

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

In the Matter of:

CLAIMANT

v.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER

DDS No. CS0015895

OAH No. 2024051065

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 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 has had steady progress with his current tutor and should not be forced to choose another tutor 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 the tutoring was meant to foster, and he should now take advantage of the generic resources offered by his school district.

FINDINGS OF FACT

1. The Service Agency's May 14, 2024 Notice of Action (NOA) states, Exhibit 1, page A12, that the reason for the proposed termination of tutoring services is that Claimant has made significant progress and the "[n]eed has been met." Claimant timely appealed.

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2. Claimant, 17 years old, lives with his father, aunt, and twin brother co-claimant. He is eligible for services based on a diagnosis of mild intellectual disability (ID) and autistic disorder, now called autism spectrum disorder, ASD.

3. The issue here is: whether the brothers' tutoring five days per week, in one joint session of 1.5 hours per day before the start of their high school classes at 8:45 a.m., should have faded out in the recent past and now should be terminated. This time-limited tutoring service has lasted about two years and has helped Claimant with basic subjects such as mathematics, English, and history. Claimant is on track to graduate from Culver City High School, where his classes have been special day classes (SDC) for students with disabilities needing special education. He participates in a robotics program, water polo, and enjoys and hopes one day to design video games. Claimant's plan is to enroll at Santa Monica community college.

4. Claimant's most recent Individual Program Plan (IPP) was reviewed on September 11, 2023. It notes he has toileting accidents infrequently, about twice a month. Claimant is generally able to care for himself independently and has not been observed to be socially disruptive.

5. Claimant's most recent Individualized Education Program (IEP), January 22, 2024, states, Exhibit 4, page A63:

[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.

Impact of Disability: [Claimant's] deficits in cognitive and adaptive abilities impact his academic skills and performance in general education, and requires support from specialized academic instruction and curriculum modifications.

Claimant has met some goals set in his IEP, Exhibit 4, but has more challenges ahead. For instance, regarding Claimant's reading skill, as set out at page A73: "The previous goal in reading was met. According to the Woodcock Johnson IV Test of Achievement [Claimant] has a SS [standard score] of 50 [on a scale, by inference, of 100] in Broad Reading." A new goal set in the IEP was that Claimant would be able to cite evidence in support of claims in his writing. Regarding calculation skill, Claimant had met a previous goal set in the IEP, with understanding of polynomials. The IEP continues on page A74: "[Claimant] continues to work towards independently solving linear equations and inequalities in one variable. According to the Woodcock Johnson Test of Achievement (Form C) [Claimant] has a SS of 48 in Broad Math."

6. Under "Other Assessment Data," the January 2024 IEP provides at page A65 of Exhibit 4 more details concerning Claimant's skills and cognitive abilities:

[Claimant's] cognitive ability is estimated as within delayed range. [Claimant] has relative strengths in processing speed and Verbal Comprehension. In Phonological Processing skills, he has strength in Word Discrimination. In Listening Comprehension, he has relative strength in Auditory Comprehension. Relative strength in processing speed suggests that if given visual tasks with basic, 1-2 step directions, he would be able to follow and work at an

appropriate pace. Relative strength in verbal and auditory areas, suggest that if short stories or discussions are stated aloud, [Claimant] would be able to answer questions and participate verbally. 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, areas of phonological processing and conceptualization. These are consistent with deficit in cognitive ability which has been reported through prior evaluation.

7. Besides tutoring, the Service Agency funds 30 hours per month of in-home respite services, provided by Father, and 100 hours per month of personal assistance (PA), provided by Aunt.

8. The issue here is whether the Service Agency should continue to fund the tutoring that Melody Hardy, Melody Hardy Tutoring, Los Angeles, is currently providing Claimant and his twin. Ms. Hardy charges \$75 per hour per student for her services, currently delivered in joint sessions via Zoom, Monday through Friday, 6:30 to 8:00 a.m. Thus the cost for each session is \$225. In May 2024 Ms. Hardy was tutoring Claimant and his brother each weekday, except for May 27, the Memorial Day holiday. For the 22 days of tutoring in May 2024 Ms. Hardy charged a total of \$4,950.

Available Generic Resources

9. Culver City High School makes available to students, including Claimant, 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!

Service Coordinator Guzman

10. The Service Agency has employed Melissa Guzman for six and a half years. She has a Bachelor of Arts degree and, in addition to working as a Services Coordinator (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.

11. SC Guzman described steps in the Service Agency's review, approval, and payment of invoices such as Ms. Hardy's, a process she estimated lasts approximately three weeks. SC Guzman acknowledged that if she is on leave, for vacation or illness, or out in the field and away from her office, or if the fiscal department is 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 the Service Agency uses delay, such as to signal that it is unwilling to continue funding Ms. Hardy's tutoring.

12. SC Guzman has met Ms. Hardy at IEP meetings. She describes her 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. For these reasons SC Guzman expressed some sympathy for the family's desire to continue with Ms. Hardy's tutoring. Nevertheless SC Guzman also expressed her understanding that the Lanterman Act may require terminating the Service Agency's 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 examined and used if available.

13. SC Guzman advised Aunt that the Service Agency was proposing to fade out Ms. Hardy's tutoring for Claimant and his brother and provided Aunt a couple of weeks to consider the proposal. She explained that the Service Agency was proposing no immediate termination of the tutoring, but rather that Ms. Hardy "put something in writing" on how it might fade out. Aunt later advised SC Guzman in email

correspondence that the family did not agree to any fade out or termination and requested an NOA.

Program Manager Green

14. 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 to fade out and eventually terminate Ms. Hardy's tutoring.

15. PM Green is familiar with the services funded for the family. She stated her understanding that Claimant and his brother are doing well academically. She noted that their grades have improved over time and they appear to be 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. So far as she knew, the family have never requested tutoring from Claimant's high school district or any generic resource.

Aunt's Evidence

16. Aunt stated she had pored over Claimant's IEP and nowhere could she find a statement to the effect he is at grade level. She believes that 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 good academic progress. Nonetheless Claimant and his brother have been mainstreamed not to general but to “remedial” classes only because they still very much need the supports and services so far provided them if they are to have a fair chance in life.

17. Aunt is most hesitant to try another vendor of tutoring because Claimant and his brother have had a relationship to their current tutor Ms. Hardy for over three years and they all know each other well. Upon the introduction of changes, the boys sometimes struggle to adapt. Aunt recognized that life is full of change and challenge, and in meeting both the boys have had some success, but there is no reason in her estimation to take away supports that have long been effective only to put in their place substitutes bound to cause uncertainty and that may, given her nephews’ disabilities, disrupt their progress and cause one or both 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 funding it provides a consumer has the burden of demonstrating 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.

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ANALYSIS

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

4. Ms. Hardy's tutoring service offers advantages. Claimant has seen real improvement under her tutelage. There is some benefit from continuity, keeping Ms. Hardy's service instead of having Claimant move to another service provider, as any move may be disruptive, even if Claimant himself does not become disruptive or less compliant because of moves or changes. As Aunt also stated, Claimant and his brother and Ms. Hardy are comfortable with each other and their 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 soon. Claimant will graduate from high school and, if he sticks to his plan, will enroll in a community college, an environment quite different from high school.

5. Arguably Claimant might more comfortably confront the challenges of college or any future academic course if he continues with Ms. Hardy. There is little evidence for this. It is also plausible that the opposite is true, that Claimant will benefit from new arrangements. He may be less comfortable with a different tutoring service, but comfort is of little consequence if Claimant is learning new things and becoming 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. But there is no evidence that Claimant would be harmed if the comfort he feels from his current tutoring arrangement must give way to such comfort as he and a new tutor or tutors might foster with different arrangements.

6. Under the Lanterman Act, moreover, 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 to this extent 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 at all, being available any day at any time. And 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, nonetheless, 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 to adjust gradually as Ms. Hardy's services are gradually less available, mitigating adverse effects if any arise.

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8. The evidence was not convincing that the Service Agency has taken advantage of delay or used it to communicate that its 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 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.

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ORDER

The Service Agency shall fund up to eight sessions of Claimant's tutoring by Ms. Hardy for one and one half hours per session at no more than \$112.50 per session or, if Claimant and his brother are attending a joint session, the Service Agency shall fund the joint session at no more than \$225. Thereafter the Service Agency shall fund up to four sessions of Claimant's tutoring by Ms. Hardy for one hour per session at no more than \$75 per session or, if Claimant and his brother are attending a joint session, the Service Agency shall fund the joint session at no more than \$150 shall fund. 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.