

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

G.P.F.

Claimant,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2013040834

DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings on September 5, 2013, in Fresno, California.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center (CVRC).

Richard F., G.P.F.'s father represented G.P.F. (claimant). Claimant's mother, Erica R. was also present at hearing.

The record was closed and the matter was submitted on September 5, 2013.

ISSUE

Did CVRC appropriately determine in the first quarter of 2013, that claimant's one-on-one Applied Behavior Analysis (ABA) tutor hours should be reduced because claimant had made sufficient progress in the treatment of his autism disorder?

FACTUAL FINDINGS

1. Claimant is currently five years, eight months of age. He is diagnosed with autism and is eligible to receive services from CVRC on this basis. Claimant lives with his parents, Erica R. and Richard F., in separate homes. He has no siblings. CVRC served a

notice of proposed action on the parents in March 2013, indicating a reduction in ABA services. Claimant's mother was in agreement with the plan. Claimant's father opposed the plan to reduce ABA services and on April 11, 2013, requested a fair hearing in the matter, seeking an increase in one-to-one tutor hours.

2. At approximately age two years, G.P.F. took and failed the Modified Checklist for Autism in Toddlers (MCHAT). The MCHAT is a tool for screening children between 16 and 30 months of age to assess their risk for autism spectrum disorder (ASD). In February 2010, he was found to be eligible for early intervention services from CVRC based on developmental delays. He began receiving in-home speech therapy.

3. On March 23, 2010, claimant was assessed by David M. Snyder, M.D. at the Center for Children and Families. Claimant was then two years, two months of age. Dr. Snyder interviewed claimant's parents, reviewed medical records, and conducted a neurodevelopmental examination. Claimant was noted to have regressed in language and social skills, and was isolating, avoiding eye contact, and engaging in repetitive behaviors. Dr. Snyder found that G.P.F. met the DSM-IV Diagnostic Criteria for Autistic Disorder in that he displayed the following acknowledged indicators:

- Failure to develop peer relationships appropriate to developmental level.
- A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people.
- Lack of social or emotional reciprocity.
- Delay in, or total lack of, the development of spoken language.
- Stereotyped and repetitive use of language or idiosyncratic language.
- Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.
- Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements).
- Persistent preoccupation with parts of objects.

Dr. Snyder strongly recommended that claimant be provided an intensive behavior therapy program based on ABA principles through CVRC. He stated that ABA therapy was most effective if initiated before age three and should be implemented as soon as possible.

ABA Assessment and Services

4. In April 2010, claimant was referred to ACES, a CVRC vendor providing ABA services. In May 2010, ACES Supervisor Samantha Flores and Clinical Director Jessica Mitts, M.Ed., BCBA, met with claimant at home to assess him for their in-home ABA program. The interview and observations were designed to assess claimant's deficits in the areas of communication, behavior, social skills, and self-help skills. Assessors applied the Functional Analysis Screening Tool and Psycho-educational Profile in identifying claimant as "functioning in the moderate to high range in all areas. His areas of relative

strength were gross motor skills, fine motor skills and imitation skills and his areas of weakness were interpersonal communication, social skills, and safety skills.” To address noted deficits, ACES recommended that claimant and his family receive 30 hours per week of one-on-one tutoring (133 hours per month) and 21 hours per month of supervision and consultation.

5. ACES prepared an initial report dated May 19, 2010, that outlined a Behavior Plan and Program Goals for claimant. The Behavior Plan called for re-direction and consequences designed to reduce: 1) tantrum behaviors including crying, screaming, and falling to the floor; 2) assaultive and self-injurious behaviors including hitting, scratching, or pinching others and banging his head on the floor or wall and hitting himself; and 3) stereotypical behaviors including hand flapping, lining up objects, visual perseverating, and repetitively stepping on rocks.

Proposed Program Goals identified specific independent milestones that claimant and his parents should reach in order to improve his communication, self-help, behavior, cognitive, social/play skills, and motor/imitation skills. For example: Under Social/Play Skills, claimant’s goals were to be able on a consistent basis to “independently join in a group activity with at least two people and remain engaged in the activity” for three minutes, “independently take turns during adult facilitated play activities,” and “independently imitate play actions when presented with three different play items.” In June 2010, ACES began working with claimant and submitting quarterly progress reports to CVRC. The quarterly reports graphed claimant’s progress in mastering skills and proposed new program goals as appropriate.

6. Claimant’s Eighth Quarter Progress Report dated May 1, 2012, indicated that at age four years, four months, claimant was receiving 15 hours of direct one-to-one services and 13 hours per month of supervision and consultation. He was attending a special day preschool four days a week. He was noted to have made “great progress this quarter mastering five more goals.” Specifically, he was able to independently identify familiar people by their gender, complete a list of three chores, and complete a morning routine. He was able to tolerate a denied or delayed request without engaging in tantrum behaviors and participate in four outside games (baseball, football, tag, and hide-n-seek). Per parent report, claimant was excelling at school and the school was recommending that he be mainstreamed for socialization opportunities.

ACES recommended that his parents also take claimant to more places where peers are available such as a busy local park or play gym. A proposed “sportsmanship” goal was added for claimant to “independently tolerate losing a game without protest on 80 percent of opportunities across two weeks.” This was to address his tantrum behavior or screaming at the winners when he loses. Another proposed “peer conversation initiation” goal was for claimant to “independently initiate a conversation with a peer by introducing himself and asking one question...on 80 percent of opportunities.”

7. Claimant's Ninth Quarter Progress Report dated August 1, 2012, indicated that at age four years, seven months, claimant was receiving 12 hours per week of direct one-to-one services and 10 hours per month of supervision and consultation. He was noted to be making consistent progress in mastering goals, expressively identifying his personal information, and participating in an entire board game. He would tantrum when losing a game and his family was instructed to not allow him to win all the time. His parents were involved in sessions at their respective homes and arranging consistent outings including a morning class at the Zoo.

8. Claimant's 10th Quarter Progress Report dated November 1, 2012, indicated that at age four years, ten months, claimant was contracted to receive 16 hours per week of direct one-to-one services, and 13 hours per month of supervision and consulting. The family was using nine to 12 hours per week of direct services. Claimant was continuing to make progress, independently able to identify three rooms of the house, open packages, and attend social outings provided by his parents. His mother reported that claimant was doing well at school and observed to interact, talk, and play with peers independently.

9. Claimant's 11th Quarter Progress Report dated February 1, 2013, indicated that at age five years, one month, claimant was contracted to receive 16 hours per week of direct one-to-one services, and 13 hours per month of supervision and consulting. The family was receiving 13 hours per week of direct services. Claimant mastered two more goals, demonstrating the ability to independently identify three different emotions in context (mad, scared, and excited), and complete a sequence of four activities to create a project (cut, color, paste, sticker). Claimant's father reported that claimant consistently tries to engage in play with his cousins, showing and playing with his toys and playing at birthday parties. He continued to struggle with sportsmanship and a new "countdown/token system" was being employed and appeared to be working.

10. Claimant's 12th Quarter Progress Report dated May 1, 2013, indicated that at age five years, four months, claimant was now contracted to receive nine hours per week of direct one-to-one services for the first two months of the quarter, and six hours per week for the third month of the quarter, in addition to nine hours per month of supervision and consultation for the entire quarter. Claimant mastered two more goals, exhibiting the ability to independently expressively state his father's phone number and demonstrate two different sportsmanship behaviors (congratulating others and thanking others for play when he wins). His mother reported that he followed instructions in stores when his request for a toy is denied. His father reported a contrary result on shopping trips. Complainant would be transitioning to a general education classroom for kindergarten in the fall. His father had enrolled him in a gymnastics class where claimant was independently participating.

Psychological Evaluation of Claimant

11. Two psychological reports were submitted at hearing. An initial psychological evaluation was conducted by Matthew A. Battista, Ph.D, dated January 27, 2011. At the time of this evaluation, claimant was three years of age, already receiving ABA therapy

through ACES, and attending a special day class. His language and communication skills were significantly limited. He was poor at following verbal commands and following or using non-verbal gestures to express himself. His interest in play was reportedly narrow and he was often pre-occupied with lining up toy cars or trains or repetitively watching a cartoon or assembling the same puzzle. He did not engage in imaginary play, eye contact was avoidant, he did not reliably imitate others' actions, join with other children, or consistently reciprocate in his emotional connections with others. Other unusual and not stereotyped behaviors included repetitive hopping/spinning, repetitive vocalizations of words/phrases, repetitively placing a blanket over his head, tippy toe walking, squinting, averting his gaze out of the corner of his eye, fascination with motion, hand flapping, issues with transitioning, laughing for no apparent reason, a high pain threshold, odd poking of other people, and head banging.

12. Dr. Battista interviewed both parents, reviewed CVRC records, and administered four psychological tests including the Wechsler Preschool and Primary Scale of Intelligence, Vineland Adaptive Behavior Scale-II, Pervasive Developmental Disorder Screening Test, and Autism Behavior Checklist. Based on test results and other information, Dr. Battista diagnosed claimant with Autistic Disorder (Axis I) and Mild Mental Retardation (Axis II).

13. The most recent psychological evaluation was conducted by Lindsey Gerner, Ph.D. on May 21, 2013. At the time of this evaluation, claimant was five years, four months of age. Dr. Gerner reviewed the record, interviewed both parents, and observed and interacted with claimant. Parents gave somewhat contrary reports of claimant's level of functioning and progress. Claimant's mother reported improved social skills, imaginative play, ability to carrying on a conversation with others, ability to sit and play for 45 minutes, ability to tell her about his day, appreciate the emotions of others, give hugs and soothe if he noticed her not feeling well. She stated that his stereotypical behaviors had decreased or resolved. Claimant's father reported difficulty initiating interactions with peers, limited spontaneous play, limited social skills, lack of imaginative play, repetitive play and activities, poor ability to communicate his needs, poor conversation skills, resistance to structure but seeking routine. Both parents reported continued but less frequent tantrums.

14. Educationally, claimant was attending a preschool special day class, receiving speech and language services through the school district. He receives special education services on the basis of "Autistic-Like" behaviors. His then most recent Individual Education Plan (IEP) was dated January 13, 2012. The plan was for claimant to attend a regular classroom in the next school year with some "push-in" support, meaning the aide would come to his classroom. His records indicated that he had made great progress over the last year, was academically on grade level, "appeared to enjoy interaction" and was "very affectionate" with his mother. He used "gestures" and vocalizations to communicate.

15. Dr. Gerner noted that claimant "easily transitioned to the testing office and played with cars while his parents reviewed consent forms. He did not display any hand flapping, spinning, or rocking during the evaluation. She noted that he was "responsive and

engaged easily during the testing process.” She described him as busy throughout the evaluation, cooperative, impulsive, and sometimes silly. He enjoyed verbal praise and laughed when Dr. Gerner gave him a high five and then quickly moved her hand when claimant attempted to give her a low five. He did struggle to complete verbal items and eventually stopped responding when asked to define words. He appeared to do better with hands-on tasks.

16. The parents share equal custody. Claimant lives full-time with his mother and spends alternate weekends and some evenings mid-week with his father. The father’s assessment of claimant’s skills tended to contradict progress reported at school and by the mother. The father reported the following behaviors: staring at fixed objects, or hands, eye contact avoidance, specific food preferences, licking or tasting inedible objects, whirling in circles, lunging, darting, using gestures rather than speech, echoing words or phrases over and over, looking away when his name is called, not initiating conversations with others, using inappropriate questions, statements, and made up words, inability to play cooperative games with others or have pretend play, and seems disinterested in other children.

17. Dr. Gerner administered the Wechsler Preschool and Primary Scale of Intelligence, Vineland Adaptive Behavior Scale-II, Gilliam Autism Rating Scale (father), and Social Communication Questionnaire (father). Dr. Gerner’s overall impressions after considering test results, school, prior psychological evaluations, and parent reports were that claimant’s scores were “not consistent with mental retardation” and “likely probability of Autistic Disorder.”

18. Due to concerns regarding possible autistic tendencies, Dr. Gerner compared claimant’s behaviors and symptoms to the DSM-IV TR diagnostic criteria for Autistic Disorder. She noted the level of impairment (none, mild, marked) of functioning in the areas of Reciprocal Social Interaction, Communication, and Activities and Interests. Based on her observations, interactions, comprehensive review of his records, and clinical interview, Dr. Gerner found that claimant “no longer meets the full diagnostic criteria for Autistic Disorder.” In order to meet the full diagnostic criteria, a total of six criteria need to be considered “marked impairments” with two in social interaction and at least one in communication and one in activities and interests. Claimant met only four criteria. Dr. Gerner found that claimant had “made great progress with his ABA treatment and in many ways, his Autism symptoms have decreased so much that many are no longer noticeable or are mild enough not to be considered marked impairments because they are not significantly impacting his functioning.”

19. Dr. Gerner noted that claimant’s behaviors seem to be different with his mother than with his father. She opined that this could be due to the fact that he spent more time with his mother and received more ABA services with her. According to his mother, his behavior during the assessment was atypical and may have been due to both parents being present making the child uncomfortable. Dr. Gerner provided a diagnosis of Pervasive Developmental Disorder, NOS (Axis I). Her recommendations notably included continuing special education services through the school district as appropriate for academic, social and

cognitive needs, parenting classes, notice or “warnings” prior to transitions, and recreational opportunities to support peer interactions.

Individualized Education Programs

20. The May 31, 2013 Individualized Education Plan (IEP) from claimant’s school district was submitted in evidence. Claimant attends public school and is enrolled 99 percent of the time “in a regular class and extracurricular and non-academic activities.” One percent of the time he is engaged “outside the regular class, extracurricular, and non-academic activities.” Through June 12, 2013, claimant participated in the inclusion preschool with special education support. He accessed speech and language services individually and in a small group setting. Beginning August 14, 2013, claimant began kindergarten in a regular classroom, public day school. He continued to receive language and speech services through the district.

21. As of May 29, 2013, the end of his preschool term, claimant’s IEP contained an assessment of his basic skills. Academically, claimant was able to name 21 alpha characters, started to associate sounds with letters, write his name from a model and spell his name, recognize his name, count to 16 using one-to-one correspondence, do simple addition and subtraction problems with manipulatives, recognize numbers one to 10, make several patterns, and pair simple rhyming words.

In the area of communication development, he was noted to have made “significant growth in his speech/language skills” since age three. His one-word expressive vocabulary was in the average range. His overall speech/language skills were found to be in the bottom end of low-average. Syntax/grammar skills and average length of utterance were in the average range for his age. He exhibited pragmatic language deficiencies which interfered with communication and drew adverse attention. His articulation, voice, and fluency skills were within normal expectations.

In the area of gross and fine motor development, he was able to copy a circle, horizontal and vertical lines, a cross, and an X. His mother rated his overall motor abilities in the “adequate” range while his father rated them in the “moderately low” range. He was found by the school to have “good fine motor skills.” He used “good tripod grasp and is able to maintain control when using crayons, dry erase markers, and pencils.” He could cut with scissors and stay on a line. Outside, he could pedal a tricycle, run with ease, and climb on play structures.

In the area of adaptive/daily living skills, claimant was able to attend to his daily living skills. He toileted independently, washed hands, put away his personal items, and cleaned up after himself. His overall adaptive skills fell in the adequate range as rated by his mother.

22. As of May 2013, the district found claimant to meet the criteria under Autism Spectrum Disorder. It was noted that his mother’s responses yielded scores which fell in the

“unlikely probability” range of autism while his father’s responses yielded scores with the “likely” range of autism. His tantrum behaviors were “rare,” his attendance had improved, and he continued to “engage with his peers throughout the day.” He was noted to use avoidance techniques to get out of activities, being silly or pretending not to know something. Persistence about him doing his best work was called for.

CVRC Witnesses

23. Emily Branscum, Ph. D., BCBA, is a Behavioral Analyst at CVRC where she has worked for over nine years. She holds a doctorate degree in Developmental Psychology and is a Board Certified Behavioral Analyst. Her focus is the diagnosis of children with autism. She is responsible to review early intensive programming, review behavior programming in care homes, and investigate concerns regarding developmental center clients.

24. Ms. Branscum explained that the purpose of ABA or early intensive services for Autistic children is to increase their acquisition rate from the environment so that when they enter into a school setting, they can access information in the least restrictive setting. She reviews client progress at least quarterly unless there are concerns from a parent or case manager, in which case she may conduct more frequent reviews. In Ms. Branscum’s opinion, ABA services for claimant have been appropriate and he has made progress in his ABA program. She agrees with the provider’s recommendation to phase out one-on-one services. She confirmed that consultation services to the parents will continue in order to ensure that claimant’s skills level is maintained and to support parents with any concerns that may arise. Consults between the vendor and parents are scheduled at least once a quarter. As a safety net, ongoing parent initiated consults occur for a quarter before services end.

25. Ms. Branscum is aware of Richard F.’s concerns about claimant’s socialization skills. They discussed this when he was first notified of CVRC’s decision to phase out ABA services. CVRC responded by extending the one-on-one tutor services for an additional quarter. Additionally, Ms. Branscum arranged to personally observe claimant in his pre-school setting. On June 3, 2013, she went to claimant’s school and observed his social behaviors for 20 minutes during recess and transition back to the classroom. Ms. Branscum wrote a Case Note and testified to her observations.

Ms. Branscum testified that she was very happy to see how claimant interacted with peers at school. She stated that often autistic children have issues when not getting what they want. He did not always get his way and knew how to ask for help from an adult. He was playing with a little girl who did not want to play the game anymore. Claimant was able to easily transition to another group of children. Claimant engaged in social imaginative play with other children at the water table. He was able to turn the water into “food,” serve it to others, and expand on the imaginative play of others. Ms. Branscum stated that often autistic children require direct visual contact. She observed claimant take direction from adults at a distance. When the teacher called his name and asked him to go clean up in an area that he

never played in, she observed “no attitude” from claimant. Without protest, he got in line and complied with the teacher’s request, even though he did not make the mess.

Ms. Branscum spoke to claimant’s teacher who confirmed claimant would attend regular education kindergarten in the fall of 2013. He would receive “push-in” services as needed. The teacher also showed Ms. Branscum pictures of claimant and his two “best” friends, both males, one of whom is “typically developing” and the other who will no longer meet special education criteria for speech and language in the 2013-14 school year.

26. Ms. Branscum addressed Richard F.’s concern that claimant missed emotional cues. Richard F. had shared that claimant laughed when he saw another child fall. Ms. Branscum stated that it is important to look at the context in which the incident occurred, for instance, were there many others around, a few, or no one else. A challenge of autistic children is their ability to read social signals of others. Whether making emotional recognition a program goal is appropriate depends on whether there was a pattern. It would more likely be a teaching opportunity to work with parents on in the natural context since it is difficult to recreate such incidents in a contrived tutoring setting.

27. Ms. Branscum also addressed Richard F.’s dissatisfaction with ACES as a vendor. When a parent is unhappy with services, the case manager meets with the parents and vendor, often at the same time, so that they can get clarification on what the concerns are. Providing care in two different homes is more challenging. They have to take both households into account especially the number of hours spent in each environment. She stated that one-to-one services are “extremely intrusive” as they are going into people’s homes for many hours a week. So they do not switch vendors just because the vendor or a parent requests it. Switches can disrupt the client’s progress and often lead to a regression of skills in the child.

28. Kathleen Frye is the CVRC Program Manager. She supervises 11 case managers, reviews cases, signs off on reports, speaks to and advocates for clients and families. Ms. Frye is familiar with claimant’s case and testified at hearing. In her opinion, claimant has made progress in his ABA program and this is reflected in his assimilation at school. She noted that in kindergarten, he is 99 percent of the time in a regular class and extracurricular non-academic activities.

29. Ms. Frye stated that the number of hours of ABA therapy is based on the individual needs and results shown by the child. In making service determinations to modify hours, she takes into account the recommendation of the service provider. In this case, she feels comfortable with ACES’ recommendation to reduce one-on-one tutoring hours. The phase out of hours was based on complainant’s progress over the three years he has been served by this vendor. When a parent is dissatisfied with vendor services, she takes into account the opinion of both parents, the CVRC behavior analyst, claimant’s teacher observations, and the program coordinator’s opinion. She noted that the expected outcome after two plus years of ABA therapy is for the child to be able to participate in a regular

classroom with little or no additional support. In this case, claimant has accomplished this outcome. Further, such inclusion will aid claimant's peer socialization.

Claimant's Father

30. Richard F. testified at hearing regarding his son's challenges and his dissatisfaction with ACES and the reduction in tutoring hours. Claimant currently receives nine hours of tutor services each week and Richard F. would like to see this increased to the previous 16 hours. He also feels that a switch in providers would meet claimant's needs. He said that it had been five to six months since he had met with ACES personnel for a "review." He is dissatisfied with the fact that ACES Supervisor Samantha Flores is not a Board Certified Behavior Analyst (BCBA). It is noted that Lori Javauz, ACES Senior Supervisor; and Jessica Mitts, ACES Clinical Director, are both BCBA certified. Richard F. stated that the total amount of program hours has been a "roller coaster" and a "consistent program has not been implemented." The Quarterly Reports do not support his opinion.

31. Richard F. conceded that his son was "high level functioning in comparison to most." He also stated that his son had made "great progress" with the help of CVRC. He feels that the regular classroom with a resource aide is appropriate for claimant. However, Richard F. shared that his son continues to tantrum and get anxious in social settings. He noted a lack of social skills. He referenced an incident at a rodeo when claimant tantrumed for 45 minutes and became better when Smokey the Bear came out. In the father's opinion, tantrums are increasing since the reduction in hours was implemented six months ago. He provided no additional facts to support his conclusion.

32. Richard F. cited the opinion of Linda Copeland, M.D., a Developmental Pediatrician at the EPU Children's Center. Dr. Copeland conducted a developmental assessment of claimant on May 16, 2013. She interviewed only the father, reviewed medical records, and performed a neurodevelopmental examination. She wrote a letter dated May 29, 2013, in which she provided a diagnosis of Autistic Disorder. In her opinion, claimant would "benefit greatly from increased hours of ABA services (more than nine hours per week I was told by the father that he is currently receiving)." She stated that claimant's prior level of ABA services at 16 hours per week was more appropriate. She noted that claimant still shows "great deficits in functional, reciprocal communication and self-regulation" with the potential to improve if given the appropriate level of scientific, evidence-based services. In her opinion, he is at serious risk for worsening functional outcome and behavior problems if his ABA services are not increased in scope and intensity.

LEGAL CONCLUSIONS

Applicable Laws and Regulations

1. The statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) was enacted by the legislature to provide facilities and

services to meet the needs of those with developmental disabilities. (Welf. & Inst. Code, §§ 4500-4846; *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1125.)

2. Regional centers are required to contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, such that they have access to the services and supports best suited to them throughout their lifetime. (Welf. & Inst. Code, §§ 4620, 4648, subd. (a)(1).)

3. Determinations regarding which services and supports are necessary for each consumer shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan (IPP) participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (Welf. & Inst. Code, §§ 4512, 4646.)

Reduction in Service Determination

4. Claimant is eligible for CVRC services based on his diagnosis of autism. (Welf. & Inst. Code, § 4512.) Pursuant to Welfare and Institutions Code section 4686.2, ABA service vendors shall "Design an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer's goals and objectives, as set forth in the consumer's individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer's progress shall be evaluated and reported." (Welf. & Inst. Code, § 4686.2, subd. (a)(2).) ABA services shall be discontinued when the consumer's treatment goals and objectives are achieved and only if updated treatment goals and objectives do not require ABA or intensive behavioral intervention services. (Welf. & Inst. Code, § 4686.2, subd. (b)(4).)

5. Claimant has received ABA services since June 2010, with detailed behavior plans and program goals that were regularly updated as issues were identified. Quarterly reports indicated that claimant has made good progress meeting goals over the course of three years. Progress was documented in ABA reports and corroborated by information from claimant's preschool and in his May 2013 psychological evaluation. Claimant's May 2013 IEP indicates that he made significant growth in his speech/language skills and displays good fine motor skills. However, he exhibited pragmatic language (social language) deficiencies which interfere with communication and draw adverse attention. As such, claimant will benefit from continued special education services to address these deficits. Ms. Branscum, claimant's CVRC Behavior Analyst, observed claimant at school and noted many positive social skills and peer interactions.

6. Dr. Gerner opined in her May 2013 psychological evaluation report that claimant no longer meets the full diagnostic criteria for Autistic Disorder. She rendered a diagnosis of Pervasive Developmental Disorder, NOS. Claimant's progress in decreasing his Autistic symptoms was such that "many are no longer noticeable or are mild enough" that

they do not significantly impact his functioning. (Factual Finding 18.) More credibility is given to the findings made by Dr. Gerner as compared to those of Dr. Copeland. Dr. Copeland did not provide a psychological evaluation report. She did not have access to claimant's complete CVRC record. She did not interview both parents, but only the father. This is relevant because the father tends to be less optimistic about his son's progress as compared to the mother, the school, and the service providers.

7. Based on the record as a whole, and specifically information provided in claimant's Quarterly Progress Reports, ACES provided regular consistent ABA therapy to claimant in both parent homes. Claimant has made very good progress towards addressing his Autism symptoms. The reduction in the number of one-to-one ABA service hours is based on claimant's overall progress in services. Even with the reduction in therapy, consultation services to claimant's family will continue. For the reasons stated above, reduction of one-on-one ABA services as provided by ACES is appropriate at this time.

ORDER

The appeal of G.P.F. requesting an increase in the number of hours of Applied Behavioral Analysis one-on-one tutor services from Central Valley Regional Center, is DENIED. The Notice of Proposed Action reducing ABA service hours is AFFIRMED.

DATED: September 13, 2013

/s/
DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days after receiving notice of this final decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)