

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

**In the Matter of the Fair Hearing Request by:**

**CLAIMANT,**

**v.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022020435**

**DECISION**

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, conducted a hearing in this matter by video conference on April 12, 2022.

Jacob Romero, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (Service Agency or ELARC). Claimant represented himself and was assisted by his mother (Mother). To protect their privacy Claimant's name is omitted and his mother's title is used.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on April 12, 2022.

## **ISSUE PRESENTED**

Should the Service Agency reimburse Claimant for the cost of purchasing Adobe Pro Premiere software and Final Draft screenplay software?

## **EVIDENCE RELIED UPON**

Exhibits: ELARC's exhibits 1 to 10 and Claimant's exhibits A and B. Testimony: ELARC employee Jessica Herrera, Claimant, and Mother.

## **SUMMARY**

Claimant attends community college as well as Actors for Autism, a specialized education program for which ELARC pays. He purchased a monthly subscription to Adobe Pro Premiere software (Adobe PP) for a course in film and entertainment sound design and made a one-time purchase of Final Draft screenplay software for a course in screenwriting. He seeks reimbursement from ELARC for those costs. ELARC denied reimbursement based on several contentions, including: Claimant receives monthly Social Security income which is a generic source he can use to pay for the software; Claimant receives services that include help with his budgeting; the software are not specialized supports but, rather, are products designed for the public and not to alleviate the effects of a developmental disability; Claimant did not demonstrate progress in the sound design course; reimbursement is not authorized under the Lanterman Developmental Disabilities Services Act (Lanterman Act); and payment for the software would not be cost-effective. Claimant has not proven he is entitled to reimbursement for the software costs.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. Claimant is a 24-year-old man who lives in the family home with Mother. Claimant receives services from the Service Agency under the Lanterman Act (Welfare and Institutions Code section 4500 et. seq.) based on his diagnosis of Autism. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) Claimant attends educational programs at Actors for Autism, funded by the Service Agency.

2. To participate in a course on sound design, Claimant purchased a monthly subscription for Adobe PP. To participate in a course on screenwriting, Claimant made a one-time purchase of Final Draft. On a date not established by the evidence, but after he purchased the software, Claimant requested the Service Agency to reimburse him for the costs of the software purchases.

3. The Service Agency sent a Notice of Proposed Action (NOPA) to Claimant dated December 21, 2021, denying the requests for reimbursement. (Exhibit 1.) The reason cited is "because consumer is currently receiving SSI benefits and those benefits should be used towards his personal/educational needs. ELARC is currently providing services and supports that allow [Claimant] to work on budgeting. These services and supports are available to provide [Claimant] with the opportunity to have a life similar to a person without disabilities." The NOPA also refers to several sections of the Lanterman Act, some of which are discussed below.

4. Claimant submitted a Fair Hearing Request dated January 8, 2022. He requested reimbursement, noting that his education program required him to download the software. (Exhibit 2.)

5. All jurisdictional requirements were met, and the hearing was scheduled.

## **Relevant Services and History**

6. Claimant has received services from ELARC under the Lanterman Act. His Individual Program Plan (IPP) from October 14 and 15, 2021 (Exhibit 3) refers to numerous services paid by ELARC, including the following relevant services: personal assistance, 60 hours per month, provided by Behavior Respite in Action; counseling, 10 hours per month, provided by ASD Consultancy; adaptive skills training, 24 hours per month, provided by CARD; and a creative arts program from AFA HUB, five hours per day, five times per week, total 115 hours per month. Also of relevance, the IPP notes Claimant receives In-Home Supportive Services (IHSS) 44 hours per month; Applied Behavioral Analysis/Independent Living Services, 13 hours per week, from CARD, paid by private insurance; SSI of \$940 per month; CalFresh benefits; and he attends Rio Hondo Community College.

7. The IPP and testimony establish Claimant pays rent to Mother and Mother does not provide financial support for Claimant. Claimant is high functioning and able to communicate and care for himself generally but requires reminders to stay on task and has difficulty with completing tasks. Organization and time management are challenges for him. CARD works with Claimant on executive functioning, general safety awareness, paying utilities/housing, and independent living. Claimant's SSI and CalFresh benefits are used to help fund his housing, food, and utilities. He struggles with budgeting his income.

8. The IPP section on Psychiatric/Behavioral includes, among other things, Claimant has frustration when he is not successful in completing a task, he gives up easily, and does not want to tackle harder tasks. Personal assistant services address various subjects, including help with academic tasks and providing encouragement to complete course demands. Claimant's behavioral episodes are characterized by acts of noncompliance and avoidance. Claimant is very prompt dependent when it comes to executive functioning. This section also includes that if adaptive equipment and additional therapy services are needed and are not covered by private insurance, ELARC may be the provider "if the requested service is related to [Claimant's] developmental disability." (Exhibit 3, p. A18.)

9. The IPP section on Work/Career/Education includes, among other things, Claimant was taking one online film class at Rio Hondo Community College in which his grades are improving. He is assisted there by Disabled Students Programs & Services. Personal assistant services from Behavior Respite in Action help Claimant with campus related tasks such as clarifying and prioritizing assignments, time management, and purchasing textbooks. At a prior job with a job coach, Claimant required several prompts to stay focused on tasks and had difficulty accepting and following the coach's directions. Claimant had recently been hired to work at a movie theater. Claimant had previously completed two years of classes at Actors for Autism, requested and was granted funding for a third year, and was taking a course in sound design.

10. A letter from Actors for Autism successor AFAHUB dated December 10, 2021, provides more information about Claimant's history and courses. (Exhibit 4.) Claimant attended Actors for Autism's film program from January 2016 to December 2018. He took six courses his first year, including Editing, Screenwriting, and Sound

Design. His second year he specialized in screenwriting. At the conclusion of his second year, Claimant decided to pursue employment on his own. Actors for Autism discontinued its film program in October 2020, and AFAHUB later ran the film program. When Claimant decided to attend that program in May 2021 and study sound design, an evaluation was conducted, and it was determined there was a decline in his retention and skills previously learned in the Sound Design and Editing courses. AFAHUB offered Claimant a year of specialization in sound design, but Claimant needed to be retrained in both sound design and editing. Industry standards had changed, and the coursework had changed. ELARC authorized Claimant to retake the two-month Editing course in September 2021 and he passed the course, although he had problems in task preparation and completion and time management. He then started the two-month Sound Design course in November 2021 and, as of the writing of the letter, was expected to pass by the end of December. Claimant had recently expressed interest in screenwriting to obtain gainful employment. Goals were proposed and it was recommended Claimant continue to attend the AFAHUB film program for the year 2022.

11. For the Editing course Claimant was required to purchase a subscription to Adobe PP. His bank records, Exhibit 6, show charges and credits to his account from October 2021 to January 2022. Claimant testified he tried several times and had difficulty getting Adobe to cancel the monthly charges after he no longer was using the software. The total of the charges, minus the credits, is \$90.96. On February 14, 2022, Claimant purchased the Final Draft software for \$199.99.

12. Claimant did not request pre-approval from ELARC for the software purchases. According to testimony from his service coordinator, Jessica Herrera, these course materials would not be ELARC's responsibility, because any typical student

would be responsible to purchase generally available materials required for coursework. The software was not related to alleviating any condition related to Claimant's developmental disability.

13. Behavior Respite in Action, an ELARC vendor providing personal assistant services to Claimant, prepared a progress report covering July to December 2021. (Exhibit 7.) It provides services to Claimant Monday and Friday, 3-8 pm, and Tuesday, 7-10 pm. Among other things, Behavior Respite in Action assists Claimant with academic tasks, his college career, and self-independence goals, including organizational skills, time management (keeping track of time for assignments, and deadlines), and money management (purchasing textbooks and budgeting for personal expenses). The report notes Mother provides minimal guidance to allow Claimant "to make his own decisions with budgeting and his finances to promote his independence." (*Ibid.* at p. A43.) Claimant is progressing in meeting his goals.

14. Adaptive skills training is provided by CARD, an ELARC vendor that prepared a report dated October 15, 2021. (Exhibit 8.) The adaptive skills training includes subjects of meal acquisition, safety awareness, scheduling appointments, paying utilities, and independent living. Under paying utilities, it is noted in the report Claimant has been working on goals since May 2021 to identify his income and determine how much money should be allocated to housing/bills/savings/groceries/leisure activities, and identify the consequences when bills are not paid on time. Claimant had not mastered the targets by the time of the report.

15. ASD Consultancy has provided counseling services since May 2010, and provided a report dated November 19, 2021. (Exhibit 9.) Claimant attended an average of three counseling sessions per month, each two hours long. Numerous subjects are covered in the report. Of relevance it is noted Claimant's busy schedule

includes community college courses and a class at Actors for Autism, working part-time, and various appointments. Claimant requires support to maintain appropriate boundaries, interact with members of the community, and prioritize responsibilities. He "continues to struggle with budgeting his income . . ." (*Ibid.* at p. A54.)

### **Informal Meeting; Testimony of Claimant and Mother**

16. In an attempt to resolve the matter, an informal meeting was held by videoconference on February 23, 2022, followed by Mr. Romero's letter of the same date. (Exhibit 10.) Mr. Romero summarized the circumstances as he understood them, much of which is noted in the Findings above. In addition, Mr. Romero noted Claimant originally wanted to create movie soundtracks but there is no such program at Actors for Autism. After starting the screenwriting program there, Claimant has produced scripts for TV pilots, and he also desires to write movie scripts. Claimant's courses at Rio Hondo Community College are currently online; he is taking a course in Ethnic Studies towards his associates degree in Mass Communication. Claimant pays for rent, utilities, and his cell phone out of his monthly SSI check and has about \$50 left over for personal spending. When Claimant was pursuing sound editing, he started with a free subscription for Adobe PP that ended and then became a paid monthly subscription. He later decided to switch to screenwriting, which required the Final Draft software, considered the industry standard. Claimant inquired whether the Department of Rehabilitation (DOR) would pay for the software, but the request was denied because Actors for Autism was an unaccredited program. Mr. Romero cited numerous provisions of the Lanterman Act, discussed below, and offered as settlement for ELARC to pay for the First Draft software if Claimant first demonstrated reasonable progress by passing the screenwriting course.



17. Claimant testified he had greater ability to pay for things when he had a job, but he lost his job due to his current busy schedule of classes, services, and appointments. He bought the Final Draft software when he was informed he would be suspended or expelled from the class if he did not have it. He also needed to get his computer fixed. Claimant began the course in January and is making progress, having written a movie script and two TV pilots. His prior interest in sound design stemmed from his interests in music and being a DJ, however the Sound Design program at Actors for Autism did not mesh with his interests. Claimant testified sincerely to his problems understanding the charges to his bank account and the difficulties he had trying to stop the monthly subscription charges for Adobe PP. In letters to Mr. Romero and the judge, Claimant wrote that ELARC funds for Actors for Autism, which required him to purchase the software. He contends ELARC should pay for these needed supplies. (Exhibits A, B.)

18. Claimant's Mother described some of Claimant's challenges and issues regarding executive functioning, and that he requires a lot of support to reach his goal of becoming more independent. She does not provide financial support for Claimant and stated everyone has to pay for their living expenses. Claimant's laptop was provided by DOR, which would pay up front for tuition, equipment, and books for an accredited program. She questioned why ELARC would condition payment for the Final Draft software on Claimant passing the course.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Code, § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding for

purchases of software. Jurisdiction in this case was thus established. (Factual Findings 1 through 5.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes 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, Claimant bears the burden of proof regarding his request for reimbursement of costs for purchases of computer software. (Factual Findings 1 through 18.)

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Code, § 4501.) These services and supports are provided by the state’s regional centers. (Code, § 4620, subd. (a).)

### **Services Designed for Persons with Developmental Disabilities**

4. Code section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities” as meaning “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability . . . .”

5. The Adobe PP and Final Draft software are commercially produced computer programs designed for the public at large, and not specialized or adapted

to alleviate a developmental disability. They do not qualify as a service or support under this part of the definition of services and supports provided by regional centers.

### **Cost-Effective Use of Service Agency Resources**

6. Cost-effectiveness is referenced in several portions of the Lanterman Act. As relevant to this matter, Code section 4646.4, subdivision (a)(2), requires the Service Agency to ensure a consumer's IPP adheres to laws and regulations that generic services and supports are utilized when appropriate. Code section 4648, subdivision (a), refers to the process whereby an IPP is prepared. Under subdivision (a)(7), a service or support "shall not be continued" unless "reasonable progress toward objectives have [*sic*] been made."

7. As applied here, Adobe PP and Final Draft are generic services, not specialized to alleviate Claimant's developmental disability. Further, Claimant receives SSI funds, a generic resource, which he could use to purchase the software. Regarding Adobe PP, Claimant decided to no longer pursue the Actors for Autism Sound Design program that required use of Adobe PP. By deciding to no longer pursue the program, Claimant was not making reasonable progress towards this prior objective.

8. Cost-effectiveness is also mentioned in Code section 4640.7, subdivision (b), as a goal of the Service Agency's service coordination model. Service coordination for a consumer is guided by the process whereby needed services and supports are identified in the creation of a consumer's IPP.

## **The Process of Obtaining Services and Developing an IPP**

9. The services and supports to be provided for a consumer are determined by a team, including parents and regional center representatives, under the guidance of various sections of the Lanterman Act, some of which are discussed below.

10. Code section 4646, subdivision (a), states:

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.

11. Code section 4512, subdivision (b), states in part:

The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall

be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

12. Claimant's IPP makes reference to payment by ELARC for Claimant's tuition for courses at Actors for Autism but does not refer to payment for software or supplies for the courses. The only reference in the IPP to the purchase of equipment is in the section on Psychiatric/Behavioral, which refers to adaptive equipment related to Claimant's developmental disability that may be purchased by ELARC if it is not covered by private insurance. The software is not adaptive equipment; it is generic. Claimant did not request ELARC to pay for the software before he purchased it, and ELARC had not agreed to pay for the software before it was purchased by Claimant, contrary to the design and goal for needed services and supports to be discussed and agreed in the process of creating the IPP.

13. Assisting Claimant with his budget is one of the services identified in the IPP and the progress reports from ELARC's vendors. There was no evidence whether Claimant sought assistance from these vendors in budgeting for the purchase of the software.

## **Reimbursement**

14. Reimbursement of an expense paid by a consumer is specifically authorized under the Lanterman Act only under limited circumstances. Code section

4648, subdivision (a)(3)(B), allows reimbursement if the supplier has a rate of payment with the Department of Developmental Services and is providing the service under an emergency or other special circumstances. Further requirements are found in California Code of Regulations, title 17, section 50612, subdivision (a), describing the nature of an emergency that can support a retroactive reimbursement for an expense. There was no evidence any of these conditions existed concerning Claimant's purchase of the software.

15. Retroactive payments were also discussed in *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, where the court upheld multiple administrative rulings ordering the regional center to fund services for the care of a client requiring intensive physical therapy, including retroactive payments for money paid directly by that client's mother to secure the ongoing employment of skilled assistants. Those rulings were based on the flexibility and innovation required under the Lanterman Act to "take all steps possible to keep disabled children at home." (*Id.* at p. 301.) However, provisions relating to children do not apply to Claimant, who is an adult.

## **Determination**

16. Several factors support the denial of reimbursement sought by Claimant. First, the software is available to and used by the general public and is not a specialized service or support or special adaptation of a generic service and support directed toward the alleviation of Claimant's developmental disability. Second, purchase of the software could be considered a support if it is necessary to ensure delivery of services under the IPP. However, the software was not identified as a need or as a service in Claimant's IPP. The IPP forms the contract of services to be provided, and the needs to be addressed by those services. Third, Claimant's services include

help with budgeting, presumably so that Claimant can purchase items needed for his coursework. Fourth, the software purchase was not of an emergency nature that would permit ELARC to reimburse the expense retroactively. Finally, unlike in *Harbor Regional Center*, Claimant is not a child and the strong preferences to provide for flexibility in the provision of services and supports to maintain a child in the family home is not applicable. (Factual Findings 1 through 18.)

17. Stated differently, like any other person, Claimant should consider his budget and available funds before making a purchase. If he does not have enough funds, perhaps he should not make the purchase.

18. Reimbursement of Claimant's cost for purchasing the software does not qualify as a service and support required to be provided by ELARC under the Lanterman Act.

## **ORDER**

Claimant's appeal of the Service Agency's decision to deny reimbursement for the cost of purchasing Adobe Pro Premiere software and Final Draft screenplay software is denied.

DATE:

DAVID B. ROSENMAN  
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.