

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

EASTERN LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH Case No. 2014100315

**DECISION**

Humberto Flores, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter in Whittier, California, on June 9, 22, and 29, 2015.

Claimant was represented by her parents.

Judy Perez, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC or regional center)

Oral and documentary evidence was received and the record was left open to allow the parties to submit a proposed order. ELARC's proposed order was received on July 2, 2015, and was marked Exhibit Q for identification only. Claimant's proposed order was received on July 3, 2015, and was marked as Exhibit 66 for identification only. The matter was submitted for decision on July 3, 2015.

During the deliberative process, the ALJ determined that claimant's Exhibit 34, the medical report issued by claimant's emergency room physician, was missing the last page of the report. On July 20, 2015, the undersigned issued an Order Reopening the Record to allow claimant to submit a complete medical report for a December 15, 2009 ER visit.

On July 30, 2015, claimant submitted a complete set of medical records for the above mentioned ER visit. The records were marked for identification as Exhibit 67. In addition to the medical records, claimant submitted a letter and a physician's note from Dr. Sandhya Rani Gudapati (claimant's psychiatrist), which were marked collectively as Exhibit 68. On

July 30, 2015, Ms. Perez submitted a letter objecting to medical records and to Dr. Gudapati's letter and note. On July 31, 2015, the ALJ issued a written order overruling the regional center's objection to the medical records and admitted Exhibit 67. The objection to Dr. Gudapati's letter and note was sustained and Exhibit 68 was not admitted into evidence. The record was closed and the matter was deemed submitted for decision on July 31, 2015.

## ISSUE

Should ELARC's decision to terminate claimant's therapeutic services be affirmed?

## FACTUAL FINDINGS

1. Claimant is a 23-year-old female who receives regional center services based on a diagnosis of mild intellectual disability. Claimant also suffers from anxiety disorder, with some obsessive compulsive features, Schizoaffective Disorder and Enuresis.
2. Claimant lives with her parents and her twin brothers.
3. In 2006, Larry E. Gaines, Ph.D., performed a psychological evaluation of claimant. In his report Dr. Gaines noted that claimant developed good social rapport during the evaluation and was cooperative and attentive to tasks but also presented as extremely immature. Claimant also exhibited difficulties with mood regulation and constantly needed feedback that she was performing tasks satisfactorily. Claimant's verbal abilities fell within the mild range of deficiency, while non-verbal skills fell within the moderate range of delay. Claimant's language skills fell within the moderate range of deficiency. She was able to talk in sentences and maintain a simple conversation, although at times she would get off topic. Claimant's motor skills were marked by poor coordination. Her visual motor and perceptual skills fell at the seven year level of development. Claimant's adaptive behavior skills fell within the mild range of deficiency on the Vineland Adaptive Behavior Scales, as she was able to care for most of her basic self-help needs. Claimant's social skills fell within the mild range of deficiency. Claimant claimed to have friends but her mother reported that claimant has problems with peer relationships. Dr. Gaines diagnosed claimant with Mild Mental Retardation now referred to as Intellectual Disability. (Exhibit C.)
4. In 2009, when claimant was 17 years old, claimant was evaluated by Roderick B. Rhodes, Ph.D. In his report Dr. Rhodes indicated that the results of the evaluation support the presence of an anxiety disorder, which is generalized in nature, but that claimant also presents with features of other anxiety disorders such as specific phobias, obsessive compulsivity, social anxieties, and adjustment to various stressors, including the experience of living with a developmental disability. Dr. Rhodes also noted that claimant has a long standing history of voiding urine in her clothes during waking hours (diurnal enuresis) with a frequency ranging from one to five times per week. Dr. Rhodes recommended:

(a) Individual and family psychotherapy (mental health treatment), to address claimant's mental health needs in order to optimally benefit from her educational program. Dr. Rhodes recommended that the mental health provider have expertise in the mental health treatment of individuals and families affected by developmental disabilities.

(b) Psychopharmacologic evaluation and possible treatment if claimant's symptoms do not improve during psychotherapy.

(c) Upon completion of high school, the IEP team should consider placement within an age appropriate transitional setting, in a program where health support services are infused throughout the program. (Exhibit 29)

*Claimant's December 15, 2009 Emergency Room Treatment.*

5. In December 2009, claimant suffered what claimant's mother described as a "psychotic break." Claimant's mother testified that this episode caused claimant to be non-responsive. She did not talk, eat or drink during the episode. In addition, claimant spoke of dying, leaving home and of being a vampire. Claimant was incoherent but was able to communicate with her mother. Sometime prior to December 15, 2009, claimant's parents took claimant to the University of California, Irvine (UCI) Medical Center for treatment of her mental health condition. After a disagreement over an insurance issue, claimant's parents decided to take claimant to the emergency room (ER) at St. Joseph Children's Hospital of Orange County. On December 15, 2009, at approximately 6:00 p.m., claimant was seen and treated by Brian Lee, M.D. Dr. Lee diagnosed claimant with "Anxiety, Generalized Disorder," and ordered that Geodon, an antipsychotic drug, be administered to claimant by injection. Dr. Lee also prescribed risperidone. The Emergency Physician Record indicates that claimant's chief complaint was depression with associated symptoms of anger, paranoia and hallucinations. In a written notation, Dr. Lee states that "Mom doesn't believe that patient is a credible threat to self in regards to self-injury." After examining and treating claimant, Dr. Lee discharged claimant at 7:50 p.m. There is no indication in the medical record that Dr. Lee diagnosed or observed claimant experiencing a psychotic break. (Exhibit 67.)

6. Dr. Lee issued a physician's report prior to discharging claimant. The body of the report states that "an important part of [claimant's] problem is from anxiety and emotional distress" that is "related to mental depression." The medical report goes on to list the general symptoms associated with "emotional upsets" and depression. Dr. Lee diagnosed claimant with Anxiety, Generalized Disorder and prescribed risperidone. Dr. Lee's report made no mention of a psychotic episode and contains no information regarding claimant's symptoms, behaviors or condition, nor did it contain the physician's observations of claimant's condition. Claimant is currently on medication to manage her anxiety disorder.

7. Based on a thorough review of the medical records of claimant's ER visit, the undersigned cannot make a factual finding that claimant's anxiety and emotional distress rose to the level of a "psychotic break." However, there is no doubt that claimant suffered a substantial bout of emotional distress and anxiety on December 15, 2009.

8. Claimant's mother testified that it took about two to three weeks for claimant "to come back" from the December 15, 2009 incident.

9. After claimant's hospitalization, claimant was referred to Dr. Sandhya Rani Gudapati, a psychiatrist. Dr. Gudapati has been treating claimant since 2010. Dr. Gudapati diagnosed claimant with Schizo-Affective Disorder, Unspecified. In a September 2, 2014 letter Dr. Gudapati states in part:

[Claimant] has been under my care for treatment of medication management. She has been diagnosed and is being treated for Schizo-affective Disorder.

She has been managed on psychotropic medications, which include Risperdal, Lamictal, Prozac, and Lonopin to control her reality orientation, and with long persistent therapy, 1:1 support services, she has been stable with most of her symptoms of psychosis.

Anytime patients are out of their routine or change in structure with daily care, evidence indicates destabilization of the patient's psychotic symptoms, at times requiring hospitalization.

At this time, client will need continued 1:1 services and activities at the same pace to maintain stability, as her household environment is extremely chaotic with having two younger siblings with severe autism. Her parents are unable to provide the full support needed as she is very fragile and may have a relapse without consistent support services and medication management. Due to her condition, she is at risk for acute psychotic breaks if she is under severe stress and if any minimal changes in her daily routine occur. (Exhibit 30.)

10. There is no evidence that Dr. Gudapati has observed claimant to be in a psychotic state.

11. Claimant has been receiving individual counseling since 2010. Her therapist is Tony Rojas, MSW, ACSW. In a July 2, 2012 letter, Mr. Rojas wrote in pertinent part:

[Claimant] has been under my care for her diagnosis Generalized Anxiety Disorder and Mild MR. Although

counseling has improved many of her symptoms, a great deal of the improvement in her functioning has been related to the collaboration of her therapeutic team and her family. Together they have supported her in maintaining a structured and consistent environment, expressing her thoughts and feelings through specialized forms of communication and maintaining continuous communication between the client, her family, direct staff, therapist and psychiatrist.

[Claimant] was diagnosed with Generalized Anxiety Disorder after experiencing a psychotic break in December 2009. . . . It has since been identified that her anxiety is typically triggered by changes in her environment and routine, exposure to unfamiliar people and activities, and separation from family. [Claimant's] anxiety typically manifests itself in problematic behaviors including temper outbursts, screaming, irrational thoughts, crying, noncompliance, throwing property, toileting accidents and sleep disturbances. It is feared that without a consistent schedule with support from familiar and well trained staff, [claimant's] current abilities and physical health are at risk for deterioration. (Exhibit 36)

12. Mr. Rojas did not personally observe claimant experience the psychotic break that he referenced in his letter. He was informed of this incident by claimant's parents.

13. Mr. Rojas was providing counseling services for claimant through his association with Progressive Resources (Progressive). Progressive was providing a comprehensive program for claimant that included counseling, one-to-one support staff and other services for claimant during the time that claimant was in high school. Claimant developed a strong relationship with Mr. Rojas and certain aides who worked for Progressive. Claimant's parents were happy with the services that were being provided by Progressive because claimant was familiar and comfortable not only with Mr. Rojas, but also with the people who provided support staff services. In fact, Jillian Diaz, a support staff person had worked with claimant for four years. The evidence established that claimant enjoys consistency and experiences anxiety when changes are introduced in her daily activities and whenever there is a change in the people who provide services.

### *2013 Psychological Evaluation*

14. In 2013, Dr. Rhodes and Joan Rhodes, MA, MS, completed a comprehensive evaluation of claimant at the request of the school district. The evaluation was performed during a six-day period in February and March. It included extensive interviews with claimant, her parents, and her therapist, Mr. Rojas. Claimant's mother reported to Dr. Rhodes that claimant is sometimes fidgety, is easily distracted, has difficulty paying attention

and following directions, frustrates easily, is overly anxious and worried, exhibits low mood and obsessive-compulsive behaviors, and has an excessive number of accidents.

15. Mr. Rojas, who at the time of the evaluation worked for Progressive Resources, reported that claimant had made nice progress over the past few years and that claimant had fewer anxiety-related outbursts. Claimant's outbursts would include tears, shouting and/or screaming, but she would not become physically aggressive. Mr. Rojas also reported that the support staff at Progressive Resources worked well with claimant by helping her to carry out her responsibilities appropriately. They developed checklists for her morning routine and other responsibilities such as doing laundry and helping her interact in the community. Finally, Mr. Rojas reported that claimant enjoys participating in activities in the community, including volunteer work, dance classes, a class at Rio Hondo Community College, and a class at the Apple Store.

16. Regarding the therapy sessions, Mr. Rojas reported to Dr. Rhodes that in addition to Generalized Anxiety Disorder, claimant exhibits signs of depression and low self-esteem but does not reach the level of Depressive Disorder. Regarding her affect, she may appear happy but is actually anxious. For example, giggling may be a sign of increased stress and anxiety. Her anxiety is increased when she has distorted thoughts, such as believing people are upset with her when they are not. Mr. Rojas reported that with individual and family counseling and medication management, claimant had been making moderate progress at the time of the evaluation. Mr. Rojas opined that claimant needed to continue counseling to further reduce her anxieties.

17. Ms. Rhodes, who collaborated with Dr. Rhodes in the evaluation of claimant, conducted the following tests: Wechsler Adult Intelligent Scale IV (WAIS IV); Wechsler Nonverbal Scale of Ability (WNSA); Koppitz-II; Wide Range Assessment of Memory and Learning II (WRAML-2); Wechsler Individual Achievement Test III (WIAT-III); Basic Assessment Scale for Children-2 (BASC-2); Adaptive Behavior Assessment System-II (ABAS-2); and the Woodcock-Johnson-III. The results of the above referenced testing instruments are as follows:

(a) In the WAIS-IV, which tests problem solving and cognitive strengths and weaknesses, claimant earned a full-scale IQ of 62 which is in the significantly below average range. In verbal comprehension, claimant scored a 63, which is also significantly below average. Claimant earned a 67 in the in the Perceptual Reasoning Index portion of the test, (significantly below average). Claimant earned a 60 in the in the Working Memory Index portion of the test (significantly below average). Claimant earned an 81 in the in the Processing Speed Index portion of the test (significantly below average). Ms. Rhodes opined that based on the WAIS-IV, claimant has significant cognitive challenges.

(b) In the WNSA, claimant scored in the significantly below average range of non-verbal cognitive ability, although there was significant strength in claimant's nonverbal reasoning ability.

(c) The Koppitz-II, which tests an individual's ability to copy designs, showed that claimant's visual motor skills and fine motor skills are in the below average range. Claimant had difficulty maintaining the shape of designs, including cubes and more complex designs.

(d) In the WRAML-2, which assesses the individual's memory ability, claimant scored a 55 in the general memory index. This score is significantly below average. Claimant's verbal memory and visual memory are significantly stronger than her attention and concentration. These results suggest that claimant is challenged by attention and concentration issues and that she learns best when exposed to verbal information repetitively.

(e) Claimant's scores in the WIAT-III in receptive vocabulary and oral discourse comprehension suggest that her oral language skills are significantly below average.

(f) The BASC-2 is based on reporting from claimant, parents and teachers, and measures social/emotional adjustment. Claimant's responses in the BASC-2 suggest some challenges in the at-risk range in the areas of atypicality, locus of control, hyperactivity and the content scales area of mania. Claimant's mother's reporting suggest that claimant has some challenges in the at-risk range in the specific areas of hyperactivity, depression, withdrawal, the content scales areas of developmental social disorders, and emotional self-control. Claimant's community integration support person gave responses which suggested that claimant has challenges in the at-risk range in the areas of internalizing problems, in the specific areas of anxiety and depression, and in the content scales areas of bullying, emotional self-control and negative emotionality.

(g) The ABAS-II is designed to evaluate functional skills. This assessment, completed by claimant's mother and claimant's community integration support person, indicates that claimant's functional skills are within the extremely low range when compared to her peers. And her ability to perform self-help activities is weak. In addition, claimant's adaptive behavior is in the significantly below average range.

(h) The Woodcock-Johnson tested reading, writing and math skills. Claimant's reading and writing skills were in the borderline range, while her math skills were in the significantly below average range.

18. Dr. Rhodes diagnosed claimant with (1) General Anxiety Disorder with obsessive compulsive features; (2) Schizoaffective Disorder by history; (3) Enuresis, diurnal only; and (4) Developmental Disorder by history. Dr. Rhodes and Ms. Rhodes made integrated findings which are set forth in pertinent part as follows:

[Claimant] appears to have significantly below average cognitive ability according to her performance on the WNV and WAIS-IV. . . . She has challenges in verbal skills and working memory. . . . Her Verbal Memory and Visual Memory are significantly stronger than her Attention and Concentration. Her General Recognition Memory is significantly stronger than her

General Memory. These results suggest that claimant is challenged by attention and concentration issues. . . . She scored within the average range in her ability to recognize words from a list of words she had been given four times to remember. This suggests that she learns best when she is exposed to verbal information repetitively. Academically, she is stronger in her basic skills than in skills that involve higher thinking skills . . . . She has made progress in the area of adaptive behavior but continues to have challenges in this area. [Claimant] continues to meet educational criteria for Intellectual Disability as she is displaying significantly below average intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period that adversely affects her educational performance and independent living skills. [Claimant] has made progress in dealing with her anxiety disorder but continues to exhibit challenges in this area, and [she] also has challenges in the area of emotional self-control and self-regulation, with some features of depression, according to her therapist, support staff, and her parents. She continues to meet education eligibility criteria for Emotional Disturbance as she is exhibiting anxiety and depressive symptoms within her school program and at home. These challenges negatively impact her educational achievement and independent living skills. She has had these challenges for several years. (Exhibit 32.)

19. Dr. Rhodes testified at the hearing that claimant presents with a complex set of developmental and mental health issues. He also stated that claimant has difficulty communicating her thoughts. Therefore, it is extremely important for claimant to maintain established relationships with support staff who would be able to recognize when she is stressed and who would be able to help alleviate her stress. Dr. Rhodes further testified that familiarity is critical for staff support to avoid regression and possible reoccurrence of a psychotic episode. Dr. Rhodes opined that in order to address these issues properly, claimant would need to be in a creative program that includes consistency of support staff who are experienced in providing specialized support. He stated that inconsistency causes claimant to become stressed and to engage in challenging behaviors. He also testified that there is no danger that claimant would become overly dependent because when she is provided with consistent support she makes progress. Finally, Dr. Rhodes does not believe that there is a potential for dependency because of claimant's high need for specialized support. Dr. Rhodes has not treated claimant nor did he personally observe claimant experience a psychotic episode.

20. At about the time that claimant was completing her high school education, claimant's parents and regional center representatives met to develop and implement an Individual Program Plan (IPP) for claimant. During this process, claimant's parents and the

regional center collaborated to develop a program known as a Tailored Day Service (TDS). TDS is a service that is specifically tailored to an individual consumer's needs. The family was happy with the services that they had been receiving from Progressive and agreed that Progressive should be the vendor to provide TDS.

21. The TDS program was scheduled to begin July 2014. However, approximately one week before the program was scheduled to start, Progressive declined to provide the services. The administrator from Progressive informed Gerard Torrez, the Supervisor for Consumer Services for the regional center, that Progressive was not able to meet the preferences and demands of claimant's parents regarding the implementation of TDS. According to Mr. Torrez, claimant's parents were asking for specific persons to perform the support services for claimant, including the aforementioned Jillian Diaz. Ms. Diaz was asking an hourly rate of \$25 per hour, which is well above the rate that the regional center is authorized to pay for such services.

22. In certain cases, the regional center will request what is referred to as a "Health and Safety Waiver," which is a request by the regional center to the Department of Developmental Services (DDS) for a waiver authorizing the regional center to pay the increased amount for a particular service. In this case, the regional center chose not to request a Health and Safety Waiver from DDS because regional center representatives felt that claimant's needs could be met by funding for a personal one-to-one aide. Mr. Torrez testified that claimant does not present with a level of disability and mental health issues that would require a Health and Safety Waiver.

23. Mr. Torrez has met claimant and testified that he observed claimant to be friendly and talkative. She talked of her activities in the community and of her trip to Disneyland. Mr. Torrez also viewed a video shown to him by claimant's parents of the incident previously referred to as a psychotic break. When asked on cross-examination to comment on the video, Mr. Torrez testified that "the video did not show claimant to be in a psychotic reaction." In fact, she did not engage in any behavior outburst although she did "shut down" in what Mr. Torrez described as "pouting type behavior."

24. After being informed of Progressive's decision not to provide TDS for claimant, the regional center offered to fund Specialized Therapeutic Services (STS) for claimant "as an interim measure" so that claimant's services would not be interrupted while the regional center and the family continued to work towards implementing a TDS program. Mr. Torrez testified that STS was never intended to be a permanent service for claimant. He indicated that generally a clinical review by a physician and a psychologist and a subsequent recommendation is required before STS is implemented. The regional center did not initiate this process because everyone understood that claimant's STS was considered a transitional service. Claimant's parents and regional center representatives have met several times over the past year in an attempt to resolve the outstanding issues but have been unable reach an agreement.

25. On September 23, 2014, ELARC issued a Notice of Proposed Action (NPA), seeking to terminate its funding for STS services effective September 23, 2014. The stated reason in the NPA for the termination of STS funding was set forth as follows:

ELARC agreed to fund [STS] – Mercedes Diaz Homes to support [claimant] for post-secondary support because of the urgency that arose to put in place last minute in her new environment with someone familiar. The regional center did have concerns regarding the cost effectiveness of this service. However, ELARC did concede to providing this service on the Friday prior to the start day, due to [claimant] needing to have support in place the following Monday to attend Rio Hondo Community College.

Several weeks later you are now requesting that ELARC also support claimant under [STS] for other community activities and to take her to the gym. ELARC believes that the personal assistance service that [claimant] is receiving at 40 hours per week and an additional 15 hours per month for weekends can meet that need. You also stated that the current personal assistant providers you have will no longer be available effective October 1, 2014, therefore creating an urgency once again. You stated that you have two staff from [claimant's] previous service agency that would be willing to support her for a higher rate. However, ELARC can put in place other Personal Assistant staff at the current rate to support [claimant] for these activities. (Exhibit A.)

26. Claimant's mother filed a request for hearing dated September 30, 2014, requesting that all services including community integration, which is at issue in this case, be provided through the STS currently received by claimant until claimant's TDS is in place.

27. Claimant's parents testified that claimant suffers substantial anxiety attacks when any type of change is introduced into her life. Therefore, it is extremely important that claimant be provided with support staff who are experienced in caring for her and who know how to deal with claimant's anxiety attacks. They indicated that Ms. Jillian Diaz has the experience and has an established relationship with claimant.

28. While claimant was receiving services from Progressive, she started to become more independent. She began attending Rio Hondo Community College and enjoyed activities such as shopping. Claimant's mother testified that Progressive enhanced her experiences. Claimant and her parents were also receiving six hours per month of counseling from Mr. Rojas.

29. At some point in 2014, Mr. Rojas left the employ of Progressive and accepted a position with ASD Consultancy. Shortly thereafter, claimant resumed counseling services with Mr. Rojas through ASD Consultancy. In a November 21, 2014 progress report, Mr.

Rojas noted a baseline, which included a history of anxiety and significant challenges in coping with change and loss of relationships. In addition, Mr. Rojas indicated that claimant expressed her anxiety through “emotional outbursts, verbal/physical aggression, isolation and/or incontinence. During the most extreme moments, she threatened self-harm or elopement. After experiencing the significant stressor of losing a service provider after seven years, her symptoms exacerbated. At the start of the authorization period, she demonstrated heightened levels of anxiety 90% of the session.” In the “Progress” section of the report, Mr. Rojas stated:

Claimant has made substantial progress toward increasing her ability to cope with heightened levels of anxiety. During individual sessions, she is developing a greater awareness of the triggers to her anxiety and at times is able to anticipate the need to implement regulation strategies. She continues to require therapist support to implement strategies . . . but is able to provide a visual signal requesting support. She is recognizing that coping with change is a significant stressor, and has been receptive to therapist’s request to systematically introduce changes to her regular routine. At first she was very reluctant to deviate from her typical routine, but with significant support and preparation, she has been able to make minor changes weekly. She is very receptive to the visual scale that is used weekly to assess her anxiety levels. She understands the concept well and demonstrates accuracy in using it when regulated. She is developing her ability to accurately assess her anxiety levels when she is experiencing stressors. . . . She currently demonstrates heightened levels of anxiety 75% of the session. (Exhibit 38.)

30. Mr. Rojas did not testify at the hearing. He has been claimant’s treating therapist for a number of years. As such, Mr. Rojas could have provided extremely relevant information concerning claimant’s current mental status.

31. On September 19, 2014, Mercedes Diaz, claimant’s STS provider, issued a progress report concerning claimant’s communication and self-regulation. The report indicates that claimant’s inability to respond quickly to change impacts her daily progress and hinders her ability to participate in her daily activities.

32. On September 24, 2014, Alexander Beebee, M.D., a psychiatrist, issued a report based on his record review of claimant’s chart that is contained in ELARC’s records. Dr. Beebee stated in his report in pertinent part:

Overall I do not see [claimant] as a consumer with severe behavioral problems. She has challenges but overall they appear to me to be manageable and well managed. She has

outbursts but there is no damage to person, self or property. She has said she wants to die, but that never amounts to serious suicidality. She will attempt to run away but is redirectable. Overall, it is impressive how much progress she has made in learning to regulate her emotions with the help of others.

In December 2009, she had a psychotic break. She was disorganized and delusional, feeling she was a vampire. She was not hospitalized. She mostly recovered in 4 weeks. . . . The history does not suggest that she had severe depression or mania either before or after this event. If that is true, the diagnosis is not Schizoaffective. It is not even Schizophrenia, which requires six months of symptoms. I would diagnose Psychotic Disorder NOS or Acute Psychosis.

As far as I can tell, there have been no psychotic symptoms since early 2010. It is now 2014. This good track record suggests to me that she is at low risk of another psychotic break, as long as she remains on medication. It is clear that she has trouble with change in routine. It leads to anxiety and outbursts, as is typical of autistic spectrum conditions. It is a great stretch to say that changes in routine put her at risk of psychosis, as there is no evidence for that since 2009. (Exhibit L.)

33. On October 23, 2014, Dr. Beebee issued a second psychiatric report (Exhibit N) concluding that there are no facts to support claimant's request to have only one particular aide to take claimant to her doctor's appointments.

34. On December 19, 2014, Martin Cogan, who at the time was the Supervisor for the Community Service Unit of the regional center, approved Request for Vendorization and Vendor Rates for Mercedes Diaz, Homes, Inc., to provide STS for claimant. He authorized direct care staff funding for 107.5 hours per month at \$25 per hour; consultation services for 4.3 hours per month at \$75 per hour; Case Management services for 52 hours per month at \$95 per hour; two hours per month of Level I Administration at \$95 per hour; and four hours per month of Level II Administration at \$25 per hour. The approved vendorization was for a three-month period ending December 31, 2014. (Exhibit 43.)

35. In December 2014, Ziba Nassab, Psy.D., performed an adaptive skills assessment. In addition to reviewing claimant's medical, mental health and clinical records, Dr. Nassab interviewed claimant, her parents, and claimant's one-to-one support person. Dr. Nassab also observed claimant while she worked at her library volunteer job with the help of her support person. Dr. Nassab assessed claimant in regards to nine developmental milestones, including Shared Attention, Engagement, Affective Reciprocity & Gestural Communication, Complex Problem Solving, Emotional Ideas, Emotional Thinking, Multi-Causal Thinking, Gray Area Thinking and Emotional Differentiated Thinking, and Reflective

Thinking. There are five levels that can be attained by the person being assessed, including Not Mastered, Emerging (milestone is barely present), Partially Mastered (milestone is present but is inconsistent and requires support), Mastered with Restrictions (milestone is present but may require minimal support and may be vulnerable to stress), and Mastered (milestone is age appropriate and present across all settings). Dr. Nassab assessed claimant's milestones as follows:

- (a) In the area of Shared Attention, which includes claimant's ability to enter and sustain a state of shared attention with another person, claimant's ability was placed at a level of Mastered with Restrictions.
- (b) In the area of Engagements (forming relationships or attachments), claimant has reached a level of Mastered. This indicates that claimant has the "ability to engage and relate to another person with some warmth, positive emotion, and the expectation of something useful or pleasurable happening in the interaction."
- (c) In the area of Affective Reciprocity & Gestural Communication (intentional two-way communication), claimant's ability was placed at a level of Mastered. This indicates that claimant has the "ability to signal her needs and intentions and also comprehend someone else's, and string these together as part of an interaction in a back and forth reciprocal pattern."
- (d) In the area of Complex Problem Solving, claimant's ability was placed at the level Mastered with Restrictions. This level describes claimant's "ability to create complex circles of communication through gestures and words by stringing together a series of actions into elaborate problem solving sequence of interactions."
- (e) In the areas of Emotional Ideas, Emotional Thinking, and Multi-Causal Thinking, claimant's was placed in the Partially Mastered level. However, Dr. Nassab determined that more observation time was needed to fully assess these areas.
- (f) In the area Gray Thinking and Emotionally Differentiated Thinking, Dr. Nassab determined that claimant has Not Mastered the ability to understand degrees of feelings, events, or other phenomenon in the world or understand her role in groups or sense of self to group identity.

- (g) In the area of Reflective Thinking, claimant's ability was placed in the Not Mastered level. This means claimant has not developed an internal standard of ideals and a sense of self-worth. (Exhibit 39.)

36. In her written report, Dr. Nassab made certain recommendations including that claimant receive 30 hours per month of adaptive skills services in the home or in the community over a six month period with an emphasis on parent training. Regarding claimant's anxiety with transitions, Dr. Nassab stated, "Unfortunately, transitions in life cannot always be controlled, so therefore two goals have been developed (transitions and regulation) so she will have the tools to be able to address life transitions." (Exhibit 39.)

37. Claimant's mother asserted that claimant presents a complex case that requires a high level of one-to-one care where the caregivers have experience with caring for claimant and who understand how to communicate with claimant and who understand claimant's attempts at communication. This is important because of claimant's proclivity for anxiety when there is a significant change in her life such as a loss of a one-to-one service provider or when a service provider is unable to understand claimant. Claimant's parents contend that the complex nature of claimant's intellectual disability and her precarious mental health, requires that she continue to receive Specialized Therapeutic Services (STS) and that her community integration service as well as other services should be provided under the umbrella of STS. Further, claimant is requesting the funding for specific one-to-one support aides who are familiar to claimant such as Jillian Diaz.

38. The regional center contends that to expand STS to include vocational and community integration would not be cost effective. For example, to include one-to-one direct care staff within STS would require a clinical component and a case management component. These components increase the costs of providing direct care services dramatically. For example, direct care staff funding for claimant through STS provided by Mercedes Diaz is set at \$25 per hour at 107.5 hours per month. This amount is much higher than the regional center generally funds for a personal aide, which according to Exhibit 50 is \$11.85 an hour. Further, a consultant to supervise the support person is funded for 4.3 hours per month at \$75 per hour. Case Management is being funded for 52 hours per month at \$95 per hour. Finally, the regional center further asserts that claimant is already being provided with a clinical component through the therapy provided by Mr. Rojas. The regional center has since offered to fund for a personal assistant for claimant through Independent Living Services (ILS), which would provide a teaching component, teaching claimant skills to increase her independence.

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act), set forth in Welfare and Institutions Code section 4500 et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also

recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. Welfare and Institutions Code section 4512 provides for services and supports for consumers that include “training” and “community integration services.”

3. The Lanterman Act also provides that “[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (Welf. & Inst. Code, § 4512, subd. (b).)

4. California Code of Regulations, title 17, section 54302, subdivision (a)(35), states that an Independent Living Program provides adult consumers with the functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or may provide the support necessary to maintain those skills. Subdivision (a)(30), defines “Functional Skills” as those “skills which enable an individual to communicate, interact with others and to perform tasks which have practical utility and meaning at home, in the community or on the job.” Subdivision (a)(17) defines “community integration” as “presence, participation and interactions in natural environments.”

5. California Code of regulations, title 17 section 56742, subdivision (b)(3), provides that independent living programs shall have functional skills training components, which includes shopping in natural environments, money management and purchasing activities, use of public transportation in natural environments, independent recreation and participation in natural environments, and home and community safety.

6. California Code of regulations, title 17, section 56756, subdivision (h), provides that independent living programs shall provide a direct care staff to consumer ratio of 1:1 when the service is conducted on an individual basis.

#### *Claimant’s Contention Regarding Psychotic Break*

7. In this case both parties presented facts and argument that provide support for their respective positions. Claimant proved that change in her daily routine increases her anxiety and stress. It is also true that claimant benefits greatly from the collaborative efforts of her parents, her therapeutic team, and her one-to-one aides. Further, claimant suffers less anxiety when she is around family or familiar people because they are in a better position to understand claimant’s attempts at communication and know how to calm claimant when she is stressed. However, the opinions of Dr. Rhodes and Dr. Gudapati that claimant would be in danger of a recurrence of a psychotic break if any minimal changes occur in her daily routine is not persuasive. Neither Dr. Rhodes nor Dr. Gudapati observed claimant during her December 15, 2009 emergency room visit at St. Joseph Hospital. Further, the hospital

records do not indicate that claimant suffered a psychotic break. As noted in Factual Finding 5, Dr. Brian Lee was the physician who observed, treated and diagnosed claimant during her emergency room visit. Dr. Lee diagnosed claimant with Anxiety, Generalized Disorder and noted in his medical report that claimant's "anxiety and emotional distress was related to mental depression." (Exhibit 34.) Even if claimant did suffer a psychotic break in December 2009, the collaborative efforts of her parents, therapist, psychiatrist and her aides have been effective in preventing a reoccurrence.

### *Claimant's Progress*

8. In his November 21, 2014 report, claimant's therapist, Mr. Rojas, stated that claimant "has been making progress in coping with her anxiety and has developed a greater awareness of the triggers to her anxiety and has been receptive to [Mr. Rojas'] request to systematically introduce changes to her routine." (Exhibit 38.)

9. Dr. Nassab, in her December 20, 2014 Adaptive Skills assessment stated that claimant has "Mastered" the area of "Engagement" (the ability to form relationships and engage another person with warmth and positive emotion). She has also "Mastered" the area of "Affective Reciprocity" in that claimant has the ability to signal her needs and intentions and to comprehend someone else's (needs and intentions). In her recommendations, Dr. Nassab notes that claimant has anxiety and great difficulty with transitions. In this regard, Dr. Nassab developed goals to address this concern because, according to Dr. Nassab, "Unfortunately, transitions in life cannot always be controlled." (Exhibit 39.)

### *Specialized Therapeutic Services*

10. As noted in Factual Finding 24, the Specialized Therapeutic Services (STS) that claimant has been receiving was instituted as an "interim measure" until claimant's Tailored Day Service was in place. Claimant's request to continue STS and to have community integration and well as other services provided under the umbrella of STS would in effect make STS into a permanent service; a result never intended by the parties.

11. Cause exists to affirm ELARC's decision to terminate Claimant's STS, based on Factual Findings 1 through 38, and Legal Conclusions 1 through 11. However, as noted in Factual Finding 38, ELACR has offered to provide personal assistant support services under Independent Living Service so that there would be a teaching component when claimant is out in the community. This is a reasonable outcome which would lessen the impact of terminating STS as long as STS is terminated on a gradual basis. Therefore, claimant's STS should be terminated gradually and should only be terminated on the condition that the regional center is prepared to fund community integration for claimant through Independent Living Services with a teaching or training component when claimant is assisted in the community that meets the requirements of California Code of Regulations, title 17, sections 54302, 56742, and 56756. The ALJ is aware that claimant might suffer anxiety when the change in services occurs. But the undersigned has also considered claimant's progress as noted by her therapist in recognizing and coping with her anxieties; as

well as the fact that claimant has “Mastered” the areas of Engagement and Affective Reciprocity” as opined by Dr. Nassab. Further, as correctly noted by Dr. Nassab, change and transitions cannot always be controlled.

### ORDER

Eastern Los Angeles Regional Center’s decision to terminate Claimant’s Specialized Therapeutic Services is affirmed on the condition that the ELARC provide Independent Living Services. Claimant’s appeal is denied. Claimant’s Specialized Therapeutic Services shall be terminated 90 days after the date of this order to lessen the impact on the change in services.

Dated: August 14, 2015

\_\_\_\_\_  
/s/  
HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.