Claimant, as was vacation camp. The SDP specialist completed a socialization, leisure and recreation skills assessment. (Ex. SA 11, pp. A60-A61.)

45. An IPP was drafted after the meeting, but not executed. It reveals uncertainties that had arisen during the meeting. Hence it states that in light of Claimant's return to school, day care and personal assistance would depend on parents' work schedules, and that social skills services would depend on the submission of a social skills progress report. Likewise, the document notes that an AST assessment report was submitted but approval of services would be determined by a review by the Service Agency clinical team. (Ex. SA 5, p. A228.) As a practical matter the document committed the Service Agency to provide only respite care.

46. On May 5, 2022, the service coordinator wrote Mom about information she needed to review the services provided. She asked for a work schedule, noting that she knew Mother's wasn't on a set schedule so that an estimate would do. She wanted Mother to state the IHSS hours utilized, and if they were used at night, the coordinator wanted medical records that showed the hours needed to be used at night, stating "this way I am able to continue the request for PA [personal assistance]." (Ex. SA 11, p. A61.) Ms. Martinez further asked for a schedule of how hours of services were distributed during the week, stating Mother could add the AST hours to show how they might be put into the schedule. (*Id.*)

47. Mother sent two weekly schedules, one for the school week, and one if camp was provided, to Ms. Martinez on May 9, 2022. (Ex. CL 11, p. B88.) The documents are each a weekly calendar, broken down by hours each day, and Mother drew/wrote information about how the time was used. The school week showed a

block of time during the week, approximately 7:00 a.m. through 3:00 p.m. (The word approximately is used because it appears Mother was trying to split the time block beginning at 7:00 a.m. to show 7:30 a.m.) Day care was shown as a block of time from approximately 3:00 p.m. through 9:00 a.m., Monday through Friday. Protective supervision was shown as taking place from 10:00 p.m. to approximately 7:00 a.m., Monday through Friday. On the weekends the protective supervision ran from midnight to approximately 7:00 a.m. Respite was depicted as occurring on Sunday mornings and Saturday night. Personal assistance time was shown on Sunday evening and Saturday morning. The proposed AST time was blocked into Saturday and Sunday afternoon. (Ex. SA 13, p. A77.)

48. Mother provided a “summer” calendar, found at Service Agency exhibit 13, p. A76. It showed a block of time, Monday through Friday for camp, from 9:00 a.m. until 1:00 p.m. After camp, Mother had indicated she might utilize personal assistance from 2:00 p.m. until 4:00 p.m.—she placed a question mark in each box after the letters “PA”—and Daycare would be utilized after that from approximately 5:00 p.m. until 11:00 p.m. Respite was shown as used for two hours on Wednesday, Thursday, and Friday mornings, and on Saturday night from 6:00 p.m. through 11:00 p.m. Personal assistance time was also shown as used on Saturday and Sunday morning, and Sunday evening. Saturday and Sunday afternoons were to be utilized by AST.

49. The ID notes, and some emails in the record, show an effort to set up another meeting, first on May 16, then on May 23, 2022. The ID notes in the record do not establish that such a meeting occurred on the latter date, although the NOPA letter stated that there had been a meeting on May 23, 2022. (Factual Finding 4.)

50. The Service Agency staff asked for a letter that described Father’s work schedule. He sent one to the service coordinator through Mother. Staff wanted a letter

on his employer's letterhead. Father did not want to involve his employer in his private business in any way. The findings herein establish that Father has a demanding job that routinely takes him away from the family home. It should be noted that the family does not have typical family supports such as relatives who might help Claimant's family.

51. By the end of May 2022, the Service Agency still had not evaluated the AST assessment report. It had not received a work schedule that at least estimated Mother's typical work week; it only had the two calendars she had generated that showed how services were, or might be, utilized. Service Agency staff was plainly uncomfortable that Father's employer had not verified his work claims. Medical documentation had also not been received.

52. By early June 2022 the issues had not been resolved. The Service Agency proposed a six-month budget that would pay for the services as they had been provided during the 2021-2022 SDP budget year. Service Agency proposed such so that it could have the time to obtain further information from the family, and so that it could assess the services, including the proposed AST services. Mother would not agree to the six-month term, believing that this would cede services previously provided by the Service Agency. The Service Agency took the position that she could sign the SDP release but state on the document she did not agree with the budget, without prejudice to her cause, but Mother apparently did not believe this would protect Claimant's position.

53. The Service Agency wrote Mother on June 3, 2022, and told her that if the parties could not agree on the six-month budget, money could not be released to the FMS, and service providers would not be paid, and if staff worked without funds

being available, that could expose Claimant to liability for a violation of labor laws. (Ex. CL 9, p. B84.) Mother would not agree, and so funding from SDP ceased.

54. As noted in the section above pertaining to jurisdiction, the fair hearing process was underway by mid-June 2022. The parties continued to engage in discussions about a resolution, but no funding was coming through. The service coordinator had told Mother that funding could revert to the traditional method, and Mother took umbrage, believing that this was some sort of threat. Further communications sought to assuage Mother's concerns, pointing out that this was an option only.

55. In late July 2022, Dana Lawrence, an NLACRC employee with experience in the fair hearing process, wrote to the SDP Ombudsperson at the Department of Developmental Services (DDS), seeking advice regarding disputes pertaining to SDP funding. Ms. Lawrence stated that the Service Agency was encountering an issue where a service dispute would break out while the parties to an IPP funded by SDP were attempting to work out the next year's budget. Lawrence stated that a budget would be created allowing for services to continue for another three to six months, so that the parties might have time to resolve the conflict. But, Ms. Lawrence stated, the parents would refuse to sign off on the budget due to the disagreement. Ms. Lawrence asked how the Service Agency could provide Aid Paid Pending if there was no active budget. The reversion to traditional service delivery could be interrupted if there was a non-vendor service provider being funded by SDP. Ms. Lawrence hoped for guidance, stating that NLACRC at that point had three cases with such a posture. (Ex. SA 19, p. A102.)

56. The SDP Ombudsperson—identified as "Suzy"—wrote back and opined that the scenario was a "tough situation." (Ex. SA 19, p. A102.) She opined that the

participants' signature on the budget did not necessarily mean agreement, but only that the methodology and amount was reviewed by them, and that one could sign the budget and appeal at the same time. Recognizing that distrust could affect the family members' actions, Suzy recommended finding ways to document the review and disagreement at the same time. She closed by stating that absent such documentation, she did not know a feasible option for the regional centers to pay for services without returning to the traditional service model and vendored providers. (*Id.*)

57. The parties remain stalemated, with the family paying for Claimant's services.

Other Matters

58. During the hearing, the Service Agency raised the issue of Claimant referring to a "nanny" in his Person Centered Plan. (Ex. SA 5.) Mother explained that that is the label for the woman who acts as the respite worker, day care provider, and personal assistant. That care provider formerly worked for Mother's partner in the advocacy firm.

59. During his brief testimony, Father pointed to the issue of the AST services, as a need for Claimant.

60. The April 2021 SDP Budget document contains a statement of rights, after the signature blocks. It states: "Participants enrolled in the Self-Determination Program have the same rights established under the traditional service model (e.g. appeals, eligibility determinations, and all other rights associated with the individual program plan process)." (Ex. SA 8, p. A36.) Similar language is found in the proposed 2022 SDP documentation.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 7.

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.)

General Rules Applicable to Resolving Service Disputes

3. Although the SDP is at issue in this case, the SDP must be seen as a vehicle to fund services, services that are determined by the IPP process. Therefore, basic concepts from the Act, and especially regarding IPP development, would apply.

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Act mandates that 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 life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

5. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the

pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.)

6. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing decision may establish such terms. (See § 4710.5, subd. (a).)

7. Regional centers must develop and implement IPP's, which shall identify services and supports "on the basis of the needs and preferences of the consumer or, where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1), (2).) The IPP must be updated at least every three years. (§ 4646.5, subd. (b).)

8. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible for the consumer. (§ 4646; *ARC v. DDS, supra*, 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646; 4646.5, subd. (a)(1), (2) and (4); 4512, subd. (b); and 4648, subd. (a)(6)(E).)

9. Section 4512, subdivision (b), 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.

10. Section 4512, subdivision (b), provides a list of services that, in appropriate circumstances, may be provided to a consumer of regional center services. 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. Respite care and assistance are among the services listed in section 4512, subdivision (b).

11. Other statutes, and regulations, may impose limits on the provision of the services set out in section 4512, subdivision (b). One rule that can limit the obligation of a regional center to provide services is the general rule that the regional centers may not supply services and supports available from generic resources. (§§ 4648, subd. (a)(8); 4659, subd. (a), (c).)

12. Services provided must be cost-effective (§ 4512, subd. (b)), and the Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other

consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many people and families.

13. The IPP is to be prepared jointly by the planning team and shall include 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 disabled individual or 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).)

14. 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 disabled consumers 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).)

15. When purchasing services and supports for a consumer, a regional center shall ensure the following: (1) conformance with the regional center's purchase of service policies, as approved by the Department of Developmental Services pursuant to section 4434, subdivision (d); (2) use of generic services and supports when appropriate; (3) use of other services and sources of funding as contained in section

4659; and (4) consideration of a family's responsibility for providing similar services and supports for a minor child without disabilities. (§ 4646.4, subd. (a).)

16. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies." (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer's needs, it is plain that assessments must be made by the regional centers so that services can be provided to aid the consumer in approximating everyday living, and community inclusion, in a cost-efficient manner.

17. 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 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."

18. Reliance on a fixed policy "is inconsistent with the 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. (*ARC v. DDS, supra*, 38 Cal.3d at 388.)

19. 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 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). It can be said that the Legislature's enactment of SDP as an alternative for all consumers and their families furthers this general rule.

20. 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." (Subd. (b)(1).) There is also a right to dignity, privacy and humane care. (Subd. (b)(2).)

21. As set forth previously, the regional centers are to pursue generic services as part of service coordination. The core rule has long resided in section 4648, subdivision (a)(8), which provides that "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." Traditionally, generic services or agencies were defined as those described above, agencies using public funds to serve members of the general public. Hence, public schools were and are generic sources.

22. Section 4659 has long provided that the regional centers shall identify and pursue all possible sources of funding for consumers receiving services. Section 4659 underwent substantial revision in 2009. The statute retained its mandate for the regional centers to pursue sources of funding for their consumers, such as generic resources (school systems, Medi-Cal, etc.). The statute now provides that the regional centers shall not purchase services that could be obtained by the consumer from traditional generic resources, as well as "private insurance, or a health care service plan when a consumer or family meets criteria of this coverage but chooses not to pursue that coverage." (§ 4659, subd. (c).)

23. There are other limits imposed on the planning process. As previously noted, the 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).) Here, NLACRC has enacted such policies, and they have been approved by the Department of Developmental Services. 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).)

SDP Rules

24. Section 4685.8 governs regional center consumers participating in the SDP. The purpose of the SDP is to provide consumers (also referred to as participants) and their families, within an individual annual budget, increased flexibility and choice,

and greater control over decisions, resources, and needed and desired services and supports to implement their IPP. (*Id.* at subd. (a).)

25. "Self-determination" is defined in the statute as a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. (*Id.* at subd. (c)(6).)

26. When developing the individual budget, the IPP team determines the services, supports, and goods necessary for each consumer, based on the needs and preferences of the consumer, and when appropriate the consumer's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in section 4648, subdivision (a)(6)(D). (*Id.* at subd. (b)(2)(H)(i).)

27. The participant also shall utilize the services and supports available within the SDP only when generic services and supports are not available. (*Id.* at subd. (d)(3)(B).)

28. Section 4685.8, subdivision (l) provides:

The participant shall implement their IPP, including choosing and purchasing the services and supports allowable under this section necessary to implement the plan. A participant is exempt from the cost control restrictions regarding the purchases of services and

supports pursuant to Section 4648.5.¹ A regional center shall not prohibit the purchase of any service or support that is otherwise allowable under this section.

29. Pursuant to section 4685.8, subdivision (n)(1), the IPP team shall determine the initial and any revised individual budget for the participant using the following methodology:

(A)(i) Except as specified in clause (ii), for a participant who is a current consumer of the regional center, their individual budget shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant.

(A)(ii) An adjustment may be made to the amount specified in clause (i) if both of the following occur:

(I) The IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were

¹Under Code section 4648.5, regional centers' ability to purchase certain services, such as camping, social recreation activities, and educational services, was suspended.

unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures.

(II) The regional center certifies on the individual budget document that regional center expenditures for the individual budget, including any adjustment, would have occurred regardless of the individual's participation in the Self-Determination Program.

30. In requiring a regional center to certify its expenditures would have occurred regardless of the consumer's participation in the SDP, it is clear that other provisions of the Lanterman Act not expressly exempted in section 4685.8 still apply to funding determinations within the SDP process. For example, there is nothing in section 4685.8 exempting the Legislature's intention set forth in section 4646, subdivision (a), "to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

31. Other provisions of section 4685.8 impact this case. Subsections (g) and (h) provide:

(g) If at any time during participation in the Self-Determination Program a regional center determines that a participant is no longer eligible to continue in, or a participant voluntarily chooses to exit, the Self-Determination Program, the regional center shall provide for the participant's transition from the Self-Determination

Program to other services and supports. This transition shall include the development of a new IPP that reflects the services and supports necessary to meet the individual's needs. The regional center shall ensure that there is no gap in services and supports during the transition period.

(h) An individual determined to be ineligible for or who voluntarily exits the Self-Determination Program shall be permitted to return to the Self-Determination Program upon meeting all applicable eligibility criteria and upon approval of the participant's planning team, as described in subdivision (j) of Section 4512. An individual who has voluntarily exited the Self-Determination Program shall not return to the program for at least 12 months.

32. Subdivision (o) provides: "Consistent with the implementation date of the IPP, the IPP team shall annually ascertain from the participant whether there are any circumstances or needs that require a change to the annual individual budget. Based on that review, the IPP team shall calculate a new individual budget consistent with the methodology identified in subdivision (m)."

Legal Conclusions Dispositive of the Case

33. The April 27, 2021 IPP is valid, based on Factual Finding 29. Although not signed, the parties complied with that IPP and the related spending plan. Absent a change to that IPP, either by the IPP team's agreement, or an order after a fair hearing, that IPP remains in effect. The mandate that IPP's in the traditional setting are to be reviewed at least every three years does not call for termination of the IPP at that

three-year mark. (§ 4646.5, subd. (b).) There is no authority for the proposition that an IPP expires by the passage of time, or even a dispute as to whether it should be modified.

34. The requirement, set out in section 4685.8, subsection (o), to review the individual budget on a yearly basis does not itself terminate an IPP or spending plan; rather, it calls for adjustments after determining, from the participant, whether there is a change in circumstances or needs that require a change in the annual individual budget. If the participant—Claimant—did not advise of any change in circumstances or needs, this begs the question as to whether the Service Agency can decide there are changes in needs or circumstances. Seemingly, under a strict reading of section 4685.8, subsection (o), that is not the case, but under the traditional reading of the rules governing IPP's, a regional center can raise the issue of what services should be provided going forward, because a regional center, through staff participation, is part of the IPP team. (Legal Conclusion 13.)

35. As to the issue of whether a new IPP was adopted, plainly one was not. The parties were at loggerheads by early June 2022. Likewise, a new spending plan or budget was not adopted. This did not justify cutting off funding for services.

36. Claimant's FHR was filed in a timely manner, so that services must be continued pending the outcome of the hearing, pursuant to section 4715. That rule is not abrogated by the enactment of section 4685.3. Indeed, as noted on the spending plan, Claimant had all the rights afforded consumers under the traditional funding method, e.g. appeals, eligibility determinations, and all other rights associated with the individual program plan process. (Factual Finding 60.) Thus, funding for the services that Claimant was receiving, and was entitled to under the April 2021 IPP, should have continued after June 3, 2022.

37. The strictures of section 4715 should be read with the requirement that if there is a transition, that there is to be no gap in funding. (§ 4685.8, subd. (g).) While that rule appears to relate to transition out of SDP, which Claimant did not desire, it remains a directive to avoid the situation that has developed here, where services that had been agreed to in 2021 were no longer being funded.

38. During the hearing, Service Agency staff took the position that Claimant can not participate in the SDP until 12 months have passed. It appeared they believe that time period began running sometime in June 2022, when Mother would not sign off on the six-month budget. The implication was that Claimant now must leave SDP for one year. However, the rule in the statute bars participation for one year to those who “voluntarily” leave the SDP program. On this record, it cannot be found that Claimant voluntarily left the SDP program. To the contrary, Mother wanted to stay in the program, on terms and conditions substantially similar to those in place as of April 2022. (Factual Finding 6.) To refuse to sign off on a budget that a party does not agree to is not the same as “voluntarily” leaving the SDP. This interpretation would place a power in the hands of the regional centers; they could refuse to continue a spending plan, and if the consumer and his or her family disagreed with the regional center, they could be excluded from further participation in SDP for a year. Essentially, the regional center could say “take it or leave it.” The statutory scheme—remedial in nature—should not be read to provide the regional centers with such powers.

39. That the Service Agency wanted to adopt a six-month budget, when reading the law to require 12-month budgets, is somewhat contradictory, although the DDS Ombudsperson did not see a problem with it. However, given the requirement not to have a gap in services, and given the aid-paid-pending rule enshrined in section 4715, such a stop-gap measure appears appropriate.

40. The DDS Ombudsperson counseled the Service Agency to find language for the six-month budget that would assuage Mother's concerns that she was signing away long-provided and valuable services by agreeing to the extension. A simple paragraph saying that agreement to the short-term funding did not waive the rights or claims of either party should have sufficed.

41. The Service Agency, in the NOPA, based its action on, essentially, a lack of information from Claimant's parents regarding services that were needed. As of the hearing date, staff had still not obtained a report by the social skills providers, and they did not have Mother's work schedule. Staff had asked for medical information justifying use of IHSS protective supervision hours at night. Mother did provide testimony at the hearing as to Claimant's nighttime activities, but such a detailed report does not appear to have been provided prior to the hearing. Mother had provided the AST report, which both experts say is not focused on goals involving ADLs, an area of need from Mother's past reports, and a goal the experts believe should be addressed. Between Father's letter regarding his job, and his testimony, his heavy work schedule has been established.

42. Assessment is a cornerstone of the Act. (Legal Conclusion 16.) The consumers and their parents must provide information necessary for the regional center and the IPP team to assess what the consumer's needs are, so that proper services may be programmed. This is not a burdensome requirement. Claimant's family must stand ready to provide information reasonably calculated to aid the assessment process. However, the failure to provide requested information on relatively short notice, does not justify termination of funding.

42. In a typical services dispute, the ALJ would order services to be provided to an extent justified by the record. On this record the ALJ is unable to do so. The AST

report is sets some goals and does not set others the experts opine should be addressed. Mother's work schedule is not disclosed by the record. There is no progress report from the social skills provider. Thus, the order shall be, essentially, for the parties to go back to the drawing board, while the Service Agency provides the family reimbursement for the services they have been funding, and to provide six months of SDP payments consistent with the April 2021 IPP and Spending Plan. During this period, the parties must gather the necessary information to make considered decisions about the IPP and spending plan going forward. Neither party will be deemed to have waived any rights or claims by adhering to the order. Based on the foregoing, the parties are free to create a new 12-month budget, as the Claimant did not voluntarily exit SDP.

43. As an observation, the ALJ understood the Service Agency to have concerns that much of the services heretofore provided have been supportive services, and not so focused on habilitation. The latter should perhaps be a goal in the planning going forward. The reports from Claimant's school assessment show him to be a boy with potential, notwithstanding the maladies of ASD and of ADHD. Habilitative services, coupled with the services provided by his school district, could be of great benefit to him.

ORDER

1. Claimant's appeal is granted in part. The Service Agency shall provide six months of SDP funding, consistent with the 2021 SDP budget and IPP, commencing within 15 days of the effective date of this decision.

2. The Service Agency shall reimburse Claimant's parents for expenditures they have made to maintain his services, from June 3, 2022, the costs to be consistent with the 2021 SDP budget and IPP. Claimant's parents shall provide documentation of their expenditures.

3. The parties shall reconvene an IPP and budget meeting within 30 days of the effective date of this order. The Service Agency shall fund, if necessary, for a further AST report, and a report from the social skills provider shall be obtained. Mother shall provide a work schedule, and shall obtain medical records from Claimant's doctor for discussion and review.

4. If the parties cannot arrive at an agreement for a new IPP and SDP budget within 120 days of the effective date of this decision, one party or the other shall initiate another fair hearing process, with an eye toward holding a hearing within six months of the effective date of this decision.

DATE:

JOSEPH D. MONTOYA

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.