

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

In the Matter of:

Claimant

vs.

East Los Angeles Regional Center

OAH No. 2019030545

PROPOSED DECISION

ALJ Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 12, 2019, in Alhambra, California.

Jacob Romero, Fair Hearing Coordinator, represented the East Los Angeles Regional Center (ELARC or Service Agency). Claimant's mother¹ represented Claimant, who was not present, and was assisted by a Spanish language interpreter.

Oral and documentary evidence was received. The record was held open until June 17, 2019, for Claimant to provide a schedule of Claimant's weekend activities and

¹ The names of Claimant and his mother are omitted to protect their privacy.

an English version of his prescription side effects. The Service Agency was provided until June 24, 2019, to review the information and provide written argument.

On June 14, 2019, Claimant's mother submitted the information to the Service Agency, which was forwarded to the OAH. These documents were marked for identification as Exhibits F and G and entered into evidence. The Service Agency timely provided a written response which was marked as Exhibit 16. The record was closed and the matter submitted for decision on June 24, 2019.

ISSUES

Must the Service Agency approve an additional two hours of parent-coordinated personal assistance during the weekend?

EVIDENCE

Documentary: Service Agency Exhibits 1-7, 10, 12 and 15-16. Claimant's Exhibits A through G

Testimonial: Elsa Ames-Cupen, Ph.D., Service Coordinator (SC); and Claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 21-year-old consumer who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. &

Inst. Code, § 4500 et seq.)² based upon a qualifying diagnosis of autism. Claimant's mother is his authorized representative. (§ 4701.6.)

2. On February 4, 2019, the Service Agency issued a Notice of Proposed Action (NOPA) notifying Claimant that it was denying his request for an additional two hours per week of parent-coordinated personal assistance.

3. Claimant's mother submitted a Fair Hearing Request on Claimant's behalf to appeal the Service Agency's decision and this hearing ensued.

4a. This matter was timely set for hearing on March 25, 2019. On March 21, 2019, the Service Agency filed a motion to continue the hearing, which was unopposed by Claimant.³ On March 26, 2019, the continuance was granted and the hearing in this matter was set for April 10, 2019.

4b. On April 4, 2019, Claimant's mother filed a motion to continue the April 10, 2019 hearing, which was unopposed by the Service Agency. On April 4, 2019, the continuance was granted and the hearing was set for June 12, 2019.

5. All jurisdictional requirements have been met.

² All further statutory references are to the Welfare and institutions Code unless otherwise indicated.

³ Claimant has waived the time limits contained in the Lanterman Developmental Disabilities Services Act.

BACKGROUND

6. Claimant lives with his mother in the family home in Montebello. Claimant has attended college since graduating from high school in 2017.

7. On August 15, 2018, ELARC conducted an Individual Program Plan (IPP) meeting with Claimant, his mother and SC Cupen, and an IPP was generated. Claimant does not engage in reciprocal conversation and communicated with SC Cupen at the meeting through his mother.

8a. During the IPP meeting, Claimant's mother expressed concerns regarding her son's difficult behaviors. Specifically, Claimant has a low frustration tolerance and will act out. Claimant has a history of being physically aggressive, hitting, kicking, and engaging in self-injurious behaviors. Claimant has also displayed verbal aggression, has episodes of crying, threatened to do harm, and screamed at his mother. These behaviors, however, have become less frequent and less intense.

8b. Claimant's mother also reported that Claimant lacks safety and stranger awareness, and therefore requires adult supervision at all times to ensure his safety.

8c. In order to address concerns related to these behaviors, Claimant receives psychiatric services from Alan J. Tuckman, M.D. Dr. Tuckman prescribed a number of medications for Claimant that control his anxiety and depression.

8d. Claimant previously received behavioral intervention services through Medi-Cal. Claimant's mother, however, discontinued the services in January 2017 because the provider constantly changed therapists. SC Cupen recommended that Claimant reinstate these services through a different provider.

9. At the time of the IPP, Claimant was attending college two days a week with the aid of a personal assistant. Claimant's mother reported that on the weekends, Claimant played soccer at a recreational center and swam at a fitness center.

10. During the IPP meeting, Claimant's mother requested that the Service Agency continue funding five hours of personal assistance services during the weekends, and increase funding of personal assistance hours during the weekdays to six hours. The stated purpose for the additional personal assistance hours during the weekday was to facilitate Claimant's college attendance and participation in extracurricular activities. Claimant also requested the additional hours for the provision of supervision to address his lack of safety awareness.

11. Through his mother, Claimant relayed to SC Cupen that he was interested in obtaining his driver's license. In order to assist Claimant in reaching his goal, the IPP team agreed that Claimant should first undergo mobility training so that Claimant could learn how to use public transportation.

12. The Service Agency approved five hours of mobility training a week for Claimant, and increased the number of personal assistance hours provided during the weekdays.

13. In November 2018, the Service Agency provided Inclusion Services, the Service Agency's authorized vendor for mobility training, a referral packet. At that time, Inclusion Services advised the Service Agency that though they would be able to conduct an assessment, they would not be able to initiate mobility training services for one to two months. On November 26, 2018, Inclusion Services scheduled the assessment with Claimant's mother for January 2, 2019.

14. On December 18, 2018, Claimant's mother contacted the Service Agency and requested a meeting in order to prepare an addendum to the IPP. A meeting was scheduled for December 20, 2018. There was no evidence, however, that the IPP addendum meeting was conducted and no explanation provided for why the meeting did not take place.

15. On January 8, 2019, Inclusion Services notified the Service Agency that they did not conduct the scheduled January 2, 2019, assessment as Claimant's mother did not confirm⁴ the appointment.

16. On January 28, 2019, Claimant's mother withdrew the request for mobility training, stating that Claimant changed his mind about obtaining a driver's license. The following day, Claimant's mother requested that Claimant be provided with an additional hour of personal assistance during the weekends in lieu of the mobility training. The Service Agency denied the request was on the grounds that the mobility training services were to be provided in order to help Claimant meet his goal of independence. The additional personal assistance on the weekends, however, did not appear to address any of Claimant's needs as identified in his IPP.

17. On March 21, 2019, an informal meeting was conducted with the Service Agency regarding Claimant's request. During the meeting, Claimant's mother stated that Claimant's bouts of anxiety were increasing, which could cause him to act out. She also shared that the previous week she required the assistance of the Montebello Police Department to manage one of Claimant's outbursts. Claimant's mother relayed

⁴ There appears to be some confusion regarding Inclusion Service's allegation, as Claimant's mother indicated that she had contacted Inclusion Services in January regarding the mobility training.

that she had requested the personal assistance hours so that his anxiety could be reduced with less medication. Claimant's mother expressed concern regarding the side effects caused by all the medications Claimant has currently been prescribed.

18. At the hearing, SC Cupen explained that funded hours could not be transferred from one service to another. Hours are funded by the Service Agency in order to meet the needs of its consumers. Because no need was identified that would be addressed by the additional personal service hours, the Service Agency could not authorize funding for the additional hour.

19. SC Cupen testified that Claimant was offered counseling through Fuller Psychological and Family Services to address Claimant's anxiety,. SC Cupen also provided Claimant's mother with information regarding the Crisis Respondent Project (CRP), a program designed support primary caretakers and consumers to de-escalate and prevent crises. SC Cupen stated that Claimant's mother could utilize those services when Claimant began acting out. Following the March 21, 2019 informal meeting with the Service Agency, Claimant's mother utilized the services of CBT to de-escalate Claimant's behaviors.

20. At the hearing, Claimant's mother expressed that having a personal assistant⁵ helps to keep Claimant's anxiety under control. The personal assistant has knowledge of Claimant's condition and can handle crises when they arise. Claimant's mother also stated that she did not want to utilize the counseling services that have

⁵ At the time of the hearing, Claimant had three personal assistants each of whom would provide assistance alternating weekends.

been offered. She explained that Claimant had a negative experience with a therapist who was physically and verbally abusive.

21. Claimant's mother explained that during the weekends, the personal assistant transported Claimant to various activities, including soccer, the gym and music classes on Saturdays, and church and youth group meetings on Sundays. Due to the limited number of personal assistant hours, Claimant often had to leave before the activities ended. As a result, Claimant became depressed and unhappy the rest of the week.

21. Claimant's psychologist, Dr. Tuckman, provided a note stating that "[i]t would be helpful and medically necessary if [Claimant] were able to engage in various sports activities, which will help significantly with his serious anxiety disorder." (Exhibit D.)

22. Though Claimant's mother was not able to provide her son's weekend schedule at the time of hearing, she did provide the hours that the personal assistant would be needed. (Ex. H.)

23. SC Cupen testified that though Claimant's mother informed her that Claimant was involved in weekend activities, she had not been made aware that Claimant had had to leave activities prior to their conclusion.

24. The Service Agency acknowledged the personal assistant could support Claimant's participation in community activities. The Service Agency, however, argued that it needed to perform an assessment in order to determine Claimant's limitations.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code Section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-5 .)

Standard of Proof

2. When one seeks government benefits or services, the burden of proof is on him. (*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.) In this case, Claimant requests funding for additional personal assistance hours that the Service Agency has not before agreed to provide, and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

Applicable Law

3. In enacting the Lanterman Act, section 4500 et seq., the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. (§ 4501.)

4. The consumer's needs are determined through the IPP process. (§ 4646.) The process "is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments." (§ 4646, subd. (a).)

5. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the consumer's particular desires and preferences. (§§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a) (4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

6. Although an IPP must reflect the needs and preferences of the consumer, a regional center is not mandated to provide all the services a consumer may request. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§ 4646, subd. (a).) A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

Analysis

7. In this case, the evidence did not establish that the Claimant is entitled to regional center funding for the additional hours of personal assistance services on the

weekends. In each of her requests, Claimant's mother asserted that the personal assistant was required in order to minimize Claimant's anxiety, minimize his behavioral outbursts, and reduce the number of medications he is prescribed. During the IPP meeting, Claimant's mother reported that his negative behaviors were improving. The information provided by Claimant's mother at the hearing, however, suggests that this is no longer the case and that Claimant's negative episodes are escalating. Though Claimant's mother believes that this could be resolved with the provision of additional personal assistance hours, there is no evidence to support this belief. There was no evidence that Claimant's personal assistants have any training to provide Claimant the necessary psychological support. Additional evidence is necessary to assess the reason for the escalation of Claimant's mal behavior.

8. It is acknowledged, however, that the personal assistance hours may assist Claimant with community integration. Since Claimant's last IPP, it appears that Claimant has become involved in additional recreational activities. The evidence provided by Claimant's mother, however, was extremely vague and did not provide enough detail to support an order directing the Service Agency to fund the additional hours.

9. Under the Lanterman Act, the Service Agency is required to provide services and supports to Claimant based on his needs as determined in his IPP. The evidence provided at hearing suggests that Claimant's current status and needs have changed since his last IPP on August 15, 2018. Therefore, it is appropriate for the Service Agency to fund a proper assessment to determine what supports are necessary to meet Claimant's needs.

ORDER

Claimant's appeal is granted in part and denied in part as follows:

1. The appeal is granted in that, within 30 days of the date of this Decision, the Service Agency shall fund an appropriate assessment to determine the services and supports that are necessary, effective, and cost-effective to reduce Claimant's anxiety and the increase Claimant's integration into the community.

Within 30 days of the completion of the assessment, the Service Agency shall conduct an IPP planning meeting with Claimant and Claimant's mother to discuss the results of the assessment and the Service Agency's obligations, if any, for providing required services and supports.

2. In all other respects, Claimant's appeal is denied.

DATE:

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.