

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

X.G.,

Claimant,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Respondent.

OAH Case No. 2010120132

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on June 7, and August 25, 2011, in Los Angeles, California.

Carmen Carley, Parent Advocate, represented X.G. (Claimant).¹ Claimant was not present, but her parents appeared on both days of hearing.

Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented the South Central Los Angeles Regional Center (Service Agency).

The ALJ left the record open until September 9, 2011, to allow the Service Agency to file a closing brief. Claimant filed her closing brief at hearing. The Service Agency filed a closing brief timely; the brief was marked for identification.

The parties submitted the matter for decision on September 9, 2011.

STATEMENT OF THE CASE

The questions in this matter are, 1) whether the Service Agency should fund 40 hours per week of Applied Behavior Analysis (ABA), in addition to supervision hours, and 2) whether the Service Agency should reimburse Claimant's parents for their personal funding of ABA hours between the time of their initial request for ABA and the Service Agency's

¹ Petitioner's surname was reduced to initials to preserve Petitioner's confidentiality.

denial. Claimant also requested that the Service Agency's ABA purchase of service policy be found invalid, as contrary to the Lanterman Act.

Claimant contends she needs ABA services at 40 hours per week, in addition to supervision hours, due to her developmental disability.

The Service Agency agrees Claimant needs ABA, but contends that 12 hours per month of ABA and six hours of out-of-office visits is adequate to meet her needs.

FACTUAL FINDINGS

1. Claimant is a three-year-old girl with autism, Retts syndrome, and pica. Claimant's autism is severe. She has significantly low intellectual and adaptive behavior skills. Claimant lacks all self-help skills. She is non-verbal. She is not toilet trained. She has no safety awareness. She lacks play skills. She has limited use of her hands. She is not able to interact with others. Claimant has severe behaviors. She grinds her teeth, tantrums, wanders when not supervised, pulls her hair, and bangs her head. She flicks her fingers and clasps her fingers to such a degree that she causes wounds. The evidence established that her tantrums are rare and that her pica and finger flicking are her most severe behavioral challenges.

2. The parties did not dispute Claimant's skill deficits or behaviors or the severity of those deficits and behaviors.

3. Claimant began receiving services from the Service Agency in its early start program. Claimant had her first meeting with the Service Agency in May 2010; however, her initial Individualized Family Service Plan (IFSP) was held in July 2010. The evidence did not explain this delay.

4. At her July 2010, IFSP meeting, Claimant requested, among other things, that the Service Agency fund 40 hours per week of ABA to address all of her negative behaviors. At this IFSP, Claimant's parents and Claimant's parent advocate identified Claimant's negative behaviors. Those negative behaviors included all of those behaviors set forth in Factual Finding 1. The Service Agency agreed to evaluate Claimant to understand the severity of her behaviors and decide whether it would agree to fund ABA services.

5. In August 2010, Claimant again requested ABA services from the Service Agency. Between August and September 2010, the parties repeatedly corresponded with each other. Claimant sought to authorize a behavior evaluation by the Service Agency. Due to errors on the part of the Service Agency, the Service Agency was delayed in authorizing the behavior evaluation for Claimant. The delay, while due to errors, was unintentional.

6. The Service Agency sought consultation from Bruce W. Williams, Ph.D., regarding Claimant's request for ABA services. Williams is a psychologist and behavior

specialist consultant for the Service Agency. There was no evidence establishing Williams's education, credentials, training, or practice. Williams has worked for the Service Agency as a consultant since 1990.

7. In a note to the Service Agency, dated August 24, 2010, Williams wrote, "It is not clear whether this is a request for in-home behavior intervention to address the identified problem behaviors of pica, hand flapping, insomnia, and rubbing her fingers together, or whether it is a request for discrete trial training (DTT)." Williams explained that if Claimant sought DTT, he opines that school districts are responsible for providing DTT, and at most, the Service Agency might supplement DTT services in the home. If Claimant sought ABA services to address her behaviors, the Service Agency should determine if Claimant's behaviors are so severe as to require in-home intervention.

8. The evidence did not establish why Williams sought to distinguish Claimant's request between ABA and DTT. There was no evidence that Claimant ever requested or referred to the service she seeks from the Service Agency as DTT. The evidence at hearing persuasively established, based on expert testimony (see Factual Finding 32), that ABA is a behavior intervention service and that DTT is a teaching method that can be utilized within ABA. Claimant's request was for ABA services. Whether DTT is a component of the ABA services at issue here, is irrelevant to this Decision.

9. The Service Agency sent Claimant a letter from Williams, dated September 17, 2010, informing Claimant of ABA and DTT services through the Service Agency. In describing ABA services, Williams's letter stated, "For children older than 3, the school system has the chief responsibility for providing the intervention. ... In such cases, the regional center may provide some additional hours in the home in order to help apply learning from the school intervention to the home and community setting."

10. The evidence did not support Williams's and the Service Agency's position that ABA is primarily school districts' responsibility. (See Factual Finding 21.)

11. In September 2010, the Service Agency authorized a behavior intervention provider, Behavior Frontiers (BF) to evaluate Claimant's ABA needs by conducting an eight-hour functional assessment.

12. BF evaluated Claimant in October 2010. BF found Claimant had significant behaviors and skill deficits due to her autism and recommended that Claimant receive a total of 40 hours per week of behavior therapy, in addition to supervision hours.

13. Claimant had already been receiving ABA from BF, since April 2010. Claimant's parents had decided to fund ABA services privately because they believed the services were necessary for Claimant's development. Claimant's parents were aware that ABA should be implemented as soon as possible for very young children with autism and decided to implement ABA to the degree they could. BF began providing Claimant six hours per week of ABA beginning in April 2010.

14. BF's progress report, dated October 6, 2010, provided specific data regarding Claimant's behaviors and skills. BF wrote, "it is recommended that she [Claimant] receive a total of 40 hours per week of behavior therapy (to include behavior therapy in the home and community, parent training, and team meetings) as well as 8 hours per month for case supervision of her . . . program. These recommendations have been formulated specifically to address the goals provided for [Claimant] in this report. It is necessary for [Claimant] to receive the behavioral services recommended in order for her to gain independent functioning."

15. On November 10, 2010, in a note to the Service Agency, Williams wrote, "Rather than funding a 40 hour per week intervention, as recommended by the vendor (again for behavior modification and DTT), it is recommended that the vendor be funded for a 12 hour per month intervention only to address the two targeted behavior problems. ... If the vendor does not agree, it is recommended that another vendor be selected to perform the intervention."

16. Williams never evaluated or observed Claimant.

17. Upon concluding in concert with Williams's recommendation of 12 hours per month of ABA, the Service Agency sent Claimant a notice of action denying her request for 40 hours per week of ABA. In its notice of action, dated November 15, 2010, the Service Agency wrote, that it would only fund 12 hours per month for three months "to address the two identified targeted behavior problems."² The Service Agency identified the two targeted areas as, "self-stimulatory rubbing her fingers together and placing non-edible items in her mouth." The Service Agency further wrote, "DTT is an education intervention and the school district is the *primary agency responsible for funding this intervention*. The purpose of that intervention is to ameliorate the skill deficits associated with Autism, not to reduce problem behaviors. In-home behavior intervention is typically carried out with about 12 hours per month of funded service; the purpose is to teach the family to carry out behavioral procedures in the home . . . to reduce problem behaviors." The Service Agency suggested that Claimant's family request a DTT assessment, "if the family's intent is for an intensive DTT intervention to address skill deficits."

18. It was not established why the Service Agency believed the behavior intervention services were limited to addressing the "two targeted behavior problems." The evidence did not establish that Claimant sought such limited assistance. The behaviors set forth in Factual Finding 1, were undisputed at hearing. Those behaviors are contained in Claimant's individual program plan (IPP); and at hearing, Claimant's service coordinator

² The Service Agency's Notice of Proposed Action failed to state any legal authority for its denial, in violation of Welfare and Institutions Code section 4701, subdivision (d). However, Claimant did not object to the inadequate Notice and proceeded at hearing with obvious knowledge of the legal authorities relevant to this matter. Therefore, the Notice's inadequacy was deemed waived.

confirmed that Claimant's parents described these behaviors at the IPP meeting.³ Claimant informed the Service Agency of all of these behavior problems when requesting ABA. It appears that it was Williams who first limited the behavioral intervention to the two problems. In Williams's first note of August 24, 2010, he questioned whether Claimant sought ABA to address behaviors that included hand flapping and insomnia, in addition to the pica and finger flicking. (Factual Finding 7.) Thereafter however, Williams and the Service Agency focused solely on the latter two behaviors with no explanation as to why they failed to address Claimant's other behavior problems. Thus, although the finger flicking and pica are Claimant's most severe behaviors (a fact corroborated at hearing by BF's witness, Fredericksen (see Factual Findings 26 and 27)), Claimant sought ABA to address all of her behaviors and skill deficits, as described in Factual Finding 1.

19. In December 2010, Williams wrote to BF's clinical director, Helen Mader. Referencing BF's recommendation of 40 hours per week of ABA, Williams wrote, "many hours were recommended." "Can you proceed to do an intervention to address the finger flicking and pica behaviors, as originally intended (but not the various skill training goals, which should be the primary responsibility of the school system)?"

20. At hearing, Williams explained his opinion. He opined that 12 hours per month of ABA is "standard" and would be adequate to meet Claimant's needs. Williams asserted that hand movements are a genetic predisposition in persons with Retts syndrome and will not likely decrease with ABA services. He explained that research shows that children, like Claimant, gain no additional benefit beyond 25 hours per week of ABA and DTT. Williams further opined that DTT is an educational service that should be provided primarily by the school district and is meant to improve skill deficits associated with autism, like communication and social skills deficits. The Service Agency further argued these points in its closing brief, emphasizing its own opinion that DTT includes educational components that are a school district's responsibility, and pointing to the Legislature's suspension of regional centers' authority to purchase educational services, pursuant to Welfare and Institutions Code section 4648.5.

21. Williams's opinions and the Service Agency's supporting arguments were unpersuasive. Williams did not explain what he meant by 12 hours per month of ABA being "standard." Given the Legislature's mandate that regional centers individualize services under the Lanterman Act (see Legal Conclusion 3), standardized allotments of services would be inappropriate, absent a clinical finding that such a quantity would, by chance, also be therapeutically appropriate. Williams provided no support for his opinion that any genetic predisposition of hand movements in persons with Retts syndrome was not likely to be ameliorated by ABA. The Service Agency also provided no conclusive evidence on this assertion. Claimant's expert, Betty B. Bostani, Ph.D. (discussed in Factual Findings 31-35) who is aware of Claimant's diagnoses, made no such assertion. Williams cited generally to research to support his opinion that 25 hours per week of ABA would be the likely

³ The evidence did not establish when precisely Claimant transferred between the early start program (with IFSPs) to Lanterman Act services (with IPPs).

maximum. He solely identified that research by author name; he provided no specific citations and did not explain this limitation. However, having opined that up to 25 hours per week was effective, he failed to explain why Claimant would adequately benefit from only 12 hours per month, a drastically lower quantity. The Service Agency also provided no persuasive argument on this point. Further, Williams's opinion on the number of hours was given significantly less weight because he never evaluated or observed Claimant. Lastly, *Williams offered no clinical basis for his opinion that ABA services were educational in nature and that the school districts should be primarily responsible for ABA.* Indeed, such an opinion is a legal conclusion outside of his expertise as a psychologist. The evidence established that ABA addresses a myriad of problem behaviors and skill deficits that impede a child's overall life functioning. Thus, ABA addresses deficits in a child's educational and home life. Contrary to Williams's opinion and the Service Agency's argument, the evidence established that ABA is not solely or even primarily an educational service. The Service Agency can fund ABA, and nothing in the evidence persuasively established that the Service Agency may withhold the funding of ABA based on the notion that ABA is the primary responsibility of the school district.

22. In January 2011, in accordance with Williams's opinion, the Service Agency authorized and funded BF to provide 12 hours per month of ABA, and six hours of out-of-office visits, to be reevaluated every three months.

23. A second progress report by BF, dated March 1, 2011, stated, "Given [Claimant's] behavioral deficits, excesses, and current levels of progress, it is recommended that she receive an increase in hours of behavior therapy. This increase should be determined in conjunction with the number of hours funded by the school district so that the total between each funding agency allows for 40 hours per week of behavior therapy (to include, 1:1 behavior therapy in the home and community, Parent/caregiver training, and team meetings) as well as 8 hours per month for case supervision of her behavior program. These recommendations have been formulated specifically to address the goals provided for [Claimant] in this report. It is necessary for [Claimant] to receive the behavioral services recommended in order for her to gain independent functioning."

24. Claimant found the Service Agency's authorized hours inadequate to meet her needs. In her initial IPP meeting of April 1, 2011, Claimant again requested 40 hours of ABA per week with BF, and additional supervision hours.

25. On March 18, 2011, Williams again wrote to Mader. He had problems with the broad spectrum of therapy in contrast to addressing what he understood to be the targeted behavioral goals of decreasing her finger flicking and pica. In his correspondence, Williams questioned the things BF was addressing with Claimant, like distinguishing animals, imitating feet stomping and table tapping, and following directions. He wrote, "In the recommendation section, there is again a recommendation for discrete trial training—i.e. a lot of hours of 1:1 service to have [Claimant] 'gain independent functioning.' [The Service Agency] is funding for behavior modification services to reduce identified problem

behaviors, not for skill training, as agreed in December 2010. Can you eliminate the various skill training goals and follow through with this agreement?"

26. On March 27, 2011, BF responded to Williams. Instead of Mader, Sara Fredericksen, corresponded with Williams. Fredericksen is a board certified behavior analyst and a behavior supervisor at BF. She has worked directly with Claimant since April 2010. Fredericksen wrote, "I understand how it may appear that some of the 'skills' that we are teaching [Claimant] are not functionally related to her target problem behaviors. Those skills that do not seem to be directly related (e.g., visual and auditory discrimination, simple compliance, etc.) are prerequisite behaviors that must be learned in order to effectively teach the replacement behaviors necessary to reduce [Claimant's behaviors]. [¶] . . . [¶] To be consistent with your initial request, we have not worked on other very important skills that would address [Claimant's] deficits in communication, self-help, and social skills. ... I will make sure that we only target goals that are absolutely critical to effectively reducing [Claimant's] identified problem behaviors. As for the recommendation, I did not state that I recommended discrete trial training, however, I do believe [Claimant] needs more hours than she is currently receiving given her behavioral [excesses] and deficits."

27. At hearing, Fredericksen reiterated her opinions of Claimant's needs, as stated in Factual Finding 26, and opined that Claimant's severe autism requires 40 hours per week of ABA. Fredericksen described Claimant's deficits and behaviors and explained how a 40 hour per week regimen of ABA would assist Claimant and increase her progress. She opined that Claimant has made limited progress up to date due to the limited number of hours. Fredericksen agreed that Claimant's most severe behaviors involve finger flicking and pica, but persuasively explained why and how Claimant requires a 40-hour per week regimen of ABA to address those behaviors as well as all of her other deficits, as described in Factual Finding 26.

28. Claimant's mother testified and corroborated Fredericksen's testimony as to Claimant's needs and limited progress. Claimant's mother explained that she sees Claimant regress during the days she does not attend BF.

29. In a third progress report by BF, dated June 1, 2011, BF reiterated its earlier recommendations, including that ABA hours should increase to meet Claimant's needs.

30. All three BF progress reports contained data regarding Claimant's behaviors and skills and, together with Fredericksen's testimony, demonstrated a persuasive factual basis to find that Claimant needs a more intensive and consistent number of ABA service hours to address her behavioral problems and skill deficits.

31. Claimant proffered the opinions of Betty Bostani, Ph.D., a licensed clinical psychologist. In June 2010, Bostani evaluated Claimant. At the time, Claimant was two years, eight months old. Bostani concluded, "It is recommended that [Claimant] receive an in-home behavioral intervention program consisting of at least 40 hours per week of one-to-one behavioral intervention in the form of Applied Behavior Analysis (ABA), to include

discrete trial teaching. Due to her young age, his [*sic*] program should initially consist of approximately 25 hours per week and increase to 40 hours per week as her tolerance for the intensive program increases. ... This program should be supervised on a regular basis by a professional specifically trained in ABA, implementing intensive one-to-one behavioral therapy.” Bostani recommended supervision hours, but did not quantify her recommendation.

32. Bostani explained that ABA is a type of intervention used to address behavior problems and that DTT is one of several teaching methods that may be used within an ABA program.

33. Bostani opined that Claimant’s severe autism, severe behaviors, and severe skill deficits require ABA services. Bostani asserted that she does not always recommend 40 hours per week of ABA services for all young children with autism, but in Claimant’s case, Bostani opined that she requires the intensity and consistency of a 40-hour per week regimen, due to the severity of her disability. Bostani relied on the findings she made in her assessment. Bostani administered a number of psychological tests, including the Behavior Rating Inventory of Executive Functioning—Preschool Version, the Developmental Profile—II, the Leiter International Performance Scale—Revised, the Preschool Language Scale—4th Edition, the Vineland Adaptive Behavior Scales—2nd Edition, and the Wechsler Preschool and Primary Scales of Intelligence. Additionally, Bostani observed Claimant interact with her parents and reviewed Claimant’s history and records.

34. Bostani received her Ph.D. in 2002 from the California School of Professional Psychology, in Los Angeles. She has been in private practice since September 2004, specializing, in among other things, children on the autism spectrum. She has significant experience in treating children with autism. Bostani was an Assessor and Clinical Supervisor for the Center for Autism and Related Disorders, from March 2003 to September 2004. She was an Institute Assessor and Case Supervisor at the Lovaas Institute for Early Intervention, from September 1996 to January 2003. She was a senior staff therapist with the Center for Autism and Related Disorders from July 1996 to March 1997. Since 1998, Bostani has been a member of the California Association for Applied Behavioral Analysis.

35. *Bostani’s opinions were persuasive. She relied on test data and her own observations.* She explained her findings, describing how ABA works and how it would address Claimant’s needs. Her background, training, and practice were pertinent to the matters in this case.

36. When asked about the correspondence from Williams to BF, where Williams attempted to narrow the scope of BF’s services to Claimant (Factual Findings 19 and 25), Bostani opined that Williams’s requests to BF served to limit services that are critical to Claimant. She described Williams’s correspondence as “disturbing,” “improper,” and “surprising.”

37. Claimant requested funding for ABA services from her private health insurance, Kaiser Permanente. On June 1, 2011, Kaiser denied her request because her health plan coverage “is limited to health care services,” and Kaiser deemed ABA a “learning therapy designed to teach skills that others may learn from observation.”

38. The Service Agency pointed to Kaiser’s description of ABA as a “learning therapy” to support its position that ABA is an educational service. This argument was unpersuasive. Kaiser did not state ABA was a school service. There was no evidence that Kaiser intended its use of the words “learning therapy” to mean that Kaiser also believed ABA is solely or primarily an educational service.⁴ As there was no evidence that Kaiser was aware of the regional centers’ and school districts’ legal mandates regarding behavior services, a medical insurance provider’s words within a benefit denial letter cannot be ascribed such meaning as the Service Agency would ascribe to it in this case.

39. Claimant attends school in the Downey Unified School District (DUSD). Claimant sought ABA services through DUSD. DUSD proposed a particular placement that Bostani agreed to observe and evaluate to determine if it would meet Claimant’s needs.

40. Bostani observed Claimant’s proposed school placement in November 2010. She opined, “While the programming is based on principles of Applied Behavior Analysis, it very much lacks the intensity and consistency documented in replicated, empirical research for significant progress to be made.” Bostani reiterated her opinion that Claimant requires 40 hours per week of ABA, and supervision.

41. Claimant’s parents agree the proposed school placement fails to meet Claimant’s needs and they are pursuing discussions with special education advocates to determine how to secure a more appropriate school placement, potentially utilizing the administrative hearing process in the special education arena. At the time of the instant hearing, Claimant was not receiving ABA services from DUSD.

42. Claimant argued that the ALJ should order the Service Agency to reimburse Claimant’s parents for their payments to BF for ABA from the date Claimant requested ABA from the Service Agency, to the date that the Service Agency denied her. According to a BF invoice offered by Claimant, Claimant’s parents have expended \$15,593.25 between April 2010 and March 2011. Reimbursement of costs was not granted, as discussed in Legal Conclusion 8.

43. Claimant presented the ALJ with 16 decisions by other ALJs from the Office of Administrative Hearings, wherein reimbursement costs were awarded to other claimants. Claimant requested, and the ALJ officially noticed, the decisions. However, those decisions

⁴ See also Welf. & Inst. Code, § 4686.2, subd. (d)(1), wherein the Legislature describes ABA as a service intended to ameliorate behaviors that interfere with “learning.” Thus, and because the Legislature allows for regional centers to fund ABA, the use of the word, “learning,” when describing ABA, does not signify a school-related service.

are not precedential. The facts in this matter are specific to Claimant and, contrary to Claimant's argument, these other decisions did not contain analogous facts. Therefore, the ALJ did not use those decisions in reaching his factual findings and legal conclusions.

44. Claimant requested that the Service Agency's ABA purchase of service policy be found invalid. Claimant argued that the policy requires parents to pursue school district funding and be trained to become the ABA trainer, both in contravention to the Lanterman Act. However, there was insufficient evidence to find that the Service Agency implemented these portions of the policy against Claimant and her parents. Furthermore, it could not be found that the purchase of service policy contravenes the Lanterman Act, as worded and as implemented with regard to Claimant.

45. The Service Agency argued that the ALJ should consider that BF has a financial interest in increasing the number of ABA hours provided to Claimant. The ALJ considered that financial interest and weighed that interest against BF. However, the data BF used to support its recommendations was in concert with the testimony of Claimant's parents, and Bostani's findings. Bostani was persuasive; and she holds no financial interest in Claimant's ABA services. Moreover, the parties did not dispute Claimant's behavior problems; and it was the Service Agency that agreed to and funded BF to complete Claimant's functional assessment. Thus, BF's recommendations were nonetheless credited.

LEGAL CONCLUSIONS

1. As Claimant seeks a new service, she bears the burden of proof. The standard of proof is a preponderance of the evidence.

2. Welfare and Institutions Code section 4512 states in part:

(b) 'Services and supports for persons with developmental disabilities' means 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. 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.

3. Welfare and Institutions Code section 4646 states in part:

(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.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

4. Welfare and Institutions Code section 4648, subdivision (a) requires regional centers, like the Service Agency, to secure “needed services and supports.”

5. The evidence established that Claimant requires ABA 40 hours per week and that 12 hours per month of ABA is inadequate to meet her autism-related needs. (Welf. & Inst. Code, § 4512, subd. (b).) Bostani was persuasive in her opinions, and Williams, having never observed or evaluated Claimant, was not entitled to similar weight. Further, Williams’ opinions had faulty, incomplete, and/or inappropriate bases for his opinions. (Factual Finding 21.)

6. The Service Agency’s position that ABA has educational components and is primarily an educational service school districts must implement was unsuccessful. It is noted that in Welfare and Institutions Code section 4686.2, the Legislature sets forth the manner in which regional centers must provide ABA. The Legislature therefore accepts and sanctions regional centers’ provision of ABA. (Welf. & Inst. Code, § 4686.2.) The Legislature did not determine that ABA is primarily educational in nature. The relevant statutory provision was made effective in July 2009, during a time when the Legislature was reducing regional centers’ authority to fund numerous services, due to California’s fiscal crisis. (*Ibid.*, and see also Welf. & Inst. Code, § 4648.5.) Indeed, it did modify and reduce regional centers’ funding and payment of ABA; but it did not suspend such funding. The statute makes clear that ABA can and does fall within the continuum of services available through the regional center system for persons with developmental disabilities, like Claimant. Furthermore, as the Service Agency agrees Claimant requires ABA, the only question is the appropriate quantity of the service. Claimant has no appropriate ABA services from her school district. Since she requires ABA 40 hours per week, and no other entity is providing those services, the Service Agency is required to fund ABA at this level. (Welf. & Inst. Code, § 4648, subd. (a).)

7. As Bostani and BF recommended, Claimant's ABA services further require supervision hours. Bostani failed to quantify the number of hours required. BF recommended eight. The evidence established that supervision hours are necessary to properly implement ABA services for Claimant. Given BF's service role, its recommendation was adequate to establish that eight additional hours are proper to compliment the 40 hour per week ABA regimen.

8. Claimant's request for reimbursement was untenable. It was reasonable for the Service Agency to seek an assessment before agreeing to ABA. Therefore, some time delay between Claimant's request for ABA and the Service Agency's denial was appropriate. The Service Agency made errors that prolonged the assessment's authorization, but the delay was unintentional and there was no evidence that the Service Agency acted in bad faith, as it pursued additional information to determine whether Claimant required ABA. Under these circumstances, and with no direct authority for reimbursement in the Lanterman Act, reimbursement is not warranted.⁵

9. Claimant argued that the Service Agency's ABA purchase of service policy is invalid. There was insufficient evidence and inadequate argument to establish such invalidity.

10. Cause exists to grant Claimant's appeal for 40 hours of ABA per week and additional eight supervision hours, as set forth in Factual Findings 1-45, and Legal Conclusions 2-7.

11. Cause exists to deny Claimant's request for reimbursement, as set forth in Factual Finding 42, and Legal Conclusion 8.

12. Cause exists to deny Claimant's request to find the Service Agency's ABA purchase of service policy invalid, as set forth in Factual Finding 44, and Legal Conclusion 9.

⁵ While not granted in this matter, the ALJ concludes that under the principle of equity, reimbursement, although not directly authorized by the Legislature, is available in these administrative hearings.

ORDER

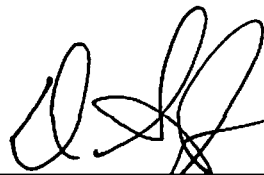
1(a). Claimant's appeal, in case number 2010120132, is granted in part and denied in part.

1(b). The Service Agency shall fund 40 hours per week of Applied Behavior Analysis for Claimant, with eight additional hours of supervision.

1(c). Claimant's request for reimbursement is denied.

1(d). Claimant's request to find the Service Agency's ABA purchase of service policy invalid is denied.

Dated: September 21, 2011



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.

DECLARATION OF SERVICE

Case Name: **Gallardo, Xitlali**

OAH No.: 2010120132

I, Esperanza Barrios, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 West Fourth Street, Suite 630, Los Angeles, CA 90013. On September 27, 2011, I served a copy of the following document(s) in the action entitled above:

DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Xitlali Gallardo
c/o Antonio and Mary Gallardo
10527 Mattock Ave
Downey, CA 90241

Johanna Arias, Fair Hearing
Coordinator/Government affairs Manager
South Central Los Angeles Regional Center
650 West Adams Blvd., Suite 400
Los Angeles, CA 90007

United States Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Los Angeles, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. Correspondences are deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid. [by certified mail].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on September 27, 2011.

/s/
Esperanza Barrios, Declarant