

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MARISOL G.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013040445

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on June 27, 2013, in Alhambra, California.

Judy Castaneda, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant Marisol G. (Claimant) was represented by her mother (Mother).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on June 27, 2013.

ISSUE

Must the Service Agency continue to fund Adaptive Skills Training Services, provided by Jay Nolan Community Services (Jay Nolan), for 16.25 hours per week, in order to meet Claimant's needs?¹

¹ At the commencement of hearing, the parties stipulated that the Service Agency could amend its Notice of Proposed Action to reflect that it no longer wished to deny Claimant's request for continued funding for Adaptive Skills Training Services, but rather wished to reduce the number of service hours from 16.5 hours per week to five hours per month. Mother agreed to the amendment, because she contended that a reduction was inappropriate for the same reasons she contended a denial was inappropriate. As such, and

FINDINGS OF FACT

1. Claimant is an 11-year-old girl, and a consumer of the Service Agency. Specifically, Claimant has Down syndrome, with moderate to severe cognitive delays, and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.²

2. The Service Agency issued a Notice of Proposed Action (NOPA) on or about March 20, 2013, denying Claimant's request for "Adaptive Skills Training Services" provided by Jay Nolan. The NOPA indicated that reason for the denial was because the Service Agency believed Claimant's "needs [could] be better addressed through Behavioral Services."³ On April 1, 2013, Mother filed a Fair Hearing Request on behalf of Claimant. All jurisdictional requirements have been met.

3. Claimant lives with her parents and three siblings within the Service Agency's catchment area. In or about 2006, the Service Agency began funding adaptive skills training services for Claimant, provided by Jay Nolan, to help her with her daily living skills, personal hygiene, health and safety, and other adaptive skills. Initially, the Service Agency funded 25 hours per week of Jay Nolan's services. In 2010, the Service Agency reduced the hours from 25 to 16.25, claiming that 8.75 hours per week constituted social or recreational activities, and not adaptive skills training. The Office of Administrative Hearings (OAH) sustained the Service Agency's reduction in a decision issued on July 25, 2011.⁴

September 2010 Individual Support Plan

4. In September 2010, Jay Nolan staff drafted an individual support plan for Claimant, which set forth eight goals for Claimant to meet. Specifically, the goals addressed daily living, personal hygiene, building relationships/socialization, choice/autonomy, communication, positive behavioral supports, health/safety, and community integration.

5. A goal addressing Claimant's communication skills provided that Claimant would be able to express her wants and needs clearly, such as making simple statements of preference, reporting health issues (i.e., feeling sick), and using her words for simple

because she did not have to alter how she intended to present her case, she agreed to the Service Agency's amendment.

² All statutory references are to the Welfare and Institutions Code.

³ At hearing, the Service Agency advised that it received information indicating that behavioral services may not be an appropriate service for Claimant, and wished to amend the NOPA to indicate so. However, Mother objected, stating that she had prepared her case to respond to the Service Agency's assertion that Claimant did not require adaptive skills training services, but rather required behavioral services to meet her needs. The Service Agency then reasserted its position that adaptive skills training were still inappropriate at 16.25 hours per week, whether behavioral services were appropriate or not.

⁴ OAH Case No. 2010090211.

interactions to make a purchase. The plan included Claimant's current proficiency, which indicated that Claimant's speech had improved, that her speech had not been clear before, but she had been working on projecting more. Claimant had also been trying to make complete sentences and phrases, but that she would get frustrated when she could not say what she wanted. The plan also stated that Claimant would become very quiet and shy when speaking to a cashier or customer service assistant in a store.

6. A goal addressing Claimant's positive behavior supports provided that, in order to minimize tantrums, Claimant would verbally express her dislikes, needs, and wants as they occurred. The plan included Claimant's current proficiency, which indicated that Claimant's negative behaviors had decreased when in public. On the other hand, Claimant had several incidents of displaying physical aggression toward her peers at school. Claimant would also whine or tantrum when asked to complete a task she did not want to do, but Jay Nolan staff would explain to Claimant why the task was necessary, give her time to calm down, and then have Claimant try the task again.

7. A goal addressing Claimant's health and safety, provided that Claimant would learn to improve on her safety skills, such as crossing the street when appropriate, memorizing her home address and emergency telephone number, wearing a seatbelt, learning how to call 911 for help in an emergency situation, and not leaving with strangers even when they appeared friendly. The plan included Claimant's current proficiency, which indicated Claimant had been working on paying attention to her surroundings when in the community and in parking lots, and would look both ways before crossing the street approximately 50 percent of the time. She had to be prompted to put on her seatbelt when in a car. Claimant did not know her home telephone number or address.

January 11, 2011 Progress Report

8. On January 11, 2011, Jay Nolan prepared a progress report concerning Claimant. The report indicated that the goal addressing communication was still in progress, and then repeated, almost verbatim, Claimant's current proficiency as set forth in the September 2010 individual support plan. However, the report added that staff would model correct phrases and statements to have Claimant use and repeat in various settings to express her wants and needs.

9. The goal addressing positive behavior supports showed that Claimant continued to display physical aggression towards peers at school, such as pulling on others' hair, or using her body to bump others. At home, Claimant displayed negative behavior in the form of yelling. The report indicated that staff would assist Claimant to use her words instead of displaying any physical aggression, and would explain ways for Claimant to state her frustrations, such as talking with someone to let him or her know she was upset, writing down her frustrations, or asking for assistance on how to deal with a frustrating situation.

10. The goal relating to health and safety showed that Claimant was making progress, and was looking both ways before crossing the street more often. The report

indicated that staff would assist Claimant to continuing working on her health and safety skills, as set forth in the September 2010 individual support plan.

11. The report also indicated that goals related to daily living skills, personal hygiene, building relationships/socialization, choice/autonomy, and community participation, were still in progress.

May 17, 2011 Progress Report

12. On May 17, 2011, Jay Nolan prepared a progress report concerning Claimant. The report indicated that Claimant was progressing on the goals related to communication and positive behavior supports, and was meeting those goals at an accuracy rate of 25 percent.

13. The report indicated that the health and safety goal was changed to address Claimant's toileting issues. Specifically, the goal provided that Claimant would learn how to use the toilet independently during the day and night, and would learn to wipe herself thereafter. The report indicated that, currently, Claimant, if left unmonitored, would walk out of the restroom with unclean hands, and would then touch surfaces and items with soiled hands. The staff would encourage Claimant to communicate when she needed to use the restroom, and to inform someone when she had to go "number two." The report showed that Claimant was meeting the goal at an accuracy rate of 20 percent.

14. The report also indicated that Claimant was meeting the goals related to daily living skills, personal hygiene, building relationships/socialization, choice/autonomy, and community participation, at an accuracy rate ranging from 25 to 40 percent.

October 13, 2012 Progress Report

15. On October 13, 2012, Jay Nolan prepared a progress report concerning Claimant. The report indicated that Claimant was progressing at the goals related to communication and positive behavior supports, and was meeting the goals at an accuracy rate of 85 percent with consistent verbal prompting, and independently at a rate of 60 percent. The report noted that during Claimant's menstrual cycle, her attitude heightened, and she would become uncooperative, non-compliant, and would be less willing to share with others. In addition, she would become pushy, moody, and less patient.

16. The report indicated that the health and safety goal to address Claimant's toileting issues was modified to add that Claimant would learn to manage her menstrual cycles efficiently. Claimant met the toileting component at an accuracy rate of 100 percent. However, with respect to the menstrual management, Claimant would not change her sanitary napkin when engaged in a preferred activity, and often required prompting to wash her hands after changing her sanitary napkin. The report showed that Claimant met the menstrual management goal independently at an accuracy rate of 25 percent, and at a rate of 60 percent with consistent verbal prompting.

17. The report also indicated that Claimant independently met goals related to daily living skills, personal hygiene, and building relationships/socialization, at rates ranging from 25 to 85 percent. The report did not reference the goals addressing choice/autonomy, or community participation.

September 25, 2012 Individualized Education Program (IEP)

18. Claimant's IEP, developed on September 25, 2012, set forth eight goals to assist Claimant in accessing her education: (1) a language arts goal designed to help Claimant understand causal relationships; (2) a reading comprehension goal; (3) a language arts goal designed to help Claimant write a paragraph; (4) a mathematics goal to help Claimant understand the concepts of decimals and fractions; (5) a mathematics goal designed to help Claimant understand the concept of division; (6) a mathematics goal designed to help Claimant improve her basic math facts; (7) a speech and language goal, delivered by a speech and language therapist and Claimant's teachers, designed to help Claimant demonstrate appropriate body positioning and vocal volume; and (8) a speech and language goal designed to help Claimant improve her vocabulary by using synonyms and antonyms. The IEP provided that Claimant would receive specialized academic instruction in the areas of language arts, writing, and mathematics, and would receive speech and language therapy services for two 30-minute sessions per week.

19. The IEP also noted that Claimant had improved her gross and fine motor skills at school, and that her development in these areas appeared to be age-appropriate. In addition, it noted under social-emotional development that Claimant got along with her peers, but could be shy when discussing new topics, and initiating conversation and play on the playground.

December 19, 2012 Individual Program Plan (IPP)

20. On December 19, 2012, Mother and Claimant met with the Service Agency's service coordinator assigned to Claimant's case, Vanessa Grande, to develop Claimant's IPP. Mother, Claimant, and Ms. Grande discussed the service provision agreement, which included vendor services to address Claimant's needs. The vendor services addressed living, health, school, adaptive skills, in-home respite, and daycare. For adaptive skills, the handwritten service provision agreement included in the IPP stated that Jay Nolan would provide services, 16.25 hours per week, for a period of one year or less.

21. The typewritten portion of the IPP, which the Service Agency did not provide to Mother until the exchange of exhibits in this matter, and not executed by a Service Agency supervisor until April 16, 2013, contained a number of errors and discrepancies that suggested that the 11-page document contained "cut and paste" passages from previous IPPs concerning Claimant. Specifically, the IPP described Claimant's age as 11-years-old on one page, and then 10-years-old on a different page; as in the fifth grade on one page, and then in the fourth grade on a different page; and as receiving funding for Huggies diapers to wear at

night on one page, and then stating on another page that Claimant required no diapers, because she was able to control her bowels and bladder. The IPP also included outdated information concerning Claimant's behaviors, which came from IPPs from two and/or three prior. At the bottom of page 10 of the IPP, it indicated that the document had been revised on November 1, 2011, which was 13 months prior to the December 19, 2012 IPP.

22. The typewritten IPP also indicated that "ELARC [would] fund adaptive skills training . . . to be reviewed every six months to determine if service continue[d] to be warranted."

23. On March 20, 2013, three months after the December 19, 2012 IPP, the Service Agency issued a NOPA to cease adaptive skills training by Jay Nolan, citing that Claimant's needs could be better addressed through behavioral services.

April 2013 Individual Support Plan

24. In April 2013, Jay Nolan drafted an individual support plan, which set forth nine goals customized for Claimant. Specifically, the goals addressed community integration, choice/autonomy regarding the use of money, choice/autonomy regarding fastening and unfastening clothes, community involvement, communication, daily living, self-redirection, safety, and health.

25. A goal addressing Claimant's community integration provided that Claimant would engage in a conversation with others. The plan included Claimant's current proficiency, which indicated that Claimant interacted with family and neighbors, but had difficulty initiating conversation, and had trouble building and maintaining relationships. In addition, Claimant had a low level of community awareness.

26. Another goal addressing Claimant's community integration provided that Claimant would use money accurately in a money simulation. The plan included Claimant's current proficiency, which indicated that Claimant did not utilize money, and would, instead, ask family members to make purchases for her.

27. A goal addressing Claimant's choice/autonomy provided that Claimant would manage to fasten and unfasten her clothing each day. The plan included Claimant's current proficiency, which indicated that Claimant required assistance in completing dressing tasks.

28. A goal addressing Claimant's community involvement provided that Claimant would complete purchases for books and feminine hygiene items. The plan included Claimant's current proficiency, which indicated that Claimant enjoyed reading books, and would express her desire to purchase books, but required assistance to complete transactions. Claimant did not understand how to purchase feminine hygiene products.

29. A goal addressing Claimant's communication skills provided that Claimant would be able to express the activities of her day to her parents. The plan included

Claimant's current proficiency, which included a verbatim recitation of Claimant's proficiency as listed in her September 2010 individual support plan.

30. A goal addressing Claimant's daily living skills provided that Claimant would care for herself during menstruation. The plan included Claimant's current proficiency, and noted that Claimant would not change her sanitary napkin when engaged in a preferred activity, which caused accidents at home, school, and in the community. Claimant required constant reminders to check her sanitary napkins, as well as visual and verbal reminders on how to discard her soiled sanitary napkins properly.

31. A goal addressing Claimant's self-redirection, formerly called positive behavior supports, provided that Claimant would continue to verbally express her dislikes, needs, and wants as they occurred. The plan included Claimant's current proficiency, which included a verbatim recitation of Claimant's proficiency as listed in her September 2010 individual support plan.

32. A goal addressing Claimant's safety provided that Claimant would learn how to improve her safety skills by memorizing her parents' cell phone number. The plan included Claimant's current proficiency, which noted that Claimant did not know her parents' cell phone numbers or her home address.

33. A goal addressing Claimant's health provided that Claimant would eat food safely. The plan included Claimant's current proficiency, which noted that Claimant needed visual support when eating, required her food to be cut up into bite-sized pieces to prevent her from overfilling her mouth, and required supervision while eating to avoid choking.

Modification of Position After Issuance of NOPA

34. On June 13, 2013, pursuant to the Service Agency's request, Mother provided the Service Agency with a copy of Claimant's September 25, 2012 IEP.

35. Claimant's service coordinator, Ms. Grande, testified at hearing. Ms. Grande received her bachelor's degree in psychology and social behavior, with a minor in education, from University of California at Irvine, in 2008. She has been a service coordinator at the Service Agency since September 2012, where she provides case management for her assigned consumers, and participates in annual IPP meetings. Ms. Grande, along with her supervisor, Lily Ortega, after reviewing Claimant's IEP, as well as the September 2010 and April 2013 individual support plans prepared by Jay Nolan, determined that a denial or ceasing of adaptive skills training was not appropriate, but rather a reduction of these services from 16.25 hours per week, to five hours per month, was more appropriate.

36. Specifically, Ms. Grande concluded that the community integration goal in Claimant's April 2013 individual support plan, which addressed Claimant's ability to engage in conversation with others, should be part of the speech and language services provided at Claimant's school. She also considered the choice/autonomy goal concerning the use of

money as a school responsibility, specifically something to be addressed in school mathematics. In addition, she considered the choice/autonomy goal concerning the fastening and unfastening of her clothes as a parental responsibility, as well as something Mother should discuss at an IEP meeting through a request for occupational therapy services. Ms. Grande also considered the community involvement goal addressing the personal purchases for books and feminine hygiene products as a parental responsibility. Moreover, Ms. Grande concluded that the communication goal addressing Claimant's ability to express the activities of her day to her parents, as well as the self-redirection goal addressing Claimant's ability to verbally express her dislikes, needs, and wants, should be left to the responsibility of the school during speech and language therapy sessions. Finally, she considered the health goal addressing Claimant's ability to eat food safely and appropriately as a parental responsibility, and offered that, should Mother have any eating concerns regarding Claimant, she should contact Claimant's physician.

37. Ms. Grande determined that the goals associated with daily living skills related to self-care during menstruation, and safety related to Claimant learning to improve her safety skills by memorizing her parents' cell phone number, were appropriate for adaptive skills training, and believed these goals could be addressed five hours per month.

38. Judy Casteneda, who testified at hearing, has been employed by the Service Agency for a total of 14 years. She has been a fair hearing and HIPAA coordinator for three years. Prior, she was a service coordinator for three years, where she became intimately familiar with regional center services. Before that, she performed intake and assessment services for the Service Agency. Ms. Casteneda received her bachelor's degree in sociology and Spanish from Whittier College in 1998, and her master's degree in social work from California State University at Los Angeles in 2008.

39. Ms. Casteneda reviewed Claimant's September 2010 and April 2013 individual support plan drafted by Jay Nolan, as well as Claimant's IEP, and determined that behavior intervention services were not necessarily appropriate, as nothing in the reports or the IEP demonstrated that Claimant displayed behaviors extreme enough to warrant such services.

40. Ms. Casteneda concluded from her review of the September 2010 and April 2013 plans that Claimant had not made sufficient progress on her goals during the last three years to justify continued funding of adaptive skills training services at the same rate, and concurred with Ms. Grande that a reduction in hours was appropriate. No evidence was presented at hearing whether Ms. Casteneda considered the January 11, 2011, May 17, 2011, or October 13, 2012 progress reports submitted by Jay Nolan. Ms. Casteneda based her conclusion on a comparison between Claimant's current proficiency listed in the April 2013 plan with that listed in the September 2010 plan. Specifically, the current proficiency for the communication goal set forth in the April 2013 plan was identical to the current proficiency set forth in the September 2010 plan. Similarly, the current proficiency for self-redirection in the April 2013 plan was identical to the current proficiency for positive behavior supports in the September 2010 plan. In addition, the current proficiency for safety in the April 2013

plan, which stated that Claimant did not know her parents' cell phone numbers or home address, was similar to the current proficiency set forth in the September 2010 plan that Claimant did not know her home telephone number or address.

Mother's Testimony

41. Mother and Claimant's father (Father) work with and assist Claimant as much as possible. However, because Mother and Father are full time employees, coupled with the fact that Claimant requires round the clock supervision, Claimant's disability requires more support than Mother and Father are able to provide. In addition, Claimant requires constant repetition to master goals. Without the support of in-home adaptive skills training to assist Claimant in maintaining proper living skills, social relationships, and consistent positive behavior, Mother believes it will be difficult to maintain Claimant in the home, and the family will have to consider institutionalization. Claimant's family receives no SSI, has no other in-home support, has disabled grandparents, and is unable to rely on extended family for support.

42. Mother believes Claimant has made good progress on her goals and adaptive living skills as a result of Jay Nolan's adaptive skills training, evidenced by the progress reports issued by Jay Nolan. Once Claimant met a goal, Jay Nolan staff would create a new goal in the same area to assist Claimant towards becoming more independent and self-sufficient. In addition, Jay Nolan staff met with the Mother and Father once every two months to discuss Claimant's progress, as well as how to support Claimant in ways consistent with Jay Nolan techniques. Mother believes Claimant is at great risk of regression socially, emotionally, and behaviorally if Jay Nolan's services are terminated or reduced, as they are critical to Claimant's overall development.

LEGAL CONCLUSIONS

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states 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’s family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . .special living arrangements, physical, occupational, and speech therapy, . . .education, . . . recreation, . . .community integration services, . . .*daily living skills training*, . . .

(Emphasis added.)

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers’ obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer’s every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable a minor child with developmental disabilities to remain with his or her family. (§ 4648, subd. (a)(1).)

7. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. In addition, subdivision (a)(4) requires regional centers to consider the family's responsibility for providing similar services and supports for a minor child without disabilities. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

8. California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031). "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

9. Here, the Service Agency failed to meet its burden establishing that a termination or reduction of adaptive skills training services by Jay Nolan was appropriate for Claimant. The Service Agency failed to produce any evidence to support its rationale for denying adaptive skills training, as stated in its NOPA. Specifically, the Service Agency introduced no witnesses or documents demonstrating that Claimant's needs could be better addressed through behavioral services. On the contrary, as the Service Agency later admitted, behavior intervention services were not necessarily appropriate for Claimant, as nothing in the reports or the IEP demonstrated that Claimant displayed behaviors extreme enough to warrant such services.

10. Similarly, the Service Agency's argument, that most of the goals drafted by Jay Nolan were the responsibility of Claimant's school or parents, and not those of the Service Agency, and, therefore, adaptive skills training should be reduced, must fail. First, this rationale was developed three months after the issuance of the NOPA, after the Service Agency's receipt of the April 2013 support plan, and Student's IEP. As such, Claimant was provided improper notice of this rationale for denying the requested service. Notwithstanding this, the Service Agency's conclusion is unreasonable, given the facts of this case. Specifically, the evidence showed that Ms. Grande determined, simply by reviewing the September 2010 and April 2013 support plans, as well as Claimant's IEP, that Claimant's school should handle her community integration, communication, and self-direction goals through school-based speech and language therapy, that goals concerning the use of money should be addressed through school mathematics, and that goals concerning the fastening and unfastening of her clothes should be addressed through a request that the school provide occupational therapy. In addition, Ms. Grande considered the community involvement goal addressing the personal purchases for books and feminine hygiene products as solely the parents' responsibility, as well as the health goal addressing

Claimant's ability to eat food safely and appropriately. However, such conclusions are arbitrary, in the absence of evidence showing that Ms. Grande consulted any experts concerning adaptive skills training prior to her blanket reduction of hours, or ordered any assessments to determine whether a reduction was appropriate or not.

11. In addition, there is no evidence that Ms. Grande consulted any Jay Nolan staff, or any other party to determine whether the school and/or the parents were equipped to properly address Claimant's goals, considering the school's limited obligation to provide services only to the extent to help a child access his or her curriculum, as set forth in Legal Conclusion 8, and the parents' limited time given their full-time jobs, and their obligation to parent three other children. In that regard, particularly as it pertains to school-based obligations, the community integration, communication, and self-direction goals, as set forth in the April 2013 support plan, given the plain language of the goals, were mainly designed to address situations that occurred in the community, or in the home, and not necessarily in the school. Indeed, the Service Agency provided no credible evidence showing that such skills were necessary for Claimant to access her education. Similarly, the goal concerning fastening and unfastening clothes was designed for daily living, and not a skill necessary for Claimant to access her education.

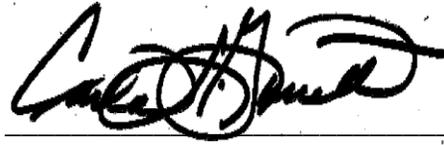
12. The Service Agency's final argument, that Claimant has not made sufficient progress, and, therefore, adaptive skills training should be reduced, is equally unavailing. Again, this rationale was developed subsequent to the issuance of the NOPA, after the Service Agency's receipt of the April 2013 support plan, and, therefore, the Service Agency provided Claimant with improper notice of this rationale for denying the requested service. Notwithstanding this, the assertion that Claimant had not made progress in three years on some of her goals, simply because the April 2013 support plan had, what appeared to be, cut and paste passages from the September 2010 support plan concerning Claimant's current proficiency, is not reasonable grounds, alone, upon which to deny or reduce services. At a minimum, the Service Agency should have contacted Jay Nolan staff for further explanation concerning Claimant's current proficiency before concluding that Claimant had made no progress. Making such a blanket conclusion, with nothing more, would be like accepting, as true, the numerous errors and misstatements contained in the cut and paste IPP drafted by the Service Agency. Clearly, further investigation was necessary.

13. Given the above factors, the Service Agency failed to meet its burden of establishing that Claimant's adaptive skills training hours should be reduced.

ORDER

Claimant's appeal is granted. The Service Agency may not deny Claimant's request for continued funding for Adaptive Skills Training Services, provided by Jay Nolan, for 16.25 hours per week.

Date: July 12, 2013

A handwritten signature in black ink, appearing to read 'Carla L. Garrett', written over a horizontal line.

CARLA L. GARRETT
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.