

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MICHAEL M.,

Claimant,

v.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH Case No. 2010061053

DECISION

Administrative Law Judge (ALJ) Nancy Beezy Micon, State of California, Office of Administrative Hearings, heard this matter on August 10, 2011, in Santa Clarita, California.

Stella Dorian, Risk Assessment Supervisor, represented North Los Angeles County Regional Center (NLACRC, Regional Center, or Service Agency).

Michael M. (Claimant) was not present. He was represented by his father.¹ Claimant's mother was also present at the hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision at the conclusion of the hearing on August 10, 2011.

ISSUES

1. Whether the Service Agency may terminate funding for Claimant to receive Adaptive Skills Training (AST) services.
2. Whether Claimant is entitled to "reimbursement" for the cost of AST services.

¹ Initials and titles are used to protect the privacy of Claimant and his family.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, who is 11-years-old, is a consumer of the Service Agency based on his qualifying diagnosis of autism.

2. By a Notice of Proposed Action (NOPA), dated May 25, 2010, Service Agency notified Claimant that it proposed to terminate funding for AST services, effective May 25, 2010. Two reasons were listed for the action: (1) ineffective service; and (2) inability to conduct needs assessment. The NOPA was accompanied by a letter, dated May 25, 2010, from Estela McCraw, Claimant's consumer service coordinator, detailing the reasons for Service Agency's proposed action.

3. On June 2, 2010, Claimant's father filed a Fair Hearing Request on Claimant's behalf, requesting a hearing to appeal the Service Agency's proposed termination of services.

4. An initial hearing date was scheduled in this matter for March 15, 2011. That hearing date was continued at the request of Claimant's father, who was acting in the capacity of Claimant's representative. In connection with that request, Claimant waived the time limit prescribed by law for holding the hearing and for the administrative law judge to issue a decision. The hearing was rescheduled to take place on August 10, 2011. That hearing date was also continued at the request of Claimant's father, who asserted that an expert witness he intended to present was unavailable and that he intended to hire legal counsel, who would need time to prepare for the hearing in order to represent Claimant.

Background Information

5. Claimant lives at home with his parents and a younger brother, who is also a consumer of the Service Agency. Claimant attends a local public elementary school. Although qualified for special education as a student with autistic-like behaviors, Claimant participates in a full-inclusion program in a general education classroom. In May 2010, the school provided Claimant speech and language services outside the classroom one time per week, RSP [Resource Specialist Program] consultation, and a Special Circumstances Instructional Assistant (SCIA) to assist Claimant for half of his school day. A flexible fading plan was taking place for the SCIA services due to Claimant's documented progress during the previous year in working independently. (See, factual finding number 33.) Claimant also participated in a school-based, general education, social skills class.

6. Claimant was diagnosed with autism at age three. He received speech and behavior intervention services through a pilot preschool program within his local school district. Beginning 2004, an organization called California PsychCare provided Claimant

with Discrete Trial Training/Applied Behavior Analysis (DTT/ABA) services. In December 2007, Claimant began his participation in an adaptive skills intervention program at Behavior Learning Center, Inc. (BLC).

Adaptive Skills Training Services

7. According to AST Service Guidelines promulgated by NLACRC in August, 2010, AST services are “designed to teach consumers to become as independent in activities of daily living as one would expect [of] a developmentally typical child of the same age and also to teach parents/family how to systematically teach and support their child as they acquire skills leading to greater independence.” The adaptive skills address global skill domains, such as in the areas of socialization, communication, personal hygiene, self-help, and community integration. (Exhibit 12.)

8. Sonia Becker, B.A., Program Manager at BLC, initially assessed Claimant for AST services in October 2007. The summary recommendation in the assessment report, dated October 22, 2007, states:

Michael is an extremely bright, 7-year old boy who has the diagnosis of High-Functioning Autism. He possesses relative strengths within the domains of self-care and daily living. His weaknesses lie within the domains of communication, social skills and leisure skills. Although a vast array of fundamental skills was developed during Michael’s previous ABA/DTT intervention, it was determined that a more functional and community-based program was better suited to address his continued deficits. The ASIP [Adaptive Skills Intervention Program] Program is designed to teach persons with Autism necessary information and skills they need to learn to live healthy and safe lives. The intention is also to allow these individuals to lead as independent of a life as they are physically and mentally capable of. The ASIP team recommends that [Claimant] be approved to receive 13 hours of ASIP intervention per week, including supervision for the next 6 months. A progress report will be generated at that time to determine progress and continuation of services.

(Exhibit 4.)

9. Testimony established that Claimant’s Individual Program Plan (IPP) designates that BLC will be the provider of AST services for Claimant.

10. The BLC Adaptive Skills Progress Report, dated October 28, 2009, reported that Claimant, at that time, had demonstrated positive progress in the areas of communication, leisure and daily living:

The advancement in communication has allowed Michael to communicate more complex thoughts and feelings he is experiencing. He is learning that his choice of words and his tone of voice can have a positive or negative influence upon others, making him more conscious of his actions. Progress within the area of leisure has given him another topic of conversation for his peers, as well as sports-related skills he can enjoy with his peers.

The clinical team, however, “strongly” recommended that Claimant be approved to receive 56 hours per month, including supervision, of AST services from BLC for the next six month authorization period, based on the following:

However, Michael continues to need support in the area of non-verbal communication and how to appropriately respond to others subtle cues, especially when they express signs of boredom and dislike. The inability to respond appropriate[ly] to these social cues can result in damaging relationships and building new friendships. Although he does not have the intent to hurt others, he tends to make statements that are blunt and perceived as rude. Michael is also in the process of developing social[ly] appropriate responses to various social related dilemmas, such as responding to and accepting others when they say “No.” The team will continue to utilize ABA based approaches for the preceding skill deficits.

(Exhibit 8.)

11. On February 5, 2010, BLC issued an Adaptive Skills Addendum, stating reasons for a reduction in the number of hours for Claimant’s AST services in anticipation of Claimant’s proposed termination from the BLC program, effective May 31, 2010. The addendum contains the following summation:

Overall, Michael continues to make slow but steady positive progress across all of his targeted domains in his ASIP curriculum. During the last authorization period, Michael and his tutors have been working on his communication and his social skills . . . The team’s program manager has been closely

working with [Claimant's] family by teaching them the principles of ABA so that they too will be able to possess [sic] the necessary tools to manage these and other behaviors that may arise in the future. Given the progress that Michael has been making, the ASIP team feels that he will be ready to transition out of this intervention program in the near future. The ASIP teams (sic), along with Michael's parents have been working on learning the critical ABA skills and techniques that will assist them smoothly during this transition. Given Michael's progress, level of functioning, and current needs, the team suggests a reduction of his direct in-home service hours. Therefore, the clinical team at BLC, Inc. recommends that [Claimant] be approved to receive the ASIP intervention at a new rate of 10 hours per week of the [ASIP] for the next two months, with an expected graduation date of March 31, 2010.²

(Exhibit 9.)

12. Jody Erin Stiegemeyer, M.Sc., CCC-SLP, a part-owner and Clinical Director of BLC, has worked with Claimant since he was age three. She was the speech language specialist who certified Claimant to enter the pilot preschool program he attended; she was Claimant's program manager at California PsychCare, where Claimant received DTT services; and, she has overseen Claimant's case since his referral to BLC in 2007. Stiegemeyer testified at the hearing. She detailed the progress Claimant made since his participation in the AST program at BLC, explaining the reasons for BLC's determination that Claimant should graduate from the AST program, effective May 31, 2010. Stiegemeyer explained that, by February 2010, Claimant was at a stage where he needed to learn social skills in the presence of peers. The AST intervention program at BLC, which provides individualized service to a consumer, was not being effective for Claimant in generalizing his skills. Social skills training, on the other hand, would provide Claimant with the ability to learn from and generalize his skills to a group of other peers of similar age and skills. Stiegemeyer noted that social skills groups are run by a person with superior skills in teaching social skills. Also, because Claimant's parents were experiencing deficits in Claimant's social skills, BLC determined that Claimant's parents needed training provided to them in their home so they could increase their skills on how to respond to Claimant when deficits manifested in the home setting. According to Stiegemeyer, BLC stopped AST services to Claimant because the service no longer met Claimant's needs; NLACRC did not

² Jody Stiegemeyer of BLC testified that "March" was a typo. The expected graduation date was instead "May" 31, 2010. Claimant did not dispute that May 31, 2010 was the intended date.

influence BLC's determination. Stiegemeyer asserted that NLACRC has never pressured BLC to terminate services to one of its consumers based on the length of time the consumer has been in the program or any other reason.

13. On March 8, 2010, Claimant's father contacted Estela McCraw, Claimant's service coordinator, to express his disagreement with Claimant's planned graduation from the AST program at BLC. Claimant's father informed McCraw that, if it happened, he would appeal this action. He expressed his opinion that a potential appeal would end up costing NLACRC more money than continuing the service. Claimant's father told McCraw that BLC presented the program as an on-going service that would develop new goals as Claimant progressed. Claimant's father explained that neither he nor his wife is a child development expert and they therefore cannot address all of Claimant's needs. Claimant's father further stated that he works seven days per week and his wife works in her own daycare business. McCraw responded that the AST program, in addition to addressing Claimant's deficits, was designed to train and equip parents to address their child's needs. McCraw informed Claimant's father that she would contact them to discuss a recommendation after BLC submitted the next progress report concerning Claimant.

14. On March 12, 2010, Claimant's parents had an additional discussion with McCraw about BLC's recommendation to "graduate" Claimant from the AST program at BLC. Claimant's parents believed the program was being ended due to budget cuts at the Regional Center. McCraw explained that the recommendation was made because Claimant had mastered the top curriculum at BLC, thereby meeting his IPP goal. Claimant's mother told McCraw that Claimant continued to lack social skills, such as not listening when she tried to facilitate play dates. Claimant's father stated that they would accept a reduction in hours to four hours per week of AST services if Service Agency extended the service for another six months. Claimant's father again stated that he would appeal the decision, which he felt would ultimately cost more money to NLACRC. McCraw informed Claimant's parents that service decisions are based upon a consumer's needs. McCraw stated that, based upon Claimant's needs, other services were more appropriate for Claimant. Claimant's parents disagreed. They requested a meeting to discuss the topic of Claimant's graduation from the AST program at BLC. McCraw agreed to schedule a meeting.

15. On April 9, 2010, Claimant's parents, McCraw, Luis Fernando Guerrero, Ph.D., BCBA-D (a clinical consultant for NLACRC), Stiegemeyer (BLC Clinical Director), Raul Engle (BLC's program coordinator), and Patrick Hwang (BLC employee on Claimant's AST program team) participated in a meeting to discuss Claimant's status. Claimant's parents expressed disagreement with Claimant's projected graduation from the AST program at BLC, stating that Claimant continued to lack social skills to maintain social interactions and friendships and that Claimant also continued to display some challenging behaviors, such as aggression towards his brother. The BLC team informed Claimant's parents that they were recommending graduation for Claimant, although he still had some deficits, because

Claimant had made significant progress and had mastered their highest level of curriculum. Dr. Guerrero provided his opinion that AST services were no longer appropriate and that the appropriate services to address Claimant's needs were in-home parent training (IHPT) and social skills training. Stiegemeyer explained that Claimant had met his AST goals at BLC and that their Parenting for Success Behavior Intervention Program would now be most effective to address Claimant's behaviors. Claimant's parents expressed a desire to observe social skills groups and obtain more information about IHPT. Claimant's father asked for a continuation of AST services for a few months due to his busy work schedule. The Service Agency, based on Claimant's goal attainment and mastery of BLC's AST program curricula, declined Claimant's father's request. Service Agency agreed, however, to extend the AST services for one month and reconvene to discuss the issue on May 18, 2010.

16. On April 14, 2010, McCraw provided Claimant's parents with a list containing IHPT vendors.

17. On May 18, 2010, Claimant's parents again met with McCraw, Dr. Guerrero, Stiegemeyer, Raul Engle, and Patrick. Dr. Guerrero participated in the meeting by phone. Sheila Calove (consumer services supervisor for NLACRC) also joined the meeting. Claimant's mother expressed concern about Claimant's rude language, including "I hate you mom" and "you're the worst mom" as well as Claimant's deficits in perception. Service Agency offered an IHPT assessment to analyze the behaviors. The assessment could be performed by BLC or any other NLACRC vendor that parents selected. Dr. Guerrero also offered to observe Claimant. Claimant's parents declined these offers. Service Agency again advised Claimant's parents that AST services were not appropriate to address Claimant's behaviors and that, according to BLC, Claimant had met his AST goals and that BLC no longer had a curriculum for Claimant. Claimant's father stated that he had contacted an attorney and other parties who could conduct an independent assessment of Claimant concerning what services were appropriate for him. Calove suggested that NLACRC and Claimant's parents agree on a vendor to conduct the assessment so that NLACRC could fund the assessment. Claimant's father declined this offer, stating that he intended to use someone with no connection to NLACRC. Claimant's father informed Service Agency that the independent assessor he wanted to use was not available until August or September of 2010. Service Agency did not agree to extend AST services for that length of time. Service Agency offered to assess Claimant for IHPT and social skills training. Claimant's parents declined the offer. The meeting concluded with Claimant's parents, and BLC and NLACRC personnel "agreeing to disagree" on Claimant's need for continued AST services.

18. On May 19, 2010, McCraw documented that Service Agency extended payment of service for Claimant's AST services at BLC through June 30, 2010.

///

19. BLC completed an Adaptive Skills Progress Report, dated May 28, 2010, which noted Claimant's current progress and deficits in his adaptive skills. A portion of the narrative in the summary and recommendation portion of the report states:

Michael has made much positive progress in his adaptive skills program. However, Michael continues to display deficits in the area of social communication as he will interrupt his peers and family members, causing a detrimental effect on his ability to form and maintain personal relationships with his peers. In addition, Michael continues to possess maladaptive behaviors as he will express himself using a rude tone when conversing with his parents (particularly with his mother) and he will interrupt his parents and peers while they are trying to talk. He also displays rude language when he is denied access to a tangible he desires. His rude language is being observed frequently with his female tutor and his parents, and this behavior has increased over the past three months.

Michael's maladaptive behaviors continue to interfere with his ability to acquire and master several important functional skills. They further prevent him from accessing his true potential. Michael has reached the advanced curriculum set forth in the ASIP program offered at BLC, Inc. as 80% of his skills were mastered when targeted in the presence of the ASIP team. Furthermore, goals chosen were all in the advanced curriculum. The concern is that Michael is often unable to generalize his communication and social skills to his parents and peers. When such goals were generalized through ASIP intervention, Michael showed regression in his ability. Therefore, the clinical team at BLC, Inc. recommends that Michael **graduate** from the Adaptive Skills Intervention Program effective **May 31, 2010** as previously recommended in the addendum report. Since Michael continues to possess maladaptive behaviors which interfere with his acquisition of necessary functional skills, and because he displays difficulty generalizing goals towards his parents and peers, the BLC Inc. clinical team recommends that **In-Home Parent Training assessment** be authorized to determine eligibility. This program would assess the ability of Michael's parents to learn and utilize necessary ABA strategies as well as set up naturally occurring opportunities for Michael to utilize his skills in natural settings such as with his parents and peers. Furthermore, as a result of Michael's difficulties

generalizing skills to his peers, it is recommended that Michael be assessed to determine eligibility for participation in a **social skills program**.

(Exhibit 10; emphasis in original.)

20. BLC notified Claimant's parents that BLC would no longer provide AST services to Claimant, effective May 31, 2010. BLC notified NLACRC that it intended to stand by its decision to "graduate" Claimant from the AST program at BLC, stating that Claimant's needs could no longer be addressed through AST services.

21. On June 2, 2010, Claimant's father and McCraw had a phone conference to discuss BLC's termination of Claimant's AST services. Claimant's father informed McCraw that he had received the NOPA and had completed the paperwork to appeal the proposed action. Claimant's father expressed his intention to speak with Stiegemeyer, whom he viewed as the person who made the decision to stop the services. Claimant's father also believed Service Agency was involved in the decision. McCraw informed Claimant's father that Service Agency cannot dictate to vendors that they continue or end services, and that she had provided BLC with the documentation to extend the AST service. Claimant's father was given the option to select a different vendor to provide the service. Claimant's father agreed to pursue that option but insisted upon first speaking with Stiegemeyer.

Efforts to Obtain Assessment of Claimant

22. On June 11, 2010, Claimant's father sent a letter to George Stevens, Director, NLACRC, concerning the termination of Claimant's AST services. The letter proposed three solutions: (1) NLACRC continue Claimant's AST services at BLC within seven days of receiving the letter; or (2) If NLACRC was unable to compel BLC to continue AST services, a new vendor who could provide AST service within seven days could be provided: "Should a new vendor need to conduct an assessment, they shall conduct this assessment within seven (7) days of your receipt of this letter."; and (3) NLACRC review BLC's vendorization and what Claimant's father believed were ethical violations by BLC. (Claimant's Exhibit 9.)

23. On July 20, 2010, Stella Dorian, NLACRC Risk Assessment Supervisor, responded to Claimant's father's June 11, 2010 letter. Claimant's case history was set forth, noting that Claimant's planning team had recommended that Claimant be assessed for IHPT and social skills training programs. NLACRC contended that it was not obligated to transfer Claimant to another AST service provider because Claimant's achievement of his adaptive skills goals precluded a referral. The letter points out that BLC was the service provider identified in Claimant's individual program plan (IPP) and that controlling law provides for the continuation of services in dispute pursuant to a consumer's IPP. NLACRC argued that it had no obligation to continue to deliver AST services after BLC assessed Claimant and

determined that Claimant met his AST goals. NLACRC therefore contended that it was not required to provide an alternate service provider. The letter continued: “Despite this, and the fact that your issue is in appeal, please be assured that [NLACRC] is dedicated to service Michael and your family. It is my understanding that both behavioral and social skills assessment have been offered to assist in determining the appropriate prospective service delivery for Michael and your family. It is my sincere hope that you will reconsider the suggested assessments, and further, please understand that you have the right to participate in the process for selecting the vendored provider to conduct each assessment.” (Claimant’s Exhibit 10.)

24. Claimant’s parents did not obtain the “independent” assessment which they asserted, during the phone call with NLACRC and BLC team members, could be arranged in August or September 2010, as set forth in factual finding number 17. They also did not avail themselves of NLACRC’s offer to have Claimant assessed by a NLACRC vendor of their choosing.

25. Approximately one year after Claimant’s AST services had been terminated by BLC, Claimant’s parents contacted NLACRC to discuss Claimant’s status. By letter, dated May 20, 2011, Claimant’s father agreed to meet with John G. Youngbauer, Ph.D. (supervisor of behavioral services for NLACRC) in order to have Dr. Youngbauer observe Claimant and discuss an assessment for Claimant.

26. Dr. Youngbauer testified at the hearing. He met with Claimant and his family at their home on May 31, 2011. Dr. Youngbauer’s interaction with Claimant was brief; he had a lengthy discussion with Claimant’s parents and also reviewed Claimant’s records. Based upon his observation, discussion with parents, and his record review, Dr. Youngbauer recommended that Claimant be assessed for social skills training and that Claimant participate in an activity that would foster his computer skills while exposing Claimant to children with interests similar to his own. Dr. Youngbauer provided Claimant’s service coordinator with information on vendors that provided multimedia and technology classes to children with special needs.

27. On June 7, 2011, NLACRC provided Claimant’s parents with information concerning social skills vendors, as well as information on the technology program and recreation class recommended by Dr. Youngbauer. Claimant’s father responded with communications about the list of vendors. There were discussions between NLACRC supervisors and Claimant’s father about the list. On July 1, 2011, Dr. Youngbauer spoke with Claimant’s father, who wanted Claimant to receive individualized services. Claimant’s father asserted that individualized services had been beneficial for Claimant in the past. Dr. Youngbauer explained to Claimant’s father that social skills training is based on the concept that social skills are learned in an environment with peers, who can provide corrective feedback. According to Dr. Youngbauer, a social skills group is typically the best method for

gaining social skills. Dr. Youngbauer suggested that Claimant's father speak with the vendors and ask whether individual instruction could be provided, if needed, and whether their assessment process would identify that need, if it existed. Dr. Youngbauer explained at hearing that each social skills training group is unique and that parents are encouraged to find a vendor that will be the best fit for an individual consumer. Dr. Youngbauer provided his opinion that Claimant needed a social skills program to help Claimant learn how to respond to peers.

28. By the time of the hearing on this matter in August 2011, Claimant's parents had not obtained the independent assessment of Claimant they had previously asserted they intended to obtain. Claimant's parents had, however, agreed to a social skills assessment and relayed to NLACRC supervisor Sheila Calove that they would agree to a vendor to conduct the assessment by the end of the week.

Claimant's Witnesses

29. Claimant's parents testified concerning their involvement in Claimant's care throughout the years and their perception of Claimant's regression after AST services were terminated by BLC. Claimant's parents did not agree with the BLC determination that Claimant mastered his adaptive skills goals. Claimant's parents also believe BLC should have provided more of a transition before terminating AST services. Claimant's parents described Claimant's difficulties in his social interactions during the ensuing school year. Claimant's individualized education program (IEP) report, dated March 24, 2011, noted:

The IEP team discussed the significant differences between Michael's conduct in observations from April 2010 and March 2011. Inappropriate conduct between Michael and classroom assistants and peers continues to increase. . . calling out names, using odd voices, laughing to himself, social conflicts with peers, repeating things he has heard from movies or peers, more frequent periods of inattention, lack of engagement with others, emulating inappropriate behaviors of others, forgets items at school, difficulty keeping with routine during transitions. Michael is having difficulty discerning between play and peer conflicts.

(Claimant's Exhibit 20.)

30. Claimant's father believes that BLC's termination of AST services was due to the pressure BLC felt to make budget cuts. Claimant's father felt it did not make sense that BLC could "strongly" recommend that AST services be continued for six months in October 2009 and then, in February 2010, recommend a reduction in hours and an "expected

graduation” from AST services by May 2010. Claimant’s father described that, after BLC terminated AST services, Claimant gradually began to have problems at school. Claimant’s father did not get an assessment in part because the parties could not agree on a vendor and, in part, because Claimant did not start to exhibit problems until after the school year began. Claimant’s father explained that the cost of an assessment was also a factor in their decision not to get an independent assessment of Claimant. According to Claimant’s father, he believed the matter would soon be resolved through a fair hearing. Claimant’s father felt NLACRC had dug in its heels and was unwilling to provide services to Claimant. After observing Claimant at school in April 2011, however, and seeing the deterioration in his son’s social interactions, Claimant’s father realized he and his wife needed to do something. They therefore contacted NLACRC.

31. Claimant’s father argued that he felt it was “suspicious” that BLC had recommended that AST services be terminated for both of his children. BLC’s recommendation concerning termination of services for Claimant’s younger brother was made a month or two after BLC recommended termination of Claimant’s AST services. Claimant’s father acknowledges that, in the case of Claimant’s younger brother, he and his wife agreed to have an assessment performed by a NLACRC vendor. As a result of that assessment, BLC continued services for Claimant’s younger brother. When asked to explain why Claimant’s family did not agree to have an assessment done for Claimant after seeing that disputed services were implemented after an assessment was performed on their other son, Claimant’s father stated that he had decided to wait for the hearing on Claimant’s case. He acknowledges that he was angry at NLACRC at that point in time because he did not believe that NLACRC’s actions were based solely on Claimant’s needs.

32. Rene Raul Engle, the program manager at BLC who was part of the team providing AST services to Claimant, testified at the hearing. Engle has worked with disabled children since 2000. He has a degree in kinesiology. According to Engle, he “quit” working at BLC in July 2010 because he was “written up for ridiculous things.” He acknowledges that BLC “wrote him up” on five occasions and demoted him before he resigned. Engle felt the write-ups were invalid but claims he has no ill will against BLC. At hearing, Engle testified that he felt BLC’s decision to end Claimant’s AST services was the result of pressure placed upon BLC due to the length of time Claimant had been in the program. He believes Stiegemeyer made the decision to terminate the services. Engle explained that budget cuts were a topic of discussion during the time period when the decision was made. Engle provided his opinion that a termination of services after reducing hours to ten hours per week was not a sufficient tapering down of services. Engle believes it should have been a slower tapering down of hours. Engle expressed his opinion to Stiegemeyer and Patrick; however, they disagreed with him and Engle’s opinion concerning the need to further taper the service hours was not implemented. According to Engle, one of Claimant’s AST goals was removed in order to make it appear that Claimant had mastered more goals. (Exhibit 7.) Engle acknowledges that BLC was directed by NLACRC, during the May 2010 meeting

between NLACRC, BLC, and Claimant's parents, to proceed with AST services until the fair hearing concluded. According to Engle, Stiegemeyer was "livid" after the May 2010 meeting because she felt that Claimant's parents felt entitled to services which she believed were not warranted. Engle asserts that he was reprimanded by BLC in his performance evaluation over his handling of Claimant's case. Engle believes that he could have continued to write new AST goals for Claimant and that BLC should not have terminated Claimant's AST services.

Other Relevant Evidence

33. Claimant's IEP, dated April 19, 2010, contained observations concerning whether Claimant continued to need the assistance of an SCIA during school. The following observations were made:

Michael was observed for three, twenty-minute intervals as a means to determine his continued need for a SCIA. . . . He was generally on task. He was not observed to need assistance by the SCIA. He was socially appropriate at recess (i.e., walking with a peer, visiting with other peers). Per an interview with the SCIA, Michael requires minimal assistance as compared to last year. She reported that he occasionally needs assistance with directions, but in general is independent. . . .

Adapted PE specialist shared that Michael is safely and successfully participating in classroom PE, schoolwide PE activities, and walking club. When observed in these programs, Michael's skills appeared age appropriate and he kept pace with his peers. At recess, he usually climbs the apparatus with a friend, walks and talks with a friend, or plays "chase games" with peers. He did not interact with the aide [at] recess. . . .

The teacher reported . . . [he] socializes at recess walking with one peer in particular and visiting with approximately three others.

(Exhibit 22, page 10 of 13.)

34. Claimant's parents did not pay for Claimant to receive AST, or any other, services after BLC, effective May 31, 2010, terminated Claimant's AST services.

///

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code³ section 4500 et seq., to provide a pattern of services and supports sufficiently complete to meet the needs of each person with a qualifying developmental disability, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant submitted a fair hearing request to appeal the Service Agency’s proposed termination of funding for AST services. Jurisdiction in this case was thus established.

2. “Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or of the court. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.) A regional center seeking to terminate ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making charges generally has the burden of proof in administrative proceedings. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof because it terminated services it previously agreed to provide. Since the Service Agency triggered the reimbursement issue by terminating funding and by not providing aid-paid-pending during this appeal, it should bear the burden of proof on that issue as well.

Adaptive Skills Training Services

3. The foundation of the Lanterman Act is the concept that services and supports should be provided to meet the needs of each person with developmental disabilities, at each stage of life, and to support their integration into the mainstream life of the community. (§ 4501.) According to sections 4640.7, 4646, subdivision (a), and 4648, subdivision (a)(2), the delivery of services should be done in a cost-effective manner, be effective in meeting the goals stated in the individual program plan, and reflect the preferences and choices of the consumer. Services should enable developmentally disabled persons to approximate the

³ All further statutory references are to the Welfare and Institutions Code.

pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501, 4750-4751.) Section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities”, and contains within that definition a list of specialized services and supports, including but not limited to social skills training, behavior modification training, and training for parents of children with developmental disabilities. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).)

4. Claimant’s AST services were terminated, effective May 31, 2010, based on a determination by BLC, Claimant’s AST service provider, that AST services no longer met Claimant’s needs. It was recommended that Claimant be assessed for a social skills program and IHPT services. NLACRC established by a preponderance of the evidence that it was appropriate, given Claimant’s needs, to reduce the hours of Claimant’s AST services in February 2010 and terminate AST services to Claimant, effective May 31, 2010.

5. Other reliable evidence corroborated that Claimant’s needs had changed by early 2010. Claimant’s school district, in April 2010, noted that Claimant needed minimal assistance when compared with a year earlier. The school district was considering the discontinuation of an aide for Claimant because he was on task, displayed socially appropriate behavior with peers, and safely participated in classroom activities and a school club. The school notes that Claimant’s skills appeared “age appropriate and he kept pace with his peers.” Claimant socialized with a friend at recess and played chase games with peers. (Factual finding number 33.)

6. Claimant’s parents testified to Claimant’s regression after AST services were terminated. However, Claimant’s father did not notice deterioration in Claimant’s behavior until after school resumed at the end of 2010. Also, Claimant’s father did not perceive the need to pursue the assessments that had been offered by NLACRC until the following year, in May 2011. There could have been several reasons for Claimant to regress after AST services were terminated. Claimant did not establish that the termination of AST services was the cause of Claimant’s regression.

///

///

///

///

///

7. The testimony of Rene Raul Engle, the former program manager at BLC, was considered. Although Engle claimed to have no ill will against BLC, the testimony of a former employee who believes discipline imposed against him was unjustified, is likely to be influenced by bias against the company that imposed the discipline. Engle expressed his opinion on what he felt was the best course of action for Claimant. He provided his sincere opinion concerning the situation. The evidence, however, showed that those with greater expertise did not agree with this opinion, and their judgment was supported by the reliable evidence from the school district, which supported that, effective May 31, 2010, AST services no longer met Claimant's needs. Claimant had reached a level of skill and had changing needs that required he move on to different supports and services.

8. The procedures that a regional center must follow when terminating the services that a vendor is providing to a consumer are set forth in California Code of Regulations, title 17, section 56718, which provides:

(a) Funding of a consumer's placement in a vendor's program shall be terminated when one or more of the following occur:

(1) The regional center issues a written determination stating that continued participation jeopardized the consumer's health and safety;

(2) The consumer or authorized consumer representative makes a written or oral request to the regional center to discontinue participation or the consumer can no longer attend the program due to an unanticipated change in residence;

(3) The ID Team has determined through a consumer evaluation that the vendor's program no longer meets the consumer's needs;

(4) The vendor determines that its program may no longer meet the consumer's needs; or

(5) The consumer, or authorized consumer representative acting on behalf of the consumer, consents to an alternate placement identified by the ID Team as being able to meet the consumer's needs and as being more cost effective. The alternate placement shall be considered more cost effective if the combined cost of the alternate placement and the cost of transporting the consumer to and from the alternate placement is less than the combined cost of the consumer's current placement and the cost of transporting the consumer to and from the current placement.

(b) When a determination is made pursuant to (a)(1), (3), (4) or (5) above, the basis for the determination shall be documented in writing in the consumer's

case file by the regional center for (a)(1) and/or (3) and/or (5) and by the vendor for (a)(4). The regional center shall also include written documentation in the consumer's file that the consumer or authorized consumer representative has been informed of the fair hearing rights pursuant to Welfare and Institutions Code, Sections 4701, 4705 and 4710 when the determination is made pursuant to (a)(1), (3) or (5) above.

(c) When the regional center or the vendor proposes to terminate the consumer's placement in the vendor's program, other than in accordance with (a)(1) or (a)(2) above, the initiating party shall notify the other party and the consumer in writing at least 30 days prior to the proposed termination date. Such notice shall include a written statement of reasons for the termination. . . .

[¶] . . . [¶]

(e) When the conditions specified in (a)(1), (a)(3) or (a)(5) above exist, termination of funding shall not be made if the consumer files a fair hearing request pursuant to Welfare and Institutions Code, Sections 4700 through 4730.

9. Regional Center's conduct in terminating Claimant's AST services comported with the provisions of the regulation. Here, the vendor, on February 5, 2010, made a determination that the AST program did not meet Claimant's needs (subdivision (a)(4)). Based on BLC's evaluation, NLACRC also determined that BLC's AST program no longer met Claimant's needs (subdivision (a)(3)). Claimant was notified in writing of the proposed termination of vendor services more than 30 days before the proposed termination date (subdivision (c)). The vendor documented the basis for the determination (subdivision (b)). NLACRC provided Claimant with information on fair hearing rights even though the action was taken in accordance with subdivision (4) of the regulation (subdivision (c)). NLACRC thus established by a preponderance of the evidence that it properly terminated funding for Claimant's placement in the BLC AST program.

*Reimbursement (Compensatory Services or Damages)*⁴

10. The Lanterman Act does not specifically authorize the payment of damages, retroactive reimbursement for services, or the provision of compensatory services in the fair hearing context. California Code of Regulations, title 17, section 50612 suggests that funding is only available when either the service has been preauthorized or in limited

⁴ Although the parties referenced this issue as one of "reimbursement," it could be construed as an issue of whether compensatory services or damages are warranted under the facts.

emergency situations before such authorization can be obtained. (See Cal.Code Regs, tit. 17, § 50612, subds. (a), (b) & (c).)

11. The lack of specific statutory authorization is not, however, necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . .” (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, if the Lanterman Act is to be applied as the Legislature intended, reimbursement (or other equitable relief) should only be available in particular cases where equity requires it. Otherwise, the general requirements that services be established after IPP meetings, and the above-described regulatory restriction on funding, would all be superfluous. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, reimbursement should be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

12. Claimant’s request for “reimbursement” is premised on the argument that he was entitled to continuing funding for the services in question while this appeal was pending under the principle of “aid-paid-pending.” Section 4715, subdivision (a), provides that “if a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of section 4710, services that are provided pursuant to a recipient’s individual program plan shall be continued during the appeal procedure. . . .”

13. In this case, Claimant’s authorized representative submitted the Fair Hearing Request within the 10 day deadline for purposes of aid-paid-pending. The funding stopped solely because the services were terminated by the vendor. NLACRC could not force the vendor to provide the services. NLACRC and Claimant’s family were unable, however, to reach an agreement about how to proceed. An examination of the equities in this case shows that Claimant’s interdisciplinary team at NLACRC convened team meetings on April 9, 2010 and on May 18, 2010 to discuss the vendor’s proposed action. When Claimant’s parents disagreed with the conclusions reached by BLC, NLACRC offered to have social skills training and IHPT assessments conducted and to have its consultant observe Claimant. Claimant’s parents declined these offers. They asserted that they wanted to have an “independent” assessment conducted using an assessor who had no connection to NLACRC. Claimant’s father claimed the independent assessor he had chosen was not available until August or September of 2010. NLACRC suggested that Claimant and NLACRC agree upon a NLACRC vendor to conduct an assessment in order for the assessment to be funded by NLACRC. (Factual finding numbers 15, 16 and 17.) On June 2, 2010, after BLC terminated Claimant’s AST services, NLACRC offered to have the services provided by another vendor, but that offer was not acted upon. Rather than immediately pursue that option, Claimant’s father stated that he wished to first speak with Stiegemeier. Claimant’s father also filed the

fair hearing request on the June 2 date. (Factual finding numbers 2, 3, and 21.) Claimant's father then, on June 11, 2010, sent a letter to NLACRC's director. On July 20, 2010, NLACRC responded to the issues raised in Claimant's father's letter. NLACRC, at this juncture, contended that it was not obligated to provide funding for services that BLC had determined were no longer needed, and encouraged Claimant's father to reconsider his position on the assessments that had previously been offered. (Factual finding numbers 22, 23 and 24.) Claimant did not obtain any assessments and he did not pay on his own to receive AST services. Instead, Claimant waited almost one year before contacting NLACRC. (Factual finding number 24 and 25.) During the same time period in early 2010, Claimant's parents were successful in continuing services for Claimant's brother at BLC after being notified by BLC that it intended to terminate those services. In that case, an assessment was conducted by a NLACRC vendor and, as a result of that assessment, services at BLC were continued for Claimant's brother. (Factual finding number 31.) In addition, the hearing in this matter was continued on two occasions at the request of Claimant's father. Even by the time of hearing, Claimant's family had not yet agreed on a vendor to provide an assessment for Claimant. The equities do not require reimbursement or other equitable relief to Claimant under these circumstances.

ORDER

Claimant's appeals are denied. North Los Angeles County Regional Center is not required to provide adaptive skills training services for Claimant. Claimant is not entitled to reimbursement or other equitable relief.

Dated: January ___, 2012

Nancy Beezy Micon
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.