

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

TIMOTHY S.,

Claimant,

and

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency

OAH No. 2012050727

DECISION

This matter came on regularly for hearing on October 30 and November 19, 2012, and January 31 and May 24, 2013, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Claimant Timothy S. was represented by his father. (Initials and titles are used to protect confidentiality.) Frank D. Lanterman Regional Center (FDLRC or Service Agency) was represented by Julie A. Ocheltree, Attorney at Law, Enright & Ocheltree LLP.

Oral and documentary evidence was presented and the matter was submitted for decision on May 24, 2013.

ISSUES

The Service Agency contends that the issues are those set forth in a Notice of Proposed Action dated April 10, 2012, denying the family's request for the Service Agency to pay Claimant's father to provide 543 hours per month of services to Claimant in the amount of \$13,739 per month. Over objection of the Service Agency, the ALJ ruled that the issues to be determined in this matter are the nine issues below, modeled after Attachment B to Claimant's Fair Hearing Request.

1. Must FDLRC complete an Individualized Program Plan (IPP) as required by California law and more specifically the applicable sections of the Welfare and Institutions Code?

2. Must FDLRC include Claimant's goals, preferences, choices and desires, and specify his specific service and service hour needs in an IPP as required by California law and more specifically the applicable sections of the Welfare and Institutions Code?

3. Must FDLRC take into consideration input from Claimant's father and mother as part of the IPP process as required by California law and more specifically the applicable sections of the Welfare and Institutions Code?

4. Must FDLRC provide the services necessary for Claimant to live independently in the least restrictive environment as required by California law and more specifically the applicable sections of the Welfare and Institutions Code?

5. Must FDLRC provide Supported Living Services to Claimant as required by California law and more specifically the applicable sections of the Welfare and Institutions Code?

6. Must FDLRC consider and allow Claimant's request and desire for family vendoring of any services, as allowed under California law and more specifically the applicable sections of the Welfare and Institutions Code?

7. Must FDLRC consider and allow Claimant's request and evidence that Claimant is exempt from attendance at a school district because his needs cannot be met in the educational system as set forth in Welfare and Institutions Code section 4848, subdivisions (a) and (d)?

8. Must FDLRC grant services to Claimant and stop unlawfully discriminating against Claimant based on his disability and the extent of his disability in violation of California laws, as well as Federal laws, the California Constitution and the United States Constitution?

9. Must FDLRC agree, at a minimum, to provide services to Claimant in the nature, type and extent (number of hours) of such services as specified in the Supported Living Services Assessment Report issued by Inclusion Services dated February 8, 2012?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits A through BB were admitted into evidence, with the exception of exhibit U, a prior administrative law Decision of which official notice was taken, and exhibit AA, an Exhibit Comparison listing where the same document can be found in each party's exhibits.¹ Claimant's exhibits 1 through 56 were admitted into evidence.

Testimonial: FDLRC employees Michele Johnson, Enrique Roman and Karen Ingram; psychologist Sandra Kaler, Ph.D.; and Claimant's father.

¹ In some instances in this Decision, reference will be made to only one party's designation of an exhibit number or letter even though that exhibit may have a number assigned by the Service Agency and a letter assigned by Claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 21-year-old non-conserved male who is eligible for regional center services based on his diagnoses of autism and moderate mental retardation. He has also been diagnosed with Down syndrome and hypothyroidism.

2. After a series of communications between the parties, the Service Agency issued a Notice of Proposed Action dated April 10, 2012, in which Claimant's father was advised that the Service Agency had denied his request that the Service Agency pay him to provide Supported Living Services (SLS) to Claimant in the amount of 543 hours per month, for a total of \$13,739 per month.

3. On June 30, 2012, Claimant's father submitted a Fair Hearing Request on behalf of Claimant, including two attachments. (Ex. B.) Attachment A is a list of eight reasons for requesting a Fair Hearing, and Attachment B is a list of nine items which father felt were needed to resolve the complaint. (Items one through eight of both lists are parallel, addressing the first eight subjects listed in the Issues section above. The ninth item of Attachment B, listed as Issue 9 above, has no corollary in Attachment A.)

4. A hearing for this matter was timely set for July 11, 2012. Claimant requested a continuance of the hearing due to a calendar conflict of a witness. The hearing was continued. As part of his request for the continuance, Claimant's father executed a written waiver of the time limit prescribed by law for the holding of the hearing and for the ALJ to issue a decision. (Ex. X.)

Claimant's Background Information

5. Claimant has substantial disabilities and requires constant supervision at all times. Claimant's father describes him as functioning like an 18-month-old infant.

6. Claimant became a client of the Service Agency when he was a young child. Beginning in or about 2004, however, Claimant's parents decided to stop using regional center services.

7. As a young child, Claimant attended a public school program with his mother accompanying him. Claimant's parents decided to withdraw their son from the public school program because they did not believe he was benefitting from it. Claimant was home schooled since approximately the fourth or fifth grade. He is not currently involved in any formal day program.

8. Claimant resides in his own home, which is a guest house on the same property as his father's home. Claimant pays rent, including utilities, from his SSI. Claimant's mother has a separate residence. As described by father, Claimant sleeps in the

bedroom of the guest house and one of his parents is usually also in the guest house at night. Father describes sleeping on a couch in the guest house and estimates he has slept in his bedroom in the main house only ten times since 2003. Father also travels for various reasons. Claimant is constantly supervised by his parents and/or other family members or a family friend. Claimant's father and family members have been able to make progress in teaching certain skills (e.g., toileting and swimming) to Claimant. In many instances, to achieve such success, it was necessary for the family to work with Claimant over years, re-teaching and reinforcing these skills.

The IPP Process and Other Relevant Events

9. In late June or early July of 2010, Claimant's father contacted the Service Agency to inquire about regional center services. In May or June of 2011, Claimant's father contacted the Service Agency again, this time to reinstate services for his son. A letter from Service Agency representative Michele Johnson, dated June 24, 2011, to Claimant's father stated that Irene Owuor had been assigned to coordinate services for Claimant. (Ex. 4 and Ex. P, p. 114.²) Claimant's case with the Service Agency was reactivated on June 24, 2011. Ms. Owuor attempted to schedule a meeting with Claimant's father in the summer to evaluate Claimant's needs however father was unable to attend due to work, travel and scheduling issues. In mid-September Ms. Owuor requested medical and school information for Claimant. Claimant's father responded with an e-mail to Ms. Owuor on October 18, 2011, in which he provided the requested information and stated, "I am writing to request services for Timothy He needs 24 hour per day care and supervision." (Ex. 6.) By November 3, 2011, Ms. Owuor and Claimant's father were again in contact to schedule a meeting, upon his return from a trip out of state. (Ex. P, p. 116.) Claimant's father requested a meeting in his letter to Ms. Owuor dated November 26, 2011. (Ex. 7.) Ms. Owuor scheduled a meeting with Claimant's father for December 8, 2011.

10. On December 8, 2011, the first IPP meeting was held. The parties discussed the nature and extent of Claimant's disabilities and needs. Claimant's father stated his son needed at least 15 hours of personal care beyond the nine hours per day of care covered by In-Home Supportive Services (IHSS) funding. An IHSS Notice of Action dated December 13, 2011, indicates that Claimant would receive funding for 283 hours per month of services, that there was no change from a previous authorization, and that there would be a reduction to 272.9 hours per month due to a change in the law. (Ex. BB. See Factual Finding 45B for more details on IHSS funding.) Claimant's father also stated that he wanted the IPP to reflect that personal care hours funded by the Service Agency should be family vendored, and that he, his wife, Claimant's brother and a family friend would do what was necessary to become vendored. Claimant's father also requested that other services be provided "separate from the 24 hour care required to attend to Claimant's direct needs for care and protective supervision." Ms. Owuor created a draft IPP document which indicated the next scheduled meeting was December 14, 2011. (Ex. C, pp. 18-23.) On December 10, 2011, Claimant's

² FDLRC exhibits are lettered, and each has page numbers beginning with "FDLRC" and several zeros. Neither "FDLRC" nor the zeros will be used in this Decision.

father sent Ms. Owuor a lengthy e-mail in which he reiterated his requests and included extensive information about Claimant's condition, skills, needs, and other relevant information. (Ex. 8.) In summary, father suggested that there was not only a need for Claimant to have 24 hour per day direct care, some of which was met by IHSS, but added services for ancillary activities such as locating and scheduling medical services, purchasing needed items, managing his financial affairs and asserting his civil rights. The December 8 IPP document was not sent to father until January 10 or 12, 2012. (Ex. 12.) Curiously, although the cover letter is dated January 10, the signatures of the Ms. Owuor and her supervisor, Ms. Johnson, are dated January 12. (Ex. C, p. 23.)

11. The December 8 IPP document is signed by Ms. Owuor and an FDLRC regional manager but was not signed by father because he did not agree with some of the information it contained. In its six pages are sections titled Living, Education / Work, Social / Recreation, and Health, and the Service Agency's agreement to obtain an SLS assessment from its vendor, Inclusion Services. It is clear that this reference to an SLS assessment was added after the meeting on December 8, most probably between December 15 and January 6, as explained in more detail below. The December 8 IPP includes a reference to Claimant's eligibility for programs from the Pasadena Unified School District (school district), but also that the parents are not comfortable with the available programs. There is no mention of other services for the Service Agency to provide.

12. Claimant's father contends that the December 8 IPP document contains incorrect information, and Issues 1, 2 and 3 relate directly to the IPP process and the information to be considered and included. It is not necessary to cull through the extensive evidence to determine whether there is incorrect information in the December 8 IPP as it was superseded by two later IPP's.

13. Although the December 8 IPP document indicated there was to be another meeting on December 14, no such meeting occurred. On December 15, 2011, Ms. Owuor called Claimant's father and advised him that her supervisor believed the family vendored care as proposed was not allowed by law, and that instead the Service Agency believed supported living services (SLS) from a third-party vendor would be more appropriate. For that reason, the Service Agency wanted to conduct an assessment to determine Claimant's needs. Claimant's father replied that family vendored care was supported by the law, and he asked for funding for a minimum of 15 additional hours a day of protective care.

14. Claimant's father confirmed the December 15, 2011 telephone discussion in an e-mail he sent to Ms. Owuor that same day. (Ex. 9.) In that e-mail, Claimant's father confirmed that he had told Ms. Owuor, "I was not going to categorize the type of care that Claimant should have or agree to any categorization of such care unless and until after we had a meeting to discuss and develop an appropriate plan for services for Claimant as required by California law. Whether such services are categorized as 'supported living services' or other services, should not be a decision that is made at the beginning of the planning process. Rather, we should be discussing the service needs, and the regional center should be determining, with the input and approval of Claimant's parents (me) the nature and

extent of needed services and how best to provide them to him.” Claimant’s father also wrote in his December 15th e-mail that he had “no objection to any type of assessment as part of the planning process and would welcome the opportunity to meet with somebody at Claimant’s apartment to review his needs and assessment as part of the planning process. However, the planning process is not a process that is determined solely by decision by the regional center.” Claimant’s father asked to schedule another meeting “to start working on the individual program plan.” (Ex. 9.)

15. In a January 4, 2012 e-mail, Ms. Owuor’s supervisor, Ms. Johnson, requested an SLS assessment to provide comprehensive details on Claimant’s activities, needs and supports. Ms. Johnson acknowledged that the family was interested in having supports for Claimant provided by his family, but that she thought the best place to start “is for us all to be on the same page regarding his needs. Once we have determined his needs, then we could move on to the services that he would require.” (Ex. 10.)

16. On January 5, 2012, Claimant’s father replied in an e-mail to Ms. Johnson. Claimant’s father expressed concern about an assessment specifically related to SLS, but was open to the idea of a general needs assessment. He asked for a significant amount of detailed information about the assessment process and the qualifications of the assessor and whether they were independent. He wanted to view a form of assessment report and asked for an independent observer. He was concerned about the added time before services might be granted, and asked the Service Agency to pay for legal services he provided to Claimant. He wrote, “To the extent that the Regional Center needs an assessment to better able determine the exact extent of his needs as part of developing a plan for his care I would welcome a generic assessment of his needs. However, I do not agree that it is a ‘Supported Living Plan’ that he needs or doesn’t need. I believe that this should be an assessment of his needs generically.... [A]s Claimant’s attorney and parent, I will not agree to any specific plan or program unless and until the nature and extent of that plan, as well as the limitations and legal consequences of that plan have been communicated to me in detail in writing and I reply in writing that such plan, limitations and consequences are acceptable.” (Ex. 11.)

17. With a cover letter dated January 10, 2012, Ms. Johnson sent a draft IPP to Claimant’s father. (Ex. 12, attaching the same December 8 IPP document described in Factual Finding 10 and also found in Ex. C, pp. 18-23.) This draft IPP document included funding for the SLS assessment. In her cover letter to Claimant’s father, Ms. Johnson stated that, in her view, the parties were still in the midst of the program planning process and could amend the IPP as needed, and that the Service Agency had “not granted or denied your request for 15 hour per day of support.”

18. On January 13, 2012, Ms. Johnson sent Claimant’s father a Notice of Proposed Action wherein the Service Agency denied funding for retroactive services and attorney’s fees. In that letter, Ms. Johnson stated “FDLRC has agreed to fund only an assessment to assist in determining Claimant’s needs.” Claimant’s father was also referred for advocacy assistance to an assigned Client’s Rights Advocate, Mr. Timothy Poe. (Ex. 13.) That Notice

of Proposed Action is not the one at issue in this case. It was the subject of a separate hearing and Decision (OAH No. 2012020706; see Ex. U.)

19A. Inclusion Services, a vendor approved by the Service Agency, performed an SLS assessment of Claimant on January 24, 2012. Inclusion Services issued its SLS assessment report on or about February 8, 2012. (Ex. L and Ex. 15. The schedule discussed below is found only in Ex. L.) The report includes background information, discussion of nine specific aspects of services, recommendations for services, and a proposed schedule of services, some of which is discussed in more detail below. The assessment report recommends funding to cover 543 hours per month of SLS, at a proposed total cost of \$13,739.00 per month. It also states that the information presented should be compared to Claimant's IPP objectives and goals and used to establish a basis for his future progress and evaluation.

19B. The section "Living Options (Housing)" notes that: Claimant's home has no stove due to fire risk, the family does all cooking and cleaning, he requires reminders to use the bathroom to avoid accidents, he requires 24/7 assistance, and that, although the family wants eventually to be vendored itself, in the interim father wants 24/7 SLS and 2 to 1 services during "programming hours" "due to the full assistance and supervision" Claimant requires.

19C. The "Health" section notes that Claimant must be bathed daily and has medication due to a skin condition. He requires assistance to take other medications. His meals are chopped. Inclusion Services proposes, among other things, to assist in setting up and attending medical appointments and assist with medications.

19D. For "Mobility Training," Inclusion Services proposes to provide transportation and training for Claimant to access the community.

19E. Under "Personal Hygiene," the following subjects and proposals are listed. Claimant's family assists with his laundry (there is no description of what part, if any, Claimant can perform). He needs reminders to use the restroom, occasionally wears diapers, and accidents must be cleaned and he must be showered immediately. It notes that sometimes 2 to 1 assistance is needed for safety reasons.

19F. Claimant has no "Money Management" skills and relies on his father for this, who requested assistance only as needed. Inclusion Services proposes, if needed, to create a budget and assist "(e.g., groceries, leisure-time materials, clothing, etc.)."

19G. The introduction notes that Claimant was uncomfortable in the presence of the Inclusion Services assessors. The section "Interpersonal Skills" adds that he may grind his teeth, start humming or have hand tremors in an uncomfortable situation, and that he may lie down on the floor. His family is familiar with his behaviors and often recognizes when he may begin to display anxiety or discomfort. Nevertheless, Claimant likes to be in the community, such as going to parks or the mall, and some shop owners greet him. Inclusion

Services proposes to assist in community access, develop a plan for involvement in community events and activities, and increase Claimant's social network.

19H. The section "Household Activities" notes that the family completes household chores as Claimant cannot. The family shops, plans meals, cooks, cleans and does laundry and would like assistance with these activities. Inclusion Services proposes to provide such assistance, in detail, as well as other household management such as responding to mail, repairs, and financial planning.

19I. Additional services are proposed to create an emergency preparedness plan, including access to Inclusions Services staff 24/7, under emergency and non-life threatening circumstances.

19J. The report explains that the total hours of service includes IHSS hours and several hours per day of 2 to 1 staffing. The total of 543 hours per month is computed as follows: 436 SLS hours at a 1:1 staff ratio plus 100 SLS hours at a 2:1 staff ratio during stimulating program hours plus 279 IHSS hours for a total of 822 hours per month, as set forth in an attached schedule discussed below. Subtracting the IHSS hours results in the total of 543 hours per month, at a proposed a total cost of \$13,739.00. The report is in error in that Claimant receives 272.9 hours per month of IHSS, not 279. (See Ex. BB and Factual Findings 10 and 45B.)

19K. The weekly schedule is summarized as follows. Inclusion Services will have staff present every day from 8:00 a.m. to 10:30 p.m. (For ease of reference, this person will be designated as "first staff person" in this Decision. As this is a 14.5 hour period each day, it is assumed that two shifts of employees will fill the role of first staff person.) On weekdays, from 9:00 a.m. to 2:00 p.m., a second staff person will be present. The schedule lists 18 activities, programmed for either the first or second staff person. These 18 activities are titled SLS focus areas and are: Health & Medical Assistance; Self-Help Skills (hygiene); Self-Advocacy; Health & Fitness; Community Resources; Money Management; Interpersonal Skills; Social Skills; Laundry Skills; Training / Habilitation Services; Safe Environment; Shopping; Emergency Preparedness; Mobility; Cooking/ Food Preparation; Generic Services Awareness; Adaptive Services Awareness; and Menu Planning/ Nutrition. Each of these 18 activities is listed for the first and/or second staff person on the weekly SLS schedule proposed by Inclusion Services.

19L. Although not explicitly stated, the SLS weekly schedule does not account for use of the 279 (correctly, 272.9) hours per month of IHSS. However, the schedule ends at 10:30 each night and begins again at 8:00 the next day, a gap of 9.5 hours. The 272.9 hours of IHSS, divided into daily amounts (assuming 4.3 weeks in a month, as used by Inclusion Services), is 9.07 hours per day. Therefore, it appears that Inclusion Services assumed the nightly gap in services, from 10:30 p.m. to 8:00 a.m. the next day, would be covered by IHSS hours and natural supports.

19M. In her testimony, Ms. Johnson was critical of the Inclusion Services proposal, claiming that most of the proposed services could be accomplished at a lower cost by the use of personal assistants and not through an SLS program.

20. In a letter to Ms. Owuor dated February 1, 2012, Claimant's father stated, among other things, that he did not agree with the December 8 IPP document. (Ex. D and Ex. 14.) For example, in the section of the December 8 IPP document titled "Education / Work" there is a reference that the school district could provide day activities. Father explained why he believed that the school district could not provide Claimant an acceptable service program, and argued that the Service Agency should therefore not exclude programming hours based on services that Claimant could receive at school. (However, the December 8 IPP contains no such suggestion and, in fact, does not propose any services other than an SLS assessment.) As no SLS services were included, father suggested they be added. (Recall that, when the December 8 IPP was sent to father on January 10, the SLS assessment had not yet occurred.)

21. In an e-mail to Ms. Johnson dated February 20, 2012, Claimant's father explained why he disagreed with the (prior, unrelated) Notice of Proposed Action, but added he was willing to defer the hearing request until the other issues in the IPP were resolved. He explained that he did not want to make determinations piece-meal and would rather proceed with the IPP "on all matters in an attempt to reach an agreement on as many matters as possible" (Ex. 16.)

22. On February 22, 2012, Ms. Johnson contacted Claimant's father to schedule another IPP meeting. (Ex. P, p. 131.) Soon thereafter, Claimant's father went out of state to care for his father. The parties communicated by phone and by e-mail frequently during March of 2012 and the date of March 23, 2012 was chosen for the next IPP meeting.

23. On March 21, 2012, Claimant's father indicated in an e-mail that he had reviewed the SLS assessment by Inclusion Services. He wrote, among other things, that "I am hopeful that, whether those services are provided through a family-vendored program or through Inclusion Services, the Regional Center will understand that these services need to be provided." (Ex. 24.)

24. The second IPP meeting was held on March 23, 2012. Among other things, Ms. Johnson discussed the fact that family vendored services had not been agreed to and for that reason were not included in the second draft IPP. Claimant's father and Ms. Johnson discussed the possibility of Claimant attending a school program and the Service Agency funding 15 hours per day of services on weekends and nine hours per week day, or more hours during the week if Claimant attended a shortened school program. However, Claimant's father declined those proposals and asked the Service Agency to pay for family vendored services at the same amount and rate as recommended by Inclusion Services. A written IPP was drafted, dated March 23, 2012. (Ex. E and Ex. 34.) Signatures of Service Agency representatives are dated May 2 and, according to a note on that page, the IPP was

sent to father on May 2. (Ex. E, p. 47.) Father sent a reply on May 7, discussed further, below.

25A. The March 23 IPP document contains more information than the February 8 IPP. Claimant is described as having some limited self-care skills but requiring substantial assistance for most of his activities of daily living. He is nonverbal with inconsistent comprehension and limited ability to communicate (by body language and facial expression). When he objects to an activity he will sit or lay on the floor. He is normally well behaved and does not exhibit aggression. Claimant has no safety/danger awareness and requires close supervision at all times.

25B. The March 23 IPP document notes that Claimant receives 272 hours per month of IHSS including 5.4 hours per day of protective services. (The actual amount is 272.9.) His mother is the IHSS provider. Father requested the Service Agency provide SLS 24 hours per day, seven days per week. Service Agency noted that the school district can be a resource for school hour services, but father “declined to accept anything less than 15 hours per day, Monday through Sunday.” (Ex. E, p. 40.) Service Agency offered respite, but father would not agree until all services he requested were approved. Service Agency informed father that he could agree to some services while pursuing other services, which did not change father’s position. Father agreed to an assessment to determine if there was assistive technology (e.g., a computer and software) to increase communication.

25C. The March 23 IPP document relates that Claimant is eligible for services from the school district, that the school district is responsible for his educational needs, that he would have to go through an assessment process, and that an Individual Education Program (IEP) would be developed. Father expressed disagreement about the quality of services provided by the school district and stated the family’s preference for Claimant to continue to engage in daily activities with family members.

25D. The March 23 IPP document expresses a similar family preference regarding social and recreational activities; that is, to engage in such activities with family members.

25E. The March 23 IPP document relates that Claimant is in relative good health. Relevant information is that he has difficulty sleeping at night, with inconsistent sleep patterns, requires supervision during the day, and has inconsistent bladder and bowel control.

26. On April 6, 2012, Ms. Johnson sent Claimant’s father an e-mail notifying him that a Notice of Proposed Action would be sent denying his request for family vendored funding in the amount of \$13,739 per month for SLS services. On April 9, 2012, Claimant’s father sent Ms. Johnson an e-mail in which he asked, among other things, why a Notice of Proposed Action would be sent prior to completing the process of creating an IPP. (Ex. 25.)

However, when his request for this service was denied, the Regional Center was required to notify Claimant of that action under Welfare and Institutions Code section 4710.³

27. As set forth in Factual Findings 2 and 3, this Notice of Proposed Action was sent to Claimant's father on April 10, 2012. On June 30, 2012, he filed the Fair Hearing Request that resulted in this hearing. Although a fair hearing request is to be filed within 30 days of notification of a regional center decision (§ 4710.5, subd. (a)), the Service Agency made no objection and this matter proceeded to hearing.

28A. The Notice of Proposed Action referred to a letter from Ms. Johnson, also dated April 10, 2012, for the reasons that the service requests had been denied. (Ex. A and Ex. 28.) The letter is ten pages long and includes, among other things, various statements about Claimant and father's position on services, many of which are included in previous Factual Findings and will not necessarily be repeated. Ms. Johnson's letter also included citations to various statutes and regulations.⁴ Generally, Ms. Johnson takes the position that the SLS assessment was performed to gather pertinent information, but that SLS is not the proper service for Claimant. She writes that Claimant is not eligible for SLS as he "is not living in his own 'home'" as defined by regulation, and does not control his environment or make his own choices. Further, if SLS was appropriate, the Service Agency would use a vendor to assure compliance with applicable statutes and regulations, and to ensure quality of service and cost-effectiveness.

28B. Ms. Johnson also notes that the hours of services proposed in the SLS assessment do not account for generic resources and natural supports, which would serve to reduce the total number of hours of SLS. IHSS and the school district are identified as generic resources. She encourages father to consider having the school district do the assessment and planning necessary to prepare an IEP to see what program are available. Although father wants the Service Agency to excuse Claimant from the requirement to use school district services, the Service Agency states that it will require more than father's unilateral determination that the school district cannot help Claimant. With respect to natural supports, Ms. Johnson comments that father is asking the Service Agency to pay him to care for his son, and that this is contrary to the Lanterman Act.

28C. Based on her conclusions that: Claimant does not qualify for SLS; the school district could supply six hours per weekday of supervision / education; IHSS could be used for overnight and other supervision; and assuming that the family could provide 57 hours per month of supervision, Ms. Johnson proposes that the Service Agency provide a personal attendant for 279 hours per month to be utilized after school and weekends. According to

³ All further statutory references are to the Welfare and Institutions Code. Code sections 4500 through 4868, known as the Lanterman Developmental Disabilities Services Act, will be referred to as the Lanterman Act.

⁴ The statutes referenced are from the Welfare and Institutions Code. The regulations are from the California Code of Regulations, title 17, and will be referred to as "Regulation."

Ms. Johnson's calculations, this would provide 1:1 coverage for Claimant for all 744 hours in an average month.

28D. In her testimony, Ms. Johnson stated that she was not particularly concerned with the title placed on the services, as some could be characterized as personal assistance, or respite, or independent living services. At this point in time, she was more concerned with establishing the number of hours of service to be provided.

29A. Also on April 10, 2012, father sent an e-mail and mailed a letter responding to Ms. Johnson.

29B. Father's eight-page April 10 letter (Ex. 26 and Ex. H) addresses numerous subjects, only some of which are referenced here. He comments that Claimant was present for the March 23 IPP meeting and that it was apparent he was significantly and profoundly retarded, yet highly mobile. Father requests: "at a minimum," the SLS services recommended in the assessment by Inclusion Services; family vendoring for SLS; rental assistance; assistive technology for communication; transportation assistance; assistance for household finances; financial management; homemaker services; and advocacy assistance.

29C. With respect to the school district, father repeated the negative factors that led to the family removing Claimant from past school programs. He stated concerns that advances in Claimant's behavior, such as the painstaking approach by father to teach toileting skills over 13 years, were likely to regress. A regular school schedule would be difficult based on the effect of medications on Claimant's sleep schedule, which is erratic. Father relayed that he had recently observed a school district program which, according to his discussion with program employees, would not meet Claimant's needs. Father related his recent discussion with the school district's head of special education, who "acknowledged the risks and limited benefits from [Claimant] attending their school programs." Father concluded that the school district cannot meet Claimant's needs. Father also asserted that the situation was such that Claimant qualified for the exemptions from reliance on school district services based on "extraordinary circumstances" and the inability of the school district to meet Claimant's needs.

29D. Father did not accept or reject the Service Agency's proposal to provide personal attendant services for 279 hours per month. Rather, he focused on Ms. Johnson's statement that she did not have authority to make this an official offer, and concluded that the Service Agency had not met the requirement to have a decision-maker at the IPP and had violated section 4646, subdivision (d).

29E. With respect to family vendored SLS, father contended that the Service Agency was incorrect in its position that it was not legal. (As noted below, father was correct in this assertion and the Service Agency, ultimately, developed procedures for family vendoring of SLS.)

29F. Father recapped his view of the history of the IPP process and his frustration at the length of time taken and the lack of any services for Claimant during that period. He did not believe that the IPP documents specified Claimant's needs. He requested, among other things, to review Claimant's file, a further IPP meeting with a decision-maker, and a meeting with a supervisor to determine how to best proceed.

30. Ms. Johnson expressed concern about father's letter and replied that she had been unavailable to respond immediately. She wanted to set a further meeting with father. (See Consumer Transactions notes for 4/11/12, Ex. P, p. 139.)

31. On a separate track, the Service Agency treated father's April 10 letter as a written complaint under section 4731, which authorizes complaints if a consumer's rights have been "abused, punitively withheld, or improperly or unreasonably denied."⁵ The Service Agency's response was written by Melinda Sullivan, Associate Director, Client and Family Services, is dated May 11, and is summarized below. (Ex. I; Factual Finding 35.) Father appealed the matter to DDS. (Ex. J, pp. 77-79.) On June 11, 2012, DDS replied to the effect that father had already filed his fair hearing request (a reference to the prior fair hearing noted in Factual Finding 18 and discussed further below) and the issues raised in the 4731 complaint would be more properly addressed in the fair hearing. (Ex. J, p. 76.)⁶

32. The parties then exchanged several e-mails, arranging for the assistive technology assessment and to schedule a further IPP meeting. (Exs. 29-32.)

33. On May 2, the Service Agency sent the March 23 IPP to father. Father authored an e-mail reply on May 6, 2012 (Ex. 33) in which he contends, among other things, that the IPP is inaccurate and does not contain any services. He reiterates many of the positions he had taken previously. Father explains that two service providers may be necessary at certain times; for example, while an IHSS worker does laundry, cleaning or meal preparation, Claimant cannot be left unattended. Father offers to have another IPP meeting and requests that a decision-maker be present.

34. Also in early May the parties worked on arranging for the assessment for assistive technology.

⁵ A "4731 complaint" is different from a fair hearing request. In brief, the complaint goes to the regional center's director, who can investigate and submit a written response. If the complainant is not satisfied with that response, the complainant can forward the matter to the Director of the Department of Developmental Services (DDS) who can make a written decision.

⁶ The issues raised in father's 4731 complaint are relevant to this fair hearing only to the extent that those issues are included in the nine issues raised by father in the fair hearing request, which are stated at the outset of this Decision.

35A. Ms. Sullivan's response to father's April 10 letter is dated May 11. (Ex. I.) It contains a response to each section of father's letter, some of which will be summarized here. Ms. Sullivan's May 11 letter is designated as the Service Agency's response to his 4731 complaint (see Factual Finding 31) and tracks the sections in father's April 10 letter. Regarding the March 23 IPP, the Service Agency did not agree with all of father's representations about what was discussed, but does not set forth any details.

35B. With respect to SLS, Ms. Sullivan comments that a fair hearing request was received relating to this issue. Again, this is a reference to an earlier matter, not this one. Some brief discussion of this earlier matter is necessary for context. As noted in Factual Finding 18, the Service Agency sent an earlier Notice of Proposed Action on January 13, 2012. Father filed a fair hearing request on February 13, 2012. The matter proceeded to hearing on June 19, 2012, and a Decision was issued by Administrative Law Judge (ALJ) Eric Sawyer dated July 23, 2012. (Ex. UU.) Father disputes the accuracy of some information in the Decision; however it is referenced here to explain some of the actions taken and statements made by the parties. This prior fair hearing request included four issues; ALJ Sawyer determined that he had jurisdiction over only two of those issues. ALJ Sawyer declined to exercise jurisdiction over the issues (1) that the Service Agency timely provide services required by law, and (2) that the Service Agency complete the IPP process promptly. (Ex. UU, p. 9.) ALJ Sawyer decided two other issues: retroactive reimbursement for services, and advocacy. (Ex. UU, p. 9.) This brief history explains Ms. Sullivan's comment in her May 11 letter that the issue of SLS was pending for the (prior) fair hearing process, was not proper in the context of a 4731 complaint, and would not be addressed further in her letter.

35C. Father's concerns about the lack of efficacy of any school district services was also considered as pending for the (prior) fair hearing process and Ms. Sullivan does not address it further other than to reference, as did father, the exemption process in section 4685.55, subdivision (d). She notes that low functioning is not considered as justification for waiving an education program and she requests father to allow the Service Agency to discuss with the school district what district services may be available to meet Claimant's needs.

35D. Ms. Sullivan acknowledges that family vendored SLS is allowed, under the same regulations that apply to other SLS providers, and refers to those regulations in her letter. Again, as the issue of family vendoring was pending for the (prior) fair hearing process and was not proper in the context of a 4731 complaint, she does not further address the issue in her letter.

35E. With respect to the services requested by father, Ms. Sullivan states they should be discussed at a follow-up IPP meeting. Concerning the IPP process to date, Ms. Sullivan provides her own summary of the history. She notes the upcoming IPP meeting for May 16 that will include Ms. Johnson and her supervisor, that the SLS assessment had been performed, and that the source of services must be addressed by the program planning team. She refers to references in the Lanterman Act to natural supports and generic resources, and cost-effective use of regional center funds for services. Finally, Ms. Sullivan notes that the

prior notice of proposed action cannot be cancelled, as requested by father, but that if the parties reached agreement on services at the upcoming May 16 IPP meeting there might be no need to have the hearing.

36A. The parties had a further IPP meeting May 16, 2012. A draft IPP was prepared (Ex. F and Ex. 38), which was sent to father June 18 (Ex. F, p. 48). The meeting was attended by father, Ms. Johnson and Enrique Roman, Assistant Director of Client and Family Services for the Service Agency. The May 16 IPP document contains some information from the prior IPP's and is more comprehensive than the prior IPP's. Portions of the May 16 IPP document are summarized herein.

36B. Of note in the "Living" section, Claimant's father and mother live in separate homes; they share responsibility for ensuring Claimant's care and well-being; Claimant's residence is a guest house on the grounds of father's house, but with its own address, and contains a bedroom, bathroom and kitchen. Claimant pays rent and utilities of \$500 per month to father. Claimant is nonverbal but the family has become adept, with moderate success, at reading / deciphering his body language and gestures to determine what he is trying to communicate. An example was given related to making a peanut butter sandwich. However, when Claimant goes to the kitchen cabinet, the family is not sure if he is communicating general hunger or the specific desire for the sandwich. Claimant demonstrates inconsistent comprehension of directives to him. He can walk independently but uses a wheelchair for extended community outings. Claimant requires 100 percent assistance with bathing, grooming and dressing. He exhibits inconsistent bladder and bowel control, requires frequent reminders, and wears protective undergarments. Claimant requires food to be cut and fed to him. He does not have skills or ability to complete household chores or manage money. IHSS is assisting with hygiene, grooming and dressing, for protective supervision as allotted, and groceries, chores and meal preparation.

36C. Claimant's behavior is usually good. He has no concept of safety or danger. If left unattended he will climb furniture or wander. He requires close supervision at all times. Although not aggressive, Claimant may indicate objection to an activity by sitting or lying on the floor, or may do so with no known reason. At times it is necessary for father and another person to lift him. This has occurred, for example, while walking at the mall or while bathing.

36D. In a section marked "Services Discussed" is a summary of the Service Agency's denial of the request to pay SLS and the Service Agency's offer of "alternative services." Father gave more information about the "select group" of people familiar with Claimant and able to care for him. Father expressed the desire for family vendored SLS, and the Service Agency stated that, to reconsider the request, it needed "to investigate the rate of payment and whether or not a family member could be hired to provide the support, among other things," and would seek to clarify the issues. Father would provide a proposed staffing schedule. IHSS and school services were mentioned as possible generic resources. Father expressed doubts that the school district could develop an appropriate education program for Claimant and was concerned Claimant would lose valuable skills learned at home, such as

toileting. When father inquired of an exemption from the requirement to utilize school district services, Service Agency noted it would have to see the school district's documentation of services it could offer before the exemption criteria could be satisfied. The parties discussed assistive technology and father indicated he had signed the consent forms.

36E. The May 16 IPP document notes that Claimant receives 272 hours per month of IHSS including 5.4 hours of protective services per day. Father agrees to supply the IHSS award letter.

36F. The IPP section on "Education" has information on Claimant's prior experience with the school district and repeats father's skepticism that it can meet his present needs. Service Agency informed father that the school district should perform an assessment and have an IEP plan addressing Claimant's needs. Father expressed the preference that Claimant engage in daily community activities with his family. The section on "Social / Recreation" describes some of these activities.

36G. The section on "Health" includes reference to the side effect of Claimant's medication causing difficulty in sleeping through the night. Claimant requires supervision during these unscheduled and varying awake hours and also does not have a regular waking time. IHSS is assisting with toileting, maintaining hygiene, obtaining and administering medications and attending medical appointments.

37. Soon after the May 16 IPP meeting, but before the plan document was sent to father, there was further correspondence. Mr. Roman attended the May 16 IPP meeting and wrote to father on May 29 that he is following up on the meeting. (Exs. G and 36.) He notes the subject of family vendored SLS was discussed and is being examined by the Service Agency. Mr. Roman asks father to provide a proposed staffing schedule as an alternative to the prior offer of 279 hours per month of personal assistant services. (this was determined by Ms. Johnson based on her consideration of IHSS hours and the school district's responsibility to provide services. See Factual Finding 28C.) Mr. Roman asks father to provide the IHSS document listing the IHSS services and hours awarded. Mr. Roman also confirms that father would schedule an IEP meeting with the school district and requests that father also invite personnel from the Service Agency to attend.

38. At the hearing, father explained that he understood the request for a staffing schedule to relate to a discussion at the May 16 IPP meeting concerning resolution of the services issue. Referring to the assessment by Inclusion Services (Exs. L and 15; Factual Finding 19), and its plan to provide 543 hours of SLS per month, father wanted either to be paid to provide this amount of SLS to Claimant, or to have Inclusion Services provide the proposed SLS. Mr. Roman noted the Service Agency's proposal to provide 279 hours per month of personal assistance (see Factual Finding 28C). Father believed that the Service Agency was considering a compromise between these two levels of services. When he worked out his schedule of staffing for Claimant and it came to an amount higher than 543 hours per month, he believed that the Service Agency would not be interested and did not send the schedule to the Service Agency.

39. Father responded to Mr. Roman's May 29 letter by e-mail also on May 29. (Ex. 37.) He indicates he will send a more detailed response later, and informs Mr. Roman that he will send the IHSS notice of action letter and that he met with the school district. The district was deciding whether to do an evaluation and how they could provide effective services, and would contact father. Father again states the family preference for family vendored services, suggesting it is the least restrictive environment and cost effective.

40. The May 16 IPP document was sent to father on June 18, 2012. (Ex. F.) Ms. Johnson's signature is dated June 18. The letter requests father to sign and return the signature page. Father did not sign.

41. As noted above, father submitted the Fair Hearing Request on June 30, 2012. As the purpose of this fair hearing is to determine the issues he framed as of that time, the later communications exchanged by the parties are of lesser significance and they will be addressed generally, if at all.

42. On July 12, 2012, Ms. Sullivan sent a letter to father with a booklet on family vendored SLS that was recently developed by the Service Agency. (Ex. K.) Ms. Sullivan reminded father that his request for family vendored SLS had been denied, that he had filed a Fair Hearing Request, and that the Service Agency had not changed its decision to deny that request.

43. Father wrote an e-mail to Mr. Roman on July 25, 2012, in which he states, among other things, that he had prepared a schedule to staff Claimant's needs and concluded those needs exceeded the services and hours listed in the Inclusion Services assessment. (Ex. 39) After meeting with the school district, he was still waiting for their response. Father again asserts that Claimant will receive no better care than that provided by his family and friends rather than the Service Agency "paying more money for strangers to provide a lower quality of care."

44. In a letter to Ms. Sullivan dated July 29, 2012, father responds to her July 12 letter. (Ex. 40.) He relates that Mr. Roman apologized at the May 16 IPP meeting for the Service Agency's earlier position that family vendored SLS could not be provided under the law. Father asks questions concerning the Service Agency's decision to not allow family vendored services for Claimant. Father notes that a family vendored SLS provider is required to meet all requirements of other SLS providers, but that under Regulation 58630, subdivision (d), a regional center can waive or reduce certain "service design" requirements if services are limited to one home, the "competence and suitability" of the applicant has been established under other Regulations, and no adverse impact on quality of service will result from the reduction in service design requirements. Father inquires whether the Service Agency will reduce or waive these service design requirements so Claimant's family can become family vendored SLS providers for Claimant.

45A. Claimant receives IHSS in the amounts of time and service categories listed in the IHSS Notice of Action. (Ex. BB.) The time amounts are somewhat deceiving, as the Notice of Action also states that, under section 12301.06, these times are each reduced by 3.6 per cent. Although the Notice of Action applies that reduction to the total number of hours per month (283, to reduce it to 279), it does not compute the reduction for each of the services listed. The Notice of Action was provided during the hearing; there was no evidence it had been provided to the Service Agency prior to the hearing.

45B. Claimant receives the following monthly IHSS, in the amount of hours noted (again, not yet reduced by 3.6 per cent):

Hours Description of Services

5.00	Domestic services (clean floors, wash kitchen counters, stoves, refrigerators, bathrooms; store food, supplies; take out garbage; dust, pick up; bring in fuel; change; make bed and miscellaneous)
7.00	Prepare meals
2.45	Meal cleanup
1.00	Routine laundry
1.00	Shopping for food
0.50	Other shopping errands
2.80	Medical- bowel, bladder care
3.50	Medical- Feeding
2.33	Personal- Dressing
5.01	Personal- Bathe, oral hygiene/grooming
0.47	Personal- Rub skin, repositioning, help on/off seats, in/out vehicles
0.46	Accompaniment to medical appointment
37.69	Protective supervision per week

46A. Father obtained an Independent Assessment of Supported Living Services from the Association for Individuals with Developmental Disabilities (AIDD) dated August 15, 2012. (Ex. 44.) This assessment confirms many of Claimant's symptoms, behaviors, abilities and limitations.

46B. Each topic in the report includes a recommendation of service hours. These are summarized and include generic / IHSS services. (Ex. 44, pp. 26 - 28.) The following subjects and hours per week are included in the proposed plan: Health, 2 hours; Financial, 2 hours; Domestic Skills, 33 hours (and 31.74 hours for generic services); Self Help Skills, 33 hours (and 31.74 hours for generic services); Community Access and Transportation, 14 hours; Safety / Risk, 40 hours; and Overnight (AWAKE), 57.67 hours. (It is assumed that the reference to Overnight (AWAKE) means that overnight staff would be awake, and not allowed to sleep.) The totals per month are 781.18 hours for SLS staff and 272.96 hours for generic / IHSS. From the information in the report, it cannot be easily determined if the proposal includes any 2:1 support, and whether the overlap of SLS and generic services in two areas is meant to indicate 2:1 support or services in a serial or combined fashion or something else. However, considering that the average month contains 744 hours, the AIDD assessment necessarily includes 2:1 support for 41.18 hours of SLS staff and all 272.96 hours of IHSS.

46C. It is clear that the sources of information for the AIDD assessment was father and an observation of Claimant. There is no reference to review of any documents, and in particular the assessment performed by Inclusion Services. As a result, the assessment is extremely supportive of father's requests for services. For example, it suggests 2:1 coverage for at least ten hours per day. It suggests that the family be vendored and that nothing be done "to alter his support so as to cause him to regress," that any day program "utilize his parents in his care and instruction." For these reasons, and others, the recommendations in this assessment report are given relatively little weight.

47. Father presented the testimony and psychological evaluation, dated August 8, 2012, of Sandra Kaler, R.N., Ph.D., based on her observations of Claimant and consultations with father in July and August 2012. (Ex. 45.) Dr. Kaler estimates she observed Claimant for two hours and reviewed the SLS assessments by Inclusion Services and by AIDD. Her report confirms many of Claimant's symptoms, behaviors, abilities and limitations. Dr. Kaler supports father's proposed program of care, and cautions that a change in current programming has a risk of regression in skills. She suggests an outside agency consult with father to optimize the program. She recommends "round-the-clock care, including 2:1 staffing during hours that are problematic," referring to the AIDD assessment, and a referral to a neurologist for further examination of Claimant's communication limitations. Dr. Kaler's primary sources of information were father and the AIDD report. She had not reviewed any documents suggesting the competing concerns of the Service Agency. The weight given to her recommendations suffers accordingly.

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LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

Burden and Standard of Proof

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

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. (Evid. Code, § 115.) When one seeks government benefits or services, the burden of proof is on him or her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In this case, Claimant bears the burden of proof, because he is seeking funding that the Service Agency has not agreed to provide.

Jurisdictional Issues

3. Section 4710.5, subdivision (a), provides that an applicant for or recipient of services dissatisfied with any decision or action of a regional center may request a fair hearing within 30 days after “notification of the decision or action complained of”

4. Section 4710 delineates two types of notifications that a regional center is required to provide a consumer regarding a decision or action from which can result a request for a fair hearing pursuant to section 4710.5. In section 4710, subdivision (a), a regional center is required to provide a notification when it proposes to “reduce, terminate, or change services set forth in an individual program plan” or when a consumer is determined to be no longer eligible for services. In section 4710, subdivision (b), a regional center is required to provide a notification when it makes a decision “to deny the initiation of a service or support requested for inclusion in the individual program plan.”

5. The Notice of Proposed Action in this matter is of the second type noted above – a denial of a service request – as set forth in Factual Finding 2. Although the denial was to the specific request that the Service Agency pay father to provide SLS of 543 hours per month, in the amount of \$13,739 per month, father’s Fair Hearing Request goes far beyond this one issue and father listed the nine items needed to resolve his complaint that have been deemed the issues to be decided herein. (See Issues and Factual Findings 2 and 3.)

6. There was no objection to father’s filing beyond the 30 day period in the statute. Jurisdiction is found for this matter,

Issues Relating to the IPP

7. Under section 4620, subdivision (c), the Service Agency is responsible for providing services and supports for individuals with developmental disabilities. In doing so, the Service Agency must respect the choices made by consumers and their families under section 4502.1. Services are designed toward “alleviation of a developmental disability,” and among the services and supports to be provided are behavior training and behavior modification programs, under section 4512, subdivision (b).

8. The process for identifying the need for services and for providing funding for the services by regional centers is generally set forth in sections 4646 and 4648. As applied to this case, that process includes that a request for the services would be made and discussed by the team responsible for coordinating a consumer’s plan of services, including the parents and Service Agency representatives.

9. The applicable sections of the Code address the team nature of the decision-making process regarding those services that are to be supplied or funded by the Service Agency. This is accomplished by the IPP process, which is described and referred to in numerous sections of the Lanterman Act. Set out below are some of the sections that describe the purpose of the IPP and the process of preparing and modifying the IPP.

10. Section 4512, subdivision (b), provides, in part:

“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.”

11. Section 4646 provides, 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. 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.

“(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. [¶] . . . [¶]

“(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the Service Agency or obtained from generic agencies shall be made by agreement between the Service Agency representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.”

12. Section 4646.5 provides, in part:

“(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

“(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

“(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals. [¶] . . . [¶]

“(4) A schedule of the type and amount of services and supports to be purchased by the Service Agency or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain

timelines for actions necessary to begin services and supports, including generic services. [¶] . . . [¶]

“(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.”

13. Section 4647, subdivision (a), provides:

“(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

14. Section 4648 provides, in pertinent part:

“In order to achieve the stated objectives of a consumer’s individual program plan, the Service Agency shall conduct activities including, but not limited to, all of the following:

“(a) Securing needed services and supports.

“(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer’s individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.”

“(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.” [¶] . . . [¶]

“(6)(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. . . .”

15A. The process created by these sections and others can be summarized and explained in less technical terms. The Code sections set forth criteria that relate to the development and modification of an IPP for a person with a developmental disability, referred to as a consumer.

15B. An IPP is developed through a collaborative effort involving the appropriate Service Agency representatives and the consumer and/or the consumer's representative(s), and others, sometimes collectively referred to as the program planning team. It was the intent of the Legislature that persons with diverse skills and expertise were to serve on the program planning team. They were intended to confer, deliberate, and decide what should be included in the consumer's IPP. The program planning team may not abdicate its role nor may it ignore its duty owed not only to the consumer but also to the IPP process.

15C. The IPP is prepared for the consumer by, among other things, identifying necessary services and supports. The Service Agency must allow the consumer and his parents to participate in developing the IPP. The plan must be based on information and assessments relating to the consumer's life goals, his capabilities and strengths, his preferences, any barriers to meeting his goals, his concerns, and other relevant data.

15D. Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family. Claimant and his parents have the reciprocal obligation to assist the Service Agency in meeting its mandate. No consumer should benefit by refusing to cooperate with the Service Agency, even if such conduct is well intentioned.

15E. An IPP must include a statement of the consumer's goals, based on the consumer's needs, preferences, and life choices. Identified goals and objectives should maximize a consumer's opportunity to develop relationships and participate in community life, in housing, work, school, and leisure activities. Identified goals and objectives should increase the consumer's control over his life, should assist the consumer in acquiring increasingly positive roles in community life, and should be directed toward developing competency to help accomplish these goals. Proper goals and objectives allow for efficient evaluation of the effectiveness of the plan and the progress made by a consumer.

15F. The Service Agency is required to prepare a plan identifying the services and supports a consumer needs to meet the goals and objectives identified by the program planning team, and determine whether those services and supports are to be purchased by the Service Agency, obtained from generic agencies, or provided from other sources. Claimant and his parents have the right to provide the Service Agency with input into the selection of the providers of those services and supports. The services provided must be effective in meeting IPP goals and the IPP should be cost-effective in its use of public resources.

15G. If a consumer and/or his representatives do not agree with all of the components contained in an IPP, the area(s) of disagreement may be noted; but, a disagreement with specific IPP components does not prevent implementation of those services and supports to which there is no disagreement. The Service Agency must send written notice advising the consumer and/or his representatives of the right to a fair hearing as to the areas of disagreement.

16. If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at the conclusion of the IPP process, a subsequent IPP meeting shall be convened within 15 days, or later at the request of the consumer or his authorized representative, or when agreed to by the IPP planning team. (§ 4646, subd. (f).) Additional meetings may be held with the agreement of the IPP planning team. (*Id.*) When the parties involved in planning the consumer's services cannot reach an agreement, it is appropriate to take that disagreement to a fair hearing, present relevant evidence, and have a decision prepared to resolve the issue. (See §§ 4646, subd. (g), 4710, 4710.5, 4710.7 and 4712.)

17. The Service Agency's initiation of the IPP process was appropriate here. The file was reopened in May or June 2011 and efforts were made to meet for an IPP in August. Due to no fault of the Service Agency, the first IPP meeting did not actually occur until December 8. Under all of the circumstances, it cannot be concluded that the Service Agency acted improperly or to thwart the purposes of the Lanterman Act regarding how and when the first IPP meeting was scheduled.

18. Subsequently, the amount of information gathered and exchanged between Claimant's father and the Service Agency was substantial. The parties engaged in three formal IPP meetings with draft IPP's prepared that, in each instance, the Service Agency agreed with and signed, and in each instance father did not sign. The last, the May 16 IPP, preceded the filing of the Fair Hearing Request by 14 days. When the Fair Hearing Request in question was submitted, the parties were still actively engaged in discussing all of the issues.

19. Issue 1 requests completion of the IPP. Issue 2 requests that the IPP include Claimant's goals, preferences, choices and desires, and services. Issue 3 requests that the Service Agency must consider input from Claimant's father and mother as part of the IPP process. Father is correct that an IPP has not been completed. The May 16 IPP sufficiently meets numerous, but not all, of the requirements for an IPP. It contains a sufficient statement of Claimant's goals and objectives, but not the services and supports to be purchased by the Service Agency. (§§ 4646, subd. (d), and 4646.5, subd. (a).) As noted in more detail below,

services and supports will be ordered. The Service Agency considered input from Claimant's father in setting forth those goals and objectives. With the inclusion of the services and supports through the fair hearing process, the IPP will be completed under the authority of section 4646, subdivision (g). No further resolution is needed as to Issues 1, 2 and 3.

Issues Relating to Services and the Family as Vendor

20. Issues 4, 5 and 9 relate to necessary services generally and, more specifically SLS. (Issue 4 requests services generally; Issue 5 requests SLS; and Issue 9 requests the services recommended in the Inclusion Services SLS assessment.) Issue 6 is related in that it requests SLS to be family vendored. Issue 7 is related in that it requests an exemption from the requirement that education services be obtained and considered when determining Claimant's needs for SLS.

21. There are numerous statutes and Regulations regarding SLS, some of which are summarized as follows. Under section 4354, SLS "means a range of appropriate supervision, support, and training in the consumer's place of residence, designed to maximize independence." Further specifications are found in Regulation 58614, subdivision (a), which states that SLS consists of individually designed services which assist an individual consumer to live in his own home, "with support available as often and for as long as it is needed," and "make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home." SLS must be "tailored to meet the consumer's evolving needs and preferences for support so that the consumer does not have to move from the home of choice." (*Id.*) Under Regulation 58617, the list of services includes, inter alia, assistance with common daily living activities such as meal preparation, including planning, shopping, and cooking; performing routine household activities to keep a clean and safe home; locating and scheduling medical services; acquiring household furnishings; becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community; managing personal financial affairs; recruiting, screening, hiring, training, supervising, and dismissing personal attendants; dealing with governmental agencies; asserting civil and statutory rights through self-advocacy; building and maintaining interpersonal relationships, including a circle of support; participating in community life; and 24-hour emergency assistance. Further, a regional center is obligated to assess the projected annual costs of the consumer's supported living assistance, as determined through the IPP process, before SLS is provided.

22. Claimant does not have the present capabilities to significantly participate in many of these activities, but the evidence established that, with the interpretation of those familiar with his mannerisms, he has some limited ability to participate in some of them. Further, through incredible devotion, diligence, consistency and perseverance, father has demonstrated that Claimant is able to acquire some important skills, albeit very slowly.

23. The type of service required by Claimant, whether SLS or personal attendant, or other, is contested by the parties. The assessment by Inclusion Services recommends an SLS program, but some of the services included may fall outside of the scope of SLS as defined by the law, and some of the services included also fall within the scope of Claimant's IHSS hours. Ms. Johnson conceded that the Service Agency's offer of 279 hours of service per month could be by a personal attendant, under respite, under independent living services, or under another category to be determined later. She was more interested in whether father would agree to the number of hours.

24. The Service Agency's determination on April 10, 2012, that Claimant did not qualify for SLS was based on its interpretation of other statutory requirements of SLS. Under Regulation 54302, subdivision (a)(71)(A), SLS are to support a consumer's efforts to live in their own homes. Under Regulation 58601, subdivision (a)(3), "home" is defined as a house, apartment, or comparable dwelling space "in which no parent or conservator of the consumer resides, and which the consumer chooses, owns or rents, controls, and occupies as a principal place of residence." Service Agency contends that, as father or mother is present in Claimant's residence every night, his residence does not qualify as a home under these Regulations and Claimant therefore is not eligible for SLS. This contention is rejected. First, father and mother have their own residences that are separate from Claimant's residence. They are present each night to assist Claimant when necessary due to his disability and medical needs (e.g., the medication that interferes with his sleep and causes him to awaken). There was insufficient evidence to establish that father "resides" in Claimant's residence. Further, there is a certain irony to this situation. As no services are presently provided by the Service Agency, it is necessary for father or mother to be present to assure Claimant's safety, some of which is under IHSS protective services. Yet their presence, claims the Service Agency, makes him ineligible for the very services that would potentially make their presence less necessary.

25. The second reason cited by the Service Agency to support its determination that Claimant did not qualify for SLS is based on section 4689, subdivision (a)(4), requiring regional centers to, among other things, ensure that SLS adheres to the principle that consumers "shall have control over the environment within their own home." The Service Agency contends that due to the level of his disabilities, Claimant does not control the environment in his home and, therefore, is not eligible for SLS. This contention is rejected. The Service Agency misinterpreted this statute, which instructs it to assure that SLS arrangements for a consumer shall allow the consumer to have control over his home environment. In other words, SLS will not prevent the consumer from having that control. This is not a requirement that the consumer exercise this control but, rather, a direction that the SLS arrangements not limit the consumer's control. Further, a consumer cannot be excluded from supported living arrangements based solely on the nature and severity of their disabilities (section 4689 and Regulation 58613).

26. There is sufficient evidence to conclude that Claimant qualifies for SLS. This includes the Inclusion Services assessment, the AIDD report, and the testimony and report of Dr. Kaler. The Service Agency has the right and obligation to periodically review and

monitor the SLS provided (see section 4648.1) to determine whether it is effective and shall be continued beyond the parameters of this Decision, or continued at all. In doing so, it should consider, at least, whether Claimant remains eligible (see, for example, Regulation 58613), whether Claimant can exercise sufficient independence (see section 4354), and whether the services are cost-effective (see Regulation 54349).

27. There are several requirements to become an SLS provider. The Regulations are found at 58600 through 58680, and include, inter alia, requirements for specific components of services and supports, consumer rights, service design, standards, training for administrators and staff, rates and evaluations. The application to be a vendor must be approved if the applicant meets all the requirements, pursuant to Regulation 58612. Under Regulation 58616, a consumer can serve as his own SLS vendor. Under subdivision (b), a relative can do so only when it is determined through the IPP process that:

“(1) Unpaid family-based, or other natural supports for the consumer will not be supplanted;

“(2) Such service is consistent with the consumer's IPP goals and objectives;

“(3) The relative or conservator proposing to serve as the SLS vendor has no legal obligation to support the consumer;

“(4) The consumer's preference is for that relative or conservator to serve as the SLS vendor; and

“(5) The service will be at least as cost effective as any available alternative.”

28. The Service Agency will consider an application for family vendored SLS that complies with the requirements of all applicants seeking to provide SLS, to any qualified consumer. Father has requested that certain requirements be waived or reduced. For example, under Regulations 58630, subdivision (d), and 58640, subdivision (d), under certain circumstances a regional center may waive or reduce certain requirements for service design, and under Regulation 58654, under certain circumstances a regional center may waive certain requirements for training.

29. Father has never submitted an application to become vendored to provide SLS for Claimant. He argues that it will be easier, and less costly, for him to submit an application if the service design and training requirements are waived or reduced. He contends that the Service Agency should indicate to him, before he submits any such application, whether it will reduce or waive some of the requirements regarding service design of the SLS program. The Service Agency has not indicated to him that it will do so. There is no requirement for the Service Agency to reduce or waive these requirements. It is an option. The Service Agency is not unreasonable in seeking to review an application from father to determine whether he is capable of providing SLS under the applicable laws. There is nothing about this approach that is contrary to law. Until father submits an application to

be a family vendored SLS provider, there is no authority to order the Service Agency to approve it. If that means that father must submit an application meeting all of the requirements of any other SLS provider seeking approval, so be it. Without any application having been submitted, it cannot be determined that Claimant's family meets the qualifications to provide SLS and it cannot be ordered that the Service Agency pay for Claimant's family to provide SLS.

30. Father has not established that he meets the qualifications to be an SLS provider, either under the regular requirements or any lesser requirements. Under these circumstances, his request under Issue 6 to be family vendored to provide SLS to Claimant is denied.

31. Effective September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. (See, also, sections 4648, subd. (a)(8), and 4659; and Regulation 54302, subds. (a)(31) and (32).) The SLS assessment by Inclusion Services does not explicitly factor in services by IHSS or any component of services that is the responsibility of the school district, or natural supports by Claimant's family.

32. Father has gathered certain information from the school district but has not, according to the evidence, put the school district in the position of having to comply with its legal duty to perform assessments and engage in the IEP planning process. More specifically, under Education Code section 56302.1, school districts must perform assessments and hold a meeting to develop an IEP within 60 days of the parent signing a consent. The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.) The report shall include, but not be limited to: (1) whether the student may need special education and related services, (2) the basis for making the determination, (3) the relevant behavior noted during the observation of the student in an appropriate setting, (4) the relationship of that behavior to the student's academic and social functioning, (5) the educationally relevant health and development, and medical findings, if any, (6) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate, and (7) the need for specialized services, materials, and equipment for students with low incidence disabilities. (Ed. Code, § 56327.) Although father has consulted with the school district, there was no evidence he signed a consent for assessment which begins the clock ticking for the school district to act.

33. Under section 4648.55, subdivision (a), a regional center "shall not" purchase various services for a consumer who is 18 to 22 years of age "if that consumer is eligible for special education and related education services and has not received a diploma or certificate of completion, unless the individual program plan (IPP) planning team determines that the consumer's needs cannot be met in the educational system or grants an exemption pursuant to subdivision (d)." If this generic service can meet some service needs, the regional center is to assist the consumer to access them, including attending the IEP meeting if the consumer

requests it. Under subdivision (c), which applies to Claimant, the Service Agency “shall use generic education services to meet the consumer’s day, vocational education, work services, independent living, or mobility training and related transportation needs if those needs are subsequently identified in the IPP unless the consumer is eligible for an exemption as set forth in subdivision (d). If the planning team determines that generic services can meet the consumer’s day, vocational education, work services, independent living, or mobility training and related transportation needs, the regional center shall assist the consumer in accessing those services.” Under subdivision (e), a school district “may contract with regional center vendors to meet the needs of consumers pursuant to this section.”

34. Issue 7 requests an exemption from this requirement to access school district services. The exemption is found in section 4648.55, subdivision (d), which states: “An exemption to the provisions of this section may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a). An exemption shall be granted through the IPP process and shall be based on a determination that the generic service is not appropriate to meet the consumer’s need. The consumer shall be informed of the exemption and the process for obtaining an exemption.”

35A. Father contends that the Service Agency should accept his representations that the school district will not be able to provide acceptable services for Claimant. This contention is not supported by the law. The Service Agency has informed father that, to consider an exemption, the school district must provide documentation of whatever programs it can offer to Claimant. Father did not submit evidence that he has engaged in the process that would require the school district to do so. The ball is in father’s court. Claimant will be given sufficient time to engage the school district in the formal process of assessment and IEP planning to gather the information needed to assist the IPP in making the determinations necessary under section 4648.55. If Claimant chooses not to engage the school district in this process, there will be an effect on the level of services the Service Agency is being ordered to provide.

35B. As noted in more detail below, SLS will be ordered in two layers, the first designed to provide the general SLS that is necessary, under the evidence, for services from 8:00 a.m. to 10:30 p.m. However, a second layer will be ordered, from 9:00 a.m. to 2:00 p.m., Monday to Friday, only for the period necessary for father to engage the school district for possible services, if he chooses to do so. Once the school district’s plan of services, if any, is available, the parties can reassess the situation, under section 4648.55 and other applicable laws. If father chooses not to engage the school district for possible services, no second layer of services is provided, in accordance with section 4648.55.

36. The Service Agency must consider Claimant’s IHSS services. Under section 4689.05, subdivision (b), a regional center “shall not purchase supported living services for a consumer to supplant IHSS.” Similarly, under section 4689, subdivision (f), the IPP planning team for a consumer receiving supported living services “shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.”

37. The statutes defining and relating to IHSS are mostly found in section 12300 through 12330. Section 12300, subdivisions (b) and (c), provide:

“(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

“(c) Personal care services shall mean all of the following: (1) Assistance with ambulation. (2) Bathing, oral hygiene, and grooming. (3) Dressing. (4) Care and assistance with prosthetic devices. (5) Bowel, bladder, and menstrual care. (6) Repositioning, skin care, range of motion exercises, and transfers. (7) Feeding and assurance of adequate fluid intake. (8) Respiration. (9) Assistance with self-administration of medications.”

38. Many of the IHSS categories of service which are provided to Claimant (see Factual Finding 45B) are included in the list of SLS recommended for Claimant. However, as noted above, IHSS is a generic source and the Service Agency may not duplicate services provided by IHSS. However, if Claimant’s need for services covered by IHSS exceeds the services provided by IHSS, those services can be included in SLS as well. There was insufficient evidence on which to conclude that Claimant’s IHSS services satisfy all of his needs in the areas covered by that IHSS. As an element of the flexibility and practicality needed to create a workable program, IHSS will be utilized in the same manner as suggested by Inclusion Services; that is, to cover the non-programmed hours from 10:30 p.m. each night to 8:00 a.m. the next morning.

39. Also to be considered in determining Claimant’s services is the part played by natural supports, which are defined in section 4512, subdivision (e), as “personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.” Under section 4791, subdivision (h)(1)(A), the Service Agency “shall take into account, in identifying the consumers’ needs, the family’s responsibility for providing similar services to a child without disabilities.” This is factored into the regulatory design of family vendored SLS noted above (Legal Conclusion 27) that “Unpaid family-based, or other natural supports for the consumer will not be supplanted.” (Cal. Code Regs., tit. 17, § 58616, subd. (b)(1).)

40A. The last component to be factored in is that SLS provided by an outside vendor (not the family) has to be practicably workable. That is, there should be consideration of reasonable shifts and obligations for which the vendor can provide appropriate staffing. For example, full shifts are better than partial or oddly-scheduled shifts. And, as is true of life generally, schedules don’t always accommodate reality. It is not cost

effective for a second staff person to be available for a full or partial shift if that staff person is only needed to assist Claimant in shaving and bathing, and is to otherwise be available only if the situation presents itself that Claimant has resisted an activity outside the home by sitting or lying down, such as at the mall or a park. Cost efficiency requirements are sprinkled liberally throughout the Lanterman Act, and many of the references are noted above. As a result of the services ordered below, some periods of time may have 2:1 staffing and other extra needs for support may need to be provided by IHSS (particularly Protective Services), mother, father and other natural supports.

40B. On a practical level, in the program of services and supports ordered herein, natural supports will be provided in conjunction with IHSS to cover the non-programmed hours from 10:30 p.m. each night to 8:00 a.m. the next morning, and to provide 2:1 support, as needed, for incidents such as those when Claimant needs extra help (such as the examples given of shaving, bathing, and when he might sit down or lie down while in a mall or otherwise in a community setting).

41. The SLS assessment provided by Inclusion Services (Ex. 15 and Ex. L) is a good place to start, with some adjustments. As noted above, it does not explicitly factor in IHSS hours, but appears to be based on IHSS of 9.5 hours per day being used for overnight coverage when SLS staff is not scheduled. On the one hand, this is a reasonable use of the generic resource and makes for easier scheduling of remaining hours (14.5 per day) to be covered by SLS staff. On the other hand, the award of IHSS hours is based upon an assessment that the hours are needed for certain listed services required by Claimant, as set forth in Factual Finding 45B, and those services are not of the type that would be accomplished during only the overnight shift. Based on the concepts that Claimant's needs may exceed the IHSS award, some compromise and flexibility is needed to make this all work, and that such compromise and flexibility is usually exercised by the parties during the IPP process, the schedule of services below will, instead, order the parties to be flexible, as needed for Claimant's benefit.

42. The Service Agency will provide vendored SLS for Claimant for 14.5 hours per day, from 8:00 a.m. to 10:30 p.m., seven days per week. Based on an average of 4.3 weeks per month, this is 436 hours per month.

43. For 60 days, the Service Agency will provide additional vendored SLS for Claimant for five hours per day, 9:00 a.m. to 2:00 p.m., Monday through Friday. Based on an average of 4.3 weeks per month, this is 108 hours per month. This additional SLS is designed to cover the period wherein the school district should comply with its legal obligations to assess Claimant and propose an IEP. The 60 day period of services, that is, five hours per day, 9:00 a.m. to 2:00 p.m., Monday through Friday, will commence only upon father providing to the Service Agency a copy of his written request and consent for assessment to the school district.

44. The SLS shall be as set forth in the Inclusion Services report generally, and specifically in the schedule found in Exhibit L, pp. 102 and 103, with the exception of on-call availability for additional staff.

Discrimination and Other Possible Issues

45. As noted in Factual Finding 29B, in his April 10 letter, father requested, “at a minimum,” the SLS services recommended in the assessment by Inclusion Services; family vendoring for SLS; rental assistance; assistive technology for communication; transportation assistance; assistance for household finances; financial management; homemaker services; and advocacy assistance. Many of these requests are beyond the scope of father’s fair hearing request and the Issues above, which were derived from father’s request. Some of these requests are granted (for example, the Inclusion Services assessment and schedule of weekly SLS include money management, transportation assistance, self-advocacy and homemaker services). Some of these requests were previously denied in the prior fair hearing procedure (such as advocacy). One request, assistive technology for communication, is currently being pursued by agreement of the parties.

46. The last issue remaining is Issue 8, stating that the Service Agency must grant services to Claimant and stop unlawfully discriminating against Claimant based on his disability and the extent of his disability in violation of California laws, as well as Federal laws, the California Constitution and the United States Constitution. There was no evidence of such discrimination as claimed by father. The evidence is that the Service Agency relied on its interpretation of applicable laws in its review of Claimant’s needs and services. Although such interpretation was sometimes in error, the Service Agency’s reliance on those interpretations of law was not an indication of any discriminatory intent or actual discrimination against Claimant.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The May 16, 2012 IPP document (Ex. F and Ex. 48) is an adequate statement of Claimant’s goals and objectives as required by law. The Service Agency sufficiently considered input from Claimant’s mother and father in preparing the May 16, 2012 IPP document.

2. Claimant’s services and supports, as required by law, shall include the following:

a. The Service Agency will provide vendored SLS for Claimant for 14.5 hours per day, from 8:00 a.m. to 10:30 p.m., seven days per week. Based on an average of 4.3 weeks per month, this is 436 hours per month.

b. For 60 days, the Service Agency will provide additional vendored SLS for Claimant for five hours per day, 9:00 a.m. to 2:00 p.m., Monday through Friday. Based on an average of 4.3 weeks per month, this is 108 hours per month. The 60 day period of services will commence only upon father providing to the Service Agency a copy of his written request and consent for assessment to the school district.

c. The SLS shall be as set forth in the Inclusion Services report generally, and specifically in the schedule found in Exhibit L, pp. 102 and 103, with the exception of on-call availability for additional staff.

d. All other required services and supports shall be provided by generic resources and natural supports, or as agreed by the parties.

3. In all other respects, Claimant's requests for services or other relief by fair hearing, as set forth in the Issues stated at the outset of this Decision, are denied.

DATED: August 2, 2013.



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.