

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

**In the Matter of:**

**CLAIMANT**

**and**

**REGIONAL CENTER OF ORANGE COUNTY,**

**Service Agency.**

**System Tracking No. CS0024004**

**OAH No. 2025020055**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Santa Ana, California on March 17, 2025.

Ublester Penaloza, Assistant Manager, Fair Hearings & Mediation, represented the Regional Center of Orange County (RCRC or regional center). Mother, with the assistance of a Spanish language interpreter, represented Claimant, who was not present. Mother and Claimant are not identified by name to protect their privacy and maintain confidentiality.

Mother, Mr. Penaloza, and RCOC Area Supervisor Ana Penaloza testified. Claimant's Exhibit A and RCOC's Exhibit 1 through Exhibit 10 were received in evidence. RCOC's Position Statement was marked for identification only. At hearing, Mother withdrew Claimant's request for reimbursement of any attorneys' fees incurred in connection with this matter because no attorney was retained. The record closed and the matter was submitted for decision at the conclusion of the hearing.

## **ISSUES FOR DETERMINATION**

Whether RCOC should fund a fourth social recreational activity for Claimant and, if yes, whether such funding should be retroactive to the date Claimant requested RCOC funding for that service.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On December 9, 2024, Mother requested the RCOC to fund a Photography, Video and Performance class offered by Schettino and Lopez Comedy at a cost of \$89 per hour, two hours per week for Claimant.

2. By letter dated December 26, 2024, RCOC notified Moter it denied the request. RCOC articulated its reasons for the denial reminding Mother RCOC already provides funding for three different social recreational activities in which Claimant participates—karate, swimming, and music. RCOC informed Mother "that under RCOC's Purchase of Service (POS) guidelines, RCOC is permitted to fund 1 to 2

activities per week, and that there is already an exception in place as RCOC is funding a third activity for [Claimant].” (Exh. 2.)

3. On January 29, 2025, on Claimant’s behalf, Mother filed a Fair Hearing Request.

4. All jurisdictional requirements are satisfied.

### **Criteria for RCOC-Funded Social Recreational Activities**

5. The *Regional Center of Orange County Purchase of Service Guidelines (Guidelines)* provides the following definition of social recreational activities:

Social and recreational activities are defined as those services which provide the person served with the opportunity to develop their socialization skills and to participate in family group activities in the home and community. Those services may be provided by Parks and Recreation, Special Olympics, church, school, circles of support, or other resources available to the person served. RCOC staff will provide persons served, families and service providers with information regarding available resources in the community, including options for generic, RCOC vendored and participant-directed services.

(Exh. 9.)

6. The *Guidelines* permits the RCOC staff to authorize social and recreational services if the following criteria are met:

1. The need for the service is identified in the person's Individual Program Plan [IPP] and a specific outcome has been developed to address the need.
2. The individual has no socialization or recreation resources otherwise available to them.
3. Typical parental responsibility to pay for similar services for a minor child without disabilities has been considered.
4. The ability for an adult person served to pay for activities utilizing their personal funds (SSI, wages, etc.) has been exhausted.
5. The identified service meets required Home and Community Based Services (HCBS) regulations, as appropriate.
6. Exceptions will be considered on a case-by-case basis in accordance with the process . . . .

(Exh. 9.)

7. Consistent with the *Guidelines'* criterion number five, RCOG reviews requests for social recreation activities to ensure compliance with HCBS objectives set forth in *Home and Community-Based Services Social Recreational Services Request Review Tool* (*HCBS Social Recreational Services Request Review Tool*):

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The Home and Community-Based Services rules ensure that people with disabilities have full access to, and enjoy the benefits of, community living through long-term services and supports in the most integrated settings of their choosing. One of the requirements calls for settings in which services are provided to persons served by regional centers be integrated in, and support full access of individuals receiving regional center services to the greater community. This includes persons served by the regional centers engaging in community life, controlling personal resources, and receiving services in the community, to the same degree of access as individuals that are not served by regional centers.

(Exh. A.) Prospective social recreational providers are required to provide information in response to several questions about the setting, site, and content of the class, lesson, or activity. (See *ibid.*)

8. Regarding levels of service, the *Guidelines* states "Social and recreational activities may occur once or twice weekly for 6 hours total per week, but is based on the frequency and quantity of services assessed and determined to be needed within the Planning Team process."

### **Claimant's Current RCOC-Funded Social Recreational Services**

9. Claimant is a fourteen-year, five-month-old male consumer of RCOC due to a diagnosis of Down Syndrome.

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10. Claimant's July 23, 2024 IPP identifies several "Desired Outcome," including the following:

[Claimant] will participate in social/recreational activities that are age appropriate and promote social interaction at least once a month.

(Exh. 4 at p.10 [A27].) Claimant's IPP additionally includes a five bullet point Plan, which states the following:

- [Claimant] will participate in social/recreational activities he enjoys.
- Parents and school to support and encourage [Claimant's] participation in social/recreational activities.
- Parents to fund social recreational activities for [Claimant].
- Parents to review RCOC funding for HCBS approved social recreational activities.
- RCOC SC [Service Coordinator] to monitor [Claimant's] progress annually, and/or as needed.

(Ibid.)

11. On October 15, 2024, Claimant's IPP was amended to reflect RCOC-funded Karate for Claimant at a rate of \$299 per month through American Martial Arts and swimming at a rate of \$500 per month through Aqua Tots. This IPP addendum reports the benefits of Karate and swimming accruing to Claimant as follows:

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[Claimant] enjoys going to Karate which helps him get structure and focus. Karate is teaching discipline and how to follow rules in a group setting with typical peers his age. He also gets an opportunity to practice his language skills when communication [s/c] with the instructor and peers. Mom reports that [Claimant's] self-esteem has improved and that he is proud to be a participant of the Karate classes. [Claimant] loves the water and swimming allows him to participate in one of his favorite activities while receiving instruction, supervision and learning about safety in the water. [Claimant] is able to participate in other activities within Aqua [T]ots that provides him with opportunities to interact and socialize with peers.

(Exh. 6 at p. 4 [A39].)

12. On November 6, 2024, Area Supervisor Penaloza approved RCOC-funded music classes for Claimant at a rate of \$119 per week.

### **Claimant's Request for a Fourth RCOC-funded Social Recreational Services**

13. Mother requests RCOC to fund a group Photography, Video and Performance class provided by Schettino and Lopez Comedy at a cost of \$89 per hour, two hours per week for Claimant. At hearing, Mother acknowledged "in other social recreational activities [Claimant] is able to socialize." Mother wants the Photography, Video and Performance class as "an additional opportunity to socialize." Mother explained Claimant enjoys video graphing himself acting and dancing and taking

selfies to tell stories about himself and what is happening with his friends and family. Mother noted Claimant is active on social media and asserted this class will help Claimant “learn appropriate behaviors” and “effectively communicate and socialize.”

14. Mother testified, “His communication is limited, especially verbally. An unfamiliar person will have difficulty understanding him. One of the ways to communicate is to make videos. He wants to be a social media influencer. He is business-minded. He had a business selling videos and cars around the neighborhood. He wants to open a restaurant. But almost every day he says, ‘I want to upload videos on the internet.’”

15. Mother explained the instructor of the Photography, Video and Performance class “is a scenic producer” who offers the class “in his spare time.” The instructor has done small videos of students acting like cartoon characters. According to Mother’s testimony, one of the instructor’s students recently received an award.

## **RCOC’s Position**

16. RCOC maintained it received from Mother limited information regarding the provider of the Photography, Video and Performance class. RCOC personnel used the limited information obtained from Mother to conduct an online search and “came up with no results.” Consequently, RCOC is unable to determine whether either the provider or the class content satisfies HCBS requirements.

17. At hearing, Mother expressed willingness to get and provide RCOC with more provider information but represented she needed additional time—one more week—to do so.

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18. RCOC maintains the three social recreational activities it currently funds for Claimants satisfy Claimants' IPP goals and therefore further maintains it is cost-ineffective to fund a fourth social recreational activity for Claimant.

## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. As the party asserting a claim for services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq., Claimant bears the burden of establishing by a preponderance of the evidence his entitlement to the requested services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Administration* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

2. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id.* at p. 325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or un-contradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

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## Applicable Law

3. Under the Lanterman Act, developmentally disabled persons have a statutory right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4620, & 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code, § 4501.)

4. Services and supports for persons with developmental disabilities are defined as “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be 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.” (Welf. & Inst. Code, § 4512, subd. (b).)

5. Regional centers play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing an IPP for the individual with developmental disabilities, taking into

account the needs and preferences of the individual and the family, and promoting community integration, independent, productive, and normal lives, and stable and healthy environments. Regional centers are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting the goals stated in the IPP and reflect the preferences and choices of the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, & 4648.) Regional centers are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646.4, 4646.5, 4647, & 4648.) Regional centers must ensure “[u]tilization of generic services and supports when appropriate.” (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

## **Discussion**

6. Without information to determine whether HCBS objectives and requirements are satisfied, RCOC cannot properly vet the course content of or the individual or entity offering the Photography, Video and Performance class Mother requests for Claimant. Unless and until a comprehensive vetting occurs, RCOC is precluded from considering funding that additional social recreational activity for Claimant.

7. No evidence offered at hearing demonstrated the three social recreational activities RCOC currently funds for Claimant, individually or in the aggregate, have not benefited Claimant. To the contrary, Claimant’s IPP addendum documents karate and swimming, for example, have benefited Claimant. Those RCOC-funded social recreational activities have facilitated Claimant’s positive social interaction with peers, provided opportunities for Claimant to use or practice his communication skills, and improved Claimant’s self-esteem. These benefits are consistent with the desired outcome identified in Claimant’s IPP, thus suggesting, in

the absence of contravening evidence, Claimant is receiving an appropriate frequency and quantity of RCOC-funded social recreation activities. Under these circumstances, it would be cost-ineffective for RCOC to fund additional social recreational activities for Claimant.

8. In sum, the three social recreational activities RCOC currently funds support Claimant's IPP goals of social and community integration. Mother is not exempt from typical parental responsibilities, which include paying for any additional social recreational activity she identifies as appropriate for Claimant.

9. Mother, on behalf of Claimant, has not established by a preponderance of the evidence Claimant is entitled to RCOC funding for an additional social recreational activity in the form of a Photography, Video and Performance class.

## **ORDER**

1. Claimant's appeal is denied.

2. The Regional Center of Orange County's determination not to fund a fourth social recreational activity in the form of a Photography, Video and Performance class for Claimant is affirmed.

DATE:

JENNIFER M. RUSSELL

Senior Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Pursuant to Welfare and Institutions Code section 4713, subdivision (b), either party may request in writing a reconsideration within 15 days of receiving the decision or appeal the decision to a court of competent jurisdiction within 180 days of receiving the decision.