

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

In the Matter of the Appeal by:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2022120075

DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 12, 2023, from Sacramento, California.

Claimant's mother represented claimant.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Evidence was received and the record left open to allow claimant to introduce statutes she referenced during hearing and ACRC to respond to those statutes. Claimant's additional submission is marked as Exhibit G, and ACRC's response is marked as Exhibit 17. Both Exhibits G and 17 are admitted as argument. The record was closed and the matter submitted on May 16, 2023.

ISSUES

1. Is there jurisdiction to consider claimant's request for 30 additional hours per month (90 additional hours per quarter) of in-home respite services at fair hearing?

2. If there is jurisdiction, is ACRC required to fund 30 additional hours per month (90 additional hours per quarter) of in-home respite services for a total of 70 hours per month (210 hours per quarter) for claimant?

FACTUAL FINDINGS

Background

1. Claimant is a 13-year-old girl who has been receiving regional center services since the age of three based on diagnoses of moderate Autism Spectrum Disorder and Global Developmental Delay (Fifth Category). Her developmental disabilities constitute substantial disabilities in the areas of self-care, receptive and expressive communication, learning, and self-direction.

2. Claimant lives at home with her mother. Her parents are divorced, and her mother has sole legal and physical custody. Her father used to visit occasionally but recently discontinued visiting altogether.

3. Claimant's mother does not work outside the home. Her sole source of income is as claimant's In-Home Support Services (IHSS) provider. She homeschools her daughter through Feather River Charter, which is covered by El Dorado County

Charter Special Education Local Plan Area (SELPA). Claimant receives Social Security Disability Insurance benefits through her father.

4. Claimant currently receives regional services pursuant to the traditional service delivery model via an Individual Program Plan (IPP). Her IPP is reviewed annually, usually in the month of April. Hima Suri has been claimant's service coordinator since May 2018.

5. Claimant's mother expressed interest in transitioning to the Self-Determination Program (SDP), and ACRC has provided funding up to \$2,500 for initial person-centered planning services with Elizabeth Cuevas. Ms. Suri transferred to ACRC's SDP Unit three months ago and will remain claimant's service coordinator after she transitions to the SDP. As of the date of hearing, she, Ms. Cuevas, and claimant's mother were working on claimant's proposed SDP budget.

Jurisdiction

DENIAL OF AFTER SCHOOL SERVICES AND REQUEST FOR ADDITIONAL HOURS OF IN-HOME RESPITE SERVICES

6. On October 10, 2022, claimant's mother sent Ms. Suri an email requesting after school care services. On November 22, 2022, Ms. Suri prepared a Notice of Proposed Action (NOPA) advising claimant's mother "that ACRC is denying [her] request to purchase day care/after school care services" for claimant. Ms. Suri further advised claimant's mother of her right to appeal ACRC's denial and the process for doing so.

7. Claimant's mother appealed ACRC's denial by submitting a Fair Hearing Request the following week. She wrote on her Fair Hearing Request that the following action was necessary to resolve her appeal:

Additional 80 hours of respite monthly due to need and unique circumstances. Client needs 24 [s/c] hour care, 720 hrs/mo. IHSS covers 283 hrs/mo, current respite hours are only 40/mo, avg only 1.3 hrs/day. Client needs supervision after school hours 230-6:30pm. Mother is only caregiver and has only 1.2 hours of rest per day.

PRIOR REQUEST FOR ADDITIONAL HOURS OF IN-HOME RESPITE SERVICES

8. Prior to issuance of the NOPA, Ms. Suri, Ms. Cuevas, and claimant's mother began working on claimant's proposed SDP budget. Creating a budget requires a review of the regional center services claimant has been receiving during the previous 12 months, as well as determining whether she has any unmet needs.

9. Claimant's mother identified in-home respite services as an unmet need. On November 14, 2022, she sent Ms. Suri an email requesting an "additional 30 hours a month of respite care" because: (1) claimant was prescribed an adaptive stroller which is too heavy for her mother to manage on her own; (2) claimant recently started puberty and requires more frequent showering; (3) the intensity of claimant's care and supervision makes additional respite hours necessary to keep her in the family home; and (4) claimant's mother is a single parent with no family support. Claimant's mother explained that she "would like to use the additional respite hours to see a chiropractor on a regular basis and also start a weight lift workout program to strengthen [her] back muscles."

10. Ms. Suri prepared the necessary paperwork to submit claimant's mother's request for additional respite hours to ACRC's Family Services and Supports Committee (FSSC) for consideration. This included creating a spreadsheet using a Client Services Assessment Tool to calculate the total number of hours in a month for which claimant receives no services or supports.

11. As of November 2022, claimant received the following services and supports: (1) 134 hours per month of education; (2) 283 hours per month of IHSS; (3) 44 hours per month of ABA therapy and therapeutic horse riding; (4) 6.5 hours per night of sleep; and (5) 120 hours per quarter of in-home respite services. There were only 31 hours in a month for which claimant received no services and supports and her mother was solely responsible for claimant's care and support.

12. After considering all the information Ms. Suri presented, the FSSC denied claimant's mother's request. It explained, "Even with 120 hours of respite per qrt[,] with the current other services there is [*sic*] only 31 uncovered hours, which is somewhat low, though potentially passable, for a minor due to consideration of parental responsibility." The Committee recommended that claimant's mother consider outsourcing some of her IHSS provider duties and/or homeschooling responsibilities to give her a break.

13. On January 18, 2023, Ms. Suri issued claimant's mother a NOPA advising that "ACRC is denying [her] request to purchase an additional 30 hours per month of in-home respite" for claimant. Ms. Suri explained claimant's mother's right to appeal ACRC's denial and the process for doing so. Neither claimant's mother nor anyone else acting on claimant's behalf appealed ACRC's decision.

SUBSEQUENT REQUEST FOR ADDITIONAL HOURS OF IN-HOME RESPITE SERVICES

14. Claimant's mother, Ms. Suri, and Ms. Cuevas met for an annual IPP planning team meeting on April 3, 10, and 21, 2023. They discussed claimant's current receipt of 40 hours per month (120 hours per quarter) of in-home respite services through Pacific Homecare. Claimant's mother explained she uses those hours to run errands, attend appointments, and for self-care. She requested that claimant continue receiving those hours plus an additional 30 hours per month, for a total of 210 hours per quarter (current 40 hours per month/120 hours per quarter + additional 30 hours per month/90 hours per quarter = 70 hours per month/210 hours per quarter).

15. The planning team agreed to continue funding 30 hours per month/90 hours per quarter of in-home respite services while Ms. Suri "staffed" the request for additional hours. Ms. Suri prepared the IPP and forwarded it to claimant's mother for signature the day before hearing.

In-Home Respite Services

16. ACRC's Service Policy Manual for Respite Services (Policy Manual) defines respite services as "intermittent or regularly scheduled temporary care and supervision for a regional center client who resides with a family member." ACRC's Procedures Manual for In-Home Respite Services (Procedures Manual) explains that respite is "care and supervision necessary to provide parents with relief from the stress of caring for a family member with a care need that exceeds the normal care for a child . . . of the same age." Such services are generally provided in the client's home or a licensed facility.

17. In-home respite services may be purchased only when there is an assessed need for them based on the client's self-care skills, medical needs, excessive behaviors, family dynamics, and available natural and generic supports. A maximum of 120 hours of services per quarter may be purchased.

18. The existence of the following criteria supports the purchase of the maximum number of hours of in-home respite services:

- Clients who require 24-hour care around-the-clock by family members due to a medical problem (such as tracheostomy, continuous mechanical ventilation, or other major medical condition that requires LVN or skilled nursing care) may receive from 91 to 120 hours of in-home respite per quarter paid by ACRC. If a family is receiving 16 hours per day or more through Medi-Cal, EPSDT Nursing Waiver, private insurance, or another source, ACRC will not pay for additional respite hours.
- The client requires total care due to physical limitation or medical needs.
- The client is exhibiting severe challenging behaviors constituting a danger to self or others.
- Parent's ability to cope with the routine demands of child care is compromised by severe medical or emotional problems.
- There are 2 or more ACRC clients residing in the home.
- The client's medical care needs interfere with the sleep of the primary caregiver.

19. The FSSC may grant a temporary exception to the maximum number of respite hours. To qualify for an exception, the client must demonstrate: (1) the extent of her care and supervision needs are such that additional respite hours are necessary to allow her to continue living in the family home; or (2) she has experienced an "extraordinary event." The following are examples of an extraordinary event: (1) the death, serious illness, incapacitation, or long-term absence of a caregiver or close family member; (2) the client's behavioral or medical emergency; or (3) a catastrophic natural disaster or epidemic.

20. Ms. Suri explained that claimant has been receiving in-home respite services since Ms. Suri has been her service coordinator. Claimant's initial assessment determined she qualified for the maximum number of hours each quarter, and she has always received that amount.

21. Ms. Suri presented claimant's request for additional in-home respite services to the FSSC for consideration of granting an exception to the maximum number of hours typically provided. She presented a spreadsheet from the Client Services Assessment Tool showing the number of hours of services claimant receives in support of the request.

22. The FSSC considered claimant's request and determined she did not present sufficient evidence of a temporary increase in her care and supervision needs that requires additional hours of respite to keep her at home or an extraordinary event. The FSSC noted that there are only 31 hours in a month during which claimant is not receiving any services or supports and her mother is responsible for her care. The FSSC suggested that claimant's mother outsource homeschooling support and IHSS to someone else to relieve her feelings of being overwhelmed.

23. Katherine Weston, a client services manager at ACRC and Ms. Suri's supervisor prior to her transfer to the SDP Unit, explained that the FSSC denied claimant's request for additional in-home respite hours because ACRC is prohibited from funding a service or support that claimant can receive somewhere else for free. Claimant is entitled to a free and appropriate education, yet her mother chooses to take on the responsibility of homeschooling her. Based on information provided by claimant's mother, she spends 134 hours each month homeschooling claimant. She could instead enroll claimant in special education services at her local school district and receive a temporary break from caring for claimant during those hours.

24. Additionally, claimant receives 283 hours each month of IHSS. Her mother is her sole IHSS provider. However, claimant's mother could hire another person as claimant's provider for up to 32 hours per month, during which she would receive a temporary respite from caring for claimant.

25. Lastly, Ms. Weston explained that ACRC is precluded from including funds in claimant's SDP budget that it would not spend if she continued receiving regional center services through the traditional service delivery model. Claimant has always received the maximum number of hours of in-home respite services, and she has never qualified for an exception. She does not currently qualify for an exception, and ACRC would not fund additional hours pursuant to an IPP if claimant ultimately does not switch to the SDP.

Claimant's Evidence

CLAIMANT'S MOTHER'S TESTIMONY

26. Claimant's mother explained that in addition to the diagnoses that qualify claimant for regional center services, claimant has diagnoses for attention

deficit hyperactivity disorder, severe processing disorder, as well as others. She has no family in the United States who can help care for claimant, and she has limited natural support.

27. Claimant prefers showering over bathing. She requires full assistance while showering. Due to low muscle tone, claimant's mother climbs into the shower with her. As claimant is getting bigger, it is getting more difficult for her mother to physically support her, and her mother is concerned about injuring herself.

28. Claimant's mother can shower herself only after claimant goes to bed, which can be a prolonged process. Claimant regularly gets up and jumps around after initially going to bed, so her mother feels the constant need to supervise her until she falls asleep. Even then, claimant's mother frequently interrupts her showers to check multiple cameras monitoring claimant to make sure she does not wake up.

29. Claimant needs constant supervision while eating to prevent choking because she frequently puts more food in her mouth than she can chew. She also gets up and starts jumping with food in her mouth. Claimant often wipes her hands on her clothes after eating. She will wear only certain clothing, so her mother often does laundry after each meal.

30. Claimant's mother believes homeschooling is the best fit for claimant. Claimant was previously tested for special education services by her local school district, and she qualified for placement in a special day class. She was assessed as needing a one-to-one aide. Claimant's mother spoke to parents of other special education students, and they told her they constantly fight with their school district over the services and supports their children need. Therefore, claimant's mother decided to homeschool claimant.

ELIZABETH CUEVAS

31. Elizabeth Cuevas is an independent facilitator helping claimant transfer to the SDP. She first spoke to claimant's mother about a year ago, and she completed a person-centered plan in August 2022.

32. Ms. Cuevas estimated that ACRC and claimant are about halfway through the preparation of claimant's SDP budget. She opined that claimant has several unmet needs, which required multiple meetings to identify and determine which should be covered by the SDP. She estimated there were approximately 20 to 30 meetings, which she opined was excessive. Ms. Cuevas believes in-home respite services is one of claimant's unmet needs.

DOCUMENTS

33. Claimant introduced a letter from her primary care physician recommending that claimant increase her respite hours by one hour per week because her "chronic medical conditions . . . [require] more assistance with activities of daily living." She also introduced several letters describing her extensive need for services and support and her mother's need for additional assistance with caring for claimant.

34. Lastly, claimant introduced an August 3, 2017 letter to all regional centers from the Department of Developmental Services. The letter notified the regional centers of the repeal of Welfare and Institutions Code section 4686.5, which previously limited regional centers to purchasing no more than 90 hours per quarter of in-home respite services, absent an exception. The letter advised, "Effective January 1, 2018, these limits on the purchase of respite services will no longer apply."

35. The letter further provided:

In addition to conducting proactive outreach, regional centers should revise their Respite Services purchase of service policies, and submit them to DDS, no later than November 1, 2017, for review and approval to be effective January 1, 2018.

Analysis

JURISDICTION

36. There is jurisdiction to consider claimant's request for 30 additional hours per month (90 additional hours per quarter) of in-home respite services. Although the November 22, 2022 NOPA does not pertain to respite services, claimant requested additional respite hours by email the week before. And though claimant did not appeal the January 18, 2023 NOPA denying her request, she renewed her request three months later during her annual IPP meeting. As such, ACRC had sufficient notice that claimant's request for 30 additional hours per month of in-home respite services was the subject of fair hearing.

37. Any confusion caused by claimant's Fair Hearing Request asking for 80 additional hours of in-home-home respite services and her other requests for only 30 additional hours was clarified at the beginning of hearing. ACRC did not request a continuance, and it had a full and fair opportunity to present evidence.

38. ACRC's arguments that "the planning team never considered [the most recent] request, there was never a determination that ACRC disagreed with the request; [sic] there was never a 15-day timeout meeting, and ACRC never issued a NOPA on the request" are disingenuous because a NOPA was issued for a similar

request three months prior. There was no evidence that the outcome would be any different if the planning team had additional time to consider the most recent request.

ADDITIONAL HOURS OF IN-HOME RESPITE SERVICES

39. It was undisputed that claimant has been receiving the maximum number of hours of in-home respite services authorized under ACRC's Policy Manual and Procedures Manual since she was first approved for such services. ACRC performed an updated assessment of her needs to see if she qualified for an exception to the maximum number of hours and determined she did not. Claimant did not produce evidence of a temporary increase in her needs or an extraordinary event justifying granting an exemption to the limit specified in ACRC's Policy Manual and Procedures Manual. Instead, her evidence demonstrated ACRC's initial assessment that she qualifies for the maximum number of hours of in-home respite services was correct.

40. Although claimant is correct that the Legislature repealed the statute that limited the number of hours of in-home respite services a regional center can purchase for a consumer in 2017 (former Welf. & Inst. Code, § 4686.5, repealed by Stats. 2017, ch. 65 (A.B.126), § 1, eff. Jan. 1, 2018), that does not mean there are no limits on the number of hours of respite ACRC can purchase. ACRC is required to adopt internal policies regarding the purchase of services for consumers, which must be reviewed and approved by the Department of Developmental Services. The Policies Manual and Procedures Manual are such internal policies and have been approved by the Department of Developmental Services.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Claimant has the burden of proving by a preponderance of the evidence that ACRC is required to fund her request for additional hours of in-home respite services. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not that ACRC is required to fund her request for additional hours of in-home respite services. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “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 [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations].” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or her representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer's developmental needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4512, subd. (b); 4646; 4646.5, subd. (a); and 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. An alternative method of delivering services is through the SDP. The SDP provides "participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP." (Welf. & Inst. Code, § 4685.8, subd. (a).) An existing consumer who transitions to the SDP is entitled to an initial budget equal to "the total amount of the most recently available 12 months of purchase of service expenditures for [her]." (*Id.*, subd. (m)(1)(A)(i).) That amount may be adjusted if: (1) the IPP team determines there is a change in the consumer's circumstances, needs, or resources or there are unmet needs that justify an increase or decrease in expenditures for the purchase of services; and (2) the regional center certifies that the change in expenditures would have occurred even if the consumer was not part of the SDP. (*Id.*, subd. (m)(1)(A)(ii).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP, they must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), & 4646, subd. (a).) A regional center is not required to provide all the services a consumer may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651, subd. (a).) Regional centers are specifically prohibited from funding duplicate services that are available through another publicly funded agency. (Welf. & Inst. Code, § 4659, subd. (c).) This prohibition is often referred to as "supplanting generic resources."

6. A regional center must give a consumer advance notice of its intention to: (1) reduce, alter, or terminate a service or support required by an IPP; (2) terminate a consumer's existing eligibility for services and supports; (3) deny a request to include a service or support in an IPP; or (4) deny eligibility for regional center services. (Welf. & Inst. Code, § 4710, subds. (a)(1), (2), (b), & (e).) The consumer may challenge the proposed action by requesting a fair hearing. (Welf. & Inst. Code, § 4710, subd. (a).)

Conclusion

7. There is jurisdiction at fair hearing to consider claimant's request for 30 additional hours per month (90 additional hours per quarter) of in-home respite services. The evidence established that claimant was originally assessed as qualifying for the maximum number of hours of in-home respite services allowed under ACRC's Policies Manual and Procedures Manual. An updated assessment did not indicate that she has a temporary increase in needs or suffered an extraordinary event that qualifies her for an exception to that maximum. She did not produce persuasive evidence establishing otherwise. Therefore, her appeal should be denied.

ORDER

Claimant's appeal requesting ACRC to fund 30 additional hours per month (90 additional hours per quarter) of in-home respite services for a total of 70 hours per month (210 hours per quarter) is DENIED.

DATE: May 30, 2023

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.