

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SOUTH CENTRAL REGIONAL CENTER,

Service Agency.

OAH No. 2023010766

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by video and teleconference on March 10, 2023.

Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (SCLARC). Claimant's mother, who is also his conservator, represented claimant, who was not present. The names of claimant and his family members are omitted to protect their privacy.

Oral testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on March 10, 2023.

ISSUE

Whether SCLARC must provide an Independent Living Services (ILS) vendor for claimant, to be funded in accordance with claimant's Individual Program Plan (IPP).

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1 through 9.

Witnesses: Churchill Onuselogu and Joseph Velasquez for SCLARC; claimant's mother for claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 36-year-old conserved male, is an eligible client of SCLARC based on his diagnosis of mild Intellectual Disability (ID). He is not employed. He lives with his mother who, at the time of the hearing, was experiencing homelessness, spending nights at various friends' homes. Claimant has one older sister, also a regional center client, who has only infrequent contact with claimant. Claimant's In-Home Supportive Services (IHSS) worker is a close family friend.

2. Claimant's mother filed a Fair Hearing Request dated October 13, 2022, claiming that, for the past two years, respondent has not been receiving the ILS services called for in claimant's IPP. The regional center contested it has denied claimant any services and offered an informal meeting, which claimant's mother refused. This hearing ensued.

Claimant's IPP and ILS Services

3. At the time of claimant's most recent triennial IPP, dated July 28, 2021, claimant was living in his mother's home. The IPP provides that claimant "[r]equires someone nearby during waking hours to prevent injury/harm in all settings." (Ex. 2, p. A22.) Claimant "is passive and trusting of others and requires someone nearby when in the community to prevent anyone from [taking] advantage of him and to ensure his safety." (*Id.* at p. A23.) Claimant "continues to receive up to 60 hours of ILS supports through Independent Hands Inc[.] in order for him to learn skills necessary to gain greater independence. [¶] This includes managing money/cooking food and taking him out in the community. [Claimant] is not working and . . . [would] like to go back to work once the state lift[s] [the] ban on COVID Pandemic and as soon as it is safe for him to go back to work." (*Ibid.*) "Service Coordinator will monitor status annually or as needed." (*Id.* at p. A24.)

4. In the related section, "Desired Outcome #9," the IPP described claimant's mother wanting claimant "to receive ongoing supervision in unfamiliar settings to avoid any injury and ensure his safety. He requires someone to accompany him while in an unfamiliar environment" (Ex. 2, p. A24.)

5. In the section entitled, "Desired Outcome #10," the IPP stated that claimant's mother wants claimant "to continue[] receiving 34 hours of ILS supports through Independent Hands Inc., in order for him to learn skills necessary to gain greater independence. The reason is because the ILS worker will teach [claimant] on how to navigate in the community and going to places of his choice by utilizing public transportation This will help [claimant] to gain skills necessary to gain greater independence. This includes managing money/cooking food and taking him out in the community." (Ex. 2, p. A24.)

6. The IPP “Plan for Consumer/Family” was that claimant and his mother “utilize approved ILS hours (34 hours per month) to learn tasks that will help him become independent. . . . Conservator/Parent will assist [claimant] and work with the vendor to utilize the authorized hours as appropriate.” (Ex. 2, p. A24.) The “Plan for SCLARC Supports” called for the service coordinator “to request funding for 34 hours of ILS services per month through Independent Hands Inc. . . . in accordance with SCLARC POS guidelines.” (*Id.* at p. A25.) (“POS” refers to Purchase of Services.) The service coordinator was to monitor claimant’s progress annually.

7. The funding for ILS supports was effective from July 28, 2021 to July 31, 2022.

8. The IPP also notes, at “Desired Outcome #12,” that claimant’s mother “is requesting for an increase in his (ILS) services from 34 hours per month to 60 hours per month through Independent Hands Inc. The reason is because [claimant] is not working due to COVID-19. It will revert back to 34 hours per month once he gains employment.” (Ex. 2, p. A25.) The “Plan for SCLARC Supports” was that the service coordinator was to “request funding for up to 60 hours of ILS services per month through Independent Hands Inc. . . .” (*Id.* at pp. A25-A26.)

9. As the IPP provides, claimant also received regional center funding for Independent Steps Employment Services to develop claimant’s vocational skills and for community integration training and health and fitness programs.

10. At an IPP Annual Review meeting on August 29, 2022, claimant’s mother met with claimant’s service coordinator, Churchill Onusologu, and with program manager Joseph Velasquez. They reviewed ILS services through Independent Hands Inc., as well as claimant’s day programs, with which claimant’s mother was satisfied.

SCLARC agreed to refer claimant to a mental health triage team for support with mental health issues. (Ex. 3.) According to a January 2023 IPP Addendum, claimant was also participating in a paid internship program to learn vocational skills leading to employment, with TEMPS, Inc., the employer of record, to provide Financial Management Services (FMS), funded by SCLARC.

11. Numerous IPP Addendums in 2021, 2022, and 2023 address claimant's need for ILS services and the use of, or attempt to use, various ILS vendors. For example:

a. An addendum dated November 18, 2021, notes that the service coordinator was to request funding for 60 hours of ILS services per month through Enhancing Lives Home Inc. from November 22, 2021, to June 30, 2022.

b. An addendum dated February 9, 2022, notes that the service coordinator was to request funding for 34 hours of ILS services per month through Roman Empire Living Services Inc. from February 1, 2022, to July 31, 2022.

c. An addendum dated March 15, 2022, notes that the service coordinator was to request funding for 34 hours of ILS services per month through A Better Tomorrow Services Inc. from March 15, 2022, to June 30, 2022. (Ex. 6, p. A82.)

d. An addendum dated April 22, 2022, notes that the service coordinator was to request funding for 34 hours of ILS services per month through The Smile Group from April 25, 2022, to July 31, 2022. (By letter dated June 14, 2022, The Smile Group cancelled ILS services for claimant due to "irreconcilable differences" with claimant's mother (see Factual Finding 12, *infra*).)

e. Addendums dated July 1 and July 6, 2022, note that the service coordinator was to request funding for 34 hours of ILS services per month through Care Living Solutions from July 11, 2022, to June 30, 2023. (Ex. 6, pp. A70, A72.)

f. An addendum dated July 26, 2022, notes that claimant was to receive 34 hours per month of ILS services through Passport To Learning Inc. from August 1, 2022, to July 30, 2023. (Ex. 6, p. A66.)

g. Most recently, an IPP Addendum dated January 13, 2023, notes that claimant was to receive 34 hours per month of ILS services with MDH-ILS Program Inc.:

[Claimant] was already receiving 34 hours per month of ILS with previous vendors. Mother requested to change ILS agencies and work with MDH-ILS Program Inc. The program has indicated that they [would] like to help [claimant] develop his independent skills. [Claimant] continues to have challenges with money management/budgeting skills, and safety awareness/community integration skills. ILS services will provide [claimant] with the training that he needs in order to become as independent as possible.

(Ex. 6, p. A64.)

12. MHD-ILS was to provide a progress report every six months to the service coordinator, who was to monitor the effectiveness of the service annually or as needed. The period of service was from August 8, 2022, to July 31, 2023.

13. In describing the reasons for cancelling ILS supports for claimant, the Smile Group wrote in its June 2022 letter (see Factual Finding 11d, *ante*) that it did not employ any males to work with claimant, contrary to claimant's mother's wishes, and was unable to accommodate the "time restrictions" claimant's mother imposed. (Ex. 4, p. A50.) The Smile Group wrote claimant "has been a pleasure to service" and he was not a factor in their decision. (*Ibid.*)

14. In an Individualized Service Plan (ISP) for claimant dated February 25, 2022, Roman Empire Living Skills, Inc., wrote that SCLARC referred claimant for an assessment for ILS skills. (See Factual Finding 11b, *ante*.) The vendor found claimant to be friendly, respectful, and mellow. "Mom reported that [claimant] is overweight and needs to be encouraged to have a healthy lifestyle. In addition, [he] needs to be reminded to use the bathroom before leaving any premises to avoid any accidents." (Ex. 5, p. A53.) The vendor described objectives for claimant in the domains of money management, community resources and leisure, and self-advocacy. The vendor recommended 34 hours of ILS services to help claimant meet the goals in his ISP, and suggested reviewing claimant's progress in six months. Claimant's mother testified that claimant never received ILS services from Roman Empire Living Skills, Inc.

Additional Evidence

15. Claimant's mother testified that, in addition to his developmental disability, claimant has dyslexia, sleep apnea, and a speech impairment. He receives 24-hour care from IHSS because he cannot be left alone safely. She recently learned from claimant's medical providers that claimant has a serious condition affecting his lower digestive tract and must use the restroom frequently. She testified he cannot communicate his feelings and his needs very well and that he was molested by a regional center vendor in 2006.

16. Claimant is in a day program five days per week. The day program ends at 1:00 p.m. on Fridays, so claimant's mother prefers he receive ILS services on Friday afternoons and Saturdays. She wants a male ILS worker who can accompany claimant to a public restroom. Claimant had male ILS workers for 15 years. The last one, with Helping Hands, worked with claimant for two or three years. Claimant's mother described that worker as "fantastic." He would take claimant for two-hour walks; claimant, who is overweight, benefitted from the exercise. The worker helped claimant learn about his own neighborhood, identifying street signs and stores. The worker stayed out of neighborhoods claimant's mother wanted him to avoid.

17. Claimant's mother denied regional center witnesses' testimony that she complained unreasonably about ILS workers and transportation vendors picking up or dropping off claimant late. She understands that people can be late, especially given Los Angeles traffic conditions. But she wants providers to make an effort to call her when they know they will not arrive on time. This was never a problem, she testified, when Helping Hands was providing ILS services.

18. When the pandemic started, Helping Hands could no longer provide services to claimant. That is why claimant started switching providers. But there were issues with all the providers the regional center identified. When claimant's mother agreed to use The Smile Group, for example, the vendor representative said she herself would work with claimant until they found a male worker; they never did find a male worker, so claimant's mother cancelled the service. While using another vendor after The Smile Group, the ILS worker, a woman, got stuck in traffic after stopping somewhere with claimant to eat. She was late bringing claimant home but never called claimant's mother to tell her she and claimant would be late. SCLARC has told

claimant's mother it is still trying to find a vendor with a male worker who can support claimant.

19. Claimant's mother's testimony is in part borne out by Consumer ID Notes the service coordinator entered in SCLARC's records. For example, Stacy Woods, in a Consumer ID Note dated July 19, 2022, memorializing a letter she sent to a transportation services agency, wrote "Mother is very keen on punctuality, and likes for vendors to be on time. Should the transportation service be running late, she appreciate[s] a phone call or text informing her [of] pick up." (Ex. 7, p. A120.) In a note on July 27, 2022, Ms. Woods wrote that claimant's mother complained claimant was picked up late by the transportation service provider on several occasions, making him late for his day program. (*Id.* at p. A131.) On the other hand, SCLARC contacted the transportation service provider, who said the time claimant's mother wanted them to pick up claimant was too early, it would result in them arriving at the day program before it opened, leaving them to wait in the parking lot. (*Id.* at p. 132.)

20. Regardless of some conflicting evidence about timeliness, it is undisputed that the lack of ILS services has created anxiety in claimant. He wants to go out in his community safely and learn how to use money and his cellphone; he does not understand what is happening and why he cannot go out. He prospered when he had ILS services. Claimant's mother "was so proud of him." The workers took time to show him how to be safe, how to communicate with others, how to manage his money, and what to do in case of emergency.

21. Claimant's mother is asking the regional center to find an appropriate vendor for claimant, one with a male worker who will help claimant achieve his IPP goals and will call claimant's mother when he is going to be late. She complained that SCLARC did not inform her of a change in claimant's service coordinator, making it

more difficult to obtain ILS services for claimant. Though Stacy Woods has been claimant's service coordinator since mid-2022, according to the Consumer ID Notes (see Factual Finding 19), Ms. Woods introduced herself as claimant's new service coordinator by letter February 8, 2023. (Ex. 8.)

22. SCLARC acknowledged there have been some traumas and setbacks for claimant's family. The regional center wishes to work with claimant's mother to find a service provider agreeable to claimant.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) (Further statutory references are to the Welfare and Institutions Code.) An administrative "fair hearing" to determine the respective rights and obligations of the individual and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the regional center's failure to arrange for a qualified vendor to provide ILS services to claimant. Jurisdiction in this case was thus established. (Factual Findings 1 & 2.)

2. Because the regional center has, in effect, failed to provide adequate ILS services required in the IPP, it bears the burden of proving it has acted properly under the Lanterman Act. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The regional center must prove its case by a preponderance of the evidence, which requires it to present evidence that has more convincing force than that

opposed to it. (Evid. Code, § 115; *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. The Legislature's intent in enacting the Lanterman Act was to ensure certain rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (§§ 4502, subd. (a), 4640.7.)

5. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for acquiring services based on the client's developmental needs and the effectiveness of the services selected to assist the client in achieving the agreed-upon goals, address the cost-effectiveness of the services and supports, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(D) & (E).)

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6. The IPP planning team must prepare the IPP:

Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

(§ 4646, subd. (d).)

7. The regional center shall ensure that claimant's "designated representative receive[s] written notice of all meetings to develop or revise the individual program plan." (§ 4646, subd. (e).) Regional centers must comply with their IPP process "at the time of development, scheduled review, or modification of a consumer's 4646.4. individual program plan." (§ 4646.4, subd. (a).)

8. "Every regional center or state-operated facility shall, as a condition of continued receipt of state funds, have an appeals procedure for resolving conflicts between the regional center or state-operated facility and recipients of, or applicants for, service." (§ 4705.) If the recipient of services disagrees with the regional center's proposal in the IPP process to reduce services, the regional center must provide notice to the recipient of the appeal procedure. (§ 4710.)

9. The goals and objectives set forth in claimant's IPP may be adjusted if the regional center's IPP team and claimant and his family determine in the course of the IPP process that an adjustment is warranted due to a change in the participant's needs

or if prior needs were not addressed in the IPP. A new IPP or an IPP addendum may then be created to reflect any change. If the consumer does not agree with the proposed change to the IPP, the consumer may initiate an appeals process that may comprise one or all of the following: an informal meeting with the regional center, mediation, and a fair hearing.

10. The service coordinator coordinates the various services the IPP identifies to meet the client's needs; the services are generally provided by different vendors that contract with the regional center. (§§ 4640.6 & 4647.) The service coordinator ensures that the services and supports are centered on the individual and the family, taking into account the needs and preferences of the individual and the family, and that they promote community integration, independent, productive, and normal lives, and stable and healthy environments. The services must be effective in meeting the goals stated in the IPP, reflect the choices of the consumer, and reflect the cost-effective use of public resources. (§ 4646.) The regional center must consider the services and supports in the client's natural community, home, work, and recreational settings. (§§ 4640.7, 4648, subd. (a)(2).)

ILS for Claimant

11. SCLARC and claimant agreed to an IPP that called for SCLARC to fund 34 hours per month of ILS services for claimant. (Factual Findings 3-7.) Though a SCLARC service coordinator has, in the past, arranged for a vendor to provide those services, no vendor is currently providing ILS services to claimant, nor has a vendor provided those services to claimant for about two years. (Factual Findings 3-21.) Claimant has established that the regional center must promptly take all steps required under the Lanterman Act to provide appropriate ILS services tailored to meet claimant's individual needs.

ORDER

Claimant's appeal from SCLARC's failure to arrange for an appropriate ILS vendor to provide services to claimant is granted. SCLARC shall identify and propose an appropriate ILS vendor to provide services and supports identified in claimant's IPP that are tailored to meet claimant's individual needs, including using a responsible male ILS worker to help claimant become independent and safety aware in his community. If the parties cannot agree on a service provider, claimant's mother may request another IPP, as the Lanterman Act prescribes.

DATE:

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.