

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2024010835**

**DDS Track No. CS0012127**

**DECISION**

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on April 12, 2024, by videoconference.

Cristina Aguirre, Due Process Officer, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant's mother (Mother) represented claimant. Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and his family.

Oral and documentary evidence was received. The record remained open until May 3, 2024, for both parties to submit their recordings of the December 6, 2023 Individual Program Plan (IPP) meeting, along with a statement about whether the recordings contain claimant's request for the social recreational activity, TechKidz: Minecraft! Course (Minecraft Course). Claimant was also granted leave to submit any emails Mother exchanged with NLACRC relating to her request for the Minecraft Course. Additionally, the parties were to submit written objections to any new evidence and written closing arguments by May 10, 2024.

NLACRC timely submitted (1) its recording of the December 6, 2023 IPP meeting, (2) its statement about whether the recording contains claimant's request for the Minecraft Course, and (3) a written closing argument, which were marked for identification as Exhibits 19, 20, and 21, respectively. Claimant timely submitted (1) his recording of the December 6, 2023 IPP meeting, (2) an email showing Mother exchanged evidence with NLACRC, (3) a January 8, 2024 email thread with NLACRC, (4) a December 2023 email thread with NLACRC, and (5) Mother's statement about the December 6, 2023 IPP meeting, which were marked for identification as Exhibits A, B, C, D, and E. Neither party raised any objections to the new evidence. Therefore, Exhibits 19, A, C, and D were admitted. The record was closed, and the matter was submitted for decision on May 10, 2024.

## **ISSUE**

Should NLACRC reimburse claimant for his participation in the social recreational activity, Minecraft Course?

## **EVIDENCE**

Documentary: Exhibits 1 through 21; A through E.

Testimonial: Jennifer Thurm and Liz Campos, NLACRC Consumer Services Supervisors (CSS); and Mother.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is an eight-year-old male who qualifies for regional center services under the category of autism. He lives at home with Mother.
2. On January 25, 2024, claimant filed a request for a fair hearing appealing NLACRC's denial of his request for reimbursement of his participation in Minecraft Course, a social-recreational course provided by Parker Anderson Enrichment (Parker Anderson) during the spring of 2024. This hearing ensued.

### **Claimant's IPP**

3. Claimant's most recent IPP, dated December 6, 2023 (2023 IPP), contains Service Agency's and claimant's agreements, sets forth specific objectives and goals, and identifies the services and supports to achieve them. It also describes claimant's needs and behaviors.
4. As set forth in the 2023 IPP, claimant can walk on his own. He is verbal but has a difficult time expressing himself when he wants something. Claimant can eat independently but prefers to use his fingers. He is toilet trained but requires assistance

to clean himself after bowel movements. Claimant also requires assistance with personal care tasks, including dressing, undressing, bathing, and brushing teeth. Claimant lacks safety awareness in all settings, and he must be supervised at all times.

## **2023 IPP Planning**

5. From April 2023 to December 2023, claimant and Service Agency met approximately five times to develop the 2023 IPP. In April 2023, claimant and Service Agency met on April 18 and April 21, 2023, to discuss claimant's IPP. According to CSS Jennifer Thurm, who attended these two IPP meetings, Mother did not request the Minecraft Course at IPP meetings on April 18 and April 21, 2023.

6. Claimant and Service Agency met again on September 14, November 1, and December 6, 2023, to finalize the IPP. During these last three IPP meetings, Emily Ikuta (Ikuta), an attorney from Disability Rights California, represented claimant. After each of these meetings, Service Agency sent a draft IPP to Ikuta and Mother, who provided corrections and revisions to each draft IPP.

## **CLAIMANT'S REQUESTS FOR PARKER ANDERSON COURSES**

7. On November 7, 2023, Mother requested Service Agency to reimburse her for the social recreational activity, TechKidz: Game Design! (Game Design Course) offered by Parker Anderson during the fall of 2023. (Ex. 4.) Service Agency agreed to reimburse claimant for the Game Design Course on a one-time basis. In an email dated November 7, 2023, NLACRC Consumer Service Coordinator (CSC) Victoria Velasco (Velasco) wrote to Mother and Ikuta, in relevant part: "After reviewing and discussing social recreational activities with my supervisor the reimbursement for [Game Design Course] will be added. Any other activities or requests will be reviewed and added if

approved after IPP is completed. As mentioned to you before, an IPP addendum will be completed to reflect any changes.” (Ex. 4, p. A70.)

8. In an email to the Service Agency dated December 5, 2023, Ikuta wrote: “In addition to the “one-time” reimbursement for the Parker Anderson [Game Design Course], [Mother] plans to sign [claimant] up for future Parker Anderson courses. The signups have already opened up and slots are filling in quickly, will NLACRC cover enrollment in the Parker Anderson courses that [Mother] chooses for her son?” (Ex. 5, p. A73.)

9. Although the record does not show a written response from NLACRC to Ikuta’s question, Mother, Ikuta, CSS Liz Campos, and CSC Velasco met for an IPP meeting via videoconference the next day, on December 6, 2023. According to Mother, she requested NLACRC to reimburse her for future social-recreational activities at this December 6, 2023 IPP meeting, and NLACRC assured her she would be reimbursed for such activities after providing receipts for these activities to the Service Agency. According to CSS Campos, at this December 6, 2023 IPP meeting, NLACRC gave approval for reimbursement of only the Game Design Course, and Mother did not make a request for the reimbursement of the Minecraft Course. CSS Campos testified that Mother asked about enrolling claimant in future Parker Anderson courses, but NLACRC gave no approval for any future courses. Instead, CSS Campos instructed Mother to contact claimant’s service coordinator and do IPP planning for any future social recreational courses in which she intends to enroll claimant.

10. Both Mother and NLACRC recorded this December 6, 2023 IPP meeting. Both Mother and NLACRC submitted the audio recordings of this meeting. (Exs. 19 & A.) In these recordings, Mother expressed concerns that only the Game Design course was included in the IPP draft and that she may be denied reimbursement for social

recreational activities in which she wished to enroll claimant in the future. Mother sought clarification about the procedure to obtain reimbursement for such future social-recreational activities. In response, CSC Velasco assured Mother that only the Game Design Course was included in the IPP draft because Service Agency wished to expedite the completion and signing of the 2023 IPP. CSC Velasco further assured Mother that other social-recreational activities in which Mother wished to enroll claimant would not be denied so long as they are group activities and there is no overlap in services. CSC Velasco also noted that there is no cap on the amount of funding for future social-recreational activities for claimant. Additionally, CSC Velasco clarified that the procedure for reimbursement of future social-recreational activity is for Mother to provide the invoices or the receipts for the activity to the Service Agency, and the Service Agency in turn will approve the activity and put it in an IPP addendum. CSC Velasco averred that the reimbursement process would be simple; Mother can seek reimbursement by phone call, without having to engage in another IPP meeting; and Mother will receive reimbursement within six to eight weeks of her request. Both CSC Velasco and CSS Campos repeated several times that they did not anticipate any denials for social-recreational activities in which Mother enrolls claimant in the future. CSS Campos, at one point, cited the Minecraft computing class as an example of a future social-recreational activity which the Service Agency would approve.

11. On December 15, 2023, CSC Velasco emailed an IPP draft to Ikuta. (Ex. 6, p. A91.) On December 19, 2023, December 22, 2023, January 8, 2024, and January 11, 2024, Mother and Ikuta continued to exchange emails with CSC Velasco making corrections and changes to the draft IPP. (Exs. 7-9.)

12. On January 18, 2024, Ikuta emailed CSC Velasco to make further changes to the draft IPP. Ikuta also wrote, in relevant part:

**Additions:**

- Additionally, [Mother] informed me that she recently registered [claimant] in another social recreation activity. Specifically [Minecraft Course] by Parker Anderson. Parker Anderson also managed the course that [claimant] participated last Fall 2023 [Game Design Course]. The course takes place in a classroom on school grounds after school hours. I attached a staffing ratio form that Parker Anderson completed for the Game Design course, which also applies to this Minecraft course.

(Ex. 11, p. A163.)

13. According to Service Agency, this January 18, 2024 email was the first time Mother notified NLACRC she had paid for and sought retroactive reimbursement for the Minecraft Course. NLACRC denied the request and issued a Notice of Action. In an email dated January 24, 2024, Sarah Yap (Yap), a NLACRC representative sent the IPP signature page to Ikuta and Mother. Yap also wrote, in relevant part: "The social recreation reimbursement for [the Minecraft Course] is not listed on the signature page as a Notice of Action is being been issued for that service request. . . ." (Ex. 12, p. A182.)

14. On January 31, 2024, Mother signed the 2023 IPP, which did not include the Minecraft Course as an approved social-recreational activity.

## **Mother's Testimony**

15. At the hearing, Mother testified Service Agency has created obstacles for her to obtain social-recreational services for her son. According to Mother, Service Agency has never actively offered her any services. Not until Mother spoke with other families did she realize that claimant was entitled to social-recreational activities. Mother also noted there were many mistakes on the draft IPP. Despite promises to fix these errors, Service Agency never did so. Mother believes the failure to include the Minecraft Course was such a mistake, but Service Agency is unwilling to admit to it.

## **LEGAL CONCLUSIONS**

### **Standard and Burden of Proof**

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that Service Agency is required to reimburse him for the Minecraft Course. (Evid. Code, § 115.) Claimant has met his burden.

### **Applicable Law**

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (All further references are to the Welfare & Institutions Code, unless otherwise designated.) As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the



purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, 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." (*Id.* at p. 389, quoting from § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made "on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

4. As set forth in section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

## **Disposition**

5. Claimant requested the reimbursement of the Minecraft Course, a course for which he had paid before requesting funding from the Service Agency. Thus, this is a request for retroactive service authorization. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. A purchase of service authorization must be obtained in advance from the regional center for all services purchased out of regional center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for emergency services "if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person

(e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

6. Thus, the regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. In this instance, the Service Agency did not preauthorize claimant's Minecraft Course, and reimbursement of this social-recreational activity cannot be considered as retroactive authorization of an emergency service.

7. Ordinarily, services are provided to the consumer through the IPP process. (§ 4646.5.) The process of creating an IPP, by its nature, is collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives, and other appropriate participants. (§§ 4646, 4648.) If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (§ 4646, subd. (g).) If the consumer or his parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (§ 4646, subd. (g).) The issue of retroactive reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed.

8. Yet, the lack of specific statutory authorization is not dispositive of this issue. In the fair hearing context, 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).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available in particular cases where equity requires it. Otherwise, the general requirements for funding services through the IPP process would be superfluous. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d 384, reimbursement should be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

9. A vital principle of equitable relief is detrimental reliance, or as put by the California Supreme Court in the case *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795: “He who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.” Here, during the December 6, 2023 IPP meeting, the Service Agency assured Mother several times that she would be reimbursed for social-recreational activities, such as the Minecraft Course, as long as she turned in her receipts for such a course. Service Agency also assured Mother that future social-recreational activities were not included in the 2023 IPP because they wished to expedite the completion and signing of the IPP. In reliance on these promise, Mother enrolled claimant in the Minecraft Course and paid for it without seeking preapproval. Under these circumstances, it is not equitable for Mother to bear the expense of the Minecraft Course because Mother’s failure to seek preapproval was not based on her intent to frustrate the IPP process. Mother did not unilaterally incur the cost of the

Minecraft Course without regional center input. Instead, she was following the procedures for reimbursement of future social-recreational courses, such as the Minecraft Course, just as CSC Velasco and CSS Campos had described to her at the December 6, 2023 IPP meeting.

10. Additionally, it would thwart the purposes of the Lanterman Act to force Mother to bear these costs. First, as the court in *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d 384, 389 stated, regional centers are charged with providing consumers with access to services. Forcing Mother to pay these costs incentivizes regional centers to be negligent in their duty to help navigate consumers through a complex system of services and supports. Second, as CSS Campos had conceded during the December 6, 2023 IPP meeting, the Minecraft Course is an appropriate social-recreational activity for claimant. It is a service that allows claimant to live an independent, productive, and healthy life, within the meaning of section 4646, subdivision (a). Given the foregoing, claimant is entitled to reimbursement for the Minecraft Course.

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## **ORDER**

Claimant's appeal is granted. North Los Angeles County Regional Center shall reimburse claimant for his participation in the social recreational activity, TechKidz Minecraft!

DATE:

JI-LAN ZANG

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.