

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2017010656

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DECISION

This matter was heard before Administrative Law Judge (ALJ) Joy Redmon, Office of Administrative Hearings (OAH), State of California, in Sacramento, California, on May 26, 2017.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant was represented by his mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on May 26, 2017.

ISSUE

Issue 1: May ACRC reduce claimant's in-home respite hours to a maximum of 90 per quarter or does he qualify for an exemption?

Issue 2: If claimant qualifies for an exemption, is he eligible for up to 150 in-home respite hours per quarter?

## FACTUAL FINDINGS

1. Claimant is 15 years old and resides with his mother and older sister. He is eligible for ACRC services based on a diagnosis of autism. Claimant's mother is their full-time caregiver and she does not work outside the home. Claimant requires constant supervision in the home for safety concerns and in the community based on his tendency to elope. Claimant also requires assistance with daily tasks such as bathing, toileting, hygiene care, and dressing. Claimant receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welfare and Institutions Code section 4500 et seq.)<sup>1</sup> Claimant's Individual Program Plan (IPP) provides for services and supports from ACRC, which include in-home respite.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

<sup>2</sup> Regional centers are governed by the provisions of the Lanterman Act. Section 4690.2, in relevant part, specifies:

(a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide those services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. "In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and

## PRIOR CASE

2. On March 11, 2016, claimant's mother submitted a letter to ACRC from Catherine Jo Shao Ho, D.O., Department of Internal Medicine, Kaiser Permanente. In her letter, Dr. Shao Ho asserted that claimant required increased respite hours through May 15, 2016, due to his mother's tendonitis. At that time claimant was approved for up to 90 in-home respite hours per quarter. Jennifer Bloom, ACRC Client Services Manager, notified claimant's mother on March 25, 2016, that an exemption was granted temporarily increasing claimant's respite hours to 120 hours per quarter based upon this medical information.<sup>3</sup>

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supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do 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 the usual daily routines which would ordinarily be performed by the family members.

<sup>3</sup> Section 4648.5 limits the amount of respite that regional centers may provide for consumer caregivers as follows:

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

[¶] . . . [¶]

(4) A regional center shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day,

3. On May 18, 2016, claimant's mother submitted an additional letter from Dr. Shao Ho that placed claimant's mother, "... on modified duty at work and at home," through June 17, 2016. On June 15, 2016, Ms. Bloom notified claimant's mother that claimant's respite hours had been increased an additional 30 hours through the end of June 2016. This increased the total respite hours to 150 hours per quarter.

4. On June 29, 2016, claimant's mother submitted a letter from Jeanne Taylor, D.O., Family Practice, Internal Medicine, Kaiser Permanente, that requested three hours per day respite to, "... help her child," due to her, "... wrist pain." On July 25, 2016, ACRC issued a Notice of Proposed Action (NOPA) denying the request for three hours per day respite. Claimant timely filed a Fair Hearing Request appealing that decision. The matter proceeded to hearing before OAH and a decision was issued on February 3, 2017, denying claimant's request to increase respite hours from 150 per quarter to three hours daily.

#### CURRENT DISPUTE

5. On January 9, 2017, the IPP maintained 150 respite hours per quarter but indicated that claimant's mother was informed, "... that the hours would need to be

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while the parents are engaged in employment outside of the home or educational activities leading to employment, or both.

(5) A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family services plan (IFSP).

decreased back to 90 hours per quarter as the need for 150 hours hasn't been substantiated."

6. Claimant's mother asserted claimant's need for 150 respite hours was established by the "Work Status Reports" she provided to ACRC from various Kaiser doctors dated May 13, 2016, June 17, 2016, June 27, 2016, July 14, 2016, August 31, 2016, and November 30, 2016. The original letters upon which ACRC granted the exemption, however, were narrative letters that specifically addressed the need for temporary respite services due to claimant's mother's wrist pain and included specified timeframes. The Work Status Reports did not address respite hours. Instead, they provided percentage limits for claimant's mother's work and activities of daily living including: climbing ladders, using scaffolding, intermittent neck motions, reaching, keyboarding, repetitive right and left hand movements, gripping, grasping, pushing, and pulling.

7. On January 11, 2017, ACRC sent claimant's mother an NOPA reducing in-home respite hours from 150 per quarter to 90 hours maximum per quarter. Claimant timely appealed that determination. ACRC has continued to fund 150 hours per quarter as Aid Paid Pending the decision in this matter.

#### CLAIMANT'S MOTHER'S CURRENT MEDICAL STATUS

8. Claimant's mother was referred to Vanessa McGowan, M.D. to treat both her right and left wrist. Dr. McGowan began treating claimant's mother for Carpal Tunnel Syndrome. Over the course of several months, treatments have included physical therapy, splinting, and injections. While the treatments have provided some relief, claimant's mother continues to experience pain in both wrists that is exacerbated by meeting claimant's safety and personal care needs. Claimant's mother has been referred to a surgeon who evaluated her and concluded she is a candidate for surgery to both wrists. She is not currently scheduled for surgery but believes two separate surgeries with

associated recovery time are imminent. She is confident that after she recovers, the need for additional respite hours will be resolved.

9. On May 21, 2017, claimant's mother submitted an evidence binder to ACRC which included emails from Dr. McGowan documenting the treatment discussed above, as well as two "documented encounter" reports authored by Dr. Shao Ho. These reports include the percentage limitations on activities similar to the Work Status Reports. They also include the statement, "[i]f modified activity is not accommodated by the employer then this patient is considered temporarily and totally disabled from their regular work for the designated time. . ." The first report was operative from April 5, 2017, through May 31, 2017. The second report is operative from May 9, 2017, through August 9, 2017.

#### ACRC'S EXEMPTION DETERMINATION

10. Ms. Bloom testified that the Work Status Reports did not support an exemption for claimant above 90 respite hours per quarter because they failed to explain how the limited work activities impacted claimant's mother's ability to meet claimant's supervision and care needs at home and in the community. Additionally, while the reports covered a specified time period, they were long-term restrictions and not an "extraordinary event." Ms. Bloom explained that to qualify for an exemption, the law requires that the extraordinary event be for a limited time and have an end date. ACRC's Service Policy Manual supports that requirement by specifying "[r]espice services are intermittent or regularly scheduled temporary care and supervision for a regional center consumer who resides with a family member."

11. Ms. Bloom considered established criteria to assess claimant's respite need and concluded that the documents previously provided did not establish he was entitled to an exemption for respite hours exceeding 90 per quarter based on his mother's status. Ms. Bloom's opinion changed, however, after reviewing the additional information provided in claimant's evidence binder. Ms. Bloom testified that, had she seen the email

and the two most recent medical reports, she would have granted the exception and approved up to 150 hours per quarter of in-home respite care through August 9, 2017.

## DISCUSSION

12. Claimant requires constant supervision both at home and in the community. His mother is his primary caregiver. She sustained an injury to both wrists that impacts her ability to meet claimant's safety and care needs. Ms. Bloom established that the Work Status Reports did not warrant a continued exemption to the statutory maximum of up to 90 hours per quarter. However, her candid and thoughtful testimony after reviewing the newly submitted information, specifically the two most recent medical reports and the emails exchanged between claimant's mother and Dr. McGowan, established that claimant is entitled to an exemption at this time. The testimony of Ms. Bloom and claimant's mother established that the exemption through August 9, 2017, for up to 150 quarter hours of in-home respite care is appropriate.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . to support their integration into the mainstream life of the community . . . and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a), provides:



(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Section 4646.4, subdivision (a), in pertinent part provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

4. The burden in this matter is on ACRC to establish that the proposed action to reduce respite hours to the statutory maximum set forth in Section 4686.5 is appropriate. (Evid. Code, § 500.) As set forth in Factual Finding 12, ACRC has not met this burden. Rather, the evidence established that claimant requires up to 150 hours per quarter for respite care at this time.

## ORDER

Claimant's appeal is GRANTED. ACRC will fund up to 150 hours per quarter of in-home respite care through August 9, 2017.

DATED: May 31, 2017

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JOY REDMON

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**