

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2019020413

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on March 25, 2019, in Torrance.

Claimant was represented by her father (Father) and mother (Mother).¹

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (Service Agency or HRC).

Oral and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted on March 25, 2019.

ISSUE

Whether Service Agency may reduce claimant's respite services from 45 hours per month to 60 hours per quarter (20 hours per month).

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¹ Claimant and her family members are identified by titles to protect their privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-14; Claimant's exhibits A-H.

Testimonial: Judy Taimi, HRC Client Service Manager; and claimant's father and mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a five-year, eight-month old girl. She is eligible for regional center services based on her diagnosis of Autism Spectrum Disorder.
2. Claimant previously received services funded by North Los Angeles County Regional Center (NLARC) until August 2018, when her family moved to Torrance, which is within Service Agency's catchment area. Claimant was receiving respite services and behavior intervention services funded by NLARC. Respite is the only service at issue in this appeal.
3. Claimant's NLARC case was transferred to Service Agency in October 2018. Three months later, on January 3, 2019, Service Agency held its initial IPP planning team meeting for claimant at her family's home. Present at the meeting were claimant, claimant's parents, and HRC service coordinator Ruby Malit (Malit). During the meeting, claimant's parents requested that Service Agency continue funding 45 hours per month of respite services as was previously authorized by NLARC. Service Agency began funding 45 hours per month of respite services for a 30-day period to provide time for the HRC service coordinator to meet the family and discuss their needs, and to conduct any necessary assessments.²

² "Whenever a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer's

4. On January 8, 2019, Malit spoke by telephone with claimant's parents and assessed the family's respite need under HRC's respite guidelines (discussed below). The respite need of claimant's family was assessed to be 60 hours per quarter (which equates to 20 hours per month). Service Agency states respite services on a quarterly basis, as opposed to a monthly basis, in order to give families more flexibility in determining when to use their respite hours.

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5. By letter dated January 28, 2019, Service Agency notified claimant's parents that it was denying their request for ongoing funding of 45 hours per month of respite, and that claimant's respite services would be decreased to 60 hours per quarter (20 hours per month) effective March 1, 2019.

6. On February 4, 2019, Father filed a fair hearing request, on claimant's behalf, to appeal Service Agency's decision to reduce claimant's respite services from 45 hours per month to 60 hours per quarter (20 hours per month). This hearing ensued.

CLAIMANT'S IPP

7. Claimant's IPP dated January 3, 2019 was presented. (Exh. 4.) The Home section of the IPP includes goals that claimant "will continue to live in a safe and loving environment with her parents," and that she "will receive quality care and supervision through respite, while her family receives a break from her care." (Exh. 4.)

8. Claimant lives at home with her parents and older brother (age 7). Father is employed full-time as a senior engineer for Kimley Horn. He leaves for work at 6:00 a.m. and returns home at 7:00 p.m. or 8:00 p.m. Father also does work after the children go to bed. Mother is claimant's primary caregiver during the day. Mother works part-

individual program plan (IPP) shall be authorized and secured, if available, pending the development of a new IPP for the consumer." (Welf. & Inst. Code, § 4643.5, subd. (c).)

time from home, primarily on weekends, as an engineer for Redla. Father testified that claimant's grandparents live in India, and other family relatives live in other states, except for Father's brother (claimant's paternal uncle), who resides in Torrance. Claimant's parents contend the uncle is not available to supervise claimant because his wife recently had a baby in August 2018.

9. Claimant is in kindergarten at a local elementary school in Torrance. Claimant receives special education services under the eligibility category of autism. Claimant attends school Monday through Friday from 8:50 a.m. to 1:50 p.m. Mother picks up claimant from school at 1:50 p.m. Mother also picks up claimant's brother at 3:00 p.m. when his school day ends. Mother brings claimant with her when she picks up claimant's brother.

10. Claimant requires assistance with completing most of her self-care needs, such as bathing, dressing, brushing her teeth, feeding, and toileting. Claimant is toilet trained but requires assistance with wiping after a bowel movement. She is able to wash her hands but requires supervision to ensure thoroughness. Claimant is unable to choose appropriate clothes for the weather. She requires full physical assistance with dressing. She may demonstrate the necessary movements for dressing, but lacks interest. She requires assistance with manipulating snaps, buttons, and zippers. She is unable to tie her shoelaces and requires assistance. Claimant struggles with feeding and can be a very picky eater. She is selective of food and various textures. Claimant's parents continue to introduce her to new food, but it may lead to tantrums. Claimant is unable to eat with the appropriate utensils as feeding is a non-preferred task. Claimant is now able to drink from an open cup. She responds to routine directions and simple verbal messages in context. She can clean up after herself during play with prompts.

11. Claimant struggles with appropriately communicating her wants and needs. She engages in tantrum behavior twice per day. She lacks coping skills and needs

assistance to control her emotions. When claimant becomes upset, she will cry and walk to an adult and hit them. She needs verbal reminders to use her words. She engages in self-injurious behaviors, such as head banging. Claimant's behaviors are triggered by denied access to a preferred item, non-preferred task demands, and poor frustration due to her inability to communicate her wants and needs. Claimant engages in negative attention seeking behaviors. She has poor safety awareness when out in the community. She will elope in public places and requires constant supervision to ensure her safety. Claimant does not understand danger and will often climb high places or touch objects out of curiosity. Claimant oversteps social boundaries. She has no understanding of "stranger danger" and will often greet strangers when out in the community.

ASSESSMENT OF RESPITE NEEDS

12. Judy Taimi (Taimi) is employed by Service Agency as a Client Service Manager. Taimi supervises 10 service coordinators, including claimant's service coordinator Malit. Taimi testified credibly regarding Service Agency's assessment of the respite needs of claimant's family. Taimi accompanied Malit to claimant's home on March 7, 2019, to observe claimant's Applied Behavior Analysis session. During that session, Mother reported that new behaviors were occurring at home and at school, including spitting, scratching things, and screaming for attention.

13. HRC's Family Respite Needs Assessment Guideline (Guideline) was presented. The Guideline instructs the assessor to rate the consumer in seven listed areas, as follows: "Please objectively evaluate the individual's current skill level, support need, and family dynamics using the following guidelines. Choose the most appropriate number ('value') under each heading. Transfer 'value' to the Summary Sheet. [¶] NOTE: A reassessment of a family's respite need should be conducted whenever significant changes occur in the individual's skills or functioning level, family dynamics, or as alternative respite resources are identified." (Exh. 6.)

14. On January 8, 2019, after speaking with claimant's parents, Malit completed the Family Respite Needs Assessment Summary Sheet for claimant (Exhibit 8), using the point totals and descriptors from the Guideline (Exhibit 6). The Summary Sheet indicates claimant received a total of 17 points, as follows:

- (A) In the area of Adaptive Skills, claimant was given three points, which corresponds to the following description from the Guideline: "Individual is over age 5 and requires total care in some aspect of dressing, eating, grooming, toileting, etc. but not all or the individual lacks age appropriate safety." (Exh. 6, p. 1; Exh. 8, p. 1.)
- (B) In the area of Mobility, claimant was given one point, which corresponds to the following description from the Guideline: "Individual is mobile but may need some help" (Exh. 6, p. 1; ;Exh. 8, p. 1.)
- (C) In the area of Behavioral Needs, claimant was given three points, which corresponds to the following description in the Guideline: "Individual displays severe behavioral excesses weekly (e.g., aggressive towards others potentially causing injury, self-abusive requiring occasional restraint as a preventative measure or requiring occasional medical attention, serious property destruction, etc[.]). Family is not yet participating in a behavior change program. Explanation required on Summary Sheet." (Exh. 6, p. 3; Exh. 8, p. 1.)
On the Summary Sheet, Malit wrote: "[Claimant] struggles with changes in routines & task demands leading to aggression towards others." (Exh. 8, p. 1.)
- (D) In the area of Family Situation, claimant was given 10 points, even though the Guideline states a maximum point total of seven points. The Summary Sheet includes the following explanations for the 10-point score: "parents are currently receiving marriage counseling"; "older brother engages in negative attention seeking behaviors as parents' attention is focused on [claimant] and

her needs”; and “family does not have much family who reside in local area; paternal uncle resides in Torrance.” (Exh. 8, p. 1.)

15. Under HRC’s respite guidelines, a score of 17 on the Summary Sheet corresponds to 16 hours per month of respite. (Exh. 8, p. 2.) However, Malit assessed claimant’s respite need at 20 hours per month because of the Family Situation factors described in Finding 14(D), above. Taimi, as Malit’s supervisor, agreed with the assessment of 60 hours per quarter (20 hours per month).

16. Taimi testified that she reviewed the NLARC Initial Respite Needs Assessment report dated June 11, 2018, which assessed claimant’s respite need at 45 hours per month. (Exh. 9.) The NLARC report notes, among other things, that claimant requires assistance with activities of daily living (e.g., toileting, personal care, and dressing), and that she engages in socially disruptive behaviors on a daily basis. As Taimi testified, the report is not clear on how NLARC came up with 45 hours per month of respite. (See Exh. 9, p. 5.) However, a timecard from claimant’s NLARC-funded respite worker shows that the worker provided a total of 45 hours of respite services for claimant’s family in the month of July 2018. (Exh. 10.) Taimi believes the 45 hours in the NLARC assessment report is based on this timecard. Taimi further noted that the timecard showed respite services being provided at set times, i.e., from 3 p.m. to 6 p.m. every Monday, Wednesday, and Friday, leading Service Agency to suspect that Mother was working during those times and the family was using respite hours for child care. At this hearing, claimant’s parents vehemently denied using respite hours for child care and expressed they would be interested in discussing child care with Service Agency but Malit never talked to them about it. Claimant’s IPP dated January 3, 2019, does not indicate that child care was discussed with claimant’s parents.

17. Claimant’s family began using respite services funded by Service Agency on January 13, 2019. For the period January 13 through 31, 2019, claimant’s family used

23 hours of respite. For the month of February 2019, claimant's family used 26.5 hours of respite. (See Exh. D.)

PARENTS' CONTENTIONS

18. Claimant's parents feel that Service Agency's respite assessment was "improper." Father feels the assessment was "too casual" and seemed "indifferent" compared to the assessment by NLARC. Father testified that claimant's case was transferred to Service Agency on October 16, 2018, but the family did not hear from Service Agency for five weeks, until they contacted Service Agency and asked about claimant's case. According to Father, Service Agency could not find claimant's records and it took three months to set up the first IPP meeting. Father testified that, in December 2018, service coordinator Malit told him that Service Agency would not fund 45 hours of respite. Father was concerned about Malit's comment, because it was made before Malit had even met claimant and the family. Father feels that Service Agency has made no objective analysis of the family's respite needs, and that one meeting with the family is not sufficient to assess the family's need for respite. Father testified that Service Agency's decision to reduce claimant's respite hours was a "shock" to him and his wife. Father contends nothing in the family's situation has changed in the past six months since NLARC's assessment in June 2018, except that "things got worse."

19. Father testified the family had not accepted respite services from NLARC prior to June 2018. Father contends that claimant's challenging behaviors, due to her autism spectrum diagnosis, impacts the family and warrants 45 hours per month of respite. Claimant's behaviors require more attention from Father and Mother, which has caused claimant's brother to engage in attention-seeking behaviors. Claimant lacks safety awareness and engages in injurious behaviors, such as jumping off furniture. She requires constant supervision. Claimant is not a good sleeper and wakes up screaming in the middle of the night. Claimant's lack of communication skills makes it difficult for

Father and Mother to understand her behavior or what she is trying to say, which causes her parents stress and anxiety.

20. Mother, in her testimony, disagreed that she has a break during the time claimant is attending school. During the time claimant is at school, Mother testified she “barely has five minutes to sit.” She is doing household chores and errands (e.g., groceries and laundry), attending support group meetings, and researching ways to teach things to claimant. Mother testified that, in the support groups, she has learned about parent coping skills, ways to address challenging behaviors, and other programs available in the community. Mother noted that claimant is in a general education setting at school, but she needs more time and help to be on par with her classmates. Mother helps claimant with her homework. Mother volunteers in both of her children’s classrooms. Because claimant is a picky eater, Mother must cook different things for each meal to see which one claimant will eat. Mother testified that claimant’s brother is highly intellectual and demanding of Mother’s attention. Mother testified she has to pay attention to her son while also being involved in claimant’s Applied Behavior Analysis (ABA) therapy sessions.

21. On cross-examination, Mother was asked to describe what she is doing when respite services are being provided. Mother testified that she uses the respite to watch claimant when she takes claimant’s brother to his class on Monday, Wednesday, and Friday. Mother explained that she cannot bring claimant to the class because claimant has been too disruptive in the past. Additionally, the respite services allow claimant’s parents to go to dinner once a week and to allow Mother to go to services at her temple, neither of which was happening until the family began receiving respite services.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. Where a change in the status quo is sought, the party seeking the change has the burden of proving, by a preponderance of the evidence, that a change is necessary. (Evid. Code, §§ 115 and 500.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) In this case, Service Agency is seeking to change the status quo by its decision to reduce claimant's in-home respite from 45 hours to 20 hours per month. As such, Service Agency has the burden to prove by a preponderance of the evidence that this change is necessary.

3. Under the Lanterman Act, regional centers are established as "fixed points of contact" to enable the state to carry out its duties to developmentally disabled persons and to allow those persons access to the services and supports best suited to their individual needs throughout their lifetimes. (§ 4620, subd. (a).) The California Department of Developmental Services (Department) is responsible for monitoring regional centers. Each regional center operates independently, has their own governing board, and enters into a separate contract with the Department. (§§ 4629, 4640, 4622.5.) Each regional center provides services to consumers within its assigned catchment area. (§ 4640; Cal. Code Regs., tit. 17, § 50501, subd. (a)(18).)

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

4. As part of its responsibility to monitor regional centers, the Department collects and reviews printed materials used by the regional centers, such as "purchase of service policies and other policies and guidelines utilized by regional centers when determining the services needs of a consumer," and takes "appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of [the Lanterman Act] or any regulation adopted thereunder." (§ 4634, subd. (d).)

5. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The planning process for an IPP includes gathering information and conducting assessments. (§ 4646.5, subd. (a)(1).)

6. Respite is a service that may be included in a consumer's IPP. (§ 4512, subd. (b).) In-home respite services are "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member." (§ 4690.2, subd. (a).) In-home respite services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

(§ 4690.2, subds. (a)(1)-(4).)

7. When purchasing services and supports for a consumer, a regional center shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the [Department] pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(§ 4646.4, subds. (a)(1)-(4).)

8. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

9. In this case, the preponderance of the evidence established that Service Agency's decision to reduce claimant's respite services to 60 hours per quarter (20 hours per month) was proper. The decision was made in conformance with Service Agency's

established respite guidelines. Service Agency was not bound by NLARC's respite assessment, and was authorized to conduct its own assessment of the respite needs of claimant's family, in accordance with Service Agency's own Department-approved policies and guidelines. Service Agency's assessment report was based on the objective findings set forth in the Summary Sheet (Exh. 8). Although its guidelines recommended 16 hours per month of respite for claimant's family, Service Agency agreed to fund 20 hours per month based on the unique circumstances of claimant's family situation noted in the Summary Sheet. Service Agency's assessment of 20 hours per month closely approximates the amount of Service Agency-funded respite actually used by claimant's family in the months of January and February 2019.

10. Mother's contention that she does not get a break when claimant is in school because she is performing household chores and errands does not establish a need for more respite hours than assessed by Service Agency. The purpose of respite is to relieve a parent from the constantly demanding responsibility of caring for a developmentally disabled child. Respite is not for the purpose of giving the caregiver a break from household chores and errands that any parent would have to do regardless of a child's disability.

11. Based on the foregoing, Service Agency is not required to continue funding 45 hours per month of respite, as previously assessed by NLARC. Instead, based on its own assessment and established guidelines, Service Agency shall fund 60 hours per quarter (20 hours per month) of respite for claimant's family. (Factual Findings 1-21; Legal Conclusions 1-10.)

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ORDER

Claimant's appeal is denied. Harbor Regional Center is not required to continue funding respite services of 45 hours per month for claimant's family. Harbor Regional Center shall fund respite services of 60 hours per quarter (20 hours per month) for claimant's family.

DATED:

ERLINDA G. SHRENGER

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.