

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018100113

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on November 7, 2018.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant.

The record was closed and the matter submitted on November 7, 2018.

ISSUE

Should IRC increase the respite hours claimant receives from 24 hours per month to 32 hours per month?

FACTUAL FINDINGS

1. Claimant is a three-year-old boy who qualified for regional center services on June 14, 2018, based on a diagnosis of autism. Claimant resides with his mother and

father. Also living in the home are claimant's two young cousins, ages 8 and 11, for whom claimant's mother has agreed to provide foster care services.

2. According to a psychological evaluation completed by IRC Staff Psychologist Holly Miller on June 7, 2018, the following behavioral concerns were noted:

Claimant demonstrates daily aggressive behavior towards adults (i.e. hitting), such as when toys are taken from him. When upset, he sometimes hits his head against the wall, which occurs a few times per week. Claimant shows very little fear of danger and often engages in behaviors that could result in injury. For example, he will approach heat/open flame, attempts to walk off high platforms, and reaches his body over the top bunk of the bed without awareness that he may fall. When in public, he elopes if not strapped to his chair. When he elopes, claimant may briefly pause when called, but will not return to his parent, who must chase after him. On the other hand, claimant shows unusual fears of other objects, such as the bathtub. He appears apprehensive at school and clings to his parent. There are no concerns with sleep at this time, though claimant's mother reported a history of night terrors (improved since taking melatonin). Claimant has a short attention span, often does not look where he is going, and does not seem aware of his environment. He frequently trips, falls, or runs into objects.

3. At claimant's August 7, 2018, Individualized Program Plan (IPP) meeting, claimant's mother requested 32 hours of preferred provider respite services.

4. On August 15, 2018, IRC sent claimant's mother a Notice of Proposed Action partially granting claimant's mother's request for preferred provider respite. IRC approved 24 hours of preferred provider respite services, to be provided through Cambrian Home Care. IRC took into consideration claimant's age, the fact that all three-year-olds require constant supervision, parental responsibility, and the time claimant is sleeping and in school, in order to reach the decision that 24 hours of respite were sufficient.

5. On September 7, 2018, claimant's mother filed a Fair Hearing Request contesting IRC's determination. She stated, "Requested respite services for my son, however Inland Regional Center only approved 24 hours only [sic], when I justifiably requested 32 hours per month." (Emphasis in original.)

6. Chelsey Van Goey has been claimant's consumer services coordinator since he became eligible for regional center services. Ms. Van Goey has worked at IRC for over 13 years and has extensive experience working with vendors who provide services to developmentally disabled children and adults. Ms. Van Goey testified that claimant is currently receiving occupational and speech therapy and would benefit from behavioral intervention services. Claimant's father works outside the home and claimant's mother is a "stay at home mom." Claimant's health is stable and he has not required any emergency room visits in the past year. Claimant's needs for care and supervision are "pretty typical" of what would be expected for any three-year-old. As such, there has not been a significant change in the level of care claimant requires since he became a consumer that would justify additional respite hours.

7. IRC Program Manager Amy Clark testified at the hearing. Ms. Clark said that IRC considered parental responsibility, the time that claimant sleeps, the time that claimant attends school, and the typical needs of a three-year-old in deciding to grant 24 hours of respite services. Ms. Clark said that it was her understanding that claimant

attends school five days per week for six hours per day and is bussed to school. Typical non-developmentally-disabled three-year-olds require supervision at all times. However, because claimant does have self-injurious behaviors, IRC decided to grant 24 hours of respite services, instead of the 16 hours the agency would typically recommend. Claimant does not currently have In-Home Supportive Services (IHSS), a generic resource, but IRC would be willing to attend the assessment should claimant's mother decide to pursue such services.

8. Claimant's mother testified that claimant constantly cries. He elopes. If she takes him out in public to shop, claimant must remain in the shopping cart. Claimant is not potty trained. Claimant puts things in his mouth if he is not being watched. If claimant wakes up at night she must tend to him. Claimant's father is "in denial" that their son is developmentally disabled and does not help her. Claimant's mother feels she needs the additional respite hours because she does not have time for herself and does not have a social life. Claimant's mother also provides foster care for her niece and nephew who have their own medical and psychological problems, including Attention Deficit Hyperactivity Disorder and Oppositional Defiance Disorder. Claimant's mother said she lives with stress all the time and even had to get rid of her dogs. Claimant's mother takes claimant to school now because on one occasion the school forgot claimant on the bus. Claimant attends school four days per week, five hours per day.<sup>1</sup> Claimant's mother has only been using respite services for one month and claimant's grandmother is the provider.

---

<sup>1</sup> IRC Program Manager Amy Clark testified on rebuttal that even though IRC believed claimant attended school five days per week rather than four days per week, the new information did not change her conclusion that 24 hours of preferred provider respite hours is sufficient.

9. Maria Rodriguez is claimant's mother's aunt. She testified that claimant is not a typical child. Claimant's mother needs a break. She feels that claimant's mother needs the respite hours to "reconnect with her husband," "do housework," and "have free time for herself."

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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 habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all of the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the

consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue that coverage." As the family is eligible for IHSS, but has not chosen to pursue it, IRC cannot fund the requested services.

12. California Code of Regulations, title 17, section 54302, subdivision (a)(3), provides:

In-home Respite Services means intermittent or regularly scheduled temporary non-medical care and supervision provided in the consumer's own home and designed to do all of the following:

(A) Assist family members in maintaining the consumer in the home

(B) Provide appropriate care and supervision to protect the consumer's safety in the absence of family members

(C) Relieve family members from the constantly demanding responsibility of caring for a consumer

(D) Attend to the consumer's basic self-help needs and other activities of daily living, including interaction, socialization,



and continuation of daily routines which would ordinarily be performed by the family member

## EVALUATION

13. Claimant's mother had the burden of demonstrating the need for the requested service or support, in this case, an increase in preferred provider respite services from 24 hours per month to 32 hours per month. Claimant did not meet that burden.

An increase in respite hours would typically be authorized if there was a significant change in the level of care claimant required. Claimant has only been a consumer since June 2018, and there is no evidence that his level of care has changed significantly since that time. Claimant is also only three-years-old, and typically, any three-year-old regardless of a developmental disability would require constant supervision. Given that claimant has some behavioral challenges, IRC nonetheless decided to grant 24 hours of preferred provider respite, which is more than the 16 hours they would typically grant for a toddler. Claimant spends four days per week in school for five hours per day. Parents who have a child attending school typically tend to their errands and personal needs while the child is in school. Claimant's father works outside the home; but errands, personal needs outside the home, and needed rest can be had by one parent in a two-parent household when the other parent is home. In consideration of claimant's needs, claimant's age, claimant's level of care, the hours claimant is in school, sleep time, parental responsibility in a two-parent household, and the respite hours already provided, a preponderance of the evidence does not support the request for an increase in respite hours.<sup>2</sup>

---

<sup>2</sup> Certainly, deciding to take on two additional foster children with special challenges also hinders, rather than helps, the ability of claimant's mother to provide

## ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund an increase in respite hours from 24 hours per month to 32 hours per month is denied.

DATED: November 15, 2018

---

KIMBERLY J. BELVEDERE  
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 ninety days.**

---

care to claimant. Such a voluntary assumption of additional household responsibilities does not, however, constitute grounds to increase respite hours with regard to claimant.