

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

In the Matter of:

CLAIMANT

and

Regional Center of Orange County,

Service Agency.

DDS No. CS0024485

OAH No. 2025020745

DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on June 4, 2025, at Regional Center of Orange County, located at 1525 North Tustin Avenue, Santa Ana, California 92705.

Claimant and Claimant's brother, her authorized representative, appeared on behalf of Claimant. Claimant's Personal Assistant (PA) was also present during hearing.

Ublester Penaloza, Assistant Manager, Fair Hearing and Mediations, appeared on behalf of the Regional Center of Orange County (RCOC).

Testimonial and documentary evidence was received. Claimant came to the hearing with paper copies of Exhibits A-W which she was unable to upload to Case Center and did not provide to RCOC prior to hearing. The ALJ left the record open for Claimant to provide additional exhibits to RCOC by June 6, 2025; for RCOC to file any objections to Claimant's additional documents; and, for RCOC to upload Claimant's exhibits to Case Center by June 11, 2025. Claimant provided one additional exhibit to RCOC, an index of Claimant's exhibits, which was uploaded to Case Center by RCOC with Exhibits A-W, and marked and admitted as Exhibit X. The record closed, and the matter was submitted for decision on June 11, 2025.

ISSUE

Should RCOC be ordered to allow Claimant to direct her own Personal Assistant Services (PAS) without having to utilize a Financial Management Service (FMS), as the PAS management had previously been done?

FACTUAL FINDINGS

1. Claimant is a 31-year-old woman who is eligible for regional center services due to a diagnosis of Cerebral Palsy (CP) and Unspecified Intellectual Disability (ID). Claimant receives services from RCOC under the traditional model. She is an unconserved adult who resides independently in the city of Costa Mesa. Claimant's CP causes severe motor dysfunction, which significantly impairs and precludes her activity. Claimant is non-ambulatory, needs assistance to get in and out of her wheelchair and maneuvers using her electric wheelchair. Due to Claimant's level of disability, she requires 100 percent physical assistance with all of her daily living

needs at school, home and community. She also requires 24 hours of supervision and care and has PA staff throughout the night for re-positioning and assistance for restroom use.

2. Claimant has been receiving PAS since 2011. With 24 hour PAS support and supervision services, Claimant is able to lead an independent life, with experienced PA staff by her side. It has been Claimant's practice and custom to supplement the rate of PA staff reimbursed by RCOC out of pocket to retain her PA staff and avoid turnover. Claimant is paying approximately 20 dollars higher than the RCOC reimbursement rate and receives 121 of PA hours per week from RCOC. Claimant has had PA staff leave because they want a higher rate and has not had luck with PA staff from agencies. Any disruption to Claimant's PA staff has the likely potential to affect her health and safety and impair her ability to integrate into community life.

3. In 2017, Claimant graduated from the University of California, Irvine, in 2017, with a bachelor's degree in psychology and social behavior. Since 2018, Claimant has worked a part-time job at St. Joseph's Hospital. In 2024, Claimant graduated with a master's degree in clinical counseling. Claimant's goal is to obtain her clinical license as a therapist which requires her to complete approximately 700 internship hours.

4. Claimant's mother previously managed Claimant's PAS as an RCOC vendor under the 062-service code. Under that model, Claimant's mother hired and paid Claimant's PA staff and was then reimbursed by RCOC.

5. Effective September 16, 2022, PA services were added to the list of Participant Directed Services (PDS) eligible under California Code of Regulations, title 17 (Regulations), section 58886. Per the regulation, PDS providers were required to pay PA staff through a Financial Management Service (FMS) provider. Existing vendors

under a 062-service code, such as Claimant's mother, were transitioned by RCOC to a 093-service code, which allowed Claimant's mother to continue to use the 062 direct pay and reimbursement model for Claimant's PA staff. The 093-service code was made available as an exception for those already vendored under an 062 code, described as "grandfathered," by RCOC. (Exhibit 2, p. A7.) RCOC maintains that it was prohibited from establishing any new contracts under a 093-service code.

6. Claimant's PAS services were changed to a 093-service code as part of the June 2022 Individual Program Plan (IPP), and continued under the 093-service code in Claimant's 2023 IPP. Claimant was not aware of the implications of the 062 to 093-service code changes to her PA services because, for her, the PA model billing structure and management of services remained the same. Because of Claimant's mother's declining health, in early 2023, Claimant's brother assumed Claimant's mother's role in paying PA staff and then being reimbursed for Claimant's PAS by RCOC. In 2023, Claimant's mother died.

7. RCOC approved Claimant's brother to pay for and be reimbursed for PAS services rendered to Claimant in the same way Claimant's mother had been as an exception starting July 1, 2023 until September 30, 2023. However, RCOC notified Claimant that as of September 30, 2023, Claimant's service providers would be required to transition under a Personal Assistant Worker Administrator (PAWA) under a Financial Management Services (FMS) vendor. Claimant maintains that RCOC's proposed change was unilateral and presented to her as the only option for continuing to receive her PAS and for her PA staff to be paid.

8. As proposed by RCOC, Claimant also attempted to revisit Supported Living Services (SLS) as an alternative option around this 2023 time period, but found that SLS services were not suitable for her. According to Claimant, after speaking to

three SLS agencies, Claimant could not agree to SLS as an option because of transportation issues since SLS staff are not allowed to drive clients, which would undermine the ability to accommodate her rigorous school and community schedules. In addition, the SLS staff was unable to implement Claimant's physical exercise program at home and at the pool because of the necessity of having specific worker's compensation policy clauses to cover the use of lift and mechanical devices for Claimant's required transfers and to work with her in the pool.

9. RCOC vendored Claimant's brother for Participant Directed Personal Assistance Services under the 456 service code. Claimant and her brother erroneously believed that he was being vendored the same way as her mother had been, allowing her PAS to continue without the need for an FMS to pay her PA staff, which is not the case. Claimant's PA staff have indicated to Claimant they are unwilling to be paid by an FMS and Claimant is very concerned that she will lose her PA staff if forced to transition to the FMS model.

10. On June 20, 2024, an IPP meeting was held between Claimant and RC. There is no dispute that Claimant's goal is to retain effective PA staff, which is critical to her maintaining independent life. Claimant refused to sign the IPP based on ongoing disagreement with RCOC's proposed changes to her PAS payment and reimbursement structure. There is no current executed IPP between RCOC and Claimant due to this ongoing PAS issue.

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11. On December 2, 2024, Claimant emailed RCOC asking that RCOC reimburse her brother for services starting October 1, 2023 and ongoing. Claimant requested that Claimant's brother continue to be able to pay her PA staff and be reimbursed in the same way as her mother, explaining that the change mandated by RCOC to the existing model would pose a serious concern to her health and safety by disrupting her necessary PA services. RCOC agreed to make another exception to reimburse Claimant's brother effective October 1, 2023 to February 28, 2025.

12. By a Notice of Action (NOA) dated January 31, 2025, RCOC notified Claimant that she had 30-days to transition to a PAWA model (Premier/Aveanna), effective March 1, 2025. RCOC further notified Claimant it would no longer approve any exception to reimburse her brother for paying Claimant's PA staff, citing Welfare and Institutions Code (Code) sections 4646.4, subdivisions (a)(1), 4646, subdivision (a), 4646.5 and 4648. The January 31, 2025 NOA did not provide the option of Claimant's brother being vendored under the 62 service code so that Claimant's PAS services could continue as is.

13. On February 12, 2025, Claimant filed an appeal request of RCOC's NOA. The basis of Claimant's appeal is that she disagreed "with RCOC's decision to deny continuation of current PAS services under code 062 and 093." (Exhibit 1, p. A2.) (Claimant also included RCOC's failure to reimburse her brother as an additional issue. However, the reimbursement issue had been resolved by the parties as of the hearing and is, therefore not addressed in this decision.)

14. On February 26, 2025, RCOC and Claimant held an informal meeting without resolution. As relevant here, the issue of Claimant's request to receive PAS under the service code 062 and 093 was discussed. By informal decision letter dated March 3, 2025, RCOC notified Claimant that it was denying her request, citing

Regulations section 58886, which, according to RCOC “explicitly outline[s] that in order for services provided by a [PA] to be eligible for reimbursement, the service provider must be hired through a [FMS] entity.” (Exhibit 3, p. A12.) The letter did not discuss the option of Claimant’s brother being vendored under the 062 service code so that PAS could continue as is.

15. On March 24, 2025, the parties held a mediation which ended without resolution.

16. RCOC filed its Position Statement before hearing. (Exhibit 12.) In the statement, RCOC offered an alternative to its prior FMS position, writing that “[s]hould Claimant not choose to access [PAS] through the Participant Directed model, they may request [PAS] provided by an Agency under service code 062. Claimant’s brother has the option to become a vendor under service code 062, given he completes the vendor requirements outlined in [Regulations section] 54310 and is vendored with RCOC to provide services.” (Ibid., p. Z2.)

17. During hearing, Claimant and her brother agreed with RCOC’s proposed FMS alternative. Specifically, they agreed to have Claimant’s brother complete vendorization under service code 062 so that PAS services could continue as is without disruption to Claimant’s PA staff and necessary services. RCOC in turn agreed to continue to fund PAS services as is, as an exception, with Claimant’s brother being reimbursed for services rendered for a period of 90 days of the date of this decision, provided that Claimant’s brother complete and submit the 062 vendorization application to RCOC in a timely manner not to exceed 45 days of the date of this decision. The parties further agreed to hold an IPP meeting to discuss the 062 vendorization process where Claimant’s brother can receive any necessary assistance

in pursuing vendorization, including, but not limited to, filling out the vendorization application packet.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the RCOC’s proposed change in how PAS services were to be provided wherein Claimant’s deceased mother was vendored under an 062-service code by RCOC. Specifically, RCOC’s mandate that Claimant utilize an FMS to direct her PAS instead of allowing Claimant’s brother to directly pay Claimant’s staff and be reimbursed by RCOC, as had been the prior model. Jurisdiction was therefore established. (Factual Findings 1-13.)

2. The party asserting a claim 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.) In this case, the RCOC bears the burden of proving, by a preponderance of the evidence, that its decision directing Claimant to utilize an FMS to direct her PAS is correct. (Evid. Code, § 115.)

3. Based on the agreement of the parties at the conclusion of hearing allowing Claimant to direct her own PAS services without having to utilize an FMS provided Claimant’s brother is vendored under the 062-service code, as set forth in Factual Findings 16 and 17, the hearing issue is currently resolved. Should Claimant’s brother fail to complete the vendorization process under the 062-service code within

the 45-day time limit, the parties can revisit the issue after 90 days from the date of this decision, as set forth in the order below.

ORDER

1. Claimant's appeal is granted based on the conditions outlined in paragraphs 2 through 4 below.

2. RCOC and Claimant and/or her authorized representative, Claimant's brother, shall hold an IPP meeting within 15 days of the date of this decision, consistent with Code sections 4646 and 4648, where RCOC shall assist Claimant's brother in the 062-service code vendorization application process.

3. RCOC is ordered to continue to allow Claimant to direct her own PAS without having to utilize an FMS provided from February 28, 2025 until 90 days from the date of this decision. Claimant's brother shall therefore continue to be reimbursed for the direct payment of PA staff and be reimbursed by RCOC as had been done previously by RCOC from February 28, 2025, through 90 days from the date of this decision.

4. Claimant's brother shall complete the 062 vendorization application and submit it to RCOC within 45 days of this decision.

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5. If Claimant's brother is vendored under the 062-service code, RCOC shall continue to allow Claimant to direct her own PAS without having to utilize an FMS, as the PAS management had previously been done.

DATE:

IRINA TENTSER

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 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.