

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ARVINA M.,

Claimant,

OAH No. 2012090785

and

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

DECISION

Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Los Angeles, California on October 24, 2012.

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented the South Central Los Regional Center (SCLARC or service agency).

Claimant's grandmother, with assistance from claimant's mother, represented claimant, who was present at the hearing.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on October 24, 2012. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order.

ISSUE

The sole issue presented is whether claimant's request for in-home respite care services should be granted notwithstanding the service agency's finding that claimant is eligible for a higher level of service such as LVN respite care.

FACTUAL FINDINGS

1. Claimant is a 13-year-old female consumer of SCLARC due to her qualifying diagnosis of cerebral palsy with spastic quadriplegia. Claimant also has diagnoses of seizure disorder, expressive language disorder, asthma, and scoliosis. Claimant is incontinent of bladder and bowel; she wears diapers. Claimant is capable of bearing weight and taking a few steps with support, but she primarily relies on a wheel chair for mobility. Claimant's vocabulary is limited to 20 words. Claimant resides with her parents, younger sibling, and maternal uncle.

2. Claimant's most recent Individual Program Plan (IPP), which is dated December 1, 2010, indicates that claimant is dependent on her mother for all of her personal needs and daily living activities. Claimant's grandmother assists claimant's mother. Consequently, claimant's grandmother is regarded as a "desired in-home respite care provider." (Ex. 6, at page 2.)

3. For a period of time not established at the hearing, the service agency funded in-home respite care services for claimant, which for reasons not established at the hearing were terminated six years ago. Recently, claimant's mother requested in-home respite care services, and in response to that request SCLARC referred claimant's case to its nursing consultant Nasreen Asaria, RN, for a nursing assessment.

4. Ms. Asaria testified at the hearing that the assessment process consisted of a review of claimant's medical history and records, interviews of claimant's mother and grandmother, a physical examination of claimant, and the preparation of a June 6, 2012 Nursing Assessment report containing her findings. According to Ms. Asaria's testimony and nursing assessment report (Ex. 4), claimant suffers three to four episodes of seizures daily. She has significant scoliosis requiring surgical correction which cannot occur until claimant gains at least 25 pounds. Claimant's severe under-weight of 33 pounds and

her height of 33 inches place her in the third percentile. Ms. Asaria's nursing assessment report identifies the following risks for claimant:

1. At risk of multiple seizure episodes with respiratory distress secondary to her diagnoses.
2. At risk for dehydration and for malnutrition secondary to being petite and underweight.
3. At risk of injury, needs supervision and assistance at all times.
4. Regular follow ups and total care is a challenge for mother and family.

(Ex. 4, at page 5.)

5. Based on her nursing assessment of claimant's medical condition, Ms. Asaria determined that claimant required a higher skill level of respite care and recommended 30 hours per month of LVN respite care for claimant.

6. By Notice of Proposed Action Letter dated July 9, 2012, SCLARC notified claimant's mother that "[b]ased on the recommendations from the nursing assessment, it has been determined by SCLARC that . . . [claimant] needs LVN respite services to maintain a stable and healthy environment. Therefore if you are interested in receiving 30 hours per month LVN services please contact your Service Coordinator as soon a possible."

7. On September 18, 2012, claimant's mother filed a Fair Hearing Request stating in part that claimant's "grandmother is more than well qualified to care for her as she has been helping me care for her since she's been born. She has been denied the opportunity to become a provider." Thereafter, these proceedings ensued.

8. Fezem Shabaf is the service agency's nurse manager. Ms. Shabaf testified that upon learning the full extent of claimant's needs, "best practices" require SCLARC to provide claimant with a commensurate level of care, which in this case is LNV respite care.

9. Claimant's mother and grandmother both maintain that grandmother is capable of caring for claimant. They cite to the fact that grandmother previously received CPR training from the service agency as a precondition to working as a respite care provider for claimant in the past. They had reservations about having persons who are not family members in the family home. They expressed concern that the service agency was offering a "more costly" service in light of budgetary constraints.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), which mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (§ 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (§ 4512, subd. (b).) Services and supports include in-home respite services. (§ 4686.5.)

3. Section 4686.5, effective July 1, 2009, provides for the purchase of up to 90 hours of in-home respite services in a quarter (30 hours each month) when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. Section 4690.2, subdivision (a) provides that “In-home respite services’ means intermittent or regularly scheduled temporary **nonmedical** care and supervision provided in the client’s home, for a regional center client who resides with a family member.” (Emphasis added.)

4. In-home respite is designed to achieve the following objectives set forth in section 4690.2, subdivision (a):

- (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 the 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.

5. In this case, claimant seeks a service for which she has the burden of establishing her entitlement by a preponderance of evidence. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); Evid. Code, §§ 115 (“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”) and 500 (“a party has the burden of proof as to each fact the existence of which is essential to the claim for relief or defense that he is asserting.”).)

6. The preponderance of evidence does not establish claimant’s eligibility for in-home respite care services as defined section 4690.2, subdivision (a). Rather, claimant presents with significant medical risks requiring the care and supervision of a trained

health care professional to ensure her safety when family members are absent. (See Factual Findings 4 and 5.) Claimant's grandmother's unquestionable love and dedication to claimant, although laudable, is no substitute for medical knowledge, experience, and acumen. Nothing in the Order set forth below precludes claimant's grandmother's continuing care for claimant when her mother is in need of respite.

7. Cause does not exist pursuant to Welfare and Institution Code section 4686.5 of the Lanterman Act to grant claimant's request for in-home respite care services by reason of Factual Findings 1 through 9 and Legal Conclusions 1 through 6.

WHEREFORE THE FOLLOWING ORDER is hereby made:

ORDER

Claimant Arvinae M.'s appeal is denied; however, claimant remains eligible for LVN respite care previously offered to her by South Central Los Angeles Regional Center.

Dated: November 7, 2012



JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.