

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2019100621

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 10, 2020, in Chatsworth, California.

Dana Lawrence, Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Leon Brown, authorized representative, represented claimant,¹ who did not appear at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 10, 2020.

ISSUE

Should NLACRC fund Independent Living Skills (ILS) services for claimant at the rate of 13 hours per day?

EVIDENCE

Documentary: Exhibits 1 through 8; C-1 through C-9.

Testimonial: Sato Gharibian, Executive Director of Indelife Services; Marine Topushyan, NLACRC Consumer Services Supervisor; Edward Villaluna, NLACRC Consumer Services Coordinator; claimant's mother; and Leon Brown.

¹ Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and her family.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 28-year-old conserved female who qualifies for regional center services under the category of epilepsy based on a diagnosis of Landau-Kleffner Syndrome (LKS), a rare convulsive disorder characterized by the progressive loss of language abilities. She lives at home with her mother and step-father.

2. On October 3, 2019, claimant filed a request for a fair hearing appealing NLACRC's denial of her request for 271.3 hours per month of ILS services. ILS services are programs that teach regional center consumers functional skills to enable them to live on their own. (See Cal. Code Regs., tit. 17, § 54302(a)(35).) This hearing ensued.

3. At the hearing, claimant confirmed that, contrary to the request contained in her fair hearing request, she is seeking ILS services at the rate of 13 hours per day.

Claimant's Individual Program Plan

4. Claimant's most recent individual program plan (IPP), dated November 26, 2019, contains Service Agency's and claimant's family's agreements, sets forth specific objectives and goals, and contains the services and supports to achieve them. It also describes claimant's needs and behaviors.

5. A. As set forth in the IPP, claimant communicates verbally. She requires verbal reminders and prompting in order to perform daily hygiene tasks, such as combing her hair and changing her contact lenses. Claimant also requires assistance to select appropriate outfits for the day. She is able to prepare simple meals with

supervision and knows how to use the cell phone to communicate with her parents. However, claimant lacks safety awareness. She is overly trusting of strangers and can be easily manipulated. Claimant struggles with the concept of the passage of time and has difficulty completing simple mathematical problems such as additions and subtractions.

B. The IPP indicated that claimant attended community college and obtained a degree in Child Development. She continues to take classes online at Valley College.

C. The IPP identified the following goals for claimant: (1) maintaining overall health and safety skills; (2) improving home management and adult daily living skills; and (3) managing her money and finances and understanding the concept of time.

D. As of the date of the IPP, NLACRC funded the following services to claimant: 20 hours per month of ILS services and 282 hours per month of personal assistance (PA) services. PA services are those provided by caretakers who assist consumers in performing tasks such as grocery shopping or going to a doctor's appointment.

The ILS Assessment by Right Choice In-Home Care

6. NLACRC's provision of ILS services for claimant is based on an ILS assessment conducted by Right Choice In-Home Care (Right Choice) on September 21, 2019. In a three-page report dated the same day as the assessment, Right Choice's ILS assessor, Vimala Rozner, recommended that claimant should receive 20 hours of ILS services per month. However, the report merely restates the information contained in claimant's IPP. It does not discuss any methodology used to assess claimant's current

level of functional skills, nor does it describe how Ms. Rozner reached her conclusion that claimant should receive 20 hours of ILS services.

7. Regardless, claimant did not receive any ILS services through Right Choice because it did not wish to be involved in the provision of ILS services to claimant. However, Right Choice was selected as claimant's PA service provider and continues to serve claimant in that capacity as of the date of the hearing.

The ILS Assessment by Indelife Services

8. Because Right Choice could not provide ILS services to claimant, another vendor, Indelife Services (Indelife), was selected to perform a second ILS assessment of claimant on December 1, 2019. To complete this assessment, Sato Gharibian, Executive Director of Indelife, interviewed claimant regarding her strengths and weaknesses and observed claimant in her home environment. She also accompanied claimant into the community, observed her safety skills, and conducted a mock purchase of a lunch at claimant's favorite shopping location. Ms. Gharibian completed her ILS assessment in approximately three hours.

9. In an ILS Assessment Report dated the same date of the assessment, Ms. Gharibian, set forth her findings and recommendations. Ms. Gharibian first scored claimant's current functioning level across 15 areas, including money management, home management, food management, personal care, and safety skills. Based on a scoring scale across ratings of "basic," "intermediate," and "advanced," claimant earned a score of "basic" across all 15 areas. The ILS Assessment Report also described 10 ILS training objectives to address claimant's functional skill deficits and specific plans to achieve those goals. The 10 objectives included assisting claimant to improve her health and safety skills, to learn home management and maintenance skills, to learn

money and understand the concept of time, and to improve her socialization and recreation skills. Examples of a typical plan to assist claimant in reaching such goals included working with claimant to count and receive correct change back in play money to teach her about money management and using tools such as kitchen timers and stop watches to help her to understand the concept of time. (Ex. 4, p. 8.)

10. Based on the information and data she collected, Ms. Gharibian recommended that claimant receive 30 hours of ILS services per month to address claimant's functional skill deficits.

Provision of ILS Services by Indelife

11. In light of Ms. Gharibian's recommendations, NLACRC began funding ILS services for claimant in the amount of 30 hours per month, a 10-hour increase from the agreed-upon amount in claimant's IPP. Commencing on February 6, 2020, claimant participated in ILS sessions with a trainer from Indelife.

12. A. Progress notes of claimant's February 2020 sessions with her ILS trainer were submitted into evidence at the hearing. These notes indicate that claimant is very capable and motivated, although she requires assistance in her school work.

B. For instance, during her first session with the ILS trainer, claimant independently used the google app to decipher bus routes to travel to Valley College. At the Valley College book store, the trainer helped claimant to purchase a book for her online class. On the return trip, claimant, along with the trainer, made a separate stop at a supermarket where claimant purchased a salad for dinner. The trainer wrote, "ILS trainer's first impression was that [claimant] did not require assistance in many of the tasks completed today." (Ex. 7, p.1.)

C. In a note dated February 13, 2020, the trainer observed that claimant's reading and comprehension skills are below average and that she required assistance in her school work. However, the trainer also wrote that during a 30-minute walk she took with claimant, claimant "demonstrated good social skills and ability to carry on conversations." (*Ibid.*)

D. In a note dated February 21, 2020, the trainer wrote, "Overall, [claimant] is very aware of surroundings, she is very health conscious, and enjoys eating healthy meals to maintain her weight. She is physically active and enjoys the outdoors. . . ." (*Id.* at p. 2.) In a note dated February 27, 2020, the trainer also wrote, "[Claimant] was able to prioritize important tasks on her own to which the trainer praised for [*sic*] her [for her] decision making skills." (*Ibid.*)

13. Claimant participated in her last ILS session with Indelife on February 28, 2020, because on March 5, 2020, claimant enrolled in Actors for Autism, a day program that requires her attendance Monday through Friday, from 10 a.m. to 3 p.m. Claimant's attendance in Actors for Autism created a scheduling conflict because Indelife trainers are only available Monday through Fridays, from 9 a.m. to 5 p.m.

Current Level of Regional Center Services Provided to Claimant

14. As of the date of the hearing, NLACRC is funding the following services to claimant: (1) the day program, Actors for Autism, which occurs Monday through Friday, from 10 a.m. to 3 p.m.; (2) 13 hours of PA per day through vendor Right Choice; and (3) 30 hours per month of ILS through vendor Indelife. Claimant seeks to convert the 13 hours of PA services that she receives into ILS services.

Testimony of Ms. Gharibian

15. At the hearing, Ms. Gharibian testified regarding her December 1, 2019 ILS Assessment of claimant and the February 2020 progress report notes of claimant's ILS sessions written by her trainer. Ms. Gharibian stated during her direct examination that she typically does not recommend more than 30 hours per month of ILS services because there is a "burn-out factor" (her words) for both the consumer and the trainer when the ILS sessions extend beyond that time. In addition, if a consumer's functional skills are so deficient such that they require more than 30 hours of ILS services per month, she would refer them to Supported Living Services (SLS). SLS are services that support people with developmental disabilities so they can live on their own, which may include assistance with selecting and moving into a home, choosing personal attendants and housemates, acquiring household furnishings, planning for emergencies, and managing personal financial affairs, as well as other supports. (Welf. & Inst. Code,² § 4689; Cal. Code Regs., tit. 17 § 58613.)

16. During cross-examination, Ms. Gharibian was questioned extensively regarding the existence of a 30-hour per month cap on ILS services imposed by NLACRC. Ms. Gharibian responded that she is aware that NLACRC typically will not approve ILS services for more than 30 hours per month. However, she has made recommendations in other cases for more than 30 hours of ILS services per month, but she would have to provide additional justification for the increase in the number of ILS

² All further references are to the Welfare and Institutions Code, unless otherwise indicated.

hours. Furthermore, NLACRC approval for extended ILS services is usually on a temporary basis.

17. Nevertheless, Ms. Gharibian confirmed that in claimant's case, she made the recommendation for 30 hours of ILS services per month based on claimant's individual circumstances, not on any limits placed on ILS services by NLACRC. In addition, Ms. Gharibian testified that based on her review of the progress notes written by the ILS trainer, claimant appears to be capable and motivated such that she does not need additional ILS services beyond 30 hours per month. Indeed, throughout her testimony, Ms. Gharibian did not waver from her initial recommendation for claimant to receive 30 hours of ILS services per month.

Testimony of Claimant's Mother

18. At the hearing, claimant's mother testified regarding her daughter's medical condition and its effects on her functional skills. Claimant's mother explained that her daughter was diagnosed with LKS at age five, when she lost all her speech. After intensive speech therapy, claimant regained her language skills, but she still suffers significant speech and language deficits. Claimant also has been hospitalized periodically, after which she had regressions that caused her to lose most of her functional skills. Claimant was most recently hospitalized in 2018 for 10 days. Claimant is also not safety aware, and she very trusting in nature. As a result, claimant suffered a sexual assault in 2013. Additionally, due to her LKS diagnosis, claimant experiences subclinical seizures that occur in deep sleep. Thus, for her health and safety, claimant must be supervised and cannot live alone. Claimant has, in fact, lived with her mother all of her life. Claimant currently lives in a separate area in her mother's house and pays rent to her mother.

19. Claimant's mother testified that she would like claimant's PA hours to be converted into ILS hours because PA services are, in her words, "more or less babysitting." To illustrate this assertion, claimant's mother recounted an incident during which claimant was applying for a job online while the PA service provider sat around and watched television. Claimant's mother believes that ILS services are more appropriate for claimant because ILS services will teach claimant to use her functional skills in the community. Claimant's mother identified safety awareness, cooking skills, and understanding the concept of time as areas where claimant needs training and support.

20. Claimant's mother asserted that from 2009 to 2018, her daughter received 35 hours per week of services from Jay Nolan Community Services Center (Jay Nolan), which she considered to be equivalent to ILS services. Claimant's mother explained that the service provider from Jay Nolan worked with claimant in the home and in the community on her functional skills. However, due to various problems, including fraudulent billing and failure to provide progress reports, claimant's mother terminated Jay Nolan's services in 2018.

21. According to claimant's mother, her daughter is currently taking an online class in African American history from Valley College, and she needs four more classes to obtain her associate's degree. Claimant is also attending the Actors for Autism day program, which she loves and wishes to continue to attend. Claimant's mother explained that although her fair hearing request is for 13 hours per day of ILS services, claimant's mother would also accept a lower number of additional ILS hours for her daughter. Furthermore, claimant's mother stated that since claimant stopped ILS services with Indelife at the end of February due to her participation in Actors for

Autism, she and NLACRC have not explored alternative vendors that may provide ILS services during the weekdays after 5 p.m. or during the weekends.

Testimony of Leon Brown

22. At the hearing, Leon Brown, testified on behalf of claimant. Mr. Brown's son is claimant's boyfriend, and Mr. Brown has known claimant for approximately two years. Mr. Brown testified that he has two disabled children who receive 24-hour care. His children also receive SLS services with funding from NLACRC. He believes that claimant would benefit from a similar level of services as his sons.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that Service Agency is required to fund ILS services for her for 13 hours per day. (Evid. Code, § 115.) Claimant has not met her burden.

Applicable Law

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (§ 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and

their dislocation from family and community” and “to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.” Under the Lanterman Act, regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Id.* at p. 389, quoting from § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.) The types of services and supports that a regional center must provide are “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.” (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

//

4. As set forth in section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system 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. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. California Code of Regulations, title 17, section 54302, subdivision (a)(35), defines Independent Living Programs as "community-based day programs that provide to adult consumers the functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or may provide the support necessary to maintain those skills. Independent living programs focus on functional skills training for adult consumers who generally have acquired basic self-help skills and who, because of their physical disabilities, do not possess basic self-help skills, but who employ and supervise aides to assist them in meeting their personal needs."

Disposition

6. In this case, two ILS assessments of claimant were performed. The first assessment, conducted by Right Choice, recommended that claimant receive 20 hours of ILS services per month. This assessment was accorded little weight because of the lack of discussion regarding claimant's current level of functional skills and the methodology used to reach the recommendation of 20 hours per month of ILS services. The second assessment, conducted by Ms. Gharibian of Indelife, recommended that claimant receive 30 hours of ILS services per month. At the hearing, Ms. Gharibian opined, consistently with her report, that 30 hours per month of ILS services is appropriate for claimant based on her individual circumstances, especially in view of claimant's capable performance during her February ILS training sessions as indicated in her progress notes. This assessment and Ms. Gharibian opinions were accorded significant weight because they were uncontroverted and supported by the evidence in this case.

7. Moreover, claimant's current schedule includes an online class at Valley College and her participation in the Actors for Autism program Mondays through Fridays from 10 a.m. to 3 p.m. Given this schedule and Ms. Gharibian's testimony that both ILS trainers and trainees are likely to suffer burnout with too many hours of ILS training, funding for more than 30 hours per month of ILS services would not be appropriate for claimant. In fact, claimant has terminated ILS training with Indelife beginning in March due to scheduling conflicts. Claimant's attendance at Actors for Autism means that she is only available to participate in ILS training during the hours that Indelife does not operate. To resolve this conflict, the parties are encouraged to confer on alternative vendors who may be able to provide ILS services to claimant during the off-hours.

8. It is concerning that Ms. Gharibian, during her testimony, indicated that NLACRC has a policy of placing some limitation on funding of ILS service hours. In *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232, the state appellate court found that "the Regional Center's reliance on a fixed policy is inconsistent with the [Lanterman] Act's stated purpose of providing services sufficiently complete to meet the needs of each person with developmental disabilities (§ 4501)." Therefore, regional center policies that place time limits on ILS services and ignore an individual's needs are contrary to the Lanterman Act. Although Ms. Gharibian credibly testified that in this case, her ILS assessment was based on claimant's needs and not on any limit imposed by NLACRC, the orders that follow includes a requirement that any re-assessment of claimant shall be conducted based on her individual needs and not on any fixed regional center policy.

ORDERS

1. Claimant's appeal is denied.
2. Any re-assessment of claimant's Independent Living Skills services shall be based on claimant's individual needs.

DATE:

JI-LAN ZANG
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.