

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

In the Matter of:

Claimant,

and

North Los Angeles County Regional Center,

Service Agency.

DDS No. CS0021938

OAH No. 2024110353

DECISION

Erlinda Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 19, 2024.

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

North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Paul Mejia, Due Process Officer.

Testimony and documentary evidence were received. At the conclusion of the hearing, the ALJ found good cause to continue the hearing to January 10, 2025, to allow claimant to upload additional documents to Case Center by December 23, 2024, for Service Agency to file and serve written objections, if any, to claimant's additional documents by January 10, 2025, and for claimant to file and serve written objections, if any, to Service Agency's Exhibit 7 by January 10, 2025. The ALJ issued a Continuance Order for Evidence Only, which was served on the parties on December 20, 2024, and hereby marked and admitted as Exhibit OAH-1.

OAH received no documents from Mother, and no additional documents were uploaded to Case Center by Mother, by the deadlines set in the Continuance Order for Evidence Only. OAH also did not receive any written objections from Mother to Service Agency's Exhibit 7. Therefore, Exhibit 7 is hereby admitted.

The record was closed and the matter was submitted for decision on January 10, 2025.

ISSUE

Should Service Agency be required to fund the purchase of an Apple Watch for claimant?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1 through 7.

Testimonial: Debbie Rombeau, NLACRC Supervisor; Lisa DePiro, NLACRC Behavior Consultant; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 12-year-old boy who qualifies for regional center services based on his diagnosis of Autism Spectrum Disorder.

2. On May 21, 2024, Service Agency sent Mother a Notice of Action, notifying her of the denial of her request that Service Agency fund the purchase of an Apple Watch for claimant. (Exh. 1, p. A1.) On November 1, 2024, Mother appealed Service Agency's denial of her funding request. (Exh. 1, pp. A7.) This hearing ensued.

IPP Addendum

3. Mother's funding request for an Apple Watch is documented in an Individual Program Plan (IPP) Addendum dated February 7, 2024. (Exh. 4.) This IPP Addendum is an addendum to claimant's IPP dated June 27, 2023, which was not presented at hearing.

4. The February 7, 2024 IPP Addendum indicates Mother requested an Apple Watch for the following purposes:

According to [M]other[,] "[t]he [A]pple watch has a GPS so she can locate [claimant] on her phone (safety). The watch also has a walkie-talkie so if he doesn't respond via text, parent can talk directly through his watch and ask him questions or remind him to check/respond to her messages. It will also help with his time management as she can set alarms on his watch and have it vibrate (not make a loud

sound that can overstimulate/upset him) to alert him for things like cooking basic meals for himself, therapy (log into therapy at his time), breaks (swing break for 30 minutes), etc."

(Exh. 4, p. A38.)

5. The IPP Addendum states that Service Agency's behavior consultant "recommended implementing an AST [adaptive skills training] assessment to assess the above-mentioned areas to determine needed supports." (Exh. 4, p. A38.) Service Agency authorized funding for an AST assessment by Mother's chosen vendor, A Change in Trajectory (ACT), to determine claimant's service needs. Service Agency requested ACT to provide a written report by April 30, 2024. (*Ibid.*)

AST Assessment

6. In March 2024, ACT completed an AST assessment of claimant. The findings of the assessment are summarized in ACT's written report dated March 26, 2024. (Exh. 2.) The report states claimant was referred to ACT for evaluation by Service Agency "to determine his future goals for adaptive skills services." (*Id.* at p. A28.)

7. ACT reviewed claimant's IPP dated June 27, 2023. (Exh. 2, at p. A29.) ACT's report included background information for claimant. It was noted claimant lives at home with both his parents and his three brothers, ages 6, 8 and 12. Mother reported all of claimant's brothers have been diagnosed with developmental disabilities. Claimant was diagnosed with Autism Spectrum Disorder when he was 21 months old.

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8. ACT's report noted claimant's school program consisted of a special education class and a general education class. (Exh. 2, p. A30.) Claimant's ongoing services provided by his school were speech therapy, occupational therapy, and ERICS, which stands for Educationally Related Intensive Counseling. (*Ibid.*)

9. As noted in ACT's written report, Mother reported claimant demonstrated strengths in making and editing videos, and he has shown improvement with his independent skills. He is able to shower, comb his hair, and brush his teeth independently. He is able to make simple meals, such as sandwiches, French toast, and eggs, and eat with utensils. He is able to order food on his own. Claimant has a debit card. He is capable of checking the balance of his bank account, and he can make purchases independently but will ask for permission first. ACT also noted: "Mother mentioned he has improved with his safety, but needs reminders. She also added that tantrums do occur, but he is working on that. [Mother] informed no major concerns at the moment." (Exh. 2, p. A28.)

10. ACT noted that claimant's IPP listed five goals: Outcome 1, respite for claimant's parents; Outcome 2, "decrease temper tantrums from 3-4x/day to 2" and "decrease emotional outbursts, e.g., crying, screaming, cursing, from 1-5x/day to 1x/wk"; Outcome 3, "maintain clean" and "have adequate supply of wipes"; Outcome 4, "make and maintain friendships by respecting social boundaries, starting a convers[at]ion and having reciprocal convers[at]ions"; and Outcome 5, "receive Personal Assistance Services up to 16 hours a month in order to provide [claimant] the care and supervision he requires to complete ADL's." (Exh. 2, p. A28.)

11. ACT noted claimant received ongoing physical therapy through his medical insurance, and ongoing counseling from the Child & Family Center. (Exh. 2, p. A30.)

12. ACT administered the Adaptive Behavior Assessment System III (ABAS), with Mother as the respondent for all tests administered. (Exh. 2, p. A31.) The ABAS is "a diagnostic tool to identify strengths and limitations for individuals from birth to 89 years old." (*Ibid.*) Claimant's scores on the ABAS indicated "Average" skills in the areas of Communication, Community Use, Functional Academics, Home Living, Health/Safety, Leisure, and Self-Care, but "Below Average" skills in the area of Self-Direction. (Exh. 2, p. A31.) The AST assessment report includes goals for claimant in each of the eight areas evaluated, and five parent goals. (*Id.* at pp. A32-A33.)

13. Based on its assessment of claimant, ACT found claimant "only demonstrates weakness in the area of self-direction" and Mother "reported not having major concerns at the moment." (Exh. 2, p. A34.)

Service Agency's Denial

14. Lisa DePiro has been employed by Service Agency for 12 years. She is currently a behavior consultant for Service Agency. Her duties include assisting service coordinators to determine appropriate services for consumers. Ms. DePiro holds a bachelor's degree in psychology and a master's degree in clinical psychology and Applied Behavior Analysis (ABA). She is a Board Certified Behavior Analyst (BCBA).

15. Ms. DePiro consulted with claimant's service coordinator, Blanca Verduzco, regarding Mother's request for an Apple Watch. Initially, Ms. DePiro felt more information was needed to better understand claimant's service and support needs in the areas of safety, self-management, and time management, which were the basis for Mother's request for an Apple Watch. At that time, Ms. DePiro was informed claimant did not have AST or ABA services in place, but he was receiving social skills training and would soon be starting jiu jitsu as a social recreation activity. Ms. DePiro

recommended an AST assessment for claimant. Service Agency authorized funding for the assessment in February 2024, and ACT completed the AST assessment on March 26, 2024. (Exhs. 2, 4.)

16. Ms. DePiro reviewed ACT's assessment report. She noted the report included a safety goal for claimant, that he will look both ways before crossing the street or a parking lot, and a parent goal for claimant's self-management, that Mother would be taught how to teach claimant about organizing and prioritizing his daily activities. (Exh. 2, pp. A32 and A33.)

17. After reviewing the ACT assessment report, Ms. DePiro recommended In-Home Parent Education (IHPE) services should be implemented to assist claimant's parents with teaching him self-management skills and safety skills needed in the community, which were two areas in the AST assessment identified as recommended parent goals. Ms. DePiro noted claimant already has an iPhone that has the same features as an Apple Watch. The IHPE service can assist claimant's caregivers with using the current technology available to teach claimant needed self-management skills. Ms. DePiro noted there was no mention in ACT's report of claimant engaging in elopement behavior.

18. Ms. DePiro explained that while both the iPhone and Apple Watch may be beneficial tools, they are not unique to and do not appear to be needed to ameliorate claimant's disability, but rather are tools that could promote self-management outcomes for all individuals regardless of a disability. Further, the devices alone will not teach claimant the skills he needs; what is crucial is that claimant is taught how to use the applications or any tool to assist with self-management.

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19. As stated in its Position Statement, Service Agency "contends that IHPE is the most appropriate service for Claimant as the service can assist the parents and/or caregivers in teaching Claimant appropriate self-management skills. An Apple watch will not teach Claimant the appropriate self-management skills he needs to stay safe in the community. The IHPE support recommended will allow for the needed techniques and strategies to be individualized and monitored to ensure effectiveness." (Exh. 6.)

Mother's Testimony

20. Mother testified she requested an Apple Watch for claimant due to safety and health concerns. She testified that claimant has previously used a smart watch, but it was not an Apple Watch. The previous smart watch could not track claimant's location or monitor his heart rate and blood sugar intake. Mother testified claimant has elopement issues, and an Apple Watch would allow her to track his location.

21. Mother explained that claimant has an iPhone but "when he is in a state, he does not pay attention to his phone." Mother testified claimant is verbal but if he is emotional or distressed, he is unable to communicate or answer questions. The Apple Watch has a walkie-talkie function, so Mother can speak directly to claimant or others who are near him. The Apple Watch will stay with claimant at all times because he wears it. Mother noted that claimant likes to wear bracelets. Mother testified she receives parent training from the Child & Family Center, which works with claimant on self-management and time management issues.

22. At hearing, Mother testified she had additional documents to support her request for an Apple Watch, including a letter from a speech pathologist, Natalie Murray, and claimant's pediatrician, Karen Camero. However, as noted in the Preamble

of this Decision, although Mother was allowed the opportunity to submit her additional documents, OAH received no additional documents from her.

23. Mother testified she did not receive the ACT assessment report (Exhibit 2) until this hearing. Service Agency presented ID Notes indicating that claimant's service coordinator, Ms. Verduzco, spoke by telephone with Mother on March 26, 2024, "to go over AST assessment report and how the report was submitted to [NLACRC's] behavior team to make their recommendations on the apple watch requested by parents." (Exh. 7.) Despite being shown the ID Notes, Mother testified she did not recall Ms. Verduzco contacting her by telephone on March 26, 2024, to discuss the ACT assessment report.

24. At hearing, Mother testified she agrees to IHPE services for claimant, and that claimant is currently on the waiting list for IHPE services.

LEGAL CONCLUSIONS

Legal Principles

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.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the regional center's decision. Claimant, through Mother, timely requested a fair hearing and jurisdiction for this case was established. (Factual Findings 1-2.)

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.) "Preponderance of the evidence" means evidence that has more convincing force than opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In this case, claimant bears the burden of proving by a preponderance of the evidence that he is entitled to Service Agency funding for the purchase of an Apple Watch.

3. 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).) "It is the intent of the Legislature that services and supports assist individuals with developmental disabilities to achieve the greatest self-sufficiency possible and to exercise personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's [IPP], and within the context of the [IPP], the planning team shall give highest preference to those services and supports that would allow minors with developmental disabilities to live with their families, . . . and that allow all consumers to interact with persons without disabilities in positive, meaningful ways." (*Ibid.*)

4. 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 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.” (§ 4646.5, subd. (a)(1).) “Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible.” (*Ibid.*)

Analysis

6. The preponderance of the evidence established Service Agency properly denied Mother’s funding request to purchase an Apple Watch for claimant. Service Agency presented convincing evidence that claimant’s needs related to safety, health, and self-management/time management are appropriately addressed through IHPE services that will train claimant’s parents and caregivers on using technology already available to him, i.e., his iPhone. Ms. DePiro’s testimony was reasonable.

7. Claimant already has an iPhone that has the same features as an Apple Watch. The IHPE service recommended by Service Agency can assist claimant’s parents and caregivers with using the current technology available to teach claimant needed safety and self-management skills. An iPhone or an Apple Watch, by themselves, will not teach claimant safety skills when he is out in the community or self-management/time management skills; what is crucial is to teach claimant how to use the technology to develop skills to address his safety and self-management/time management needs. The preponderance of the evidence established that the IHPE service recommended by Service Agency is the appropriate service for addressing claimant’s needs in these areas. Mother has agreed to the IHPE service, and claimant is currently on a waiting list for the service.

8. Based on the foregoing, Service Agency is not required to provide funding for claimant to purchase an Apple Watch.

ORDER

Claimant's appeal is denied. Service Agency is not required to fund the purchase of an Apple Watch for claimant.

DATE:

ERLINDA SHRENGER

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.