BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of

Claimant,

vs.

Regional Center of Orange County,

Service Agency.

OAH No. 2023030826

System Tracking No. CS0003839

DECISION

Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on May 24, 2023; June 28, 2023; July 6, 2023; and July 7, 2023.

Paula Gray, Manager of Fair Hearings, represented the Regional Center of Orange County (RC or Service Agency).

Claimant was represented by his Mother.

A Spanish to English and English to Spanish interpreter was present on each day of hearing to translate the proceedings.

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on July 7, 2023.

ISSUE

Shall Regional Center be ordered to fund 30 hours, per week, of academic tutoring to be provided by Lindamood Bell, at a rate of $165 per hour.

FACTUAL FINDINGS

1. Claimant is a 27-year-old man who lives with his Mother.

2. According to Claimant's Individualized Program Plan (IPP), which was agreed to by the parties on July 25, 2022, Claimant is eligible for RC services due to a diagnosis of Autism Spectrum Disorder (ASD). Claimant has also been diagnosed with delayed speech and language development, impaired coordination, impaired social interaction, tuberous sclerosis, "impaired intellectual disability of language and autistic characteristics," and visual abilities deficiencies.

3. On March 14, 2023, Claimant filed a Request for Fair Hearing, which stated, "[RC] does not respect [Claimant's] rights RC is denying a waiver based on his needs for the $165 per hour fee 6 hours per day 5 days a week for the Linda Mood Bell service. [T]his service was the only one that works for the Claimant's needs."

4. Claimant previously requested that RC fund 20 hours, per week, of Lindamood-Bell Learning Processes (LMB). Claimant filed a Fair Hearing Request on this issue on August 19, 2020. On May 27, 2021, ALJ Julie Cabos-Owen issued an Order of Dismissal after Claimant was not prepared to proceed at the scheduled hearing date of May 27, 2021.

5. On March 16, 2023, RC sent a Notice of Action to Claimant which stated that RC was unable to fund LMB because LMB was not an authorized vendor for RC

March 10, 2023 Planning Team Meeting

6. A Planning Team Meeting was held on March 10, 2023. The participants of the meeting were: Claimant; Claimant's Mother; Elizabeth Gomez, Family Advocate and Director of Integrated Community Collaboration; Teresa Ayala, family friend; Carie Otto, RC Manager; Benjamin Torres, RC Area Supervisor; and Silvia Herrera, RC Service Coordinator. At that meeting, the parties discussed the RC services being funded for claimant, and the generic services being received by claimant.

7. Claimant requested that RC make an exception and fund the Lindamood Bell (LMB) program for 6 hours per day, five days per week, at $162.00 per hour. The approximate total cost for LMB, per week, is $4,860. The total approximate cost, per month, is $19,440.

8. RC offered to fund a 1:1 adult day program with an approved vendor. RC also offered to assist Claimant in attending a local community college, which has experience in working with persons with disabilities.

9. RC also offered purchase reimbursement for a 1:1 adult day program based on Department of Developmental Services' approved rate of $33.56 per hour,

for 30 hours per week. Claimant could use this money to purchase whatever day program Claimant desired. RC offered to fund $1,006.80, per week, for this service, or approximately $4,027.40 per month.

10. Claimant declined all of RC's offers.

Claimant's Individual Program Plan

11. The most recent IPP Plan, agreed upon by all parties, is dated August 31, 2022. (Exhibit 6.) RC recently increased funding for Personal Assistance – Support Services (PAWAS) and now funds 32 hours per week of PAWAS, an increase of 24 hours.

12. RC funds Personal Assistance – Day Program (PAWAP) services, at a rate of 30 hours per week. Claimant's mother designed Claimant's day program, which includes: auditory processing. vision therapy. reading and comprehension, occupational therapy, physical therapy, and speech and language. Mother serves as Claimant's PAWAP provider, through Maxim Healthcare Services, and she receives $3,148 a month for these services.

13. RC funds 24 hours, per month of respite, for a total cost of $605, which is paid to one of Claimant's family members who provides the respite services.

14. It was established that RC has previously made multiple funding exceptions for Claimant.

Other Evidence

15. Mother testified at hearing that LMB is the only program than can meet Claimant's needs. However, RC has also offered to coordinate Claimant attending a

local community college. RC has relationships with local community colleges, which are familiar with providing educational services to people with disabilities, at no cost to RC or Claimant. Claimant rejected this offer.

16. During her testimony, Mother did not establish whether the LMB program would replace Claimant's current day program. As previously stated, Claimant currently attends a 30 hour per-week day program at his home, which his Mother administers, and for which she is paid approximately $3,148 per month by RC. When asked directly, Mother testified that consideration of funding for the LMB program should not involve any consideration of Claimant's current day program. However, Mother's testimony did not establish how, or if, Claimant could physically attend both his current day program and also a 30 hour per week program at LMB. Both programs are six hours, per day, on every weekday. If Claimant attended both programs, he would be attending day programs for a total of 12 hours per day. This does not include travel time or time for anything else, such as eating. Such a schedule would be viewed by almost any person, typical or disabled, as a very heavy and difficult schedule. Claimant would have little free time or even time to eat breakfast or lunch. It was not established that Claimant is physically capable of attending a two-day programs, every day, five days a week, or that he would mentally benefit from the LMB program, if administered during a 12 hour day.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

2. An administrative "fair hearing" to determine the respective rights and obligations of the consumer and a regional center is available under the Lanterman Act. (§§ 4700- 4716.) Claimant requested a fair hearing to appeal the RC's denial of his request for funding for the LMB program.

3. Because Claimant seeks additional benefits or services, he bears the burden of proving he is entitled to the services requested. (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.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

4. 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.)

5. Regional centers are responsible for conducting a planning process that results in an Individual Program Plan (IPP). Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, 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)(E).)

6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all the services that a client may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.)

7. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or other "generic resource." Regional centers are required to "identify and pursue all possible sources of funding[.]" (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a client's IPP, the regional center must itself fund the service to meet the goals set forth in the IPP. Therefore, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

8. The Lanterman Act defines "services and supports" to include personal care, day care, and respite. (§ 4512, subd. (b).) The Lanterman Act requires regional centers to create POS guidelines and to follow them. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).)

9. Claimant failed to establish that the Lanterman Act requires RC to fund a 30 hour per-week program at LMB for Claimant.

10. The evidence presented established that RC has offered attending a local community college to Claimant, as an alternative to the LMB program. Community colleges are a generic resource that may meet Claimant's needs. It was not established that Claimant's needs cannot be met by him attending a community college. It was not established that LMB is the only entity that can meet Claimant's needs.

11. The evidence presented established Claimant's Mother's and RC have had many disagreements in the past. Mother appears resistant to working with RC to clarify and optimize RC's funding for services. Previously, Claimant's Mother refused to consider any day program alternatives to the PAWAP day program, a program that requires Claimant's Mother to spend 30 hours per week working with Claimant. Similarly, Claimant's Mother currently is unwilling to consider any of the available alternatives to LMB which were offered by RC.

12. Since Claimant's most recent IPP does not reflect the need for a LMB program, Claimant is required to provide supplemental information to RC to support any requested change in services and supports. Insufficient evidence was provided to justify ordering RC to fund the LMB program.

13. Claimant did not establish by a preponderance of the evidence that RC is required under the Lanterman Act to fund a 30 hour per-week LMB program for Claimant.

ORDER

Claimant's appeal is denied.

DATE:

CHRISOPHER RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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

BEFORE THE
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STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2023030826

DDS Case No. CS0003839

ORDER DENYING CLAIMANT'S APPLICATION FOR RECONSIDERATION

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a final decision in this matter on July 21, 2023; the decision was served on the parties on July 24, 2023, and in Spanish on July 26, 2023.

On August 4, 2023, Claimant's authorized representative applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713 (application). The application was timely submitted. Claimant gave appropriate notice of the application to Service Agency and the Department of Developmental Services (DDS).

The undersigned hearing officer, who did not hear the matter or write the decision for which reconsideration is requested, was assigned to decide the application.

Pursuant to Welfare and Institutions Code section 4713, subdivision (b), a party may apply for reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Undesignated statutory references are to the Welfare and Institutions Code.)

Section 4712, subdivision (g), provides:

> The hearing officer shall voluntarily disqualify themselves and withdraw from any case in which the hearing officer cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the hearing officer by filing an affidavit or making an objection on the record, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be decided by the hearing officer and may be reviewed as part of the reconsideration process specified in Section 4713.

Here, Claimant's authorized representative applies for reconsideration on various grounds, arguing overall that the ALJ was biased in favor of Service Agency and against Claimant. Specifically, she argues the ALJ refused to allow any of her

witnesses to testify, other than herself; did not display empathy or respect toward Claimant or her; refused to disqualify himself from hearing the matter; and refused to replace an uncertified interpreter retained by OAH in favor of a certified interpreter Claimant's authorized representative uses in her dealings with Service Agency.

Claimant's authorized representative concluded as follows:

> Lastly, I also want to shed light on the fact that [the ALJ's] decision is full of misinformation since he only heard one side. Everything his decision says is read and submitted by the regional center. He never took time to listen to [Claimant's] side and for that reason his result is full of misinformation and lies from [Service Agency].

(Translated from Spanish.)

In addition, several individuals who attended the videoconference hearing presented letters in support of the application, containing their observations and explanations why they feel the hearing was unfair. Initials are used to protect the privacy of Claimant and his family, as well as the confidentiality of this proceeding. Those individuals are J. A. de M., the interpreter who Claimant's authorized representative wanted to translate the proceeding; B. M., T. A., I. N., and E. B.-G., members of Claimant's circle of support, some of whom were proposed witnesses. A letter also was presented from D.T., an employee of the vendor in question, who was another proposed witness, but did not opine in his letter how the hearing was conducted.

Only a party has standing to file an application for reconsideration, not an interested observer or member of a claimant's circle of support. (§ 4713, subd. (b).)

Therefore, the letters in support of the application are considered as corroboration of the arguments made in the application, but not as a separate basis to order reconsideration.

On August 14, 2023, Service Agency filed an opposition to the application. Service Agency contends Claimant's authorized representative failed to describe an error of law or fact as described in section 4713, subdivision (b); failed to timely request the ALJ disqualify himself and failed to describe in the motion a basis for disqualification identified within section 4712, subdivision (g); and that the ALJ properly denied using an interpreter selected by Claimant's authorized representative.

ANALYSIS

There was one issue stated in Claimant's Fair Hearing Request (FHR):

> Reimbursement of $165 per hour 6 hours per day 5 days a week for the linda modd bell service[.] [T]his service was the only one that works for [Claimant's] needs[.] RCOC does not respect [Claimant's] rights[.] RCOC is denying a waiver based on his needs.

(Translated from Spanish in the original.)

The ALJ correctly summarized the issue on appeal in the Issue section of the Decision as follows:

> Shall Regional Center be ordered to fund 30 hours, per week, of academic tutoring to be provided by Lindamood Bell, at a rate of $165 per hour.

In Legal Conclusion 13, the ALJ concluded, "Claimant did not establish by a preponderance of the evidence that [Regional Center] is required under the Lanterman [Developmental Disabilities Services] Act to fund a 30 hour per-week [Lindamood Bell] program for Claimant." The ALJ denied the appeal.

ALJ Refusal to Recuse Himself

The application does not clearly articulate a reason the ALJ should have recused himself from hearing the matter. Construing the application broadly, it appears Claimant's authorized representative wanted a Spanish-speaking ALJ to hear the case, which the ALJ in this matter is not. This was a request Claimant's authorized representative made several times to OAH before the hearing, which was denied by OAH because there is no provision in either the Lanterman Developmental Disabilities Services Act or the Administrative Procedure Act that requires an ALJ be fluent in the preferred language of a party.

However, section 4712, subdivision (*l*), requires the hearing to be in English. Not being fluent in a language other than English is not grounds for disqualification pursuant to section 4712, subdivision (g). In fact, according to Government Code section 11425.40, subdivision (b)(1), it is not grounds for disqualification that the presiding officer "[i]s or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group."

The application does not describe any other reason the ALJ would have been precluded from providing a fair and impartial hearing and therefore should have disqualified himself at the start of the hearing.

Service Agency advises in its opposition that Claimant's authorized representative did request the ALJ to recuse himself during the hearing, but did so well

after the hearing began and evidence was presented. Service Agency argues no specific reason was given by Claimant's authorized representative when she made the request. Based on the record presented, it is assumed the request was made, in part, because Claimant's authorized representative was dissatisfied over the rulings of the ALJ or because she felt she and Claimant were being unfairly treated.

However, the request of Claimant's authorized representative was untimely, as section 4712, subdivision (g), requires a party to request recusal "prior to the taking of evidence at a hearing." This deadline is mandated because once a hearing begins and evidentiary rulings are made, one party inevitably will become dissatisfied with the ALJ and request disqualification, which would wreak havoc with the hearing process.

Based on the above, the application fails to establish the ALJ should have recused himself following a request pursuant to section 4712, subdivision (g).

An Error of Fact or Law

As cited above, section 4713, subdivision (b), allows reconsideration "for a correction of a mistake of fact or law." Pursuant to section 4713, subdivision (d), the application for reconsideration must be decided within 15 days of receipt. The hearing office responsible for deciding the application may deny it, grant it and modify the decision, or grant it and set the matter for another hearing.

The wording of section 4713, subdivision (b), as well as the expedited deadline for deciding an application, make clear that the mistake of fact or law in question must be apparent from the decision, such as an obvious mathematical error in calculating hours of service, an order that fails to accurately encompass the legal conclusions, the citation to the wrong statute, or reliance on a law that is no longer in effect. In such

instances, the hearing office can either correct the mistake if the resolution is apparent from the decision or order the matter to be reheard if the error is not apparent.

There is nothing in section 4713 suggesting an application for reconsideration contemplates the hearing office reviewing the entire record, including the admitted exhibits and the recorded hearing, to determine if the ALJ made errors in evidentiary rulings or made mistakes of fact or law. That process is undertaken in an appeal of the decision to the Superior Court, not in an application for reconsideration pursuant to section 4713.

In this case, Claimant's authorized representative contends the ALJ's evidentiary rulings concerning the exclusion of her witnesses was an error of law. However, a determination concerning the correctness of the ALJ's decision in that regard cannot be made in reviewing the decision. In its opposition, Service Agency provides an explanation for the ruling, indicating the ALJ exercised his discretion. The other arguments raised in the application can only be determined by reviewing the entire record, which is not contemplated by section 4713.

However, it can be concluded, as a matter of law, that the ALJ did not err in denying the request of Claimant's authorized representative to use a certified interpreter retained by her. Pursuant to section 4712, subdivision (/), "if the preferred language of the claimant or authorized representative is not English, an interpreter shall be provided by the hearing office." There is no requirement in section 4712 for the interpreter to be certified. Allowing one party to dictate which interpreter to use would also create obvious due process concerns.

While Claimant's authorized representative and some of her supporters contend the interpreters provided by OAH for the hearing did not provide accurate translation,

only one concrete example was cited regarding interpretation of the term "generic resources," which in and of itself does not seem to have created a material problem.

Finally, in her letter of support, E. B.-G. also specified four errors of fact she believed the ALJ made in the decision. She contended the ALJ misunderstood the facts and arguments presented by Claimant's authorized representative and therefore arrived at erroneous findings and conclusions. However, E. B.-G. has no standing in this matter to present such arguments, in that she was not designated as Claimant's authorized representative. (§ 4701, subd. (d)(1) & (2).) Even if the four mistakes of fact cited by E. B.-G. in her letter could be considered for purposes of the application, a determination of whether those constituted errors of fact by the ALJ cannot be made in reviewing the decision.

For these reasons, the application must be denied.

ORDER

Claimant's application for reconsideration of the final decision is DENIED.

IT IS SO ORDERED.

DATE:

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings