

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0006562**

**OAH No. 2023060213**

**DECISION**

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 10, 2023.

Stella Dorian, Fair Hearing Representative, appeared on behalf of the Service Agency, North Los Angeles County Regional Center (NLACRC). Mother represented Claimant. Their names are withheld to protect privacy. An interpreter of Armenian was of some assistance, but Mother decided mid-hearing that she preferred to proceed in English only.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act). Each of the regulations cited below is a section of title 17 of the California Code of Regulations.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on August 10, 2023.

## **STATEMENT OF THE CASE**

The Service Agency contends it needs more information to assess the family's need for Personal Assistant (PA) services, at least a progress report from the provider of Claimant's Applied Behavioral Analysis (ABA) services and in-home observation of Claimant. Mother contends that the Service Agency was able to offer PA services in the past based on the information already in its possession and had no reason to rescind the offer.

## **FINDINGS OF FACT**

1. On May 8, 2023, the Service Agency served Claimant a Notice of Proposed Action, stating that it had insufficient information to provide PA services. Claimant timely filed an appeal that the Service Agency received on May 31, 2023.

### **Background**

2. Claimant, who turned three years old in August 2023, is eligible for services based on a diagnosis of autism, now generally called Autism Spectrum

Disorder (ASD). Claimant lives with his mother and four older siblings. Three of Claimant's four siblings are NLACRC consumers.

3. Claimant received services in the Early Start Program, the intervention program operated by the Service Agency for infants and toddlers with disabilities or developmental delays. The services were set out in an Individualized Family Service Plan (IFSP), as required by Government Code section 95020. Meetings regarding an IFSP are semi-annual. An IFSP is the equivalent of an Individual Program Plan (IPP) for consumers three years old or older.

### **Transition from Early Start**

4. Consumers in the Early Start Program become ineligible when they reach three years of age. Claimant would therefore become ineligible for the program in August 2023, on his third birthday. As Claimant would continue eligible for services under the Lanterman Act, a Transition IFSP was scheduled.

5. An important reason for a Transition IFSP meeting is introduce the family to school district personnel and transition children to Special Education services. Special Education services are a generic resource, available to the public who are eligible. School districts offer eligible children generic services of various kinds and must do so before the Service Agency. The Service Agency is the payor of last resort, as Manager of Consumer Services (MCS) Elisa Hill explained at the fair hearing. The Service Agency has employed MCS Hill for some 16 years, 6 as MCS.

6. MCS Hill's testimony in this regard was in accord with the NLACRC Service Standards, Exhibit 18, pages A113 and A114:

A generic agency is any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing such service.

[¶] . . . [¶]

It is the policy of NLACRC to utilize all other resources before expending the center's funds. . . . NLACRC is precluded by law from supplanting the budget of any generic agency . . . .

7. In this case Cynthia Ayon, a transition teacher employed by Claimant's local school district, attended Claimant's Transition IFSP meeting on March 16, 2023. Laura Vo, who was at the time Claimant's Consumer Services Coordinator (CSC), was the Service Agency representative at the meeting. Welfare and Institutions Code Section 4640.6, subdivision (d), states that a CSC is "a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' [IPP's], securing and coordinating consumer services and supports, and providing placement and monitoring activities."

8. CSC Vo has 12 years' experience in the Service Agency's Early Start Program. She became Claimant's assigned CSC about three days before the Transition IFSP meeting, because Claimant's previous CSC was on leave. In June 2023 CSC Adineh Vertanus, who speaks Armenian, took over as Claimant's CSC when the Service Agency accommodated Mother's request for a CSC who spoke Armenian. The Service Agency has employed CSC Vertanus for over three years. Like other CSC's, her responsibilities include helping families to find and avail themselves of the services they need.

## **Request for PA Services**

9. Mother told CSC Vo at the March 16, 2023 meeting that the family was requesting PA services, described in the Service Agency's Service Standards, Exhibit 18, page A125:

Personal assistant services are to assist with bathing, grooming, dressing, toileting, meal preparation, feeding, and protective supervision is a typical parental responsibility for minor children. Personal assistant services for minor children will be considered on an exception basis when the needs of the consumer are of such a nature that it requires more than one person to provide the needed care. There may be exceptional circumstances as a result of the severity and/or intensity of the developmental disability that may impact the family's ability to provide specialized care and supervision while maintaining the child in the family home. Eligibility and/or use of generic services such as In-Home Support Services [IHSS] will be explored and accessed where possible prior to NLACRC funding as an exception.

IHSS is a generic resource to make it possible for a consumer to receive care at home and includes services such as housecleaning, meal preparation, grocery shopping, personal care, accompaniment to medical appointments, and protective supervision for the mentally impaired.

10. Among the factors the Service Agency considers in evaluating whether PA services are appropriate are, as stated in the Service Standards, Exhibit 18, pages A125 through A126:

Eligibility and/or use of generic services such as [IHSS], college/university special student services, or Department of Rehabilitation.

Support based on an assessed need when a consumer's behavioral or medical issues are of such severity that a parent requires assistance in the home in order to adequately care for the consumer.

11. In addition to her request for PA services, Mother told CSC Vo of behavior by Claimant causing her concern, including that he was unaware of danger, for instance, his running to and touching a hot stove, jumping on couches and from high places, self-injury, and eating inedible objects like trash, rocks, and sand. Mother said that Claimant also draws on walls, cries without using words, and does not sleep well at night.

12. A service provider, Light on Path, prepared a May 10, 2023 Developmental Closing Report regarding Claimant for the Service Agency. Such reports are meant to describe comprehensively a child's disabilities and care when the child is turning three years old and about to leave the Early Start Program. The report describes Claimant's behavior of various types, but those Mother told CSC Vo were causing her concern do not appear in the report.

13. Mother reported not only on Claimant's behavior, but also that he was soon to have ABA services. She agreed to update CSC Vo about the number of ABA

hours to be provided and when they were to start. Mother advised she wished to continue with Claimant's Physical Therapy (PT) once per week, Occupational Therapy (OT) twice per week, speech therapy once per week, and services at the Buonora Child Development Center three times per week. She sought respite support of 45 hours per month. Respite hours are provided by a person who stays with the disabled consumer at home to give a caregiver such as Mother a break, to leave home on errands, for instance.

14. CSC Vo advised her supervisor, Consumer Services Supervisor (CSS) Christian Sanchez, of Mother's request for PA services on March 16, 2023, the same day as Mother's request at the Transition IFSP meeting. CSS Sanchez instructed CSC Vo to request Claimant's weekly schedule, including all services Claimant received and when the family would use PA hours. In communications in April 2023, CSC Vo made the request of Mother, provided her the Service Agency's blank schedule form, and Mother said she would fill it in.

15. Mother filled in the schedule form with some of the information that CSC Vo and the Service Agency were requesting, but the partial information was insufficient. As CSC Vo told Mother, the Service Agency needed to know when Claimant's services were used seven days a week, Claimant's sleeping schedule, mealtimes, and when Mother was unassisted, all to determine eligibility for PA services and to move forward with an assessment of the appropriate type, amount, and timing of services.

16. Mother told CSC Vo it was hard for her to provide the requested information because different hours were used in different ways in different weeks and months. CSC Vo had several follow-up communications with Mother by telephone and

email. In the end, Mother said she was unable to fill out the schedule as requested and would withdraw her request for PA services.

17. When Claimant's case was transferred to CSC Vertanus in June 2023, she too encouraged Mother to fill out the schedule form regarding services, asking Mother about all therapies Claimant was receiving, and about IHSS and respite hours.

18. Mother provided some of the requested information. She told CSC Vertanus, for instance, how many IHSS hours the family received, 195 per month, but she would not say how or at what times the family used them.

19. When Claimant's case was transferred to CSC Vertanus, the case became the responsibility of CSS Arevik A. Aghajanyan as well because she supervises CSC Vertanus. The Service Agency has employed CSS Aghajanyan for approximately seven years, six as CSS. Her duties include following up on the work of CSC's, reviewing reports regarding consumers, ensuring consumers have supports, and that a family's IFSP is in place and effective.

20. CSS Aghajanyan participated in an informal meeting with Mother and the Service Agency's Due Process Officer Stella Dorian, as described in the latter's June 12, 2023 letter to Mother. The letter reiterated that still needed for the Service Agency's decision whether to provide PA services was Claimant's weekly schedule, including when during the day PA hours would be used.

21. In a July 3, 2023 letter Due Process Officer Dorian wrote Mother that given the information Mother had provided regarding Claimant's weekly schedule, the Service Agency proposed funding 35 to 40 hours per month of PA services. But she wrote that only with further information could the Service Agency assess the need. The Service Agency therefore proposed conducting an in-home observation of Claimant.



The Service Agency also needed a behavioral progress report to make its assessment. Due Process Officer Dorian concluded, Exhibit 5, page A20:

If you are in agreement to proceed with an observation of [Claimant] and to provide NLACRC with a copy of [Claimant's] current behavioral progress report, please notify me. Please note, NLACRC cannot make a determination regarding need for PA support, level of care for PA support, and the number of support hours, without the needed information. If you are not in agreement with this proposed plan, you have the option of proceeding with a mediation and a hearing.

## **Level of Care**

22. The question of what type of PA services the Service Agency ought to provide may be understood as a question regarding "level of care." As the Service Standards quoted above state, the different services available to the consumer affect how the Service Agency assesses the need for PA services. So in this case, a decision by the Service Agency depended on Claimant's needs and disabilities in the context of both care already received, such as IHSS, and those about to be received, such as ABA services. This information enables the Service Agency to decide whether PA services should be at a professional level, such as from a licensed vocational nurse (LVN) or therapist.

23. The Service Agency has employed Behavioral Consultant (BC) Lisa DePiro, BA, BCBA, for approximately 11 years. She noted in a June 30, 2023 report that the Developmental Closing Report from Light on Path, described above, had no mention

of Claimant's behaviors Mother reported as support for her request for PA services. BC DePiro's report made these recommendations, Exhibit 13, page A70:

1. Request most recent ABA progress report to gather more information on current clinically significant behaviors, skill deficits, and review behavior plans and program goals.
  2. Request an observation of [Claimant] in his home environment outside of ABA session to gather insight on challenging behaviors within the natural family routines.
- After the above recommendations have taken place and needed information has been gathered, this Consultant will determine level of care for personal assistance services.

24. BC DePiro explained that tantrums and behavior that requires a high level of supervision are fairly typical of children in Claimant's age group. The recommended activity would allow BC DePiro and the Service Agency to see if Claimant's behavior is at such a higher level or intensity as would require a person trained in such behaviors to provide support to the family.

25. Besides noting that the Service Agency is payor of last resort, as set out above, MCS Hill pointed out that PA services are a form of family support services, described in the Service Standards, Exhibit 18, page A121. As a form of support, such services are not intended to supplant normal parental responsibilities, but depending on a disabled child's behavior and family dynamics, additional personal assistance may be appropriate.

26. There are unanswered questions regarding Claimant's behavior. Mother's weekly schedule shows that most IHSS hours are used overnight, but Mother has not

provided information on what overnight behavior justifies using IHSS in this way, information necessary for the Service Agency's assessment of any need for PA services. It would likewise help with assessment if Mother provided a progress report from the provider of Claimant's ABA services, as Service Agency personnel have requested to no avail.

27. With such information as was available, MCS Hill considered the family dynamic, including what services Claimant's siblings were receiving, Mother's weekly schedule, and what she told Service Agency personnel about the need for PA services. But to assess that need fairly and perform its due diligence, the Service Agency must be able to compare information from Mother and that from vendors, as therapists have reported information inconsistent with Mother's. Understanding Claimant's behavior at home is critical. As MCS Hill noted, however, Mother has so far not agreed to observation or to provide information such as the ABA report or why IHSS hours are being used overnight.

### **Mother's Evidence**

28. Mother explained that before she filed her appeal, no one at the Service Agency mentioned "level of care" and she did not consider it part of or relevant in any way to her request for PA services. In Mother's view, the Service Agency's supposed concern with level of care is a pretext. She has supplied the Service Agency with detailed information about her and Claimant's daily schedules and services, enough for a thorough assessment. In Mother's view, the Service Agency is in effect retaliating by delaying PA services because Mother was not as prompt or amenable in answering communications as Service Agency personnel would like.

29. To support her position, Mother offered emails between her and CSC Vo and CSC Vertanus. On June 22, 2023, for instance, Mother emailed CSC Vertanus, Exhibit A, pages B18 through B19:

I'm using respite for doctors appointments, running errands, and allows me to care for myself.

I'm requesting a personal assistant for [Claimant] because I require assistance with [Claimant's] daily care, such as safely bathing him, grooming, dressing, toileting, preparing meals, feeding, taking him to doctors appointments, taking outdoors, and testings. [Claimant] is a non-verbal child who engages in self-injurious behaviors . . . many times a day. . . . [Claimant] is a child with extreme self-harm behaviors and I believe a personal assistant will help reduce his injuries.

30. A few days after the email quoted above, CSC Vertanus told Mother that the Service Agency was offering to fund 35 to 40 hours per month of PA services. Mother asked that the director of the Service Agency send her a letter to explain in writing why the Service Agency was offering no more than 40 hours of PA services.

31. CSS Aghajanyan telephoned Mother within a day of the offer of 35 to 40 hours of PA services to say that PA services should not have been offered at all until after an assessment that would include observing Claimant at home. As Mother recalled, CSS Aghajanyan said that in offering PA hours without a complete assessment, including in-home observation, the Service Agency had made a "huge mistake." Mother asked that CSS Aghajanyan send a letter to explain the mistake in writing.

## **LEGAL CONCLUSIONS**

### **PRINCIPLES OF LAW**

1. Generally, the party asserting a claim or urging a change in the status quo has the burden of proof in an administrative proceeding. (Cal. Administrative Hearing Practice (Cont. Ed. Bar 2d ed. 1997) § 7.50, p. 365.) Claimant bears the burden of proof here.

2. The standard Claimant must meet under Evidence Code sections 115 and 500 is proof by a preponderance of the evidence. Claimant must show that the evidence preponderates or weighs in his favor, making it more likely than not that he should prevail on his claim for services.

3. A Service Agency is required to act under a specific plan, the IPP, in providing services to consumers under the Lanterman Act. Subdivision (b) of section 4646 of the Welfare and Institutions Code states that "The [IPP] is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents . . . shall have the opportunity to actively participate in the development of the plan." Subdivision (c) of section 4646 provides that: "An [IPP] shall be developed for any person who . . . is . . . eligible for regional center services."

4. Welfare and Institutions Code Section 4646.4 states in part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's [IPP] . . . or of an [IFSP] . . . , the establishment of an internal process. This internal process shall ensure

adherence with federal and state law and regulation, and if purchasing services and supports, shall ensure all of the following: [¶] . . . [¶]

(2) Utilization of generic services and supports if appropriate. [¶] . . . [¶]

(4) Consideration of 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.

5. Welfare and Institutions Code Section 4646.5, subdivision (a)(1), states that "The planning process for the [IPP] . . . shall include all of the following: [¶] (1) Gathering information and conducting assessments . . . ."

6. Welfare and Institutions Code Section 4659 states in part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer . . . .

(c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, [IHSS], California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

## **ANALYSIS**

7. There is considerable uncertainty whether the family needs PA services. Mother was willing to withdraw her request for PA services, suggesting that she was uncertain whether PA services were actually needed. The Service Agency then offered Mother PA services, but did so by mistake. The Service Agency recognized the day after the offer that it did not have sufficient information to justify the offer. By this time, however, Mother decided that she would oppose any withdrawal of the offer.

8. As the Service Agency's Service Standards state, PA services are funded in exceptional cases. All children without exception, disabled and not, require a good deal of care and supervision. Protection and supervision of their children are in fact among the typical responsibilities parents must bear. Mother's one-time willingness to withdraw her request for PA services is no doubt due to her recognition of this fact.

9. A parent may nevertheless need the sort of assistance that PA services provide, if caring for a disabled child imposes on the family unusual difficulties. How unusual the difficulties must be to justify PA services is a matter of degree. Mother provided the Service Agency some facts, such as Claimant's being unaware of dangers, his eating inedible things, and self-injury, that go far in making the case that the degree of her difficulties argue for funding PA services.

10. But a good deal of uncertainty remains. There is the unsettling fact that what Mother currently reports about Claimant's behavior has little corresponding to behavior in the May 2023 Developmental Closing Report from Light on Path. Of course, children change, and behavior evolves: all the more reason for observing Claimant at home. There is no evidence that observation would be particularly disruptive or difficult. Observation would be rather a direct and obvious method of clearing away uncertainty.

11. Absent direct observation of Claimant, as the Service Agency has proposed, its personnel, whether CSC's or supervisors, are relegated to comparing conduct reported by a parent to reports of Claimant's status and progress by professionals such as providers of OT, PT, and speech therapy. Exacerbating the uncertainty here, however, is that Mother has not supplied the Service Agency with an ABA progress report, though such a report would shed much light on the question in a case such as this. Further, as Mother's information did not match that in the Light on



Path report, so her information does not match behaviors reported by professionals who have provided Claimant recent care.

12. Mother has provided no good explanation for her reluctance or unwillingness to provide or allow the Service Agency more information. At one point she told CSC Vo that it was too difficult to fill in Claimant's weekly schedule because he was helped in ways that changed day to day or week to week. But this is no reason for Mother to disallow direct observation of her child in the home. There is likewise no reason to deny the Service Agency access to an ABA progress report. Even if the weekly schedule were confusing with more information on changes in care, Mother in fairness should supply more information, if only to allow Service Agency personnel to understand more about Claimant's routines and their complexities and to ask questions about them as appropriate.

13. As the Lanterman Act provisions quoted above make clear, the Service Agency is mandated by law to act on a specific plan for Claimant. The Service Agency must, with facts as fully developed as possible, devise, in cooperation with Mother, an IPP. These tasks cannot be accomplished unless the Service Agency has full and up to date information to assess Claimant's needs, including his needs as they evolve over time. That takes cooperation and understanding.

14. Mother cannot be faulted for suspicion or doubt or skepticism concerning the Service Agency's requests for more information. Given the offer, though rescinded, of 35 to 40 hours of PA services, Mother could reason that the Service Agency in fact had sufficient information and should not tax her, a single mother of more than one disabled child, with extraordinary efforts or arrangements, such as an in-home observation might entail.

15. Nonetheless, as Mother, like other parents of disabled children, knows, care of her child and planning for his well-being, must be constantly adjusted. In these circumstances, Mother must adjust to and appreciate the Service Agency's needs for the most thorough assessment of Claimant's current status and progress. It is fair that she give more information to CSC Vertanus regarding her son's weekly schedule, provide the Service Agency an ABA progress report, and allow the Service Agency to arrange for Claimant's in-home observation.

16. In the present circumstances, lacking evidence from in-home observation and an ABA progress report, denial of this appeal for the provision of PA service hours is appropriate. Denial of the appeal is not based on the merits, but because of the lack of certain facts.

## **ORDER**

Claimant's appeal is denied.

DATE:

THOMAS LUCERO  
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.