

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

**In the Matter of:**

**Claimant,**

**vs.**

**Westside Regional Center,**

**Service Agency.**

**DDS No. CS0019532**

**OAH No. 2024080191**

**PROPOSED DECISION**

Erlinda Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 13, 2024.

Claimant was represented by his mother (Mother). Claimant and Mother are identified by titles to protect their privacy.

Westside Regional Center (Service Agency or WRC) was represented by Ron Lopez, IDEA Specialist.

Two Mongolian-language interpreters provided interpreter services for the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 13, 2024.

## **ISSUE**

Did Service Agency properly deny Mother's request for Service Agency to fund Floortime services for claimant?

## **EVIDENCE RELIED ON**

Documentary: Service Agency exhibits 1-11, 13-19; Claimant's exhibits A-C.

Testimonial: Ron Lopez, WRC, IDEA Specialist; and Mother.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a five-year-old boy who qualifies for regional center services based on his diagnosis of Autism Spectrum Disorder. Claimant lives at home with Mother, who is his primary caregiver.

2. Claimant is a participant in the Self-Determination Program (SDP). He transitioned into the SDP starting on April 1, 2024.

///

3. On July 25, 2024, Service Agency notified Mother, in writing, that her request for regional center funding of Floortime services for claimant was denied. (Exh. 3, pp. A17 to A19.) Service Agency determined Floortime was not the appropriate service for addressing claimant's behavioral issues. Service Agency recommended Applied Behavior Analysis (ABA) as the appropriate service to address claimant's behaviors. Service Agency noted claimant's ability to access Floortime services would be inhibited by his behavioral issues, and ABA services were available through claimant's medical insurance and/or his school district.

4. On July 26, 2024, Mother filed an appeal request to appeal Service Agency's decision denying her funding request for Floortime services. In the appeal request, Mother claimed Service Agency's denial was based on "false information" and "behaviors like eloping and tantrums." (Exh. 3, p. A13.) Mother claimed that claimant "doesn't have challenging behaviors like tantrum and eloping." (*Ibid.*) Mother claimed that claimant had behaviors like eloping and tantrums "only during his [ABA] therapy sessions", "the ABA therapy causes the root of the behaviors", and "[claimant] didn't respond [to] ABA therapy." (*Id.*, at pp. A13 to A14.) She asserted that child-led therapy like Floortime was recommended for claimant. (*Id.*, at p. A14.)

## **Claimant's Background**

### **INDIVIDUAL PROGRAM PLAN WITH FDLRC**

5. Claimant was previously a consumer of Frank D. Lanterman Regional Center (FDLRC) in approximately 2022 and 2023.

6. In July and August 2022, a psychological assessment of claimant was conducted at the request of FDLRC for the purpose of assessing claimant's ongoing eligibility for regional center services. At the time of the assessment, claimant was

three years old. The assessment was conducted by licensed psychologist Denise Rockwell, Ph.D., BCBA-D. Dr. Rockwell's findings are summarized in her written Psychological Assessment report dated August 19, 2022. (Exh. 13.)

7. Based on the assessment results, Dr. Rockwell found that claimant met the diagnostic criteria for Autism Spectrum Disorder. (Exh. 13, p. A68.) Dr. Rockwell's recommendations included that claimant "participate in a highly structured, behaviorally based intervention, such as Applied Behavior Analysis (ABA) to address his presenting symptoms." (*Id.*, at p. A71.)

8. Regarding claimant's behaviors, Dr. Rockwell's report noted, in part: "Behaviorally when upset, he will have a tantrum that includes crying, screaming, verbally protesting, pulling his mother's hair, and sometimes running in circles. Tantrums occur about 3-4 times per week and last between 1-5 minutes. Tantrums are typically triggered by being told 'no' or being denied access. Mother reports that teachers expressed concern with his behavior at the start of the school year. He was reported to pee on the floor, chew his shirt, and fake cry while at school. They also reported that he was very nervous and threw toys at his teacher." (Exh. 13, pp. A63 to A64.)

9. On October 24, 2023, FDLRC conducted an annual review of claimant's Individual Program Plan (IPP). (Exh. 8.) Claimant's IPP included a goal (Outcome 3) that claimant will, among other things, reduce tantrums, physical aggression, and verbal aggression; self-regulate inappropriate behavior; increase compliance with caregivers; use functional communication; and use age-appropriate communication to express his needs and wants. (*Id.*, at p. A49.) The annual review IPP described claimant's behavior challenges as follows:

Mother expressed concerns with [claimant's] behaviors, as he seems to display maladaptive behaviors. He is reported to tantrum on a daily basis, which may be due to his lack of sleep. His tantrums consist of biting, hitting himself, screaming at random, crying and laying on the floor. [Claimant] will also throw objects and may be moody at times. Mother feels [claimant] has lots of internal triggers that cause his behaviors. Tantrums can last about 30 minutes to an hour and require of mother to hold him to calm him down. He is not able to be redirected and does not like touch when he is upset.

(Exh. 8, pp. A49 to A50.)

### **INDIVIDUAL PROGRAM PLAN WITH WRC**

10. Claimant is currently a WRC consumer. His IPP with WRC is dated February 20, 2024 (2024 IPP). (Exh. 7.)

11. The 2024 IPP indicates "[claimant] is not receiving ABA services and [Mother] is looking into possibly getting [Floortime] instead. [Claimant] is lacking communication skills, has sensory issues, moves hands a lot, and he jumps from high things so [Mother] is worried about safety." (Exh. 7, p. A36.)

12. The 2024 IPP indicates claimant was attending preschool at Child Development Services. He attended in-person classes on weekdays from 8:30 a.m. to 12:30 p.m. His last Individualized Education Program (IEP) meeting was in May 2023. It was noted that claimant "elopes at school, doesn't sit still, doesn't focus, school readiness is not up to date, and doesn't recognize shapes or letters. Overall, he seems

happy going to school, he doesn't have friends, and he needs [coaching] to start conversations. [Mother] wants to know if his behaviors are related to school or what else is going on. He receives [occupational therapy] for 25 mins at school." (Exh. 7, p. A36.)

13. In the Social-Emotional area, the 2024 IPP states, in pertinent part:

[Claimant] has a lot of behavioral issues and it[']s mom's main concern. He sometimes screams non-stop or throw[s] a tantrum suddenly without any warning. He has a hard time sleeping, he tantrums for hours, if they go outside he needs to be in the stroller [:] if not, he goes into traffic and runs off and doesn't listen. They were getting ABA services but it wasn't working so Mom thinks [Floortime] can help. [Claimant] did not like the ABA therapist and was misbehaving during the sessions. [Service Coordinator] will submit request for floor time and ABA specialist will review.

(Exh. 7, p. A37.)

14. The 2024 IPP includes a goal (Outcome #5) that claimant "will decrease the intensity and frequency of his tantrum behaviors. He will increase his safety awareness at home and when out in the community." (Exh. 7, p. A45.) The plan for meeting this goal is that Mother will continue to implement the behavior strategies she has learned from the behaviorist when at home and when out in the community; Medi-Cal will continue to fund for claimant's ABA therapy; and Service Agency will monitor progress annually. (*Id.*, at pp. A45 to A46.)

///

## Floortime Assessment

15. In 2024, a Floortime assessment of claimant was conducted by To Live & Play in LA (LPLA), an assessor selected by Mother. Service Agency funded the assessment through claimant's SDP budget. (See Exh. 10; Exh. 19, p. A96.) The findings and results of the assessment are summarized in LPLA's assessment report (Exhibit 5) and addendum report (Exhibit 6). Based on the assessment results, LPLA's clinical team recommended "40 hours per month of Adaptive Skills utilizing a DIR modality over a 12 month period which includes direct services, social facilitation and 1:1 parent training sessions." (Exh. 5, p. A30.) The LPLA clinical team noted: "Our program's goal is to give the parent the tools to continue providing services after expiration of services, this is done by coaching/modeling and direct parent training." (*Ibid.*)

16. LPLA's report stated that claimant "has speech delay, articulation challenges and significant delay responses to when people make verbal gestures. . . . [Claimant] has challenges in environments that have large gatherings of people and can cause him to reject new places, or it takes a significant period for [claimant] to become comfortable and regulated." (Exh. 5, p. A22.) Mother reported that claimant is limited in his verbal communication and can verbalize no more than 1-to-2-word sentences, unless he starts the sentence with a need that he wants met. (*Id.*, at p. A23.)

17. The LPLA addendum report noted: "According to the parent, [claimant] did not respond well to ABA interventions, and that they may not be the appropriate intervention for him at this juncture of development. Parent was concerned that they found their child regressing in skills and with regulation. He was demonstrating challenging behaviors possibly due to the modality not syncing up with his learning style to socialize with others." (Exh. 6, p. A32.)

## **Service Agency's Contentions**

18. Service Agency contends it properly denied Mother's funding request for Floortime services. In its Position Statement, Service Agency explained as follows:

Claimant is participating in the Self-Determination Program (SDP) through which services are funded by Service Agency. Parent requested that Floortime services be added to the SDP budget. A Floortime assessment conducted by [LPLA] identified significant and challenging behaviors. Similar behaviors were documented in the IPP. Service Agency was concerned that those behaviors could not be appropriately addressed by Floortime intervention and, in fact, would impede Claimant's ability to effectively participate in Floortime intervention. ABA intervention was recommended to address his behaviors. Service Agency denied the request for Floortime services. Claimant's mother appealed Service Agency's denial.

(Exh. 4.)

19. At hearing, Mr. Lopez testified regarding Service Agency's denial of funding for Floortime services. He testified WRC's autism specialist and behavior specialist reviewed Mother's request and the available records and information, and concluded that ABA is the appropriate service for claimant's behavioral challenges. Mr. Lopez noted that ABA is a permitted service in the SDP but Floortime is not. He also noted that Service Agency considers Floortime to be more of a social skills program.

///



20. Mr. Lopez, in testimony, explained the general difference between ABA and Floortime. ABA is behavior-focused and therapist-led, whereas Floortime is relationship-based, social-emotional focused, and child-led. Mr. Lopez explained ABA involves directing the child and promoting replacement behaviors for maladaptive behaviors. ABA services are covered by insurance. Mr. Lopez explained Floortime involves engaging with the child in a play-based environment and focusing more on social development.

21. Service Agency believes the Floortime assessment completed by LPLA is focused more on social skills and language development, rather than interventions for claimant's behavioral issues. Claimant attends school, where he receives occupational therapy, speech therapy, and tutoring. Claimant attends Beyond Karate, which Service Agency is funding. Claimant's social recreational activities will be addressed in the SDP under service code 331 (employment and community participation). Mother would like to enroll claimant activities, such as camp, swimming, social skills, tutoring, horseback riding, and dance. Service Agency contends social skills activities are available to claimant. Service Agency contends claimant does not have an unmet need at this time.

22. Mother provided Service Agency with a letter dated August 31, 2023, from claimant's physician, Rebecca Kim (Exhibit 11), and a letter dated November 14, 2023, from Rebecca Wilkins of the International School of Los Angeles (Exhibit 14), where claimant attended preschool from 2022-2023. Dr. Kim's letter states the opinion that it would be in claimant's best interest to be included in a general education class. Ms. Wilkins letter states her belief that claimant would do well in a general education classroom. Neither of the letters discuss whether claimant's behaviors are better addressed through ABA therapy or Floortime.

///

## **Mother's Contentions**

23. Mother testified at the hearing. She claimed that claimant has been receiving ABA services for over two years but has shown no progress. Mother feels claimant has regressed. Mother testified that during the ABA sessions, claimant's behavior changes; he tantrums and cries and wants to leave the session. Once the ABA therapist leaves, claimant's behavior is normal. She contends claimant acted in this manner for all of his ABA sessions. She testified that claimant does not like it when he is ordered to do something.

24. Mother testified she was informed by Ample Joy, in a letter, that ABA is not working for claimant. Ample Joy is one of claimant's ABA providers. Mother presented an undated letter from Christopher Amakeze of Ample Joy ABA Consulting Services. (Exh. C.) The letter states claimant received ABA from 2022 to 2024, and he worked with over eight therapists; the letter does not explain why claimant had over eight therapists. Moreover, the letter does not support Mother's claim that claimant made "no progress" in ABA. To the contrary, the letter states: "Throughout the course of his therapy, [claimant] has shown progress from his initial assessment. However, it is important to note that he still maintains periods of regression and continued to exhibit tantrums, which are consistent with his Autism diagnosis." (*Ibid.*) At hearing, Mr. Lopez pointed out that this letter indicates claimant did show progress in his ABA program.

25. Mother testified that during an evaluation by WRC, the WRC assessor asked about claimant's behaviors. Mother told the assessor that claimant's behaviors, such as tantrums, occurred only during the ABA sessions. Mother feels, due to language issues, the WRC assessor misunderstood her. At hearing, Mother reiterated it is only during ABA sessions that claimant engages in challenging behaviors, and not when he is in a "normal environment" (i.e., outside of ABA sessions). Mother presented

no documentation to support her contention that claimant's behavioral issues occurred only during his ABA sessions or were caused by his ABA sessions.

26. Mother testified claimant is in kindergarten and he has an IEP with the school district. Mother testified that an Independent Educational Evaluation (IEE) "did not show abnormal behavior, so it was recommended that he take general education classes." Mother testified a psycho-educational assessment with the school district is in the process of being completed, and an IEP meeting will be held after the assessment is completed. Mother testified that claimant's current IEP does not include behavior therapy; it only includes occupational therapy and speech therapy. When asked if claimant engages in challenging behaviors at school, Mother testified that has been no report of misbehavior, only positive reports.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. The Lanterman Act, Welfare and Institutions Code section 4500 et seq., governs this case. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.)

2. When an individual seeks government benefits or services, the burden of proof is on the individual. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents 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.)

3. In this case, claimant bears the burden of proving by a preponderance of the evidence that he is entitled to the requested funding for Floortime services. Claimant did not meet this burden.

## **Lanterman Act**

4. A regional center is required to secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be based on 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. The Lanterman Act contemplates that the provision of services shall be a mutual effort by and between regional centers and the consumer and their family. The foundation of this mutual effort is the development of a consumer's IPP. (§ 4646, subd. (d).)

6. Section 4646.5, subdivision (a)(1), provides that the planning process for an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." Subdivision (a)(1) further provides: "Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible."

7. When purchasing services and supports for a consumer, a regional center shall ensure conformance with its purchase of services policies, utilization of generic

services and supports when appropriate, utilization of other sources of funding as contained in section 4659, and consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs. (§ 4646.4, subd. (a).)

8. Under section 4659, subdivision (a), regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, such as school districts, and private entities, to the extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

9. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

10. The SDP is an alternative model of service delivery provided under section 4685.8. A regional center consumer who has been deemed eligible for, and has voluntarily agreed to participate in, the SDP is referred to as a "participant." (§ 4685.8, subd. (c)(5).) The SDP "shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (§ 4685.8, subd. (c)(6).)

11. A participant must comply with the requirements of section 4685.8, subdivision (d)(3). Among other things, the participant shall use the services and supports available within the SDP only when generic services and supports are not available; the participant shall only purchase services and supports necessary to implement their IPP and shall comply with all terms and conditions for participation in

the SDP; and the participant shall manage SDP services and supports within the participant's individual budget. (§ 4685.8, subd. (d)(3)(B), (C), (D).)

## **Discussion**

12. The preponderance of the evidence established that Service Agency properly denied Mother's request to fund Floortime services for claimant. Service Agency's denial was based on the opinions of its autism specialist and behavior specialist that ABA is the appropriate service to address claimant's behavior challenges, which include tantrums and eloping. The Lanterman Act recognizes the purpose of ABA is to "promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction." (§ 4686.2, subd. (c)(1).)

13. Mother's testimony and evidence justifying her request for Floortime services for claimant were not convincing. Mother's claim that claimant made no progress after receiving ABA for two years was not supported by the evidence. The letter from Ample Joy, claimant's ABA provider, indicated claimant did show progress from his initial assessment, although he also experienced periods of tantrums and regression. Mother's claim that claimant exhibited his challenging behaviors only during his ABA sessions was not persuasive. She offered no documentary proof of this claim. The letters recommending a general education classroom as claimant's placement at school did not discuss the appropriateness of ABA versus Floortime for addressing claimant's behaviors.

14. Claimant became a participant in the SDP in April 1, 2024. Mother failed to present evidence showing that Floortime is a service that may be purchased with SDP funds. She did not show that Floortime is eligible for federal financial participation, as determined by the federal Centers for Medicare and Medicaid

Services. (§ 4685.8, subd. (c)(6).) ABA therapy, on the other hand, does qualify as a service that may be purchased with SDP funds.

15. Mother's testimony and evidence was insufficient to prove by a preponderance of the evidence that Service Agency's denial of her funding request for Floortime was not proper. Claimant's appeal shall be denied.

### **ORDER**

Claimant's appeal is denied. Service Agency properly denied claimant's funding request for Floortime services.

DATE:

ERLINDA SHRENGER

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024080191

Vs.

**DECISION BY THE DIRECTOR**

Westside Regional Center

Respondent.

ORDER OF DECISION

On September 23, 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 October 21, 2024

*Original signed by:*

Pete Cervinka, Acting Director



BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024080191

Vs.

**RECONSIDERATION ORDER,  
DECISION BY THE DIRECTOR**

Westside Regional Center

Respondent.

RECONSIDERATION ORDER

On October 31, 2024, the Department of Developmental Services (Department) received an application for reconsideration of a Final Decision in the matter referenced above, that was issued by the Director on October 21, 2024.

The application for reconsideration is denied. There are no changes to the Final Decision, and it remains effective as of October 21, 2024. All parties are bound by Final Decision.

This is the final administrative Decision. Each party has the right to appeal the Decision to a court of competent jurisdiction within 180 days of receiving the final Decision.

IT IS SO ORDERED on this day November 8, 2024.

*Original signed by:*

Pete Cervinka, Acting Director