

**BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0013492**

**OAH No. 2024030511**

**PROPOSED DECISION**

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on May 22, 2024, in Chatsworth, California.

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

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

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 22, 2024.

## **ISSUE**

Did NLACRC properly stop extending claimant's Self-Determination Program (SDP) budget beyond January 31, 2024, effectively terminating his Applied Behavior Analysis (ABA) services because these services were being provided by his parents and sister, who are not credentialed ABA providers?

## **EVIDENCE**

Documentary: Exhibits 1 through 40.

Testimonial: Jennifer Lee, NLACRC Consumer Services Supervisors (CSS), Arpi Arabian, Psy.D., NLACRC Behavioral Services Supervisor, and Silvia Renteria-Haro, NLACRC Consumer Services Manager.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 32-year-old un-conserved male who qualifies for regional center services based on diagnoses of Unspecified Intellectual Disability and Autism Spectrum Disorder. He lives at home with his parents and sister.
2. On February 22, 2024, NLACRC sent a Notice of Action (NOA) to claimant, notifying him that it will not extend his SDP budget beyond January 31, 2024,

effectively terminating following services: (1) in-home behavior level Personal Assistant (PA) at the rate of 128 hours per week, (2) ABA services at the rate of 40 hours per week, (3) ABA Out of Office Cost (OOC) at the rate of 1 hour per month, and (4) ABA supervision/In-Home Parent Training (IHPT) at the rate of 20 hours per month. (Ex. 2, p. A7.) On March 12, 2024, claimant filed a request for a fair hearing appealing the NOA. This hearing ensued.

## **Claimant's Background**

3. Claimant's most recent Individual Program Plan (IPP), dated November 9, 2022 (2022 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. According to the 2022 IPP, claimant is able to complete all of his daily skills independently, but he requires verbal prompting to ensure that he completes them. For example, claimant requires verbal prompting to warm food in the microwave, to make a snack that requires multiple steps, to wipe himself after defecating, and to wash his hands.

4. According to a third-party Functional Behavioral Assessment (FBA) conducted in 2024, claimant also has an extensive history of significant challenging behavior, including physical aggression, vocal outbursts, refusal behaviors, pacing, agitating his body, property destruction, and self-injurious behaviors. (Ex. 14, pp. A131-132.) These behaviors have resulted in law enforcement contact, locked treatment settings (crisis-level homes and psychiatric hospitalization), multiple residential placements, substantial property destruction, and injury to others. Additionally, claimant has a history of significant elopement behavior. In 2011, he eloped from his home and had to be physically prevented from jumping into a

reservoir. Claimant had, on multiple occasions, eloped hundreds of miles away from his home.

## **2022 SDP Budget**

5. Claimant transitioned from the traditional services delivery model to the SDP model on December 1, 2021. Claimant's 2022 IPP indicates NLACRC approved claimant's SDP budget for the 2022 budget year with the following services for six months, pending a clinical review of the ABA progress report: (1) ABA services at the 2:1 support level (service code 615) for 40 hours per week; (2) ABA supervision/IHPT (service code 612) for 20 hours per month; (3) ABA Out of Office Cost (OOC) (service code 615) for one hour per month; and (4) behavioral-level PA (service code 062) for 128 hours per week. (Ex. 5, pp. A58-59.) The SDP revised budget for these services totaled \$275,698.60.

6. The 2022 IPP also stated, in relevant part:

2.3 [Claimant's] parents will ensure that the ABA Therapist follows the supervising [Board Certified Behavioral Analyst's (BCBA)] technique suggestions, changes to the behavior plan, and any other suggestions made.

2.4 The ABA Therapist and supervising BCBA will compile a progress report and submit this report to NLACRC for a clinical evaluation and continuation of service at the beginning of the 6th month.

(Ex. 5, pp. A68-69.)

7. Arpi Arabian, Psy.D., BCBA, Behavioral Services Manager at NLACRC, testified at the hearing about the reasons why the Service Agency agreed to fund these services in 2022. According to Dr. Arabian, CARE, Inc. (CARE) had performed an FBA of claimant in August 2021. In its FBA report and two subsequent addenda to the report, CARE recommended ABA services at the levels described in the 2022 IPP. (Ex. 11, p. A106.) Dr. Arabian explained that NLACRC approved the ABA services at the 2:1 ratio with the understanding that the ratio would eventually be reduced to 1:1, as providing ABA services at the 2:1 ratio is not the standard of care. NLACRC also approved the higher level of services, including overnight behavioral-level PA due to the concern that claimant has a history of severe behaviors which requires crisis management.

8. Dr. Arabian further explained the 20 hours ABA supervision were intended to be performed by BCBA's, while the 40 hours of ABA services and the behavioral level PA was intended to be supervised by BCBA's. BCBA's are graduate level professionals who are certified in ABA by the Behavior Analyst Certification Board (BACB). BCBA's write ABA treatment plans using evidence-based strategies. The components of an ABA treatment plan include an FBA and a behavior intervention plan based on the outcome of the FBA. The behavior intervention plan identifies target behaviors, goals for reduction of target behaviors, skills acquisition goals, enforcement strategies, replacement skill strategies, fade out strategies, fade out criteria, and if applicable, crisis management plan. Dr. Arabian noted only a BCBA can make necessary changes to the behavior intervention plan, and only a BCBA can train caregivers to ensure continuous monitoring of claimant's progress.

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## **Review of 2022 SDP Budget in 2023**

9. On March 29, 2023, Dr. Arabian performed a behavioral consult to determine whether the current level of behavioral services was appropriate. For this consult, Dr. Arabian reviewed the 2022 IPP, claimant's weekly schedule, his Person-Centered Plan, his monthly spending report, and an October 9, 2022 progress report from ABA Therapy Partners (2022 ABA Report). This 2022 ABA Report revealed that claimant's parents and sister were providing the 40 hours per month of 2:1 ABA services. (Ex. 12.) However, it was unclear whether claimant's parents and sister were qualified to provide ABA services or trained in crisis management. Dr. Arabian also found the October 2022 ABA Report lacked baseline data, behavioral goals, and intervention plans to address each goal. In short, there was no data to determine how claimant was presenting and whether progress was being made. Due to these issues, Dr. Arabian requested a "revised [ABA progress] report with data, behavior plan which includes the utilization of 2:1 supports/fade of those supports, etc, schedule of ABA programming as well as the breakdown of the 2:1 staff roles." (Ex. 18, p. A154.)

10. On April 28, 2023, ABA Therapy Partners submitted a revised progress report (2023 ABA Report), as requested by Dr. Arabian. (Ex. 13.)

11. On May 26, 2023, Dr. Arabian performed another behavioral consult regarding claimant's current level of behavioral services after reviewing the 2023 ABA Report. While the 2023 ABA Report indicates claimant's target behaviors included tantrums, aggression, property destruction, and elopement, the rates of the target behaviors were low during the reporting period. The 2023 ABA Report also indicates ABA services were provided in the form of parent training/consultation by the BCBA at 20 hours per month. The 2023 ABA Report, however, does not include behavior plan and crisis intervention plan. It also does not recommend the 2:1 ABA services and

there is no discussion as to whether 2:1 ABA services are appropriate. Furthermore, the 2023 ABA Report does not discuss the need for PA supports at the behavioral level or how this service was being used. Given these issues, Dr. Arabian recommended a behavioral observation to better understand how behavioral interventions are being implemented and an Interdisciplinary Clinical Team (ICT) consult.

12. According to Dr. Arabian, a behavioral observation never occurred due to claimant's inconsistent schedule. However, an ICT consult occurred on July 17, 2023. The recommendation of the ICT consult was for a third party to complete an FBA report to determine whether the level of ABA services and staffing ratios were appropriate for claimant. (Ex. 20.)

### **Extensions of the SDP Budget Pending the Third-Party FBA Report**

13. On August 3, 2023, October 20, 2023, and December 18, 2023, NLACRC extended claimant's SDP budget at the same level of behavioral services (40 hours per week of 2:1 ABA services, 20 hours per month of ABA supervision, one hour per month of ABA OOC, and 128 weekly hours of behavioral-level PA) until January 31, 2024, pending the outcome of the FBA report. (Exs. 5-8.)

### **The Third-Party FBA Report**

14. On January 19, 2024, Change Factors Analysis, Inc. (Change Factor), submitted an independent FBA report (2024 FBA Report) to NLACRC. According to the 2024 FBA Report, claimant is not enrolled in a day program. Per claimant's family, they provide him with day programming activities at ratio of 2:1, and the family is not interested in enrolling him in a day program. Claimant is not conserved, and Father reportedly designs the ABA interventions and receives further training from IHPT provider, Luz Shelly, BCBA, from ABA Therapy Partners. Father claimed to be a retired

behavior analyst with extensive training in ABA, and he reportedly also developed a crisis management plan.

15. In the 2024 FBA Report, the assessor from Change Factor also interviewed BCBA Shelly, who indicated she provides IHPT consultation to claimant's parents by telehealth for one hour per day, even though NLACRC had authorized IHPT for 20 hours per month. BCBA Shelly admitted she has never met claimant and has never provided any direct training to claimant's support team. Additionally, BCBA Shelly conceded neither she nor ABA Therapy Partner completed any formalized assessment of claimant's target behaviors. Nevertheless, she indicated claimant has not engaged in the target behavior for some time. Moreover, BCBA Shelly stated she was only providing IHPT and was unsure if anyone directly supervises the 40 hours per month of 2:1 ABA services.

16. The assessor from Change Factor also completed observations in the community on November 27, 2023, and January 10, 2024. During both observations, claimant did not engage in any target behaviors. Based on information gathered through the FBA process, the assessor made several recommendations, which included, in relevant part, the following:

Should ABA services continued to be funded at the 2:1 level, it is important to address the service components that are missing, including criteria to reduce. It is without question that currently [claimant] does require 2:1 support during all waking hours as his behavior history is significant and the potential for hospitalization, injury, and arrest are still a concern due to the unpredictability of his challenging behavior. In lieu of ABA services at the 2:1 level, it is

reasonable to fund behavioral PA services for all waking hours at 2:1 support as long as IHPT services can remain in place to assist with data analysis toward treatment goals and technological design of a treatment and crisis plan. . . .

(Ex. 14, p. A 142.)

17. After reviewing the 2024 FBA Report, Dr. Arabian made the following recommendations:

Based on information received and reviewed, this consultant agrees with the analysis regarding current services as well as the recommendations provided in the [2024 FBA Report] completed by [Change Factor]. More specifically, while [claimant] may require 2:1 ABA services and 2:1 behavioral PA support at this time, those services need to be provided by qualified and trained professionals. Individuals need to be trained in line with ABA standards of training. Additionally, for direct ABA intervention to continue, the behavior intervention plans, and the crisis management plans need to be designed and monitored by a BCBA. The supervision of the 2:1 ABA services needs to consistently take place as outlined in the [2024 FBA Report] and needs to be completed by a BCBA. At this time, while [IHPT] is authorized for 20 hours per month, the BCBA is currently not providing any direction or supervision with regards to the 2:1 direct ABA services. All components of ABA services need to be met as outlined by the BACB.

Individuals providing the direct services must meet very specific criteria with regards to training in ABA principles. The Individualized Behavior Support Plan (IBSP) and the Individualized Emergency Intervention Plan (IEIP) need to be completed by a BCBA after the completion of the FBA. The IBSP should outline the roles of the 2:1 staff as well as the criteria and fade plan from the 2:1 to 1:1 supports. The ABA program should also outline the schedule of activities [claimant] will engage in during the ABA sessions. The individuals working with [claimant] need to have crisis management training as outlined in the IEIP. For a more in-depth review of the recommendations, please refer to the "Current Service Description" and "Programmatic recommendations" sections of the [2024 FBA Report] completed by [Change Factor]. All the recommendations with regards to ABA services and PA supports at the behavioral level found within the context of the FBA need to be met in order for services to continue at the current levels. While [claimant] has been receiving intensive behavioral level supports in the form of [IHPT], 2:1 ABA services as well as behavioral level PA, it's unclear if [claimant] has made any progress or if the services are effective at this time. As such, it is recommended that the services be provided in a manner consistent with the BACB code of ethics as well as ABA standards in order to determine the effectiveness of the interventions to meet

[claimant's] needs. Based on review of the information provided, the services to date have not been provided as intended to meet the IPP needs of the individual.

(Ex. 21, p. A163.)

18. At the hearing, Dr. Arabian testified she searched the BACB for inactive certifications and was unable to locate Father's purported ABA certification. Dr. Arabian also considered the Change Factor's recommendation to continue funding behavioral level PA services for all waking hours at 2:1 support with appropriate IHPT supervision by an ABA provider. According to claimant's family, ABA Therapy Partners refuses to provide such IHPT supervision because they are only able to provide their services via telehealth. Thus, Dr. Arabian reached out to other ABA providers who are willing to provide the IHPT supervision in person, but these providers have requested the 2024 FBA Report to develop an appropriate behavioral intervention and crisis management plan. However, claimant's family has refused to share the 2024 FBA Report with other ABA providers.

### **Service Agency's Contentions**

19. NLACRC contends for claimant's safety and welfare, all behavioral-level services must be provided by or supervised by appropriately credentialed ABA providers. NLACRC believes funding for behavioral level services may continue only if claimant either returns to the traditional services delivery model, where he will receive services from regional centers vendors, or continues with SDP, but using only credentialed ABA providers who will design and implement behavioral intervention and crisis management plans.

## **Claimant's Contentions**

20. Father did not testify at the hearing, but he contends the traditional services delivery model did not meet claimant's challenging needs. Father wishes for a solution where his son could receive the behavioral-level services he needs. However, no evidence was presented that claimant's parents and sister have any education or training in providing ABA services.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (Evid. Code, §§ 115, 500.) In this matter, the burden is on NLACRC to establish by a preponderance of the evidence there is good cause to stop extending claimant's SDP budget beyond January 31, 2024, effectively terminating his ABA services. Service Agency has met this burden.

### **Statutory Framework**

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.”

## **SDP**

3. Section 4685.8 governs regional center consumers participating in the SDP. The purpose of the SDP is to provide consumers (also referred to as participants) and their families, within an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPPs. (*Id.*, subd. (a).)

4. “Self-determination” is defined as “a voluntary delivery system consisting of a comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. . .” (§ 4685.8, subd. (c)(6).)

5. When developing the individual budget used for the SDP, the IPP team determines the services, supports, and goods necessary for each participant, based on the needs and preferences of the participant, and when appropriate the participant's family, the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option, as specified in section 4648, subdivision (a)(6)(D). (§ 4685.8, subd. (b)(2)(H)(i).)

6. When legislation initiating the SDP was enacted, section 4685.7, subdivision (a), specified that the SDP was contingent upon approval of a federal

waiver, defined in subdivision (b)(4) as “a waiver of federal law pursuant to Section 1396n of Title 42 of the United States Code.”

## **THE FEDERAL WAIVER**

7. In 2009, section 4688.3 was enacted, mandating DDS, which oversees implementation and funding of the Lanterman Act, to partner with the California Department of Health Care Services to jointly seek from Center for Medicare and Medicaid Services (CMS) its approval of a so-called “1915(i) state plan amendment” to expand federal financial participation for services under the Lanterman Act.

8. The upshot of these statutes is that funding under the SDP must be consistent with the dictates of the federal waiver approved for California, through the state plan amendment approved by CMS.

9. Regional centers provide home and community-based services to people with significant physical and cognitive limitations, allowing them to remain living in their homes or home-like settings rather than being institutionalized. (Social Security Act § 1 et seq., codified at 42 U.S.C. § 1396n, subd. (c).) To be eligible, individuals must meet level-of-care standards required for institutionalization in the absence of HCBS. (42 U.S.C. § 1396n, subd. (c)(1).)

10. HCBS are funded via a Medicaid waiver under the Social Security Act. (42 U.S.C. § 1396n, subd. (c).) The HCBS waiver is the federal waiver referenced in the SDP statutes. Therefore, any services provided under the SDP must comply with the HCBS waiver.

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## **BEHAVIORAL INTERVENTION SERVICES UNDER THE HCBS WAIVER**

11. California Code of Regulations, title 17, section 54342 (Regulation) defines types of service provided by regional center vendors by service codes. Pertinent to this case are service codes 612 and 615. Claimant's ABA supervision is funded under service code 612, and his 2:1 ABA services and OOC ABA are funded under service code 615. Pursuant to the Regulation, service code 612 is for Behavior Analysts, and service code 615 is Behavioral Management Assistant. (Regulation, subds. (a)(11), (a)(12).)

12. The HCBS waiver mandates only certain providers, including Behavioral Analyst and Behavioral Management Assistant, may provide behavioral intervention services. (Ex. 29, p. A206.) The HCBS waiver also lists qualifications for Behavioral Analyst and Behavioral Management Assistant, which are the same as those for vendorized Behavioral Analyst and Behavioral Management Assistant defined under the Regulation. (See Regulation, § 54342, subds. (a)(11), (a)(12).)

13. Under the HCBS waiver, a Behavioral Analyst is an individual "[l]icensed in accordance with Business and Professions Code as appropriate to the skilled professions staff" and has a "[c]ertification by the Behavior Analyst Certification Board accredited by the National Commission for Certifying Agencies." (Ex. 29, p. A217.)

14. Under the HCBS waiver, a Behavioral Management Assistant must be either licensed as Psychology Assistant by the Medical Board of California under Business and Professions Code section 2913 or licensed as an Associate Clinical Social Worker by the California Board of Behavioral Science Examiners under Business and Professions Code section 4996.18. (Ex. 29, p. A231.) A Behavioral Management Assistant must be either registered as a psychological assistant of a psychologist by

the Medical Board of California or Psychology Examining Board, or as an Associate Licensed Clinical Social Worker pursuant to Business and Professions Code, Section 4996.18. (*Id.* at p. A231.) A Behavioral Management Assistant must also possess "a Bachelor of Arts or Science Degree and has either: 1. Twelve semester units in applied behavior analysis and one year of experience in designing and/or implementing behavior modification intervention services; [citation] or 2. Two years of experience in designing and/or implementing behavior modification intervention services." (*Ibid.*)

## **Disposition**

15. In this case, as a part of claimant's SDP, NLACRC has funded 40 hours per month of 2:1 ABA services to be provided by Behavioral Management Assistants, and one hour per month of OCC ABA funded at the level of a Behavioral Management Assistant. Currently, claimant's parents and sister provide the 2:1 ABA services, but no evidence was presented that they are qualified as Behavioral Management Assistants under the HCBS waiver. Because claimant's parents and sister may not provide behavioral intervention services under the HCBS waiver, NLACRC may not fund these services under the SDP if they continue to be claimant's ABA service provider.

16. NLACRC has also funded for 20 hours per month of ABA supervision/IHPT to be provided by a Behavioral Analyst. Although BCBA Shelly from ABA Therapy Partners is purportedly providing these services, she is not supervising any qualified Behavioral Management Assistant, and it is unclear from the record how she is implementing IHPT without having ever formally assessed claimant or provided direct training to claimant's support team. Thus, NLACRC may not continue to fund these services under the current circumstances.

17. Additionally, NLACRC has funded 128 hours per week of behavioral-level PA services. Although there is no statutory guidance on the requirements for the provision of these services, Dr. Arabian's concerns about how these behavioral-level services are currently being provided by claimant's parents and sister without a behavioral intervention plan, a crisis management plan, and any supervision by a qualified BCBA were compelling. These concerns also echo the recommendation of the 2024 FBA Report, which stated that the provision of behavioral-level PA services is reasonable only if there are treatment and crisis plans and data analysis toward treatment goals. Thus, NLACRC may not continue to fund these services under the current circumstances.

18. Given claimant's significant history of challenging behavior and his evident need for 2:1 ABA services and behavioral attendant support, it is troubling that claimant's ABA services are being terminated. However, by statute, only qualified and trained ABA professionals may provide behavioral intervention services. To ensure claimant's safety and welfare and compliance with the statutory requirements, behavioral intervention services may only be funded when a BCBA designs a behavioral intervention and crisis management plan and provides oversight over the implementation of these plans.

## **ORDER**

Claimant's appeal is denied. North Los Angeles County Regional Center properly stopped extending claimant's Self-Determination Program budget beyond January 31, 2024, effectively terminating following services: (1) in-home behavior level Personal Assistant at the rate of 128 hours per week, (2) Applied Behavior Analysis services at the rate of 40 hours per week, (3) Applied Behavior Analysis Out of Office

Cost at the rate of 1 hour per month, and (4) Applied Behavior Analysis supervision/In-Home Parent Training at the rate of 20 hours per month.

DATE: 05/31/2024

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024030511

Vs.

**DECISION BY THE DIRECTOR**

North Los Angeles County Regional Center,

Respondent.

ORDER OF DECISION

On May 31, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached 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 June 21, 2024.

*Original signed by:*

Nancy Bargmann, Director