

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request  
of:

OAH Case No. 2012080723

TAMIKA A.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY REGIONAL  
CENTER,

Service Agency.

DECISION DENYING THE APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on September 25, 2012, in Lancaster. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Tamika A. (Claimant), who was not present, was represented by her mother.<sup>1</sup>

The North Los Angeles County Regional Center (Service Agency) was represented by Stella Dorian, Fair Hearing Representative.

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<sup>1</sup> Initials and family titles are used to protect the privacy of Claimant and her family.

## ISSUE

May the Service Agency replace 30 hours per month of parent vendored respite funding with 30 hours per month of either parent conversion or agency provided respite?

## EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon exhibits 1-7 submitted by the Service Agency, and the testimony of Consumer Service Supervisor Edie Bryant and Claimant's mother.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a 23-year-old female who is a Service Agency consumer based on a qualifying diagnosis not established.

2. The Service Agency has been providing funding for Claimant's mother to receive 30 hours per month of respite. The respite has been funded as parent vendored. In this case, a family friend, Dahlia Walker, provides the respite, and the Service Agency provides the funds to Claimant's mother, who in turn compensates Ms. Walker.

3. By a Notice of Proposed Action dated August 8, 2012, Claimant's mother was advised that the Service Agency was proposing to terminate parent vendored respite, so that it can be replaced by another funding mechanism required by a recent change in the law.

4. On August 16, 2012, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, which appealed the Service Agency's proposed action.

5. The Service Agency has continued to provide the parent vendored respite while this matter has been pending, pursuant to Welfare and Institutions Code section 4715, subdivision (a).

6. On or before September 19, 2012, the parties participated in an Informal Conference to discuss the Service Agency's proposed action. No resolution was reached.

7. Claimant, who is an adult, submitted a written authorization for her mother to represent her in this matter.

#### RESPIRE FUNDING

8. In October of 2011, emergency regulations were implemented requiring consumers and/or family members to use a Financial Management Service (FMS) provider if they are vendored to procure respite services and authorized to receive reimbursement for the purchase of respite services. The new regulations apply to situations when the consumer and/or a family member is the vendored respite provider, and the consumer in question receives Medi-Cal funding or is eligible to receive the same.

9. Pursuant to the new regulations, vendored consumers and/or family members receiving respite services must either a) use an FMS Fiscal/Employer Agent (F/EA), or b) use an FMS Co-Employer, or c) take the parent conversion route, or d) simply allow the respite to be provided by an agency respite provider vendored with a regional center. The new regulations prohibit regional centers from directly reimbursing consumers or family members for purchase of respite services.

10. Under the FMS F/EA model, the vendored consumer or family member continues to be the employer of the respite provider, but the FMS agency performs payroll duties, processes payments for the reimbursement of services, and performs other employer responsibilities that are required by federal and state law. Under the FMS Co-Employer model, the consumer or family member recommends or refers respite worker(s) to be hired, while the FMS agency hires and pays the employee to perform the respite service, as well as handling the employer responsibilities required by law. Under the parent conversion model, an agency vendored by a regional center will provide the respite service and receive the funding, but conversion agencies will hire individuals referred by the

consumer or family, if they are eligible for employment. Under the agency model, the family simply agrees to have the respite provided by an agency vendored with the regional center, but does not refer workers to the agency or otherwise get involved in the process.

11. Claimant's mother is the parent vendor for the respite funded by the Service Agency. Claimant is eligible to receive Medi-Cal services. Therefore, the new regulations apply to Claimant and her family with regard to respite.

12. In or about January of 2012, the Service Agency sent to families impacted by the new regulations a document explaining the situation and their options. Thereafter, Claimant's prior Consumer Services Coordinator (CSC), Kathryn Watts, explained the new regulatory requirements for respite service delivery to Claimant's mother. Claimant's mother has consistently told the Service Agency that she does not want to use either of the two FMS models, but prefers to take the parent conversion route. Claimant's mother also has consistently declined to take the agency respite route.

13. On numerous occasions, Service Agency staff have explained to Claimant's mother the need for her to complete and forward the required documentation in order for Claimant's current respite provider, Ms. Walker, to become employed with the respite agency. On April 18, 2012, a referral was made to Accredited Respite Services (ARS). A parent conversion packet was mailed to Claimant's mother on May 9, 2012. On July 19, 2012, CSC Watts was informed by ARS that it had not yet received Ms. Walker's application.

14. During the above-described Informal Conference, the status of Ms. Walker's application was discussed. Claimant's mother also inquired whether her adult son or daughter could become Claimant's respite provider instead of Ms. Walker.

15. After the Informal Conference, Service Agency staff contacted ARS on August 29, 2012. The Service Agency was informed by ARS that Claimant's mother had spoken to Oscar Rivera of ARS on August 16, 2012, and informed him that Ms. Walker had

mailed the application back to ARS. However, Mr. Rivera had not received the application packet.

16. By September 5, 2012, Claimant's mother and Ms. Walker requested Claimant's new CSC, Lisa Burbano, to refer them to a new respite agency. CSC Burbano promptly referred them to Home Respite and Caregivers (HRC) to complete the parent conversion process. Ms. Walker told CSC Burbano that she would complete and submit the conversion packet to HRC.

17. On September 18, 2012, CSC Burbano determined that Ms. Walker did not show up to her appointment with HRC to complete the conversion process.

18. As of the hearing date, neither Claimant's mother nor Ms. Walker has completed the parent conversion packet and/or sent it to the appropriate respite agency.

19. The Service Agency is willing to convert the 30 hours per month of respite to parent conversion should Claimant's mother complete and forward the necessary paperwork. In the interim, the Service Agency is willing to simply convert the 30 hours per month of respite to agency respite, until Claimant's mother and a proposed respite provider successfully complete the parent conversion process.

20. During the hearing, Claimant's mother reiterated her desire to have Ms. Walker remain as Claimant's respite provider through the parent conversion process. She did not provide an adequate explanation why the required application has not been completed and/or forwarded. If Ms. Walker is unable or not interested in remaining as the respite provider, Claimant's mother would like for her adult daughter or son to do so. It was not established whether they are qualified to be so employed, or whether they have completed or submitted the required paperwork. Claimant's mother does not want to use either FMS model, or the respite agency model.

## DISCUSSION

### JURISDICTION AND BURDEN OF PROOF

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.<sup>2</sup>) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

A regional center seeking to terminate or reduce ongoing funding has the burden to demonstrate its decision is correct. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof regarding its proposed action.

### RESPITE FUNDING

California Code of Regulations, title 17 (Regulation), section 54355, subdivision (c) (4), states that a "regional center shall classify a vendor as respite service-family member if the vendor: (A) Is a family member; (B) Is not the direct provider of the respite service; and (C) selects the respite service for the consumer: (1) (a) an individual who is at least 18 years of age. . . . (b) possesses the skill, training, or education necessary to provider the respite service. . . ."

Regulation 54355, subdivisions (i)(1) and (2), state, "[e]ffective October 1, 2011, for [respite] services . . ., when funded with federal financial participation through Medicaid

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

programs, the consumers and family members of consumers shall be vendored for the services pursuant to California Code of Regulations, Title 17, Section 58886; or use another vendored service provider.” Pursuant to Regulation 58886, when respite services are funded with federal financial participation through Medicaid programs, the regional center may provide the respite funding through either the two FMS models or to an independent respite agency (using either the parent conversion or agency respite models). The Service Agency is no longer able to provide respite funding directly to a consumer or his/her family member.

Claimant’s mother is vendored for in-home parent respite service. Claimant is Medi-Cal eligible. The new regulations therefore apply. Because parent vendored respite is no longer available, that funding delivery mechanism shall be terminated. The Service Agency does not seek to change the 30 hours per month of respite, but simply to change the funding mechanism. In order to comply with the new regulatory requirements for respite service delivery, Claimant’s mother has chosen the parent conversion service delivery model. However, neither Claimant’s mother nor a proposed respite provider has completed the necessary parent conversion application packet. Until they do so, the parent conversion process cannot be completed. In the interim, the Service Agency may change the respite funding to agency respite, unless and until Claimant’s mother and a qualified proposed respite provider completes the necessary paperwork to complete the parent conversion route. The Service Agency shall assist Claimant’s mother in that process.

## LEGAL CONCLUSION

Pursuant to Regulations 54355 and 58886, cause was established to allow the Service Agency to terminate Claimant’s parent vendored respite, to be replaced with 30 hours per month of either parent conversion or agency provided respite. (Factual Findings 1-20, Discussion.)

## ORDER

Claimant Tamika A.'s appeal is denied. The North Los Angeles County Regional Center may terminate Claimant's parent vendored respite. When it does so, it shall immediately convert the respite funding to 30 hours per month of agency provided respite, and shall continue such funding until Claimant's mother and the proposed respite provider successfully complete and forward the required paperwork for parent conversion respite, and the proposed respite provider is properly qualified for such service and employment. The Service Agency shall assist Claimant's mother in completing that process.

DATED: October 22, 2012

A handwritten signature in black ink, appearing to read 'ES', is written over a solid horizontal line.

ERIC SAWYER,  
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.