

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013110252

Ryan M.,

Claimant,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

DECISION

Administrative Law Judge Deborah M. Gmeiner of the Office of Administrative Hearings heard this matter on March 20, May 29, June 11, 17, 18, and 19, 2014, in Pomona, California. Closing briefs were received and the matter was submitted on July 8, 2014.

Ryan M. (Claimant) was represented by Matthew Pope, Esq. Gina A., Claimant's mother (mother) was also present.¹ Christopher Russell, Claimant's advocate, also attended the hearing. Claimant did not attend the hearing.

Julie Ocheltree, Esq., Enright & Ocheltree, LLP, appeared on behalf of San Gabriel Pomona Regional Center (SGPRC or Service Agency). Also in attendance on various days of the hearing was Jon Hope, Assistant Director; Isabel York, Program Manager; and Daniela Santana, Fair Hearing Manager.

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¹ Claimant and his mother are identified by their first name and last initial to protect their privacy.

ISSUE

Must the Service Agency fund 2000 hours of compensatory Applied Behavior Analysis (ABA) services?

Must the Service Agency fund a neurological examination?

Must the Service Agency fund an Augmentative and Alternative Communication assessment (AAC)?²

SUMMARY OF DECISION

Claimant contends that SGPRC denied him a behavioral intervention program as identified in his January 12, 2012 Individual Program Plan (IPP; 2012 IPP) when it contracted with Total Community Integration Program (TCIP), thereby causing him injury. As a remedy, Claimant seeks 2000 hours of compensatory ABA services. SGPRC contends that TCIP was an appropriate intensive behavioral intervention program consistent with Claimant's 2012 IPP and that, in any case, Claimant suffered no injury as a result of receiving TCIP services. This decision holds that TCIP was an appropriate program consistent with Claimant's 2012 IPP, that Claimant suffered no injury as a result of the services he received from TCIP, and that as an equitable matter, Claimant is not entitled to compensatory services.

Claimant further contends that SGPRC improperly denied him funding for an evaluation by a neurologist of his choice. SGPRC contends that Claimant is eligible for Medi-Cal, a generic service which must be used to obtain medical services. This decision holds that SGPRC properly denied Claimant's request for SGPRC to fund an evaluation by a neurologist of his choice.

Claimant contends that SGPRC improperly denied him funding for an AAC assessment. SGPRC contends that an AAC assessment is a service that should be obtained from Claimant's school district. This decision holds that SGPRC properly denied Claimant's request for an AAC assessment.

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² The terms AAC, Assistive Communication (AC) and to some extent, speech therapy are at times used interchangeably throughout the record in the case. This decision will use the term AAC unless the context requires otherwise.

FACTUAL FINDINGS

Jurisdictional Facts

1. Claimant is a 21-year-old man who resides with his mother. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) on the basis of autism and an unspecified level of developmental disability.³ Claimant also has aphasia, a speech and language disorder.

2. On October 8, 2013, Service Agency issued a Notice of Proposed Action (NPA) denying Claimant's request to fund 2000 hours of compensatory ABA services for the following reasons:

In regards to your request for compensatory hours, you are requesting 2000 compensatory hours of ABA services for the months of 7/1/12 through 4/11/13 in which Total Programs was providing services to [Claimant.] You have stated to San Gabriel staff that Total Programs is not a behavioral program and was not providing ABA services outlined in [Claimant's] IPP. The services with Total Programs were initiated when [Claimant] was a client of Eastern Los Angeles Regional Center and were agreed upon by you. Ryan's case transferred to SG/PRC in November, 2012 with the service of community integration with Total Programs already in place for approximately 4 months prior to the transfer to SG/PRC. During the duration of time that [Claimant] received services from Total Programs, staff worked with [Claimant] on meeting his IPP goals including addressing [Claimant's] behaviors. During this time [Claimant] worked with a lead therapist (for consultation and supervision) and behavior specialist staff (for community integration). All lead therapists with Total Programs are required to have or be in the process of a Master's degree in Psychology, Applied Behavioral Analysis, Education or other related field. All behavior specialists with Total Programs are trained upon entry in the areas including, but not limited to: behavioral issues, self-efficacy issues, psychological interventions, educational interventions, and communication strategies. Total Programs is vendored with San Gabriel/Pomona Regional Center as a behavioral program. Therefore, Regional Center believes that [Claimant's] ABA needs were being met during the time he was receiving services from Total Programs.

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³ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

On November 6, 2013, Claimant's mother filed a Fair Hearing Request on behalf of Claimant. Jurisdiction was established as to Claimant's claim for compensatory ABA services.⁴

3. On October 8, 2013, Service Agency issued a Notice of Proposed Action denying Claimant's request to fund a neurological evaluation on grounds that Claimant is eligible for Medi-Cal benefits, a generic resource, that is responsible for Claimant's health and medical care needs. On November 6, 2013, Claimant's mother filed a Fair Hearing Request on behalf of Claimant. Jurisdiction was established as to Claimant's claim for a neurological evaluation.

4. On October 8, 2013, Service Agency issued a Notice of Proposed Action denying Claimant's request for an AAC assessment on the grounds that Claimant's school was providing speech therapy pursuant to Claimant's September 11, 2013 Individual Education Plan (IEP) and that an AAC assessment should be obtained through Claimant's school district. On November 6, 2013, Claimant's mother filed a Fair Hearing Request on behalf of Claimant. Jurisdiction was established as to Claimant's claim for an AAC assessment.

Background

5. Claimant was diagnosed with autism as a young child. Claimant attended school in the Glendora Unified School District until he and his mother moved to Whittier when Claimant was 14 years old. Mother moved to Whittier because Claimant was entering middle school and she had heard that a program at Granada Middle School in the East Whittier City School District was good. When that program did not work out, Claimant was placed at Speech and Language Development Center (SLDC), a non-public school funded by the East Whittier City School District. He then transferred to a program at Sierra High School in Whittier Union High School District, about which mother had heard "wonderful things." When Sierra did not work out, Claimant attended a Lindamood-Bell program for about one year, then attended Beacon Day School for about one year. He then returned to SLDC. Claimant was attending SLDC when the family moved to Glendora in 2011 and the Glendora Unified School District continued Claimant's educational placement at that program; mother removed him from SLDC sometime in the late spring of 2012. Mother explained she took this action because she had heard from other parents that SLDC staff members were not treating Claimant properly. She was concerned the SLDC aides were not properly trained and there was frequent staff turn-over. At the time Claimant left SLDC, he had art therapy and speech related services available, but no summer or regular school program in place for the 2012-2013 school year. Claimant continues to be enrolled in the Glendora Unified School District, which has been working with Claimant and mother to provide Claimant an educationally-related transition program.

⁴ Claimant's requests for additional respite service hours was resolved by agreement of the parties prior to the commencement of this hearing.

Claimant's Circumstances at the Time of His 2012 Eastern Los Angeles Regional Center (ELARC) IPP

6. Claimant was a consumer of SGPRC until he was approximately 14 years old, when he and his mother moved to Whittier, which is in the ELARC catchment area. Claimant moved back to Glendora in late 2011. Glendora is in the SGPRC catchment area.

7. Although Claimant was residing in Glendora, Claimant was a consumer of ELARC at the time of his January 12, 2012 Individual Program Plan meeting. Claimant's mother attended the IPP; Claimant was at school at the time and did not attend the IPP. Mother appears to have provided most of the information contained in Claimant's 2012 IPP. Claimant's 2012 Individual Education Plan (IEP) was not available at the time of the IPP meeting. Mother had Christopher Russell (Russell) review the IPP document before she signed it.

8. At the time of his 2012 IPP, Claimant was 19 years old. Claimant was not conserved. Claimant and mother had lived in an apartment in Whittier until approximately October 2011, when they moved to Glendora, where they initially lived with relatives. Claimant and mother moved into their own apartment in Glendora in early January 2012. Mother initially testified that they moved from Whittier because they were having problems at the apartment complex where they lived. Upon further inquiry, mother said they moved to Glendora to be in their home town, near family and friends. Mother later admitted that Claimant had been "a little out of character," becoming more agitated, more aggressive, and engaging in more self-injurious behavior prior to their move. Claimant was also becoming resistive to going places he had previously been. Mother thought perhaps Claimant's age was affecting him. Mother "took a leap of faith" and moved back to Glendora.

9. At the time of his 2012 IPP, Claimant was receiving 230 hours of In-Home Support Services (IHSS), with his mother serving as his IHSS service provider. He was also receiving SSI benefits. Claimant was described as having no medical problems, was not taking medication, and his eczema had resolved. He was not on a special diet. He had no hearing or vision problems. He was working out at a gym three times a week.

10. Mother reported that Claimant had been fairly independent in eating and executing his self-help skills until December 2011, but that he had recently "refused to drink liquids, [had] lost a significant amount of weight, [was] taking a very long time to eat, experience[ing] meltdowns when brushing his teeth, [his] communication [had] diminished, and [he was] afraid of driving by certain parts of town that he has frequently visited in the past." (Exhibits F, 11.)

11. Socially, Claimant was described as exhibiting anxiety. He was hesitant to engage in social activities and made no independent attempts to participate in activities. He did not communicate with peers, impeding his ability to form relationships. Claimant's primary mode of communication was speech, although he also used written communication

and an iPad. Claimant's speech was unintelligible to those not familiar with his speech patterns. Claimant was able to answer questions but needed prompts to make comments. Despite his difficulty in communicating and forming social relationships, Claimant enjoyed a variety of activities, including art, basketball, going to the bookstore, the golf range, bowling, playing darts, board games, and surfing the internet and using his iPad. Claimant needed someone nearby to address and diminish his inappropriate behaviors, including screaming, physical aggression, self-injury, and self-stimulation. When Claimant was anxious, he would "bit his hand, [became] aggressive and hit, bend his fingers or push people/furniture." (Exhibits F, 11.)

12. Claimant's 2012 IPP included long and short terms goals and desired outcomes. Desired outcomes are generally stated as objectives for the consumer and include services and supports needed to achieve those objectives. Pertinent to the issues raised in this case, Claimant's goals included improved communication to maximize Claimant's oral speech and communication strategies, development of his social skills, independently completing his self-care needs, decreased inappropriate behaviors, and increased appropriate communication of his needs and feelings. ELARC funded supports intended to assist Claimant to achieve these goals included "retroactive" funding⁵ of AAC services due to an interruption in ELARC-funded services during 2011, 130 hours per month of Intensive Support Services (ISS) training provided by the Institute for Applied Behavior Analysis (IABA) "tutors," and 23 hours per month of IABA "out of office services," contingent on ELARC receiving IABA progress reports. It appears ELARC had not yet received the January 2012 progress report prepared by IABA and that ELARC and Claimant and his mother were unaware that IABA intended to terminate its behavior intervention services effective March 1, 2012.

13. Additional services funded by ELARC included 36 hours per month of behavior respite provided by IABA, mother's participation in conferences and workshops related to autism, communication and education, art therapy, and reimbursement for yoga and mileage. ELARC also agreed to make a referral for adaptive skills training (AST) and counseling services, including a parent support group, to be provided by Progressive Resources and reviewed quarterly.

IABA's January 15, 2012 Progress Report

⁵ Various documents in evidence and witnesses used the terms "retroactive," "make up," and "compensatory" to refer to services for which an Authorization for the Purchase of Service was issued, but for some reason those services were not used during the designated time period. As a result, Claimant was authorized in some circumstances to use those services at a later date, in addition to services otherwise authorized. In this context, this Decision will use the term "make-up service" to include retroactive and compensatory services.

14. IABA provided a 23 page progress report on January 15, 2012. (IABA report.) (Exhibit B.) The IABA report was prepared by Lori Murray, B.A. (Murray), program manager. While the caption of the report and the data collection section describes the reporting period as December 3, 2011 through November 30, 2011, the header describes the report as covering the period from January 1, 2011 through November 30, 2011. The most recent prior report was May 31, 2011. (Exhibit GG.)

15. At the time of the report, Claimant had been receiving IABA services for about six years. Prior to that he had received ABA services from the Center for Autism Related Disorders (CARD) for about 7 years. IABA completed a Functional Behavior Assessment (FBA) in 2006 (2006 FBA) and it recommended 15 hours per week of in-home and community-based intervention services to reduce target behaviors (“physical aggression, screaming/yelling, noncompliance, and inappropriate touching”) and to increase appropriate replacement behaviors (“clear pronunciation and diction of expressive language, slowing of speech so that others can understand it, and verbalizing emotions.”) (Exhibit B.) Effective June 2009, Claimant began receiving 160 hour per month of IABA ISS with 8 hours of supervision. This continued through some time in 2011 when ELARC discontinued funding for supervision.

16. IABA services were typically provided seven days per week at home and in the community, at after-school AAC/speech therapy, and during physical therapy and doctor’s visits. Services were coordinated with Claimant’s different services providers through a monthly clinic meeting held at Claimant’s school. Clinic participants included the IABA team, Claimant’s special education teacher, speech teacher and mother. ELARC did not separately fund clinic meetings. When Claimant and mother moved to Glendora in October 2011, IABA was unable to provide services in that location. As a result, mother transported Claimant to a location in Orange County or East Los Angeles. IABA reported this was presenting problems, both because of the need to transport Claimant to a community setting and because mother was not consistently bringing the logbook used to record Claimant’s behavior to the sessions.

17. At the time of the 2012 IABA report, Claimant’s target behaviors remained largely the same as they were described in the 2006 FBA, including physical aggression, self-injurious behavior, and screaming. Inappropriate touching had been eliminated and self-stimulation/perseveration had been added as a new target behavior. Additional emphasis was placed on parent skills, in order to generalize skills and protocol’s taught in the IABA sessions with Claimant’s family. The IABA report breaks down each target behavior into an operational definition, measurement criteria, and hypothesized function of the behavior. The report identified support strategies, including ecological strategies, positive programming strategies, focused support strategies, reactive strategies, and parent participation.

18. During the January through November 2011 reporting period, IABA reported a decrease in physical aggression, self-injurious behavior and screaming. The Differential Reinforcement of Other Behaviors on a progressive schedule (DROP) program was instituted to address Claimant’s aggression and self-injurious behavior. A dramatic reduction in

physical aggression was noted after the implementation of DROP. The DROP program was faded out in May 2011 when it was mastered by Claimant. The frequency of Claimant's screaming and self-stimulatory/perseverative behaviors were also noted to be have remained low.

19. The 2012 IABA report describes mother's "deep dissatisfaction with [Claimant's] current clinical treatment and various aspects of his treatment. Mother was not satisfied with the answers and support provided by IABA staff in regard to her concerns." IABA described the differences as "not reconcilable." (Exhibit B.) During the hearing, mother had difficulty clearly remembering what her concerns were, other than that she was unhappy with the assignment of female rather than male staff members to work with Claimant. Mother clearly remembered being upset because IABA would not provide services in Glendale. She described herself as "relentless" in trying to keep IABA services in place after she moved.

20. Because IABA did not serve the Glendora area, IABA included suggestions for Claimant's transition to a new service provider. IABA recommended Claimant receive 160 hour per month of direct behavior intervention, 23 hours of out-of-office visits and 8 hour per month of supervision through July 31, 2012.

February 2012 Case Transfer from ELARC to SGPRC and March 2012 Case Transfer from SGPRC to ELARC

21. On February 8, 2012, ELARC sent SGPRC an Interregional Regional Center Transmittal (IRCT or transmittal), informing SGPRC that Claimant's case was being transferred to SGPRC effective March 1, 2012. The IRCT identified the same service providers that were identified in the 2012 IPP, including the vendor name, the vendor number, the net cost for the service, and the termination date. SGPRC received the IRCT on February 10, 2012. Effective March 1, 2012, SGPRC accepted Claimant's case and fiscal responsibility. IABA was identified as a behavior service in the ICRT. (Exhibit 14.)

22. SGPRC Inter-Disciplinary Notes (ID Notes or Notes) for the period February 29, 2012 through December 6, 2013 were received into evidence.⁶ Jon Hope, SGPRC Director of Clinical Services (Hope), testified that ID Notes are maintained by the service coordinator. Hope has a Master Degree in Organizational Management, and is certified as an Autism Specialist by the MIND Institute at University of California at Davis. He is working to complete his Board Certified Behavior Analyst (BCBA.) certification.⁷ He serves on the

⁶ Claimant's evidence included ID Notes for the period February 29, 2012 through May 9, 2013. (Exhibit Y.) Service Agency evidence includes ID Notes for the period October 25, 2012 through December 6, 2013. (Exhibit 12.)

⁷ A BCBA is a nationally recognized certification awarded to individuals based on both coursework and supervised fieldwork and training.

SGPRC Autism Committee as well as regional and statewide autism committees. He manages SGPRC autism services and the autism program. He oversees seven service coordinator units, and eight full-time and several part-time managers. He provides training and consultation to SGPRC staff. He testified that a service coordinator is expected to accurately report information in the ID Notes, although they are cautioned to not quote consumers or family members, who have access to the Notes and might find it offensive. The ID Notes in this case provide a significant amount of detail regarding the chronology of events and are deemed reliable as to the chronology of events, in the absence of evidence to the contrary. Mother, on the other hand, had great difficulty providing even approximate dates for most events, and to that extent her testimony was not reliable.

23. Hope was also knowledgeable about the process used to vendor programs, and about autism programs in the SGPRC area. He testified that behavior programs have problems retaining direct service staff, which is an entry level position. He was familiar with Claimant's case, particularly through conversations with the service coordinator, her manager and mother. Hope also discussed Claimant's services with TCIP. He reviewed the IABA report and considered the program to be a community based program with behavior support. He considered the decision by mother and ELARC to use TCIP in lieu of IABA reasonable. According to Hope, in-home behavior programs require parent training, which is critical to achieve consistency across all environments. Hope was knowledgeable about autism and autism programs and services and about the vendoring of autism programs by SGPRC.

24. On February 29, 2012, Isabel York, SGPRC Manager of Transitional Services Programs (York) reviewed the case with the newly assigned service coordinator and discussed with the Hope whether there was a need to conduct a new IPP.⁸ They determined that a new IPP was needed and mother was informed of this by York. According to the Notes, mother asked to speak to the Client's Rights Advocate, Pam Ray (CRA or Ray). During the hearing, mother testified that she has known Ray since Claimant was a Client of SGPRC in the mid 2000's. There was no evidence that Ray made entries regarding Claimant's case in the ID Notes.

25. Upon receipt of the case, SGPRC service coordinator completed vendor forms for various service providers identified in Claimant's IPP and the IRCT, obtained approval for those services, and identified new vendors when necessary. Service coordinator needed to locate behavior respite services in the area because IABA had been the previous service provider. She contacted TOTAL Program behavior respite (TOTAL Respite), one of several services provided by TOTAL Programs. TOTAL Respite confirmed that it could provide the staff required to meet Claimant's respite needs. Service coordinator obtained authorization for the purchase of this service.

⁸ While the ID Notes identify Taunisia Steward as the service coordinator from February 2012 through at least December 2013, it appears that Rob Phipps provided some service coordinator services in late 2012 into at least early 2013. For clarity, throughout this decision, the designation, service coordinator, will be used in lieu of the individual's name.

26a. On March 8, 2012, Mother, York and SGPRC service coordinator discusses several programs that Claimant might be interested in attending. Mother requested information from the service coordinator about CARD and another program called California United Services Providers (CUSP). Service coordinator informed mother that she would not provide mother with the requested information until she discussed the request with her supervisor. During that conversation, Mother asked for and was transferred to Ray. Later that day, Program Manager York and mother discussed adaptive skills training (AST) services. Mother indicated that Autism Response Team, an AST provider suggested by the agency, was not going to work for Claimant because mother could not be present during community-based training. Mother indicated that she was going to look for other vendors. York explained to mother that mother's participation was required for all adaptive skills programs. Mother asked about community integration programs. York explained that this was a new service not included in Claimant's IPP and would require an IPP meeting. Mother said that she would look at other programs and call York back. York also informed mother that the agency had located TOTAL Respite to provide behavior respite. Mother stated that she wanted to meet with TOTAL Respite before agreeing to their services. York explained to mother that there were only a few behavior respite programs available in the area.

26b. Service coordinator and mother discussed Claimant's case and the need for an IPP. Mother did not want to meet for an IPP but did want to discuss services for Claimant. Service coordinator suggested meeting on March 26, 2012, but mother objected that it was too far in the future. Service coordinator and her supervisor discussed the need for a new IPP versus an addendum IPP. The matter was referred to SGPRC Assistant Director Hope, who determined that if mother was requesting community integration services, an addendum IPP meeting was required and that a new IPP would need to be developed before the end of the fiscal year. Service coordinator left a message for mother with this information and asking if March 26, 2012 was an agreeable date.

27. On March 21, 2012, mother informed the service coordinator that she had requested an appeal of the decision to transfer Claimant's case to SGPRC and that she had spoken to the Chief Counselor at ELARC to request that the case be transferred back to ELARC. Mother testified that she asked for the case to be transferred back to ELARC because she had concerns about the services that had been transferred. Mother could not identify what services she was concerned about that caused her to ask to have the case transferred back to ELARC. She did testify that she thought the IPP was incomplete. On March 22, 2012, SGPRC informed ELARC that it was rescinding its acceptance of Claimant's case effective March 1, 2012. Mother's appeal of the decision to transfer Claimant's case appears to have been resolved by a mediation agreement dated June 11, 2012.

28. Mother testified that she thought SGPRC had referred her to a TOTAL program that was for services other than behavioral respite during the time that SGPRC had the case in March 2012. The only evidence regarding mother's contention is that SGPRC referred mother to TOTAL Respite. Prior to returning the case to ELARC, SGPRC service

coordinator confirmed with TOTAL Respite that mother had not contacted them regarding their services. There is no evidence that while SGPRC had the case prior to its transfer back to ELARC, that it referred Claimant to TOTAL for any program other than behavioral respite.

ELARC Services and Supports between March 30, 2012 and October 2012

29. On June 11, 2012, ELARC and Claimant's mother entered into a mediation agreement providing that ELARC would continue to provide case management services up to and including October 31, 2012 and would forward funds to SGPRC to "cover consumer's service provisions in the IPP, including hours owed, beginning on November 1, 2012 through June 30, 2013." (Exhibit O.) The agreement does not include a list of what services were being funded, a significant omission in light of IABA's termination of its services several months earlier. Nonetheless, the agreement appears to resolve mother's appeal of the transfer of the case to SGPRC.

30. On May 16, 2012, several weeks before ELARC and mother entered into the mediation agreement, Veronica Valenzuela, ELARC supervisor for Liz Rodgers, Claimant's service coordinator (Rodgers) sent Agustin Jimenez, (Jimenez) TOTAL Program's (TOTAL) Director of Community Integration Program, a packet of information referring Claimant to the TOTAL Community Integration Program (TCIP). According to the cover letter, mother had provided verbal consent for the referral and wanted to speak with TCIP staff. The referral packet included the following documents: the 2012 IPP signature page; the 2012 Service Provision Agreement based on Person Centered Planning Meeting (IPP); Claimant's 2012 IPP; Claimant's Client Development Evaluation Report (CDER); a 1995 Psychological Evaluation completed by Gabrielle du Verglas, Ph.D.; and IABA's 2012 Report. (Exhibit 20.)

31. TOTAL provides a variety of services for persons with developmental disabilities. Sean Surfas, Pd.D. is the owner and Executive Director of TOTAL. Surfas is a Licensed Educational Psychologist and doctoral level BCBA. TOTAL Programs offer community integration, in-home behavior intervention, behavioral respite, and educationally-related services. According to Surfas, an in-home behavior intervention program may be used to supplement a community integration program, but TCIP programs include a behavior component. Programs may be adjusted as the individual need arises. New TCIP staff receive six weeks of training, including field work and supervision. TCIP staff have a variety of educational backgrounds and training, from a high school education to graduate level work. Several staff working with Claimant were completing graduate level programs. According to Surfas, TCIP is no less intensive than other behavior programs because it involves taking individuals into the community. ABA programs are designed to develop a valid social life to make an individual's social life better at home and in the community. ABA may involve Discrete Trial Training (DTT) but it does not have to. According to Surfas, DTT typically involves "table top activates," with date collection during repetitive trials of a skill. DTT is typically used to teach adaptive skills.

32. According to Surfás, TCIP and mother discussed increasing supports for Claimant, including in-home behavior intervention. The in-home component was recommended in order to teach mother skills she needed to help Claimant. According to Surfás, Mother was not interested in this approach because she wanted Claimant to be more independent. She wanted Claimant to receive services in a more natural environment than a more structured in-home program might afford. According to Surfás, mother's goal for TCIP was to keep Claimant busy during the day. Surfás emphasized that TCIP is not intended to provide baby-sitting services; it is intended to provide behavior interventions.

33. According to Surfás, TCIP used ABA techniques with Claimant. TCIP tried to extinguish Claimant's maladaptive behaviors. He explained that this can be difficult because it can result in an increase in the targeted maladaptive behaviors. This is similar to what other witnesses described as an "extinction burst," that is an increase in the frequency or severity of a target behavior. There were several activities that TCIP worked to support that Claimant did not want to engage in, including using his iPad for communication and speech therapy. Claimant's resistance to engaging in speech related activities was not a new problem. IABA staff reported that on December 30, 2008, while IABA was providing behavior respite, Claimant became aggressive with his female respite worker when she was trying to engage him in speech-related exercises. Claimant became angry, "stomping all over her feet. He got up and grabbed her ponytail and wrapped her hair around her face while squeezing her head . . . [Claimant] continued to squeeze her head and scratched her face and then let go." (Exhibit S.)

34. Although TCIP was not providing an in-home program, Surfás suggested that mother call TCIP if she needed assistance to manage Claimant's behaviors. Surfás testified that he discussed with mother the possibility that Claimant needed more "down time" and suggested Total behavior respite. It does not appear mother was agreeable to this suggestion, because she questioned the qualifications of its staff members.

35. On March 11, 2012, TCIP informed mother that it intended to terminate TCIP services for Claimant. Surfás participated in the decision to terminate Claimant. He testified that TCIP tried unsuccessfully to meet with mother prior to giving notice of termination. According to Surfás, mother was very angry with TCIP during the last three to four months that TCIP was providing services to Claimant. Surfás agreed that sometimes mother's anger was justified, but that her yelling at staff was not helpful. Ultimately, the parties were unable to resolve their differences.

36. Jimenez, TCIP's Director, has a master's degree in counseling, has taken coursework in ABA and is BCBA certified. TCIP is a SGPRC vendored community integration program. Although TCIP is not an ABA program, it uses ABA and other behavior intervention techniques when working with consumers with behavior problems.

37. According to Jimenez, he discussed the TCIP program with Rodgers, explaining that it was a one to one program offered in the community to teach functional and adaptive skills, including increased communication, safety awareness, transitioning between

activities, and that the program could work with individual behavior problems. Jimenez testified that he also discussed TCIP services with mother.

38. In early July, 2012, Rodgers and Jimenez discussed Claimant having 370 make-up service hours as well as 130 hours per month of services available to him. As a result of the retroactive hours, Rodgers agreed to authorize 160 service hours for July 5th through August 31, 2012. They agreed to keep track of hours used. ELARC issued an Authorization for Purchase of Service (POS) for TCIP for community integration training for the months of July, August, September and October 2012, for 130 hours per month, plus authorizations to adjust for what appear to be additional make-up service hours each month.

39. As part of TCIP's assessment process, Mother completed a Community Integration Assessment Interview on June 19, 2012. (Exhibit 22.) Mother also completed a monthly schedule showing Claimant's daily routine. Mother's primary concerns were Claimant's ability to independently complete self-help activities and his lack of water consumption. Mother was also concerned with Claimant's general safety awareness, his ability to communicate with others, and to engage in reciprocal conversation. Jimenez prepared a Community Integration Survey Interview Report on July 7, 2013. (2012 TCIP Report.) (Exhibit Q.)

40. The 2012 TCIP report included information about Claimant's functioning in the following areas: Adaptive Functioning; Communication; Independent Functioning; Safety/Transportation; Money and Economic Skills; and Maladaptive Behaviors. It was reported by mother that Claimant had not engaged in aggressive or self-injurious behavior, with the exception of bending his fingers back, in over one year. This was generally consistent with IABA's report. Maladaptive behaviors that mother described as continuing to present a problem included elopement behavior (runs away when he see birds in the community), non-compliance with directives he had previously mastered such as taking showers, brushing his teeth, independently drinking water, and socially inappropriate behaviors (loud vocalizations). Jimenez identified a community integration goal and additional goals in the areas of communication, community awareness, purchasing, safety and transportation, home living, and independent hygiene and increasing Claimant's fluid intake. The report recommended the number of service hours as approved by ELARC.

41. Jimenez thought that TCIP services for Claimant were very similar to those provided by IABA. He based this on his conversation with an IABA case supervisor and review of the IABA report. According to Jimenez, the IABA supervisor agreed that a community integration program would be good for Claimant.

42. TCIP services started in early July 2012. During the course of providing services to Claimant, TCIP maintained a daily provider log, ABA notes, and a supervisor's log. Mother signed the daily provider log sheets. The logs listed Claimant's goals and could change as his needs changed. The ABA notes were maintained to provide communication between staff and with mother. Data was collected and recorded in various forms, including narrative, and numerical counts. The various logs do not appear to have been consistently

used by all staff members. According to Jimenez, data was difficult to collect because TCIP was taking Claimant to so many programs and sites, including augmentative communication/speech therapy, social skills training, occupational therapy, counseling, the gym, the bookstore and art classes. The supervision log was prepared by Jimenez who did not provide Claimant with direct services, but he did meet at least monthly with direct service staff and his field supervisors.

43. According to Jimenez, community integration services do not ordinarily include clinic meetings. Three or four clinic meetings were held with TCIP staff members and mother. Services were delivered primarily in the community, although staff did provide services to Claimant in the home around pick up and drop off times as well as when requested by mother. Approximately 12 to 15 staff members worked with Claimant while he was a TCIP client. According to Jimenez, TCIP had problems providing enough staff for Claimant due to a variety of factors, including changes in staff availability, problems with Claimant's behavior, and the need to have a male staff member with Claimant. Several staff declined to work with Claimant because of conflicts with mother.

44. Jimenez testified that TCIP staff used ABA strategies, including extinction and teaching replacement skills, to decrease Claimant's maladaptive behaviors, including aggression, self-injurious behavior and inappropriate vocalizations. Jimenez opined that Claimant used aggression to avoid doing something. He observed what CARD later described as Claimant's becoming "stuck" throughout the time TCIP was providing services. Jimenez associated Claimant becoming stuck with compliance problems. Surfes and Jimenez thought that the extinction strategies TCIP was using resulted in an increase in Claimant's aggression, but that that was not an unusual reaction to extinction, and should eventually result in decreased maladaptive behavior. Overall, Jimenez thought that Claimant made some progress while working with TCIP, including improved street safety, increased communication using his iPad, and improved purchasing skills.

45. Jimenez also testified that he discussed with Rodgers providing in-home behavior intervention services for Claimant to supplement the community integration program and to increase generalization of learned skills across different settings. According to Jimenez, mother was not agreeable to parent training because she had had years of ABA services. Jimenez testified that mother wanted community integration services because she wanted to get Claimant into the community more and mother told him she wanted to focus on being a parent, not a therapist.

46. During the hearing, mother testified that she did not recall agreeing to TCIP. She did think that she was referred to TOTAL by SGPRC, not ELARC. However, the weight of the evidence shows that Claimant was referred by SGPRC to TOTAL Programs for behavior respite services, not community integration services. ELARC referred Claimant to TCIP, with mother's verbal consent. Claimant started TCIP in or about July 2012 and continued to participate in its program until TCIP terminated services in April 2013.

47. On August 20, 2012, TCIP staff completed a Special Incident Report (SIR). On that occasion Claimant was at a Subway restaurant with TCIP staff. Staff was verbally prompting Claimant to get out of his seat when Claimant charged staff, and punched a female customer sitting near him in the shoulder. Claimant then dropped to the floor but staff was able to get him up and to the car with verbal prompts. As a result of this incident, TCIP met with mother to discuss Claimant's schedule and level of supervision when Claimant is in the community. Claimant's daily TCIP schedule was reduced because TCIP and mother thought that the number of hours might be causing an increase in Claimant's stress and his aggressive behavior. In addition, TCIP planned to train staff to address Claimant's aggressiveness and agitation.

Transfer of Claimant's Case from ELARC to SGPRC

48a. On October 1, 2012, ELARC provided SGPRC a Transfer Summary stating its intent to transfer Claimant's case to SGPRC based on his place of residence. Among other things, the summary included a list of ELARC-funded services, the number of hours per month authorized for each service and the number of retroactive hours and the date by which those hours should be used. Those services included:

- Communication Aide (Justine Sherman and Associates): Per IPP 8 hours per month. However 26 additional hours per month per past agreement can be completed by 6/30/2013 retroactive hours;
- Personal Assistance (Behavior Respite in Action): 36 hours per month;
- Community Integration (TOTAL Programs): 141 hours per month;
- Music Therapy (Amy Tibert): 5 hours per month;
- Adaptive Skills (Progressive Resources): 7.5 hours per month;
- Adaptive skills out-of-office charge (Progressive Resources): 5 hours per month;
- Counseling (Dr. Rod Rhodes): 5 hours per month;
- Mileage Reimbursement: Round Trip for Regional Center funded services;
- Gymnastics (Gymnastikids): per agreement this service ends 10/3/14.
(Exhibits R, 14.)

48b. In addition, ELARC agreed to fund 137 additional hours of community integration services through June 30, 2013. According to ELARC, those hours were "owed to consumer while service provider issues were being resolved." (Exhibits R, 14.) The Transfer Summary did not identify any of the listed services as ISS, intensive behavior intervention or ABA services.

49. On October 4, 2012, ELARC sent an IRCT to SGPRC confirming its intent to transfer the case to SGPRC. Attached to the IRCT was a Fiscal Summary identifying the services being funded by ELARC. The Fiscal Summary states that an additional 23 hours was available for TCIP, on a one time basis. The transmittal was revised on November 13, 2012, stating that ELARC was "funding for 114 hours of Community Integration (TOTAL

Programs) . . . as a one-time owed per agreement and can be used through the fiscal year.” (Exhibit 15.) ELARC revised its list of services and funds several time after the case was received by SGPRC.

50. SGPRC service coordinator received the case on October 25, 2012. York continued to be the assigned Program Manager. SGPRC agreed to continue the services identified for funding in the ELARC transmittal, to have a December 2012 IPP, and to have the SGPRC behavior analyst observe Claimant at TCIP and during his music therapy.

51a. On October 29, 2012, SGPRC service coordinator contacted mother to inform her that she was working on getting Claimant’s services set up. Mother informed the service coordinator that Claimant had been having a “tough year” and that “initially” she had been having some problems with TCIP staff. Mother was described as “not happy” with the direct service staff. She expressed concern and conflicts with the oversight of the TCIP. Specifically, she wanted clinic time and consultation with a TCIP supervisor. Mother told service coordinator that she had been working with Jimenez but was continuing to have problems. Mother explained that she wanted TCIP to use more of a behavioral approach when working with Claimant. Service coordinator explained that TCIP is not vendored as an ABA program – that it is designed to provide maintenance of skills and transition to the community. Mother disagreed with the service coordinator about whether a community integration program could include an ABA approach and asked the service coordinator to contact Murray from IABA and Rodgers from ELARC regarding Claimant’s behavior needs. When service coordinator asked mother what behaviors Claimant was exhibiting that were of concern to her, mother referred service coordinator to Murray and Rodgers. Service coordinator agreed to contact TCIP regarding services for Claimant. Murray and service coordinator exchanged voicemail messages over several days.

51b. SGPRC service coordinator suggested to mother that she attend a behavior workshop at SGPRC. Mother replied that she “could probably run a Behavior Workshop.” Mother also informed service coordinator that Claimant was not attending school, but it does not appear that mother provided an explanation for this situation. When discussing Claimant’s services, mother said that AST service was not a priority. Her priority was to work on her concerns regarding TCIP’s “oversight” because of Claimant’s behavior. Nonetheless, Mother asked service coordinator to look for AST programs in her area. Service coordinator also talked to Justine Sherman (Sherman) regarding Claimant’s AAC and was informed by Sherman that she would not provide Service Agency funded services until a behavior plan was in place. Sherman had completed an iPad communication protocol on September 9, 2012. The protocol was intended to identify strategies to help Claimant use his iPad for communication.

52. Service coordinator also contacted Jimenez on October 29, 2012, to discuss mother’s concerns about TCIP. Jimenez reported there were SGPRC vendor issues regarding the availability of supervision hours that mother wanted. He also told service coordinator that Claimant was having some behavior issues including self-injurious behavior and hitting bystanders in the community. Jimenez reported that TCIP does not typically address such

behaviors, is not an intensive ABA program, and is designed to support the maintenance of existing skills. Jimenez explained that TCIP uses some ABA techniques to improve Claimant's community-based skills.

53. Service coordinator met with York on October 30, 2012. SGPRC approved 128 hours of TCIP from November 1, 2012 through April 30, 2013. SGPRC was also trying to clarify what was left of the 144 hours previously approved as make-up service hours. Service coordinator and York discussed TCIP recommendations and agreed to meet with mother for Claimant's annual review and to have a SGPRC behavior analyst observe Claimant before implementing an ABA program.

54. Service coordinator also received telephone calls from ELARC staff, Rodgers and Edith Hernandez (Hernandez). Both said mother had contacted them regarding her concerns about TCIP. Both told service coordinator that mother wanted a program like she had with IABA and according to Hernandez, mother thought that she could work with the ABA program through TOTAL, but she did not like TCIP. Service coordinator explained to Rodgers that the plan was to provide consistency and structure for Claimant by continuing to provide his existing programs and to meet for a December annual review and to involve the program manager, the Inter-Disciplinary team (ID team) and the behavior analyst.

55. Over the next several days, SGPRC service coordinator contacted or attempted to contact various vendors providing services to Claimant, including Progressive Resources, gymnastics, his music therapist, and Sherman. Service coordinator talked to Murray on November 1, 2012. Murray told service coordinator that Claimant had made progress, reducing his self-injurious behavior and physical aggression. Murray thought mother was capable of managing Claimant's behavior. Murray told the service coordinator that IABA used DTT to address Claimant's functional skills and self-help skills to increase Claimant's independence. According to Murray, IABA also provided DDT in the community and during behavior respite. According to Murray, Claimant had become agreeable to using his iPad. Murray explained that IABA terminated the case because the family moved out of the area.

56. On November 1, 2012 and November 26, 2012, SGPRC service coordinator discussed Claimant's AAC needs with Sherman. Sherman said that that Claimant is very resistive to using his iPad, which was inconsistent with the information provided by IABA. Due to Claimant's behavior problems and physical aggression, Sherman was unwilling to continue to provide Claimant with Service Agency funded services even with a member of TCIP staff present. She was continuing to provide clinic-based services for Claimant through his school district. On November 26, Sherman described a meeting at which mother declined further services because she wanted a behavior plan. Sherman, Surfas, and Jimenez attended the meeting at Claimant's school to ask Claimant's school to fund a "Functional Analysis" and to propose amending the TCIP school plan to try to get mother to agree to permit Claimant to attend his AAC/speech therapy. At some point in time, Glendora Unified School District entered into an agreement with TOTAL Programs to conduct an educational assessment, apparently with the expectation that TCIP would provide Claimant with an educationally-related transition program.

57. In late November, 2012, apparently in response to a revised ELARC IRCT, SGPRC service coordinator submitted a request to fund additional TCIP services for the next eight months. In addition, service coordinator addressed other funding issues, including a mileage reimbursement issue that mother was very concerned about.⁹ Service coordinator also completed a referral to Elizabeth Annamraju, LMFT (Annamraju), SGPRC's behavior analyst, to initiate an observation by Annamraju. Service Agency wanted Annamraju to observe Claimant before funding a behavior intervention program.

58. On November 26, 2012, mother informed service coordinator that she wanted Russell to attend Claimant's annual review. At mother's request, service coordinator contacted a social skills/AST provider to obtain needed vendor information.

59. After unsuccessfully trying to leave Russell a voicemail, service coordinator emailed him on December 4, 2012, asking him to contact her regarding dates he might be available to attend Claimant's annual review.

60a. On December 6, 2012, service coordinator spoke with Jimenez regarding the number of hours Claimant was receiving and the number of hours he may need in December. They also discussed a clinic meeting TCIP had the previous Saturday with mother. Jimenez said that meeting went well and they were planning to have a clinic meeting the first Saturday of the month. TCIP had assigned a field supervisor to support Claimant and the direct service staff. According to Jimenez, mother was still declining to resume AAC services because demands to communicate were a trigger for self-injurious behavior and non-compliance. Service coordinator informed Jimenez that Annamraju would be observing Claimant in TCIP and during his music therapy sessions. Jimenez informed service coordinator that Claimant's IEP was scheduled for December 19, 2012. It is not clear from the record if TOTAL Programs ever provided Claimant educational services.

60b. Service coordinator also left a message for mother reminding her of the need to schedule Claimant's annual review, provided information regarding behavior respite, and

⁹ Although mileage reimbursement is not an issue in this case, the ID Notes contain numerous efforts by mother to receive mileage reimbursement, disputes over paperwork she was required to submit in order to be vendored by SGPRC as the transportation vendor for Claimant, and disputes about whether mother was entitled to claim reimbursement for unlimited mileage. At one point the service coordinator wrote that she was asking ELARC to do another transmittal to reflect the correct information. In January 2013, the SGPRC service coordinator met with Ray, the client's rights advocate to discuss the transportation issue. In January, mother disagreed with the need for a payment agreement for mileage reimbursement. Mother eventually signed and returned the reimbursement payment agreement. Several months later, mileage reimbursement again became an issue when mother refused to sign an e-billing agreement required by the Service Agency. Mother eventually signed the e-billing statement.

let mother know that she had not heard back from Russell. She also sent mother social skills training and adaptive skills training agreements for mother to sign and return. (Exhibit K.) Claimant's annual review was not held during December, his birth month.

61. Claimant's services were reviewed by SGPRC's Autism Committee on December 18, 2012. Annamraju attended the meeting. The ID Note indicates that Annamraju's observation was pending. The Note also stated that Claimant's school placement was pending and that his IEP was scheduled for the following day. The Autism Committee recommended a program that would combine both social skills and adaptive skills training. Service coordinator contacted the service provider suggested by the committee. The provider said that due to the complexity of the case, she wanted to do an assessment before providing services. York suggesting proposing additional hours to compensate for the provider implementing services without an assessment.

62a. On January 16, 2013, mother called service coordinator, asking if TCIP staff could go with her and Claimant to a church retreat. The purpose of the retreat was to transition Claimant back to attending church, which had been curtailed because his voice volume was disruptive.

62b. Claimant's annual review was scheduled for January 24, 2013. Russell asked service coordinator to change the time to 10:00 a.m. because mother needed to transport Claimant in the morning. Russell also expressed his concern about how much mileage reimbursement mother was entitled to receive and his disagreement with the mileage payment agreement mother had been asked to sign. Russell also asked for additional respite care for Claimant while mother was attending a religious retreat. Later that day, service coordinator talked to mother about the use of TCIP for the retreat, mileage reimbursement, and the need to sign the mileage payment agreement and mother's concern because she had been transporting Claimant to his services and had not been reimbursed for the expenses. Service coordinator explained that different regional centers have different practices and that she could choose between accepting a flat mileage rate and a per-mile rate.

63. On January 24, 2013, Russell emailed service coordinator, informing her that mother would not be able to attend the annual review scheduled for 10:00 a.m. that day because Claimant was not feeling well and she had no one to care for him. Russell suggested three dates in February. Service coordinator and York agreed to February 12, 2013, one of the dates suggested by Russell.

64a. On January 31, 2013, Sherman contacted service coordinator to say that mother wanted to restart AAC services, but that there was no behavior plan in place and that she could only staff 32 hours of service, 7 hours less than ELARC had agreed to fund.

64b. On January 31, 2013, Surfas and Ledys Lopez, Psy.D., TOTAL Program psychologists, completed an educational assessment to determine Claimant's present levels of functioning, areas of identified need, the need for general education interventions, and the level of support need in a special education program. The report included a review of

records, results of standardized tests, adaptive and social skills assessments, and a summary of Claimant's functioning. The report included recommended goals in the areas of functional academics, adaptive skills, communication, and vocational skills.

65. According to mother, an IEP meeting was held on January 31, 2013. Mother invited Ray to attend this meeting. No one else from Service Agency appears to have been invited to attend the IEP meeting.

Claimant's Services and Supports during February and March, 2013

66. During the months of February and March 2013, mother and various Service Agency staff had frequent telephone contact regarding Claimant's behavior, mother's desire to start behavior intervention services, her request for additional service hours, and TCIP's staff availability.

67. On February 6, 2013, mother twice contacted the SGPRC on-call service for crisis intervention. At the time of the call, Claimant was sleeping on the couch after eating dinner. He was described by mother as calm, but mother was afraid that when she asked him to move from the couch to his bed, that he would have a behavior crisis. Mother was advised to not disturb Claimant and to contact the on-call service if she needed further assistance. Mother told the responding on-call manager that Claimant was receiving TCIP services. The on-call-manager told mother that TCIP is a community integration program with a behavior intervention component, but it is not an in-home behavior management program. After some discussion, the on call-manager approved two hours of behavior intervention to be provided in the home by TCIP. Mother asked for the service on an on-going basis. The manager explained this was a one-time exception. The manager contacted Jimenez to inform him of the plan and the expectation that TCIP would contact the manager to confirm receipt of the message. The manager did not receive a return call from Jimenez or mother. The manager informed the service coordinator of the incident the following day.

68. On February 7, 2012, mother contacted the service coordinator to discuss problems she was having getting Claimant to bed. According to mother, this behavior had escalated over the past several weeks. Mother wanted Service Agency to authorized TCIP to stay several hour longer each night to transition Claimant to bed. Service coordinator told mother that her request would be reviewed by the ID team; the team agreed that TCIP could stay up to two hours longer each night on a temporary basis but that the time would come from the monthly hours that were already authorized. Service coordinator then contacted Jimenez, who agreed that staff would stay up to two hours longer, using the hours that previously had been authorized.

69. A meeting was held at SGPRC on February 12, 2013). According to the ID Notes, service coordinator, York, mother and Russell attended the meeting. The meeting was scheduled to develop an IPP. Jimenez was present for part of the meeting. The meeting included discussion of Claimant's behaviors, in particular his aggression and self-injurious behavior. The various changes in Claimant's life, including the family move, changes in

programs and services, and the impact these changes had on Claimant's behavior also appear to have been discussed. The ID Note indicates that mother was concerned that Claimant was having increased behavior problems, but service coordinator and York were having difficulty getting details from mother about those behaviors. Service coordinator and York also tried to explore with mother why mother was not able to apply the many years of parent training she had received from CARD and IABA to Claimant's present problems. There also was some discussion about mother's request that TCIP provide clinic time, disagreement between Jimenez and service coordinator about whether TCIP had agreed to provide clinic time, and funding for such a service. There was disagreement about whether SGPRC had told mother TCIP was a behavior program, and whether TCIP was using a behavior program in the community. The service coordinator informed mother that Annamraju would have to observe Claimant and that she would report the results of her observation to the ID team in order to propose a solution. Mother wanted an independent assessment, not performed by a member of the SGPRC staff, but "reluctantly" agreed that Annamraju could observe Claimant on February 20, 2013. Mother declined to sign a proposed Behavior Agreement, a standard form required by the agency if the ID Team agrees to implement a behavior intervention service. (Exhibit L.) Mother took the form with her for review. The team members also discussed TCIP's program in light of Claimant receiving a full school program. Russell suggested some adjustment to the TCIP hours might be appropriate although the service coordinator thought mother was reluctant to agree to a change. The meeting attendees also discussed Claimant's other services.¹⁰

70. An incident occurred on February 11, 2012 which resulted in TCIP filing a Special Incident Report. Marine Aladzhyan, a field supervisor for TCIP, contacted the service coordinator on February 12, 2013 regarding the incident and expressed her concern that Claimant was reacting to increased demands being placed on him in the community, his resistance to those demands, and her concern that Claimant was not subject to demands at home. That same day, service coordinator informed Annamraju that mother had agreed to an observation on February 20, 2013. During a discussion with service coordinator, mother suggested that Eric Maier (Maier) provide behavior intervention program for Claimant. Service coordinator informed mother that she would take that suggestion to the ID Team after Annamraju had an opportunity to observe Claimant. Mother also reported that Claimant had met with Darlene Hanson, an AAC provider (Hansen), and that Hansen had been able to get Claimant to type his thoughts. On February 15, service coordinator contacted Sherman, Claimant's AAC provider, about starting Claimant's AAC services. Sherman informed service coordinator that the service had not started yet but that Sherman and her staff were working out the details with mother.

71. On February 15, 2013, service coordinator was informed that mother had

¹⁰ Although the ID Notes indicated that service coordinator spent several days in May preparing an IPP document, there is no evidence that that document was completed or implemented prior to another IPP meeting held on September 26, 2013.

contacted Keith Penman, SGPRC Executive Director (Penman), expressing her urgent need for behavior services. Mother told Penman that she was not happy with TCIP and that it was not providing enough support for Claimant's behavior problems and that it had misrepresented itself as a behavior service. Mother was also concerned because she had to contact the on-call manager to discuss her need for additional services and that manager said that TCIP is not a behavior program. Mother told Penman that she believed that the service coordinator did not understand what she wanted, and that she wants what is on Claimant's IPP as soon as possible. Mother told Penman that she wants a behavior program and wants to keep a community integration program in place as well. She provided Penman with the name of Eric Maier, said he was associated with CUSP, and asked that he be vendored on an emergency basis so the program could be put in place as soon as possible. Penman told mother that the agency would convene a Client Consultation Committee (CCC) meeting to discuss mother's concerns.

72. Shortly after mother and Penman spoke, the CCC met and recommended behavior interventions services be started, that Annamraju would need to observe Claimant, and that mother would have to sign or agree to the Behavior Services Agreement. (Exhibit L.)

73. In mid-February, service coordinator received a letter from Rhodes, Claimant's counselor, who describing behavior issues Claimant was having, including several incidents of physical aggression towards the therapist and loud vocalization in the office.

74. On February 19, 2013, York discussed with mother behavior intervention services, the need to have Annamraju conduct an observation of Claimant, the need to see if mother's provider of choice for behavior intervention services was vendored by another regional center and if not, that vendoring the service would take time to complete. She also told mother that SGPRC could refer her to other behavior intervention service providers, but mother would need to agree to the terms of the Behavior Agreement that had been presented to her at the February IPP meeting. Mother told York that all information "needed to go through her advocate." (Exhibit 14.)

75. Throughout February and March, 2013, Service Agency and mother had ongoing discussions about mother's request to continue community integration services when Claimant's behavior intervention services started. Hope determined that Claimant was not entitled to community integration services because it was not one of the services listed in the 2012 IPP and that Service Agency would give Claimant notice that it was terminating community integration services when Claimant's behavior intervention services started. York testified that Service Agency considered behavior intervention and community integration to be duplicative services because both services were designed to meet the same needs and both involved behavior intervention.

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76. Mother expressed her frustration with the communication and delay, and asked service coordinator to send an email with agency recommendations to Russell. Service coordinator reminded mother that Annamraju's observation was scheduled for the next day and that would help to expedite things. Service coordinator and mother disagree about how long mother had been asking for behavior services. Mother terminated the conversation. Later that day, TCIP contacted the service coordinator, because the program did not have staff available for Annamraju's observation of Claimant, scheduled for the next day.

77. On February 20, service coordinator left a message for Russell regarding dates to meet. Service coordinator also asked Russell to provide a power of attorney or another document showing that mother is Claimant's authorized representative. Mother provided an email address and asked the service coordinator to copy the information she had sent to Russell to her. She also informed the service coordinator that an emergency IEP was scheduled to discuss Claimant's educational services, but that she did not want a Service Agency representative at the IEP meeting. Mother also cancelled Annamraju's observation scheduled for the same day, stating she did not want anyone from the Service Agency in her home, that she would bring Claimant to the Service Agency offices, but that she did not want any observations or documentation of Claimant's behavior to occur. Service coordinator explained that the agency was agreeable to behavior intervention services but that it need to establish a baseline for Claimant's behaviors.

78. On February 22, 2013, mother contacted service coordinator to inform the agency that TCIP had not provided staff for Claimant that day. Mother informed service coordinator that she had called Surfás, but had not received a return call. Service coordinator contacted a TCIP supervisor, who explained that TCIP typically had staff with Claimant between 9:00 a.m. and 9:00 p.m. According to the TCIP supervisor, mother was unwilling to work with four staff that were available, making staff coverage during the evening hours difficult. According to the supervisor, TCIP has been able to have staff members available through 2:00 p.m. When service coordinator contacted mother, mother expressed concern that staff had attended a conference that day and thus TCIP was unable to provide her with the staff she needed. Although mother asked service coordinator to try to arrange staffing for all day, she agreed the most critical time for staff coverage was at 6:00 p.m. The service coordinator followed up with meeting with various SGPRC managers and eventually reached Surfás and Jimenez, trying to arrange for evening staff coverage. According to Jimenez, the staffing problem was due to staff medical appointments and two staff having withdrawn for the case. He was having problems finding staff members available for the evening hours. According to Jimenez, he was working to train new staff, but that training would take about a week.

79a. Mother called service coordinator on February 25, 2013 to report that the prior evening, Claimant became violent and aggressive. That incident was documented by TCIP in a SIP. A TCIP staff member stayed through the night to help to control Claimant's behavior if needed. Mother asked to start a behavior intervention program because Claimant was in crisis and because Claimant's 2012 IPP identified a behavior intervention program, not a community integration program. She requested a behavior program with a community

aspect. Service coordinator discussed mother's request with York who reiterated that SGPRC was willing to fund a behavior program, but that if it did so, it would discontinue community integration services. When service coordinator informed mother that the agency would not approve both community integration and behavior intervention services, mother again stated that she was not willing to discontinue community integration services. Mother told service coordinator that it was Service Agency's fault that it could not provide the behavior intervention and community integration services as agreed to in Claimant's IPP. Mother told service coordinator that she would discuss the issue with her advocate. According to mother, Claimant's maladaptive behaviors were very serious and she believed that with the right support, he would overcome his problems.

79b. After speaking with mother, service coordinator discussed the case with York. They reviewed Claimant's last IPP, prepared by ELARC in January 2012 and the transmittal from ELARC. The IPP listed an intensive support service to be provided by IABA. The service was to be provided primarily in the home, although some hours were approved for service delivery in the community. However, ELARC's October 2013 transmittals listed and identified funding for TOTAL's community integration program. York's position continued to be that mother could choose between a community integration program and in-home behavior services.

79c. Mother later called service coordinator because TCIP staff had not arrived at the agreed meeting place. According to mother, the staff member was two hours late. Service coordinator spoke with Jimenez, who explained that he did not have staff meet mother because they had worked overnight the previous night and he was in "overtime." He was trying to arrange overnight staff for that evening to accommodate mother's request. York and service coordinator reviewed the request and informed Jimenez that if mother requested additional hours, it would be deducted from the previously authorized hours. Jimenez was apprised of the agency's position regarding the available number of hours.

80a. On February 26, at about 4:30 p.m. Mother contacted the service coordinator, informing her that mother had been trying to contact York for several hours. York was unavailable. According to mother, Claimant had been sitting in a car, refusing to get out since 9:30 a.m. Claimant had not eaten or used the restroom. Service coordinator suggested calling the police if mother considered it to be an emergency. Mother again asked to speak with York, because they had spoken earlier that day regarding TCIP.

80b. Mother contacted Ray, SGPRC's CRA, asking that CARD be authorized to provide behavior intervention services. Service coordinator, York and Ray discussed mother's request for CARD services and Service Agency agreed to fund a CARD assessment. Mother was informed that SGPRC would give mother notice that it was terminating TCIP once the CARD assessment was completed.

81. On February 28, 2018, service coordinator contacted CARD to see if they would have staff members available for 130 service hours per month and if they could begin providing services before they had completed an assessment. CARD agreed that to review

the case, and schedule an assessment to determine the level of services, hours of service, and appropriate staff members that Claimant would need. Service coordinator also contacted TCIP to obtain an accurate schedule of the number of hours worked during the month of February. Based on that information, Service Agency approved an additional 20 hours to compensate TCIP for overnight hours TCIP staff had worked. Mother also contacted service coordinator, asking Service Agency to fund additional TCIP hours and asking that a new supervisor replace Jimenez. Service Agency denied the request for additional hours, but informed mother that CARD had been approved to provide a behavior intervention program. Mother told service coordinator that she would appeal the denial of additional hours and that she would hold the agency responsible if anything happened to her or Claimant.

82. On March 4, 2013, mother told the SGPRC service coordinator that she had spoken with York on March 1, 2013, that York had approved behavior intervention service to be provided by TOTAL Behavior Intervention Programs (TBIP) until CARD could start providing services. Mother again asked Service Agency to continue Claimant's community integration program as well as begin behavior intervention services. She also asked for more service hours to have someone with Claimant until he falls asleep at night. Service coordinator also spoke with mother about TCIP's effort to have staff available for a night shift. Service coordinator discussed mother's request with Jimenez, who was having problems finding a male staff member to cover the shift. Jimenez said he informed mother that she was rapidly running out of service hours because of the added night shift. Ultimately, TCIP was able to get a staff member to work the night shift. Jimenez asked for a meeting with service coordinator and York to discuss a staffing schedule to avoid last minute requests. Service coordinator also confirmed with CARD that a supervisor would have to be BCBA certified. CARD agreed to talk with mother about Claimant's insurance, and the services she wanted and the hours for those services. Service coordinator and CARD determined that Medi-Cal would not cover behavior intervention services. CARD asked Service Agency to authorize eight hours for an assessment. Mother asked if CARD could begin services before March 18, 2013. The following day, service coordinator obtained authorization for CARD to conduct an assessment effective March 5, 2013.

83. On March 5, 2013, Service Agency authorized an additional 20 hours of TCIP services to be used when Claimant was out of school. Mother called to report that TCIP had not been available that afternoon. Mother said she could not provide TCIP with a fixed schedule so they could arrange staff schedules but that she definitely needed someone on Tuesday and Thursday evening for speech therapy and when Claimant transitions to bed. Mother informed the service coordinator that she was looking at school programs and that the next IEP was scheduled for March 11, 2013.

84a. On March 6, 2013, mother called service coordinator to cancel the meeting she had requested and scheduled for that day. Mother continued to express her concern because TCIP was unable to staff the evening hours. She asked service coordinator to have Jimenez removed from the case. Service coordinator explained to mother that Service Agency does not control TOTAL's staff. Service coordinator discussed mother's request with Surfes. Surfes declined the request explaining that Jimenez was TCIP's director of community

integration and was familiar with the case, which was very involved. Surfás also suggested TCIP and CARD staff meet so that they were working collaboratively on Claimant's case. Surfás explained at hearing that he had been unsuccessful in getting mother to work with them on intervention techniques.

84b. Mother told service coordinator that she considered Surfás' position unacceptable, that Jimenez was making disparaging statements about her, and that as a result, TCIP's employees were distant and distrustful. Mother told the service coordinator that she had always been able to call TCIP staff, but that they had not been returning her calls or texts. Mother felt that Jimenez was inconsistent with his services, his communication with his staff, and with the Service Agency. Mother refused to speak with or work with Jimenez. During that conversation, Mother also asked service coordinator to contact ELARC to get an authorization signed by Claimant giving mother educational rights that she needed for the upcoming IEP. SGPRC's service coordinator called Rodgers, who said that mother had never given ELARC a copy of the authorization.

84c. When service coordinator again talked with mother on March 6, 2013, mother expressed her dissatisfaction with the staff TCIP was providing. According to mother, she had to stay with Claimant all day because TCIP staff were unable to redirect him. Mother wanted to know which TCIP staff would be providing services when Claimant's regular staff were off between Friday and Monday. When mother was told to contact TCIP directly, she said she refused to speak with Jimenez and would have to find someone else to speak to.

85a. On March 7, 2013, mother asked for a meeting to take place on March 12, 2013 with TCIP and the Service Agency. She continued to be unhappy with TCIP services and staff. Jimenez and Surfás agreed to attend the meeting. On March 11, Surfás informed service coordinator that at an IEP held that day, mother told the school district that she did not want TOTAL Programs to provide Claimant's school program and that she did not want TOTAL anywhere near Claimant. At York's direction, service coordinator contacted mother to see if she still wanted to have TCIP provide any Service Agency services and advise her that there was no vendor available to replace TCIP. Mother was upset because Jimenez told service coordinator what occurred at the IEP meeting. According to mother, she was making the school district aware of how TOTAL was mishandling Claimant's case, having lost his belongings at a restaurant, having staffing problems, and that TOTAL had cancelled assessments and appointments. At mother's request, the school district agreed to take TOTAL off of Claimant's case. However, Mother did not want agency-funded TCIP services stopped until CARD services began. Jimenez agreed to continue services until CARD services could begin because he did not want to leave Claimant without support. According to Jimenez, TCIP took mother's accusations very seriously, and he wanted to hear directly from the mother that she wanted to continue with their services during the interim before CARD services were scheduled to begin. York asked service coordinator to contact mother to see if she still wanted notice that Service Agency would terminate TCIP services when CARD started providing Service Agency funded behavior intervention services.

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85b. When service coordinator contacted mother, mother was concerned because Jimenez was able to staff only 138 service hours and that TCIP's hours would be reduced during the day, presumably because the school district would no longer fund TOTAL's services. Mother asked for additional hours from TCIP until CARD was fully staffed to cover district funded hours. York denied mother's request for additional service hours.

86. On March 12, 2013, mother cancelled the meeting she had requested with TCIP. TCIP informed service coordinator that it was giving 30-day notice to terminate Claimant's services based on mother's statement that she no longer wanted to work with TOTAL. Jimenez testified that the breakdown in the relationship between mother and TCIP staff contributed to the decision to terminate services. Jimenez was having problems locating consistent staff willing to work with Claimant and his mother. Claimant's behaviors were difficult to manage and Jimenez was only assigning male staff to work with him. Mother did not want some staff members to work with Claimant. Moreover, mother would complain to staff members about other staff members, about Jimenez, and about TCIP. Mother and TCIP were not able to come to agreement about staff hours, the staff Jimenez would assign to work with Claimant, and the degree of control mother would have over services, including the contingencies that would be used. Jimenez felt the relationship between mother and TCIP had deteriorated to the point that it was no longer beneficial to serve Claimant. Mother thought TCIP's decision was retaliation for her complaining to the school district about the poor service they were providing. She asked service coordinator to write a "formal complaint letter" about TCIP's service. When service coordinator declined mother's request, mother said she would discuss the matter with an agency director.

87a. On March 13, 2013, mother asked for another vendor to provide community integration until CARD could begin providing services. Mother was upset because the hours proposed by Jimenez would not allow staff to accompany Claimant to speech therapy, which was on Claimant's IEP, and which according to mother, TCIP had agreed to do. Mother had spoken with a staff member at Behavior Respite in Action (BRIA), who said they could provide staff for the hours mother wanted. Mother said she no longer wanted to work with TCIP, even for the last 30 days, pending termination of their services. She asked for TCIP to be removed from Claimant's case.

87b. Service coordinator contacted David Yin (Yin), the director of BRIA, regarding mother's request that BRIA provide a community integration program. Service coordinator informed Yin that BRIA was authorized to provide behavior respite at home but not in the community. Mother asked Service Agency to vendor BRIA on an emergency basis so that it could take Claimant into the community. She also told the service coordinator that she no longer wanted to talk to TCIP, but that she would continue to use their services until a new vendor was available. Mother stated that Claimant's last IPP included communication services and art therapy and that she wanted those services to commence immediately so that Claimant would receive some services in the community. Mother also asked the service coordinator to obtain a copy of TCIP's last progress report. Finally, mother asked that Russell be included in all communication with her and asked for a meeting with service coordinator, York and Penman along with Russell. Russell and service coordinator

subsequently discussed mother's request that BRIA provide community integration services, and whether CARD was ready to start services. Service coordinator explained that CARD was approved to provide services but that an assessment needed to be completed. Russell agreed to have mother contact CARD to schedule an appointment.

87c. Later that day, mother informed service coordinator that she had retained an attorney who was going to file a claim against the Service Agency because it was not in compliance with Claimant's IPP. According to mother, counsel advised her to again ask to use BRIA in lieu of TCIP. After speaking with mother, service coordinator called CARD to see if the assessment was scheduled to take place. Mother and service coordinator also discussed mileage reimbursement. Mother told service coordinator that she had not mailed the mileage payment agreement because she did not have a stamp.

88a. On March 14, 2013, mother informed service coordinator that she had not received a response to several calls she had made to the agency the previous evening. Mother was concerned because TCIP was unable to provide staff during the morning hours. Again, mother asked for an interim community integration program. Mother said her attorney would be calling the agency because Mother believed that Service Agency was denying her CARD services.

88b. Mother, service coordinator and Yin discussed BRIA services. Yin explained to mother that BRIA was not a behavior intervention program and that it needed a behavior intervention plan developed by an appropriate agency, such as CARD, to provide behavior respite services. Mother asked again for BRIA to provide behavior intervention services and Yin explained that it could not do that. Mother asked service coordinator to have Penman authorize BRIA to provide behavior intervention services. Later that day, mother told service coordinator that TCIP was unable to provide staff that day because the assigned staff had called in sick.

88c. On March 14, 2013, service coordinator presented Claimant's case to the CCC in order to obtain additional resources. CCC suggested People's Choice, a community integration program. The committee also discusses whether Claimant was entitled to unused AAC service hours because the service had not yet started. Service coordinator informed mother that she had talked to CARD, who was trying to approve staff member's work schedules before meeting with mother. Service coordinator also informed mother of the outcome of the CCC meeting.

88d. Service coordinator spoke with Sherman, Claimant's AAC therapist. Sherman informed service coordinator that she was originally authorized to provide 30 hours per week of service but this was reduced to 10 hours because Claimant's behavior and focus were interfering with his grasp of information. On October 10, 2012, mother had terminated Sherman's service. Sherman explained to service coordinator that she provided service to Claimant in the community, using an iPad or whiteboard to facilitate Claimant's communication.

89a. On March 18, 2013, mother contacted Claudia Hemingway, a Service Agency director (Hemingway), asking for additional community integration services in the evening. Claimant was authorized to receive 138 hours of TCIP services at the time. Mother said she needed the service because she could not get Claimant to get off the couch and he was not drinking fluids. Hemingway contacted Jimenez, who explained that Claimant was almost out of hours because Claimant was using his TCIP hours in the morning when he was not attending school. According to Jimenez, mother was refusing to discuss Claimant's schedule with TCIP staff. Hemingway declined to increase TCIP service hours.

89b. Mother again contacted the service coordinator and asked for additional TCIP service hours. Mother also had a list of vendored community integration programs and asked service coordinator to initiate services with one of them, Education Spectrum. Service coordinator also returned a call to Rodgers, Claimant's ELARC service coordinator, who told service coordinator that mother had called asking for a community integration program vendor list. According to Rodgers, she told mother that she had to call SGPRC and that Rodger's could not assist mother.

89c. In another conversation on March 18, 2013, mother asked service coordinator to consider California Psych Care as a possible behavior intervention program. Service coordinator explained to mother that Service Agency had authorized CARD as a behavior intervention program and could not authorize a second program for the same service. Nonetheless, service coordinator agreed to explore Education Spectrum as a community integration program. Mother expressed her dissatisfaction with TCIP because Claimant had had his iPad stolen, and been left alone in a restaurant restroom while under their care. Mother believed that TCIP was terminating its Service Agency funded services because she had asked the school district not to contract with TCIP as Claimant's educational program provider. Service coordinator again declined mother's request to write a formal letter of complaint about TCIP.

89d. That day service coordinator also contacted Frank Fernandez of People's Care regarding a program for Claimant. Fernandez asked for a referral packet and agreed to take the referral to his review team for consideration. Service coordinator also informed mother of her consultation with York regarding the appropriateness of Education Spectrum for Claimant. According to York, Education Spectrum is primarily a social skills training program, it is not a community based program and it does not accept consumers with behavior problems. Mother and service coordinator also discussed information provided by Dr. Rhodes, Claimant's psychologist, regarding Claimant's behavior.

90. On March 19, 2013, TCIP staff picked Claimant up at home. Mother told staff that Claimant was "bothered" and "off." (Exhibit S.) TCIP staff took Claimant to a shopping center for lunch and then to a book store. Claimant had difficulty transitioning between activities, becoming agitated and aggressive towards the staff member. The store manager called the police. Mother was also called and eventually the staff member escorted Claimant home, with mother following separately. Subsequently, the staff member informed the

supervisor that he did not want to continue to provide behavior intervention services for Claimant because of problems in transitioning him from one activity to another and his aggressive behaviors.

91. On April 4, 2013, service coordinator contacted Grace Chang, a staff member with SEEK (Chang), to determine whether that program could start providing community integration services to Claimant on April 12, 2013. Service coordinator obtained authorization to fund SEEK but when she informed mother of this, mother indicated that she preferred Education Spectrum. Nonetheless, mother agreed to call SEEK to obtain more information about the program. Several days later, mother told service coordinator that she did not want SEEK in her home or near Claimant's services.

CARD's April 2013 FBA Report and Recommendations

92. CARD completed its FBA Report and Intervention Plan on April 5, 2013. (CARD FBA.) The report was prepared by Justin Goldman, M.A., CARD Case Supervisor (Goldman) and reviewed by Betty Tia, M.S, BCBA, CARD Case Supervisor (Tia). According to Tia, Card uses an ABA approach with clients. ABA is designed to teach individuals skills so that they can be socially significant in their world. Tia testified that a FBA involves direct and indirect observation of an individual in his natural environment in order to assess behaviors, skills, and the level of services needed.

93. The CARD FBA listed the referral behaviors as non-compliance/verbal protest; aggression; self-injurious behaviors; physical stereotype; vocal stereotype; and ritualistic behaviors. These behaviors were identified as priorities for an intervention plan. In addition, CARD recommendations included an emphasis on adaptive living skills, leisure skills, social skills and communication. CARD reviewed Claimant's strengths and deficits in the areas of language and communication, self-help, social behavior, and maladaptive behavior. According to the report, mother reported that Claimant had regressed since his ABA services were terminated and she was eager to resume such services and participate in parent education so she could apply appropriate interventions when Claimant engages in maladaptive behavior.

94. CARD established six month goals and intervention strategies. CARD also identified a data collection and treatment protocol training plan for Claimant's mother, along with three goals for mother. CARD expected active involvement on the part of mother. Environmental and ecological strategies, methods for teaching replacement strategies and for generalization and maintenance were identified. CARD recommended 87 hours per month of direct one to one therapy, 8 hours per month of supervision and 9 hours per month of consultation with mother and team members.

95. According to Tia, CARD did not initially observe Claimant's aggressive and self-injurious behaviors. A behavior Tia described as Claimant becoming "stuck" was significant. Stuckness was defined as any time Claimant did not move for a period in excess of one minute. This behavior could last up to seven hours. Stuckness occurred when

Claimant was unable to move during a transition from one activity to another. Tia hypothesized that Claimant was overwhelmed. Claimant became “stuck” when he was in an unfamiliar place or situation or asked to engage in a non-preferred activity such as speech therapy.

96. According to Tia, ABA services typically range from 30 to 40 hours per week. Although Claimant’s ABA services hours varied over the time CARD has been serving Claimant, he was receiving approximately 70 hours per week of Service Agency and school district funded services. Tia knew of no literature that supported that level of service and thought that it was not in Claimant’s interest to receive that much service. According to Tia, Claimant needed to have breaks from ABA services, to read or watch video clips. She acknowledged that getting a stuck was a form of a break for Claimant.

Claimant Services and Supports in April 2013 through July 2013

97a. On April 10, 2013, mother contacted service coordinator because TCIP was terminating services effective April 11. Mother asked service coordinator to extend authorization for TCIP to continue providing Claimant with services until another program could start. Because mother did not want SEEK, she asked that CARD be authorized to provide services in the community as well as in the home. Service coordinator explained that this was not possible. Service coordinator explained that she was waiting for CARD to set a start date and that if mother rejects SEEK, then Claimant will be without a program until CARD starts. Service coordinator spoke with York and Hope and thereafter, informed mother that TCIP was unwilling to extend its services. Mother initially agreed to accept SEEK on a temporary basis but then wanted to first speak to Russell. Ultimately, mother said that she wanted the community integration program terminated until Claimant’s behaviors were under better control.

97b. On that same day, a conference call was held with mother, service coordinator, York, and Hope. Hope explained that Service Agency cannot force TCIP to provide additional services, although Service Agency was willing to authorize additional hours if TCIP was willing to provide them. At mother’s request, Service Agency contacted Goldman, who said CARD did not have the staff available for 104 hours that were authorized, but could provide staff for 87 hours in April. York asked mother to contact Goldman to discuss CARD’s staff availability and agreed to fund additional hours of service if CARD could provide them.

98a. On April 23, 2013, mother contacted York to ask for an IPP meeting. When service coordinator called mother to set the meeting up, mother said she had been mistaken, that she did not want an IPP but did want a team meeting to discuss the role of CARD and how CARD would be providing services to Claimant. Mother then said she was not sure if she wanted the meeting because she did not want to take time away from CARD completing Claimant’s assessment.

98b. On the same day, Mother asked service coordinator to re-start Claimant's gymnastics, which she identified as an IPP service. In a conference call mother, Russell and service coordinator agreed to meet for an IPP on May 16, 2013. They also discussed gymnastics, which Russell said he would check on, and mother's refusal to sign an e-billing agreement required for mileage reimbursement. Service coordinator agreed to take mother's request for gymnastics to the Exceptional Services Review Committee.

99. On May 1, 2013, service coordinator obtained authorization for CARD to commence providing behavior intervention services pursuant to CARD's request for 87 hours per month through October 2013, with some adjustment for April and May 2013. In addition Service Agency authorized 8 hours per month of supervision and 6 hours per month of clinic services. Service coordinator also met with the Exceptional Services Review Committee to discuss Claimant's request for Service Agency funded gymnastics. The committee denied the request because the service was not on Claimant's IPP and was not related to a developmental need. At mother's request, service coordinator prepared an NPA denying gymnastics.

100. In early May 2013, service coordinator appears to have drafted some of the notes from the February 2013 IPP meeting, apparently in anticipation of the May 16th meeting. However, there was some disagreement among mother, Russell, and Service Agency staff over whether the meeting scheduled for May 16, 2013 was an IPP meeting or a review team meeting. Eventually, mother cancelled the meeting.

101. On the weekend of June 1-2, 2013, mother contacted the on-call manager, Christine Nicholson (Nicholson), who authorized CARD to provide additional services over the weekend. Nicholson informed mother of the need to convene an IPP to discuss mother's request for additional respite on an on-going basis. Tia informed a Service Agency manager that CARD had provided seven hours of additional service over the weekend and would be asking for additional service hours. Tia also identified about the need for mother to have an emergency back-up plan for times when CARD staff are not available.

102. Service coordinator followed up with Nicholson, who clarified that she did not authorize additional hours, but authorized CARD to use hours from their existing allotment. Service coordinator informed Nicholson that CARD's hours were under review. Service coordinator was able to obtain authorization for seven additional hours to make up for those used over the weekend. On June 3, York clarified with CARD staff that Service Agency funding was for services delivered after Claimant completed his school day. Glendale Unified School District had approved CARD to provide Claimant with educationally related services.

103. On June 5, 2013, Goldman completed a Behavior Assessment Report. The report identified an overall increase in Claimant's aggression during the month of May. Aggression was occurring when even minimal demands were placed on Claimant. Goldman also described Claimant becoming stuck. According to Goldman, physical prompting to transition Claimant sometimes led to acts of aggression or to Claimant "flopping" to the

ground wherever he is. Consequently, staff was “waiting-out” these events, but they could take up to eight hours to resolve. Mother reported that Claimant was having approximately eight to ten of these events per day. Staff was generally more successful in transitioning Claimant than was mother. Due to these behaviors, mother was fearful when left alone with Claimant. CARD requested one to one direct therapy hours be increased to 225 hours per month. On June 5, 2013, service coordinator requested approval of CARD’s request for 225 service hours per month. Service Agency approved 130 hours retroactive to April, when CARD services had been approved to start. Service coordinator prepared an NPA denying the request for 225 hours of behavior intervention services. Service coordinator and mother also discussed mother’s concern because it appeared to mother that CARD was having problems providing staff.

104. On June 6, 2013, mother asked to meet with York to discuss CARD’s request for 225 hours per week. York declined to meet with mother and asked mother to set up an IPP meeting with the service coordinator. Hope contacted CARD to discuss its request for 225 hours. CARD staff explained that Claimant was aggressive with mother and female staff and CARD was only assigning male staff to work with Claimant. CARD asked for 225 hours for six months. Hope approved 225 hours for three months. CARD staff and Hope also discussed the need to formulate an emergency plan. Service coordinator was asked to set up a meeting with Annamraju, CARD and mother to try to reach an agreement regarding Claimant’s services. When service coordinator contacted mother to schedule an IPP meeting, mother was not sure if she wanted Annamraju to attend the meeting, expressing concern that it might delay scheduling the meeting.

105a. On June 7, 2013, mother contacted Hope, asking for additional respite hours because Claimant was becoming aggressive. The matter was referred to service coordinator, who reviewed with mother the fact that she was receiving 12 hours per day of services and that Service Agency was not prepared to increase the number of respite hours. At the time, mother still had hours available for the month of June. Service coordinator advised mother to contact BRIA to determine if they had staff available to provide her with respite. Mother asked to speak with Penman regarding her request for additional respite services.

105b. That same day, Rhodes, Claimant’s psychologist, left service coordinator a message confirming that Claimant’s aggression was escalating, that he agreed with the additional behavior intervention support being provided by CARD, and that sometimes, Mother may need overnight support when Claimant is having problems. Rhodes said he and mother had discussed safety protocols, including giving Claimant personal space, providing for her personal safety, staying out of harm, avoiding injury and calling 911 in the event that Claimant becomes aggressive.

106a. On June 10, mother called service coordinator to request increased support during the evening hours. Service coordinator explained to mother that Hope had previously reviewed this request and that it had been denied. Mother asked to speak to Penman, because she believed staff was withholding important information from him. Service coordinator explained to mother that Penman was aware of her request and had made a note in the case

file. Service coordinator reminded mother that CARD was authorized to stay late if necessary, but that those hours would be taken from the hours previously authorized. Mother was also reminded that she could use BRIA if that agency had staff available. At the time, Claimant was receiving 225 hours of Service Agency funded CARD services and 36 hours per month of BRIA services in addition to school district funded CARD services. Mother said she would not ask for 24 hours per day of services if Service Agency would agree to provide her service through 1:30 a.m. Mother was concerned that she should not be left alone with Claimant. Mother asked that a planning team be convened that day, a request that service coordinator declined because of the need to assemble a group of individuals who already had busy schedules.

106b. Later that day, mother called to report that Claimant had run out of the house in his boxer shorts, but that CARD was able to get him to return to the house. Mother was concerned that if CARD had not been present, she would not have been able to get Claimant back into the house. Mother also expressed concern that CARD was not yet able to staff all the authorized hours and wanted service coordinator to ask CARD when they would be fully staffed. Mother also wanted another agency to provide services when CARD was unable to and to cover the period between 8:00 p.m. and 1:30 a.m.

106c. Service coordinator discussed with mother the emergency protocols mother had developed with Dr. Rhodes. According to the ID Notes, Mother said she did not have time to be a counselor and did not think it was her place to counsel Claimant when he was having problems. Service coordinator again explained to mother that CARD was not an emergency service and advised mother that she should call 911 if it was an emergency. Mother told service coordinator that she would not call 911, and that if anything happened to Claimant or to her, that blood would be on the service coordinator's hands, and that service coordinator would have to answer to God about her lack of care and support. Service coordinator completed an NPA regarding mother's request for additional respite services.

107a. Service coordinator met with mother, CARD staff members Goldman and Tia, Russell and York on June 14, 2013. CARD informed mother that it could not provide staff after 8:00 p.m. and that she needed a plan if an emergency occurred after 8:00 p.m. CARD agreed to train mother on techniques that she could use to get Claimant to comply with her requests. CARD also explained that the approval for 225 service hours was through August 31, and that services would then revert to 148 hours. CARD also explained that it was working to fully staff the 225 hours and that it was trying to put together a team of staff. One of the problems it was encountering was the need to keep staff with Claimant, thus taking away from other clients' scheduled service time. CARD also offered to train respite staff. It determined that it would need 12 hours to do that and could do it during its regularly scheduled hours. Service Agency agreed to fund additional respite service hours to train a respite staff member. Mother thought that if CARD could fully staff Claimant then she would not need additional respite services. Mother then contacted Yin of BRIA asking if it had any staff available for training. York also contacted Yin and explained the plan and the authorization for 12 additional hours for respite staff training. At the time, Claimant had 15 respite hours remaining during the month of June. Claimant's nephew was providing the

service, but had indicated he would no longer do so and BRIA was looking for staff to serve Claimant. Eventually a new staff member was identified and this information was relayed to Goldman, who indicated that CARD could train the individual the week of June 18th.

107b. The need to conduct Claimant's IPP was also discussed in the meeting. Mother suggested holding it at her home, so that Claimant could attend. Mother agreed that Annamraju could attend and observe Claimant during the IPP meeting. Mother asked Annamraju to contact CARD to schedule an observation when CARD was present.

108. On June 19th, service coordinator contacted mother to schedule the IPP. Service Agency staff and mother agreed to meet on July 11, 2013. Mother agreed to contact Russell regarding the meeting. On July 9th, mother cancelled the IPP because she wanted Hope to attend and he was not available on July 11th. Despite the fact that the IPP meeting was not convened, service coordinator obtained authorization for Claimant's counseling, and music behavior respite services through August 31, 2013.

109. On July 22, 2013, service coordinator contacted mother to schedule an IPP. Mother informed service coordinator that she was changing advocates because she had been unable to contact Russell. Mother was trying to arrange to have her attorney, Matthew Pope (Pope) attend the IPP and agreed to contact service coordinator when she had made those arrangements.

SGPRC Behavior Analysis' Observation of Claimant on July 18 and 25, 2013

110. SGPRC behavior analyst, Elizabeth Annamraju, observed Claimant at home on July 18 and 25, 2013 and prepared a report of that observation. (Exhibit 28.) Annamraju recalled being asked to observe Claimant one to two months before her July visit to Claimant's home. She was aware Service Agency staff had been discussing Claimant's problems in February or March, 2013, and that mother was hesitant to have Annamraju observe Claimant.

111. Annamraju has a master's degree and is a Licensed Marriage and Family Therapist. She has completed the coursework and supervised practice required for a BCBA, but has not completed the examination. Annamraju works on the Autism Committee as well as a behavioral health committee that provides support for clients who have both a mental health diagnose and are eligible for Service Agency services. According to Annamraju, in-home behavior intervention services generally involve 5 to 15 hours per week plus supervision services, and requires parent training.

112. Annamraju's observations of Claimant were generally consistent with those reported by mother, TCIP, and CARD. Annamraju expressed her concern that during Claimant's morning hygiene, Claimant was permitted to engage in self-stimulation with no interruption, and that when staff did try to intervene, Claimant became aggressive or self-injurious. When that occurred, the intervention stopped and Claimant was permitted to continue to stare into the bathroom mirror.

113. During the second observation, Annamraju observed Claimant in the home and at the gym, where Claimant was swimming. She noted that that Claimant was given non-contingent reinforcement when eating, something she believed should have been faded out by that point in Claimant's program. She also noted that mother said that they had gone to the beach that week. Annamraju was concerned because the CARD staff member present at the time reported that CARD was not working on a community-based goal and that Claimant was swimming for leisure. Annamraju explained to mother that community outings are intended to occur in the local community to work on specific goals and generally do not include swimming or trips to the beach.

114. Annamraju discussed parent training with mother. Mother reported that she is always present when services are being provided, but that she cannot become a therapist. Annamraju testified that if mother does not implement ABA techniques, then Claimant's progress may be adversely affected. Annamraju pointed out to mother that behavior services are limited, are intended to reduce inappropriate behaviors, and to train parents to take over. Mother told Annamraju that she thought the services should continue "as long as necessary." (Exhibit 28.)

115. Annamraju was of the opinion that the services CARD was providing were more like a community integration program than an in-home behavior intervention program. When she observed Claimant at home on her first visit, mother was doing household chores rather than participating in Claimant's services. Annamraju also testified that a client may have an "extinction burst" when efforts are made to reduce maladaptive behaviors. A client can also experience a return to previously extinguished behaviors, sometimes for no apparent reason. According to Claimant, a return to previously extinguished maladaptive behaviors may be the result of many factors including a change in the environment, a change in service providers, a move, or a change in treatment. Annamraju thought that Claimant's stuckness was a form of non-compliance.

116. Annamraju made several recommendations, including transitioning CARD's behavior services into a combination of community integration and behavior respite and further assessing behavior intervention services, including parent goals, to decrease maladaptive behaviors. Annamraju recommended Service Agency fund behavior services, not to exceed 15 hours per week.

Claimant's Services and Supports between July 2013 and September 2014

117. On August 6, 2013, mother contacted the service coordinator asking for more respite time because she needed surgery. Over the next several months, mother and service coordinator had several conversations about what information mother needed to provide, including Claimant's IHSS award letter and information from mother's doctor, before Service Agency would consider mother's request for additional respite services. When

mother did not provide the requested information, Service Agency issued an NPA denying her request. After mother appealed that decision, Service Agency and mother resolved the matter without the need for a hearing.

118. Mother and service coordinator discussed mother's request for more behavior intervention and respite services. Mother asked Annamraju to contact CARD to discuss additional service hours. Mother also informed service coordinator that she still had not been able to contact Russell. Mother asked service coordinator to contact Pope to select an IPP date. Service coordinator sent Claimant's IPP, IEP and the CARD assessment to Pope.

119. On August 27, 2013, mother contacted service coordinator asking why Claimant's CARD service hours were being reduced on September 1, 2013. Service coordinator explained that the increase in CARD hours during June, July and August was temporary, in order to make up for unused hours from previous months. Mother said she was unaware this would occur and asked that CARD hours be increased as soon as possible.

120. On September 9, 2013, service coordinator called mother to schedule the IPP. Mother directed service coordinator to call Pope and Russell to schedule the meeting. Mother also asked service coordinator to contact CARD to get its staff schedule. Service coordinator declined to do so, informing mother that it was her responsibility to schedule the meeting, and she could invite anyone she wanted to have at the meeting. Mother refused to schedule the IPP, telling the service coordinator that CARD is a Service Agency vendor and that service coordinator should get the schedule from them for her. Mother informed service coordinator that she would have Pope contact her to ask her to contact CARD for mother.

121. On September 11, 2013, service coordinator attended an IEP meeting. Also in attendance were Russell, Pope, Tia, and school district representatives. A transition program had been develop for Claimant beginning on August 14, 2013, but Claimant had attended school only four times. According to mother, Claimant did not attend because he was getting "stuck" and because she was concerned because he was not eating or drinking. The program consisted of workshop activities, computer class, speech services, including using the iPad to communicate, and community-based recreational activities. CARD was accompanying Claimant to school, so they could assist him if he became stuck. The team agreed to conduct a further IEP in December. During the IEP, CARD reported that it was introducing new routines, but as it did so, Claimant's aggressive and self-injurious behavior increased. Pursuant to the IEP, CARD was providing 360 minutes per day of one to one services and 240 minutes per week of clinic. His school day was from 9:00 a.m. until 2:30 p.m. Other school district funded services discussed at the IEP included art therapy, adaptive physical education, and transportation. Claimant was also receiving assistive technology services.

122. On September 11, 2013, mother contacted service coordinator asking to continue the September 26, 2013 IPP because Tia was not available. Mother was not agreeable to service coordinator's suggestion that CARD attend the IPP via a conference call. Service coordinator also asked to meet Claimant face to face, a request mother said she would review with Pope and Claimant's neurologist.

Claimant's September 26, 2013 IPP Meeting

123. On September 26, 2013, mother, Pope, Russell, York, Hope and service coordinator met for Claimant's IPP (2013 IPP).

124. The 2013 IPP document reviews Claimant's progress and problems over the last several years. It details the services that ELARC transferred to SGPRC, including TCIP and the number of hours authorized by SCPRC since the case was transferred to it. The IPP also reviewed Claimant's progress since CARD began providing services.

125. Claimant's IPP contains goals and objectives very similar to those contained in Claimant's 2012 IPP. Several behavior objectives are included, with Service Agency funding 130 hours per month of CARD services through April 30, 2014.

126. During Claimant's IPP meeting, Mother asked Service Agency to fund a neurological evaluation, an AAC assessment and 2000 hours of compensatory ABA services. According to the IPP, mother wanted the compensation because she believed that TCIP did not provide the type of service required by Claimant's 2012 IPP.

Claimant's Services and Supports between October 2013 and April 2014

127. On October 2, 2013, York called mother to inform her that Service Agency denied her request for compensatory ABA service hours, additional respite, her request for Service Agency to fund an AAC assessment and a neurological evaluation. Mother terminated the call before York could fully inform mother of Service Agency's decisions.

128. York spoke with Tia on October 2, 2013. CARD was recommending 130 service hours. CARD was working to ensure that Claimant ate at least one meal before CARD staff left for the day. CARD was focusing on providing services during the early evening hours. According to Tia, Claimant is awake at night but is not aggressive and engages in self-injurious behavior only when demands are placed on him.

129. Tia prepared CARD's October 3, 2013, ABA Intervention Plan Progress Report. CARD reported that Claimant had a transition program through his school district but due to behavior problems, had only attended four days of school. As of September, Service Agency was funding 20 hours per week of one to one direct ABA therapy and in addition, Claimant was authorized to receive an additional 110 hours of make-up time from previously unused service hours. As a result, Claimant received a total of 195 hours per month of Service Agency funded one to one therapy in September. Tia reported progress on Claimant's goals as follows: non-compliance goal met; aggression goal was emerging;¹¹ self-

¹¹ An emerging goal is one where there has been a reduction in the target behavior. Goals that are met are generally replaced with another goal, either modifying the frequency

injurious behaviors goal was emerging; physical stereotype goal was met; vocal stereotype goal was emerging; and ritualistic behaviors goal was emerging. The report indicated that mother was present during all in-home therapy sessions and clinic meetings. Tia recommended 130 hours per month of one to one direct service therapy in the home, and general community settings, and 10 hours of supervision. CARD indicated that it would contact SGPRC regarding unused service hours.

130. Several days after Claimant's IPP, service coordinator obtained authorization to purchase the following services: 5 hours per month of counseling with Dr. Rhodes; 5 hours per month of music therapy with Amy Tibert; 36 hours per month of BRIA behavior respite services; 10 hours per month for CARD supervision; and 130 hours per month for CARD direct one to one therapy services. At the time, Claimant was also authorized to receive 241.4 hours per month of IHSS services. On November 20, 2013, mother asked for, and service coordinator obtained approval, to use unused CARD hours from October 2013 during November 2013.

131. On March 5, 2014, Tia emailed mother to clarify that SGPRC required mother to be present and an active participant during all of Claimant's ABA sessions. Although mother had agreed to this in a meeting on February 25, 2014, Tia was concerned that mother had left Claimant and a staff member in the car when she went to a store to run errands. Tia pointed out that there is no therapeutic advantage to this and that it was not an appropriate use of service hours. Tia was concerned because it created confusion for Claimant when he was in the community. Tia reiterated that Claimant makes progress when he knows what to expect.

132. On April 19, 2014, Tia prepared CARD's ABA Intervention Progress Report. Tia reported that Claimant was attending an adult transition program through his school district. Classroom training was scheduled for three days per week. As of the date of the report, Claimant had attended the classroom program six times. Educationally related ABA services were being provided in home and in the community. Claimant was receiving 30 hours of service agency funded in-home and community based ABA services through CARD. Tia reported progress on Claimant's goals as follows: non-compliance goal was emerging; aggression goal was met; self-injurious behaviors goal was emerging; physical stereotype goal was emerging/met; vocal stereotype goal was not met (e.g., the behavior had increased from the original baseline); and Claimant's ritualistic behaviors goal was emerging. CARD was focusing on morning routines and meals due to concerns about eating and drinking. According to the report, mother needed reminders not to present Claimant with too many instructions when he gets stuck as this may lead to self-injurious behavior. Mother was particularly concerned with Claimant's getting stuck because it interferes with Claimant completing tasks in the home and in the community. CARD staff was observing Claimant

of occurrence of a behavior or an increase in the frequency of occurrence of the replacement behavior.

respond more positively to prompts to move along from mother. Tia testified that Claimant's aggression had been at zero incidents since January 2014 and that his self-injurious behavior was reduced.

133. Mother was concerned that CARD staff was not available in the evening hours, when she needs to attend to household chores. Mother asked Tia to request 225 hours per month. Tia testified she did not agree with mother's request. The April report recommended 108 hours per month of one to one direct service therapy in the home, and general community settings; and 10 hours of supervision. Tia testified that CARD was staffing Service Agency funded ABA services between 5:00 p.m. and 8:00 p.m. in the evening to teach Claimant adaptive living skills.

Claimant's Request for a Neurological Evaluation

134. On September 27, 2013, mother called Hope with an urgent request for Service Agency to fund a neurological evaluation. According to mother, Claimant was not eating or drinking, losing weight, he was up and down all night, agitated, temperamental and at times violent. Mother was trying to have his Medi-Cal insurance plan changed so that she could select the neurologist. She had made an appointment at UCLA for October 1, but was afraid that she would not be able to keep it because she had not secured the insurance plan changes required. Hope explained to mother that Claimant was required to use generic resources and that the agency could not fund his neurological evaluation. Mother asked that the agency review her request and told Hope that she would have Pope forward the paperwork.

135. On September 30, service coordinator informed mother that her request for a neurological evaluation had been denied and that she would provide mother with an NPA. Service coordinator agreed to give Ray a copy of the information that Pope had provided.

136. CARD recommended that Claimant see a neurologist because of his stuckness. According to Tia, this behavior was not consistent with autism spectrum disorder and the agency wanted to rule out other causes. In November 2013, mother asked CARD's psychologist, Doreen Granpeesheh, for a referral to a neurologist. Tia stated that Granpeesheh referred mother to Dr. Bowman because she sees patients at Casa Colina, which was close to mother's home, and because Dr. Bowman was familiar with the needs of individuals with autism.

137. On October 2, 2013, York contacted Carla Washburn (Washburn). Washburn is a consumer services representative with LA CARE, Claimant's Medi-Cal provider. Washburn specializes in assisting regional center consumers. Washburn agreed to provide York with a list of neurologists who were in Claimant's medical group.

138. Washburn testified that mother called on October 13, 2013, at 10:00 p.m., asking for assistance. Washburn advised her to call back the following day, because she did not have the needed information. Mother did call back and Washburn told mother she needed

to meet with Claimant's primary care physician in order to get a referral to a neurologist. After reviewing the process to obtain a referral to a neurologist with Washburn, mother said she would try to see Claimant's primary care physician and would call back if she needed further assistance. Washburn also alerted the registered nurse case manager who was assigned to Claimant's case. The nurse case manager could assist mother in obtaining a referral. Prior to testifying, Washburn reviewed the case manager's notes and found that mother had a referral to a neurologist in Claimant's health provider network, but that mother reported hearing the nurses saying the physician did not want to provide care for Claimant. The nurse's note indicated that mother had authorizations for two different in-network neurologists. Washburn testified when medically necessary, a consumer can obtain an out of network referral, but mother would have to work with Claimant's primary care physician to do that. According to Washburn, the case manager tried to follow up with mother, but mother eventually stopped returning her calls. The case manager's file was closed in mid- April 2014, but could be reopened anytime mother requested additional assistance.

139. According to the ID Notes, mother took Claimant to the appointment at UCLA but was unable to have Claimant seen because UCLA was not a member of his medical group. Mother also went to see Dr. Kundi, a neurologist, on two occasions. It appears from mother's testimony that she was referred to Dr. Kundi by Claimant's health provider. On one occasion, mother said that she waited two hours but the doctor would not see Claimant because he said he was having problems getting paid by the insurance provider. The doctor told mother to take Claimant to the emergency room to have tests done, then have the tests sent back to him. According to mother the tests were normal. Mother also testified that she discussed the results with Claimant's primary care physician, and that he did not recommend anything be done for Claimant.

Claimant's Contentions Regarding TCIP

140. Claimant contends that he was referred to TOTAL Programs in March 2012, by SGPRC, prior to Claimant's case being transferred back to ELARC; that SGPRC had a duty to provide appropriate services to Claimant; that TCIP was not the type of service listed on Claimant's IPP; and therefore, that TCIP was not appropriate for Claimant. Consequently, according to Claimant, SGPRC is liable for negligently contracting with TCIP, which proximately caused Claimant's injuries. (Claimant's Memorandum of Points and Authorities in Support of Order for Compensatory Services)

141. Mother testified that she thought Claimant was referred to TCIP when the case was briefly being served by SGPRC in 2012. However, the ID Notes establish that Claimant was referred to TOTAL for respite services and that mother did not contact TOTAL Respite before the case was transferred back to ELARC in March 2012. The evidence shows that Claimant was referred to TCIP in May 2012 by ELARC (Exhibits 20, 21, 22) and TCIP was the service provider in place when the case was transferred from ELARC to SGPRC in November 2012. (Exhibits 13, 14, 15, N, Q, R.)

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142. As documented in the ID Notes and during her testimony, Mother expressed several complaints about TCIP over the six and half months that SGPRC was funding TCIP services. One concern that surfaced soon after the case was first transferred to SGPRC in late October 2012, was mother's lack of satisfaction with some of TCIP's direct care staff, her desire for a more behavioral approach and the lack of regularly scheduled clinics. A second complaint was the unavailability of staff to cover various shifts and services. Mother's complaints about TCIP staffing problems became more frequent over the six and a half months that SGPRC was funding TCIP. She also express concerned that Claimant's maladaptive behaviors, including aggression and self-injurious behaviors were escalating. Her final complaint was with Jimenez, whom she asked to have removed from Claimant's case, something TOTAL's Executive Director, Sean Surfas, declined to do. In addition to talking with Claimant's service coordinator, mother expressed her concerns at various times to York, Hope, Ray, and Penman as well as various on-call night and weekend managers.

143. Despite mother's concerns, Service Agency had repeated difficulty getting mother to schedule and convene an IPP to discuss Claimant's program until an IPP was completed on September 26, 2013. Several times, mother refused to attend an IPP, although she agreed to participate in a team review meeting. On several occasions, mother cancelled an IPP meeting or team review meetings previously agreed to, because she did not think they were necessary, because individuals whom mother wanted to attend the meeting were unavailable, or because she needed to care for Claimant.

144. While Russell and the service coordinator discussed Claimant's case several times, there is no evidence that Russell told anyone at SGPRC that TCIP was causing Claimant injury.

145. Many of mother's calls to SGPRC staff are inconsistent with her allegation that TCIP was causing Claimant injury. On numerous occasions, mother requested that the number of hours TCIP was authorized to provide be increased, that TCIP be authorized to provide services in her home well into the evening, and her dismay that TCIP was having problems staffing the number of hours already authorized.

Service Agency's Position Regarding TCIP

146. Service Agencies position is set out in its Notice of Proposed Action, set out in full at Factual Finding 2. Service Agency denies that it referred Claimant to TCIP, and asserts that the referral to TCIP was made by ELARC and agreed to by mother. Moreover, Service Agency contends that when the case was transferred to it on November 1, 2012, Claimant's program was TCIP, and that TCIP is an intensive behavior program. Finally, Agency contends that Claimant suffered no injury as a result of his attendance at TCIP and thus is not entitled to compensatory services.

147. According to Hope, who was knowledgeable and credible in his testimony about autism programs and with SGPRC requirements for vendoring behavior and community intervention programs, TCIP was an appropriate service to replace IABA. He

considered the TCIP program to be an intensive service because of the number of service hours provided to Claimant on a one-to-one basis. IABA appears to have used ABA with DTT, at least for its in-home services; while TCIP used some ABA and related behavior interventions, but not DTT. Moreover, TCIP managers Jimenez and Surfás were BCBA certified and ABA techniques were part of the TCIP community integration program. Hope, Surfás, and Annamraju thought that there were several things that might have contributed to the increase in maladaptive behaviors Claimant experienced when attending the TCIP program, including psychiatric causes, hormonal changes due to his age, program and treatment changes, and environmental changes to Claimant's life. An extinction burst may have also caused an increase in Claimant's maladaptive behavior. However, Tia, Annamraju, and Surfás all agreed that such an event was a predictable response to behavior interventions designed to extinguish maladaptive behaviors. There is no evidence that such a response was the result of a breach of care by TCIP.

148. While most of TCIP services were provided in the community, this appears to have been the result not only of the program design but because of mother's preference. Surfás, Jimenez and Annamraju credibly testified that in their conversations with mother, mother wanted a community-based program because she did not want to be Claimant's therapist. SGPRC believed that an effective in-home behavior intervention program required parent training and participation, and embodied this principal in the agency's Behavior Services Agreement, which mother declined to sign. The alternative to an in-home behavior intervention program was a community integration program, with one to one support, but which did not require mother be present at all times services were being delivered.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a regional center decision. (§§ 4700-4716.)

2. The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code § 115.) Because Claimant is requesting a new service, he bears the burden of proof. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

3. The Legislature has made clear its intent that "regionals centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in their community." (§ 4640.7.) To secure that right, all recipients of regional center services who are "dissatisfied with any decision or action of the service agency which he or she believes is illegal, discriminatory, or not in the applicant's best interest" are afforded an opportunity for a fair

hearing. (§ 4710.5, subd. (a).) The rights of persons with developmental disability to receive services are to be decided in accordance with the appeal provisions of the Lanterman Act. (§ 4706, subd. (a).)

4. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (See § 4640 et seq.) As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* ((1985) 38 Cal.3d 384, 388), the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community." In addition to assisting consumer's and their families "in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community. . . [e]ach regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model." (§ 4640.7.)

5. Under the Lanterman Act, a consumer's needs and the services and supports required to achieve the consumer's goals are identified as part of the individual program planning process. (§4646 et seq.)

6. The IPP and the provision of supports and services is intended to be "centered on the individual and family[,] . . . take into account the needs and preferences of the individual and family, where appropriate[,] . . . 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." (§§ 4646, subd. (a), 4646.5.) The IPP "is developed through a process of individual needs determination," should involve the consumer and his parents, and should be prepared jointly by the planning team. (§ 4646 subd. (b).) "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 regional center or obtained from generic agencies shall be made by agreement between the regional center and the consumer . . . at the program plan meeting." (§ 4646, subd. (d); see also §§ 4646.7, 4648.) The program planning team may meet again if an agreement is not reached. (§ 4646, subd. (d).) If the parties are unable to reach an agreement, the consumer or his authorized representative may request a fair hearing. (§ 4700 et seq.)

7. An IPP may be reviewed and modified as needed and an IPP meeting must be convened within 30 days at the request of a consumer. (§ 4646.5, subd. (b).)

8. Service coordination is an essential element of the IPP process. "[S]ervice 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.” (§ 4647, subd. (a).)

9. While a consumer and his parents’ preferences and desires regarding goals and objectives and services and supports are to be given consideration in the planning process, regional centers are not authorized to purchase any and all services a consumer or his family may desire. (See §§ 4640.7, 4646, 4646.4, 4646.5, 4659, 4686.2.) Regional center design must “reflect the maximum cost-effectiveness possible.” (§ 4640.7, subd. (b).)

10. When purchasing services pursuant to an IPP, regional centers must ensure:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department [of developmental services] pursuant to subdivision (d) of Section 4434.

(2) Utilization of other sources of services and funding as contained in Section 4659.

(3) Consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities. (§ 4646.4, subd. (a).)

11. Regional Centers are required to obtain service and supports in the most cost effect way possible. This included relying on generic resources, including school districts. Regional Centers are also required to “identify and pursue all possible sources of funding” from governmental entities such as Medi-Cal. (See §§ 4646.4, subd. (a) (2) (3), 4648 subd. (a) (8), 4647, subd. (a), 4659, subd. (a).)

12. Section 4643.5 provides the framework for the transfer of a case from one regional center to another.

(a) If a consumer is or has been determined to be eligible for services by a regional center, he or she shall also be considered eligible by any other regional center if he or she has moved to another location within the state.

(b) An individual who is determined by any regional center to have a developmental disability shall remain eligible for services from regional centers unless a regional center, following a comprehensive reassessment, concludes that the original determination that the individual has a developmental disability is clearly erroneous.

(c) Whenever a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer’s individuals program plan shall be authorized and secured, if available, pending the development of a new individual program plan for the consumer. If these services and supports do not exist, the regional center shall

convene a meeting to develop a new individual program plan within 30 days. Prior to approval of the new individual program plan, the regional center shall provide alternative services and supports that best meet the individual program plan objectives in the least restrictive setting. The department shall develop guidelines that describe the responsibilities of regional centers in ensuring a smooth transition of services and supports from one regional center to another, including, but not limited to, pre-transferring planning and a dispute resolution process to resolve disagreements between regional centers regarding their responsibilities related to the transfer of case management services.

13. The Lanterman Act sets for the requirements for the provision of ABA or intensive behavioral intervention services. Section 4686.5, subdivision (d) (1), (2), defines those services as follows:

(1) "Applied behavioral analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.

(2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.

Claimant's Request for Compensatory ABA Services

14. The Lanterman Act does not authorize the payment of damages or the provision of compensatory services in the fair hearing context. California Code of Regulations, title 17, section 50612 suggests that funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. (See Cal.Code Regs, tit. 17, § 50612, subds. (a), (b) & (c).) The lack of specific statutory authorization is not, however, necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . ." (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to compensatory services. However, if the Lanterman Act is to be applied as the Legislature intended, compensatory services should only be available in particular cases where equity requires it. Otherwise, the general requirements that services be established after IPP meetings, and the above-described regulatory restriction on funding, would all be superfluous. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, compensatory services should be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

15. In light of Factual Findings 5 through 133 and Legal Conclusion 1__ through 14 Claimant's request for 2000 hours of compensatory ABA services is denied. Not only did Claimant receive TCIP services that were consistent with his 2012 IPP, including make-up service hours when TCIP was unable to provide the authorized number of service hours, but he continues to receive intensive services consistent with the level recommended by CARD. At no time was Claimant deprived of appropriate services nor is there any evidence that TCIP caused Claimant any injury.

16. Claimant has failed to demonstrate that TCIP was not an appropriate "Intensive Behavior Intervention" service as defined in 4686.2, subdivision (d) (2). (IBI). Claimant's IPP identified an Intensive Support Service, a term that reasonably can be understood to be the same as an IBI service. In fact, while TCIP differed in some ways from IABA because TCIP was designed primarily to be a community rather than an in-home service, TCIP and IABA shared many characteristics with IABA and was designed to achieve the same IPP goals that IABA was working on. IABA and TCIP were authorized to provide one to one services for about the same number of service hours. Both use behavior techniques, including ABA, to manage Claimant's behaviors.

17. While most of TCIP services were provided in the community, an environment less conducive to ABA techniques such as DTT, this appears to have been the result not only of the program design but because of mother's preference for her son. Surfas, Jimenez and Annamraju credibly testified that in their conversation with mother, mother wanted a community-based program rather than an in-home program because she did not want to be Claimant's therapist. SGPRC believed that an effective in-home behavior intervention program required parent training and participation, and embodied this principal in the agency's behavior services agreement, which mother refused to sign. The alternative to an in-home behavior intervention program was a community integration program, with one to one support and behavior intervention as needed, but which did not require mother to be present at all times services were being delivered.

18. Claimant has also failed to establish that Claimant suffered an injury while a participating in the TCIP program or that TCIP was the proximate cause of any increase in maladaptive behaviors Claimant may have experienced during that time. Many of those behaviors both pre-date and post-date Claimant's participation in TCIP. While IABA reported a decrease in Claimant's aggressive and self-injurious behavior during 2012, mother testified that those behaviors had become a problem in the last quarter of 2011, at least in part, leading her to move from her apartment in Whittier to Glendora. It does not appear that Mother reported these issues to TCIP during their assessment. In fact, mother reported to Jimenez that Claimant's aggression and self-injurious behavior had decreased to zero the prior year. Moreover, Claimant continued to have behavioral problems after CARD services started and was continuing to receive a high level of intensive behavior interventions services from CARD as of April 2014.

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19. Annamraju, Hope, and Surfias persuasively testified that any number of factors could have contributed to the increase in Claimant's maladaptive behaviors. He had recently moved from community and school he was familiar with, he was living in a new community, initially with relatives and later in a new apartment. He was not attending a regular school program. Changes in Claimant's environment, hormonal changes, and service provider and treatment techniques may all have contributed to the changes observed in Claimant's behavior between October 2011 and the present. Claimant may also have been experiencing an "extinction burst" as a result of TCIP's efforts to reduce Claimant's maladaptive behaviors.

20. Moreover, the evidence establishes that mother accepted TCIP as a replacement for IABA in July 2012, and continued to accept TCIP services until April 2013. If mother was not satisfied with TCIP, she had the authority to request an IPP meeting and Service Agency was required to convene an IPP within 30 days of such a request. (§ 4646.5, subd. (b).) In fact, Service Agency made numerous efforts to convene an IPP after Claimant case was transferred to SGPRC in November 2012. Such a meeting would have allowed for a discussion of the appropriateness of TCIP, Claimant's behavioral needs and alternative programs. Mother initially declined to attend an IPP meeting and subsequently cancelled most meetings scheduled with Service Agency. Equity precluded mother from complaining that Claimant did not receive the appropriate services when she was in a position to ask for an IPP meeting to remedy the problem.

Claimant's Request for a Neurological Examination.

21 In light of Factual Findings 134 through 139 and Legal Conclusion 1 through 12, Claimant's request for Service Agency to fund a neurological evaluation is denied.

22. Claimant has failed to present credible evidence that he needs or needed a neurological examination that cannot be obtained through his Medi-Cal insurance provider, LA CARE. While Dr. Bowman may be preferred by mother, Washburn persuasively testified that Claimant can obtain an evaluation through his LA CARE network and if he can establish a medical necessity, LA CARE can refer him to an out-of-network provider.

Claimant's Request for an AAC Assessment

23. In Light of Factual Findings 33, 51, 56, 60a, 64a,70, and 88d and Legal Conclusion 1 through 12, Claimant's request for an AAC assessment is denied. Claimant was evaluated for using his iPad by Jean Sherman in 2012. There is no evidence that that evaluation is no longer appropriate. The evidence demonstrates that using an iPad or other system for communicating such as a white board is not a preferred activity for Claimant and that when asked to use those devices, Claimant can be resistive to the request. Service Agency is providing services designed to address the behaviors that interfere with Claimant's use of AAC devices and skills. There is no evidence that a new AAC assessment is needed to further that objective. Moreover, Claimant has not presented evidence that an AAC evaluation and services are not available through his school, a generic agency.

ORDER

Claimant's request that Service Agency be ordered to fund 2000 hours of compensatory ABA services is denied. Claimant request that Service Agency be ordered to fund a neurological examination and an AAC assessment are denied.

Dated: August 6, 2014

DEBORAH M. GMEINER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

UNDER THE LANTERMAN DEVELOPMENTAL DISABILITIES SERVICES ACT, THIS IS A 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.