

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2013030621

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2013, in Campbell, California.

Claimant was represented by his mother. Claimant was not present.

Jacques Maitre, Director's Designee for Fair Hearings, represented Respondent San Andreas Regional Center (SARC).

The record closed on April 22, 2013.

ISSUE

Whether SARC is required to provide an additional 117 hours per month of respite services to Claimant.

FACTUAL FINDINGS

1. Claimant was born on May 15, 1979, and is currently 33 years of age. He lives with his parents in Sunnyvale. Claimant's eligibility for regional center services is based upon cerebral palsy. He also has limited vision and is legally blind. Claimant has

an individualized day program at Hope Rehabilitation Services and also attends classes at DeAnza College. He needs a great deal of physical assistance, including at night.

2. Claimant's latest Individual Program Plan (IPP) was prepared on May 30, 2012. It has not been signed by Claimant's mother. As regards respite, the IPP states that Claimant "receives 348 hours of parent vendored respite per month and more hours are being requested by his mother for complete coverage for the month. She has been persistently requesting 450 hours a month which will include consistent coverage 7 days per week and stable staff by Maxim."

3. On March 1, 2013, SARC issued a Notice of Proposed Action indicating the denial of Claimant's request for a total of 465 hours per month of respite. (The 450 number contained in the IPP was likely a typographical error.) As the reason, the Notice states "SARC is currently funding 348 hours per month of respite to [claimant's mother]. Mother currently gets 272 hours per month of IHSS<sup>1</sup> as well as current respite amount. SARC believes that 348 hours per month is an adequate amount to relieve mother of care."

4. Claimant's mother disagreed and filed a request for fair hearing, in which she repeated her request for an additional 117 hours per month of respite. This hearing followed.

5. Claimant's mother testified that the additional respite hours are needed to provide care for Claimant 24 hours each day. He has difficulty sleeping, and someone must respond to his needs in the nighttime hours. On November 7, 2011, Claimant received an overnight sleep evaluation at the Stanford Sleep clinic. The evaluation revealed severe sleep apnea, and disturbed and short sleep duration. Although Claimant

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<sup>1</sup> IHSS is the acronym for In-Home Supportive Services, a generic resource/program that is not funded by regional centers.

utilizes a toilet during the day, he has difficulty at night. Claimant's mother stressed that it is Claimant's desire to remain in the family home. They have discussed a supported living plan, but do not wish to pursue that option at this time.

6. Maxim Health Care Services, Inc., is vendorized by SARC to provide Claimant's respite care. In support of her request for an increase in respite hours, Claimant's mother contended that SARC has paid Maxim in excess of the 348 authorized hours per month on many occasions, as follows: October 2009, 397 hours; November 2010, 360 hours; December 2010, 386 hours; January 2011, 371 hours; October 2011, 350 hours; April 2012, 385 hours; May 2012, 436 hours; June 2012, 386 hours; July 2012, 355 hours; August 2012, 495 hours; September 2012, 374 hours; December 2012, 355 hours; and March 2013, 397.5 hours. The information is taken from authorization forms, however, and regardless of whether these additional hours were provided and/or paid for, the forms state that the authorized hours are 348 per month. In the past, Claimant's mother has been allowed to carry over authorized hours to other months, but SARC is apparently no longer allowing that to be done.

## LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4501 et seq.)

is two-fold: 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 productive and independent lives in the community.

*(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)*

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community . . . .

Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

*(Welf. & Inst. Code, § 4620.)*

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. The planning team includes the consumer or his representatives, agency representatives and other appropriate participants. Once the IPP is in place:

A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP].

*(Welf. & Inst. Code, § 4648, subd. (a)(3).)*

4. Respite is one service provided to consumers. It is defined as follows:

"In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision

provided in the client's own home, for a regional center client who resides with a family member. These 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 to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (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 the family members.

(Welf. & Inst. Code, § 4690.2.)

5. Effective July 1, 2009, the California legislature mandated that regional centers adopt certain cost saving measures. Pursuant to Welfare and Institutions Code section 4686.5, subdivision (a)(2), regional centers may no longer purchase more than 90 hours of in-home respite services for a consumer in a quarter unless the consumer qualifies for an exemption from that limitation.

6. As stated above, SARC currently funds 348 hours per month of respite for Claimant. This amount far exceeds the maximum amount specified in Welfare and Institutions Code section 4686.5. An exemption may only be granted:

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.

(Welf. & Inst. Code, § 4686.5, subd. (a)(3)(A).)

#### ANALYSIS

7. The over-arching purpose of respite is to give family members caring for regional center consumers a break from that care. In this instance, it appears that the service is being utilized as part of an overall extensive plan to provide for all of Claimant's needs. Nonetheless, it is Claimant's burden to demonstrate that he qualifies for an exemption to the law setting respite at a maximum of 90 hours per quarter. It appears that SARC has made the determination that the extraordinary number of hours of respite it funds – far in excess of 90 hours per quarter – are necessary to maintain Claimant in the family home. SARC has denied, however, Claimant's request for an even greater number of respite hours, and Claimant has not met his burden to show that he requires more hours. Accordingly, the appeal will be denied.

#### ORDER

Claimant's appeal is denied.

DATED: May 1, 2013

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MARY-MARGARET ANDERSON

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.