

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANTS**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER**

**Service Agency.**

**OAH Nos. 2021080595 (Primary)**

**and**

**OAH Nos. 2021080599 and 2021080601**

**DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference in Los Angeles on October 20, 2021, and December 1 and 2, 2021.

Claimant's Father and Mother represented Claimants 1, 2, and 3 (collectively, Claimants), who were not present during the hearing.

Jacob Romero, Fair Hearing/HIPPA Coordinator, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Nick Nguyen, certified translator number 6197410000, provided Vietnamese to English and English to Vietnamese interpreting services for Father and Mother.

Father filed three identical fair hearing requests on behalf of Claimants. The matters were consolidated and heard concurrently, evidence was jointly received for all three cases, and the parties agreed that a single decision would be issued for all three matters.

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on December 2, 2021.

## **ISSUE**

Should Service Agency reimburse Claimants the sum of \$1,280 for services to care for Claimants during the week of August 6, 2021, through August 10, 2021?

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimants are siblings and consumers of ELARC. They are eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.

2. Claimants live at home with Mother and Father and their sister, who is not a client of the Service Agency. Father has a disabling back injury, is unemployed,

and receives long-term disability benefits. Mother is a homemaker. Mother and Father are extremely busy caring for their children and are frequently overwhelmed by their demands., Mother has delayed having surgery to remove a brain tumor because of her constant child care responsibilities.

3. Claimant 1, an 18-year-old male, is the twin brother of Claimant 2. Claimant 1 has been diagnosed with autism spectrum disorder and borderline intellectual functioning. He recently graduated from high school and began attending a community college. He is ambulatory, and his vision and hearing are within normal limits. Claimant 1 receives the following services each month: 38.58 hours per month of In-Home Supportive Services (IHSS), 20 hours of Adaptive Skills Training, 20 hours of respite at the sibling rate, and 10 hours of respite at the individual rate. His most recent Individual Program Plan (IPP) is dated October 19, 2020.

4. Claimant 2 is an 18-year-old female who is the twin sister of Claimant 1. She has been diagnosed with autism spectrum disorder. She is ambulatory, and her vision and hearing are within normal limits. Claimant 2 recently attended a general education public high school, where she was member of the swim team. She recently graduated from high school. Claimant 2 receives the following services each month: 54 hours of IHSS services, 20 hours of Adaptive Skills Training, 20 hours of respite at the sibling rate, and 10 hours of respite at the individual rate. Her most recent IPP is dated October 19, 2020.

5. Claimant 3 is a 14-year-old boy. He has a twin sister who is not a regional center consumer. In addition to autism spectrum disorder, Claimant 3 has been diagnosed with short-bowel syndrome and he has several food allergies which require his mother to prepare special meals for him. He also has a history of frequent bouts of diarrhea. Claimant 3 is ambulatory and his vision and hearing are within normal limits.

He is hyperactive and demonstrates problem behaviors including resistance to transitions, elopement, tantrums, and self-stimulatory behaviors. However, his most recent IPP reports that during the past few years, his behavior has improved. Claimant 3 receives the following services each month: 107 hours of IHSS services, 24 hours of Adaptive Skills Training, 75 hours of PA services, an unspecified number of Applied Behavior Analysis hours, and 30 hours of respite. His most recent IPP is dated December 16, 2020.

6. Service Agency has been trying to meet with Claimants' parents for IPP meetings in 2021, but parents have stated that they have "no time" for IPP meetings.

7. Service coordinator Becky Ly testified that, after considering all the services currently being provided to each claimant, Mother and Father receive assistance, on average, for the following number of hours, per day: Claimant 1 - 4.75 hours; Claimant 2 - 6.15 hours; Claimant 3 - 8.56 hours.

### **Mother's Vacation and Service Agency's Offer**

8. Mother scheduled a vacation away from home from August 6 through August 10, 2021. Claimants requested additional services to assist Father in caring for his children while Mother was on vacation. It was established that Mother, and Father if he so desires, are entitled to take vacations.

9. In evaluation Claimant's request for additional support, Service Agency considered Claimants' IHSS hours, respite hours, PA hours, and the other assistance, as well as the natural supports provided by the family. After consideration, Service Agency offered Claimants 12 additional PA hours, per day (4 additional hours, per day, for each Claimant), which amounts to an additional 60 total PA hours to assist Father in caring for his children while Mother was on vacation. The Service Agency's offer

allowed Father to have a PA to assist him in caring for claimants for 12 each day. Service Agency anticipated Father could use the 12 additional PA hours to obtain an assistant from 8 a.m. to 8 p.m. for five days. Given that scenario, Father would then be alone with the children from 8 p.m. to midnight each evening and then Father and Claimants would sleep from 12 p.m. to 8 a.m. Father acknowledged that Claimants sleep 8 hours per night.

10. The parties also discussed the possibility of utilizing some of the available 21 days annual out-of-home respite. However, use of this service requires both parents to be away from the family home or if Claimants were placed in an out-of-home facility. Father and Mother declined to use this service, given those requirements.

11. On August 9, 2021, Service Agency sent claimants a Notice of Proposed Action letter denying their request for additional PA hours because Service Agency had already approved four hours of PA service, per day, per claimant, for a total of 12 PA hours each day while Mother was on vacation. Father requested additional hours, but his request was unclear regarding how many additional hours he was seeking.

12. On August 12, 2021, Claimants filed fair hearing requests appealing the Service Agency decision. The matters were consolidated, and this hearing ensued.

### **The Evidence Presented**

13. At the beginning of the hearing, the parties discussed and agreed upon the "Issue" (as stated on page 2 of this Decision) to be decided by the ALJ. However, after the Service Agency had presented part of its case, Claimants requested that the Issue be amended to allow Claimants to seek a greater amount of reimbursement. Specifically, Father requested that the total reimbursement sought by Claimants be

changed to \$1,920, which Father calculated as 8 hours per day of PA service for each child (24 hours per day) for 5 days (120 total hours) at \$15 per hour. Service Agency objected to Father's request as prejudicial. The objection was sustained because Service Agency had begun presenting its case. Therefore, the Issue to be decided remained as initially agreed to by the parties.

14. Father and Mother did not use any of the 60 hours of PA services authorized by Service Agency during the week Mother went on vacation. It was not established why Father and Mother chose to not use the PA hours offered and approved by the Service Agency. Service Agency acknowledges that purchase of service authorizations for the offered 60 PA hours remain open. Father and Mother may wish to contact Maxim, which is the entity that processes payments to claimants, to inquire regarding the possibility of partial reimbursement for the PA services Claimants funded.

15. Father testified that he hired Elvis Huynh (Elvis) and Anh Kim Ngo (Ahn) to assist him during the week Mother was on vacation. Ahn worked from 5:30 a.m. to 2 p.m. and Elvis worked from 2 p.m. to 10 p.m. Therefore, Father determined that Claimants' needs only required that he have the assistance of one PA provider at any given time. Similarly, the Service Agency also determined that one PA provider could adequately assist Father in caring for claimants. Therefore, according to Father's own testimony, the Service Agency's offer of one PA assistant was reasonable.

16. Since Service Agency offered 12 PA hours per day, which Father chose not to utilize, and Father paid for 16 PA hours per day, Claimants claim for reimbursement is limited four PA hours per day. The potential reimbursement for these four hours is calculated as follows: four hours per day, at \$15 per hour, for five days, totals \$300.

17. Father testified that he made cash payments of \$960 to Elvis and \$960 to Ahn. Claimants' offered exhibit C, which contains four handwritten statements regarding these payments. None of these statements were made under the penalty of perjury. Further, neither Elvis or Ahn testified at hearing.

18. Father testified that he was unable to write a check to pay these workers because of an unspecified rule, related to other unspecified government benefits, which limits the amount of money he can possess in a bank account.

19. However, between June 15, 2021, and July 15, 2021, Father became aware that proof of payment, such as cashed checks, would be required to claim reimbursement from the Service Agency or its vendors. Exhibit 6 is a printout of Consumer ID Notes documenting various discussions between Service Agency personnel and Father and Mother. During the time period stated above, Father was seeking reimbursement for other expenses not at issue in this case. Service Agency informed him, on multiple occasions, that he would need to provide written documentation of payments for which he was seeking reimbursement. For example, Father was told to provide copies of cashed checks, or bank statements, showing that Father had paid for said services. In those matters, Father understood the instruction and agreed to provide the required documentation.

20. It was not established why Father, knowing he needed written proof to claim reimbursement, did not purchase a money order, or take some other action to document his payments in support of his request for reimbursement.

21. It was established that Service Agency's offer of 12 hours, per day, of additional PA support, to assist Father during Mother's vacation, was reasonable.

22. Claimants did not establish that the additional four hours of daily PA assistance, which was scheduled by Father, in addition to the 12 hours provided by Service Agency was required to meet Claimants' needs while Mother was on vacation.

## **LEGAL CONCLUSIONS**

### **Standard and Burden of Proof**

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, Claimants bear the burden of proving, by a preponderance of the evidence, that Service Agency is required to reimburse them for additional services paid for by Father.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (Id. at p.



389, quoting from Welf. & Inst. Code, § 4620.) All future statutory references will be to the Welfare and Institutions Code.

3. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.) These types of services are “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 habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (Ibid.) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

4. As set forth in section 4646, subdivision (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 the 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.

5. Section 4646.4, subdivision (a), provides, in relevant part:

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:

[¶] . . . [¶]

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

6. There is no factual basis to order Service Agency to reimburse Claimants. Service Agency's offer of an additional 60 hours of PA support, to assist Father during Mother's vacation, was reasonable. Claimants' chose not to utilize Service Agency's 60 PA hours. Further, Claimants failed to establish that the four additional hours of PA assistance (scheduled by Father) was required to meet Claimants' needs, in addition to the 12 hours, per day, of PA services provided by Service Agency. Therefore, the expense for these four additional hours each day is properly classified as family responsibility pursuant to Code section 4646.4, subdivision (a)(4).

7. Under these circumstances, Service Agency is not required to reimburse Claimants for any services. Claimants are not precluded from submitting a claim for reimbursement for the 60 hours authorized by Service Agency for the week of August 6 to 10, 2021, to Maxim for consideration.

## **ORDER**

Claimants' appeal is denied. Service Agency is not required to reimburse Claimants for PA assistance funded by Father and Mother for the week of August 6 to 10, 2021.

DATE:

CHRIS RUIZ  
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 90 days.