

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2017120990

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on February 13, 2017. Cynthia J. Waterson, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or service agency). Claimant's parents represented Claimant.<sup>1</sup>

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order dismissing the Claimant's appeal.

ISSUES

1. Whether the service agency should retroactively fund 129 hours per month of one-on-one overnight respite care services for Claimant?

---

<sup>1</sup> Claimant and Claimant's parents are not identified by their names to preserve confidentiality.

2. Whether the service agency should retroactively fund a second shift of 150 hours per month of one-on-one overnight respite care services for Claimant?

## FACTUAL FINDINGS

1. Claimant is a conserved 24-year-old consumer of FDLRC based on his qualifying diagnosis of autism. He resides with his parents.

2. Claimant's most current Individual Program Plan (IPP), dated September 18, 2017, indicates that Claimant "has limited self-help skills and requires a high level of support and supervision at all times to be able to complete proper toileting, bathing, grooming, dressing, and brushing of teeth. . . . His independent and practical skills are limited due to his extreme behaviors and poor safety awareness. He exhibits maladaptive behaviors such as extreme tantrums and self-injurious behaviors (head/face banging and biting hands). [Claimant's] behavior episodes are unpredictable and can be extreme at times requiring police intervention . . . ." (Exh. 10.)

3. On May 23, 2017, Parents requested FDLRC to fund one-on-one overnight respite care services for Claimant. In response, the service agency informed Parents that an assessment of Claimant's needs for such services is required and that the assessment would take at least two weeks to complete. Between June 2 and June 8, 2017, Parents and the service agency negotiated the date by which an assessment would be completed. Initially, a June 14, 2017 completion date was extended to July 3, 2017; however, Parents later determined not to grant the service agency any additional time within which to complete the assessment. Parents requested that the service agency rely instead on Claimant's medical records to determine Claimant's needs for one-on-one overnight respite care services.

4. By letter dated June 16, 2017, FDLRC denied the request for one-on-one overnight respite care services for Claimant. The June 16, 2017 letter explains to Parents that "1:1 overnight coverage seven days a week is not justified due to the lack of

information required to determine [Claimant's] needs for night time assistance." (Exh. 4.) The June 16, 2017 letter cites to sections 4512, subdivision (b), 4646, subdivision (b), and 4646.5, subdivision (a)(1) of the Lanterman Developmental Disabilities Act (Lanterman Act). (See Legal Conclusions 2 through 5.)

5. On July 3, 2017, Parents requested a fair hearing. An informal meeting between Parents and the relevant service agency personnel occurred on July 27, 2017. At that informal meeting Parents requested that the entity We Care About You (WCAY) conduct an assessment within one week. The service agency objected noting that an accurate assessment requires more time to complete. Parents relented.

6. On August 8, 2017, WCAY initiated an overnight sleep assessment of Claimant. On September 18, 2017, WCAY provided the service agency with an assessment report. Based on that assessment, the service agency determined that Claimant had a demonstrated need for overnight respite care services. Subsequently, on October 16, 2017, the service agency and Parents executed a Settlement Agreement, which in part states the following:

3. The Respondent [Frank D. Lanterman Regional Center] agrees to fund 219 hours of respite with a staffing ratio of 1:1 for overnight services through 24 Hour Home Care.
4. The Respondent [Frank D. Lanterman Regional Center] agrees to fund up to 150 hours of respite per month for overnight services, to serve as a second staff, if the need arose [sic], through 24 Hour Home Care.

(Exh. 5)

7. The October 16, 2017 Settlement Agreement is fully integrated, and contains no provision for service agency-funded overnight respite care services retroactive to May 23, 2016. (See Exh. 5.)

8. On October 23, 2017, 24 Hour Home Care commenced providing Claimant with service agency-funded overnight respite care services.

9. This matter arose when Parents sought to obtain funding retroactively for overnight respite services rendered to Claimant between May 23 and October 16, 2017. FDLRC denied the retroactive funding request, and, on behalf of Claimant, Parents filed a December 19, 2017 Fair Hearing Request asserting “unnecessary delays” and identifying “pay retroactively according to the agreement from 5/23/17” as a remedy. (See Exh. 1.) Thereafter, these proceedings ensued.

10. At the administrative hearing, parents contended that the service agency should fund overnight respite services retroactively to the date of their request for such services—May 23, 2017. In support of that contention, Parents testified that Claimant was wakeful between 8 p.m. and 8 a.m. on May 23 through October 16, 2017, that Claimant engaged in disruptive behaviors, and that they or their daughter provided care to Claimant. Parents argued that on a prior occasion they had “an exact, same case” and that they were granted retroactive compensatory relief.

11. The service agency correctly maintained that its prior determination to fund retroactively a service or support for Claimant under other unrelated circumstances is not binding on this matter. In this matter, absent a demonstrated emergency or exceptional circumstance, time was needed to assess Claimant’s needs and service eligibility prior to any grant of funding for overnight respite care services consistent with the service agency’s purchase of service policies and practice. The service agency did not regard Claimant’s behavioral history as “immediate” or emergent. Although Claimant presents with a history of disruptive behaviors during the night time, the service agency had no information from Parents of any emergency or exceptional circumstance that would have warranted an exemption from its policies and practice. Because Claimant resides with Parents, the service agency regarded Parents as a part of Claimant’s “built-in support system,” which was available and capable of assisting Claimant with the effects of his developmental disability, including nighttime sleeplessness.

## LEGAL CONCLUSIONS

1. By reason of Factual Findings 1 through 11 and Legal Conclusions 2 through 8, cause does not exist to grant Claimant's appeal.

2. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (*Id.* at § 4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.)

3. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. The planning process includes gathering information and conducting assessments. (*Id.* at § 4646.5, subd. (a).)

4. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (*Id.* at § 4512, subd. (b).) Services and supports include respite. (*Id.*)

5. When purchasing services and supports a regional center must conform to its purchase of service guidelines. (*Id.* at § 4646.4, subd. (a)(1).)

6. As the party seeking funding for Lanterman Act services or supports, Claimant bears the burden of establishing his entitlement to those services or supports by

preponderance of the evidence. (Evid. Code, § 500.)<sup>2</sup>

7. On May 23, 2017, Parents requested FDLRC to fund one-on-one overnight respite care services for Claimant. Consistent with its policies and practice, the service agency commenced processing Claimant's request by informing Parents that it was necessary to gather information about and conduct an assessment of Claimant's needs to determine Claimant's service eligibility. After a back-and-forth, Parents and the service agency agreed to a time frame within which the necessary assessment would occur. No evidence suggests that Parents provided the service agency with information that would reasonably alert the service agency that Claimant's long-extant challenging behaviors had escalated into an emergency warranting an exemption from the service agency's usual policies and practice for handling requests for the purchase of services. Ultimately, Parents and the service agency executed an October 16, 2017 Settlement Agreement, which provides Claimant with 129 hours per month of one-on-one overnight respite care services and a second shift of 150 hours per month of one-on-one overnight respite care services *commencing* October 23, 2017. There is no provision for service agency-funded overnight respite care services retroactive to May 23, 2017.

8. Under these circumstances, Claimant has failed to meet his burden of establishing by a preponderance of evidence his entitlement to service agency-funded overnight respite care services retroactive to May 23, 2017.

## ORDER

1. Claimant's appeal is denied.
2. Frank D. Lanterman Regional Center may decline to fund 129 hours per

---

<sup>2</sup> Evidence Code section 500 provides that "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

month of one-on-one overnight respite care services and a second shift of 150 hours per month of one-on-one overnight respite care services for Claimant retroactively for the period May 23 through October 16, 2017.

DATED:

---

JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

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