

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Personal Assistant Services:

OAH No. 2016021124

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 14, 2016.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was present at the hearing.

The matter was submitted on April 14, 2016.

ISSUE

Should IRC fund claimant's request for personal assistant services?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On November 30, 2015, IRC served claimant with a notice of proposed action denying claimant's request for a personal assistant.

2. On February 22, 2016, claimant filed a request for a fair hearing objecting to IRC's decision, and this appeal followed.

CLAIMANT'S BACKGROUND

3. Claimant is a fourteen-year-old male who resides with his mother. He qualifies for regional center services based on diagnoses of autism, intellectual disability, and epilepsy. Claimant can walk by himself but cannot feed himself. He has bladder and bowel control problems and cannot care for his personal hygiene. Claimant requires constant supervision because he will wander away. Claimant does not communicate verbally but will communicate by smiling or making eye contact. Claimant engages in disruptive social behaviors on a regular basis and has been known to engage in self-injurious behavior on occasion. Claimant is home-schooled at his doctor's request.

Claimant currently receives 283 hours per month of In Home Supportive Services (IHSS) that are not funded by IRC. Claimant's mother is his service provider. IRC funds 48 hours per month of respite services. 43 hours of applied behavioral analysis services are funded by private insurance.¹ He also receives speech therapy, occupational therapy, and physical therapy through his insurance.

CLAIMANT'S REQUEST FOR PERSONAL ASSISTANCE SERVICES

4. Claimant, through his mother, is requesting 35 hours of personal assistance services for claimant designed to help him become more socialized outside in the community. Specifically, claimant's mother would like another person to be present to tend to claimant's needs when she is out with him. Claimant's mother explained that he is

¹ IRC funded ABA services until February 2016 when claimant's insurance began to fund the services.

a runner; he will often wander off, and she has had to leave her purse or personal belongings wherever she is so she can chase him. Similarly, she may be driving and claimant needs to eat; but he cannot feed himself. Claimant's mother also explained that claimant has toileting issues in public and it is often difficult for her to bring a child of his advanced age into the women's bathroom because private bathrooms are not always available. In sum, claimant's mother explained that it takes two people to tend to claimant's needs when they are out in the community, which is why she requested additional services. Claimant's mother testified that she gave up her career to tend to claimant and that she does everything for him. She explained she uses all of the IHSS hours to care for claimant, since doing so is a "24/7 job."

IRC'S EVIDENCE PRESENTED AT HEARING

5. IRC Program Manager Russell Thompson testified at the hearing. Mr. Thompson explained that when considering a request for personal assistance services, IRC must first look to generic resources. IRC denied claimant's request for personal assistance services because IHSS, a generic resource, already provides the type of services requested. Claimant's ABA services also help him learn social skills.

According to Mr. Thompson, personal assistance services are services that would help a person with a disability with tasks he or she would normally be able to do if not disabled. These tasks include ambulation, bathing, toileting assistance, dressing, grooming, feeding, and general domestic services. Because IHSS provides 283 hours per month for these services, the maximum number of hours allowed under IHSS, IRC did not see the need to duplicate the services by providing additional hours.

Mr. Thompson further explained that IHSS rules do not prohibit claimant's mother from hiring another person to provide IHSS services. Claimant's mother could then serve as a natural support for claimant, while accompanying the IHSS provider, so two people are always present when claimant is out in the community, if desired. Mr. Thompson

explained that there is an online registry provided by claimant's county to help choose an IHSS provider.

Mr. Thompson added that he has not seen personal assistance services offered to minors. In the rare cases where personal assistance services have been provided, those were cases where the claimant was an adult, and for whatever reason, did not qualify or receive IHSS services, or did not receive enough IHSS hours. As a minor, claimant's mother is also expected to provide some natural support. Mr. Thompson stated that, even if IRC provided personal assistance services, the service provider would not be able to accompany claimant and his mother in the community because a personal assistance services provider is not permitted to ride in the vehicle with a consumer or another person because of liability concerns.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welfare & Inst. Code, § 4648, subd. (a)(2). Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual

Program Plan. (Welfare & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welfare & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welfare & Inst. Code, § 4646.4.)

11. IHSS services are a generic resource. (Welfare & Inst. Code, § 4659.)

CAUSE DOES NOT EXIST TO REQUIRE IRC TO FUND PERSONAL ASSISTANCE SERVICES

12. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or support, funding for personal assistance services. Claimant has not met that burden.

Claimant's mother testified credibly regarding the difficulties she faces when taking claimant into a public setting. Her love for claimant is evident. Her testimony demonstrated that she is doing her best to seek whatever services and supports might be available to help claimant better adapt to his surroundings. However, IHSS is already funding 283 hours per month of the same or similar type of services being requested, and IHSS is a generic resource. This equates to almost 10 hours per day of assistance every day

of the month. Claimant's mother chooses to be claimant's IHSS provider; if additional assistance is necessary, claimant's mother is not prohibited from hiring another individual to provide personal assistance services to claimant as his IHSS provider, or splitting the IHSS hours with another person but accompanying claimant and another IHSS provider when they are out in the community. In other words, it was not established by a preponderance of the evidence that funding 35 additional hours of personal assistance services would be effective in meeting claimant's IPP goals or a cost-effective use of public resources, as required by the Lanterman Act.

Additionally, personal assistance hours are not intended to be used for social recreation which is a service which allows a consumer to access the community. Welfare and Institutions Code section 4648.5 suspended regional center's ability to fund social recreation absent an exemption. No evidence of any such exemption was presented.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund personal assistance services is denied.

DATED: April 19, 2016

_____/s/_____

KIMBERLY J. BELVEDERE

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 ninety days.