

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

S.P. and U.P.,

Claimants,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Nos. 2012080985

2012080986

DECISION

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on October 9, 2012, in Torrance, California.

Gigi Thompson represented the Harbor Regional Center (HRC or regional center or Service Agency).

Juliana M. represented her children, S.P. and U.P.¹

The matter was submitted on October 9, 2012.

ISSUE

The question in this matter is whether the Service Agency should increase funding for Claimants' respite services from 30 per month to 48 hours per month.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-25; Claimants' exhibits A-T.

¹ Initials have been used to protect the family's privacy.

Testimonial: Barbara Maeser, HRC Program Manager; Claimants' mother; and Claimants' aunt.

FACTUAL FINDINGS

1. Claimant S.P. is a four-year-old female who qualifies for regional center services based on a diagnosis of autism. Claimant U.P. is a five-year-old male who qualifies for regional center services based on a diagnosis of pervasive developmental disorder not otherwise specified (PDD-NOS).

2. Claimants have been receiving funding for 30 hours total (15 hours per child) of respite services per month from the regional center since February 2012. Claimants' family receives the individual rate for each child.

3. Claimants' mother recently requested an increase in respite hours from 30 hours per month to 48 hours per month.

4. By letter dated August 9, 2012, HRC denied the request. The stated reasons for the decision were because Claimants attend school several hours per day, five days per week, which provides Claimant's mother with a break while they are away from home. In addition, HRC provides S.P. with two hours per week of a behavioral management program, and Claimants' mother attends a parent training series in behavior management, which are anticipated to provide some relief from Claimants' behavioral challenges.

5. Claimants timely filed their fair hearing requests.

6. Barbara Maeser (Maeser), HRC Program Manager for Early Childhood Services, testified at the hearing. Maeser participated in the decision regarding how many hours per month HRC should fund for respite. Maeser explained that respite is provided to parents to assist with caring for their children. Maeser is familiar with Claimants and has visited their home. In determining the amount of respite HRC should fund for Claimants' family, HRC considered multiple factors, such as Claimant's needs

and the needs of their family. HRC also considered Claimant's ages, what care they require that is above and beyond what typical children of their age would need, Claimants' skill levels in terms of self help and adaptive skills, their medical needs, and their mobility. HRC also reviewed Claimants' behaviors, and whether they involved tantrums, noncompliance, aggression toward others, self-injurious behaviors, and serious destruction of property. Finally, HRC assessed Claimants' family: what support and resources they have; the fact that Claimants' primary caregiver is responsible for care of more than one HRC consumer; and the kind of programming they receive, such as school and behavior intervention. Maeser explained that the 30 hours per month of respite that the family is currently receiving is not common, and that she had to request approval from the administration for this level of respite. She also explained that HRC considered that Claimant's mother cares for 3 small children, two of whom are HRC consumers with tantrums and eloping, and that they felt it was appropriate to provide additional assistance beyond what is typically approved.

7. The evidence showed that S.P. has issues with tantrums and stereotypic behaviors, and she has significant needs in the area of self-help. U.P. has issues with tantrums, non-compliance, and eloping. HRC is providing behavior intervention services for S.P., and the evidence showed that she is making progress. For example, S.P. is using the toilet independently and she is able to attend to an activity for approximately 20 to 25 minutes. Her remaining issues appear to be behavioral and can be dealt with through skills and techniques training. There were no reports of self-injury or property destruction with regard to either S.P. or U.P.

8. Claimants' mother testified at the hearing. She explained the difficulties in caring for three children under the age of six. She also has health concerns of her own, including anxiety and stress which has affected her blood pressure. Claimants' mother is grateful for the respite hours she receives, and she would like more time to spend with

each of her children, and to care for herself and her husband. She acknowledged that all three children attend school every day, and that she has at least three hours per day of time alone. She explained that the time to herself is quickly taken up by errands, cooking and cleaning. Claimants' mother uses the current respite hours to spend time with her children individually. For example, during the 15 hours of respite funded for U.P., Claimants' mother focuses on S.P and her other child; and during the 15 hours per month of respite for S.P., Claimants' mother uses that break to spend more time with U.P. and her other child. Claimants' mother would like even more time to spend with her children, for herself, and with her husband.

9. At the time of the hearing, Claimants were not receiving In-Home Support Services; however, they were pursuing that option.

LEGAL CONCLUSIONS

1. Because Claimants are requesting an increased service, they bear the burden of proof, by a preponderance of evidence, that the increase in respite hours is warranted. (*See* Evid. Code, § 115; *see also Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162.)

2. Cause exists to deny Claimants' appeal and uphold HRC's denial of Claimants' request for increased funding of respite from 30 hours to 48 hours per month, as set forth in Factual Findings 1 through 9, and Legal Conclusions 3 through 8.

3. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

4. The Lanterman Act also provides that "[t]he determination of which services and supports are necessary for each consumer shall be made through the individual

program plan process. The determination shall be 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." (Welf. & Inst. Code, § 4512, subd. (b).)

5. Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

6. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subd. (a), 4647, subd. (a); 4646.5, subd. (a)(4)).

7. Welfare and Institutions Code section 4686.5 states:

(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

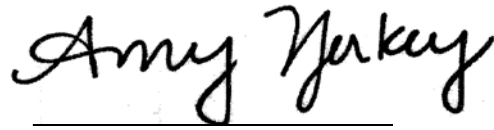
necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

8. Given the foregoing, Claimants' appeal must be denied. Claimants' mother failed to demonstrate that an increase in respite hours is warranted. HRC is currently providing Claimants' family with the maximum amount of respite allowed by statute. There was no evidence that Claimants meet the exception such that if additional respite were not funded that Claimants could not remain in the home, or that an extraordinary event occurred which impacts the family's ability to care for Claimants. Although Claimants have behavioral issues, HRC is funding behavioral intervention services and the evidence showed that Claimant S.P. is demonstrating progress. In addition, HRC is funding for Claimants' mother to receive training to assist with Claimants' maladaptive behaviors. Moreover, the evidence established that a generic resource is available to assist the family, namely, school. While caring for three children under the age of six year old, two of whom have developmental disabilities, is significant, all three children attend school daily. Thus, Claimants' mother has time every day while the children are in school, which provides her with the opportunity to have a break from the demands associated with her children's care. Based on all of the facts and circumstances of this case, Claimants did not establish that an increase in respite hours is warranted.

ORDER

Claimants S.P. and U.P.'s appeal is denied.

DATED: October 23, 2012

A handwritten signature in black ink that reads "Amy Yerkey". The signature is written in a cursive style and is positioned above a horizontal line.

AMY C. YERKEY

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.