

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2023110556

DDS No. CS0010297

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on February 2, 2024. The record closed and the matter was submitted for decision at the end of the hearing.

Claimant was represented by her mother. The names of claimant and her family members are omitted to protect their privacy and maintain confidentiality.

Srbui Ovsepyan, Fair Hearing Representative, represented Frank D. Lanterman Regional Center (service agency).

ISSUE

Shall service agency provide funding for an additional 45 minutes per session day by vendor TOTAL Programs over the next six months to make up 138.75 hours of services the vendor was not able to provide due to a staffing shortage for three months in 2023?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency's exhibits 1 through 6; claimant's exhibits A through E; and the testimony of Megan Mendes and claimant's mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a 29-year-old woman who is a service agency client and eligible for services under the Lanterman Act. (Ex. A.)

3. On August 2, 2023, claimant's mother sent service agency an e-mail informing staff that a vendor who provides claimant services, TOTAL Programs, was unable due to staff shortages to provide 138.75 hours of services during April, May,

and June 2023. Claimant's mother requested service agency to fund for TOTAL Programs to provide an additional 45 minutes per session day over the next six months to make up for the services it failed to provide. (Exs. 1, 2.)

4. By a Notice of Action dated August 22, 2023, service agency advised claimant's mother her request had been denied. (Ex. 1.) Because that Notice of Action had an error in it, service agency issued a revised Notice of Action dated October 23, 2023, which corrected the error in the first notice, but again advised claimant's mother her request was denied. (Ex. 2.)

5. The reason given in the revised Notice of Action for denying the request was that claimant receives direct services covering more than 24 hours per day from various vendors, including TOTAL Programs; and that regional centers do not have legal authority to "make up" hours of service as a means of providing retroactive authorization for a previously authorized number of service hours. (Ex. 2.)

6. On October 24, 2023, claimant's mother filed an appeal with the Department of Developmental Services (DDS), challenging service agency's denial of her request. (Ex. 3.)

7. The hearing initially was scheduled for December 29, 2023, but was continued at service agency's request. In connection with that continuance, claimant's mother waived the time limit prescribed by the Lanterman Act for holding the hearing and for the ALJ to issue a decision in this case. (Ex. 4.)

Claimant's Relevant Background Information

8. Claimant resides with her parents. She graduated from high school in 2016 and now participates in a modified day program. (Exs. 5, 6, A.)

9. Claimant has been diagnosed with Moderate Intellectual Disability, Autism, Cerebral Palsy, Seizure Disorder, Mild Corpus Callosum, Scoliosis, and Cardio-Facio-Cutaneous (CFC) Syndrome. (Exs. 5, 6, A.)

10. Claimant is significantly disabled. Her communication is limited, she has an unsteady gait, and she requires total care and assistance with all daily living activities. Claimant also requires supervision at all times for her safety. (Exs. 5, 6, A, C.)

Services Funded by Service Agency

11. TOTAL Programs (TOTAL) works daily with claimant and provides her with behavior and community integration services. TOTAL staff also accompany claimant to her other service providers. (Test. of Mendes, claimant's mother.)

12. As of the issuance of the revised Notice of Action, claimant received funding for the following services from TOTAL: 21 hours per month of Behavior Management Supervision; 100 hours per month of Behavior Management Services; 133 hours per month of Community Integration Training; 30 hours per month of Community Integration Services at a 2:1 staffing ratio; and 40 hours per month of Community Integration Supervision. (Exs. 5, 6, A.)

13. In addition, claimant receives funding for specialized therapeutic services from CABA; supported living services through a program referred to as KABA; and individual and family training through People's Care, which mimics a day program. (Exs. 5, 6, A, C.)

///

///

14. Megan Mendes, service agency's Assistant Director of Client and Family Services, estimates claimant now receives 1:1 support totaling 30 hours per day, seven days per week, which does not include other funded services such as social recreation, or physical therapy. According to Ms. Mendes, more than 24 hours per day of direct services were agreed upon for claimant's Triennial Individual Program Plan (IPP) in June 2023 to address a staffing shortage by a vendor. (Testimony [Test.] of Mendes.)

Staffing Shortage at TOTAL Programs

15. In a letter dated January 30, 2024, Sarah Robledo of TOTAL advised that TOTAL was unable to provide staffing for claimant during the months of April, May, and June 2023 due to a staffing shortage. (Ex. E.) The total number of hours not provided was 138.75, broken down by Ms. Robledo as follows:

April 2023- 38.50 hours:

2.50 hours of Behavior Intervention Services;

30 hours of 2:1 Community Integration Services;

6 hours of Community Integration Services.

May 2023- 40.75 hours:

3.75 hours of Behavior Intervention Services;

2.50 hours of 2:1 Community Integration Services;

34.50 hours of Community Integration Services.

June 2023- 59.50 hours:

4.75 hours of Behavior Intervention Services;

24.50 hours of 2:1 Community Integration Services;

30.25 hours of Community Integration Services.

(Ex. E.)

16. Claimant's mother testified claimant regressed during the months in question. She described the regression as increased negative behaviors, decreased verbalization, increased seizures, and a lowered emotional state. In her letter, Ms. Robledo commented, "We understand that this lapse in consistent service negatively impacts [claimant's] stability of programming and her behavioral progress." (Ex. E, p. B55.)

17. Claimant's mother agreed during the hearing she did not advise service agency of any particular problem or incident during the three months in question, and that claimant was neither hospitalized nor the subject of a special incident report during that time.

18. There have been no further reports of staffing shortages at TOTAL or of it being unable to provide the agreed number of hours per month.

///

///

///

///

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4717; an undesignated statutory reference is to the Welfare and Institutions Code.) Claimant's mother appealed service agency's denial of her request for a temporary increase in funding to make up for the loss of services due to a vendor staffing shortage. Therefore, jurisdiction exists for this appeal. (Factual Findings 1-7.)

2. 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.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In this case, claimant bears the burden of proving by a preponderance of the evidence she is entitled to a temporary increase in funding to make up for service hours previously not provided due to a vendor staffing shortage.

Governing Law

4. An ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]." (§ 4706, subd. (a).)

5. Claimant is essentially requesting “compensatory services,” a form of relief specifically provided in laws governing special education services to make up for times when services were not provided to a student, or not provided sufficiently. However, the Lanterman Act has no such provision for compensatory services.

6. The Lanterman Act requires the parties to develop goals, as well as the services and supports necessary to achieve those goals, in the process of creating an IPP. A client’s IPP “shall be reviewed and modified by the planning team . . . as necessary, in response to the person’s achievement or changing needs. . . .” (§ 4646.5, subd. (b).) The IPP planning process shall include, among other things, “[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities.” (§ 4646.5, subd. (a)(1) & (a)(2).) Such services must be provided in a cost-effective manner. (§ 4646, subd. (a).)

Disposition

7. The relief requested by claimant is not available in this case. There is no provision for compensatory services under the Lanterman Act. In addition, the number of hours of TOTAL’s services provided in claimant’s IPP is the result of assessments and recommendations by professionals, and agreements between the parties. There is no evidence that TOTAL, or any other service professional, has found claimant would benefit from more time working with TOTAL than is currently provided in her IPP. Put another way, there is no proof claimant will reach her goals by receiving 45 minutes more per day of TOTAL’s services. Blindly providing additional services simply because some hours were not previously provided would not be a cost-effective way of addressing TOTAL’s past staff shortage.

8. Claimant's mother likens her daughter's IPP to a contract. She argues that, like a contract, service agency is obligated to fund the exact number of hours specified in claimant's IPP each month. She concludes if the specified hours are not provided, service agency must provide additional funding to make up the difference. While this is a fair analogy, it is not a dispositive one. For example, it is not clear there was a "breach" of this contract leading to any form of "damages," where a third party to the IPP (TOTAL) was responsible for the problem, not service agency. Also, claimant's IPP provides a maximum number of hours of service each month. By providing the additional funding requested, claimant would receive more hours per month than specified in her "contract." Nothing in claimant's IPP addresses how to resolve missed hours.

9. TOTAL's staff shortage was limited in time, and has resolved. Claimant's mother believes her daughter regressed during the three months in question, but there is little evidence corroborating that. This is not to say the staff shortage was a trivial problem or not concerning. Should a staff shortage arise in the future, claimant has other possible remedies under the Lanterman Act, including requesting an IPP meeting to address the problem, changing vendors, or filing a complaint with DDS pursuant to section 4731.

10. Based on the above, claimant failed to meet her burden of establishing by a preponderance of the evidence that she is entitled to the requested increase in funding hours. (Factual Findings 1-18; Legal Conclusions 1-9.)

ORDER

Service Agency is not required to provide increased funding for vendor TOTAL Programs to make up for services it previously did not provide due to staffing shortages for three months in 2023.

DATE:

ERIC SAWYER

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.