

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020021059

DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference/telephonically on July 14 and August 13, 2020.

Claimant was represented by Matthew Pope, Attorney at Law, and by his mother (Mother).¹

¹ Names are omitted and family titles are used to protect the privacy of consumers and their families.

Jacob Romero, Fair Hearing Manager, represented the Eastern Los Angeles Regional Center (ELARC or Service Agency).

The record was held open until August 27, 2020, for submission of several documents, including Claimant's 2017 Individualized Program Plan (IPP) and written closing argument. Closing Argument was timely received from both parties. The documents submitted by the Service Agency were marked as Exhibits 19 through 21 but were not admitted into evidence.

While reviewing the Service Agency's Closing Argument, the ALJ noted the Claimant's 2017 IPP was referenced in the Service Agency's Closing Argument but had not been received by OAH. Consequently, the ALJ, on her own motion, reopened the record and ordered the Service Agency to file and serve a copy of the document by close of business on September 11, 2020. Claimant was provided until September 14, 2020 to file any objection to the Service Agency's submission. The Service Agency timely filed and served a copy of the 2017 IPP. No objection was filed by Claimant to the 2017 IPP. The 2017 IPP was marked and admitted into evidence as Exhibit 22. The record was closed and the matter was resubmitted for decision on September 14, 2020.

ISSUE

Whether the Service Agency must increase funding for services provided to Claimant by Progressive Resources (Progressive) from 75 hours to 125 hours.

EVIDENCE

Documents: For the Regional Center, Exhibits 1-14, 18 and 22 were admitted for all purposes. Official notice was taken of Exhibits 15 and 16 and 17.

For the Claimant, Exhibits D-FF were admitted for all purposes. Official notice was taken of Exhibits A, B, C and GG.

Testimonial: For ELARC, Venessa Grande, ELARC Service Coordinator,; Lilia Ortega, ELARC Supervisor, Randi E. Bienstock, Clinical Psychologist, and Brittany Berg, Speech Therapist.

For Claimant, Mother, Ricki Robinson, M.D., Rodric Rhodes, Ph.D., Darmon Hanson, Una Hayes-Shepard, LCSW, Progressives Director, Courtney Miller-Wakeham, Progressive supervisor, and Parent of a ELARC adult consumer receiving services from Progressive

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 24-year-old male who is eligible for Lanterman Developmental Disabilities Services Act services (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a qualifying diagnosis of Autism Spectrum Disorder. Claimant resides with his parents (Parents) and siblings in the Service Agency's catchment area. Parents were granted limited conservatorship over Claimant effective August 14, 2014.

2. Claimant requested ELARC increase the funding it was providing for adaptive skills training (AST) services from Progressive from 75 hours a month to 125 hours a month.

3. On December 18, 2019, the Service Agency issued a Notice of Proposed Action (NOPA) notifying Claimant that his request had been denied.

4. Parents filed a fair hearing request on Claimant's behalf on February 11, 2020, to appeal the Service Agency's decision.

5. A hearing in this matter was set for March 30, 2020. On March 18, 2020, a continuance was requested by the Service Agency. Claimant did not oppose the continuance and electronically waived the time limit prescribed by law for holding the hearing and for a Decision to be issued in this matter.

6. Following the continuance request, the Governor issued Executive Order N-25-20, and the matter was re-scheduled to June 11, 2020. On June 9, 2020, a second continuance was requested by the Service Agency. Claimant opposed the request. On June 9, 2020, the continuance was granted for good cause and the hearing was scheduled for July 14, 2020.

7. All jurisdictional requirements have been met.

Parties Contentions

8. Claimant contends that the Service Agency should increase funding from 75 direct service hours to 125 direct service hours per week of "[AST] at [Progressive] in order to progress in adapting to a daily routine that leads to the maintenance of an independent, productive, and normal life." (Claimant's Closing Argument, p. 1.)

Claimant contends that Service Agency is required to defer to the family's preference, instead of its own and that these additional hours are consistent with this requirement.

9. The Service Agency maintains that funding an additional 50 hours of AST is not an effective means of ensuring that Claimant learns how to interact positively with members of the community who are not specifically trained to work with him. The Service Agency further maintains that increased funding is not a cost-effective use of public resources.

Background

10. In 2017, Claimant attended a certified non-public school (NPS) funded by the School District and was enrolled in a special education classes all day. During school and while being transported to and from school, Claimant was supported by a one-to-one aide. In addition, Claimant received speech therapy and counseling sessions on a weekly basis.

11. As Claimant was aging out of the School District, the Service Agency and Parents began exploring Claimant's options for adult day care services.

12. On October 23, 2017, an Individual Program Plan (IPP) meeting was held in Claimant's home with Claimant, Mother and Claimant's Service Coordinator (SC) Venessa Grande and the 2017 IPP was generated.

13. Mother reported during the IPP that Claimant typically tantrums daily. Claimant will tantrum when he does not get his way, there is a demand he does not want to comply with, or if he is not understood when trying to communicate. His tantrums include aggressive behaviors such as slapping, kicking, hitting, those near him and he may even run out of the home.

14. At the time of the 2017 IPP, Claimant was receiving five hours a month of AST from Progressive to assist Claimant in developing appropriate behaviors, social skills, and safety skills while out in the community.

15. SC Grande recommended Claimant receive behavior services to address some of his behaviors, noting that Progressive was not a behavior management agency that could adequately address the behaviors Mother reported. (Exhibit 22, p. 7.) Mother declined the services, reporting that she was satisfied with Progressive's AST services.

16. Mother requested the Service Agency fund one-to-one support and REACH Adult Day Program in anticipation of Claimant's aging out of the School District. A summary report from Rodric B. Rhodes, Ph.D., LCSW, was provided to SC Grande in support of Mother's request. The 2017 IPP indicated that the Service Agency would review the request and determine if the services were appropriate for Claimant. If it was determined the requested services were not appropriate under the Service Agency's Purchase of Service (POS) guidelines, Parents would be provided with a Notice of Action would be provided with alternate Day Program options.

17. On November 29, 2017, Randi Elisa Bienstock, Psy.D., performed a psychological evaluation of Claimant. At that time, it was noted that Claimant participated in a weekly social skills group at Progressive where he used facilitated communication (FC).² Claimant was noted to have a long history of "unpredictable"

² Facilitated Communication is a form of augmented communication where an individual physically supports another person and helps them to point at pictures or words.

and maladaptive behaviors for which he continued to require one-to-one support and supervision. (Exhibit 5.) Parents reported that Claimant could be calm and relaxed one moment, but then quickly become agitated for no apparent reason. It was reported that when Claimant became upset or agitated, he would "run off, pinch, bite, bit and push others." (*Ibid.*) Claimant was reported to have been aggressive with both Parents, though he was typically more aggressive with his father (Father) as he was generally the one to provide Claimant with hands-on support in daily care tasks such as showering and using the restroom. Dr. Bienstock "strongly recommended" one-to-one support and supervision at his new day program. (*Ibid.*) Dr. Bienstock further noted that FC is not an evidence-based intervention and information about the Claimant should not be based on results or information obtained through the use of FC³ but did acknowledge that Parents' choice in utilizing a day program using FC should be respected.

18. The Service Agency approved Mother's request for one-to-one support and REACH Adult Day Program at 130 hours per month. On December 15, 2017, Claimant aged out of the School District but REACH was unable to immediately provide Claimant with services because it had to hire and train staff to support Claimant's needs. Parents obtained approval for Claimant to continue to attend the NPS until January 31, 2018.

³ Though Claimant presented testimony from witnesses who advocated for the use of FC and provided anecdotal testimony of its efficacy, none of the witnesses were able to point to any research that would show that FC is an accepted evidence-based treatment modality.

19. In February 2018, Claimant began day program services with REACH. Though Claimant demonstrated behavioral difficulties, he appeared to be adjusting relatively well to this program. However, as REACH began introducing and training new staff, there was an escalation of Claimant's physical aggression and wandering behavior which ultimately resulted in REACH terminating Claimant's services in July 2018.

20. On October 23, 2018, an IPP meeting was conducted at Claimant's home. SC Grande and Parents participated and an IPP plan was generated (2018 IPP). Parents reported Claimant was continuing to have tantrums on a daily basis, during which Claimant exhibited aggression and emotional outbursts. (Exhibit S, p.) Following Claimant's termination from REACH, SC Grande immediately began researching other programs which could meet Claimant's needs. The available programs, however, were limited due to Mother's specific request that Claimant be provided with services from an agency that would support FC and Claimant's aggressive behaviors. Again, SC Grande recommended behavior services since Progressive was not a behavior management agency that could adequately address some of Claimant's behaviors. (*Ibid.*) Mother, however, was still satisfied with Claimant's progress in Progressive's program. The Service Agency increased Progressive's AST support to 25 hours as a temporary supporting program, pending additional support from another agency, and authorized personal assistant services to support Claimant while in the home or community temporarily while he did not attend a day program.

21. In June 2019, Claimant was referred to Real Connections, a provider vendorized by ELARC to provide Developmental, Individual Difference, Relationship-Based Treatment (DIR/Floortime) Support Services. Real Connections assessed Claimant from August 2019 through September 2019.

22. Services did not begin immediately as Real Connections needed to hire and train the specialized staff. In the interim, ELARC agreed to fund an additional 50 hours of services through Progressive in August 2019, as well as personal assistant hours, while services through Real Connections were pending.

23. On October 24, 2019, an IPP meeting in Claimant's home. Claimant, Parents and SC Grande participated and an IPP was generated (2019 IPP). There was no indication from the 2019 IPP that there was any increase or decrease in Claimant's tantrum behavior in that Claimant continued to have daily tantrums, during which Claimant exhibited aggression and emotional outbursts.

24. Again, SC Grande recommended behavior services since Progressive was not a behavior management agency and, in her opinion, could not adequately address some of Claimant's behaviors. Mother, however, was still satisfied with Claimant's progress in Progressive's program.

25. In late December 2019, Real Connections began providing services. Real Connections, however, terminated services at the end of January 2020 due to staff's inability to support Claimant's aggressive and destructive behavior. (Exhibit E, p. 2)

AST Services from Progressive

26. Claimant has been receiving AST services from Progressive since November 2006 when Claimant was 7 years old. Progressive routinely prepares adaptive skills progress reports (AS Progress Reports) which are then sent to the Service Agency. The reports have a benchmark that reflects Claimant's skill on a scale from 1 to 10 in structured settings with skilled staff support. "Current Skill Level" indicates a client's overall ability for a given goal and is an average of the

corresponding benchmark measurements. Goals are considered met when a client consistently demonstrates a skill level of 8 within a variety of settings without AST support.

27. From June 1, 2017 to August 28, 2018, Claimant's goals were to increase his: (1) communication; (2) ability to co-regulate in various environments; and (3) independence and ability to complete tasks. (Exhibit H.)

28. The AS Progress Report dated July 14, 2017, for the reporting period of June 1, 2017 to August 31, 2017, indicated Claimant's level of skill to be 3.8 in the area of communication, 3.5 in the area of co-regulation, and 3.5 in independence and ability to complete tasks. (Exhibits 7 and H.)

29. The AS Progress Report dated October 16, 2017, for the reporting period of September 1, 2017 to November 30, 2017, indicated Claimant's level of skill to be 3.8 in the area of communication, 3.5 in the area of co-regulation, and 3.6 in independence and ability to complete tasks. (Exhibit J.)

30. The AS Progress Report dated August 28, 2018,⁴ indicated Claimant's level of skill to be 4.0 in the area of communication, 3.6 in the area of co-regulation, and 3.7 in independence and ability to complete tasks. In addition, Progressive added five new goals which included increasing Claimant's ability to engage in problem solving processes; increased awareness of safety issues while in the community;

⁴ The cover sheet which would document the reporting period was not included in the exhibit.

development of self-help skills; integration into the community on a daily basis; and increase in Claimant's flexibility. (Exhibit 8.)

31. The AS Progress Report dated October 15, 2018, for the reporting period of September 1, 2018 to November 30, 2018, indicated Claimant's level of skill to be 4.1 in the area of communication, 3.7 in the area of co-regulation, and 3.8 in independence and ability to complete tasks. (Exhibit Q.)

32. The AS Progress Report dated May 9, 2019, for the reporting period of April 1, 2019 to May 31, 2019, indicated Claimant's level of skill to be 4.4 in the area of communication; 3.8 in the area of co-regulation; 3.7 in independence and ability to complete tasks; 1.7 in increasing Claimant's ability to engage in problem solving processes; 1.9 in increased awareness of safety issues while in the community; 1.7 in development of self-help skills; 1.9 in integration into the community on a daily basis; and 1.4 in the area of increase in Claimant's flexibility. (Exhibit X.)

33. On August 7, 2019, Progressive requested 50 additional hours for three months. The services were to be provided at \$145.14 per hour per month. (Exhibit Y.) According to the request, Claimant and his family felt they were now ready to increase Claimant's service hours from the hour and half that had previously been authorized due to Claimant's "increased motivation, and a significant reduction in aggression by 40%, with highly skilled, and familiar staff." (*Ibid.*) The increase would allow Progressive to provide Claimant with three and a half hours of services per session.

34. The AS Progress Report dated November 18, 2019, for the reporting period of October 31, 2019 to December 31, 2019, indicated Claimant's level of skill to be 4.3 in the area of communication; 3.8 in the area of co-regulation; 3.9 in independence and ability to complete tasks; 2.2 in increasing Claimant's ability to

engage in problem solving processes; 2.3 in increased awareness of safety issues while in the community; 1.0 in development of self-help skills; 2.1 in integration into the community on a daily basis; and 2.0 in the area of increase in Claimant's flexibility. (Exhibits 9 and CC.)

35. The AS Progress Report dated January 24, 2020, for the reporting period of January 1, 2020 to February 29, 2020, indicated Claimant's level of skill to be 4.3 in the area of communication; 3.8 in the area of co-regulation; 3.9 in independence and ability to complete tasks; 2.3 in increasing Claimant's ability to engage in problem solving processes; 2.3 in increased awareness of safety issues while in the community; 1.3 in development of self-help skills; 2.1 in integration into the community on a daily basis; and 2.0 in the area of increase in Claimant's flexibility. (Exhibit DD.)

36. The AS Progress Report dated March 23, 2020, for the reporting period of March 1, 2020 to April 30, 2020, indicated Claimant's level of skill to be 4.2 in the area of communication; 3.9 in the area of co-regulation; 3.9 in independence and ability to complete tasks; 2.4 increasing Claimant's ability to engage in problem solving processes; 2.3 in increased awareness of safety issues while in the community; 1.5 in development of self-help skills; 2.1 in integration into the community on a daily basis; and 2.0 increase in the area of Claimant's flexibility. (Exhibits 10 and EE.)

37. The AS Progress Reports reflect that in the approximately three years, services were being provided Claimant's level of skill in the area of communication increased from 3.8 to 4.3; his ability to co-regulate in various environments increased from 3.5 to 3.9; and his independence and ability to complete tasks increased from 3.5 to 3.9. In the area of his added goals, Claimant's documented improvement in the area of increasing Claimant's ability to engage in the problem solving process

increased from 1.7 to 2.4; increased awareness of safety issues while in the community improved from 1.9 to 2.3; development of self-help skills decreased from 1.7 to 1.5; integration into the community on a daily basis increased from 1.9 to 2.1; and the increase in Claimant's flexibility increased from 1.4 to 2.0.

38. Una Hayes-Shepard, LCSW, the Executive Director of Progressive and a DIR/Floortime fellow, testified regarding the program. According to Ms. Hayes-Shepard, approximately 95 to 98 percent of the population served by Progressive are individuals who have autism

39. Progressive has strict hiring standards, which requires staff to have either a bachelor's degree or significant experience interacting with individuals with developmental disabilities. After being hired, staff undergo several months of training before they are permitted a caseload. They are trained with each client on their caseloads and all staff have a "back up" so that there is no period of time when a client works with staff that are unfamiliar to them. Staff continue to receive extensive training after they receive their caseloads and all staff are closely supervised.

40. Ms. Hayes-Shepard believes the reason Progressive added additional goals on August 28, 2018, was because Claimant's hours increased from 5 hours to 25 hours and Progressive needed to demonstrate all the goals Progressive would be working toward with Claimant. Additional goals, however, were not added when Claimant's hours increased from 25 hours to 75 hours as Progressives needed those extra hours to work on the eight goals.

41. Progressive provides individual services in the area of Adaptive Skills, which is what Claimant is receiving pursuant to his program. They also offer community groups. Prior to the COVID pandemic, Claimant was using some of his

individual hours to join the community group with his specially trained staff, and Progressive provided support so that Claimant could participate with his peers in the community. Claimant's participation in the community group, however, was closely dependent on Claimant's tolerance levels.

42. Ms. Hayes-Shepard asserts that Claimant's is "far more capable of doing things" than he was in 2018. She noted that Claimant's progress is demonstrated in his learned skills in the narrative sense, not in an objective sense. Ms. Hayes-Shepard believes that, without any unaccounted for variables, Claimant will have regulated his behavior to the extent that he could spend up to two and a half hours with his peers and increase his daily activity rather than resting for periods of the day like he currently does.

43. Courtney Miller-Wakeham is a supervisor at Progressive who both supervises staff that work with Claimant and provides direct services to Claimant himself. Mr. Miller-Wakeham has known Claimant for at least 16 years.

44. According to Mr. Miller Wakeham, an additional 50 service hours would allow Claimant to engage in a variety of tasks that he excels at. According to Mr. Miller-Wakeham, when Claimant is limited to one task or meeting for a short period of time per day, he is not getting the exposure he needs to have fluid participation in the program. The increase in hours would make Claimant more versatile and able to tolerate other demands that he is not regularly exposed to.

45. On May 16, 2020, Mr. Romero visited Claimant's session at Progressive for two and a half hours with Mr. Pope. During the session, Mr. Romero was able to observe Claimant using FC to type the amount of energy that a given task would require on piece of paper. Claimant soon became frustrated but Mr. Miller-Wakeham

directed Claimant do breathing exercises with him to regulate Claimant's behavior. Afterwards, Claimant appeared to be able, with support, to type one-word answers to three questions about energy levels.

46. Claimant was then provided a break. Thereafter, Claimant, along with two Progressive staff members, Mr. Romero and Mr. Pope went on two community outings. During these outings, Claimant engaged in minor acts of aggression towards Mr. Miller-Wakeham.

ELARC's Contentions

47. According to SC Grande, the purpose of an adult day program is to provide consumers with supports that allow them to access the community. Personal assistance hours are provided to increase the independence of consumers by providing them with support in the home or the community. In contrast, AST is provided to consumers so that they receive training on different behavior modification techniques. ELARC provided Claimant with personal assistant hours as those hours more closely resemble the goals of an adult day program.

48. Lilia Ortega, ELARC Supervisor of Consumer Services, testified on behalf of the Service Agency. Ms. Ortega supervises one of the four units in the Whittier office at ELARC. Ms. Ortega's unit alone serves over 900 consumers. Claimant has been part of her unit's caseload since 2002.

49. Ms. Ortega noted that current AST hours that are in place are "already at a very high level" and increasing AST hours to 125 hours a month would in effect duplicate a day program, which Progressive is not. ELARC is concerned that the provision of a high level of AST hours will result in dependency. AST training is an

hourly skill building service, which is time limited and should decrease as the skills are obtained. Ms. Ortega expressed that ELARC was concerned that though Claimant has been receiving AST services through Progressive since November 2006, the reports uniformly document Claimant has made minimal progress in reaching his goals.

Claimant's Additional Evidence

RICKI ROBINSON, M.D.

50. Ricki Robinson, M.D. has treated Claimant since August 1998. Dr. Robinson notes that Claimant is, in fact, highly intelligent, however, his abilities are masked by his inability to communicate. Dr. Robinson believes Claimant's communication abilities can be fully accessed through FC though she acknowledges that FC is not a currently accepted treatment modality.⁵ She further acknowledged that there are no current peer reviewed studies which would support its efficacy. Dr. Robinson asserted, however, that her experience in using FC with clients is an effective and useful method of communication.

51. According to Dr. Robinson, when Claimant makes progress, it is because the program fits him best. Dr. Robinson asserted that if Claimant is not progressing in the program, the program is not suitable for Claimant.

⁵ Many scientific organizations have issued position statements specifically stating that FC is not a scientifically valid technique for individuals with autism. (Exhibit 15.)

RODRIC B. RHODES, PH.D

52. Dr. Rhodes has provided weekly behaviorally-focused psychotherapy services to Claimant since May 27, 2008. Initially, the School District funded those appointments. Since Claimant has aged out of the School District, ELARC has been funding for his services through a courtesy vendorization. According to Dr. Rhodes, he provides "cognitive and behavioral, and with an emphasis . . . on behavioral change, counseling services [to] [Claimant]" with the goal helping Claimant adjust to different stressors he encounters in his daily life. An additional goal is helping Claimant communicate his stressors and preferences for daily life through his behavior and through his typing.

53. According to Dr. Rhodes, the lack of a full-time day services support program has resulted in negative consequences for Claimant. In addition to his aggression, Dr. Rhodes reported Claimant has demonstrated "continued increased anxiety and stuckness and rigidity during this time period." (Exhibit E, p. 2.) Dr. Rhodes believed this increase was "likely due to not being challenged as much in activities of daily living and community participation, and therefore having increased control over his home schedule and activities, as his world is smaller and more predictable and [he is] able to have greater control over the variables." (*Ibid.*)

54. Dr. Rhodes testified that he views Claimant's aggression to be reactive and a form of communication. He offered the opinion that since Progressive has been providing Claimant with extra service hours, his aggression has been gradually decreasing. Dr. Rhodes "absolutely supports and recommends a full-time program, one that [Claimant] can participate in throughout the day at a comprehensive level," which Dr. Rhodes believes is approximately 30 hours per week.

DARLENE HANSON, SLP

55. Darlene Hanson is a licensed speech and language pathologist. Ms. Hanson first met Claimant when he was five or six years old. She worked with Claimant on communication while he was in the NPS district.

56. Claimant is, according to Ms. Hanson, someone who needs to have a relationship with an individual before he allows them "into his personal space." If the individual cannot read Claimant's emotional space the right way or Claimant does not trust the individual can do that, Claimant's level of agitation will increase.

57. Ms. Hanson noted Claimant uses multiple forms of communication, including: (1) typing (*i.e.*, FC); (2) non-verbal communication such as eye gaze, pointing and other actions; (3) a dry erase board where choices are written out and Claimant will pick the answer; and (4) using communication boards that include words and or line symbols.

PARENT OF ELARC CONSUMER

58. A parent of another adult ELARC consumer detailed her negotiations with the Service Agency in obtaining additional hours of service. Ultimately, the matter went to hearing and the administrative law judge in that case ordered the Service Agency to provide her child with 80 additional hours per month of AST and 20 hours per month of AST transportation from Progressive for three months.

MOTHER

59. Mother testified regarding the difficulties in obtaining adult day services and her interactions with REACH and Real Connections. Mother also noted Claimant's

regression when he stayed at home. Though Claimant had been provided with personal assistance hours, Mother did not use them as she did not find the staff to be helpful because they did not have the appropriate training. In addition, she did not like having staff coming to the family home.

60. Mother also noted that Claimant has been using FC in a variety of his therapies. She, herself would type with Claimant when he was in elementary school, but as Claimant entered middle school, he became increasingly aggressive so she no longer does so. Claimant now types with Dr. Rhodes and it is during those sessions Mother can have good conversations with Claimant,

61. ELARC has temporarily agreed to fund 75 hours a month for Progressive's services, which is 3 hours and 45 minutes a day as well as agreed to fund for personal assistant hours. Mother has requested ELARC fund an additional 50 hours a week of Progressive's services because Claimant needs a full day program.

62. Mother feels that Claimant is being denied a full day program because he is too aggressive. She further asserts that when Claimant has the proper supports, he is less aggressive.

63. Mother also notes that Claimant has too much time on his hands which results in his falling asleep during the day and staying up at night which results in both Parents being sleep deprived.

64. Mother asserts that the Service Agency should have done more to locate a full day program which meets Claimant's requirements and that personal assistant hours are not enough to fill that gap.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code⁶ 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 timely requested a hearing to appeal the Service Agency's proposed denial of his request for additional direct services funding. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

Burden and Standard of Proof

2. When an individual seeks to establish eligibility for 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.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to demonstrate that Service Agency's decision is incorrect by a preponderance of the evidence.

⁶ All further statutory references are to the Welfare and Institutions Code unless noted otherwise.

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, contrary to Claimant's assertion, a regional center is not mandated to provide all the services a consumer may request. Services provided must be cost effective (§§ 4512, 4646, subd. (a)), and the Lanterman Act requires regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual

decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

7. 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.)

8. Section 4689, subdivision (e) provides:

Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:

(1) Adherence to the principles set forth in this section.

(2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.

(3) Whether services and supports described in the consumer's individual program plan are being delivered.

(4) Whether services and supports are having the desired effects.

(5) Whether the consumer is satisfied with the services and supports.

9. Here, Claimant failed to meet his burden of establishing that the Service Agency must increase finding of AST services hours from 75 hours a month to 125 hours a month. While Mother established, and the Service Agency acknowledged, that Claimant had been without a day program since the end of July 2018, that alone does not justify the Service Agency violating its obligation to exercise fiscal responsibility in providing services to Claimant.

10. First, one of the reasons Claimant has been without an adult day program is Parents' insistence on having a day program that uses FC, a non-evidence-based treatment modality. Though the Service Agency has accommodated Parents preference in attempting to locate providers who utilize FC, they have been unable to identify a vendor willing to accommodate both FC and Claimant's aggressive behaviors. In the interim, Parents have been provided with alternative services including a temporary increase from 5 to 75 AST hours as well as personal assistance hours.

11. Second, Progressive does not appear to be meeting Claimant's goals as outlined by Claimant's 2019 IPP. Parents have been advised since the 2017 IPP that Claimant requires behavioral management services in order to minimize Claimant's tantruming behavior. Those services, however, have been rejected as Parents prefer the services offered by Progressive.

12. Finally, as measured by Claimant's 2017, 2018 and 2019 IPPs, there has been no progress made in achieving Claimant's behavioral goals, even though Claimant received AST services from Progressive. Progressive's own reports indicate

Claimant's progress towards his goals has been minimal, his challenges persisted and his resistance to transitions has grown. As testified by Dr. Robinson, Claimant is capable of change if the program fits Claimant. Considering his minimal progress, Claimant failed to establish that Progressive's program is meeting any of the goals outlined in Claimant's IPP.

13. The weight of the testimony supported the Service Agency's denial of funding. Claimant's evidence did not establish that 50 additional service hours from Progressive are necessary or appropriate.

ORDER

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.