

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JUAN C.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL

CENTER,

Service Agency.

OAH Nos. 2012010720 & 2012010721

DECISION

These consolidated matters were heard by Mark Harman, Administrative Law Judge, Office of Administrative Hearings, in Alhambra, California, on March 7, 2012.

Judy Castañeda, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (Service Agency or ELARC). Juan C. (Claimant), who was not present, was represented by Juana G. (Mother) who was assisted by a Spanish interpreter.

The parties presented oral and documentary evidence, and submitted the matter for decision on March 7, 2012.

ISSUES

1. Should the Service Agency be required to fund 50 hours per month of respite services?
2. Should the Service Agency reimburse Mother for the cost to provide 14 days of respite services in December 2011 at the rate of 16 hours per day?

FACTUAL FINDINGS

1. Claimant is 14 years old and lives with Mother. He receives services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act) based on a diagnosis of autism. In 2005, the Service Agency funded 50 hours per month of respite services based on several factors, including the high level of care and supervision that Claimant required, Mother's needs as a single parent and the sole provider of Claimant's care, and Mother's needs related to her medical condition. In 2009, the Lanterman Act was amended by the Legislature, and a regional center's ability to fund respite services was curtailed.¹ Approximately two

¹ Section 4686.5 was added to the Welfare and Institutions Code to specify new conditions under which a regional center may purchase respite services. It states in pertinent part:

- (a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:
 - (1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.
 - (2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.
 - (3) (A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an

years ago, the Service Agency determined to reduce its funding for respite services from 50 hours per month to 90 hours per quarter (30 hours per month), as required by Welfare and Institutions Code section 4686.5. Mother did not appeal the reduction at that time. By this appeal, Mother seeks a return to the higher level of services and reimbursement for the cost of respite services she received from her respite provider during her recent hospitalization and surgery, and post-hospitalization recovery period.

2. On December 7, 2011, the Service Agency sent Mother a Notice of Proposed Action (NOPA) stating that her request for an "additional 20 hours per month of respite services has been denied." The NOPA referenced the discussion between Mother and Claimant's service coordinator during Claimant's Individual Program Plan (IPP) meeting on October 18, 2011. The Service Agency sent a second NOPA on January 9, 2012, denying Mother's request for "2 weeks of additional respite services to begin on 12/19/11 at the rate of 16 hours per day." The Service Agency found the documentation submitted by Mother was insufficient to

extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

[¶] ... [¶]

(c) This section shall remain in effect until implementation of the individual choice budget pursuant to Section 4648.6 and certification by the Director of the Department of Developmental Services that the individual choice budget has been implemented and will result in state budget savings sufficient to offset the costs associated with the repeal of this section. This section shall be repealed on the date of certification.

demonstrate a need for additional respite services. Mother requested fair hearings on both issues, and this matter ensued.

3. Claimant is a student at Belvedere Middle School. He attends a regular education classroom with the support of a one-to-one aide, Monday through Friday, from 7:25 a.m. to 2:49 p.m. The District provides round-trip transportation to school with a transportation aide.

4. Claimant is extremely sensitive to sounds, and is unable to tolerate being in the community for long periods of time because the crowd noises agitate him. He may react to other sounds, including pen clicking, "utensils hitting against each other, water drops, ringing telephones, keys [hitting] against each other, a cat's purr, clocks that tick tock, and many other things." (Exhibit 12.) Claimant does not brush his teeth correctly; the toothpaste apparently makes him nauseous and causes him to gag. He refuses to apply items such as deodorant and lotion, because he does not like certain textures. Claimant requires constant supervision during waking hours in both familiar and unfamiliar settings as he lacks safety awareness and can be impulsive. Claimant often wakes up at night and requires Mother's comforting to return to sleep.

5. The Service Agency has recommended a psychiatric evaluation and a variety of behavioral therapies to address some of these problems. Claimant received discrete trial training services until mid-2010, in part to address these problems, but Mother was dissatisfied with the services and sought an alternative service. The Service Agency has funded and continues to fund up to 50 hours per month of Community Integration Training through a vendor called In2Vision since October 2010. This service occurs in the community or in Claimant's home, four evenings per week, from 5:00 to 7:00 p.m. The service has helped Claimant somewhat with safety skills in the community and with some hygiene skills.

6. Mother was previously diagnosed with left breast cancer and underwent a modified radical mastectomy in 2004. She received chemotherapy and radiation therapy following her hospitalization. She experienced depression and received outpatient psychiatric care, including medication, for several years. She also attended one-hour individual therapy sessions once per week with a psychiatric social worker and regularly attended support group meetings for cancer survivors. Mother's health issues at that time were a primary reason the Service Agency was funding 50 hours per month of respite.

7. In July 2010, Mother underwent a right mastectomy, followed by chemotherapy. She is reportedly cancer-free, although there is an 80 percent chance that the cancer could return. As of December 2011, Mother was taking Femara to inhibit tumor growth, and Fosamax, vitamin D, and calcium for Osteopenia. The medication reportedly causes her bones to hurt.

8. In the past, Mother has attended parenting classes. The record did not establish whether Mother has continued to take these classes or whether Mother still keeps appointments with a psychiatrist or counselor. Mother has continued to attend workshops, conferences, and meetings on autism to familiarize herself with her son's disability. She does not receive child support, and continues to prompt Claimant to eat, and to assist him with bathing and dressing. Complainant tantrums when he is agitated and needs constant prompting to complete activities of daily living, which are sources of stress for Mother. Respite services provide her with relief from this stress.

9. Claimant has no siblings. Mother does not work outside the home. Claimant receives 188 hours per month (approximately six hours per day) of In-Home Supportive Services (IHSS), which is used in part for his care and supervision and to provide Mother a break when she goes to appointments, shops, attends

meetings or conferences, exercises, or engages in other activities that relieve her stress. Jesus Gutierrez is the IHSS worker. He helps Claimant during meals, with hygiene, and provides respite services for Mother. When Mother requested the Service Agency to fund an additional 20 hours per month at the IPP meeting, she cited her medical issues, not her other needs, as the basis for granting an exception to the legal maximum.

10. The documentation Mother provided to the services coordinator failed to clearly specify how additional respite hours would meet Mother's needs. The service coordinator advised Mother that the documentation Mother submitted was unclear regarding her medical issues and lacked the kind of information the Service Agency needed to evaluate her needs. On this basis, the service coordinator determined to issue the December NOPA. The Service Agency continued to advise Mother that, if she submitted further documentation describing her limitations or the kinds of assistance and support she needed, the matter could be reconsidered. Mother failed to follow-up with the documentation that had been suggested.

11. After the December NOPA was issued, Mother provided a letter from Dr. Hao Wei (Harvey) Zhang, which briefly described the history of Mother's diagnoses, surgeries, and treatments since 2004, including the right mastectomy and subsequent treatment in 2011. Dr. Zhang concluded that "[d]ue to medications and genetic counseling she is not able to care for her child without help it would be best if she has help to watch over her child. She has side effects such as weakness, bone pain, drowsiness which limits her daily activities." (Exhibit 4.)

12. On February 29, 2012, Mother provided a letter from Maya Nambisan, M.D., who stated that Mother had been receiving care from White Memorial GYN/OB Medical Group, had undergone a laparoscopic bilateral salpingo-oophorectomy (surgical removal of both fallopian tubes and ovaries) on December 19, 2011, and

had required two weeks of convalescence after the surgery, during which time she was unable to care for Claimant. (Exhibit J.) Just prior to the hearing, the Service Agency offered to reimburse Mother for nine hours per day of respite services during the two weeks in December 2011 when she was convalescing. The Service Agency calculated the need for nine hours based on 16 waking-hours per day. The IHSS worker provides six hours per day and the Service Agency already funds one hour per day (90 hours per quarter) of ordinary respite (9 + 6 + 1 = 16). Mother did not agree with this calculation because Claimant wakes her several times a night, when she must comfort him.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code² section 4500 et seq., the Legislature codified the state's responsibility to provide for the needs of developmentally disabled individuals and their families and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

2. The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing individual program plans, taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.) The consumer, or the consumer's representative, and the Service Agency jointly work out the IPP statement of goals and objectives, including a schedule of the type and

² All further references are to the Welfare and Institutions Code, unless specified otherwise.

amount of services and supports to be purchased in order to achieve these goals and objectives.

3. Under section 4690.2, subdivision (a), "in-home respite services" means 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. Under this statute, 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.

4. A claimant who is seeking to change or add a service has the burden to demonstrate that the service is needed. The Service Agency asserts that, while it will provide additional respite hours to address an "emergency" situation, such as Mother's hospitalizations and convalescences, such services are time-limited and the Service Agency need not continue to provide the same level of services after the emergency has abated. Here, Mother's medical condition appears stable, although she continues to experience side effects from her medications. She has assistance from the IHSS worker, who can help her by providing some of Claimant's care and supervision. Claimant receives other services from the school district and from In2Vision, the Service Agency's vendor. On these occasions, Mother has time for herself and away from the constant care and supervision needs of Claimant. The Service Agency funds 90 hours

per quarter of ordinary respite, which is appropriate to meet the needs of Claimant and Mother. On this record, Mother has not demonstrated that her needs for respite meet an exemption that would require the Service Agency to increase the level of services from 30 to 50 hours per month.

ORDER

Claimant's appeal is sustained in part and denied in part. The Service Agency shall reimburse Mother for the cost of two weeks (14 days) of respite services for nine hours per day. The Service Agency is authorized to maintain the level of in-home respite services at 30 hours per month, as is currently provided to Claimant and Mother.

Dated: July 11, 2012

MARK HARMAN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.