

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2021030560

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on October 1 and 15, 2021.

Keith R. Dobyms, Attorney at Law, represented the Regional Center of Orange County (RCOC or Service Agency).

Claimant's mother and authorized representative represented claimant, who was present on October 15, 2021.¹ Claimant's mother received the assistance of a Spanish language interpreter.

Testimony and documents were received in evidence. The record was closed and the matter was submitted for decision on October 15, 2021.

ISSUES

1. Is the Service Agency required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to fund an increase in claimant's respite hours to 120 hours per month?
2. Is the Service Agency required under the Lanterman Act to increase funding for personal assistance services for claimant.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-9; claimant's exhibits C10 (portions), C14 (pp. 1-42), and C15 (p. 25, last paragraph, through p. 26, first paragraph, and date and signature).

Testimony: Crystal Sanchez, Carie Otto, and claimant's mother.

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¹ Party and family titles are used to protect claimant's privacy.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 25-year-old non-conserved man who lives at home with his mother, maternal grandmother, and cousin. He communicates with and sees his father. According to claimant's Individualized Program Plan (IPP) dated July 7, 2021, he is eligible for regional center services due to a diagnosis of Autism Spectrum Disorder (ASD). Claimant also has been diagnosed with delayed speech and language development, impaired coordination, impaired social interaction, tuberous sclerosis, "impaired intellectual disability of language and autistic characteristics," and visual abilities deficiencies. (Ex. 3.)

2. In the summer of 2020, claimant's mother asked the regional center to fund an increase in claimant's respite hours from 24 hours per month to 120 hours per month, and to fund personal assistance services.

3. Carie Otto, an RCOC Area Manager since September 2019, directed claimant's IPP team to offer a meeting with claimant and his mother to discuss the request and to explore possible generic funding sources or other RCOC supports that could address claimant's needs.

4. By email dated September 8, 2020, Crystal Sanchez, currently an Area Supervisor and previously claimant's service coordinator, participated in claimant's most recent IPP meeting and offered two possible dates to meet with claimant's mother to explore claimant's requests. Claimant's mother agreed to meet on the condition that the regional center's clinical team be present. By letter dated September 16, 2020, Ms. Sanchez wrote to ask why the clinical team should be present, and to

note that, “[a]t this time, I have not received a confirmation from you to meet on any of the dates provided. It is important for us to meet to discuss how [claimant’s] needs are not being met with the current level of support.” (Ex. 2.) Ms. Sanchez offered claimant’s mother additional dates for a meeting.

5. By letter dated September 30, 2020, Ms. Sanchez wrote to claimant’s mother that,

On September 29, 2020, you did not accept a meeting and informed me that if I need to speak to you about the increase of respite hours, I should email you. It is important for us to meet to discuss how [claimant’s] needs are not being met with the current level of support. RCOC continues to offer you the opportunity for a meeting to discuss his needs. In the absence of a complete planning process, RCOC is unable to make a decision regarding your request (Welfare and Institutions Code 4646).

(Ex. 2.) In the letter, Ms. Sanchez informed claimant’s mother that she could request an informal meeting with RCOC staff or a mediation or fair hearing through OAH.

6. In a Notice of Proposed Action dated February 4, 2021, RCOC denied claimant’s request, writing RCOC “cannot make a decision regarding your requests” in the absence of a completed planning process. (Ex. 1.) RCOC cited as authority Welfare and Institutions Code sections 4512, 4646, 4646.5, and 4624.

7. On March 4, 2021, claimant’s mother filed a Fair Hearing Request, seeking to require that RCOC increase funding for respite hours from 24 hours per

month to 120 hours per month and fund an unspecified amount of personal assistance services for claimant.

8. This hearing, originally set for May 21, 2021, then continued to October 1, 2021, ensued.

Claimant's Services

9. Claimant's mother cares for and supervises claimant. He is unable to live alone and lacks safety awareness skills, social skills, and executive skills. His diet must be monitored due to kidney problems. He "has a history of hospitalizations due to bullying, attempted suicide and anxiety caused by the harassment of peers at school." (Ex. 3.) He reportedly engages in self-injurious behaviors and aggression when his routine changes or he is denied an activity he desires.

10. Claimant receives 264 hours per month of In-Home Supportive Services (IHSS), Supplemental Security Income (SSI) benefits, and Medi-Cal/Cal Optima medical and dental coverage, in addition to RCOC-funded services.

11. Claimant's July 2021 IPP provides that claimant receives RCOC funding for 24 hours per month of "Respite Worker Administration (RWA) services" (ex. 3, p. 3); 30 hours per week of personal assistance services through a "personal assistance worker administration (PAWA) program," a self-directed day program (ex. 3, p. 3); and eight hours per week of traditional personal assistance services to assist claimant in the community. RCOC entered into Purchase of Service (POS) contracts with vendors for the three authorized services. The IPP states that respite services and personal assistance services "are in place to provide [claimant's mother] with additional support in the home." (Ex. 3, p. 4.)

RESPIRE

12. Regional centers develop POS guidelines for regional center staff to follow when authorizing service requests. RCOC's POS guidelines provide for different categories of respite services. For claimant's age and disability, the IPP team determined category 3 applied, making claimant eligible for the maximum amount of respite services hours ordinarily available, 24 hours per month. (Ex. 9, pp. 16, 18.) The only category allowing more hours of respite services, category 4, authorizes a maximum of 32 hours of respite per month when there is a temporary, time-limited crisis, such as the incapacity of a caregiver. To obtain funding for 32 hours per month of respite services, a consumer must request a time-limited exception, and the consumer's IPP team must discuss the consumer's needs at that time.

13. On August 19, 2020, RCOC contracted with Roz Home Care, LLC (Roz Home Care), to provide 24 hours of in-home respite services per month (Service Code 862) to claimant from August 19, 2020 to June 30, 2021. The contract's "Justification of Service" section states that claimant's mother "has requested for respite services to be changed to Roz Homecare [*sic*] [from Maxim]. Respite services are in place to provide mother with a break in care. . . . New provider Maria Cruz was hired on 8/19/2020." (Ex. 8, p. 1.)

PERSONAL ASSISTANCE AS A DAY PROGRAM (PAWA, OR PAWAP)

14. Claimant's long-range goals, as described in his IPP, include participating "in an appropriate day program or academic program for adults," increasing his independence skills, participating in social activities, and developing independent money management skills. (Ex. 3, p. 4.)

15. The PAWA, or PAWAP, program, to provide personal assistance as a day program, was an option RCOC offered claimant's mother when she rejected other day program options, such as community college options and certain adult day services providers, at the 2018 IPP meeting. Ms. Otto explained that, in contrast to respite, which is home-based and is intended to give the consumer's primary caregiver a break, PAWA is intended to get the consumer out in community. PAWA is participant-directed; the consumer and the consumer's family are able to choose the provider, who might be a family member rather than a vendored regional center provider.

16. The "School/Program/Employer" section of claimant's IPP notes, "[Claimant's mother] will work on creating a program design that will meet PAWA requirements. Activities should focus on community integration, community based self-care training, self-advocacy training and vocational training. [¶] A PAWA program was designed by [claimant's mother] and approved by RCOC in November 2019." (Ex. 3, p. 6.) In the same IPP section, the "Desired Outcome," with a target date of July 2021, is described as follows: "Through the PAWA program, [claimant] will work to improve his understanding of speech and language skills by engaging in activities designed in his PAWA program related to speech and language." (Ex. 3, p. 7.)

17. Also in the "School/Program/Employer" IPP section, the "Plans" to achieve the desired outcome are described as follows: that the PAWA program will be provided 6 hours per day, 5 days per week; claimant's mother or claimant will notify claimant's service coordinator "if he is interested in exploring a day program and/or a generic educational resource (i.e. community college programs); and RCOC will fund the PAWA program. (Ex. 3, p. 7.) "The [PAWA] program activities include: auditory processing, vision therapy, reading and comprehension, occupational therapy [OT],

physical therapy [PT] and speech and language. [Claimant's mother] is hired with Maxim Healthcare Services as [claimant]'s PAWA provider." (Ex. 3, July 7, 2020 IPP.)

18. On September 3, 2020, RCOC contracted with Premier Healthcare Services, LLC, (Premier) (now known as Aveanna Healthcare) to provide six hours per day, five days per week, of personal assistance as day program services (Service Code 062, Sub Code PAWAP) to claimant from August 24, 2020, to May 31, 2021. The contract's "Justification of Service" section states:

Per meeting on 10/30/19 with Area Manager and Associate Director of Employment Services, PAWA program design created by [claimant's mother] is appropriate. Activities may include: academics, communication, safety awareness in the community, social skills and purchasing skills. On 11/4/19, Arturo Cazares informed [the service coordinator] via email that PAWA request for [claimant] has been approved. [Claimant's mother] will be PAWA worker as an exception. On 8/20/20, family requested to change services to Premier. [¶] On 8/25/2020, Premier Healthcare Services confirmed that [claimant's mother] was hired effective 8/24/2020. Premier emailed RCOC accounting department with hire date.

(Ex. 8, p. 5.) The change in providers, from Maxim Healthcare to Premier, is also reflected in an IPP Addendum. (See exs. 5, 6.)

PERSONAL ASSISTANCE (PAWAS)

19. RCOC entered into a POS contract dated March 3, 2021, with 24HR Homecare, LLC, to provide eight hours of personal assistance services (Service Code 062, Sub Code PAWAS) per week to claimant from March 3, 2021, to June 30, 2021. The contract's "Justification of Service" section relates that claimant's mother "is requesting to switch agencies from Maxim [Healthcare] to 24HR Homecare. [Claimant] currently has 8 hours per week of personal assistance with Maxim. Mother has been in contact with 24HR Homecare as well as [service coordinator]. 24HR Homecare stated that they are able to accept this case. . . . Provider is Adonay Sandoval, his hire date was 07/20/2018." (Ex. 8, p. 3.)

Claimant's Requests for Additional Funding

20. Claimant's mother requested increasing respite services funding to 120 hours because claimant's vendors have told her they are paying claimant's personal assistant as a respite provider, not as a personal assistant. In December 2020, claimant's mother told Ms. Sanchez her workers did not want to work for minimum wage; consequently, she was unable to keep vendored employees working for claimant. Ms. Sanchez testified claimant's mother wanted to use her respite vendor, Roz Home Care, for personal assistance services, but Roz Home Care is not vendored by RCOC to provide those services.

21. Ms. Sanchez sent claimant's mother a flyer listing vendored personal assistants from which she could select a provider. Ms. Sanchez also offered to convene a planning team meeting with claimant and his mother to discuss claimant's services and supports and their request for additional respite and personal assistance funding. Ms. Sanchez met once with claimant and his mother in January 2021. Claimant's

mother, however, did not wish to discuss her request for increased funding for respite, but wanted to discuss only rates of pay to her providers and finding a different vendor for personal assistance services.

22. Ms. Otto testified that claimant's request for funding for 120 hours per month of respite services exceeds the POS guidelines. There are no circumstances for which the POS guidelines allow funding for 120 hours per month of respite. Also, in claimant's request for additional funding for personal assistance, claimant's mother did not identify the number of hours of personal assistance services requested, or any reason for increasing the number of personal assistance hours. At this hearing, claimant's mother testified she wanted RCOC to decide how many hours were appropriate.

23. According to Ms. Sanchez's testimony, RCOC will not authorize changes in personal assistance and respite hours until RCOC staff meets as a team with claimant and his mother to discuss claimant's service needs. Ms. Sanchez described the necessity of a collaborative IPP process, where claimant, family members, and regional center staff work together to address claimant's needs and goals, rather than trying to address those matters through the Fair Hearing process. Ms. Sanchez noted the regional center must ensure a cost-effective manner of providing requested services, including generic services. Claimant's mother testified she did not meet with RCOC to discuss claimant's request for additional funding because RCOC would not agree to send her its questions in writing prior to the meeting.

24. Claimant's mother testified she is at a disadvantage as a single mother advocating for her son. She testified claimant is 25 years old but behaves like a five or six year old. She wants the requested increase in respite services hours so she will have time to take care of her personal affairs. She currently does not have that time because

she uses the entire 24 hours of respite time to work as the PAWA day program personal assistance administrator for claimant. She only agreed to provide that PAWAP service because, she testified, RCOC denied occupational therapy, physical therapy, vision therapy, and auditory processing therapy for claimant. She believes RCOC mistakenly applies her respite hours to the time she spends working on the PAWAP program, despite her requests to both RCOC and the agency providing the services to correct that error. She believes RCOC treats hours funded for the three services—respite, PAWAP, and traditional personal assistance (PAWAS)—identically, even though there are three different vendors for those services.

25. Claimant's mother asserts that no vendor provides her with respite services. This assertion is belied by the POS contract entered into between RCOC and Roz Home Care for respite services. Claimant's mother claims that Roz Home Care provides PAWA services and does not provide respite services. The Roz Home Care contract with RCOC, however, identifies that vendor as providing respite services, sending staff to claimant's house 24 hours each month to allow claimant's mother to take a break from caregiving. (Ex. 8, p. 1.) Claimant's mother acknowledged that she had asked for Roz Home Care to be claimant's respite services provider.

26. Claimant's mother has not considered having someone other than her provide PAWA or other day services to claimant, because she does not believe any other providers will meet claimant's needs. She is not willing to meet with RCOC staff to discuss other possible providers because she does not trust RCOC.

DISCUSSION

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)² An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of his request for increased funding for respite services and personal assistance services. Jurisdiction in this case was thus established. (Factual Findings 1-8.)

2. Because claimant seeks additional benefits or services, he bears the burden of proving he is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client’s

² Statutory references are to the Welfare and Institutions Code.

developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.)

6. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or other "generic resource." Regional centers are required to "identify and pursue all possible sources of funding[.]" (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a client's IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

7. The Lanterman Act defines "services and supports" to include personal care, day care, and respite. (§ 4512, subd. (b).) The Lanterman Act requires regional centers to create POS guidelines and to follow them. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).)

8. Claimant failed to establish that the Lanterman Act requires RCOC to increase its funding of respite services from 24 hours per month, as provided in

claimant's IPP, to 120 hours per month. Claimant failed to establish that the Lanterman Act requires RCOC to increase its funding for personal assistance services from the amount provided in claimant's IPP. The parties have not explored together at an IPP meeting the basis for the requested funding increases for services and supports, whether increasing the number of hours for those services would help claimant meet his IPP goals, and whether more cost-effective services and supports are available.

9. The exhibits and testimony reflect RCOC's failure to communicate to claimant's mother how regional center-funded services hours are allocated among the several services provided to ameliorate the effects of claimant's developmental disability. The exhibits and testimony also reflect claimant's mother's resistance to working with RCOC to clarify and optimize RCOC's funding for those services. Claimant's mother has refused to consider any day program alternatives to the PAWA day program, a program that requires claimant's mother to spend a tremendous amount of time working with claimant. Although it appears from the evidence that RCOC does not treat the time spent on PAWA services as respite hours, RCOC has not explained the various vendored services, vendor contracts, and payments for services to claimant's mother in sufficient detail or with sufficient clarity.

10. To the extent claimant's IPP does not reflect the full extent of his current service needs, claimant's mother is required to provide supplemental information to RCOC to support any requested change in services and supports. Claimant and claimant's mother's participation in additional IPP meetings, without preconditions, may be required to effectuate an IPP addendum addressing claimant's mother's requests.

LEGAL CONCLUSIONS

1. Claimant did not establish by a preponderance of the evidence that the Service Agency is required under the Lanterman Act to increase funding for claimant's respite services from 24 hours per month to 120 hours per month.

2. Claimant did not establish by a preponderance of the evidence that the Service Agency is required under the Lanterman Act to fund an increase in personal assistance services hours for claimant.

ORDER

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN
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.