

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

In the Matter of the Request for DIR Floor Time Services of:

Claimant,

and

North Los Angeles County Regional Center, Service Agency.

DDS No. CS0015167

OAH No. 2024040457

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this consolidated matter¹ on August 15, 2024, and October 15, 2024, by videoconference.

¹ This matter was consolidated for hearing with DDS No. CS0015170, OAH No. 2024040453, claimant's appeal of the denial of her request for transportation services, but separate decisions for each appeal were issued.

Christopher Wecks, Independent Facilitator, Abound Services, represented claimant who was not present. Claimant's mother was also present.

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

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 15, 2024.

ISSUE

Should funds for DIR Floortime² be included in claimant's Self-Determination Program (SDP) budget?³

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is 21 years old and resides in her family home. She is eligible for regional center services based on her diagnosis of autism spectrum disorder.

² The evidence introduced referred to this therapy several different ways. In this decision it shall be referred to as DIR Floortime.

³ Claimant is transitioning to SDP. Pursuant to Welfare and Institutions Code section 4712.5, and the February 27, 2023, delegation of services from the Department of Developmental Services (DDS) to OAH, decisions containing issues regarding SDP shall be proposed decisions provided to DDS.

Authorized services and supports she receives include respite, camp service, an Applied Behavior Analysis (ABA) assessment,⁴ social recreation, community integration, and social skills training.

2. On March 13, 2024, NLACRC advised claimant that her request that DIR Floortime services be included in her SDP budget was denied.

3. Claimant appealed that decision, and this hearing followed.

Motion to Continue

4. Prior to the start of the first day of hearing, claimant filed a continuance request, moving to continue the hearing. The basis for the request was that claimant had received a large packet of documents from NCLARC (the hearing exhibits) and wanted time to review them. NCLARC opposed the request. The request was denied for failure to demonstrate good cause.⁵ NCLARC had timely uploaded the exhibits, in fact well before the time due, and most documents were claimant's records which there was no showing claimant had not previously reviewed. Other documents were simply applicable code sections, and procedural documents, previously referenced by NCLARC in its denial. The remaining documents were reference materials relied upon by NCLARC in making its decision. There was no showing why claimant had not reviewed them prior to hearing. For all those reasons, the request was denied.

⁴ That assessment is part of this appeal.

⁵ This was claimant's second continuance request. Pursuant to Welfare and Institutions Code section 4512, subdivision (a)(1), a showing of good cause was required.

Suspension of Hearing

5. During the hearing, claimant sought to introduce exhibits not previously produced. Over objection, claimant was allowed to upload those exhibits. Included among them were several research articles. NLACRC's request for time to review those articles was granted, and a second day of hearing was set.

Evidence Introduced at Hearing

6. Consumer Services Coordinator (CSC) Amado Amores, and Behavioral Services Supervisor Annette Sinanian, a certified behavioral analyst, testified, and documents, including numerous research articles about DIR Floortime, were introduced. The factual findings reached herein are based on that evidence. At the close of NLACRC's case in chief, claimant and her representative were given time to meet privately to discuss how they wanted to proceed, after which they stated they did not want to testify. Instead, they wanted claimant's representative to make a closing argument. No findings of fact can be made on the statements the representative made as they were not given under oath and can only be received as argument.

7. According to one publication, DIR Floortime is a relationship-based therapy for children with autism. It involves the parent getting on the floor with the child to play and interact, and is used both as an alternative to Applied Behavior Analysis (ABA) and sometimes in combination with ABA therapies.

8. Another publication noted that, "DIR is the Developmental, Individual-differences, and Relationship-based model and provides a foundational framework for understanding human development and learning and how each person individually perceives and interacts with the world differently." "DIR Floortime is the application of

the DIR model into practice.” It has “become most widely known as an approach to support children with Autism Spectrum Disorder.”

9. Claimant’s 2021 and 2022 Annual Progress Reports provided information about claimant including health information, behaviors, social information, potential future services, goals, and desired outcomes. Claimant graduated from high school in June 2021 with a diploma.

10. Claimant’s 2024 Individual Program Plan (IPP) documented her strengths, family information, internship worked, communication skills, services funded by NLACRC, and the disputed services which are the subject of this hearing. The IPP signature page documented the services and supports that would be funded, as well as the disputed services which required resolution.

11. A June 21, 2023, K&L C.A.R.E. Adaptive Skills Training Progress Report provided claimant’s background information, including education and work history, and concerning deficits as reported by her mother. Under challenging behaviors it was noted: “Currently, there are no behavioral concerns that warrant clinical attention.” The progress report also documented claimant’s independent living skills, community integration skills, social skills, self-direction skills, and adaptive skills training progress. There was a “fade-out plan and graduation” section and a “summary and recommendations” section. Claimant had limited progress in several adaptive skills areas. It was agreed the service would be slowly faded out but would slowly resume up to the approved 10 hours per week to aid claimant in her transition returning to services when she was accepted into her internship.

12. Claimant’s reported behaviors included perseveration, skin picking, tantrums, impulsivity, panic attacks and meltdowns. Moderation of food intake could

be challenging under stress, and noisy environments can trigger panic attacks. She was seeking services through DIR Floortime.

13. Given her reported behaviors, CSC Amores suggested claimant pursue ABA services through Medi-Cal or private insurance. However, claimant preferred DIR Floortime services because she received ABA services when she was 13, and did not like them. CSC Amores consulted with NLACRC's clinical department, which recommended an ABA assessment be completed as ABA services are the types of services recommended for individuals with claimant's behaviors.

14. CSC Amores explained that adaptive skills training addresses certain deficits and teaches consumers various skills, for example teeth brushing, toilet training, and accessing public transportation. Determining whether a consumer needs adaptive skills training or ABA services depends on the behaviors, which can be ascertained after an assessment. ABA is more appropriate for individuals exhibiting behavioral issues. However, CSC Amores explained that ABA addresses both behaviors and skills. He suggested ABA for claimant given her reported behaviors and advised her to pursue generic resources for funding ABA, as required by the Lanterman Act.

15. A hyperlink provided by claimant defined adaptive skills training as "a service designed to instruct and support individuals with developmental disabilities to be more effective with their daily living skills at home and in the community. [It] aims to use intervention strategies that enhance the individual's ability to survive and thrive in today's society."

16. Claimant asserted that ABA, adaptive skills services, and DIR Floortime are three distinct services, offering different scopes and methodological approaches. ABA focuses on behaviors, adaptive skills services focus on living skills, and DIR

Floortime focuses on a developmental approach. Claimant contended it was “cruel” to require her to use ABA after it went so poorly the last time she used that service.

17. Claimant asserted that DIR Floortime was evidence-based and identified several other regional centers and organizations that use it.

18. NLACRC’s Service Standards, adopted January 12, 2022, and approved by the Department of Developmental Services (DDS) on March 23, 2022, set forth the approved provision of services and supports for NLACRC’s consumers. Section VI contains the “Social recreation, Camp, and Non-Medical Therapies, Service and Procedural Standards.” As required, therapies must be evidence-based in order for NLACRC to purchase them. NLACRC does not have statutory authority to purchase services that have not been clinically or scientifically proven to be effective.

19. NLACRC’s Informal Decision Letter summarized the discussions that took place at the April 29, 2024, Informal Meeting. Claimant’s behaviors were noted, and her mother reported claimant previously received ABA services when she was 13 years old and “hated it.” ABA had not demonstrated the success the family would like to see in addressing claimant’s concerning behaviors and believed DIR Floortime would be a better choice because it addresses behaviors of concern in both the community and during a typical course of therapy. Claimant asserted that DIR Floortime was coded as adaptive skills training, so was requesting NLACRC fund an adaptive skills assessment for claimant. NLACRC noted that when ABA services terminated in 2016, NLACRC had funded adaptive skills training through its vendor, K&L C.A.R.E., and that vendor recommended terminating adaptive skills training effective August 31, 2023, because there were “no behavioral concerns that warrant clinical attention.” Based on claimant’s newly reported behaviors, NLACRC agreed to fund an ABA assessment with a vendor who could provide both ABA and adaptive skills training services. Based upon

that assessment, NLACRC would then decide which service, ABA or adaptive skills training, was the appropriate service to address claimant's behaviors. NLACRC stated it would not fund DIR Floortime therapy because that therapy is an intervention strategy that is not considered an evidence-based practice, so was not an effective or cost-effective service option.

20. NLACRC's April 30, 2024, "Behavior Consult and Observations" documented the ABA behavioral consultation that NLACRC authorized, but which did not occur because claimant was not in agreement with it.

21. NLACRC's Position Statement set forth the reasons for the action it took, essentially reasserting the information in its Informal Decision Letter. The position Statement again noted that NLACRC agreed that a new ABA assessment should be conducted by a service provider vendored to provide both ABA and adaptive skills training services, after which it would determine which service is appropriate.

22. The May Institute, National Autism Center's "Findings and Conclusions: National Standards Project, Phase 2," was published in 2015 to address "the need for evidence-based practice guidelines for autism spectrum disorder." The National Autism Center (NAC) is an advocate for evidence-based intervention approaches. The NAC identifies effective programming and shares information with families and practitioners. It conducts applied research and develops training and service models for practitioners, and works to shape public policy concerning autism and its intervention through the development and dissemination of national standards of practice. The publication identifies evidence-based practice guidelines for autism. The publication identifies the three categories of the "strength of evidence classification system, established, emerging, and unestablished." Established evidence is "several published, peer-reviewed articles," emerging evidence is a "few published, peer-

reviewed articles,” and unestablished evidence “may or may not be based on research.” The NAC publication reports that DIR Floortime is an unestablished intervention, meaning “there is little or no evidence in the scientific literature” from which “to draw firm conclusions about [its] effectiveness with individuals with [autism.] There is no reason to assume [this intervention is] effective. Further, there is no way to rule out the possibility [this intervention is] ineffective or harmful.”

23. The “Evidence-Based Practices for Children, Youth, and Young Adults with Autism,” a National Clearinghouse on Autism Evidence and Practice Review Team publication, identified evidence-based practices and had them listed in a matrix. DIR Floortime was not identified as an evidence-based practice.

24. Behavioral Services Supervisor Annette Sinanian reviewed the various exhibits and agreed that an ABA assessment and ABA services were appropriate for claimant. An ABA assessment is a more thorough assessment than an adaptive skills assessment, and it could identify behaviors and ways to address them.

25. Ms. Sinanian also reviewed the publications referenced above, and determined that DIR Floortime was not evidence-based, so could not be funded by NLACRC. Ms. Sinanian explained how therapies are determined to be evidence-based, describing the rigorous research and peer-review process they must undergo.

26. Claimant provided hyperlinks to various websites regarding DIR Floortime, other therapies, and research articles. Ms. Sinanian testified about those articles and at the second day of hearing discussed in detail the document she prepared regarding her review of those materials. Nothing in these articles changed her opinions that DIR Floortime is an experimental therapy.

27. These articles did not establish that DIR Floortime is an evidence-based therapy. Many contained statements indicating the study referenced therein was simply a starting point for further research and not a determinative finding. The articles contained such phrases as: "Further, methodologically rigorous studies are needed to draw definitive conclusions" about DIR; "this evidence should not be considered reliable"; "these strategies . . . may prevent [behaviors]"; "promising"; "Involvement of a limited number of participants and an absence of baseline data limits the interpretation of the impacts of DIR Floortime program's implementation by parents with their children with [autism spectrum disorder]"; and DIR Floortime "can be considered" "as a possibility for evidence-based practice (EBP), but not as an evidence-based treatment (EBT)." This language shows DIR Floortime may help and is an emerging therapy, but additional research is needed for it to be evidence-based.

28. Another article concluded: "Although this study provides an indication of the effectiveness of this approach, it should be independently replicated before it is considered empirically valid. DIR is an emerging treatment, however families are urged to continue with treatments that are currently empirically supported." Another study's conclusion "suggests" these programs are effective. Another simply found the programs offer "communities a relatively inexpensive effective intervention for children with [autism spectrum disorder] and their parents." Some articles referenced "pilot studies," and some were not specifically about DIR Floortime. Other articles were simply observational reports or contained recommendations and suggestions for further research. A one-year follow-up study merely noted that adding DIR Floortime improved development and significantly decreased autism's severity. One study provided "preliminary evidence for the use of [DIR Floortime]." Another study "suggests" this treatment works but that "additional research" was needed. Again, all

of this language showed that DIR Floortime is currently not an evidence-based therapy and more research is required.

29. None of the articles introduced were sufficient to refute NLACRC's position that DIR Floortime is not an evidence-based therapy. In fact, all lent further support to NLACRC's determination it is not, and no expert testimony refuted Ms. Sinanian's opinions. Further, although some studies showed that parent-implemented interventions (PII) were evidence based, those studies did not demonstrate that DIR Floortime was one of the PII therapies evaluated, and PII is a term used to mean the parent is providing the therapy; it is not specific to a particular teaching strategy such as DIR Floortime. Even though PII may be evidence based, this is insufficient to find DIR Floortime is evidence based because the methodology (DIR Floortime) must also be evidence based to reach that conclusion.

30. The hyperlink to the amendments made to Health and Safety Code section 1374.73 and Insurance Code section 10144.51 documented the changes made regarding how "qualified autism service provider" and "qualified autism service paraprofessional" are defined. Those amendments maintained the prohibition in the Lanterman Act that regional centers may not fund non-evidence-based therapies.

31. Claimant asserted that recently enacted Welfare and Institutions Code section 4686.4, "was intended to add and establish Floortime therapy and other developmental behavioral approaches to the roster of well regarded therapies to treat individuals." That assertion is incorrect. Welfare and Institutions Code section 4686.4 simply requires the DDS, on or before July 1, 2026, to "adopt regulations to address the use of Behavioral Health Professionals" and "Behavioral Health Paraprofessionals in behavioral health treatment group practice." The new law also requires these regulations to "establish a rate and the educational or experiential qualifications and

professional supervision requirements necessary for the Behavioral Health Professional” and “Behavioral Health Paraprofessional to provide evidence-based behavioral intervention services.” The reference to “evidence-based” services demonstrates the clear legislative intent that regional center funded services must still be evidence based.

32. A 2010 Notice of Pendency of a Class Action Proposed Settlement of a lawsuit brought against East Los Angeles County Regional Center (ELACRC), stemmed from 2009 actions ELACRC took in response to legislative changes that ceased funding for all DIR treatment programs. The class action was brought by children diagnosed with autism who asserted ELACRC had wrongfully ceased the funds. The proposed settlement included terms wherein ELACRC agreed not to cease DIR funding for current and future consumers, reinstate the DIR funding, not classify DIR as “experimental,” and conduct assessments to determine eligibility for DIR services. There was no showing this proposed settlement was accepted by the parties, and even if it had been, it was not established the settlement was binding on NLACRC or authorized NLACRC to disregard its purchase of services policy and the Lanterman Act which prohibits it from funding non-evidence-based therapies.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree

of handicap, and at each stage of life.” (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden and Standard of Proof

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, footnote 5.) In this case, claimant bears the burden to prove that her SDP budget should include funds for transportation.

3. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. It is “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.)

The Lanterman Act, DDS, and Regional Centers

5. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

6. Welfare and Institutions Code section 4501 sets forth the state’s responsibility and duties.

7. Welfare and Institutions Code section 4512 defines services and supports.

8. DDS is the state agency responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

9. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.2.

10. Welfare and Institutions Code section 4646, subdivision (b), provides that the IPP "is developed through a process of individualized needs determination."

11. Welfare and Institutions Code section 4646.4 sets forth the internal process for creating IPPs. Subdivision (a)(1) requires regional centers to conform with their purchase of service policies.

12. Welfare and Institutions Code section 4646.5, subdivision (a)(1), requires the IPP planning process to include gathering information and conducting assessments.

13. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(17) prohibits regional centers from purchasing:

experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice.

14. Welfare and Institutions Code section 4685.8 requires DDS to implement a statewide SDP which shall be available to all regional centers. Subdivisions (c)(6) and (c)(7), respectively, define "Self-determination" and "Spending Plan." Subdivision (d) makes participation in the SDP voluntary. Subdivision (d)(3)(C) mandates that the SDP "participant shall only purchase services and supports necessary to implement their IPP and shall comply with any and all other terms and conditions for participation in the" SDP. Subdivision (k) authorizes an SDP participant to "implement their IPP, including choosing and purchasing the services and supports" that are "necessary to implement the plan" and a "regional center shall not prohibit the purchase of any service or support that is otherwise allowable." Subdivision (r)(5) requires regional centers, "in addition to annual certification, [to] conduct an additional review of all final individual budgets" Subdivision (r)(6) requires the "spending plan to verify that goods and services eligible for federal financial participation are not used to fund goods or services available through generic agencies." Subdivision (y)(3)(D) makes SDP participants accountable for the use of public dollars.

15. Welfare and Institutions Code section 4686.2, subdivision (b)(1)(A), states: regional centers shall "[o]nly purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social

behaviors, and ameliorate behaviors that interfere with learning and social interactions.” Subdivision (c)(3), defines “evidence-based practice” as:

a decisionmaking process that integrates the best available scientifically rigorous research, clinical expertise, and individual’s characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

Evaluation

16. Regional centers may not fund experimental or non-evidence-based therapies. DIR Floortime is an experimental, non-evidence-based therapy. While studies suggest DIR Floortime may improve conditions and reduce behaviors in children with autism, the studies make it clear that more research is needed. Claimant’s argument that NLACRC relied on “old research” in support of its position was not accurate. The documents containing those older studies were just part of the basis for NLACRC’s decision; NLCARC also relied on the fact that no current studies showed DIR Floortime is an evidence-based therapy, for the reasons detailed above. Claimant thus failed to establish by a preponderance of the evidence that DIR Floortime is an evidence-based therapy. As such, NLACRC is prohibited from funding it through the

SDP. This determination does not preclude claimant from accepting NLACRC's previous offer to fund an ABA assessment by a vendor who can provide both adaptive skills training and ABA services.

ORDER

Claimant's appeal that NLACRC include funds for DIR Floortime in her SDP budget is denied. Those funds shall not be included in her SDP budget. Claimant may still undergo the ABA assessment NLACRC previously authorized.

DATE: October 21, 2024

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024040457

Vs.

DECISION BY THE DIRECTOR

North Los Angeles County Regional Center,

Respondent.

ORDER OF DECISION

On October 21, 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 November 20, 2024

Original signed by:

Pete Cervinka, Acting Director