

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH Nos. 2015021088

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on August 17, 18, 21, and 24, 2015, in Santa Ana, California.

Christina Petteruto, Attorney at Law, represented the Regional Center of Orange County (RCOC or Service Agency). Claimant¹ was represented by her mother (Mother) and father (Father) (collectively, Parents).

Oral and documentary evidence was received, and the record remained open until September 8, 2015 to give the parties an opportunity to file closing briefs. On September 8, 2015, Claimant and RCOC filed their briefs, marked and lodged as Exhibits L and 27, respectively. On September 8, 2015, the record was closed, and the matter was submitted for decision.

ISSUE

Must the Service Agency continue to fund personal assistance services (as behavior services) for Claimant, or may the Service Agency fade out those services?

¹ Party title is used in lieu of Claimant's name, and familial titles are used, in order to protect her privacy.

EVIDENCE RELIED UPON

Exhibits: Service Agency's Exhibits 10 – 24, 26; Claimant's Exhibits I (pages 1 – 23), J, and K (pages 1 through 14).

Testimony: Mary Carlson; Elizabeth Damiano; Patrick Ruppe; Veronica Flores; Dr. Michael Messina; Dr. Julie Schuck; Dr. Lynn Koegel; Dr. Janis White; Marta Vasquez; and Mother.

FINDINGS OF FACT

1. Claimant is a 19-year-old young man and a consumer of the Service Agency. Claimant has been diagnosed with Autism, and is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² When not at school with his twin sister, Claimant resides with Parents within the Service Agency's catchment area. Claimant currently attends the University of California at Los Angeles as a freshman, and resides in its dormitory.

2. The Service Agency issued letters on November 18, 2014 and February 5, 2015, stating its intention to fade out personal assistance services for Claimant over a period of five months. On February 20, 2015, Claimant filed a Fair Hearing Request, and requested that current services remain in place until the development of a criterion-based fade-out plan. All jurisdictional requirements have been met.

3. Claimant, who has been diagnosed with high functioning autism, suffers a number of challenges according to Mother's report, such as engaging in tantrums, physical aggression, verbal aggression, non-compliance, and property damage.

History of Services

4. Claimant currently receives 24 hours per month of in-home respite services and 10 hours per week of personal assistance services "as behavior services" or "in lieu of behavior services." (Exhibits 11, 12, and 26.) In general, the Service Agency uses the personal assistance services code as a miscellaneous code when no other applicable service code exists. Personal assistance services "as behavior services" or "in lieu of behavior services" originated from an agreement reached a number of years ago (approximately 2008 or 2009) between Mother and the Service Agency. Mother had expressed dissatisfaction with the vendors with whom the Service Agency contracted to provide behavior services to

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

Claimant.³ Consequently, Dr. Janis White of the Service Agency⁴ and Mother attended mediation, which resulted in the parties developing a creative way to give Mother, who was a Board Certified Behavior Analyst (BCBA), the funds necessary to hire and oversee staff to provide behavior services to Claimant. Because of the Service Agency's general policy precluding it from paying parents to provide services for their children, the Service Agency could not code as behavior services the delivery of funds to Mother. Instead, it could authorize the delivery of funds by using the miscellaneous personal assistance services code, for the purpose of providing behavior services, where Mother would serve as the funding intermediary between the Service Agency and the staff hired by Mother.⁵ (Testimony of Mary Carlson and Dr. Janis White.)

³ Mother alleged that some providers had not been adequately trained to work with Claimant, and that one provider had abused Claimant.

⁴ Dr. White is currently the Chief Operating Officer of the Service Agency.

⁵ While Mother denied agreeing to receive funding for personal assistance services for the purpose of hiring staff to provide Claimant with behavior services, the evidence demonstrates that Claimant was to receive personal assistance services as behavior services. Specifically, Claimant's Individualized Program Plan (IPP), Purchase of Service forms, and Purchase Orders, described personal assistance services "as behavior svc." Additionally, the testimony offered by Dr. White describing the origin of personal assistance services as behavior services in this matter was credible and highly persuasive, as she testified in a clear, concise, unequivocal manner, and supported her perspective with descriptive facts.

Additionally, ALJ Garrett did not find that Claimant discredited the testimony of Dr. White or the corroborating testimony of Ms. Carlson on this issue, despite Mother's testimony to the contrary or any document offered by her, dated June 20, 2012, to wit, a Notice of Resolution, which did not include language describing personal assistance services as behavior services. The evidence shows that subsequent documentation, most persuasively, Claimant's 2014 IPP, included the relevant language. Additionally, according to the credible testimony of Dr. White, the language set forth in the 2012 Notice of Resolution did not describe personal assistance services as new services, but rather referenced existing personal assistance services that were set in place years before as behavior services. Given these factors, ALJ Garrett afforded greater weight to the testimony of Dr. White and Ms. Carlson concerning this issue, over that of Mother.

In this matter, ALJ Garrett evaluated the credibility of the witnesses pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given. The manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when

5. Mother became vendored as a personal assistant, and, as such, received Purchase of Service documents and Purchase Orders for Claimant describing personal assistance services “as behavior svc” at a varying hourly billing rate, for 10 hours per week, not to exceed \$250 per week. In any week where Mother billed less than \$250 per week for Claimant, the unused dollars rolled over to the following week.

IPP and IPP Goals

6. On June 18, 2014, one month shy of Claimant’s 18th birthday, the Service Agency held an annual review meeting of Claimant’s Individual Program Plan (IPP). The IPP meeting was comprised of Mother and Claimant’s service coordinator, Mary Carlson. Ms. Carlson, who testified at hearing, has been a service coordinator with the Service Agency for 14 years, responsible for providing case management, and securing and implementing services, pursuant to clients’ IPPs. Ms. Carlson has been Claimant’s service coordinator for the past nine years. Ms. Carlson holds no specific certifications in the area of autism, but has received in-house training, amounting to approximately 10 hours of training over the 14 years she has been employed with the Service Agency.

7. Claimant participated his IPP meeting, but not in its entirety. Claimant, who was a senior in high school, expressed a desire to attend a four year university following graduation. Mother expressed concern that Claimant would not be socially and emotionally ready for college.

8. With respect to behavioral health, Mother stated Claimant had destroyed property over the previous year, engaged in verbal aggression, but not in physical aggression. However, he had make progress in self-monitoring and controlling anger and hurt feelings when plans changed, and improved in the area of communicating his desires, especially when verbally expressing displeasure. Claimant denied engaging in any maladaptive behaviors. The IPP included a goal of Claimant refraining from destroying property, using obscenities, or physical or verbal aggression, and demonstrating good sportsmanship by tolerating rule changes, complimenting peers, and negotiating during conflicts.

9. With respect to daily living needs, Mother reported Claimant had increased his independence during the past year, but indicated he had limited safety awareness. Claimant reported he was very independent, had a driver’s permit, independently loaded and unloaded the dishwasher, and prepared foods, such as burgers and pasta. The IPP included a goal of Claimant increasing his independence and learning to sort and wash his laundry independently.

judging credibility. The mannerisms, tone of voice, eye contact, facial expressions and body language are all considered, but are difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelieve a witness.

10. With respect to social and recreational activities, Mother reported Claimant had made great progress in gaining the attention of others appropriately, but still required prompting to establish eye contact or positioning himself an arm's length away. Mother also indicated Claimant had difficulty discussing teen topics, such as dances, music, peer relationships, and teachers. Claimant reported he enjoyed playing baseball, and using his cell phone and the computer, especially for Facebook, Snapchat, and Instagram. The IPP included a goal of Claimant continuing his participation in weekly social activities, as the goal to participate in social activities had already been met at the time of this meeting.

11. With respect to emergency preparedness, Mother reported that Claimant could verbalize the correct response to many emergency situations, but often had to be prompted to alert and respond to dangerous situations in his environment. The IPP included a goal that Parents would have an emergency/disaster plan in place to meet Claimant's needs.

12. The IPPs indicated Claimant had been receiving 24 hours per month of in-home respite services, and 10 hours per week of personal assistance services "as behavior svc," at varying billing rates, not to exceed \$250 per week.

13. Mother prepared an extensive list of additional IPP goals for Claimant and requested that they be incorporated in the IPP. The goals addressed social, safety, daily living, fine motor, and coping skills. Specifically, the goals included (1) self-monitoring; (2) obtaining the attention of others; (3) responding to bullying; (4) utilizing calming techniques; (5) complying with requests; (6) responding to emergency situations; (7) planning activities; (8) understanding inferences; (9) understanding nonverbal gestures; (10) demonstrating good sportsmanship; (11) exercising safety when crossing the street; (12) using private stalls and avoiding strangers in restrooms; (13) telephoning and conversing with friends; (14) using appropriate telephone etiquette when answering the phone; (15) scheduling a friend to "hang out"; (16) transitioning from one activity to another; (17) using graphic organizers; (18) staying within three feet of accompanying adult or peer; (19) verbalizing desires; (20) answering the door; (21) cutting food and eating with mouth closed; (22) playing with a peer; (23) predicting what people may be thinking; (24) wearing glasses; (25) self-monitoring stereotypies; (26) maintaining eye contact; (27) adjusting voice volume; (28) allowing for appropriate proximity when talking to others; (29) practicing bathroom routine and sanitary napkin disposal; (30) giving contextual information during conversations; (31) clearing the table without prompting; (32) counting change from a purchase; (33) giving complex verbal directions to others; (34) making long-range goals; (35) drawing straight lines with a ruler; (36) selecting appropriate clothing for the weather; (37) using a thermometer; (38) putting away clean clothes; (39) using tools (e.g., hammer, screwdriver, etc.); (40) washing dishes; (41) cooking; (42) using knives; (43) sorting laundry; (44) using household cleaners; (45) cleaning the house; (46) washing and drying clothes as needed; (47) planning and preparing a meal; (48) obeying curfew; (49) displaying computer skills; (50) evaluating quality and pricing when selecting items to purchase; (51) starting conversations by talking about things that interest others; (52) "hang[ing] out" with at least two friends a week; (53) going on group dates; (54) initiating small talk; (55) asking permission before using items of others; (56) refraining from entering a group when non-verbal cues indicate that such entry is

unwelcome; (57) going places with friends in the evening without adult supervision; (58) changing behavior based on familiarity with a person; (59) ending conversations appropriately; (60) apologizing for mistakes; (61) apologizing for hurting someone's feelings; (62) accepting helpful suggestions or solutions from others; (63) controlling anger or hurt feelings when plans change; (64) apologizing for unintentional mistakes; (65) demonstrating an understanding that gentle teasing with family and friends can be a form of humor and affection; (66) telling Parents or caregiver about plans such as time of departure and anticipated arrival; (67) avoiding dangerous or risky activities, controlling anger or hurt feelings when not getting one's way; (68) avoiding relationships or situations that are hurtful or dangerous; (69) controlling anger or hurt feelings due to constructive criticism; (70) keeping confidences or secrets for as long as needed; (71) thinking before making decisions; (72) being aware of socially dangerous or risky situations (e.g., binge drinking parties, internet chat rooms, personal ads, etc.); (73) balancing a check book; (74) using an automatic teller machine (ATM); (75) writing checks; (76) paying bills; (77) writing resumes and building portfolios; (78) determining the appropriate class load for each quarter or semester; (79) exploring job opportunities; (80) getting regular oil changes, car washes, and addressing other car maintenance duties; (81) learning to ride public transportation; (82) planning weekly and monthly budgets; (83) finding appropriate forms to complete for test applications, doctor's appointment information, college information sheets, and job applications; (84) making doctor and dentist appointments; (85) determining the best method to ship an item; (86) returning or exchanging items at the store; (87) maintaining hygiene; (88) knowing medications and what they are for; (89) refilling prescriptions; (90) getting regular haircuts; (91) knowing emergency numbers; (92) planning or helping plan a party or organize birthday and holiday plans; and (93) being aware and knowing programs that service people with disabilities, and utilizing such services as needed.

14. The Service Agency did not agree to incorporate the additional IPP goals. Specifically, the Planning Team, consisting of Ms. Carlson, the Service Agency's manager of behavior services (Dr. Michael Messina), and the Service Agency's area manager (Patrick Ruppe), did not agree to accept or incorporate the goals, because many were inappropriate for individuals receiving regional center services.

Adaptive Skills Assessments

15. On July 30, 2014, the Service Agency commissioned the JBA Institute to conduct an adaptive skills assessment of Claimant and prepare a written report. An adaptive skills assessment is designed to measure daily living skills, social skills, and other adaptive skills. The Service Agency granted JBA eight hours to perform the assessments, 50 percent of which to be face-to-face interactions, and 50 percent for analysis and report generation. The purpose of the assessment was to determine Claimant's current levels of adaptive functioning and, pursuant to a discussion between Elizabeth S. Damiano, M.A., BCBA, who was assigned to conduct the assessments, and Ms. Carlson, to determine whether behavior services were needed to teach Claimant new adaptive behavior or skills.

16. Ms. Damiano, who testified at hearing, is the director of research and development at JBA. She has a master's degree in psychological research, as well as her certification as a BCBA, which she received in 2012. Her job duties, in addition to performing case management duties, include performing assessments. Prior to Claimant, Ms. Damiano had not worked with any high-functioning autistic, college-bound teenagers.

17. Ms. Damiano's assessment included a review of records furnished by the Service Agency and Mother, including Claimant's IPPs, IPP goals prepared by Mother, interviews of Mother on August 20, 2014 and September 26, 2014, and interviews and direct observations of Claimant on August 20, 2014, August 22, 2014, and September 26, 2014. Because Ms. Damiano had only eight hours to conduct the assessment, Ms. Damiano limited the assessment to Claimant's home setting, as she did not have adequate time to assess Claimant in the community.

18. At the time of the assessment, Claimant was enrolled in a small private high school with typically developing peers, taking advanced placement courses, and utilized no special education services. Claimant engaged in extra-curricular activities such as track/cross country, basketball, baseball, and journalism and yearbook.

19. During Ms. Damiano's interview of Mother, she expressed generally that Claimant did not possess many skill deficits, but did need prompting to start and finish tasks in a timely manner, and to initiate and complete tasks more reliably. She also expressed concerns about Claimant attending to details of his work, organizing, and initiating socially. In terms of socialization, Mother expressed that Claimant did not talk with his peers on the phone, and did not make concrete plans with them. Mother worried whether he would remain safe in the face of peer pressure to drink or consume drugs at parties, or that someone may take advantage of his impairments. Finally, Mother expressed concern that her Claimant may not seek help when needed or navigate his environments safely.

20. When Ms. Damiano questioned Mother about past behavior intervention for Claimant, Mother refused to provide that information, because Mother had deemed that information irrelevant. As such, Ms. Damiano was not aware of whether Claimant had been receiving Applied Behavioral Analysis (ABA) therapy, psychotherapy, or any other behavior intervention.

21. In regard to Ms. Damiano's interview of Mother, at hearing, Mother indicated Ms. Damiano erroneously stated in her written reports that, at that point in time, she provided all intervention to Claimant. In reality, Mother had a team of individuals working with Claimant.

22. Ms. Damiano interviewed Claimant individually and conducted direct observations of him. Ms. Damiano discussed with him the areas of strengths and potential deficits as expressed by Mother. Ms. Damiano interviewed Claimant in various places of the house, and asked him how he had responded to situations occurring in the past, such as, "How did you know when you were upset/stressed/angry?" "What are the steps you take to

clean your room?” “How do you usually plan an outing with your friends?” Ms. Damiano also presented him with hypothetical scenarios and abstract, future-oriented questions, based on issues that commonly arose in early adulthood, and included themes such as planning and task-analysis, time management, interpersonal skills, domestic care, household safety, personal care, emotion-regulation, self-advocacy, and strengths and limitations.

23. In the area of planning and task analysis, when asked about his long-term plans, he advised he wanted to attend college, live in his own apartment or with roommates, and eventually begin a career. When Ms. Damiano asked how Claimant intended to accomplish his goals, he outlined specific steps for attending college, such as getting books, figuring out his class schedule, determining who his roommate would be in the dormitory, but skipped crucial steps, such as completing college applications. With respect to beginning a career, Claimant included the necessary steps, such as writing a resume and interviewing. Ms. Damiano concluded that while Claimant was capable of task analyzing the steps toward meeting a goal, he could neglect important details in some of his planning. Claimant outlined steps for writing a college research paper, narrated driving directions from his house to a local shopping mall, but omitted some details, such as which way to turn on the streets he named. Claimant explained how he would plan a huge party, such as arranging for a venue, food, entertainment, and inviting people.

24. In terms of time management for Claimant, he reported not being overly concerned about being late. However, when asked what time he would need to start getting ready to attend a 2:00 practice, he considered the time it would take to get ready and drive to the practice location, but concluded he would need to leave the house by 2:45. When asked how he handled competing priorities, such as extracurricular activities and homework, Claimant replied he prioritized competing activities based on how well he was performing in his classes. For example, if he had a 95 percent average in one class, and a 90 percent average in another, he would focus more on the class in which his average was 90 percent.

25. In terms of interpersonal skills, Claimant stated he hoped his friends would describe him as smart, loyal, nice, and funny. In general, he reported not having much experience with peers pressuring him to do something dangerous or risky, but felt confident that if he did encounter that, he would refuse to participate. When asked about challenging situations that people his age or early in college may experience, such as a noisy roommate late at night, Claimant generated potential solutions that involved communicating directly with the roommate, and if that failed, leaving the room. However, Claimant required some indirect prompting before he identified that he could approach the resident advisor for help. Additionally, despite his involvement in several extra-curricular activities at school, he did not report any hobbies or interests, or any desire to develop a hobby. Claimant stated he wanted to improve his general social skills at some point, but did not express any urgency or details as to which social skills required more work. He did demonstrate good operational definitions involving reading other people's emotions, such as boredom, sarcasm, and disinterest, based on non-verbal behaviors that people would use to show those emotions. When asked how he would handle bullying, Claimant stated he would try to handle it himself or go to his friends for help.

26. In terms of domestic care and general safety, Claimant reported he vacuumed and made his bed, although he did not see the point in making his bed if he was going to sleeping in it every night and mess it up. In terms of safety, Claimant discussed how he would know that someone needed urgent help and could detect household emergencies by using his senses, and was aware of using the phone to call 911 in the case of an emergency. He reported he would use a crosswalk when crossing the street, and could determine whether a driver would stop for him by looking at the driver's body language, such as seeing if the driver would wave or slow down. Claimant obtained his driver's license, but reported he did not drive. However, he could determine when a pedestrian wished to cross the street by looking at body language, such as the person facing the street and looking around as opposed to walking on the sidewalk, or leaning or stepping into the street.

27. In terms of personal care, Claimant indicated he knew how to take medication, based on the doctor's instructions. When asked what he would do if he had competing priorities of paying rent and eating, Claimant stated he would try to find a solution to meet both goals, which could involve asking his parents for assistance , or seeking help from a counselor, psychologist, or some other professional.

28. In terms of emotional regulation, Claimant stated that when upset, he would walk away and calm down alone.

29. In terms of strengths, interests, and limitations, Claimant described his areas of strengths as his focus for things that interested him, memory for information, and his interest in Humanities. He noted difficulties in the areas of maintaining attention and focus to activities that do not interest him, and in social skills in general. Claimant has held a part-time job in the past, doing clerical work in a legal office.

30. Ms. Damiano conducted observations of Claimant, and noted his eye contact was very fleeting, and almost avoidant, as he turned his head to the side frequently. Claimant shifted his attention among tasks, solved problems, and maintained a discussion about different topics while doing chores, such as washing dishes, and hanging clothes on hangers in his closet. Specifically, Claimant discussed plans for his future, interests, colleges, his family's recent trip to the East Coast, and his participation in extra-curricular activities. Claimant permitted Ms. Damiano to see his room, which contained many items on the floor, categorized and stacked, as he preferred not using his dresser. Ms. Damiano noted Claimant responded to her questions in a very logical way, and demonstrated a tendency to use more complex vocabulary or terminology, and sometimes vague phrases when he did not have a better answer to a question. Claimant engaged in a high level of motor stereotypy during the interviews and observations, such as pinching his neck, fidgeting, and riffling his hands through his hair, which increased when he did not have a clear "correct" answer to a question posed by Ms. Damiano. Overall, Ms. Damiano believed Claimant responded well to indirect and complex questions, did not engage in any untoward social behavior during the interview, such as monopolizing the discussion, perseverating on preferred topics, or refusing to participate. His response latency varied, but was generally quick. He appeared to

comprehend all of the questions, as his responses were on topic and made sense. No visual aids were used. Claimant even asked Ms. Damiano questions relating to her interest in her job, and what her goals for personal growth or hobbies were.

31. Ms. Damiano administered the Vineland Adaptive Behavior Scales, 2nd Edition (Vineland II), which measures the personal and social skills of individuals from birth through adulthood. Because adaptive behavior refers to an individual's typical performance of the day-to-day activities required for personal and social sufficiency, these scales assess what a person actually does, rather than what he or she is able to do. The Vineland II assesses adaptive behavior in four domains: (1) Communication, (2) Daily Living Skills, (3) Socialization, and (4) Motor Skills. It also provides a composite score that summarizes the individual's performance across all four domains. The Vineland II also measures problem behaviors, which are described as insignificant, intermediate, or significant. Ms. Damiano has administered the Vineland II on many occasions, but not for the age group of 15 years to 19 years.

32. Ms. Damiano gave Mother a Parent/Caregiver Rating Form to complete concerning Claimant. The scores for Claimant for receptive, expressive, and written communication fell in the moderately low, low, and adequate ranges, respectively, for an overall communication range of moderately low. In the area of daily living skills, Claimant's scores for personal, domestic, and community daily living skills fell in the low, low, and moderately low ranges, respectively, for an overall daily living skills range of low. In the area of socialization, Claimant's scores for interpersonal relationships, play and leisure time, and coping skills fell in the moderately low, adequate, and low ranges, respectively, for an overall socialization score of low. Claimant's adaptive behavior composite score fell in the low range. Claimant's level on the index that assesses minor problem behaviors was significant. Specifically, Mother's responses indicated clinically significant internalizing behaviors and elevated externalizing behaviors, with a maladaptive behavior index level of clinically significant overall.

33. Ms. Damiano sought the assistance of Clinical Director of JBA Institute, Hillary Taylor, M.A., LMFT, BCBA, who scored and interpreted the Vineland II scores, as Ms. Damiano was not qualified to do so. With this information, Ms. Damiano interpreted Claimant's Vineland II scores relative to her direct observations and interviews, and concluded the Vineland results contradicted Ms. Damiano's observations and interview findings of Claimant. For example, while Claimant was capable of explaining how he would address a variety of situations, it was possible that Claimant could explain activities better than he could perform them in reality. Ms. Damiano noted that reactivity was another potential explanation, meaning Claimant's responses to Ms. Damiano may have differed from his typical responses, because he was aware that he was being assessed. Also, because Ms. Damiano had no prior reinforcement history with Claimant, it was possible that he was motivated differently during the assessment. For example, Mother reported having difficulty motivating Claimant to perform tasks in a timely manner, whereas he performed chores readily during the assessment. Additionally, at hearing, Ms. Damiano offered that Mother

had an opportunity to observe Claimant over a broader period of time, and, therefore, had more information from which to rate Claimant.

34. Based on the results of her interviews, observations, and the Vineland scores, Ms. Damiano made recommendations for Claimant in the areas of goal setting, reinforcement and other consequences, and service recommendations. In the area of goal setting, Ms. Damiano noted Claimant could benefit from actively involving himself in the goal-setting process, as it may increase his motivation to meet his goals. Ms. Damiano noted that Claimant may require teaching to understand how short-term goals relate to his long-term goals. For example, he may not understand the value of developing his social skills if he cannot see how social skills will impact his future career prospects. Additionally, Ms. Damiano recommended the goals prepared by Mother, which appeared aligned with the Vineland II, should be linked back to Claimants' personal goals. Such goals could be task analyzed, or broken down into smaller steps, so that Claimant could see incremental progress toward his larger goals, and be directly involved in making periodic adjustments to his goals. Ms. Damiano noted that some areas Mother determined that mostly impacted Claimant were not age-appropriate or controllable by Claimant. For example, car maintenance was not yet applicable to Claimant, because, although licensed to drive, he did not do so. Ms. Damiano also stated that budgeting was also not yet appropriate for Claimant to fully master at that point, as Parents could manage his money remotely initially, gradually giving him more and more responsibility upon demonstration of the successful management of his funds.

35. Ms. Damiano noted some other goals may be targeted more meaningfully in their natural contexts, or at a later date. For example, Claimant could seek help with job placement from the career center on campus when it was time to seek employment. Ms. Damiano stated that basic tool use was a skill that many typically developing peers did not possess, but would often ask each other for help. Rather than teaching Claimant extensively in 87 individual skill areas to prevent problems that might occur in the future, Ms. Damiano concluded that it would be vital to teach Claimant to solve his own problems as they arise and become immediately meaningful to him.

36. Ms. Damiano recommended that he essentially design his own treatment plan, with help from another adult, which include teaching him to set and monitor his own goals, and to choose pursuits that align with them; teaching him to evaluate whether pursuits, such as social development, that seem unrelated to his long-term plans may actually relate in some way; teaching him to solve novel problems in novel situations; remediating fine motor deficits; addressing deficits in areas of basic personal care and safety, linking them clearly to his values, plans, and preferences; and teaching him to cope with challenges to his plans or adversity. Ms. Damiano noted how admirable it was that Mother worked so hard in all of these areas with Claimant over the years, but noted her efforts may serve Claimant better if directed toward more global outcomes that he can determine himself.

37. In the area of reinforcement and other consequences, Ms. Damiano noted that reinforcement functioned to strengthen behavior for everyone, and would be the case for Claimant. While Claimant may demonstrate difficulties accepting and coping with certain

types of consequences, such as extinction and punishment, as reported by Mother, Ms. Damiano noted that such consequences may come in the form of corrective feedback, social rejection from peers, or poor grades or work reviews, however, such contingencies naturally occurred in society. As such, Ms. Damiano recommended that steps be taken to ensure that Claimant could respond appropriately to such consequences, by strengthening his coping skills, for example.

38. In the area of service recommendations, Ms. Damiano noted that Claimant was on the cusp of major life transitions, and could face difficulties adjusting. Because he was high functioning, Ms. Damiano stated it would be important to normalize his experiences as much as possible, as others in his age group, with or without disabilities, may experience similar difficulties. Ms. Damiano noted that, based on data from the Vineland II, according to Mother's observations, Claimant still demonstrated many areas of deficit, and, as such, could likely benefit from some type of intervention, but not traditional behavior analytic services, as Ms. Damiano concluded none were indicated at this point. Instead, Ms. Damiano recommended that Claimant be referred for psychotherapeutic assessment, in order to assist in clarifying goals and values, taking steps to change behavior and increase skill performance in related areas. Ms. Damiano explained a psychotherapist could provide Claimant with assistance confidentially, and therefore, in a socially non-stigmatizing way. Overall, Ms. Damiano concluded that Claimant possessed the skills he needed, although he did not consistently demonstrate them, as his motivation to do so varied. In the future, whether through his parents, peers, or professionals working with him, it will be important to assess his motivation to demonstrate age-appropriate skills. Ms. Damiano suggested that teaching Claimant the rationale behind increasing certain skill sets, such as social skills and domestic care, may increase his motivation to develop them.

39. At hearing, upon cross-examination, Ms. Damiano conceded that some autistic children have problems generalizing to other settings, and did not know whether Claimant could generalize her skills to a college environment.

40. Ms. Damiano completed her written report on October 15, 2015, which was reviewed and signed by Hillary Taylor.

41. Thereafter, Mother requested to meet with Ms. Damiano to discuss the assessment reports. However, Ms. Damiano wanted to meet with Mother and the Service Agency together, because Ms. Damiano believed a collective meeting would be more productive than individual meetings, especially given Mother's disagreement with the assessment results. Ms. Damiano did invite Mother to send her a list of questions to which Ms. Damiano could respond in writing.

Adaptive Skills Assessment Addendum

42. On November 5, 2014, pursuant to the Service Agency's request, Ms. Damiano prepared an adaptive skills assessment addendum to the October 15, 2014 report regarding Claimant. Specifically, Dr. Messina requested Ms. Damiano to complete the

Survey Interview Form of the Vineland II concerning Claimant, so that the Service Agency could compare scores between Mother and Ms. Damiano. The scores for Claimant for receptive, expressive, and written communication each fell in the adequate, moderately low, and adequate ranges, respectively, for an overall communication range of moderately low. In the area of daily living skills, Claimant's scores for personal, domestic, and community daily living skills fell in the moderately low, moderately low, and moderately low ranges, respectively, for an overall daily living skills range of moderately low. In the area of socialization, Claimant's scores for interpersonal relationships, play and leisure time, and coping skills fell in the moderately low, moderately low, and adequate ranges, respectively, for an overall socialization score of moderately low. Claimant's adaptive behavior composite score fell in the adequate range. Claimant's level on the index that assesses minor problem behaviors was insignificant. Specifically, Ms. Damiano's responses indicated elevated internalizing behaviors and average externalizing behaviors, with a maladaptive behavior index level of average overall.

43. In general, the scores in the addendum showed Claimant's adaptive skills were higher, overall, than the scores reflected on Mother's rating scale. The scores in the addendum did not prompt Ms. Damiano to change her recommendations set forth in her initial report, but did state that her recommendations were not necessarily comprehensive, but were rather a starting point.

44. At hearing, Ms. Damiano agreed with the Service Agency's plan to fade out personal assistance services as behavior services over a five-month period, provided Claimant had not demonstrated any regressions in the year since Ms. Damiano assessed him. However, Ms. Damiano qualified her opinion by stating she did not know exactly what personal assistance services were, but if they were synonymous with behavior services, she would stand on her opinion that Claimant does not require behavior intervention services. Notwithstanding this, Ms. Damiano stated that, irrespective of her agreement with the Service Agency's decision to fade out personal assistance services over a period of five months, ideally, a criterion-based fade-out plan was superior to a time-based one, as the criterion-based model is based on data concerning certain skills, while the time-based model is based on the time worked on certain skills. As such, if there was a way for Claimant to continue to receive personal assistance services in a way that would not be socially stigmatizing, could be generalized, and helped Claimant progress, she "would not have a problem with that."

Review of Adaptive Skills Assessments

45. Dr. Messina, Ms. Carlson, and Mr. Ruppe met and reviewed Claimant's adaptive skills assessments, and determined, collectively, the Service Agency should fade out personal assistance services as behavior services.

46. Dr. Messina testified at hearing and offered insight into the Service Agency's decision to fade out personal assistance services as behavior services. Dr. Messina has been a licensed clinical psychologist since 2010, and has worked with children, adolescents, and

adults with a variety of developmental and psychiatric disorders in both private and community settings. Dr. Messina has worked with some adolescents and young adults with high functioning autism, but has not worked with any attending college. Dr. Messina, in addition to serving as a clinical psychologist, has been a BCBA since 2009, has served as the Service Agency's manager of behavior services since 2012, and has managed a team of BCBAs to monitor and assure the quality, scope, effectiveness, and the extent of delivery of behavior services to clients of the Service Agency.

47. Dr. Messina had never met or observed Claimant. While Dr. Messina knew Mother was providing personal assistance services as behavior services, he did not know specifically what Mother did when providing such services.

48. Dr. Messina explained it was appropriate to fade out behavior services when the caretakers were able to assume the place of the interventionist, or if the degree or frequency of maladaptive behaviors was not great enough to prevent individuals from managing their day-to-day lives. The objective of behavior services, Dr. Messina explained, is to create independence. In this regard, it is important to fade out services when an individual can substantially manage his or her behaviors, and can live and function without behavior supports.

49. Dr. Messina noted the assessment results showed that Claimant was very high-skilled and performing well in all significant areas, evidencing that no continued behavior intervention supports were necessary. Additionally, Dr. Messina noted Ms. Damiano's conclusion that no traditional behavior analytic services were indicated, but even if she had not stated that, Dr. Messina noted that Ms. Damiano's narrative showed Claimant was performing well, overall. Given this, Dr. Messina, along with Mr. Ruppe and Ms. Carlson, concluded Claimant no longer required behavior services, but elected, as a courtesy to the family, to fade out the services, so Claimant could transition more smoothly from the provision of personal assistance services to no such services.

50. Dr. Messina stated that Ms. Damiano's lack of experience in working with young adults with high functioning autism would not change his opinion concerning the assessment results, because the majority of the assessment came from her interview of Claimant, where Ms. Damiano asked a lot of relevant questions, and gave a lot of descriptive elements of Claimant's abilities.

51. In addition to reviewing the assessment report, Dr. Messina reviewed Claimant's IPPs and the list of goals written by Mother. Additionally, although Dr. Messina did not review Claimant's school records prior to deciding with Ms. Carlson and Mr. Ruppe that personal assistance services as behavior services should be faded out, Dr. Messina believed his subsequent review of those records supported the decision to fade out services. Specifically, Dr. Messina noted Claimant had been performing well at school for a number of years, taking advanced placement classes, without special education services, which Dr. Messina concluded was inconsistent with individuals requiring 10 hours of behavior services

per week. Dr. Messina conceded that Claimant may require some services at the moment, but certainly not behavior services.

52. Mr. Ruppe, who has served as the Service Agency's area manager for more than eight years, testified at hearing, and explained it was not the Service Agency's position that Claimant should be without assistance, but he should be without behavior intervention services.

Notices of Proposed Action

53. On November 18, 2014, Ms. Carlson sent Mother a letter stating the Service Agency was pleased with the progress Claimant had made, and, based on the results of her adaptive skills assessment, it appeared that personal assistance services (as behavior services) could be faded out over a five-month period, beginning on January 1, 2015. Specifically, the fade-out plan would reduce personal assistance services every month by two hours per week, for Claimant, as follows:

- January 1, 2015 – January 31, 2015: eight hours per week / not to exceed \$200 per week
- February 1, 2015 – February 28, 2015: six hours per week / not to exceed \$150 per week
- March 1, 2015 – March 31, 2015: four hours per week / not to exceed \$100 per week
- April 1, 2015 – April 30, 2015: two hours per week / not to exceed \$50 per week

54. Ms. Carlson also memorialized in the letter that, pursuant to her telephone conversation with Mother, she wished to schedule a Planning Team Meeting to discuss the adaptive skills assessments, but due to Mother's schedule, Mother would not be available to meet with the team until sometime after December 1, 2014.

55. Ms. Carlson enclosed with the November 18, 2014 letter, a Notice of Proposed Action concerning the fade-out plan.

56. On January 28, 2015, Ms. Carlson attempted to schedule the Planning Team Meeting, but Mother indicated she would need to later advise Ms. Carlson of her availability to participate in the meeting.

57. On February 5, 2015, after not hearing back from Mother regarding her availability to participate in a Planning Team Meeting, and after learning the language concerning the fade-out plan in Notice of Proposed Action enclosed with the November 18, 2014 letter did not match the language set forth in the November 18, 2014 letter,⁶ Ms. Carlson sent Mother a new letter stating that personal assistance services (as behavior

⁶ The Notice of Proposed Actions enclosed with the November 18, 2014 letter erroneously stated that personal assistance services would be reduced to eight hours per month, as opposed to eight hours per week.

services) would be faded out over a five-month period, beginning on March 9, 2015. Specifically, the fade-out plan would reduce personal assistance services every month by two hours per week, for Claimant, as follows:

- March 9, 2015 – April 8, 2015: eight hours per week / not to exceed \$200 per week
- April 9, 2015 – May 8, 2015: six hours per week / not to exceed \$150 per week
- May 9, 2015 – June 8, 2015: four hours per week / not to exceed \$100 per week
- June 9, 2015 – July 8, 2015: two hours per week / not to exceed \$50 per week

Claimant's Experts

A. Mother

58. Mother received her bachelor's degree, with honors, in psychology from the University of Southern California in 1991, her master's degree, with honors, from Pepperdine University in 2005, and received her BCBA in 2007. Mother had gone back to school in the 2000s, because of the frustration she had been experiencing with what she considered a lack of qualified vendors to provide intervention services for Claimant. The Service Agency had provided a number of vendors Mother had described as incompetent, so Mother decided to gain the education to step in and provide intervention for Claimant.

59. Mother explained her concerns regarding Claimant attending college with no personal assistance services. Specifically, Mother explained that, based on her educational background and personal experience with Claimant, any lack of social connectivity at UCLA could result in Claimant becoming depressed, which could cause him to fail in college. Mother also noted Claimant could experience time management issues at UCLA that could result in problems for him, because he was used to a system in high school that was very structured, and where he engaged in a number of extracurricular activities during his free time. Mother also expressed concern about Claimant engaging in high risk activities such as sex, drugs, and alcohol, as Claimant was around upperclassmen who could negatively influence him. Additionally, Mother indicated that if Claimant lacked the perspective to know when he needed help in any given situation, he could fail to seek help or visit professors during office hours. Mother also expressed concerns about others taking advantage of or bullying Claimant, and Claimant getting the requisite exercise to help him manage his stress. Mother explained that Claimant needed peer mentors to help him address his concerns, and to help him become involved in campus life, remain connected, and avoid isolation.

60. At UCLA, the Office for Students with Disabilities (OSD) oversees some accommodations Claimant requires. Claimant had been approved for nine or ten accommodations, such as additional time to take tests, a private, quiet testing area, writing on the test booklet instead of transferring answers onto a Scantron, having note takers, a Lifescribe pen, a reduced course load, and typing out essays instead of handwriting them. Currently, Claimant attends UCLA's College Summer Institute (CSI), which is designed for

freshmen entering UCLA where students take a few classes, live in the dormitories, participate in scheduled outings, and participate in social groups. At the end of CSI, Claimant will begin the Academic Advancement Program at UCLA, which is a diversity program charged with supporting underrepresented students, by providing tutoring, academic counseling, learning workshops, mentoring, guidance, and support. Claimant also met with a network of people charged with providing support to Claimant, including a psychologist.

61. In her professional opinion, Mother believed Dr. Messina as a BCBA, was wrong in only looking at one assessment, as opposed to arranging for additional observations and gathering information from other people, such as from members of Mother's team (e.g., personal coaches, peer mentors, etc.), and observing Claimant in the natural community similar to which he would be going (e.g., the local college). Mother also expressed that Dr. Messina should have made sure Ms. Damiano could interpret the data she collected, and be able to discuss the findings with Parents.

62. Mother also criticized Ms. Damiano's failure to find ways to control for reactivity, so that she could reduce the receipt of potentially erroneous information from Claimant that could have impacted Ms. Damiano's final decision in a way that would not have been beneficial to Claimant. For example, Ms. Damiano could have observed Claimant inconspicuously, either by videotape or by standing in a different room while observing Claimant, but did not make arrangements to do so. Consequently, Claimant could have given Ms. Damiano responses designed to please her, but not truly representative of the level of skills Claimant really had. Additionally, Mother believed Ms. Damiano should not have completed a Vineland II survey, because she had not spent sufficient time with Claimant, and she saw Claimant complete only four or five activities, out of more than 80 activities found on the Vineland II, similar to those set forth in the IPP goals Mother had prepared. Finally, Mother criticized Ms. Damiano for her failure to assess whether Claimant possessed the skills he would need to know while living on campus, such as banking, financing, socializing, and living independently.

63. Mother also disagreed with Ms. Damiano's service recommendations. Specifically, Mother disagreed that Claimant should undergo a psychotherapeutic assessment, because Claimant had been seeing a psychotherapist for the last five years, and seeing another one could be harmful, as only one psychotherapist at UCLA has the expertise to address the needs of individuals with high functioning autism. Additionally, adding one more person to the number of people Claimant must see could result in him suffering unnecessary stressors and possible self-esteem issues, causing him to pose questions asking, "What's wrong with me?" or "Why do I need to see so many people?"

64. However, Mother agreed with Ms. Damiano's conclusion that Claimant required no traditional behavior analytic services, as he was not and had not been receiving such services.

65. Mother has assessed Claimant's current needs, and believes her observations are more accurate than those of Ms. Damiano, given the number of years she has been

providing services to Claimant. While she completed an exhaustive list of goals she wanted incorporated in Claimant's IPPs, Mother expressed that a new baseline was required, because she was now in a different setting (i.e., UCLA campus). In that regard, Mother created modified goals considering her new environment. These modified goals addressed the areas of cleaning (hanging up clothes daily); meal preparation (learning to use a microwave to prepare various meals); money management (creating a monthly budget, opening new checking and savings accounts, balancing bank accounts, applying for a credit card, and tracking spending); social (socializing with peers at least one hour each day); self-advocacy (attending office hours for each class at least once a week); personal health and hygiene (brushing and flossing teeth at least three times per day, showering every day, maintenance of contact lenses, keeping weekly appointments with Dr. Schuck); home and community safety; and independent recreation (exercising at least one hour per day and purchasing a pass to attend university events).

66. Mother believes she would be, by far, the best provider for Claimant, given her knowledge and her exhaustive research, and her mission to provide services in a discrete manner that would not be stigmatizing or otherwise harmful to Claimant's psyche. Additionally, Mother's collaboration with Dr. Julie Schuck⁷ and Dr. Lynn Koegel⁸ would add to the quality of services, as well as an objective component.

67. Mother believes that terminating services would be detrimental to Claimant, as an abrupt halt could cause major regressions and potential catastrophic results, namely "crashing and burning." To "crash and burn" means, within the autism community, loss of gains previously made, as a result of the withdrawal of support.

68. Before any termination of services, Mother believes the Service Agency should implement a criterion-based fading plan, as opposed to time-based fading plan, because, generally speaking, as long as there was progress made toward the goal, the goal should be continued. While Claimant continued to make progress on his goals in process, Claimant has moved to a new setting which requires the acquisition of new skills. Mother noted Claimant had problems generalizing his skills.

B. Dr. Julie Schuck

69. Dr. Julie Schuck, who has been a licensed clinical psychologist since 1995, testified on Claimant's behalf. Dr. Schuck specializes in working with children, adolescents, and young adults who have high-functioning autism, attention deficit hyperactivity disorder, anxiety, depression, or bipolar disorders. Dr. Schuck has worked with individuals with high-functioning autism since 1987, and as a clinical psychologist, has worked with such individuals since 2000.

⁷ See section B below regarding Dr. Schuck.

⁸ See section C below regarding Dr. Koegel.

70. Dr. Schuck has worked with Claimant for more than five years in the areas of social group training, family therapy, and individual therapy. Over the past 10 years, Dr. Schuck has worked with 70 individuals with high functioning autism who attend college, and have seen more than 100 individuals with high functioning autism. Of the 70 college students with whom Dr. Schuck has worked, 25 took advanced placement classes, and attended high caliber universities after graduating from high school. Of those who attended universities, 15 have graduated thus far. The individuals who failed to graduate were ones who dropped out of school because they could not handle the freedom, or the decrease in supervision, accountability, and support. Dr. Schuck explained that just because an individual with high functioning autism performed well in high school did not mean they would be successful in college.

71. It was Dr. Schuck's understanding that Mother had provided Claimant services by hand-selecting and training life-coaches, peer mentors, discrete observers (i.e., people who hide and obtain data by observing Claimant in natural settings). Mother has tailored services to address Claimant's needs, such as special drivers' education training. Strategies used by Mother include modeling, role playing, and hiring and training staff to do the same. Dr. Schuck explained that services provided by Mother or by staff did not include one-on-one services for Claimant on campus, or ABA services, but rather personal assistance services, which Dr. Schuck defined as someone providing Claimant with independent living skills.

72. Dr. Schuck's current role includes transitioning Claimant to college life by communicating individually with him one time per week via Skype or telephone, consulting with Parents concerning Claimant's ongoing needs, and by personal observations of him twice per year in his natural settings.

73. Dr. Schuck reviewed the assessment report completed by Ms. Damiano. Dr. Schuck did not consider the assessments comprehensive, because the bulk of the reports dealt with Claimant's responses to "what if" questions, only tested for four or five activities of adaptive skills out of more than 80 adaptive skills activities, and did not demonstrate how Claimant would perform in a new environment, namely a college campus. Dr. Schuck noted that when Claimant advised Ms. Damiano he intended to attend college after graduating high school, Ms. Damiano should have ideally assessed Claimant on a college campus. Additionally, Dr. Schuck believed it was unethical for Ms. Damiano not to change any mistakes on the report, namely, Ms. Damiano representation that Mother provided Claimant all of her services. Dr. Schuck also found unethical Dr. Damiano's refusal to meet privately with Mother to discuss the assessment result. Additionally, Dr. Schuck opined that because Ms. Damiano had never assessed any high-functioning autistic, college-bound teenagers, prior to Claimant, Ms. Damiano operated outside of her scope of expertise. Additionally, Dr. Schuck found troubling Ms. Damiano's inability to interpret the data she gathered. Finally, Dr. Schuck found problematic that Ms. Damiano administered only one test before making any service recommendations.

74. Dr. Schuck reviewed a skills inventory shown to her by Mother the day prior to hearing, and verified the inventory was a more appropriate assessment tool. Although Dr. Schuck had no experience using the inventory tool, she indicated she intends to use it for future college students, as it tests adaptive skills in the areas of money management, consumer awareness, food management, personal appearance and hygiene, health, housekeeping, housing, transportation, job-seeking skills, and job maintenance skills.

75. Dr. Schuck disagreed with Ms. Damiano's opinion that services should be faded out or terminated. Dr. Schuck believes Claimant requires continued personal assistance services or independent living skills services to manage the massive changes in his life. Dr. Schuck opined that removing services at this point would be negligent. As such, if the Service Agency terminates Claimant's personal assistance services, Dr. Schuck stated he would require the immediate implementation of other services, in order to avoid academic failure, depression, and anxiety.

C. Dr. Lynn Koegel

76. Dr. Lynn Koegel is the clinical director at the Koegel Autism Center, and the director at the Broad Center for Asperger Research. Dr. Koegel earned her bachelor's and master's degree in speech and hearing services from the University of California at Santa Barbara (UCSB) in 1980 and 1982, respectively. Dr. Koegel received her doctorate in educational psychology from UCSB in 1993.

77. The Koegel Autism Center serves 15 to 30 individuals per year who have high functioning autism and attend UCSB. Over the years, Dr. Koegel has seen approximately 30 to 40 high-functioning autism students graduate from UCSB. The ones who did not graduate generally dropped out of school because they earned poor grades, had poor study habits, time management problems, suffered anxiety and depression, had difficulty making friends, and had difficulty living independently. The services provided by the Koegel Autism Center are individualized, but generally provide support in the areas of advocacy, social skills, time management, hygiene, diet, and other areas.

78. Dr. Koegel has been working with Claimant since 2013, when Mother sought her out when Claimant was in high school, and wanted to prepare him for skills he would need in college, such as independent living, time budgeting, and other general problems students like Claimant could face.

79. Dr. Koegel and Mother set up a program for Claimant that involves a lot of observation by college students who serve as peer support and peer mentors, who help Claimant to socialize, interact, and make friends with other students.

80. Dr. Koegel has reviewed the goals prepared by Mother and believes they are good goals that will be helpful to Claimant.

81. Dr. Koegel, who has administered several hundred Vineland II rating scales over the years, generally includes caregivers' survey information, but does not include an assessor's survey information, unless that assessor has spent significant time with the subjects of the assessment. In this matter, Dr. Koegel noted Ms. Damiano spent only a few hours with Claimant individually, insufficient time to rate Claimant appropriately, thereby invalidating the assessment. Dr. Koegel also criticized Ms. Damiano's report, because the assessment did not include observations in other settings.

82. Dr. Koegel opined that Mother should continue to receive funds to provide personal assistance services to Claimant. The advantage of this is that Mother has known Claimant for his entire life and knows interventions that would not be stigmatizing. Dr. Koegel offered that Mother was very knowledgeable and possessed the necessary expertise to attend to Claimant's needs. Dr. Koegel believed Claimant needed 20 to 30 hours of services per week, mainly one-on-one, to ensure he was waking up in the morning, exercising good study habits, going to the library, engaging in regular socialization, developing good study habits, exercising good study habits and time management skills, advocating for himself, and exercising.

83. Dr. Koegel opined that the discontinuation of services would result in harm to Claimant.

Independent Living Services

84. Sometime subsequent to the February 20, 2015 filing of Fair Hearing Request, Mother requested the Service Agency to provide Claimant with independent living services (ILS). On April 3, 2015, the Service Agency held a Planning Team Meeting to discuss Mother's request. The meeting included Mother, Mr. Ruppe, Ms. Carlson, and the Service Agency's Supported and Independent Living Manager.

85. On April 10, 2015, Ms. Carlson sent Mother a letter stating that the Service Agency was denying Mother's request for ILS for Claimant. The Service Agency based its denial on Claimant's current receipt of personal assistance services, asserting the areas of need Mother identified for Claimant could be addressed with the personal assistance services. Ms. Carlson further stated, among other things, that the provision of services must reflect the cost-effective use of public resources, and asserted it would not be cost-effective for the Service Agency to fund two services simultaneously (i.e., personal assistance services and ILS) to meet the same needs.

86. Ms. Carlson also acknowledged in her April 20, 2015 letter that fair hearings were pending concerning personal assistance services, but the Service Agency would be happy to revisit Mother's request for ILS if personal assistance services were terminated in the future.

87. Ms. Carlson enclosed in her letter information about appeal procedures. Mother did not file an appeal on Claimant's behalf concerning the Service Agency's denial of her request for ILS.

88. Overall, this ALJ limited the testimony regarding ILS, because the Service Agency's decision to fade out personal services was the subject of this instant hearing, and not the denial of ILS. However, even with the limited evidence received regarding ILS, this ALJ found suspect the Service Agency's position that personal assistance services could be used to address ILS needs, while simultaneously arguing that personal assistance services in this matter were meant solely for behavior services. The Service Agency's conflicting perspectives do not alter Factual Finding 4 establishing that personal assistance services were, indeed, implemented as a creative way for Mother to arrange for behavior services for Claimant. However, given the credible testimony of Dr. White and the subsequent documents received by Mother over the years describing personal assistance services as behavior services, the Service Agency's credibility could be called into question should it argue, in response to a future request for ILS services, that Claimant is not entitled to such services as a result of its past or current provision of personal assistance services.

LEGAL CONCLUSIONS

1. The Service Agency is not required to continue funding personal assistance services as behavior services for Claimant, and may fade out those services, as discussed in more detail below:

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Where a change in the status quo is sought, the party seeking the change has the burden of proving that a change is necessary. (Evid. Code, §§ 115 and 500.) In this case, the Service Agency is seeking to change the status quo by its proposal to fade out personal assistance services as behavior services. Accordingly, the Service Agency has the burden to prove by a preponderance of the evidence that its decision to fade out such services was not erroneous.

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

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

The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

5. Section 4512, subdivision (b), of the Lanterman Act states in part:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . behavior training and behavior modification programs, . . . community integration services, . . . daily living skills training, . . .

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

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

8. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the

greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

9. Here, the Service Agency met its burden of establishing that Claimant's personal assistance services as behavior services should be faded out. The evidence shows that Claimant no longer requires behavior services. Specifically, Ms. Damiano, based on her comprehensive interviews, observations, and her administration of Vineland II, concluded that while Claimant demonstrated areas of deficit, and could benefit from some intervention, he did not require traditional behavior analytic services.

10. Mother, during her testimony, agreed with Ms. Damiano that Claimant required no behavior services, despite Mother's criticisms of Ms. Damiano for (1) not giving more weight to her interview of Mother, a BCBA with more years of experience than Ms. Damiano, (2) completing a rating scale concerning Claimant after spending only a few hours with her, (3) observing Claimant in a home setting only, (4) lacking the ability to interpret the Vineland scores, (5) failing to control for reactivity, (6) lacking experience in working with adolescents or young adults with high functioning autism, (7) failing to correct inaccuracies in her report, (8) testing for four or five skills out of more than 80, and (9) failing to review the assessment results with Mother.

11. Additionally, Dr. Messina, who has substantial expertise and experience as a clinical psychologist and the manager of behavior services at the Service Agency, found Ms. Damiano's report comprehensive and helpful, and consistent with his overall conclusion that Claimant required no behavior intervention services, based on his review of Claimant's IPPs, as well as Claimant's school records, showing Claimant had performed well in school for a number of years, taking advanced placement courses, without special education services. Such factors, according to Dr. Messina, were inconsistent with individuals requiring 10 hours of behavior services a week.

12. In light of the above, the Service Agency has met its burden of demonstrating by a preponderance of the evidence that Claimant's personal assistance services as behavior services should be faded out over a period of five months, reducing hours by two hours a week every month, as Claimant no longer requires behavior services.

13. Notwithstanding Claimant's lack of need for behavior services, Mother contends that personal assistance services are required so that she can obtain a new baseline for Claimant, modify the list of goals previously prepared by Mother, as set forth in Factual Findings 13 and 65, and put staff in place to implement those goals. Mother buttresses her argument with the opinions of Dr. Koegel and Dr. Schuck, both of whom possess impressive credentials and professional experience, especially with high functioning autistic young adults, who support Mother's overall plan to continue providing Claimant with peer mentors, life coaches, and discrete observers, in a socially non-stigmatizing way, to help Claimant

avoid social and academic failure, depression, and anxiety, and to live independently and safely. However, these services, which Dr. Schuck identified as independent living skills services, do not fall under behavior services, and, as such, cannot be addressed with the personal assistance services currently in place. The evidence shows that the initial intent behind the Service Agency's funding of personal assistance services was to provide Mother an opportunity to hire staff to provide behavior services. Consequently, any modification of these services must be addressed in the IPP process, as set forth in Legal Conclusions 3 – 7.

14. In this regard, Claimant must seek the appropriate services from the Service Agency to address her needs. Indeed, both Dr. Messina and Mr. Ruppe testified, in essence, that it was not the Service Agency's position that Claimant should be without support or assistance. Additionally, Ms. Damiano's reports, upon which the Service Agency heavily relied in this matter, provided that Claimant could benefit from intervention. Moreover, Ms. Carlson, in her April 10, 2015 letter to Mother, stated the Service Agency would be happy to revisit Mother's previous request for ILS if personal assistance services were terminated. Given these factors, Claimant's should pursue all pertinent services that will meet her needs.

15. Finally, Mother contends that if the Service Agency is permitted to fade out services, it should be required to use a criterion-based model, as opposed to a time-based one. Specifically, Mother asserts that a criterion-based fade out plan, which requires the continuation of a goal as long as an individual makes progress on the goal, is superior, because, it requires the review of data, as opposed to focusing on a period of time in which an individual has worked on a goal. Mother supports her position by the testimony of Damiano who agreed that criterion-based fade-out plans are generally more appropriate. However, as set forth above, the evidence shows that Claimant are in no need of behavior services at this point, and that a fade out plan was proposed not because Claimant needed it, but, according to the credible testimony of Dr. Messina, as a courtesy to the family to ease the transition from the provision of these specific services to no personal assistance services. Even if Claimant required a fade-out plan, Mother has cited no authority requiring the Service Agencies to adopt criterion-based fade out plans.

16. It is unfortunate that the Service Agency did not utilize Mother's request for ILS to create an IPP with combined fade out of behavior services and implementation of ILS. Perhaps it can do so promptly. However, as noted above, ILS is beyond the questions and issues raised in this matter.

17. In light of the foregoing, Claimant's appeal shall be denied.

//

//

//

//

ORDER

Claimant's appeal is denied. The Service Agency shall fade-out Claimant's personal assistance services as behavior services over a period of five months, reducing hours by two hours per week every month.

Date: September 22, 2015

_____/s/
CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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