

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2014060600

DECISION

Abraham M. Levy Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter in San Diego, California, on September 30, 2014.

Ron House, Attorney at Law, represented the San Diego Regional Center.

Claimant's mother, who is also his conservator, represented claimant.

The matter was submitted on September 30, 2014.

ISSUE

Does claimant still qualify for an exemption allowing him to receive 40 hours of
respite services per month?

Does claimant still qualify for monthly respite services?

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Claimant is a 23-year old conserved male who lives with his parents in the family home. Claimant qualifies for regional center services under the "fifth category" and receives forty hours of in-home respite.

2. Claimant attends College to Career (C2C), a Department of Rehabilitation community college program designed for persons with disabilities. C2C provides instruction, campus supports, job development and placement services. Claimant also participates in a paid internship with Plant Operations Aide, where he sets up the gym for sporting events at C2C. In addition, claimant receives services through United Cerebral Palsy's Tailored Day Program to assist him with his internship at the gym and his homework.

3. Since 2009 claimant qualified for an exemption for respite services pursuant to Welfare and Institutions Code section 4686.5. He has been receiving 40 hours per month of respite services due to his father's and other family member's health issues that impacted the family's ability to meet claimant's care and supervision needs. On April 20, 2012, SDRC proposed reducing claimant's respite hours to 30 hours per month. Claimant appealed and a hearing was held. In a decision dated August 13, 2012, OAH Case No. 2012050234, Administrative Law Judge Alan Alvord granted claimant's appeal, finding that claimant's circumstances had not changed since 2009.

4. In 2014, SDRC reassessed claimant's continued need for respite services and determined that he no longer required this service. SDRC proposed reducing claimant's respite hours to zero on a quarterly reduction basis.

5. Claimant's mother timely appealed that determination, and this hearing ensued.

EVIDENCE ADDUCED AT HEARING

6. Sue Cavanaugh is Program Manager at SDRC. She holds a B.A. in human psychology and a M.A. in human behavior. Ms. Cavanaugh has worked at SDRC for the last twenty years and before that worked in various capacities for various mental health programs.

On May 23, 2014, Ms. Cavanaugh conducted a review and reassessment of claimant's need for respite services to determine whether claimant remains qualified for the exemption. Ms. Cavanaugh reviewed claimant's Individual Program Plan (IPP), assessments from C2C, a report from clinical psychologist Gregory Carinci, claimant's Individual Service Plan (ISP) from C2C, and a report from claimant's C2C internship supervisor, Dan Gutowski. Ms. Cavanaugh also talked with claimant's respite care provider, staff at C2C, and claimant's SDRC Service Coordinator (CSC), Nylene Anderson. On several occasions, Ms. Cavanaugh and Ms. Anderson attempted to meet with claimant's mother, but claimant's mother was not able to meet with them. Ms. Cavanaugh also asked that claimant's mother provide a written response regarding claimant's need for respite services. Claimant's mother did not provide a response. As a result of Ms. Cavanaugh's reassessment, SDRC sought to reduce and then eliminate claimant's respite services.

7. Ms. Cavanaugh testified that claimant is no longer eligible for specialized respite care. He does not need a babysitter. Claimant can remain safely in his house by himself.

Ms. Cavanaugh described claimant as highly functioning. He attends the C2C Program, which requires that he be able "to navigate the campus independently." This program also requires that a person applying for the program meet the same requirements as all other students applying to the college; that he or she has a high school diploma; that he or she falls within a specific IQ range; and that he or she has

basic safety skills. Ms. Cavanaugh added that few regional center consumers would be able to attend the program. According to claimant's Fall 2014 school schedule, he attends the program Monday through Friday from 9 a.m. to 2 p.m. In the Spring 2014 session, claimant attended the program from 9 a.m. to 6 p.m. four days a week, and from 8:30 a.m. to 2:00 p.m. on Fridays.

Ms. Cavanaugh acknowledged that claimant requires help with his organizational skills and that he can be forgetful at times. Claimant's difficulties with organization are documented in his C2C ISP. He has a coach to help him improve his organizational skills. Notwithstanding this challenge, claimant is doing well in the C2C Program. Ms. Cavanaugh cited the Employer Survey completed by Mr. Gutowski, who supervises claimant at the school gym. Mr. Gutowski reported that claimant is always punctual; he is clean, neat and appropriately dressed; he can work under pressure without visible adverse reactions; he exhibits socially appropriate behavior for the work setting; he initiates necessary communication; and he always works well with others. As strengths, Mr. Gutowski added that claimant is "100% focused" on every task he gives claimant; he is not easily distracted; and he uses his time very efficiently. Mr. Gutowski added that claimant is a blessing to work with every day and that claimant planned to continue working in the fall.

In addition, Ms. Cavanaugh cited the January to March 2014 Quarterly Report from claimant's Educational Coach at C2C, Laurie Franklin. Ms. Franklin reported that claimant has greatly improved from last semester and that he uses the C2C staff, the English Tutorial Lab, and another tutoring organization to help him with his English homework. Claimant received a C in English. Ms. Franklin noted that claimant struggles with organization.

Ms. Franklin noted that claimant told her that he likes his job at the gym, and he likes "getting to help and meet lots of people." Claimant is a good friend to the other

C2C students and shares his time with them, either by asking them to join him for movies or by going to their houses.

8. In assessing claimant's need for continued respite services, Ms. Cavanaugh could not reconcile the reports she received from claimant's C2C program with the reports from claimant's mother. Claimant's mother asserted that that claimant is safe for only very short periods of time in the community or at home because of his weak awareness of personal boundaries and his behavior problems. These reports conflicted with the C2C reports in which claimant was described as acting appropriately in social settings.

Ms. Cavanaugh attributed claimant's behaviors, as reported by his mother, not to safety issues but to "relational issues" between claimant and his mother. Due to this "relational conflict," claimant's mother recently called SDRC regarding the possibility of claimant moving out of the family home.

Clinical psychologist Gregory Carinci consulted with claimant and his mother for more than 15 hours because of claimant's mother's concerns about claimant's increasingly disorganized behavior, distractibility, non-compliance, and lack of appropriate socialization and self-help/independent skills. Claimant's mother wanted Applied Benefit Analysis (ABA) therapy for claimant. Dr. Carinci identified "relational conflict" between claimant and his mother. He observed that claimant's mother "often presented as frustrated and overwhelmed with claimant's forgetfulness and his 'lazy' presentation." Dr. Carinci did not recommend ABA therapy for claimant; instead, he referred claimant to SDRC. Dr. Carinci wrote a report dated June 15, 2013.

9. Ms. Cavanaugh referenced SDRC's Purchase of Services Standards Manual (POS Manual) used to assess a consumer's need for respite services. Pursuant to the POS Manual, SDRC takes into consideration the intensity of a consumer's care and all factors

and resources such as natural family supports, number of hours of school services, IHSS, day programs, military benefits, etc.

10. Claimant's mother testified that she needs respite services because she must help claimant more than she would like despite his age. Due to claimant's father's illness, claimant's mother is the only natural support. Claimant is not emotionally ready to move from the family home and became upset when his mother raised the issue with him.

Claimant's mother works very hard helping claimant because his organizational skills are "nil," and she believes that his lack of organizational skills could lead to safety concerns. She has to wake him up in the morning to get him to school; she has to make sure he takes his medication; and she has to make sure he eats before he goes to school. Claimant constantly loses important items. Claimant has lost his bus pass four or five times; he has broken the charger for his cell phone; and he leaves items in the morning when he goes to school. Claimant maintains contact with his mother by phone regularly during the day. Once, when he lost his cell phone, he had to go to a restaurant to call her.

Claimant's mother is exasperated by what she described as claimant's maladaptive behaviors: he has tantrums; he uses expletives; and recently, he threw an item after his father refused to go to his doctor's office. She explained that claimant's behavior may be due to his difficulty dealing with his father's illness. She believes ABA services would be appropriate for him.

Claimant also neglects his personal hygiene, and his mother has to remind him to take care of himself. He recently had an ingrown toe nail that became infected requiring surgery by a podiatrist. Claimant did not tell his mother about his toe until it was infected. For two weeks, after the surgery, claimant's mother had to ensure that the area around his toe remained clean because claimant was unable to do this on his own.

Claimant's mother described other behaviors that concern her. Once, she came home and found the microwave burning. After claimant went to a football game, he went into her room with dirty shoes, despite being admonished not to do this in order to respect her personal boundaries.

Her exasperation and palpable frustration with claimant are aggravated by the multiple stressors she presently faces. Claimant's mother cares for not only claimant but also for her husband. She is embroiled in civil litigation relating to a legal "trust" issue involving family members. To help her cope with these stressors, claimant's mother is receiving mental health therapy, and she provided a letter from Pamela Rood, MFT, who evaluated her on September 2, 2014.

11. Claimant submitted a letter, and an addendum, from his respite care provider, Carol Wood. Ms. Wood has spent considerable time over the last eight years providing respite care for claimant. She said that "because (claimant's) judgment is often unwise and he is impulsive, (she) could easily imagine him becoming involved in an unsafe or dangerous situation." At the same time, Ms. Cook noted that claimant has matured and has become more socially aware and self-confident; as a result, he has resisted her supervision as a "grandmotherly woman." This is due, she believes, to claimant's evolving sense of self. As a result, claimant currently has a younger male respite care provider with whom claimant can interact more appropriately.

In her addendum letter, Ms. Wood was asked to answer whether claimant is an even-tempered young man. She answered that he is usually even-tempered in public places and with his friends but, at home his temper often, and suddenly, flairs.

12. Claimant provided letters from Carol Cook, Linda LeBel, and Gilda Fallah. In addition to her letter, Ms. Cook testified. All of these individuals emphasized the amount of work claimant's mother does for claimant, claimant's needs, and claimant's mother's need for respite care.

ARGUMENT OF THE PARTIES

13. SDRC argued that claimant has greatly improved since 2009, when he qualified for a respite exemption. He can take the bus to school and return home and does not have safety issues while at school. Thus, he no longer qualifies for respite services.

Claimant's mother argued that claimant still qualifies for respite services because his maladaptive behaviors and lack of organizational skills can lead to safety issues.

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EVALUATION

14. As defined in SDRC's POS Manual, respite refers to the provision of intermittent or regularly scheduled temporary non-medical care to persons who require care and supervision that exceeds that of an individual of the same age without developmental disabilities. Respite is one of an array of family support services that assists the family to maintain the consumer at home; provides appropriate care and supervision to protect the consumer's safety in the absence of family members; relieves family members from the constantly demanding responsibility of caring for a consumer; and attends to the consumer's basic self-help and other activities of daily living.

The evidence established that claimant has matured and become more independent since 2012 after he entered the C2C Program. Claimant, however, still has needs that exceed the needs of an individual his age without a developmental disability. His lack of organizational skills and his forgetfulness raise safety concerns and require his mother's attention; he requires assistance with his self-care; and he exhibits maladaptive behaviors that occasionally include the destruction of property. To ensure that he can remain in the family home as he moves towards becoming more independent, an appropriate number of respite hours are required. However, claimant

does not require more than 20 hours per month of respite considering his school schedule, his high functioning level and his level of independence. Claimant no longer qualifies for an exemption for respite services. The evidence demonstrated that 20 hours of respite per month will give claimant's mother a sufficient break from caring for claimant when he is at home.

LEGAL CONCLUSIONS

BURDEN OF PROOF AND STANDARD OF EVIDENCE

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) It was SDRC's burden to establish that claimant's circumstances had changed such that he no longer qualified for an exemption or for respite services.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs, or is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

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THE LANTERMAN ACT

4. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature declared that the State of California accepts a responsibility for persons with developmental disabilities and an obligation to them that it must discharge. The Legislature declared that an array of services and supports should be established to

meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

5. The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. and Inst. Code, § 4620 et seq.) Regional centers are responsible for developing and implementing individualized program plans (IPPs), for taking into account consumer needs and preferences, and for ensuring cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

6. Welfare and Institutions Code section 4512, subdivision (b), lists examples of the kinds of services and supports that may be funded. The determination of which services and supports are necessary for each consumer shall be made through the IPP process, a collaborative process involving consumer and service agency representatives.

RESPIRE SERVICES

7. Respite under the Lanterman Act is defined as a service intended “to provide intermittent or regularly scheduled temporary relief from the care of a developmentally disabled family member.” (Welf. & Inst. Code, § 4690.2, subd. (a).)

8. Respite services are to be purchased by a regional center based upon the individual needs of a given consumer and his or her family. In making its determination of the quantum of respite services for a particular family, a regional center should consider: assistance to family members in maintaining the client at home; provision for appropriate care and supervision to ensure the client’s safety in the absence of family members; relief of family members from the constantly demanding responsibilities of caring for a client; and, attendance to the client’s basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines that would ordinarily be performed by the family member. (Welf. & Inst. Code, § 4690.2, subd. (a).)

9. Regional centers are required to provide services in a cost-effective manner (Welf. & Inst. Code, § 4646, subdivision (a)) and may purchase respite hours only when the care and supervision needs of a consumer exceed that of an individual of the same age without a developmental disability (Welf. & Inst. Code, § 4686.5, subd. (a)(1)).

10. Effective July 1, 2009, in response to a state-wide budgetary crisis, the California Legislature adopted Welfare and Institutions Code section 4686.5, which limited respite services available to regional center consumers to 90 hours per quarter. Section 4686.5, subdivision (a)(3)(A), provides an exemption from the hourly limit under certain circumstances.

CAUSE EXISTS TO DENY CLAIMANT'S APPEAL IN PART AND GRANT CLAIMANT'S APPEAL IN PART

11. Pursuant to Welfare and Institutions Code section 4690.2, subdivision (a), claimant requires 20 hours of respite per month.

ORDER

Claimant's appeal of the regional center's decision to reduce claimant's respite services is granted in part and denied in part. SDRC shall fund 20 hours per month of respite services for claimant.

Dated: October 14, 2014

_____/s/_____

ABRAHAM M. LEVY

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 the State of California.