

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

In the Matter of:

CLAIMANT

v.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER

DDS No. CS0015897

OAH No. 2024051057

DECISION

Thomas Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 19, 2024.

Tami Summerville, Fair Hearings Manager, represented the South Central Los Angeles Regional Center (SCLARC or Service Agency). Claimant was represented by his aunt. Family titles are used to protect privacy.

This matter is governed by the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act).

Claimant's twin brother is also appealing the Service Agency's proposed action to terminate tutoring services and, because of the similarity of issues and

circumstances, Claimant's and his brother's matters were consolidated for hearing purposes. Exhibits referenced below may be found in Case Center under either or both matters. Page numbers, where stated below, are from this Claimant's matter in Case Center.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on August 19, 2024.

STATEMENT OF THE CASE

Claimant contends the Service Agency recognizes he struggles to learn basic academic skills and continues to need tutoring, given it has suggested tutoring vendors. He urges his steady progress with his current tutor and that he should not be forced to choose another or to have no tutoring at all. The Service Agency contends the tutoring it funded is a time-limited service, Claimant has met the academic goals past tutoring was meant to foster, and should now take advantage of the generic resources offered by his school district.

FINDINGS OF FACT

1. The Service Agency sent Claimant a May 14, 2024 Notice of Action (NOA) proposing to terminate funding for tutoring. Claimant timely appealed.

2. Claimant, 17 years old, is eligible for services based on a diagnosis of moderate intellectual disability (ID) and autism, now called autistic spectrum disorder (ASD). He lives at home with his father, aunt, and twin brother, who also receives SCLARC services.

3. Claimant's most current Individual Program Plan (IPP) was reviewed on September 11, 2023. It shows Claimant is able to care for himself with some reminders. Claimant is not physically aggressive, but there is a note in the IPP that he is socially disruptive less than once a month. Father informed those in attendance at the IPP meeting that Claimant is less compliant when he is tired. Father also explained that Claimant was reacting to a change in routine on the day of the meeting, causing his socially disruptive behavior during the meeting. Under Desired Outcome #6 the IPP states, Exhibit 2, page A40, that Claimant "will decrease disruptive social behavior (refusing to leave place/activity without fussing or being non-compliant) with redirection from occurring every month to 1 time every other month in an effort for him to develop appropriate coping skills."

4. Claimant attends Culver City High School, where he participates in water polo and the robotics program. He is on track to graduate with a diploma, rather than a certificate, with plans to enroll at Santa Monica College. He enjoys playing electronic games and hopes to work one day on designing them.

Tutoring Services

5. Besides tutoring, the Service Agency currently funds in-home respite services, provided by Father, 30 hours per month, and personal assistance (PA), 100 hours per month, provided by Aunt. The issue here is whether the Service Agency should continue to fund the tutoring that is currently provided Claimant and his twin in joint sessions via Zoom, Monday through Friday when school is in session, 6:30 to 8:00 a.m., by Melody Hardy, Melody Hardy Tutoring, Los Angeles.

6. Claimant's most current Individualized Education Plan (IEP), dated January 16, 2024, states, Exhibit 5, page A52:

[Claimant] continues to be eligible for Special Education services as a student with an Intellectual Disability.

[Claimant] has significantly below average intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect his educational performance.

These deficits affect his skills in math, reading and written language and overall educational performance, for which special education services are needed.

The IEP, Exhibit 5, notes more than one area of need, such as, on page A62, "[Claimant] is currently functioning at 40% in reading comprehension," and on page A63, "[Claimant] requires 100% assistance when breaking down the components of a word problem." Claimant's school transcript shows that in 2023 he attended special day classes (SDC) in English, Mathematics, Social Studies, and Science.

7. The January 2024 IEP at page A55, Exhibit 5, describes these details of Claimant's skills and cognitive abilities:

[Claimant's] cognitive ability is estimated as within delayed range. [Claimant] has relative strengths in processing speed and phonological processing. This can suggest that if given visual tasks with basic, 1-2 step directions, he would be able to follow and work at an appropriate pace. He also is able to hear, break down and blend sounds together in reading words, spelling and writing at his academic level. While his verbal abilities are below average in formal vocabulary and

reasoning, [Claimant] is able to express word definitions, state how items are alike and express his ideas. He shows that he is learning from discussions and participating and would continue to benefit from verbal interactions in his instruction.

[Claimant] has delays in visual perception, spatial ability, nonverbal reasoning, auditory memory, visual memory, auditory comprehension and conceptualization. These are consistent with deficit in cognitive ability which has been reported through prior evaluation.

8. Ms. Hardy provides monthly progress reports. The one-page reports state the month and year, followed by a brief description of progress for each of four academic subjects, followed by "Comments" of two to four sentences. The progress reports in evidence concern Claimant's twin, but as noted above, Claimant and his twin are tutored together in joint sessions. The September 2023 progress report states, on page A93 of Exhibit 6, that progress in three subjects, Biology, U.S. History, and English, is "passing," and that progress in Algebra I "needs improvement." Under "Comments," the September 2023 report states, "[Claimant's twin] needs continued support in reading, writing, and comprehension. He struggles with math concepts and requires reinforcement of concepts learned and repeated practice of skills." The May 2024 report states, Exhibit 6, page A97, that progress in all four subjects is "passing." Under "Comments" the May 2024 report states, "Repetition and reinforcement of assignments is needed. We continue to work on reading, writing, comprehension, vocabulary, and spelling."

///

9. Ms. Hardy generally charges \$75 per hour per child, \$112.50 per child per session lasting 1.5 hours, \$225 for each 1.5-hour joint session. Ms. Hardy sends her invoices to Aunt, who forwards them to Service Coordinator (SC) Guzman at the Service Agency. Ms. Hardy's hours varied in 2022. In October 2022, for instance, she charged for 1.5 hours on each of 10 days, 1.75 hours on each of 3 days, and 2 hours on each of 6 days. As of February 1, 2023 and afterwards, she has consistently charged for 1.5 hours for all sessions.

Generic Resources Available

10. Culver City High School makes available to students, including Claimant and his brother, free tutoring of more than one type. Peer tutoring is provided Mondays, Tuesdays, and Thursdays before school, from 7:45 to 8:25 a.m., and after school, from 3:30 to 4:15 p.m. The school's website describes, Exhibit 11, pages A162 through A163, another tutoring service, from Paper:

Culver City High School has partnered with Paper™ to provide unlimited access to its 24/7 Educational Support System (ESS)! Now, every student can ask questions, work through problems, and grow their confidence-all at no cost to families, Paper's online ESS provides students with unlimited academic support, practice, and career and college readiness opportunities.

These features are available around-the-clock, and Paper's expert tutors are always online to assist students 1:1 in all subject areas and in more than four languages!

///

SC Guzman

11. The Service Agency has employed SC Melissa Guzman for six and a half years. She has a Bachelor of Arts degree and, in addition to working as an SC, including as Claimant's SC for approximately two years, she is a team leader who trains new SC's. Among SC Guzman's duties are case management and assisting families with supports and services, including generic services, so called because they are available to the general public and not only to clients of the Service Agency. SC Guzman is responsible for paperwork and procedures for the management and approval of reports and authorizations for services.

12. SC Guzman described the several steps for the Service Agency's review, approval, and payment of invoices such as Ms. Hardy's, a process that she estimated lasts approximately three weeks. SC Guzman acknowledged that if she is on leave, whether for vacation or illness, or out in the field and away from her office, or if personnel in the fiscal department are processing more claims for reimbursement than usual, reimbursement may be delayed. Aunt gave convincing testimony that the Service Agency has delayed reimbursement by two and at times three months. She argued that the Service Agency uses delay to signal that it is unwilling to continue funding Ms. Hardy's tutoring.

13. SC Guzman and Ms. Hardy have met at IEP meetings. SC Guzman describes Ms. Hardy as articulate in explaining the benefits Claimant and his brother receive from her tutoring and the boys, who also attend IEP meetings, seem comfortable with her. SC Guzman expressed some sympathy for the family's desire to continue with Ms. Hardy's tutoring. But she also expressed her understanding that the Lanterman Act may require terminating funding for Ms. Hardy's tutoring. To comply with the law, as SC Guzman stated, she and other Service Agency personnel must

ensure that generic tutoring services or the least costly services of the same or similar quality are used if available.

14. SC Guzman advised Aunt the Service Agency was proposing to fade out, gradually terminate, Ms. Hardy's tutoring, giving Aunt a couple of weeks to consider the proposal. SC Guzman told Aunt the Service Agency was not proposing immediate termination of funding, rather that Ms. Hardy should "put something in writing" on how Ms. Hardy's tutoring might fade out. Aunt later advised by email that the family did not agree to any fade out or termination and requested an NOA.

PM Green

15. The Service Agency has employed Ashton Green for eight years. She holds Bachelor of Arts and master's degrees. Her current position is Program Manager (PM). She oversees a unit of SC's who review IPP's and are concerned with services provided to families. With information on tutoring provided by an SC such as SC Guzman, PM Green reviews pertinent documentation, such IEP's and the consumer's report cards, and consults applicable policies of the Service Agency. She then provides the documentation to and consults their in-house Education Specialist, Monique Craig, to generate options and a recommendation on whether to continue or decrease funding. In this case PM Green also consulted a Director at the Service Agency. The consensus was first to fade out and then terminate Ms. Hardy's tutoring.

16. PM Green is familiar with the services funded for the family. She stated her understanding that Claimant and his brother are doing well academically and otherwise. She noted their grades have improved over time and they are on track for college enrollment. PM Green is also aware of the boys' extracurricular activities, such as water polo. She believes that they no longer need Ms. Hardy's tutoring to continue

to thrive. She believes the family have never requested tutoring from Claimant's school district or any generic resource.

Aunt's Evidence

17. Aunt stated she thoroughly reviewed Claimant's IEP but found no statement to the effect he is at grade level. She believes it is only because Claimant has been able to avail himself of supports and services such as Ms. Hardy's tutoring that he has made the good academic progress he has. Claimant and his brother have been mainstreamed, not to general but to "remedial" classes only. In her view, Claimant still needs the supports and services so far provided if he is to have a fair chance in life.

18. Aunt is quite hesitant to try another vendor of tutoring because Claimant and his brother know and are used to Ms. Hardy, who has tutored them for over three years. Claimant sometimes struggles to adapt when circumstances change. Aunt recognized that life is full of change and challenge, and in meeting both Claimant has had some success, but she sees no reason to take away supports that have long been effective only to try substitutes bound to cause uncertainty and that may, given Claimant's disabilities, disrupt his progress and cause him or both him and his brother to be disruptive too.

LEGAL CONCLUSIONS

LEGAL PRINCIPLES

1. Under Evidence Code sections 115 and 300, the standard of proof in this matter is proof by a preponderance of the evidence. A service agency that seeks to

terminate ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making charges generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

2. Welfare and Institutions Code section 4648, subdivision (a)(6)(D), provides:

In order to achieve the stated objectives of a consumer's [IPP], the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports. [¶] . . . [¶]

(6) The regional center and the consumer, or if appropriate, the consumer's parents . . . or authorized representative . . . shall, pursuant to the [IPP], consider all of the following when selecting a provider of consumer services and supports: [¶] . . . [¶]

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the [IPP], shall be selected. In determining the least costly provider, the availability of federal financial participation shall be

considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

ANALYSIS

3. Claimant urged the need to continue Ms. Hardy's tutoring. His latest IPP and IEP both show Claimant has academic needs, including specifically a need for tutoring. The evidence does not establish that Claimant's academic goals have been met. As Aunt pointed out, Claimant's classes are mostly SDC and not entirely in the mainstream or at grade level. Claimant and his brother are not attending classes for children without disabilities. The evidence, however, does not show that Claimant's need must be met by Ms. Hardy, as opposed to another service provider.

4. Tutoring by Ms. Hardy offers advantages in that it is proven and Claimant has seen real improvement under her tutelage. There is likewise some benefit from continuity, keeping Ms. Hardy's service instead of having Claimant move to another service provider, as any move may be disruptive. As Aunt also stated, Claimant and his brother and Ms. Hardy are comfortable with each other and the current tutoring arrangements. The status quo however is not so advantageous that change is out of the question. Change is on the horizon and cannot be entirely avoided, as Aunt acknowledged. Indeed, a major change will arrive when Claimant graduates from high school and enrolls in a community college according to plan. The environment will be quite different from high school.

5. Arguably Claimant might more comfortably confront the challenges of college or any future course of study if he continues with Ms. Hardy. But there is little

evidence for this and, in any event, comfort should not be the main concern. It is also plausible that the opposite is true, that Claimant will benefit from new arrangements, even if somewhat uncomfortable at first. Comfort seems of little consequence so long as Claimant learns new things and becomes more independent, or less dependent on supports he needed in the past. This is not to say that Claimant should be moving away from all tutoring immediately. As stated above, the evidence is that Claimant's need for tutoring continues. Still, there is no evidence that Claimant would be harmed if any comfort he feels from current arrangements gives way to new learning and new arrangements such as Claimant and a new tutor or tutors might create.

6. Under the Lanterman Act, the Service Agency must be concerned with the cost of services. Ms. Hardy is not the least costly provider of tutoring services for Claimant. Still, Claimant is not required to use a less or the least costly provider if, under Welfare and Institutions Code section 4648, subdivision (a)(6)(D), it will result in Claimant's moving to a more restrictive or less integrated service. It will not so result. There is no restriction on subjects that a peer tutor at Claimant's high school could teach. The same is true of Paper, the other free tutoring service at the high school. Like Ms. Hardy's tutoring, peer tutoring is available mornings before school, but only three of the five weekdays, so that, compared to Ms. Hardy's tutoring on all five weekdays, the peer service is somewhat more restrictive. But the peer service is also available three of five weekdays after school, alleviating any temporal restrictiveness. The service from Paper, on the other hand, has no time restrictions, being available any day at any time. Both of these free services are more, not less, integrated into Claimant's current resources, since they are offered not from an independent tutor such as Ms. Hardy but from the school where Claimant is a student.

7. There is some wisdom in an initial suggestion from the Service Agency, that though immediate termination should perhaps be avoided, fading out Ms. Hardy's service makes sense. That would allow Claimant and his brother to adjust gradually as Ms. Hardy's services are gradually less available, mitigating adverse effects if any arise.

8. The evidence was not convincing that the Service Agency has taken advantage of the delays that have occurred, or used delays to communicate that funding for tutoring should be discontinued. The Service Agency in this case appropriately reviewed the cost of providing tutoring services of comparable quality by different providers. It found that less costly providers of comparable service are available, such as the peer or Paper tutors at Claimant's high school. These other services are able to accomplish that part of the Claimant's IPP relating to academics, consistent with the particular needs of Claimant and his family. These services, if any, at the discretion of Claimant and his family, rather than Ms. Hardy's tutoring, must be selected in order to comply with the Lanterman Act, with a brief period, however, for fading out Ms. Hardy's tutoring service, to avoid possible adverse effects on or discomfort felt by Claimant.

ORDER

As it has done in the past, the Service Agency shall fund two sessions of Claimant's tutoring by Ms. Hardy for one and one half hours per session at a cost of no more than \$112.50 per session or, if Claimant and his brother are attending a joint session, the Service Agency shall fund each such joint session at no more than \$225. Thereafter the Service Agency shall fund up to two sessions of Claimant's tutoring by Ms. Hardy for three quarters of an hour per session at no more than \$56.25 per session or, if Claimant and his brother are attending a joint session, the Service Agency

shall fund the joint session, three quarters of an hour, at no more than \$112.50 for each such joint session. Thereafter the Service Agency shall have no obligation to fund tutoring sessions for Claimant.

DATE:

THOMAS LUCERO

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.