

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022090742

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 10, 2022

Claimant was represented by his mother (Mother). (Claimant and Mother are not identified by name to protect their privacy.)

Eastern Los Angeles Regional Center (Service Agency or ELARC) was represented by Jorge Morales, Appeals Specialist.

Testimony and documents were received into evidence. The record was held open until November 14, 2022 for Mother to submit Claimant's Triennial Reevaluation (Reevaluation). The Reevaluation was timely submitted and marked and admitted into

evidence as Exhibit L. The record was closed, and the matter was submitted for decision on November 14, 2022.

ISSUE

Whether Service Agency should increase funding for Independent Living Services hours from 60 hours to 200 hours.

EVIDENCE

Documentary: Exhibits 1-3, 5, 16 and 17 and A through E and G through L

Testimonial: Eduardo Santillan, ELARC Service Coordinator; Letecia Vasquez; Rodney Mojarro, P.A.L.S., LLC (PALS); Director of Services; and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 19-year-old, unconserved male who lives in the family home with Mother and his four siblings. Claimant qualifies for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a qualifying diagnosis of autism. (All further statutory references are to the Welfare and institutions Code unless otherwise indicated.)

2. On August 17, 2022, the Service Agency issued a Notice of Proposed Action (NOPA) notifying Claimant that it was denying his request for 201 hours a months of Independent Living Services (ILS) with PALS.

3. Mother submitted a Fair Hearing Request (FHR) on Claimant's behalf to appeal the Service Agency's decision and this hearing ensued. (Claimant subsequently signed the FHR authorizing Mother to represent him in this matter.)

Background

4. Claimant presently attends California State University, Fullerton (CalState) full-time. Claimant is enrolled in four classes and a lab five days a week. CalState has provided Claimant with accommodations for note taking and test taking through its Disabled Student Department.

5. Before Claimant attended CalState, Claimant received special education services from the Whittier Union High School District (District) under the eligibility criteria of autism. In his last year in high school, Claimant attended general education classes and was supported with the following monthly services: 60 minutes of language and speech, 30 minutes of college awareness and 30 minutes of college awareness.

6. Pursuant to applicable federal regulations, special education students must be provided with a summary of their academic achievements and functional performance, which includes recommendations for assisting them in meeting their postsecondary school goals, upon graduation from secondary school. (See Education Regs, 34 C.F.R. § 300.305, subd. (e) (2007).) Accordingly, in October 2021, the District conducted a "reevaluation" of Claimant before his graduation. (Exh. L, p. B42.) The reevaluation consisted of a review of Claimant's records, interviews of Claimant, his teacher and Mother, and classroom observations.

7. Though teachers' observations of Claimant's conduct and performance in class varied from subject to subject, Claimant was generally noted to be a hard worker

who would answer questions when asked and self-advocate for additional time when needed.

8. The District prepared a report of the reevaluation's findings, and concluded that Claimant's continued difficulties with verbal and nonverbal communication and social deficits could impact his educational progress and that he remained eligible for special education and related services.

Services Through IPP Process

9. On April 12, 2022, the Service Agency held an Individual Program Plan (IPP) meeting with Claimant, Mother and service coordinator (SC) Eduardo Santillan. After the meeting, SC Santillan prepared an IPP report addressing Claimant's current status, desired outcomes, and the supports he was given or needed to reach his desired outcomes.

10. At the time of the IPP, Claimant was reported to be in good general health. Claimant had no hospitalizations in the past year and no complications were reported during his annual physical. Claimant was also reported to have anxiety related to school matters and was seeking counseling with a psychologist. There were no other physical or psychological complaints reported at that time.

11. The "Desired Outcomes" pertinent to the present matter are Outcomes 1, 3, 4, 5, 6 and 8. These Outcomes and the supports Family and Service Agency are to provide are as follows:

Outcome 1: "[Claimant] will continue to reside with his family where he is happy and benefits from the least restrictive environment through 4/2023. . . [¶] . . . ELARC will fund 25 hours of respite to be reviewed on an annual basis." (Exh. 3, pp. A12-A13.)

Outcome 3: "[Claimant] will receive optimum psychiatric care and behavioral support, as needed through 4/2023." (Exh. 3, pp. A14.) Family will schedule and transport Claimant to his psychiatric appointments and participate in all behavioral services and supports as recommended by the behaviorist. SC Santillan will request Claimant's psychiatric medical records to update files and monitor progress as needed.

Outcome 4: "[Claimant] will receive appropriate education that will meet his educational goals and vocational goals through 4/2023." (Exh. 3, p. A14.) Family will ensure Claimant attends school, attend school meetings, seek support from Disabled Student Services, and notify SC Santillan of meetings where support might be needed. ELARC will consider funding PA services and monitor Claimant's progress annually.

Outcome 5: "[Claimant] will be as independent as possible through 4/2023." (Exh. 3, p. A15) SC Santillan will submit a referral packet for ILS and monitor Claimant's progress semi-annually/annually.

Outcome 6: "[Claimant] will participate in social activities within the community, amongst his peers through 4/2023" (Exh. 3, p. A16.) SC Santillan will provide Claimant with community resources and have Service Agency "consider continued funding for social skills services." (*Ibid.*)

Outcome 8: "[Claimant] will travel within the community through April 2023." (Exh. 3, p. A17.) Claimant will request assistance with transportation as needed while Claimant's family (Family) will assist Claimant with accessing transportation services and have an insured vehicle available for Claimant to drive. ELARC will refer Family to transportation resources as needed and consider funding for driver's education training. SC Santillan will submit referral to California Driving School.

12. SC Santillan was advised that Claimant would be attending CalState with the intention of majoring in computer science. SC Santillan was further advised that Claimant and Mother would be contacting CalState's Disability Support Services to see what services, if any, the school could provide Claimant. SC Santillan suggested that personal assistance (PA) services to assist Claimant in familiarizing himself with the campus. Mother indicated that they were interested in the services and would inform SC Santillan when Claimant begins attending on-campus classes.

13. During the IPP, Mother expressed an interest in ILS and transportation services. Though Claimant was generally independent when completing daily self-help tasks, including eating, toileting and maintaining his personal hygiene, Mother indicated she was interested in ILS hours to address Claimant's money management and cooking skills. Mother advised SC Santillan Claimant's parents (Parents) were currently providing transportation to meet Claimant's daily needs and requested ELARC fund for driver's education training. There was no separate request for any other transportation services at that time.

14. SC Santillan submitted a referral requesting continued respite, ILS, and drivers training services for Claimant in accordance with ELARC's purchase of service policies.

15. Service Agency reviewed the referral and the following services: (1) 25 hours per month of respite; (2) drivers training; (3) 60 hours of ILS hours; and (4) 60 hours of personal assistant (PA) hours.

16. Service Agency offered to fund 60 ILS hours and 60 PA hours based on Claimant's level of functioning. ELARC views Claimant as being highly independent in that: (1) he was admitted into CalState; (2) he is able to independently take care of his

self needs; (3) he is able to go out into the community independently, (4) he shows a level of socialization by virtue of having a girlfriend, and (5) he is working towards obtaining his driver's license. In SC Santillan's experience, consumers who have a level of functioning similar to that of Claimant are generally funded anywhere from 15 to 30 ILS hours based on the consumer's individual circumstances.

17. According to SC Santillan, ELARC typically offers consumers who express an interest in going to college PA hours. PA services can be used to: (1) connect consumers with various college services, including disability student services; (2) familiarize consumers with the campus; (3) assist consumers with getting and following school schedules; and (4) help consumers keep track of their assignments and communications with professors and guidance counselors. Though PA hours have been approved, ELARC's PA vendors have had staff shortages and Claimant has not received any PA hours.

Purchase of Service Guidelines

18. ELARC's Purchase of Service Policy states that:

[ILS] may be purchased for adult consumers, consistent with his or her individual program plan, that provide the consumer with functional skill training that enables him or her to acquire or maintain skills to live independently in his or her own home, or to achieve greater independence while living in the home of a parent, family member, or other person. ILS training focuses on teaching functional skills to adult consumers who generally have acquired basic self-help skills or who have attendant care and require

additional maintain themselves in their chosen living arrangement

[¶]

Authorization of ILS training hours” is “based on a needs assessment, the ILS hours in combination with other generic/natural support services, and the consumer’s ability and motivation to abide by the number of training hours.

(Exh. I, pp. B31-B32.)

PALS Assessment

19. On July 22, 2022, PALS completed an ILS assessment of Claimant. The assessment requested 201 hours per month. In its report. PAL set forth the following goals and estimated the number of hours necessary to meet the specific objectives/goals:

(1) Under Autonomy/Choice/Self-Advocacy, PALS’ objective is for Claimant to engage in conversation to express his opinions, wants, and needs. There were no service hours associated with this goal “because this goal and objective is woven into the fabric of [ILS];” (Exh. A.)

(2) Under Domestic Skills, PALS listed two objectives: (1) Claimant will learn to recognize situations where household maintenance is necessary; and (2) PALS will train and support Claimant to cook and plan his meals. PALS estimated that 30 hours per month would be needed to meet these objectives.

(3) Under Personal Finances, PALS' goal was for Claimant to responsibly manage his personal finances. PALS estimated that four hours per month would be needed to meet this goal.

(4) Under Housing, PALS' listed objective was for Claimant to research, apply and attain an apartment close to campus. Claimant would also explore and apply for Section 8 housing for his future housing needs as the HUD waiting list takes eight to 10 years. PALS estimated 10 hours per month would be needed to meet this goal.

(5) Under Physical/Mental/Dental Health, PALS' listed objectives: (1) with support, Claimant will participate in scheduling and attending medical appointments; and (2) Claimant will focus on maintaining a healthy diet and exercise routine. PALS estimated that eight hours per month would be needed to meet this goal.

(6) Under Self-Help, PALS' listed goal was to have Claimant complete all personal hygiene tasks on a daily basis. As there was no need in this area, PALS did not allocate any hours towards this goal.

(7) Under Generic Resources, PALS' listed objective was for Claimant to actively apply and follow-up with available generic resources. PALS estimated that eight hours per month would be needed to meet this goal.

(8) Under Community Integration, PALS' listed objective was for Claimant to participate in appropriate and necessary community activities. PALS estimated 20 hours per month would be needed to meet this goal.

(9) Under Education, PALS' listed goal was for Claimant to continue his education by attending CalState. PALS listed strategy included: (1) training and support in scheduling and attending college classes; (2) transportation to and from

school; (3) support Claimant in understanding and completing all class projects and homework assignments (4) support Claimant in communicating with his professors and others in order to advocate for any special needs during class and for test taking; (5) train and support Claimant to apply for any financial aid he may qualify for; (6) support Claimant in learning about and participating in social integration at CalState and (7) support Claimant "to learn about and participate in groups of interest for his major at school and [sic] necessary to complete all school assignments." PALS estimated that 120 hours per month would be needed to meet this goal.

(10) Under Safety/Emergency Preparedness, PALS' listed objective was for Claimant to develop an emergency preparedness plan of action and have a good understanding of proper natural disaster protocol. PALS estimated 1 hour per month would be needed to meet this goal.

20. The PAL assessment request for 201 ILS hours results in Claimant being provided with approximately 6.7 hours of functional skills training a day, seven days a week.

21. Rodney Mojarro, PALS Program Director, prepared the assessment and testified regarding the proposed services PALS would provide Claimant. According to Mr. Mojarro, ILS is defined as "instruction provided to an adult with a developmental disability who has goals and objectives related to living independently" to "whatever the individual needs to live as person without a disability would live in their community as independently as possible."

22. When questioned about the number of hours that would be devoted to transportation, Mr. Mojarro estimated 40 of the 120 hours allotted to Claimant's Education goals would be for transportation. Mr. Mojarro justified the allocation of ILS

hours to transportation stating that the ILS worker would verbally prepare Claimant for the day while providing transportation; that regional centers have been requesting ILS providers to provide transportation to consumers; and the ILS worker would provide training while providing transportation so that Claimant could obtain his driver's license.

23. Mr. Mojarro also acknowledged that CalState has generic resources to assist Claimant with note taking and navigating the campus. Mr. Mojarro, however, testified that Claimant needs a "level of assistance to follow-up and engage" to continue to access those generic services.

24. According to Mr. Mojarro, Claimant is currently failing the four classes he is enrolled in at CalState. Mr. Mojarro, however, believes that Claimant "is capable" of receiving instruction in independent living skills in addition to taking the four classes. Mr. Mojarro further testified that while ILS workers would not provide Claimant with any tutoring, they would help Claimant access the tutoring that is available through CalState.

Informal Meeting

25. On September 22, 2022, the Service Agency held an informal meeting with Mother regarding Claimant's request for additional ILS hours. A letter summarizing what occurred during the meeting was prepared on September 26, 2022.

26. During the meeting, Mother stated Claimant needed ILS now that he was attending CalState because Claimant needed to learn the system, sign up for "things" and make new friends. (Exh. C, p. B14.)

27. Mother further noted Claimant has had a lot of anxiety during his first month at CalState and needed a lot of explanations about college life to lower his anxiety. Though Claimant is receiving aid and services from Disability Support Services, Mother was worried Claimant will have a hard time adjusting to college life and succeed without additional support.

28. Service Agency expressed that the number of ILS hours PALS proposed was excessive in that it was not in line with Claimant's skill level, some of the proposed services were more appropriately addressed by PA hours, and PALS' proposal did not take into account the generic supports being offered by CalState.

Testimony of Letecia Vasquez

29. Letecia Vasquez is a special needs educator and has provided both ILS and adaptive skills training to clients with autism. Ms. Vasquez has provided Claimant's brother, also a regional center client, with adaptive skills training. In addition, Ms. Vasquez has been Claimant's respite worker for the past five years.

30. Ms. Vasquez noted that Claimant has communication deficits and a tendency to get anxious and frustrated when doing schoolwork. She also noted Claimant believes himself to be more independent than he really is. In reality, he cannot cook, do his own grocery shopping, or budget his money.

Mother's Testimony

31. At hearing, Mother testified Claimant needed additional ILS hours because: (1) she needed assistance with transporting Claimant to classes; (2) Claimant needed training so that he would learn to complete chores and learn to budget; and (3) to meet the academic challenges of college.

32. It was unclear from the evidence what type of services Mother was requesting to help Claimant succeed in his educational goals. At times, Mother appeared to suggest that Claimant needed ILS services so he could access services offered by CalState and, at other times, suggest ILS services would provide Claimant with tutoring so that he could succeed in the program.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code Section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing."

Standard of Proof

2. The party seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, Claimant is the requesting party and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to the services he seeks.

Applicable Law

3. In enacting the Lanterman Act, section 4500 et seq., the Legislature accepted responsibility to provide for the needs of developmentally disabled

individuals and recognized that services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. (§ 4501.)

4. The consumer's needs are determined through the IPP process. (§ 4646.) The process "is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments." (§ 4646, subd. (a).)

5. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the consumer's particular desires and preferences. (§§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a) (4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

6. The Lanterman Act defines "services and supports" to include "community integration services," community support, daily living skills training, and travel training services (§ 4512, subd. (b).)

7. A regional center has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources, and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

Discussion

8. Pursuant to the IPP process, Claimant requires 60 ILS hours and 60 PA hours per month.

9. Mother asserted Claimant needs tutoring services and transportation to and from CalState in order to meet his educational goals. Neither request was made during the IPP. At the IPP, Mother requested driver's training, which was approved. Service Agency was also informed during the IPP that Claimant would be seeking services from CalState to meet Claimant's educational goals. It was unclear from the evidence if Mother (or Claimant) notified ELARC before the hearing that Claimant: (1) needed transportation services to and from CalState; or (2) was unable to access CalState's student support services. Mother appeared to suggest Service Agency should have been aware of these issues even though there is no evidence Mother notified SC Santillan of either concern before the September 26, 2022 informal meeting.

10. Though regional centers, such as ELARC, are mandated to provide services to facilitate the implementation of the IPP, consumers have the reciprocal obligation to assist the regional center in meeting its mandate. (See Civ. Code, § 3521.) If Claimant required additional services or had not been using the available generic services, that information needs to be shared with the Service Agency so that the Service Agency could make an informed decision about whether Claimant needed additional services to meet his IPP goals.

11. Though Mother's concern that Claimant receive sufficient services to succeed at college was evident throughout the hearing, the evidence did not establish that the additional instruction in independent living skills would help Claimant achieve

that goal. In addition, there was no evidence Claimant expressed any indication he would be willing to undergo more than six hours of functional skills training on a daily basis. As such, there is no evidence Claimant has the "ability and motivation to abide by the number of training hours" as required by Service Agency's Purchase of Service Guidelines. (Exh. I, p. B31.)

12. PALS' assessment was provided little weight in that it included goals and objectives that were not always consistent with Claimant's IPP goals and some of the recommended services that were being provided by other vendors or generic resources.

13. Service Agency, did, however, determine Claimant required 60 hours of PA services a month. As ELARC has not identified a PA provider able to provide those services, Claimant's authorized ILS hours will be increased by 60 hours for three months. Following that period, an IPP will be convened to determine whether: (1) Claimant continues to need ILS or PA services; and (2) if it is determined Claimant needs PA services, whether a vendor has been identified who is able to provide Claimant with PA services.

ORDER

Claimant's appeal is granted in part and denied in part as follows:

1. Eastern Los Angeles Regional is increase monthly ILS services to 120 hours per month for a period of three months.

2. After that period, Service Agency will convene an IPP meeting with Claimant and other members of the IPP team as appropriate to determine whether Claimant continues to need ILS and/or PA services.

DATE:

NANA CHIN

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.