

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016040634

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 21, 2016, at Pomona, California.

Daniela Santana, Fair Hearing Manager, appeared and represented the San Gabriel/Pomona Regional Center (the Service Agency).

Claimant's mother¹ appeared and represented claimant. Claimant was also present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

¹ Claimant and his family are not identified by name in order to protect their privacy.

ISSUES

The issue in this matter is whether the Service Agency should increase respite care from 16 hours per month to 30 hours per month.

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EVIDENCE CONSIDERED

Documents: Service Agency's Exhibits 1-9; Claimant's Exhibits A-C.

Testimony: Claimant's mother; Daniela Santana, Fair Hearing Manager.

FACTUAL FINDINGS

1. Claimant is a nine-year-old boy, eligible for regional center services based on a diagnosis of Autism Spectrum Disorder. He lives with his mother, a single parent, and his adult brother.
2. Claimant is ambulatory and in overall good health, except that he has been diagnosed with encopresis² and asthma. He is not toilet trained and soils approximately five diapers per day. Claimant was determined to be eligible for special education services and attended a regular classroom at a public day school, but went weeks without a bowel movement. The school district attempted to accommodate claimant's condition by assigning a personal aid, but claimant is unable to defecate unless no one is around. Claimant is now home schooled and becomes nervous in public settings. When his mother takes him on excursions to the grocery store or the doctor, claimant demands to return home within 30 minutes.

² Encopresis is commonly known as a condition that causes involuntary defecation, and is associated with emotional disturbance or psychiatric disorders.

3. Claimant has also exhibits aggressive behaviors. When a therapist came to the house for a behavioral treatment session, claimant threw objects, locked himself in his room, hid under the bed, and refused to cooperate. On other occasions, claimant has punched people on the head, back, and any other body part within his reach. He also bit and spit at others. He has tantrums if his demands are not met. He has eloped, climbed on tables, used foul language, cried, screamed, and thrown objects on the floor.
4. Claimant received behavioral programming with Familias First. Programming had a positive effect and “[c]hallenging behaviors decreased during the authorization period.” (Ex. 8, p. 9.) However, claimant did not consistently attend the programming. On April 30, 2015, funding transitioned from the Service Agency to private insurance or Medi-Cal. Although he qualifies for funding through Medi-Cal, claimant no longer receives any behavioral treatment.
5. On July 31, 2015, the Service Agency and claimant, with his mother, participated in an Individual Program Plan (IPP) meeting. The IPP reflects that claimant’s mother “is very involved in [claimant’s] life and supportive of his needs,” and that claimant “doesn’t like going on community outings, and prefers to stay home.” (Ex. 3.) The IPP identified seven desired outcomes of services, setting forth the mother’s responsibilities with respect to each desired outcome. One of the desired outcomes is to provide the mother with respite services that will allow her to take breaks from claimant’s care, which is exhausting.
6. The Service Agency was funding 12 hours per month of respite care to give claimant’s mother a break from providing care to claimant. The Service Agency determined an increase in respite care to 16 hours per month was

appropriate, taking into account various factors including, but not limited to, the mother's status as a single parent and the severity of claimant's health and disability. The Service Agency has a Purchase of Service Policy that allows up to 90 hours of in-home respite care per quarter, with the following caveat: "Typically, a family's need for respite can be satisfied with 16 hours of in-home respite services per month or less." (Ex. 9.)

7. Claimant's mother requested the maximum allowable respite care, an increase from 16 hours per month to 30 hours per month, based on her desire to attend a training workshop in August and the need to run household and personal errands in public without claimant.
8. The Service Agency denied the request because, as was characterized by the fair hearing representative, an increase in respite care would serve only as a "Band-Aid," and have negligible effect on the underlying medical and behavioral conditions. Restoring the behavioral treatment and transitioning claimant to a general education setting would provide the mother with additional respite. The Service Agency is willing to provide advocacy services to assist claimant in making the transition to Medi-Cal funded behavioral health treatment. Also, the Service Agency is willing to fund an after-school program that would give the mother some respite two to three hours per day, five days per week. At the hearing, the mother testified that she was unfamiliar with the offered services and was willing to consider these alternatives.
9. Claimant's mother is currently unemployed. She last worked as a foster mother four years ago. She recently applied to renew her license to serve as a foster parent and is tentatively authorized to provide care for two children.

LEGAL CONCLUSIONS

1. Claimant bears the burden of proof as the party seeking government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)
The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)
2. Welfare and Institutions Code section 4686.5 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. In this case, the Service Agency has granted 16 hours per month of respite care, acknowledging that claimant's care and supervision needs exceed that of an individual of the same age without developmental disabilities. Claimant's diagnosis of encopresis and his aggressive behaviors are causing atypical burdens on his mother. The IPP identifies seven desired outcomes for regional center services, with the mother bearing some responsibilities with respect to each desired outcome. Allowing the mother a break for one hour per day on average is reasonable and within the limitations of Welfare and Institutions Code section 4686.5. The Service Agency's Purchase of Service Policy authorizes the requested amounts and its caveat is inapplicable under the facts and circumstances of claimant's case. The additional respite is for claimant's benefit so that his mother may better care for him.

4. The need for respite care may increase or decrease as the Service Agency implements other available services and claimant's mother resumes working as a foster parent. Nonetheless, claimant has proven by a preponderance of the evidence that he is entitled to an immediate increase of respite care to 30 hour per month, subject to provisions for review at his next IPP meeting.

ORDER

Claimant's appeal is granted. The Service Agency shall fund 30 hours per month in respite services.

DATED: July 27, 2016

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.