

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0008914

OAH No. 2023080588

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 23, 2023.

Claimant's mother (Mother) appeared on behalf of Claimant, who was not present. (Titles are used to protect the privacy of Claimant and his family.) Spanish interpreter Jonathan Vega provided translation assistance to Mother.

Tami Summerville, Appeals Manager for South Central Los Angeles Regional Center (Service Agency), appeared on behalf of Service Agency.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on October 23, 2023.

ISSUE

Whether Service Agency must reimburse Claimant \$4,883.70 for Personal Assistant Services (PAS) provided by Manuel Flores Canales during April and the first two weeks of May 2023.

EVIDENCE RELIED UPON

Documents: Service Agency's Exhibits 1 through 7 and 9; Claimant's Exhibit A.

Testimony: Mother; Roscio Rodriguez, Service Coordinator.

SUMMARY

Claimant's Individual Program Plan (IPP) provides for Claimant to receive 200 hours of PAS per month. In May 2023 Claimant initially requested overtime pay for a PAS provider, Ashley Calvario, for PAS provided during April and the first two weeks of May 2023 (period in question). Service Agency denied the request. Claimant soon after amended this request, asking for payment for PAS provided by Claimant's father. Service Agency denied this request and Claimant requested a Fair Hearing.

In October 2023, at an informal meeting held before the Fair Hearing, Claimant changed this request and asked Service Agency to reimburse Claimant \$4,883.70 for the amount Claimant allegedly owes Mr. Canales for PAS provided to Claimant during

the period in question. Because Claimant did not provide evidence supporting his request, such as Service Agency approval for Mr. Canales to provide PAS to Claimant, or time sheets supporting Claimant's claim that Mr. Canales provided services during the period in question, Claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is 23 years old and resides with Mother, his father (Father), and his 16-year-old brother. Claimant and his brother are eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) under the condition of Autism Spectrum Disorder (ASD). (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

2. Claimant's IPP, Outcome 9, provides for him to receive PAS 200 hours per month. On May 30, 2023, Mother informed Claimant's Service Coordinator (SC), Roscio Rodriguez, that during the period in question, April and the first two weeks of May 2023, Ms. Calvario was Claimant's PAS provider, and she worked 40 hours per week with Claimant during the period in question, and during the same weeks she worked 40 hours with Claimant's brother, for a total of 80 hours during each work week. Claimant requested Service Agency fund for the overtime hours worked by Ms. Calvario as the PAS provider. Later that day, Mother informed Service Agency Father was Claimant's PAS provider during the period in question and worked the claimed overtime hours. Claimant requested Service Agency fund for the overtime hours worked by Father as the PAS provider.

3. On June 9, 2023, Service Agency issued a Notice of Proposed Action denying Claimant's request because, as Service Agency had previously notified Claimant, effective April 1, 2023, Service Agency does not fund for PAS overtime.

4. On August 8, 2023, Claimant submitted an Appeals Request Form requesting a Fair Hearing.

5. On October 17, 2023, the parties met at an informal meeting held pursuant to section 4710.7. During the meeting, Service Agency explained its policy for funding overtime wages. Mother explained a different provider, Mr. Canales, rather than Father, was utilized during the period in question for Claimant's PAS, and Service Agency should reimburse Claimant \$4,883.70 for the PAS provided by Mr. Canales. At the informal meeting Service Agency denied this request.

6. At hearing, Mother affirmed she is no longer requesting overtime payment and that she is appealing Service Agency's denial of Claimant's request for reimbursement of \$4,883.70 for PAS provided to Claimant during the period in question by Mr. Canales.

7. Jurisdictional requirements have been met.

Claimant's Need for Personal Assistant Services

8. In addition to Claimant's ASD, Claimant has multiple health challenges, including a brain tumor, a fractured cranium, Attention Deficit Hyperactivity Disorder, depression, scoliosis, and pain in his knees and back due to frequent falls, which require him to have constant supervision. Claimant has benefited greatly from his Independent Living Services and PAS, which have increased his participation and engagement in the community. For example, these services have allowed Claimant to

play baseball and attend Cerritos College online, activities which in turn have improved Claimant's ability to communicate, socialize, and reside in his family's backhouse. Despite Claimant's independence, he requires constant supervision which historically Mother has provided to Claimant. However, for over a year Mother has been experiencing physical and mental health challenges, including treatment for breast cancer and depression. Mother's mental and physical health needs have prevented her from providing the regular care and support she historically provided to Claimant. During the period in question, Mother was primarily unable to assist Claimant.

9. Claimant's IPP was written on December 19, 2022, and provided for 200 hours per month of PAS through to February 28, 2023. On February 16, 2023, Mother requested the PAS provision of Claimant's IPP be extended. Mother explained to Claimant's SC at the time, Claudia Alvarado, that due to her compromised immune system Mother was not able to drive Claimant anywhere and he is needing additional support due to behavioral issues. SC Alvarado asked Mother if Service Agency should rely on the previous service calendar Mother had submitted for her initial PAS request. Service Agency's Personal Assistant and Specialized Supervision Policy requires the PAS request to be supported by a calendar that details Claimant's In-Home Support Services, respite, and school hours. SC Alvarado also reminded Mother Service Agency no longer pays overtime and Mother may need to find two PAS providers. (Exh. 9, p. A92.) Mother told SC Alvarado she would provide a new calendar to Service Agency. (Exh. 6, p. A83.)

10. Final approval for extending Claimant's PAS hours to August 2023 was delayed for multiple reasons. Initially, Mother did not submit the calendar to Service Agency until March 23, 2023. Once the calendar was received, Service Agency renewed Claimant's Purchase of Service List and approved an extension of Claimant's PAS for

200 hours per month effective March through September 2023. (Exh. 6, p. A81.) However, though approved by the Service Agency's Program Manager, Service Agency's fiscal department did not finalize approval until April 6, 2023. (*Id.* at p. A79.)

Claimant's Request for Reimbursement

11. Mother provided conflicting information to Service Agency regarding who provided PAS to Claimant during the period in question. On May 30, 2023, Mother reported Ashley Calvario, Claimant's PAS provider through to February 28, 2023, provided PAS to Claimant during the period in question, working from 6:00 am until 2:00 p.m. for Claimant and then from 3:00 pm until 11:00 pm for Claimant's brother when Father arrived home from work. Mother added Ms. Calvario was paid overtime for this work, which was the basis for Claimant's initial request to Service Agency for reimbursement of overtime costs for the period in question. Mother believed it was only right to pay Ms. Calvario for the time she worked during Claimant and Mother's time of need, the period in question. (Exh. 6, p. A76.) Mother added Accredited, the PAS vendor, previously allowed overtime payment but recently changed its rule and no longer pays for overtime. SC Rodriguez explained to Mother Service Agency had informed her on more than one occasion that it does not pay overtime and the request would not be granted. Later that day, Mother requested Father be approved to be Claimant's PAS provider and Service Agency denied this request because parents are not allowed to provide PAS. (*Id.* at p. A73 & A74.)

12. At the October 17, 2023, informal meeting, Mother provided new information to Service Agency and changed her request of the Service Agency to the request she affirmed at hearing, that Service Agency reimburse Claimant \$4,883.70 for PAS provided by Mr. Canales during the period in question. Mother explained it was Mr. Canales who provided PAS to Claimant during the period in question. She

presented a cashier's check in the amount of \$4,883.70, void after July 18, 2023, to be paid by Mother to Mr. Canales. Mother testified she held on to the check because she was unsure whether Service Agency would provide reimbursement. Despite Service Agency's request, Mother did not provide any additional evidence in support of her request, such as any identifying information about Mr. Canales, or any evidence of the alleged PAS provided, such as documentation of hours worked, work performed, rate of pay, receipts, or timecards. Mother testified Mr. Canales provided PAS during the period in question because it took so long for the PAS to be approved. Mother added that her complaint and request stems from the delay in approval she attributes to the previous SC, but she has been happy with SC Rodriguez's work since she was assigned to Claimant in May 2023.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-7.)

Burden and Standard of Proof

2. The party asserting a condition which would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, Claimant bears the burden of proving by a preponderance of the evidence Claimant has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

Regional Center Responsibilities

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’ and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646, 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must provide the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible and exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

7. Though regional centers have wide discretion in how to implement the IPP, “they have no discretion in determining whether to implement: they must do so.” (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

Service Requirements

8. Persons with developmental disabilities have the right to dignity, privacy, and humane care; to social interaction and participation in community activities; to physical exercise and recreational opportunities; and to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect. (§ 4502, subd. (b)(2) & (6)-(8).)

9. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

10. At the time of development or modification of a consumer's IPP, regional centers must ensure that generic services and supports are utilized when appropriate and that the family's responsibility for providing similar services and supports for a minor child without disabilities is considered, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

Funding for Services

11. Regional Centers must conform to their respective POS policies. (§ 4646.4, subd. (a)(1).)

12. Regional Center funds must not be used to supplant the budget or any agency which has a legal responsibility to serve a member of the general public.

(§ 4648, subd. (a)(8).)

13. Regional Centers must pursue all possible sources of funding for services, including private insurance to the maximum it is liable for the costs of services or aid to the consumer. (§ 4659, subd. (a).)

14. Regional Center must not purchase any service that would otherwise be available from private insurance or a health care service plan when a client meets the criteria of this coverage but chooses not to pursue the coverage. (§ 4659, subd. (c).)

Consideration of Costs

15. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

16. When selecting a provider of consumer services or supports, the regional center and the consumer, or conservator, must, pursuant to the IPP, consider the following: a provider's ability to deliver quality services or supports that can accomplish all or part of the consumer's IPP; and a provider's success in achieving the objectives set forth in the individual program plan. "The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, . . . who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected." (§ 4648, subd. (a)(6).)

17. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC*, supra, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort. (*ARC*, *ibid.*)

Analysis

18. Claimant's appeal is denied. Claimant did not establish cause for Service Agency to reimburse Mother \$4883.70 for PAS provided to Claimant by Mr. Canales during the period in question. Initially, Claimant did not establish who Mr. Canales is or that he provided any services to Claimant. Other than his name, Claimant failed to present any information about Mr. Canales, preventing Service Agency from determining his ability to deliver quality services to Claimant. (§ 4648, subd. (a)(6).) Similarly, Claimant failed to present any evidence supporting the amount requested such as a rate of pay, hours worked, or timecards. Claimant also failed to establish Claimant or his family paid any money to Mr. Canales for PAS as the cashier's check presented at hearing was void after July 18, 2023. Finally, if, in fact, Mr. Canales provided PAS to Claimant during the period in question, such work was not authorized by Claimant's IPP or Service Agency's Purchase of Service policy. Rather, Mother did not mention Mr. Canales to Service Agency until October 17, 2023, six months after the alleged services were provided. Accordingly, Service Agency cannot fund for the requested reimbursement (\$4646.4, subd. (a)(1).) (Factual Findings 8-12.)

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ORDER

Claimant's appeal of Service Agency's denial of reimbursement of \$4883.70 for PAS provided to Claimant during April and the first two weeks of May 2023 is denied.

DATE:

CHANTAL M. SAMPOGNA

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.