

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2018031116

DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge with the Office of Administrative Hearings, on April 30, 2018, in Alhambra, California.

Claimant was represented by his mother and was not present.

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

Oral and documentary evidence was received, and argument was heard. The record remained open until May 9, 2018 for Claimant to provide a complete copy of Exhibit 10 and a copy of his In-Home Support Services (IHSS) award letter and until May 14, 2018 for ELARC to object to any submission. Claimant failed to provide the documents by May 9, 2018. The record was closed and the matter was submitted for decision on May 14, 2018.

ISSUE

Must Service Agency fund 80 hours per month of in-home respite and 100 hours of personal assistant hours for Claimant.

## FACTUAL FINDINGS

1. Claimant is a 13 year-old male eligible for regional center services due to epilepsy, autism and intellectual disability.

2. Claimant lives with his mother. Claimant has no other natural supports. His father is not involved in his life and his older brother is away at college. Claimant does not have any extended family support.

3. Claimant has many seizures each day and throughout the night. On some days Claimant has experienced more than 100 seizures per day. Medication has not prevented the seizures and his mother has decided against surgical procedures that might provide some relief to him because of the risks associated with the surgery.

4. Claimant is non-verbal, but is able to use an assistive communication device. Claimant uses a wheelchair most of the time. He is able to stand for limited periods, but is unsteady and frequently falls. Claimant wears a helmet to prevent injury during his daily seizures. Claimant's nighttime seizures must be monitored at all times. Claimant has some behavior issues which have improved over the past few years. Claimant has no sense of danger and frequently undresses if he feels that his clothes are soiled in any way. Claimant is toilet-trained.

5. Claimant has been home schooled for four years based upon his doctor's recommendation and the local school district's determination that his medical needs could not be met in a classroom setting. His Mother is hopeful that Claimant will one day be able to return to a classroom setting. The school district policy requires that Claimant's parent be present during his 7.5 hours per week of home instruction. The instruction is provided by a district teacher through Carlson Home Health.

6. Claimant's mother has had recent surgeries and has her own health problems, the details of which are not in evidence.

7. Claimant's Individual Program Plan (IPP) dated February 13, 2018 provides

that ELARC funds Applied Behavior Analysis (ABA) for 16 hours per month, music therapy once per week and transportation for music therapy and various medical appointments. Claimant has received 41 hours per month of in home respite and 39 hours of personal assistant time. Additionally, Claimant was permitted to convert 16 of his 21 allotted days of out-of-home respite to 10 hours per day of in-home respite (160 hours). At the time of the hearing, Claimant had not used all of the converted hours.

8. Claimant's mother has stated that he receives 167 hours per month of IHSS hours, but has thus far refused to provide the Service Agency with a copy of the award letter which details the distribution and purpose of the hours. Claimant's mother is the IHSS provider. Mother is not willing to allow someone else to provide any of the IHSS because it will have a negative impact on her family budget to do so. Mother is also unwilling to provide the Service Agency a copy of the IHSS award letter because she considers the document to be private. Service Agency has requested the IHSS award letter in order to determine how the hours were calculated and to ensure that there is no duplication of service.

9. The ELARC Purchase of Service (POS) policy, consistent with Welfare and Institutions Code section 4690.2, subdivision (2) provides that:

In-home respite service means intermittent or regularly scheduled temporary non-medical and supervision provided in the individual's home. The individual must reside with a family member to be eligible for respite services.

The in-home respite services are intended to:

\*Assist family members in maintaining the consumer at home.

\*Provide appropriate care and supervision to ensure the individual's safety in the absence of family members.  
(Absence is defined not by physical presence by the relief of direct care and supervision of the individual.)

\*Reliever family members from the constantly demanding responsibility of caring for the individual.

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

10. With regard to the amount of service to be rendered to a consumer, the ELARC POS provides that a behavioral assessment, clinical review and medical assessment are needed when an extraordinary amount of respite hours are requested. Additionally, the ELARC POS requires that ELARC explore generic resources including private insurance, Medi-Cal benefits, schools, IHSS and natural supports before purchasing in-home respite services for a consumer. (Exhibit 4.)

11. ELARC Service Coordinator Angelica Mendez performed a "Family Respite Needs Assessment" based upon Claimant's request for additional in-home respite hours and personal assistant hours. She used ELARC's "Family Respite Needs Assessment Guideline" to conduct the assessment. Ms. Mendez considered Claimant's adaptive skills (8 points), mobility (0 points), lack of day program/school attendance (5 points), medical needs (10 points), behavioral needs (12 points), family situation (4 points) and the availability or lack of generic resources (-1 point). Each domain was assigned a point value based on the severity of the need and a one point deduction was made to account for IHSS hours. In total, Claimant received a score of 38 points which correlates with

extraordinary need (over 30 points) and requires an expanded team determination. Based upon the assessment, the team determined that Claimant was entitled to 38 hours of respite per month and added an allotment of 41 hours per month of personal assistant time for an addition of 80 hours of care and supervision funded by ELARC per month.

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12. Claimant's extensive needs were considered by ELARC in determining that an additional 80 hours of combined care and supervision including 38 hours of in-home respite and 41 hours of personal assistant time per month were appropriate. Claimant has not provided any additional information that would tend to prove that additional respite beyond that offered by ELARC is necessary. Claimant refused to provide the IHSS award letter at hearing and when requested by ELARC and thereby prevents a full analysis of Claimant's resources. Accordingly, the preponderance of the evidence establishes that ELARC's determination that 41 hours per month of in-home respite and 39 hours per month of personal assistant hours, when considered together with all generic resources, is sufficient to meet his needs at this time.

## LEGAL CONCLUSION

1. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. A claimant seeking to establish eligibility for government benefits or services has the burden of proving by a preponderance of the evidence that he has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greatorex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.) Where a claimant seeks services, the burden is on the appealing claimant to demonstrate by a preponderance of evidence that the Service Agency's decision is incorrect. Claimant has not met his burden of proof in this case.

2. The Lanterman Development Disabilities Services Act (Lanterman Act)<sup>1</sup> 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.

3. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) Appropriate services and supports include in-home, out-of-home respite services and personal care. (Welf. & Inst. Code, § 4512, subd. (b).) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account a consumer's needs and preferences, and for ensuring that services are cost-effective. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

4. The Lanterman Act gives regional centers, such as ELARC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) 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

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<sup>1</sup> Welfare and Institutions Code section 4500 et. seq.

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 IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, §4646.)

5. In-Home respite services are defined in the Lanterman Act as intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client's own home, for a regional center client who resides with a family member. (Welf & Inst. Code, §4690.2, subd. (a).) Subdivision (a) of section 4690.2 goes on to state that respite services are designed to "do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision in maintaining the client at home.
- (3) Relieve family members from the constantly demanding responsibility of caring for the clients.
- (4) Attend to client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members.

6. Out of home respite is defined in the pertinent regulations as "intermittent or regularly scheduled temporary care to individuals in a licensed facility and which: 1) are designed to relieve families of the constant responsibility of caring for a member of that family who is a consumer; 2) meet planned or emergency needs; 3) are used to allow parents or the individual the opportunity for vacations and other necessities or activities of family life; and 4) are provided to individuals away from their residence. (Cal.Code Regs., tit. 17, § 54342, subd. (a)(58)(E).)

7. Welfare and Institutions Code section 4646.4 provides:
- (a) 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:
    - (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
    - (2) Utilization of generic services and supports when appropriate. The individualized family service planning team for infants and toddlers eligible under Section 95014 of the Government Code may determine that a medical service identified in the individualized family service plan is not available through the family's private health insurance policy or health care service plan and therefore, in compliance with the timely provision of service requirements contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations, will be funded by the regional center.
    - (3) Utilization of other services and sources of funding as contained in Section 4659.
    - (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.

- (b) 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 consumer, or, where appropriate, the parents, legal guardian, or conservator, shall provide copies of their health benefit cards under which the consumer is eligible to receive health benefits, including, but not limited to, private health insurance, a health care service plan, Medi-Cal, Medicare, and TRICARE. If the individual, or, where appropriate, the parents, legal guardians, or conservators, have no such benefits, the regional center shall not use that fact to negatively impact the services that the individual may or may not receive from the regional center.
- (c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.
- (d) Final decisions regarding the individualized family service plan shall be made pursuant to Section 95020 of the Government Code.

8. Welfare and Institutions Code section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

9. In this case, ELARC has provided Claimant with a substantial allowance for in-home-respite, out-of-home respite and personal assistant hours. Claimant requests that ELARC substantially increase those allotments without providing ELARC with the documentation it needs to evaluate the entire picture of Claimant's resources. ELARC evaluated all information available to it and determined that 41 hours of personal assistant and 39 hours of in-home respite were sufficient to meet Claimant's needs. Claimant has failed to prove by a preponderance of the evidence that he needs additional personal

assistant or in-home respite hours beyond that offered by ELARC.

## ORDER

Claimant's appeal is denied. The Service Agency's determination that Claimant is not eligible for regional center series is upheld.

DATED:

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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)