

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

In the Matter of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No. CS0017146

OAH No. 2024050899

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by ZOOM videoconference on September 20, 2024.

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

Claimant was represented by his mother (mother). Claimant's brother (brother) also was present during the hearing. Titles are used to protect the family's privacy.

Testimony and documentary evidence were received as evidence. The record closed and the matter was submitted on September 20, 2024.

ISSUE TO BE DECIDED

The parties agreed the following issue is to be decided by the ALJ:

Should RC be allowed to discontinue funding for services provided by vendor Jay Nolan Community Services (Community Facilitator Program)?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 27-year-old male who is a consumer of RC by reason of his diagnosis of autism spectrum disorder. Claimant resides with his mother and siblings.
2. On April 29, 2024, RC sent a Notice of Action which informed claimant that funding for services with vendor Jay Nolan Community Services (Community Facilitator program – service code 605) (JNS), would terminate on May 29, 2024.
3. On May 21, 2024, claimant filed an appeal form, which requested an administrative fair hearing.

Claimant's History with RC

4. RC currently funds 184 hours, per month, of adaptive skills training which is provided by the JNS program. Claimant's brother is his care provider for this service.

5. On September 1, 2017, RC began funding for JNS in lieu of a traditional day program. RC funded this service at the rate of six hours per day, for five days per week, to assist claimant with achieving independence in the community and to help improve his vocational skills.

6. On October 10, 2022, per the requests of JNS and claimant, RC increased the funding for JNS services to 184 hours per month. The desired outcome was for claimant to improve his ability to independently complete his activities of daily living.

7. On March 30, 2023, brother contacted RC and requested that a referral packet be sent to a behavioral day program called Work Creation Training Program (WCTP). RC informed claimant that RC was already funding for JNS services in lieu of a day program. RC declined to fund the equivalent of two day programs, at the same time, because RC cannot fund duplicate services.

8. On April 17, 2023, claimant was accepted by WCPT.

9. On April 20, 2023, RC informed WCTP that a clinical consultation was needed to determine if claimant's participation in a behavioral day program was appropriate. On the same day, claimant's Consumer Services Coordinator (CSC) sought a clinical consultation.

10. On May 4, 2023, brother requested that RC continue funding JNS services for claimant, regardless of whether claimant was approved by RC to attend WCTP. Brother reported claimant required support at home and in the community. Brother also reported claimant had been exhibiting behavioral challenges which required intervention. RC informed brother that if claimant were to continue receiving JNS services, a reassessment of claimant's needs and services would be required.

11. Claimant was ultimately approved by RC to attend WCTP. Claimant currently attends WCTP on Mondays, Tuesdays and Thursdays. Additionally, claimant currently works every Wednesday and Friday, through the Department of Rehabilitation (DOR) and the State Internship Program (SIP).

12. RC is currently funding 16 sessions, per month, of social skills training through Social Connections Counseling.

13. On May 30, 2023, claimant began attending WCTP. At that time, RC's funding authorization for JNS services was set to expire at the end of October 2023.

14. On October 10, 2023, RC received a progress report from JNS related to claimant's adaptive skills training services. The progress report was forwarded to RC's clinical department for review. RC's funding for JNS services was extended past October 2023 to allow time for clinical review by RC personnel.

15. On November 14, 2023, RC personnel met with claimant and his family to discuss the need for continued funding of adaptive skills training services provided by JNS. As a result of this meeting, it was agreed that RC personnel would perform a behavioral observation of claimant.

16. Annette Sinanian (Sinanian) is a Behavioral Services Supervisor at RC. Sinanian's job responsibilities include reviewing the appropriateness of all behavioral services funded by RC. On December 19, 2023, Sinanian performed a behavioral observation of claimant in the community, while claimant was supported by his brother. Based on this observation, Sinanian determined that the supports provided to claimant by JNS are more similar to personal assistant services than adaptive skills training services.

17. Sinanian reviewed all JNS's progress reports regarding claimant from 2017 to 2023. In Sinanian's opinion, claimant is not making clinically significant progress in meeting his goals. Claimant, at times, has had significant behavioral issues. These behavioral issues included physical aggression, verbal outbursts, and property destruction. Sinanian noted that JNS's services were initially funded in lieu of a day program. Further, since RC began funding JNS services, claimant's situation has changed. Claimant is currently participating in WCTP (three days per week) and working with the DOR (two days per week). Sinanian testified that these changes in claimant's schedule, combined with the lack of progress claimant has made while receiving JNS services, indicated a behavioral assessment was warranted. Sinanian opined that an Applied Behavior Analysis (ABA) assessment would review all of claimant's behavioral issues, claimant's goals, and the services being funded by RC.

18. After considering Sinanian's review of claimant's records, her behavioral observations, and the changes in claimant's schedule, RC proposed funding an ABA assessment to identify claimant's support needs. The proposed ABA assessment would not be limited to only ABA therapy. RC also recommended an assessment to determine claimant's need for personal assistant services.

19. In March 2024, claimant declined to participate in either of the assessments proposed by RC. It was established that there was some misunderstanding between the parties. Claimant and his family believed, at least initially, that the proposed ABA assessment was limited to determining whether claimant required ABA therapy, which claimant has tried previously and did not find helpful.

20. Because claimant refused to participate in an ABA assessment to determine his needs, and the appropriateness of the services he currently receives, RC

proposed discontinuing funding for JNS services. RC concluded JNS services are not currently being utilized for adaptive skills training, but rather are being used to provide claimant a personal assistant. Additionally, RC concluded JNS services have not helped claimant make clinically significant progress in meeting his goals.

Claimant's Contentions and Other Evidence

21. Claimant's most recent Individual Program Plan (IPP) addendum, which was agreed to by all parties, is dated May 19, 2023. At that meeting, claimant stated he was frustrated because he wants to be social and make friends, but he is generally unable to do so because he has poor boundaries and impulse control. At that time, claimant had received JNS adaptive skills services for approximately six years. Claimant was also participating in a social skills group through Social Connections Counseling. Despite these services, claimant requested funding for the WCTP, a behavior management program. Claimant's past request supports RC's contention that claimant's behavioral needs should be fully assessed because claimant was seeking additional services to help him with his behaviors.

22. At hearing, claimant's representative stated claimant is currently willing to participate in an ABA assessment.

23. Brother has been claimant's JNS service provider since 2017. Brother has a Bachelor of Arts in Psychology, and he is presently earning his master's degree. Brother testified that he provides claimant with adaptive skills training. For example, brother reminds claimant to use his breathing exercises to suppress his anxiety. Brother believes claimant's day program has helped with claimant's behavioral issues. Brother feels he is the best person to provide adaptive skills training for claimant because claimant relies on brother and listens to brother. Brother believes an ABA

assessment is unnecessary because claimant is satisfied with his current level of services.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established.

2. Where a Claimant seeks to establish the propriety of a service not previously agreed to by the Service Agency, the burden is on that appealing Claimant to demonstrate the Service Agency's decision is incorrect. Where the Service Agency seeks to discontinue a service it has previously funded, the Service Agency has the burden to demonstrate that its decision is correct. In this case, the Service Agency had the burden of establishing that funding for JNS services should be discontinued.

3. Pursuant to Welfare and Institutions Code (Code) section 4512, subdivision (b), the Service Agency provides services and supports to persons with developmental disabilities. The determination of which services and supports are necessary for a consumer are made through the IPP process and are 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 . . .*" (Emphasis added.)

4. Code section 4646.5, subdivision (a)(8), states, in pertinent part, that the IPP process shall include "[A] schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, *that objectives have been fulfilled within the times specified*, and that consumers and families are satisfied with the individual program plan and its implementation." (Emphasis added.)

5. A Service Agency is mandated to provide services to eligible consumers. RC is also mandated to ensure that the services it is funding are appropriate and are meeting the claimant's needs. To meet these mandates, a Service Agency is required to perform assessments of consumer's needs with respect to the goals and services of that consumer. Under Code section 4646, subdivision (a)(1), the IPP process requires the Service Agency to gather information and conduct assessments ". . . to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." There is nothing in the Lanterman Act which requires a Service Agency to provide services to a consumer who is unwilling to participate in a reasonably necessary assessment and the Lanterman Act can be read to bar services to consumers who do not cooperate in the assessment process.

6. In this case, claimant's daily schedule, and the level of services funded for claimant by RC, are both substantially different than when RC began funding JNS services in 2017. Additionally, claimant continues to have behavioral issues. Therefore, RC's request to perform an ABA assessment to determine claimant's current behavioral needs was reasonable.

7. Claimant now appears willing to participate in an ABA assessment. Nevertheless, the undersigned must decide the issue that the parties presented at hearing. Claimant refused to participate in RC's reasonable request for an ABA

assessment. Therefore, RC established a valid reason to discontinue funding for JNS services. The following order will discontinue funding for JNS services in approximately 30 days, which provides a limited time for claimant to participate in an ABA assessment if he chooses to do so.

ORDER

North Los Angeles Regional Center may discontinue funding for Jay Nolan Community Services on November 4, 2024.

DATE:

CHRIS RUIZ

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

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

**In the Matter of the Request for Reconsideration
of the Final Decision in:**

CLAIMANT

vs.

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,
Service Agency.**

DDS No. CS0017146

OAH No. 2024050899

ORDER DENYING REQUEST FOR RECONSIDERATION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, is assigned to decide the request for reconsideration of the October 4, 2024 final decision in the above-captioned matter, in accordance with Welfare and Institutions Code section 4713.

The October 4, 2024 Final Decision

Since September 2017, North Los Angeles County Regional Center funded adaptive skills training Jay Nolan Community Services (JNS) provided to Claimant, initially at a frequency of 120 hours per month and then, as of October 10, 2022, at a frequency of 184 hours per month. In May 2023, Claimant commenced participating in Work Creation Training Program, a behavioral day program, three days per week. In addition, Claimant commenced working two days per week through the Department of Rehabilitation and State Internship program. In October 2023, North Los Angeles County Regional Center personnel and Claimant's family agreed to "discuss the need for continued funding of adaptive skills training services provided by JNS." (October 4, 2024 Final Decision at p. 4.) Furthermore, "As a result of this meeting, it was agreed that [North Los Angeles County Regional Center] personnel would perform a behavioral observation of claimant." (*Ibid.*)

North Los Angeles County Regional Center personnel reviewed JNS reports regarding Claimant progress, and determined Claimant was "not making clinically significant progress in meeting his goals. Claimant, at times, has had significant behavioral issues. These behavioral issues included physical aggression, verbal outbursts, and property destruction." (*Id.* at p. 5.) Furthermore, "[C]laimant's situation has changed" since North Los Angeles County Regional Center began funding Claimant's adaptive skills training services provided by JNS. North Los Angeles County Regional Center proposed funding assessments for Adaptive Behavioral Analysis (ABA) and personal assistant services. (See *Ibid.*)

In March 2024, Claimant declined to participate in either of the proposed assessments. North Los Angeles County Regional Center concluded "JNS services are not currently being utilized for adaptive skills training, but rather are being used to

provide claimant a personal assistant. Additionally, . . . JNS services have not helped [C]laimant make clinically significant progress in meeting his goals.” (*Id.* at p. 6.) Claimant filed an appeal.

On September 20, 2024, an Administrative Law Judge conducted a fair hearing to determine “Should RC [North Los Angeles County Regional Center] be allowed to discontinue funding for services provided by vendor Jay Nolan Community Services (Community Facilitator Program) [JNS]?” (*Id.* at p. 2.) After consideration of testimony and documents submitted into evidence, on October 4, 2024, the Administrative Law Judge issued the final decision with the legal conclusion “Claimant refused to participate in RC’s reasonable request for an ABA assessment. Therefore, RC established a valid reason to discontinue funding for JNS services.” (*Id.* at pp. 8-9.) The final decision includes an Order to “discontinue funding for JNS services in approximately 30 days [November 4, 2024], which provides a limited time for claimant to participate in an ABA assessment if he chooses to do so.” (*Id.* at p. 9.)

The October 18, 2024 Application Requesting Reconsideration

On October 18, 2024, on behalf of Claimant, his parent and guardian timely filed an application requesting reconsideration of the October 4, 2024 final decision. In pertinent part, the application states the following:

While it is noted in [the final decision Claimant] has behavioral issues, it is essential to emphasize that his main struggles are tied to emotional regulation and sensory processing rather than behavioral non-compliance. AST [Adaptive Skills Training] specifically addresses these needs, providing real-time strategies to help hm manage anxiety

and function in the community. Cutting these services could lead to a regression in his abilities, undoing his gains through consistent and tailored support.

The refusal of the ABA assessment was due to a misunderstanding on [Claimant's] part and a concern that the focus of the assessment would be on behavior modification—a service [Claimant] has tried in the past and found unhelpful for his specific needs. [Claimant] and our family now understand that the assessment could provide insight into a broader range of support needs, and [Claimant] is currently willing to participate in the ABA assessment. The openness to reassessment was acknowledged during the hearing.

Given this willingness to cooperate, we respectfully ask that you reconsider the decision to discontinue AST services. . . .

In a written statement dated October 21, 2024, North Los Angeles County Regional Center opposed the application requesting reconsideration on grounds "Claimant's basis for requesting a reconsideration of OAH's decision is not among the reasons specified in the statute."

Standard for Reconsideration

Welfare and Institutions Code section 4713 provides in pertinent part the following:

(a) If the final decision is unfavorable to the claimant, and the claimant has been receiving the services that have been the subject of the appeal, the decision shall not be implemented until 15 days after the receipt of the final hearing decision by the claimant and the authorized representative, unless a reconsideration is requested within 15 days from the date of the final hearing. . . .

(b) Within 15 days of the date of the final hearing decision, a party may apply to the hearing office or to the director responsible for issuing the final decision for a correction of a mistake of fact or law, or a clerical error in the decision or in the decision of the hearing officer not to recuse themselves following a request pursuant to [Welfare and Institutions Code section 4712, subdivision (g)]. The party shall state the specific grounds on which the application is made. . . . The other party may file a written statement supporting or opposing the application.

(c) The hearing office shall refer the application to a hearing officer who did not write the decision for which reconsideration is requested.

(d) Within 15 days of receiving the request, the hearing office or the director responsible for issuing the decision may deny the application, grant the application and modify the decision, or grant the application and set the matter for further proceedings.

Analysis

Claimant's parent and guardian identifies no mistake of fact or law or clerical error in the October 4, 2024 final decision. Claimant's parent and guardian makes no claim the Administrative Law Judge issuing the October 4, 2024 final decision failed to recuse themselves following a request pursuant to section 4712, subdivision (g). Rather, in the application requesting reconsideration, Claimant's parent and guardian asserts Claimant's refusal to participate in a proposed ABA assessment was due to Claimant's misunderstanding about the purpose and scope of the recommended ABA assessment. Claimant is now willing to participate in an ABA assessment, and Claimant may still do so by informing North Los Angeles County Regional Center of his readiness to participate in such an assessment in accordance with the October 4, 2024 final decision.

No cause exists pursuant to Welfare and Institutions Code section 4713 to grant Claimant's October 18, 2024 application requesting reconsideration.

ORDER

Claimant's application requesting reconsideration of the October 4, 2024 final decision is denied.

DATE:

JENNIFER M. RUSSELL

Senior Administrative Law Judge

Office of Administrative Hearings

