

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

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

DDS Case No. CS0016589

OAH Nos. 2024050413

PROPOSED DECISION

Jeffrey U. Javinar, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, acting as a hearing officer, conducted a fair hearing by videoconference on June 26, 2024, from Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's mother (Mother) represented Claimant, who was not present.

Evidence was received, the record closed, and the matter submitted for decision on June 26, 2024.

ISSUE

Did ACRC appropriately deny Claimant's request to include funding for 56 hours per week of crisis behavioral intervention services in his Self-Determination Program (SDP) budget?

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a 25-year-old individual who has been receiving Lanterman Act services coordinated through ACRC since 2017. He qualifies for such services by virtue of his severe intellectual disability, Autism Spectrum Disorder, and Fragile X syndrome. He is currently enrolled in the SDP.

2. On April 26, 2024, ACRC issued three Notices of Action (NOAs) denying and/or reducing funding for certain Lanterman Act services. Mother, on behalf of Claimant, timely filed hearing requests to appeal the NOAs. Subsequently, all three NOAs were consolidated and set for a fair hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California.

3. On the record at the fair hearing, the parties stipulated that the matters at issue in two of the NOAs (DDS Case Nos. CS0016591 and CS0016594) had been resolved and indicated that corresponding Notices of Resolution would also be filed following the hearing. The remaining NOA (DDS Case No. CS0016589) proceeded to hearing. Through that NOA, ACRC denied Claimant's request to include funding for 56 hours per week of crisis behavioral intervention services in his SDP budget. ACRC reasoned that the clinical recommendation for crisis behavioral intervention services

was not supported with evidence-based practices, and Claimant has no assessed need to receive such services.

ACRC's Evidence and Argument

4. In March 2023, ACRC and Mother agreed to and signed a Year One SDP budget, which was effective from April 1, 2023, through March 31, 2024. In the signed Year One SDP budget, ACRC added funds to Claimant's SDP budget for crisis behavioral intervention services based upon Mother's representation that Claimant was in crisis and required such services. ACRC requested that Board Certified Behavior Analyst (BCBA) assessments and recommendations be provided to ACRC to assess for the continued need for crisis behavioral intervention services when developing the following year's SDP budget.

5. Mother did not have Claimant assessed by a behavioral services provider, nor did Claimant receive any behavioral intervention services, until December 11, 2023. On that day, Courtney Baker, BCBA at Blossom Behavioral Health, initially assessed Claimant. Thereafter, Ms. Baker and her staff at Blossom Behavioral Health began providing behavioral intervention services. Ms. Baker conducted follow-up clinical assessments in March 2024, April 2024, and June 2024, and memorialized those assessments in clinical reports. In March 2024, Ms. Baker recommended Claimant have the following treatment plan for April 2024 through September 2024: 56 hours per week of crisis behavioral intervention services; 20 hours per month of mid-level program supervision; and two hours per month of BCBA supervision. Crisis behavioral intervention services require one-on-one intensive therapy.

6. Mary Rettinhouse, Autism Clinical Specialist at ACRC, testified at hearing. She has held her present position for seven years; before that, she worked as a

Behavior Analyst at ACRC for seven years. Ms. Rettinhouse has bachelor's and master's degrees in psychology and a certificate in applied behavior analysis. She is a certified instructor for the Program for the Education and Enrichment of Relational Skills (PEERS), a social skills training program to support individuals with autism. She is also a certified instructor of Professional Assault Crisis Training (Pro-ACT), a crisis behavior intervention and de-escalation protocol program. Ms. Rettinhouse has remained current with the behavior analysis research and evidence-based practices for behavior intervention programs, especially for persons with autism. In evaluating whether methods are rooted in evidence-based practices, Ms. Rettinhouse relies upon the National Autism Center's National Standards Project report and the Association of Behavior Analysis International's Statement on Restraint and Seclusion – authoritative texts universally relied upon in the behavior services field.

7. Ms. Rettinhouse observed deficiencies in Ms. Baker's clinical assessments regarding Claimant's use of mechanical restraints and arm immobilizers. Ms. Rettinhouse explained that mechanical restraints and arm immobilizers are equipment that limit self-injurious behavior while facilitating persons to apply function-based and consequence interventions. Mechanical restraints and arm immobilizers require specific clinical justifications and express permission for their use. In contrast, Ms. Baker's initial assessment described using them according to a specified schedule but did not provide any justification for their use. Also, her assessments did not contain written informed consent or a conservator's advanced directive for the use of mechanical restraints and arm immobilizers.

8. Further, Ms. Rettinhouse explained that clinical recommendations should be made to reduce or "fade away" Claimant's use of mechanical restraints and arm immobilizers. However, Ms. Baker's assessments did not specify any plan to "fade

away” Claimant’s use of mechanical restraints and arm immobilizers. Ms. Baker’s clinical recommendations relied heavily on their use. Thus, Ms. Rettinhouse opined that Ms. Baker’s assessments were flawed and not clinically supported.

9. Ms. Rettinhouse opined that Ms. Baker’s recommendation of 56 hours a week of crisis behavioral intervention services is not clinically supported for two reasons. First, Ms. Rettinhouse reasoned that nothing in Ms. Baker’s clinical assessments justified crisis behavioral intervention services for Claimant. Ms. Baker’s clinical reports did not explain any link between Claimant’s behavior and the need for intensive one-on-one therapy.

10. Second, Ms. Rettinhouse explained that crisis behavioral intervention services are deemed effective only for persons up to age nine. For individuals over the age of 22, evidence-based practices advise creating a treatment plan using function-based preventions and consequence interventions. Based on the National Autism Center’s National Standards Project report, targeting specific behavioral concerns is more effective for adults with autism. That requires family members to be trained to help address Claimant’s behavioral needs at home, not one-on-one crisis behavioral intervention services from a behavioral therapist.

11. Ms. Rettinhouse opined that Claimant has an assessed need for regular behavioral services, and that 22 hours per month of such services are clinically supported. This could include 20 hours per month of mid-level program supervision and two hours per month of BCBA supervision. Ms. Rettinhouse’s opinion is based on clinical information and data from Ms. Baker’s report about Claimant, Ms. Rettinhouse’s behavior intervention expertise, and evidence-based recommendations from the National Autism Center’s National Standards Project report and the Association of Behavior Analysis International’s Statement on Restraint and Seclusion.

Claimant's Evidence

12. Courtney Baker, BCBA at Blossom Behavioral Health, testified at hearing. She has a master's degree in applied behavior analysis. She has been a BCBA for about seven years. Ms. Baker has been the sole proprietor of Blossom Behavioral Health since 2022. She has about 13 years of experience working with clients with severe aggression and self-injurious behavior, including adults with autism.

13. On December 11, 2023, Ms. Baker conducted an initial clinical assessment of Claimant. She conducted a follow-up assessment in March 2024. She admitted her assessments were primarily based on Mother's observations of Claimant because Ms. Baker did not observe any behavioral issues during her meetings with him. Ms. Baker prepared a report on March 28, 2024, outlining a treatment plan. The plan included 56 hours per week of crisis behavioral intervention services, 20 hours per month of mid-level program supervision, and two hours per month of BCBA supervision.

14. At hearing, Ms. Baker acknowledged there is no present need to have any crisis behavioral intervention services for Claimant. She admitted she had no prior experience working with clients with an SDP budget coordinated through a regional center. Based on her limited understanding of how SDP works, she tailored her recommendations based on what Mother desired the treatment goals to be. Ms. Baker believed that Mother had final spending authority for services, so if Mother could fund the services, Ms. Baker should assent to those services in her clinical assessment. Ms. Baker explained in March 2024, Mother demanded Ms. Baker reflect the 56 hours per week for crisis behavioral intervention services in the report, so Ms. Baker included those 56 hours in her March 2024 clinical assessment report. Ms. Baker told Mother that Blossom Behavioral Health could not provide the 56 hours per week of crisis behavioral intervention services for Claimant. Ms. Baker admitted there is no clinical

basis to justify the 56 hours per week of crisis behavioral intervention services for Claimant.

15. When asked at hearing to address the deficiencies pointed out by Ms. Rettinhouse, Ms. Baker testified she normally makes recommendations based on what clinical research supports. Ms. Baker could not identify any authoritative text or clinical expertise to justify her assessment methods. She asserted her methods were based on her experience working with clients at previous jobs. In Claimant's case, Ms. Baker agreed that the evidence-based practices and clinical research support between 20 to 25 hours per month of regular behavioral services for Claimant.

16. Mother asserted she believes Claimant needs more behavioral intervention services based on her observations of his self-injurious behavior. She contends ACRC is unnecessarily obstructing Claimant from receiving funds for crisis behavioral intervention services.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, section 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700–4716.)

2. The Lanterman Act sets forth the regional center's responsibility for providing services and supports for eligible persons with developmental disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) An "array of services and supports should be established. . . to meet the needs and choices of each person with developmental disabilities. . . to support their integration into the mainstream life

of the community. . . [and to] prevent dislocation of persons with developmental disabilities from their home communities." (*Ibid.*) Additionally, "[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served." (*Ibid.*)

3. Funds added to the SDP budget must be based upon assessed need. (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) Moreover, services funded by the regional center must reflect evidence-based practices. (Welf. & Inst. Code, § 4686.2, subd. (b)(1)(A) – (b)(1)(D).) Evidence-based practices mean "a decisionmaking process that integrates the best available scientifically rigorous research, clinical expertise, and [the] individual's characteristics." (*Id.*, at (c)(3).)

4. Here, the parties do not dispute that Claimant requires behavioral services. The issue is the level of services required. Claimant asserts the SDP budget should include funding for 56 hours per week of crisis behavioral intervention services in the Year Two SDP budget. Claimant has the burden of proving his entitlement to such funded services by a preponderance of the evidence. (See Evid. Code, §§ 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"] & 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "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.)

5. Claimant has not proven that there is an assessed need to support funding crisis behavioral intervention services. That Claimant went almost an entire year without such services demonstrates otherwise. Ms. Baker's initial clinical

recommendation for Claimant to receive crisis intervention behavioral services was unpersuasive. When asked to support her initial clinical recommendation, Ms. Baker could not point to any evidence-based practices to justify it. Ms. Baker initially recommended 56 hours per week of crisis behavioral intervention services because Mother asked her to do so. Ms. Baker admitted there is no present need for crisis behavioral intervention services for Claimant.

6. In sum, Claimant did not demonstrate by a preponderance of the evidence that he is entitled to funding for 56 hours a week for crisis behavioral intervention services in his SDP budget. Although Mother's frustration is understandable, funds added to the SDP budget must be based on an assessed need determined using evidence-based practices.

ORDER

Claimant's appeal of the denial of his request to include funding for 56 hours per week of crisis behavioral intervention services in his SDP budget is DENIED.

DATE: July 3, 2024

JEFFREY U. JAVINAR
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024050413

Vs.

DECISION BY THE DIRECTOR

Alta California Regional Center

Respondent.

ORDER OF DECISION

On July 3, 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 submit an application for reconsideration to DDS pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving this 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 July 30, 2024

Original signed by:

Nancy Bargmann, Director