

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

In the Matter of:

Claimant,

v.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

DDS No. CS0010899

OAH No. 2023120005

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 18, 2024, by videoconference.

Claimant's parents appeared representing claimant, who was not present.

Fair Hearing Specialist Mary Dugan represented service agency Regional Center of the East Bay (RCEB).

The matter was submitted for decision on January 18, 2024.

After issuance of a decision in this matter, the Department of Developmental Services (DDS) requested that the Office of Administrative Hearings re-issue the

decision as a proposed decision for review and action by DDS. The matter was re-submitted for a proposed decision on January 30, 2024.

ISSUES

1. Must RCEB authorize and provide funding for “intensive behavioral support” services, to be provided to claimant by Maxim Healthcare Services?
2. Must RCEB authorize and provide funding for Applied Behavior Analysis (ABA) services for claimant?
3. Must RCEB list several specific “outcomes,” identified by claimant’s parents, in claimant’s Individual Program Plan (IPP)?
4. Must RCEB conduct a further assessment of the potential utility to claimant of an iPad or Apple Watch?
5. (withdrawn at hearing)
6. Must RCEB deem claimant and RCEB to have agreed on an IPP for claimant that allows him to begin participating in the Self-Determination Program (SDP)?
7. Must RCEB include an “addendum” drafted by claimants’ parents in claimant’s IPP, or revise the IPP to use words and phrases his parents prefer?

FACTUAL FINDINGS

1. Claimant was born in fall 2012 and lives with his parents and sibling. Claimant is an RCEB consumer because he has substantially disabling autism spectrum disorder.

2. In August 2023, claimant and RCEB agreed to an IPP for claimant. In pertinent part, this August 2023 IPP calls for RCEB to fund 160 hours per quarter of respite services (for a person to care for claimant in his parents' absence). The August 2023 IPP also commits RCEB to funding other services and supports that are not in dispute between claimant and RCEB.

3. Claimant and RCEB have been working to develop a new IPP, as well as a service budget and spending plan, that will authorize claimant's parents to manage his care through SDP. They have reached agreement on several issues and impasse on several others.

4. Claimant requested a fair hearing with respect to issues on which claimant and RCEB do not agree. At the hearing, claimant's parents agreed that RCEB had addressed one such issue to their current satisfaction, and the hearing proceeded as to claimant's other concerns.

Issue 1: Intensive Behavioral Support

5. Claimant has asked RCEB to authorize him to receive services through an RCEB vendor, Maxim Healthcare Services, in a category that Maxim identifies as "intensive behavioral support." His parents characterize these services as "behavioral respite," in which caregivers would provide a higher level of care and supervision to claimant in his parents' absence than do his current respite care providers.

6. DDS has authorized some regional centers to offer “behavioral respite” services. Vendors of such services provide highly-trained caregivers for parental respite, to serve consumers whose unusual behavior requires intensive management and supervision. DDS has not authorized RCEB to procure “behavioral respite” services for its consumers, however.

7. According to RCEB psychologist Rebecca Churchill Sterling, Maxim’s intensive behavioral support services represent more significant behavioral intervention than does “behavioral respite.” RCEB refers consumers for these services only if they exhibit severe, dangerous behavioral problems that create significant obstacles to participating in school and in day activity programs, or to receiving conventional respite care services. Because claimant attends school, participates in community activities (with parental support), and receives respite care in his home, Dr. Sterling does not believe he is an appropriate candidate for Maxim’s intensive behavioral support services.

8. Claimant’s parents testified credibly about their concern for claimant’s safety, but presented no evidence tending to show that claimant’s undesirable behavior is so severe that it may qualify him for intensive behavioral support services. They also have declined an offer by RCEB staff members to visit their home and observe claimant’s behavior, including his interaction with caregivers, personally.

Issue 2: ABA

9. For persons such as claimant, with anti-social behavioral challenges due to autism spectrum disorder, ABA service teaches pro-social behavior. Although claimant’s family has private health insurance that covers ABA service, claimant is not currently receiving this service. His parents have contacted multiple potential

providers, but these providers either have offered service at times claimant's parents deem unacceptable, or have offered only to put claimant on a service waiting list.

10. RCEB staff members have attempted to assist claimant in identifying an ABA provider that is available to serve claimant. They have not succeeded. Regardless of whether any provider is available to claimant through his family's insurance plan, all providers known to RCEB who serve clients with needs similar to claimant's in his geographic area have waiting lists, or limited available hours.

11. Because claimant has been unable to access ABA through his family's private insurance, his parents ask RCEB to authorize funding for ABA and to identify an ABA provider that can serve claimant immediately, on a schedule they choose. They presented no evidence supporting their belief that such a provider would be available if RCEB, rather than their private insurance carrier, paid the bill.

Issue 4: iPad and Apple Watch Assessment

12. In developing his SDP spending plan, claimant sought RCEB's approval to spend a portion of his SDP budget to buy an iPad and an Apple Watch. RCEB denied this request in mid-2023, on the ground that the information available to RCEB at that time about claimant and his potential use of these devices was inadequate to establish their value in addressing his developmental disability. Claimant's parents appealed this denial, but the hearing judge ruled in RCEB's favor.

13. Claimant's parents then provided claimant's Individualized Education Program (IEP) to his RCEB case manager, Miuwan Young, for review.¹ Young conferred with other RCEB staff members, and they concluded that the IEP supported claimant's request. As of the hearing date, the current draft of claimant's SDP spending plan would permit claimant to use SDP funds to buy an iPad and an Apple Watch.

14. Claimant's parents know that RCEB now has agreed to include these devices in claimant's SDP spending plan. Nevertheless, claimant seeks an order directing RCEB to "complete the assessment of the appropriateness of the [iPad and Apple Watch] for improving [claimant's] challenging behavior and safety, and then share the assessment report with parents."

15. The matters stated in Findings 13 and 14 show that RCEB has completed its assessment regarding claimant's purchase of an iPad and an Apple Watch. No evidence explains why claimant's parents believe that any further "assessment report" exists or should be forthcoming.

Issues 3, 6, and 7: IPP for SDP

16. In preparation to enroll claimant in SDP, his parents and RCEB negotiated an SDP budget. On October 3, 2023, acting for RCEB, Young signed a document memorializing claimant's and RCEB's agreement to a total SDP budget of \$41,901.¹⁶ Claimant's mother countersigned this same document for claimant on October 13,

¹ RCEB staff members had explained to claimant's parents before the hearing, and to the hearing judge, that reviewing claimant's complete IEP would be one way for them to assess whether RCEB should fund these devices for claimant.

2023, adding a caveat referring to the dispute summarized above in Findings 5 through 8:

The law says we can agree to part of the IPP with exceptions and the Regional Center must start those agreed services right away. With my signature, I agree to this above budget with the understanding that the budget of behavior respite and behavior respite assessment, are still in dispute and extra budget of them can be added in the future.

17. Young met with claimant's mother on November 2, 2023, to finalize plans for claimant's transition to SDP. They agreed on an SDP spending plan for claimant. Later that day, claimant's mother finalized a document memorializing this spending plan, signed it, and sent it to Young. The document claimant's mother signed is an accurate representation of the spending plan to which claimant's and RCEB's representatives have agreed in principle. As of the hearing date, claimant's parents had not received a counter-signed copy of this document from RCEB, however.

18. Immediately after the November 2 meeting, Young prepared a new IPP summary page for claimant's and RCEB's representatives to sign. This signature page lists five goals. In addition, this November 2023 IPP signature page replaces the list of RCEB-funded services and supports that was on the August 2023 IPP signature page with the statement that claimant will participate in SDP, with a total SDP budget for January 1 through December 31, 2024, of \$41,901.16.

19. The IPP signature page has a box for the claimant or claimant's representative to check, affirming agreement "to the implementation of the IPP." It also has a space for the claimant or representative to sign. The case manager signed

this document for RCEB, and sent it to claimant's parents for signature, on November 2, 2023.

20. Rather than signing and returning the November 2023 IPP signature page described in Finding 19, claimant's mother asked Young to send her the IPP's narrative report component. Young did so on November 6, 2023, and claimant's mother replied by email on November 7, 2023, proposing numerous revisions and corrections. Young sent claimant's mother a revised narrative component to the November 2023 IPP on November 7, 2023.

21. Neither of claimant's parents have signed the IPP signature page that Young sent to them. Rather, after further correspondence, they returned a copy of the signature page with numerous additions and revisions.

- They placed a red line through the check-box and statement agreeing to the IPP's implementation.
- They added a check-box, and checked it, with the statement, "I agree to the implementation of part of IPP we agree to. Please see our partial consent of IPP,* requests and disagreements in attached Parent Addendum dated 11/9/2023 with 7 attachments (total 54 pages)."
- They added a statement bordered by a dashed rectangle: "**Parents did not receive the IPP until 11/6/23 and 11/7/23. Tracy Young emailed [claimant's] mother two version of IPP dated 11/2/2023 (Attachment 2 and 4). Please note our consent with exception must match these two documents in the attachment."

- On the signature line, instead of a signature, they wrote, "Please see signature on page 5 of the Parent Addendum dated 11/9/2023."
- They attached a document they had drafted, titled "Parent Addendum." It includes five single-spaced pages explaining and arguing for changes claimant's parents would like the RCEB case manager to make to the IPP, along with seven explanatory attachments totaling another 49 pages.

22. At the hearing, claimant's parents testified that they agree with all five IPP goals stated on the November 2023 signature page that Young prepared; that they agree that claimant should participate in SDP; and that they agree that his SDP budget should be at least \$41,901.16, to pay for the items in claimant's SDP spending plan. Nevertheless, they explained that they had refused to sign the signature page, without marking it up, for several reasons:

- They would like the narrative report component of claimant's IPP to list several specific anticipated "outcomes" from IPP implementation that it currently does not list.
- They believe the report misstates some information about claimant or their family, and covers other information in insufficient detail.
- They believe that rather than simply noting and briefly summarizing their disagreements with RCEB regarding intensive behavioral services (summarized above in Findings 5 through 8) and ABA (summarized above in Findings 9 through 11), the IPP should reargue those disagreements in detail.

OUTCOMES

23. The IPP narrative Young sent to claimant's mother on November 7, 2024, states these anticipated "Outcomes" from implementing the IPP:

- "Outcome #1: [Claimant] will continue to live at home with his family while his parents can take intermittent break from providing constant care for him."
- "Outcome #2: [Claimant] will improve his social skills, and have opportunities to interact with peers by participating in the activities or programs at home and in the community."
- "Outcome #3: [Claimant] will use sensory support goods (such as plush, squishy, chewy, special texture, etc) to regulate his emotions, improve his behavior and make him more safe."
- "Outcome #4: [Claimant] will be more independently care for his own needs, and remain safe during transportation."
- "Outcome #5: [Claimant] will reduce challenging behaviors, increase quality of sleep to reduce tantrums."
- "Outcome #6: [Claimant] will use technology of ipad to expand his vocabularies."
- "Outcome #7: [Claimant] will maintain his current level of health."

24. Claimant's parents ask for an order directing RCEB to supplement these seven statements with five additional "outcome" statements:

- “[Claimant] will receive care and supervision at all times to ensure his health and safety while his parents are taking intermittent breaks.”
- “[Claimant] will refrain from hitting, slapping, or pushing others at home and in community.”
- “[Claimant] will brush his teeth daily by himself with minimal help.”
- “[Claimant] will stay safe in the community with his family or with non-parent caregivers with support from well-trained non-parent providers.”
- “[Claimant] will be able to indicate the need to change the pull-up at all times.”

25. Three of the five “outcome” statements claimant’s parents want RCEB to add to claimant’s IPP (regarding physical aggression, tooth-brushing, and diapers) add specificity to the general “outcome” statements that are already in RCEB’s draft regarding safety, health, and anti-social behaviors. None of the statements claimant’s parents want RCEB to add introduce new concepts or information to RCEB’s draft, however.

ERRORS AND OMISSIONS

26. Claimant’s parents demand that RCEB revise numerous statements in the narrative component of claimant’s IPP, either to change the words RCEB has drafted or in some cases to add information.

IHSS Hours

27. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says, [Claimant] has Medi-Cal through institutional deeming, and he has In-Home Supportive Services (IHSS) for about 283 hours per month. His mother is his IHSS care provider. Parent reported that mother cannot provide 283 hours of IHSS to [claimant] due to the limitation of the IHSS provider's working hours. Currently, Mother provides IHSS hours ranging from 180 to 240 hours per month to [claimant], which depends on the number of hours Mother provides to his brother. Also, IHSS does not allow hiring non-parent IHSS providers for parents to take a break or take care of other family members. Therefore, some of [claimant's] IHSS hours are forfeited.
28. Claimant's parents' "Parent Addendum" demands that RCEB revise this passage to say, [Claimant] is qualified for 283 IHSS hours, but his Mother can not provide 283 hours of IHSS to [claimant] due to the limitation of the IHSS provider's working hours. Currently, Mother provides IHSS hours ranging from 180 to 240 hours per month to [claimant], which depends on the number of hours Mother provides to his brother. Also, IHSS does not allow hiring non-parent IHSS providers for parents to take a

break or take care of other family members. So some of [claimant's] IHSS hours are forfeited.

Gross Motor Skills

29. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says,

Parent reported that [claimant] does not have adequate gross motor skills for daily activities. He can walk, run, and climb, but his skills are not age appropriate.

30. Claimant's parents' "Parent Addendum" demands that RCEB add the following information to this passage:

These are not just parent reports. They are based on a formal assessment administered by a professional.

According to the assessment, Test of Gross Motor Development-3, his Age Equivalents of Locomotor and Ball Skills are both less than 3 years old with Percentile Ranks <1%.

Aggressive Behavior

31. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says,

His aggression also happens if someone asked him to stop his preferred activities, such as climbing to high places, watching tv, playing some apps, eating too much preferred food/snack, etc.

32. Claimant's parents' "Parent Addendum" demands that RCEB add, [Claimant] will also hit, kick or push the person if he is asked to do non-preferred activities such as homework, academic work or taking a bath.

Self-Injurious Behavior

33. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says, [Claimant] scratches his body when he is sad. This behavior occurs about every other day. He also has a tendency of scratching an open wound so it takes a very long time for the wound to be healed.

34. Claimant's parents' "Parent Addendum" demands that RCEB revise this statement to say that self-scratching because of sadness occurs daily, and to add,

In addition to scratching, [claimant] persistently picks his peeling skin and swollen area. [Claimant] cannot tolerate bandages or scabs on his body. He keeps picking or peeling them, and sometimes causes bleeding or inflammation. He often has dry/peeling skin on his lips/hands/feet, which he will keep picking.

Emotional Outbursts

35. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says, [Claimant] will scream, yell, cry and jump when he is upset with no apparent reasons. He needs adult's assistance with

counting numbers or redirect his attention. This behavior occurs about every other day.

36. Claimant's parents' "Parent Addendum" demands that RCEB add, In addition to screaming, yelling, crying, and jumping, [claimant] also scratches himself when he is upset or meltdown. This behavior occurs several times a day.

ABA Service and Intensive Behavioral Support

37. The draft IPP RCEB sent to claimant's parents on November 7, 2023, summarizes the matters stated above in Findings 9 through 11.

38. Claimant's parents' "Parent Addendum" demands that the IPP explain these disputes in much greater detail.

Vision and Hearing

39. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says, Parent reported that they do not know if [claimant's] hearing is within normal limits. He did not pass any hearing tests because he did not understand/follow the instructions from the doctor. [Claimant] has myopia and he can not tolerate any eyeglasses.

Elsewhere, however, it also says,

[Claimant] has hearing within normal limits.

With correction, his hearing within normal limits.

[Claimant] has eyesight within normal limits.

With correction, his vision is normal.

40. Claimant's parents' "Parent Addendum" demands that RCEB revise this second reference to claimant's hearing and vision to say (consistent with the first reference),

We do not know if [claimant's] hearing is within normal limits. He did not pass any hearing tests because he did not understand/follow the instructions from the doctor.

[Claimant] has myopia but he can not tolerate wearing eyeglasses.

41. Aside from these characterizations in claimant's draft IPP, no evidence at the hearing described claimant's hearing or vision.

SDP Budget and Spending Plan

42. The draft IPP RCEB sent to claimant's parents on November 7, 2023, states that claimant's SDP budget will be \$41,901.16. It also says, "Parent requested behavioral respite and ABA service. Both requests are in dispute. Therefore, the budget for the period of 1/01/2024 to 12/31/2024 will be adjusted after the appeal process."

43. Claimant's parents' "Parent Addendum" demands that the IPP explain this budget dispute in much greater detail.

Challenging Behaviors

44. The draft IPP RCEB sent to claimant's parents on November 7, 2023, states that several services and supports, including training for claimant's parents and non-parent caregivers, will assist claimant in improving his behavior.

45. Claimant's parents' "Parent Addendum" demands that the IPP also state his parents' belief that claimant needs "trained non-parent providers" and intensive behavioral support services.

Educational Support

46. The draft IPP RCEB sent to claimant's parents on November 7, 2023, says that claimant's parents will use part of his SDP budget to buy an iPad, and that they will "download similar apps as school that [claimant] is working on to enhance familiarity with difficult subjects."

47. Claimant's parents' "Parent Addendum" states, "We can not agree to this because the school did not provide student accounts or the name of all the apps [claimant] uses at school. . . . We can promise to download the free learning apps and buy apps that we can afford for [claimant] to work on difficult subjects at the home/community."

SDP ENROLLMENT

48. RCEB staff members have not yet initiated claimant's SDP enrollment. Both Young and RCEB staff member Jenifer Castañeda testified credibly that claimant's parents' insistence on modifying and qualifying their consent to claimant's IPP is the only current obstacle to claimant's SDP enrollment. Young and Castañeda do not believe that the document claimant's parents signed and returned (as described in

Finding 21) shows claimant's parents' agreement clearly, chiefly because claimant's parents specifically state that they give only "partial consent."

49. Young explained that RCEB staff members view a consumer's IPP as an agreement between RCEB and the consumer as to what services RCEB will provide to the consumer. The IPP signature page and supporting narrative should state only matters on which RCEB and the consumer agree. If RCEB and the consumer disagree on a matter that may affect IPP implementation, such as on whether RCEB must provide services to the consumer in addition to the services stated in the IPP, the IPP should summarize that disagreement briefly (stating, in effect, that RCEB and the consumer agree that a dispute exists).

50. Young also noted that a consumer who believes his or her IPP to omit important information may submit an IPP comment or addendum stating the consumer's position. Such a document does not substitute for an IPP stating the consumer's and RCEB's agreements, however, and identifying the services that RCEB will provide in accordance with those agreements.

LEGAL CONCLUSIONS

1. The Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) entitles claimant to an administrative fair hearing to review RCEB's service decisions. (Welf. & Inst. Code, § 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires RCEB to deliver the services and supports he requests.

Issue 1: Intensive Behavioral Support

2. The matters summarized in Findings 5 through 8 do not establish that the services and supports RCEB has made available to claimant, and that are available to him through other sources such as school or insurance, are inadequate to meet claimant's supervision needs. On this record, the Lanterman Act does not oblige RCEB to authorize Maxim's intensive behavioral support services for claimant.

Issue 2: ABA

3. The matters summarized in Findings 9 through 11 do not establish that ABA would be any more effectively available to claimant if RCEB funded it than it is through claimant's family's insurance. On this record, the Lanterman Act does not oblige RCEB to authorize funding for ABA services for claimant.

Issue 4: iPad and Apple Watch Assessment

4. The matters summarized in Findings 12 through 15 establish that RCEB has assessed the potential utility to claimant of an iPad and an Apple Watch. On this record, the Lanterman Act does not oblige RCEB to take any further action with respect to such assessments.

Issues 3, 6, and 7: IPP Disagreement

5. The matters summarized in Findings 23 through 25 do not establish that the "outcomes" claimant's parents wish to see in his IPP are materially different from the outcomes the draft IPP prepared by RCEB already includes. Although claimant's parents may, if they wish, continue their efforts to persuade RCEB's staff members to word any "outcome" statements in claimant's IPP in the manner claimant's parents prefer, the Lanterman Act does not oblige RCEB to accept claimant's parents' wording.

6. Similarly, the matters summarized in Findings 26 through 47 do not establish that claimant's parents' proposed revisions and corrections to the draft IPP prepared by RCEB are necessary to provide brief, accurate, and adequate explanation of the basis for the services and supports RCEB has agreed to provide for claimant. Although claimant's parents may, if they wish, continue their efforts to persuade RCEB's staff members to revise claimant's IPP in the manner claimant's parents prefer, the Lanterman Act does not oblige RCEB to accept claimant's parents' wording.

7. Before claimant may begin receiving his Lanterman Act services through SDP, RCEB must obtain claimant's parent's signature memorializing agreement to an IPP calling for claimant to participate in SDP. (Welf. & Inst. Code, §§ 4646, subd. (g), 4685.8, subds. (j), (k), (l).) Although RCEB has drafted a November 2023 IPP that calls for claimant's enrollment in SDP, the matters stated in Findings 19 through 21 do not establish that claimant's parents have given clear, unambiguous consent to this plan. RCEB must continue serving claimant in accordance with his August 2023 IPP, rather than transitioning claimant to SDP in accordance with the draft November 2023 IPP, until claimant's parents have signed the November 2023 IPP in a manner confirming that they agree that RCEB should implement it.

8. In accordance with Welfare and Institutions Code section 4646, subdivision (l), claimant's parents may ask RCEB to append their comments or addendum to any IPP they sign. Such a comment or addendum must make clear, however, that it represents only claimant's parents' views, and not any agreement between claimant and RCEB. Moreover, any such comment or addendum document is not a substitute for claimant's parent's signature memorializing consent to the IPP.

ORDER

1. Claimant's appeal from RCEB's refusal to authorize or fund Maxim "intensive behavior support" for claimant is denied.
2. Claimant's appeal from RCEB's refusal to fund ABA for claimant is denied.
3. Claimant's request for an order requiring RCEB to use claimant's parents' preferred wording for specific IPP outcomes is denied.
4. Claimant's request for an order requiring RCEB to conduct a further assessment regarding claimant's use of an iPad or Apple Watch is denied.
5. (withdrawn at hearing)
6. Claimant's request for an order requiring RCEB to move him to SDP, on the strength of his parents' qualified and partial approval in November 2023 of an SDP IPP, is denied.
7. Claimant's request for an order requiring RCEB to revise his IPP as his parents demand is denied.

DATE:

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023120005

Vs.

DECISION BY THE DIRECTOR

Regional Center of the East Bay

Respondent.

ORDER OF DECISION

On January 29, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued this decision as a Final Decision and served all parties. The decision should have been a proposed decision, subject to review by the Department of Developmental Services (DDS) pursuant to Welfare & Institutions Code section 4712.5, subdivision (e) (1). The ALJ at OAH re-issued the decision as a Proposed Decision on January 31, 2024, and served all parties.

The Department of Developmental Services (DDS) takes the following action on the attached January 31, 2024 Proposed Decision of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day February 26, 2024.

Original signed by

Nancy Bargmann, Director