

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SUNG H.A.,

Claimant,

and

KERN REGIONAL CENTER,

Respondent.

OAH Case No. 2012031029

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on May 23, 2012, in Ridgecrest, California.

Claimant's sister, Alice A.,¹ and Claimant's mother Kuinyon A., represented Claimant.

Jeffrey F. Popkin, Associate Director, represented Kern Regional Center (Regional Center or Service Agency).

Oral and documentary evidence was received at the hearing. The record was left open for Claimant's father, who was unable to attend the hearing, to submit a declaration and supporting documentary evidence, and for Service Agency to reply. No additional

¹ Initials have been used to protect Claimant's privacy.

evidence was received by the June 4, 2012, deadline, and the matter was submitted for decision.

ISSUE

Whether Claimant's respite services may be increased from 88 hours per quarter to 120 hours per quarter.

FACTUAL FINDINGS

1. Claimant is a 27-year-old Service Agency consumer with qualifying diagnoses of autism, epilepsy, and moderate mental retardation. He resides with his parents. His mother, who is in her late 50s, does not work outside the home, and is Claimant's primary, often only, caregiver. His father, who is in his early 60s, works from approximately 7:00 a.m. to 6:00 p.m. on weekdays and is away from home on business two or three weekends per month. His sister resides out-of-town, and stays with the family during the Summer months.

2. Claimant is enrolled in a day program, which includes behavior services and the services of a one-on-one aide. He is in the program from 7:45 a.m. until 2:30 p.m.

3. Claimant requires 24-hour supervision for his own safety and protection. He has run away from home to visit the family's prior home. He has run outside the home and jumped into the neighbors' yards. He has gone to the backyard in the middle of the night to look for things. On one occasion in the Fall of 2011, he ran to the outside of the home while his mother was in the shower and urinated in public, and the neighbors had to call

the police. When in public, he tends to run away from caregivers, especially to grab preferred treats, such as soda.

4. Claimant engages in severe misbehaviors. In addition to that set forth in factual finding number 3, Claimant is obsessive about collecting things, and engages in inappropriate behaviors to do so, such as trying to collect his family's and the neighbors' trash in one location. He overeats, especially pizza, even if it means pushing his mother out of the way. He has jumped behind the counter at local fast food restaurants. He has jumped out of the car while his mother is ordering food through a drive-through restaurant window. He grabs and pushes his parents. In November 2012, he attacked day program workers.

5. Because of his misbehaviors and tendency to run away from his caregivers, his mother does not take him outside the home by herself. Her friends are reluctant to accept visits from her if Claimant is with her.

6. On three occasions in the recent past, Claimant's family explored leaving Claimant in group homes while they took a brief vacation. They have taken Claimant to three homes. The caregivers at one of the homes agreed to call the family about placing Claimant, but never called. Another provider stated that it would not accept Claimant. A third actually accepted Claimant, but called his parents during his stay for them to take Claimant home. Claimant's sister has asked her parents to consider an out-of-home placement for Claimant but she does not think her parents are ready to permanently place Claimant outside the home.

7. a. On February 14, 2012, in order to evaluate the family's request for

additional respite services, Service Agency completed a "Needs Assessment Guideline" form to systematically analyze Claimant's needs. The assessment tool provides for points to be awarded for certain specific needs. The document contains a formula to award respite hours based on the point total, where the higher the total the higher the number of respite hours. No expert or other testimony was presented at the hearing to explain the formula contained in the form or its applicability to Claimant.

b. In the form, Claimant receives the maximum number of possible points for his age, his adaptive skills, his safety awareness, and his behavior needs. He received zero points in the area of mobility because he was mobile; however, in his case, his mobility adds to behavioral challenges. He received no points in the "Day Program/After School Program" area because he is enrolled in the SAILS program, and, consequently, his mother does not have to provide care. He received one point in the "health" section because he was deemed to have minimal health issues. He received one point in the "family situation" area because he is the only person with a developmental disability in a two-parent home; however, this minimizes the challenges faced by his mother, who is primarily responsible for providing care.

8. On February 29, 2012, Service Agency issued a Notice of Proposed Action, denying Claimant's family's request for an increase to 120 hours per quarter, citing the limitations contained in Welfare and Institutions Code² section 4686.5. Claimant's father filed a fair hearing request on March 19, 2012.

² All further references are to the Welfare and Institutions Code.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., 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.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. In 2009, the Legislature enacted section 4686.5, which limits regional centers' ability to fund respite services. In pertinent part, the statute provides:

"(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

"(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

"(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter for a consumer.

"(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. . . ."

The statute therefore sets a cap of 90 hours of respite services per quarter, unless the "intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home" or "there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer." (Welf. & Inst. Code, § 4686.5, subd. (a)(3)(A).)

Claimant's family established at the hearing that an exemption is warranted. Thus, Claimant presents severe behavior challenges, including lack of safety awareness and elopement tendencies. He requires 24-hour supervision. Claimant's primary caregiver, his mother, is afraid to take him into the community because she cannot control him. Even at home, Claimant requires constant attention. His size and obsessive behavior is a challenge. His mother, who provides most of the care, is in her late 50s and his father is in his early 60s. Accordingly, the intensity of Claimant's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home. In fact, the family has explored the option of placing Claimant in a group home for brief periods, but two providers have refused to accept him and the one that did accept him refused to let him stay, all apparently because of the challenge presented by Claimant's behaviors.

In the existing circumstances, the request to increase Claimant's respite hours by 11 hours per month, or less than one hour per day, is reasonable.

4. By reason of the foregoing factual findings and legal conclusions, Service Agency shall increase Claimant's respite service hours from 88 hours per month to 120 hours per month.

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ORDER

Claimant's appeal is granted, and Service Agency shall increase Claimant's respite service hours from 88 hours per month to 120 hours per month.

Dated: _____

Samuel D. Reyes

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction

within 90 days.