

APPENDIX H
Sample Position Statement

May 20, XXXX

E.G.
920 XXXXX Blvd.
XXXX, CA

Dear Ms. G.:

You contacted the Office of Clients Rights Advocacy (OCRA) regarding the provision of your son's Personal Care Services Program (PCSP) services. Based on our discussions, and review of John's records, it appears that the Los Angeles County Department of Social Services (County) was in error when it determined the level of services for your son, John. Please feel free to submit this opinion letter, along with its attachments, as your position statement at your upcoming hearing against the County.

STATEMENT OF THE CASE

The County improperly determined your son, John G.'s need for services through the Personal Care Services Program (PCSP). The County underestimated John's personal care needs and improperly denied authorization of the ancillary services he requires. John requires 209.53 hours per month in personal care and ancillary services to remain safely in his home.

The County owes an underpayment to John for underestimating his personal care needs, as identified herein, back to January 1, 2003. Further, the County must be estopped from asserting that no state jurisdiction exists to address John's claim to retroactive payment for ancillary services arising from his 9/25/02 application. The County's written notice, dated 10/30/02, cites that John has alternative resources to provide for his ancillary service needs. Yet, the County never obtained a signed form from you or John's provider voluntarily relinquishing payment for these services nor apprised either of you of this option. Therefore, the County owes an underpayment to John for the ancillary services provided, as quantified below, back to 9/25/02.

PROCEDURAL HISTORY

Your son, John, is a nine year-old boy with Cerebral Palsy who resides with you, your husband, and your two other children. John receives supports and services from Westside Regional Center. John is on the Medicaid Home and Community Based Waiver for the Developmentally Disabled (DDS Waiver). As such, John is eligible to receive zero share of cost PCSP services.

On 9/25/02, you contacted the County and requested John to be assessed for PCSP services. On 10/24/02, Ms. C., the County social worker then assigned to John's intake, conducted a needs assessment of John. To facilitate the intake, Ms. C. had you and John's grandmother (your mother and John's provider), fill out several forms and provided you with all the copies you both signed. (Attachment 1.) On 10/30/02, Ms. C. issued a Notice of Action (NOA) authorizing John for 92.5 hours of services. (Attachment 2.)

The NOA states that John's "service assessment included consideration of alternative resources for domestic services, meal prep, meals clean up, laundry, food shopping, shopping/errand." The NOA also states that such action is supported by Manual of Policies and Procedures (MPP) § 30-763.6. On 1/2/03, the County issued another NOA authorizing services identical to those listed on John's 10/30/02 NOA. (Attachment 3.) Just like the 10/30/02 NOA, the 1/2/03 NOA also did not authorize any ancillary services for John. Unlike the 10/30/02 NOA, however, the 1/2/03 NOA provided no explanation as to why John would not receive ancillary services.

On or around April 25, 2003, you consulted with OCRA regarding the County's authorization of John's PCSP services. I asked you whether the County had ever informed either you or John's grandmother that any service authorized as necessary for John's in-home care but provided voluntarily as an alternative resource is optional. You stated that the County had not informed either of you of this. I asked whether you or John's grandmother have ever signed a voluntary services certification form electing not to receive payment for the specific services the County determined, per the 10/30/02 NOA, as being delivered through an alternative resource. You stated that you and your mother had not signed any forms of this nature.

Accordingly, per OCRA's recommendation, you filed an appeal on the County's authorizations of John's PCSP services. Per OCRA's instructions, you conducted your own needs assessment for John by timing the tasks necessary to keep John safely in his own home. You reported to OCRA the results your self-assessment. I confirmed with you today, upon showing you the form, that neither you nor

grandmother had signed the voluntary services certification form. (Attachment 4.) You stated that you would have had personal knowledge of any form your mother signed because she does not read English and would need your assistance in translating any forms requiring her signature. OCRA has prepared this opinion letter for you, detailing the assessment's findings and providing legal analysis of the circumstances in John's case based on the applicable law.

ARGUMENT

I. John Requires 209.53 Hours Per Month In Personal Care And Ancillary Services To Remain Safely In His Home.

Under the PCSP, John is entitled to receive both personal care *and* ancillary services. The only limitations regarding service provision for individuals under 18 years old are found at MPP § 30-763.454. (Attachment 5, p. 2.) While the regulation does, indeed, omit domestic services, it specifically includes provision of related services at subsection (a). Thus, John is entitled to be evaluated for personal care *and* related services, as ancillary services under the PCSP. What follows is your self-assessment of John that reflects the service hours necessary to meet his PCSP needs and the reasons for those services.

A. John Requires 183.98 Hours of Personal Care Services per Month to Meet His Needs

1. Personal Care Services- 42.49 Hours per Week

a. Bowel, Bladder Care - 4.66 Hours per Week

The County's 10/30/02 notice reflects 4.66 hours per week for this service. This is an accurate figure and therefore, not in dispute.

b. Feeding - 7.58 Hours per Week

The County's 10/30/02 notice allocates 4.08 hours for this service. This determination underestimates his feeding needs by 3.50 hours. John requires supervision and full assistance for each meal. (Attachment 6, p. 2.) This need, along with all others listed in this self-assessment, was present prior to John's September 25, 2002 application date. (Attachment 7.) He is unable to feed himself because he cannot independently utilize eating utensils. Therefore, it is necessary for his provider to help feed John. John's provider hand-over-hand feeds John. To feed John his meals, breakfast takes 10 minutes, lunch takes 25 minutes, and dinner takes 30 minutes each day. While John attends school each weekday, he eats his lunch at home.

Total Need: 10 minutes x 7 days per week = 70 minutes

25 minutes x 7 days per week = 175 minutes

30 minutes x 7 days per week = 210 minutes

Total Hours of Feeding per week: 455 minutes = 7.58 hours

c. Dressing – 6.95 Hours per Week

The County's 10/30/02 notice allocates 2.80 hours per week for this service. This determination underestimates John's dressing needs by 4.15 hours. John requires complete assistance in dressing. (Attachment 6, p. 2.) Due to the limited use of John's extremities, John cannot operate a buckle, button, or zipper and cannot tie his shoes. John's provider spends approximately 10 minutes getting John dressed in and out of his clothing. Because of John's constant drooling, the provider must change John's clothes, on average, 3 times daily. John is also unable to clean his eyeglasses, and therefore, his provider cleans John's glasses also 3 times daily, spending approximately 1 minute to perform this task. Further, John wears hand and leg braces and requires assistance fastening and removing them. (Attachment 8.) John's hand braces are applied once a day and require 4 minutes to put on and 1 minute to take off. John wears leg braces during the day that are placed on him twice a day, requiring 5 minutes to put on and 2 minutes to take off each time. John wears special leg braces during the night that require 7 minutes to put on and 4 minutes to take off.

Total Need: 11 minutes x 3 = 33 minutes daily

33 minutes x 7 days = 231 minutes per week

5 minutes x 7 days = 35 minutes per week

14 minutes x 7 days = 98 minutes per week

11 minutes x 7 days = 77 minutes per week

Total Dressing Hours per Week: 417 minutes = 6.95 hours

d. Ambulation - 3.00 Hours per Week

The County's 10/30/02 notice allocates 1.86 hours per week for this service. This determination underestimates John's dressing needs by 1.14 hours. John's therapist has recommended that John attempt to use his walker in order to use the muscles in his legs and feet. (Attachment 8.) Per the recommendations, John attempts to use his walker, with close supervision by his provider to guard against falls and to help John turn, due to his lack of coordination. These ambulation exercises are in 20-minute durations and occur once a day on weekdays and twice a day on weekends.

Total Need: 20 minutes x 5 = 100 minutes

40 minutes x 2 = 80 minutes

Total Ambulation Hours per Week: 180 minutes = 3.00 hours

e. Move In/Out of Bed- 1.86 Hours per Week

The County's 10/30/02 notice allocates 1.86 hours per week for this service. This is an accurate figure and therefore, not in dispute.

f. Bathing, Oral Hygiene, Grooming – 6.89 Hours per Week

The County's 10/30/02 notice allocates 4.13 hours per week for these services combined. This determination underestimates John's needs in these service areas by 2.76 hours.

(1) Bathing

John requires complete assistance with bathing. (Attachment 6, p. 2.) John has a bath daily, including shampooing his hair, which takes 35 minutes from start to finish. John's provider must situate him in a bathchair and strap him down. John is then cleaned with a sponge, shampooed, unstrapped from the bathchair, and then dried off. Additionally, John's provider must spend 2 minutes to clean John's nose with Ocean Nasal Spray daily because it gets very dry and bleeds. Further, John's provider cleans his ears 8 times a month, with each cleaning taking 2 minutes.

Total Need: 35 minutes x 7 days = 245 minutes per week
 2 minutes x 7 days = 14 minutes per week
 16 minutes/ per month = 4 minutes per week

Total Bathing Hours per Week: 263 minutes per week = 4.40 Hours

(2) Oral Hygiene

John requires assistance in accomplishing this task. (Attachment 6, p. 2.) John has his teeth brushed three times daily at 4 minutes per brushing. John also has his teeth flossed 1 time a day, which takes 4 minutes to accomplish.

Total Need: 12 minutes x 7 days = 84 minutes
 4 minutes x 7 days = 28 minutes

Total Oral Hygiene Hours per Week: 112 minutes = 1.85 Hours

(3) Grooming

John is not able to comb his own hair. (Attachment 6, p. 2.) John's provider brushes his hair 2 times per day at 2 minutes per brushing. John's fingernails and toenails grow quickly so his provider must trim them once a week and spends 10 minutes per clipping for both.

Total Need: 4 minutes x 7 days = 28 minutes
 10 minutes x 1 = 10 minutes

Total Grooming Hours per Week: 38 minutes = .64 Hours

Total Hours per Week for Bathing, Oral Hygiene and Grooming:

263 + 112 + 38 minutes = 413 minutes = 6.89 Hours

g. Rubbing Skin, Repositioning, Help On/Off Seats, In/Out of Vehicle- 10.75 Hours Per Week

The County's 10/30/02 notice allocates 1.16 hours per week for these services. This determination underestimates John's needs in these service areas by 9.59 hours.

(1) Rubbing Skin

Because of John's cerebral palsy, his extremities are constantly in a clenched position. Per orthopedic instructions, John's provider rubs the skin of John's hands, arms, feet, legs, and back to promote better blood circulation and help reduce spasticity once a day for 20 minutes. (Attachment 8.) John also has dry skin and requires lotion to be applied to his skin once a day for 5 minutes.

Total Need: 20 minutes x 7 times per week = 140 minutes
 5 minutes x 7 times per week = 35 minutes

Total Hours Rubbing Skin per Week: 175 minutes = 2.92 Hours

(2) Repositioning

John requires assistance in moving from one sitting position to another. (Attachment 8.) John's provider repositions John approximately 4 times a day, taking 2 minutes each time. John also requires to be flipped over 3 times nightly, on average. (Attachment 6, p. 3.) Each episode takes 5 minutes.

Total Need: 8 minutes x 7 days = 56 minutes per Week
 15 minutes x 7 days = 105 minutes per week

Total Hours Repositioning per Week: 161 minutes = 2.70 Hours

(3) Help On/Off Seats

John requires assistance in getting in and out of his wheelchair. (Attachment 8.) John is placed in his wheelchair 5 times a day and each time takes 4 minutes. John is taken out of his wheelchair 5 times a day and this task takes 3 minutes to accomplish. Further, John is repositioned 5 times each night while asleep. Each nighttime repositioning takes 5 minutes.

Total Need: 20 minutes x 7 days = 140 minutes per week
 15 minutes x 7 days = 105 minutes per week

Total Hours Help On/Off Seats per Week: 245 minutes = 4.08 Hours

(4) In/Out of Vehicle

John requires assistance in getting in and out of a vehicle. (Attachment 8.) John is placed into the car seat once a day on the weekdays and twice a day on the weekends at 4 minutes each time. John is removed from the car seat once per day on the weekdays and twice a day on the weekends at 3 minutes each time.

Total Need: 4 minutes x 9 times = 36 minutes
3 minutes x 9 times = 27 minutes

Total Hours In/Out of Vehicle per Week: 63 minutes = 1.05 Hours

Total Hours per Week for Rubbing Skin, Repositioning, Help On/Off Seats, In/Out of Vehicle: 175 + 161 + 245 + 63 minutes = 644 minutes = 10.75 Hours

h. Care/Assistance with Prosthesis and Administration of Medication-.80 Hours per Week

The County's 10/30/02 notice allocates .70 hours per week for this service. This determination underestimates John's needs in these service areas by .10 hours. As stated above, John constantly drools which, along with his food spillage, requires his wheelchair to be cleaned regularly. The cleaning process requires John's provider to take John's wheelchair apart, wash its parts and straps, and put it back together. The entire process takes 20 minutes to complete and is done on a weekly basis. Further, John requires assistance with administration of his medication, Tegratol, to control seizures. (Attachment 6, p. 4.) John must take Tegratol twice daily and each administration takes 2 minutes to complete.

Total Need: 20 minutes x 1 = 20 minutes
4 minutes x 7 days = 28 minutes

Total Hours per Week: 48 minutes = .80 Hours

B. John Requires 25.55 Hours of Ancillary Services per Month to Meet His Needs

1. Related Services 5.78 Hours per Week

a. Prepare Meals-2.92 Hours Per Week

There is no time allocated for this service in the County's 10/30/02 notice of action. John must have his food mashed in order for him to eat it. No other family member requires food to be mashed, and thus, this need is not met in common with the other household members. Therefore, this service cannot be prorated, but rather, authorized based upon John's individualized need. Breakfast takes 5 minutes to prepare. Lunch requires 10 minutes to prepare for John. John's dinner takes 10 minutes to prepare.

Total Need: 25 minutes x 7 days = 175 minutes

Total Meal Preparation Hours per Week: 175 minutes = 2.92 hours

b. Meal Clean Up- 1.86 Hours Per Week

The County's 10/30/02 Notice allows no time for this service. To clean up after John's meals, breakfast takes 2 minutes to clean up, lunch takes 5 minutes to clean up, and dinner takes 6 minutes to clean up. In addition to the cups, plates, bowls,

and eating utensils John uses, John's bib must be cleaned and changed after each meal. John also has a tray that requires 1 minute of cleaning after each meal.

Total Need: 16 minutes x 7 days = 112 minutes per week

Total Meal Clean Up Hours per Week: 112 minutes = 1.86 Hours

c. Routine Laundry – .70 Hours Per Week

The County's 10/30/02 notice allows no time for this service. Laundry facilities are located on the premises. Because there are five people in John's family, his prorated share for the weekly laundry would be 12 minutes per week, assuming he had no further need for this service. But, as stated above, John constantly drools on his clothes and bed sheets. To avoid the onset of mildew, John's provider must do 2 extra loads of laundry per week. Loading, unloading, folding, and putting away these two extra loads take an additional 30 minutes.

Total Need: 42 minutes

Total Laundry Hours per Week: 42 minutes = .70 Hours

d. Shopping for Food – .20 Hour Per Week

The County's 10/30/02 Notice does not provide any time for this service. There being five people in the household, John's pro rata share of the household's food shopping needs is 12 minutes per week.

Total Food Shopping Hours per Week: 12 minutes = .20 Hour

e. Other Shopping and Errands – .10 Hour Per Week

The County's 10/30/02 Notice allows no time for this service. There being five people in the household, John's pro rata share of the household's other shopping needs is 6 minutes per week.

Total Errand Hours per Week: 6 minutes = .10 Hour

2. Transportation Services-.12 Hours per Week

The County's 10/30/02 Notice allows .12 hours per week for this service. This is an accurate figure and therefore, not in dispute.

II. The County Must Be Estopped From Asserting That No State Jurisdiction Exists To Address John's Claim Arising From His September 25, 2002

Application.

Estoppel may be asserted against the government where "justice and right require it." City of Los Angeles v. Cohn, 101 Cal. 373, 377 (1894). "Generally speaking, four elements must be present in order apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had

a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citations]” Canfield v. Prod, 67 Cal. App. 3d 722, 730-731 (1977), quoting Driscoll v. City of Los Angeles, 67 Cal. 2d 297, 305 (1967).

Counties are responsible for informing IHSS recipients of their rights and responsibilities in relation to eligibility and need for services and for assisting recipients as needed in establishing their eligibility and need for service. Counties are also responsible for complying with administrative standards to insure timely processing of recipient requests for service. MPP § 30-760.2. (Attachment 9.)

Ms. C., as a social worker for the County, is responsible for following the MPPs, as promulgated. Ms. C. was familiar enough with MPP§ 30-763.6 to have cited it as a basis for precluding authorization for John’s ancillary services in the 10/30/02 NOA. As such, Ms. C. was either aware or should have been aware that she needed to properly inform you of the County’s requirement, per MPP§ 30-763.64, to obtain certification from John’s provider on voluntarily providing services without compensation. (Attachment 10.)

But Ms. C. only painted half the picture for you and John’s grandmother because she never produced the voluntary services certification form for John’s grandmother to sign, even though Ms. C. had John’s grandmother sign other forms during the intake process. Ms. C. intended for you to rely on her illegal denial of services, under the guise of “alternative resources,” because she cited it as her reason in the 10/30/02 NOA. Prior to your consultation with OCRA, neither you nor John’s grandmother were aware that the County was required to obtain a signed statement from the provider of record agreeing to provide any PCSP compensable service voluntarily, consistent with what MPP§ 30-763.64 and MPP§ 30-757.176 require. (Attachment 11.) You have detrimentally relied on the County’s illegal conduct to your injury because the improper denial on ancillary services has resulted in fewer compensable PCSP services for John, which, in turn, makes providers less willing to serve him given the magnitude of his needs.

Given these circumstances, the County must be estopped from asserting that no state jurisdiction exists to address John’s claim for retroactive payment for ancillary or “related services” arising from his September 25, 2002 application. Applying equitable estoppel here will not contravene any public policy because it will simply place John in the correct position he would have been in had the County performed its duties consistent with what the regulations require.

Additionally, John’s personal care services should be reauthorized as calculated above, as this assessment accurately reflects John’s needs. Upon reauthorization, the County will owe retroactive payment for John’s personal care services dating back to January 1, 2003. The County’s “action” in this case, their authorization of 92.5 PCSP hours for John, is ongoing and not fixed to a particular NOA issuance date. “Where a request for a state hearing concerns the current amount of aid the request shall be filed within 90 days, but the period of review shall extend back to the first of the month in which the first day of the 90 day period occurred.” MPP § 22-009.12. (Attachment 12.)

CONCLUSION

“There is no question that the obligation to pay aid to which an applicant is entitled is a debt due from the county as of the date the applicant was first entitled to receive aid and that the right to receive benefits vests in the recipient on the first date of his entitlement thereto.” Canfield v. Prod, 67 Cal. App. 3d 722, 728 (1977), citing Tripp v. Swoap, 17 Cal. 3d 671, 682-683, 685; Bd. of Soc. Welfare v. County of L.A., 27 Cal.2d 81, 85-86 (1945); Leach v. Swoap, 35 Cal.App.3d 685, 689 (1973). The record and applicable law make clear that John requires 209.53 hours of PCSP services per month. John’s 25.03 hours of monthly ancillary related services were wrongfully denied by the County on 10/30/02. The County must be estopped from barring John’s recovery back to his September 25, 2002 application date for this service shortage. John is also entitled to difference between the level of personal care services he currently receives and the level of personal care services he requires, as described above, back to January 1, 2003, per MPP § 22-009.12.

If you have any questions or concerns, please do not hesitate to call me.

Sincerely,

XXXXXX XXXXX

Clients’ Rights Advocate

LIST OF ATTACHMENTS

ATTACHMENT	DESCRIPTION	NO. OF PAGES
1	Complete Copies of All Intake Forms Ms. C. Provided	12

2	County Notice of Action, 10/30/02	1
3	County Notice of Action, 1/02/03	1
4	SOC 450 Form, Voluntary Services Certification	1
5	MPP §§ 30-763.44 through 30-763.46	2
6	Individual Program Plan, WRC, 1/28/03	7
7	Individual Program Plan, WRC, 2/11/02	8
8	Letter, S. L., Physical Therapist, 5/20/03	1
9	MPP §§ 30-760.2	1
10	MPP §§ 30-763.6	2
11	MPP §§ 30-757.176	1
12	MPP §§ 22-009.12	1