

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

**In the Matter of the Appeal of:**

**CLAIMANT**

**vs.**

**ALTA CALIFORNIA REGIONAL CENTER, Service Agency**

**OAH No. 2023090605**

**DECISION**

Sean Gavin, a hearing officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 31, 2023, from Sacramento, California.

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

Claimant's mother represented claimant.

Evidence was received, the record closed, and the parties submitted the matter for written decision on October 31, 2023.

## ISSUE

Is ACRC required to continue funding in-home respite services for claimant at the rate of 180 hours per quarter?

## FACTUAL FINDINGS

### Background

1. Claimant is a 12-year-old boy. On February 12, 2020, ACRC determined he qualifies for regional center services based on his diagnosis of Autism, which causes substantial disability in his self-care, receptive and expressive language, self-direction, and his capacity for independent living. Claimant lives at home with his mother and older sister, who also has an Autism diagnosis. Linnell Short is his assigned Service Coordinator.

### ACRC's Service and Support Policy for Respite Services

2. ACRC's Procedures Manual describes respite services as "intermittent or regularly scheduled *temporary* non-medical 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 or adult of the same age" (emphasis in original). Services are generally provided in the family home or a licensed facility, and they are intended to:

Assist family members in maintaining the client at home.

Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

Relieve family members from the on-going responsibility of caring for the client.

Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines within the home which would ordinarily be performed by the family members.

3. ACRC's Procedures Manual provides guidelines to determine when a client qualifies for services. The guidelines specify that all generic and natural resources must be exhausted before ACRC will fund respite, only the least costly service that meets the client's needs will be funded, and "there must be the presence of a care need that exceeds that required for typically developing peers." The number of hours of services purchased "cannot exceed 120 per quarter," unless ACRC grants an exception.

4. Regarding exceptions, the Procedures Manual states:

An exception may be approved by staffing the request at the Family Services and Supports Committee (FSSC) if it is demonstrated that the client's care and supervision needs are such that additional respite is necessary to maintain the client in the home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the client. The exception is time limited.

An "extraordinary event" includes the death, serious illness, incapacitation, or long-term absence of a caregiver or family member, the client's behavioral or medical emergency, or a catastrophic occurrence such as a fire, flood, earthquake, or epidemic.

### **March 2020 IPP**

5. On March 5, 2020, ACRC held an initial Individual Program Plan (IPP) meeting regarding claimant. The planning team consisted of claimant, his mother and grandmother, a family partner through Sacramento Children's Home, and his former ACRC service coordinator. Based on information provided during the meeting and the guidelines provided in ACRC's Procedures Manual, the parties determined claimant qualified for 120 hours of in-home respite services per quarter. The IPP documented the service to be provided as follows: "ACRC [Service Coordinator] will request ACRC funding for up to a maximum of 120 hours/quarter of agency respite with Pacific Home Care, plus mileage for the agency respite worker, in accordance with ACRC Service and Support Policy."

### **April 2021 Increase in Respite Hours**

6. On March 29, 2021, claimant's mother emailed ACRC to request increased respite hours. She wrote:

I would like to request additional respite hours if that is still an option during the pandemic. As you know I haven't been able to use many up to this point but now that I am fully vaccinated it is ideal for me to get help with him for 5 hours each 3 days a week however any extra hours that can be given would be helpful. Thank you.

7. On April 2, 2021, claimant's former service coordinator emailed claimant's mother to confirm ACRC would increase the respite hours to 180 per quarter. The service coordinator wrote, in relevant part:

I took your request to my supervisor and she took the request to ACRC upper management. They approved your request for 180 Hrs/Qtr agency respite effective 4/1/21 through 6/30/21 based on current State of Emergency with Covid 19. However, before the end of June I will speak with you and we will evaluate the situation again at that time. Our typical maximum hours of respite are 120 Hrs/Qtr so the 180 Hrs/Qtr is an exception.

### **February 2023 IPP**

8. Claimant has received 180 respite hours per quarter since April 1, 2021. On February 13, 2023, ACRC held an Individual Program Plan (IPP) meeting regarding claimant. The planning team consisted of claimant's mother, Ms. Short, and ACRC's client services manager (CSM), Dr. Sparkle Crenshaw. During the meeting, the parties discussed ACRC's recommendation that claimant's respite hours be reduced to 120 per quarter. The IPP documented the recommendation as follows:

The IPP planning team recommends a high level of respite care for [claimant] of 120 Hrs./Qtr. of Agency respite. Currently, [claimant's mother] has requested an exception of 180hrs/qtr due to the difficulty with getting [claimant's] school, ABA [applied behavior analysis] and/or counseling needs met. CSM discussed services that are appropriate to

meet [claimant's] needs with [claimant's mother] (ASCEND-provided ABA/Counseling services, school) as respite will be decreased to 120hrs/qtr by 6/30/2023. She acknowledged understanding.

9. After the IPP meeting, ACRC prepared a document titled Services and Supports for the Individual Program Plan. The document, which summarized the services ACRC would fund for claimant, stated, in relevant part: "Respite – 180hrs/qtr then decrease to 120hrs/qtr." Claimant's mother checked a box that provided "I agree with the above listed services and I authorize ACRC to purchase those services for which it is responsible in the implementation of the Individual Program Plan (IPP)." She also signed the document.

### **Timing of Reduction of Respite Hours, Claimant's Mother's Request for Ongoing Extension, and ACRC's Notice of Action**

10. On June 8, 2023, claimant's mother emailed Ms. Short to ask when the respite hours would be reduced to 120 per quarter. Ms. Short responded that ACRC intended to reduce the hours effective July 1, 2023. She explained, "the increase was only meant to be temporary so the client can get school and ABA services. It has been over a year since the increase and the committee has decided it is time to decrease the hours back to 120hrs/qtr."

11. On June 12, 2023, claimant's mother requested that ACRC continue to fund 180 respite hours per quarter. Ms. Short advised her that ACRC's Family Services and Support Committee would review the request and notify her of its decision. On July 6, 2023, Dr. Crenshaw notified claimant's mother the committee would deny her

request. On July 14, 2023, ACRC issued its Notice of Action to reduce claimant's respite hours to 120 per quarter, effective September 15, 2023.

12. The Notice of Action informed claimant of his right to appeal ACRC's decision. On August 7, 2023, claimant's mother appealed the Notice of Action. This hearing followed.

## **Evidence at Hearing**

### **TESTIMONY OF MS. SHORT AND DR. CRENSHAW**

13. Ms. Short and Dr. Crenshaw testified at hearing that ACRC increased claimant's respite hours in March 2021 based on the COVID-19 pandemic. The increase was meant to be temporary. California's state of emergency associated with the COVID-19 pandemic is over. Claimant's mother has not identified any other basis for continuing to fund 180 respite hours per quarter. ACRC's written policies and procedures regarding respite hours, which have been approved by the Department of Developmental Services, provide that the maximum respite hours ACRC may fund is 120 per quarter unless a recognized exception applies. The exception since April 2021 was the COVID-19 pandemic, but that exception no longer applies.

### **TESTIMONY OF CLAIMANT'S MOTHER**

14. Claimant's mother needs as many respite hours as she can have and fully uses them every quarter. Although claimant's Autism is classified as mild, he is "high needs" and does not sleep regular hours. He is "intense" and has "meltdowns and shutdowns." He requires 24-hour protective supervision. His father is mentally ill and unable to care for claimant.

15. Both claimant and his older sister have regular medical and service-related appointments, but claimant is “95 percent housebound and refuses to leave the home.” Claimant’s mother cannot take him shopping or to his sister’s appointments. She uses respite hours to nap or run errands.

16. Claimant’s mother does not understand why ACRC intends to reduce claimant’s respite hours now. She believes nothing has changed since April 2021, when ACRC approved the increase. She acknowledged that ACRC approved the increase based on the COVID-19 pandemic, but explained, “it really didn’t ever have anything to do with Covid for us.” She understands claimant could benefit from ABA and educational services and has tried to enroll him in those services, but she does not know how to finalize the process. She would like to maintain 180 respite hours per quarter for as long as possible.

## **Analysis**

17. In March 2021, ACRC granted an exception to increase claimant’s respite hours from 120 to 180 per quarter based on the COVID-19 pandemic. That exception qualified as an “extraordinary event” and was therefore consistent with ACRC’s written policies and procedures. The increase was meant to be temporary.

18. The state of emergency associated with COVID-19 has ended. Claimant’s mother did not identify any other basis for granting an exception to exceed ACRC’s maximum of 120 respite hours per quarter. Although she credibly explained that she needs and would use all available respite hours, ACRC must follow its policies and procedures.

19. Pursuant to ACRC’s policies and procedures, there was no evidence that claimant’s “care and supervision needs are such that additional respite is necessary to



maintain [him] in the home, or there is an extraordinary event that impacts [a] family member's ability to meet the care and supervision needs of [claimant]." There is no justification for granting claimant an exception to the maximum number of respite hours allowed under ACRC's Procedure Manual, and claimant's mother's stated reasons for needing additional respite do not establish otherwise. As a result, the law requires that claimant's appeal be denied.

## LEGAL CONCLUSIONS

### Burden and Standard of Proof

1. ACRC has the burden of proving it is no longer required to fund in-home respite services for claimant at the rate of 180 hours per quarter. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has "a built-in bias in favor of the status quo," and the party seeking to change the status quo has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires ACRC 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, ACRC must prove it is more likely than not that it is no longer required to fund 180 hours of respite per quarter for claimant. (*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].” (*Assoc. for Retarded Citizens v. Dept. 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; *Assoc. for Retarded Citizens v. Dept. 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 his 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, §§ 4646, subd. (a)(1), (2), & (4); 4646.5, subd. (a); 4512, subd. (b); 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. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer’s IPP but must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), & 4646, subd. (a).) They must “identify and pursue all possible sources of funding for consumers receiving regional

center services.” (Welf. & Inst. Code, § 4659, subd. (a).) Regional centers are not required to provide all the services a consumer may require but are required to “find innovative and economical methods of achieving the objectives” of the IPP. (Welf. & Inst. Code, § 4651.)

5. Regional centers are required to adopt internal policies regarding the purchase of services for consumers. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department of Developmental Services is required to review those policies prior to implementation by the service centers, and “shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of” the Lanterman Act or any regulation adopted pursuant to it. (Welf. & Inst. Code, § 4434, subd. (d).) A regional center may not deny a request for services based upon the application of an inflexible policy denying such services. Whether a consumer is entitled to a particular service depends upon consideration of all relevant circumstances. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 231-234.)

## **Conclusion**

6. ACRC met its burden of proving it is not required to continue funding claimant’s in-home respite services at the rate of 180 hours per quarter. The reason ACRC funded additional hours, namely the state of emergency associated with the COVID-19 pandemic, no longer exists. Under the express terms of ACRC’s written policies and procedures, the maximum number of respite hours ACRC is required to fund is 120 per quarter unless an exception applies. There was no evidence to justify granting an ongoing exception to the maximum number of hours of respite authorized by ACRC’s Procedure Manual.

## **ORDER**

Claimant's appeal from Alta California Regional Center's July 14, 2023, Notice of Action proposing to reduce the number of hours of in-home respite services funded from 180 per quarter to 120 per quarter is DENIED. Claimant's in-home respite services will be reduced to 120 per quarter, effective January 1, 2024.

DATE: November 3, 2023

SEAN GAVIN  
Hearing Officer  
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 Section 4713 of the Welfare and Institutions Code 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.