

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

**In the Matter of:**

**CLAIMANT, and**

**HARBOR REGIONAL CENTER, Service Agency.**

**OAH No. 2012030107.1**

**DECISION AFTER JUDGMENT ON PEREMPTORY WRIT OF  
ADMINISTRATIVE MANDAMUS**

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter April 17, 2012, in Torrance, and telephonically on April 19, 2012, in Los Angeles, California. Claimant was represented by her mother, and by Thomas E. Beltran, Attorney at Law. (Names are not used to preserve confidentiality.) Harbor Regional Center (Service Agency) was represented by Gigi Thompson, Manager of Rights Assurance. Evidence was received, argument was made, and the matter was submitted for decision on April 19, 2012.

**ISSUANCE OF DECISION, SUBSEQUENT EVENTS, AND PEREMPTORY  
WRIT OF ADMINISTRATIVE MANDAMUS**

1. ALJ David Rosenman issued the Decision in this matter on April 27, 2012 (2012 Decision).

2. On May 21, 2012, Claimant filed a motion to clarify the 2012 Decision. Service Agency filed a response on May 22, 2012. On July 24, 2012, Presiding ALJ Susan Formaker issued an Order Denying Request for Clarification.<sup>1</sup>

3. On October 22, 2012, the appellate opinion was issued in *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, which chronicles seven prior fair hearings regarding Claimant, and decides issues relating to an eighth matter heard by OAH in July 2009. After the July 2009 hearing, there were hearings on several other Fair Hearing Requests filed by Claimant, including this matter.

4. Claimant filed a petition for writ of administrative mandamus in this matter. The Judgment Including Peremptory Writ of Administrative Mandamus (Judgment) was signed on February 25, 2014, by the Honorable James C. Chalfant, Judge, Los Angeles Superior Court, and filed that date. Notice of entry of the Judgment was served on April 11, 2014, including on OAH. The notice and Judgment are marked for identification as exhibit 101.<sup>2</sup>

---

<sup>1</sup> For efficiency and clarity, only one document will be added to the record, and will be marked exhibit 101. (See Factual Finding 4.) The clarification request, opposition, and Order are not needed as exhibits but can be found, if necessary, in the administrative record maintained by OAH.

<sup>2</sup> In the Judgment, the 2012 Decision is referred to as the "First Decision." However, using the phrase 2012 Decision herein should avoid any confusion

5. Inadvertently, OAH took no action on the Judgment until, on December 5, 2019, OAH was notified that Claimant filed a new Fair Hearing Request that made reference to the Judgment.

6. The Judgment includes that the parties submitted a stipulation to the terms of the writ, and agreed to be bound by its terms. The Judgment includes an order that the 2012 Decision be vacated, and in its place OAH is to "issue a new and different decision consistent with the following findings of fact, errors in original decision, and terms of a new and different decision." (Exhibit 101, p. 2.)

7. The 2012 Decision is, therefore, vacated, and this new Decision is issued.

## **FINDINGS OF FACT**

1. Claimant is a 17-year-old girl. She is seriously disabled by Canavan's disease. Her condition entitles her family to funding for care, including funding to pay caregivers.

2. Claimant's care is funded through three sources: Service Agency, Los Angeles County's In Home Support Services (IHSS),<sup>3</sup> and the Palos Verdes Unified

---

considering the number of other cases relating to Claimant, some of which are noted in Factual Finding 3.

<sup>3</sup> The official name for these services is In-Home Supportive Services, according to the website of the Los Angeles County Department of Public Social Services [www.dpss.lacounty.gov]. However, the Judgment uses the phrase In Home Support Services.

School District (School District). Claimant's mother utilizes IHSS funding to pay the caregivers who monitor Claimant's sleep. The School District funds a one-to-one aide for Claimant while she is in school and transportation to and from school. The Service Agency funds homemaker services.

3. Claimant's parents are separated. Claimant is in her mother's care and custody for 128.5 hours per week: 8:00 a.m. on Sundays through 4:30 p.m. on Fridays. Claimant is in her father's care and custody during the remaining 39.5 hours per week. This administrative proceeding pertains only to the times that Claimant is in her mother's care and custody.

4. Claimant attends school Mondays through Fridays, except for those Mondays through Fridays that the school is closed.

5. ALJ Eric Sawyer heard a prior matter between the parties. (OAH no. 2009091685; Decision dated July 29, 2010.) On July 29, 2010, ALJ Sawyer found that Claimant requires 24-hour care seven days per week; that all but 2.5 hours of Claimant's care would be funded by a combination of the School District, IHSS, and the Service Agency; and that 2.5 hours per day of Claimant's care would be unfunded and would be provided directly by Claimant's family. To account for the fact that the number of school days is not constant each month, ALJ Sawyer "annualized" the Service Agency's funding obligation, ordering the Service Agency to fund 3,614 hours of care per year.

6. Claimant's circumstances changed since the date of ALJ Sawyer's decision, and the changed circumstances warrant an increase in the number of hours that the Service Agency must fund for Claimant. The changed circumstances include (a) Claimant's parents' separation and the consequent division of Claimant's time

between the parents' households; (b) an injury to Claimant's mother's knee, which adversely affects her ability to lift Claimant by herself; and (c) dysplasia of Claimant's hips.

7. The School District funds 4.25 hours per day of care for Claimant on the days she attends school.

8. IHSS funds 9.5 hours per day of care for Claimant.

### **Errors in 2012 Decision**

9. The 2012 Decision ordered the Service Agency to fund homemaker services for Claimant in the amount of 13 hours for each Sunday and 8.72 hours per day for each Monday through Thursday that Claimant is in her mother's care. The Judgment determined that this calculation was incorrect, in that it was based on assumptions that IHSS funded 11 hours per day of Claimant's care on Mondays through Thursdays; and that Claimant invariably attended school on all Mondays through Thursdays (irrespective of the school's calendar). Also, the 2012 Decision did not account for Claimant's time with her mother on Fridays: 12:00 a.m. (midnight Friday morning) until 4:30 p.m. Friday afternoon.

10. IHSS funds 9.5 hours per day of Claimant's care (not the 11 hours per day stated in the 2012 Decision).

11. The School District funds 4.25 hours of care for Claimant on each Monday, Tuesday, Wednesday, Thursday, and Friday that Claimant attends school (not the 4.28 hours Monday through Thursday stated in the 2012 Decision).

12. The 2012 Decision ordered the Service Agency to fund a fixed number of hours of care for Claimant on Mondays through Thursdays without regard to whether Claimant attends school on those days.

## **LEGAL CONCLUSIONS**

The Judgment determined that this Decision after Judgment include the orders noted below.

## **ORDER**

1. This Order is applicable only to funding of services while Claimant is in her mother's custody pursuant to the currently operative custody order. The Service Agency will fund Claimant's care while she is living with her mother, as follows:

(a) The Service Agency will fund 13.5 hours of care for Claimant on Sundays.

(b) The Service Agency will fund 14.5 hours of care for Claimant any Monday, Tuesday, Wednesday, and/or Thursday that Claimant does not attend school due to a school holiday, school vacation day, or other school closure as reflected on the school's calendar.

(c) The Service Agency will fund 10.25 hours of care for Claimant on the Mondays, Tuesdays, Wednesdays and/or Thursdays that Claimant attends school.

(d) The Service Agency will fund 5.25 hours of care for Claimant on the Fridays that Claimant attends school.

(e) The Service Agency will fund 9.5 hours of care for Claimant on the Fridays that she does not attend school due to a school holiday, school vacation day, or other school closure as reflected on the school's calendar.

(f) Whether the Service Agency funds 14.5 hours of care for Claimant on Mondays, Tuesdays Wednesdays, or Thursdays, or 9.5 hours of care for Claimant on Fridays, if Claimant is absent from school due to a sudden illness or an unexpected school closure will be decided on a case-by-case basis. Conditions for the Service Agency's funding of 14.5 hours of care for Claimant on such Mondays, Tuesdays, Wednesdays, or Thursdays, or 9.5 hours of care for Claimant on Fridays, include, but are not necessarily limited to: (1) Claimant's mother's giving notice of such unexpected event immediately upon learning of it; and (2) Claimant's mother's providing details of the event.

(g) The Service Agency will not fund care as identified in subparagraphs 1(a), 1(b), 1(c), 1(d), and/or 1(e) above for Claimant while she is in a hospital, in any rehabilitation facility, or in any facility or residence other than her mother's home.

(h) Service Agency will calculate and authorize funded hours semi-annually. The first period will run from February 1, 2014 to September 30, 2014, and subsequent periods will be at six-month intervals beginning October 1, 2014. The calculations and authorizations will be based on the school calendar, the number of care hours funded by the School District, the operative number of IHSS hours available to Claimant; and the amount of time Claimant spends in her mother's custody (see paragraph 1(i) below), except as provided in subparagraph 1(f) above. Any hours not used in a semi-annual period will not be carried over into later semi-annual periods.

(i) If the division of time that Claimant spends with each of her separated parents changes, Service Agency will adjust its funding accordingly.

(j) Claimant's mother will schedule caregivers so that none is eligible for overtime pay. Should one or more caregivers become eligible for overtime pay, the responsibility to fund overtime pay shall be borne by Claimant's mother and will not be borne by the Service Agency or the caregiver's employer.

(k) Claimant will continue to utilize publicly funded service hours (including hours funded by the School District and by IHSS) to the maximum extent that Claimant is eligible for these service hours. If Claimant declines to utilize all IHSS services hours for which Claimant is eligible and/or all of the School District service hours under her most recent Individualized Education Plan established by the School District, the Service Agency will continue to fund only the service hours set forth in paragraphs 1(a), 1(b), 1(c), 1(d) and 1(e) above. Should Claimant become eligible for any additional publically funded service hours, the Service Agency's funded service hours will be reduced by the amount of additional publicly funded service hours available to Claimant.

DATE:

DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearings