

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

Robert M.,

Claimant,

vs.

SAN GABRIEL POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2013050062

DECISION

Administrative Law Judge Deborah M. Gmeiner of the Office of Administrative Hearings heard this matter on August 26, 2013, in Pomona, California.

Robert M. (Claimant) was represented by Matthew Pope, Attorney at Law. Claimant, Lily S., Claimant's mother (mother) and Christian M., Claimant's brother (brother) attended all or part of the hearing.<sup>1</sup>

Daniela Santana, Fair Hearings Program Manager represented San Gabriel Pomona Service Agency (SGPRC or Service Agency).

By agreement, both parties submitted written argument on August 26, 2013. Claimant and Service Agency's written arguments were received on September 3, 2013, and

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<sup>1</sup> Claimant, his mother and brother are identified by first name and last initial to protect their privacy.

are identified as Service Agency Exhibit 7 and Claimant Exhibit X, respectively. The matter was submitted for decision on September 3, 2013.

## ISSUE

Should Service Agency fund 21 days per year of in-home respite in lieu of out-of-home respite?

## FACTUAL FINDINGS

### JURISDICTIONAL FACTS AND BACKGROUND

1. Claimant is a 22-year-old man who lives at home with his mother and his 19-year-old brother. Claimant and his mother would like Claimant to continue to live with his family. Claimant is eligible for services under Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code § 4500 et seq.)<sup>2</sup> on the basis of autism and mental retardation. Claimant receives Social Security Disability Income in the amount of \$850.00 per month and between 275 and 282 hours of In Home Support Services (IHSS) supportive services in addition to multiple services funded by the Service Agency.

2. Claimant is in good general health. He has been diagnosed with a seizure disorder and diabetes and takes medication for his diabetes. Claimant is 5'4" tall and weighs 215 pounds, is considered to be obese, and has some special dietary needs. He wears glasses.

3. Claimant is ambulatory. He has poor fine motor skills. His bowel and bladder control are minimal and he is learning to use the toilet with assistance. Claimant requires prompts and assistance to complete his basic self-care tasks. He is able to put his shoes on

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

but not tie them. He can prepare simple microwave foods with assistance. He eats too fast and will stuff his mouth with food. He does not choke on his food.

4. Claimant is verbal and communicates with simple phrases. He requires prompting to answer questions. Claimant is able to make eye contact when he speaks. Claimant likes music, and he and his brother enjoy playing music together. Claimant likes to use his computer and play his keyboard. His teacher described him as very helpful and willing to initiate classroom chores.

5. Claimant likes to go into the community with his mother and brother, and particularly likes to go to Costco to visit the food vendors. This can be a problem because Claimant must avoid certain foods which are distributed in the store. He can become resistive and tantrum when redirected away from such foods. His tantrum consists of screaming and physical aggression, including slapping. His aggression can be unpredictable.

6. Claimant recently completed his public school education. His 2011-2012 Individual Program Plan (IPP) documents maladaptive behavior problems Claimant displayed at home and in school, including hitting and slapping others and himself.

7. Claimant started the Per Ankh Life Skills Behavior Management Day program on January 7, 2013 (PALS). This day program is designed to address significant behavior problems. Initially, Claimant displayed maladaptive behaviors when transitioning to the program and in response to a staff member whom he did not like. PALS changed the staff assigned to work with Claimant and the behaviors appear to have subsided. Service Agency funds two hours per day of personal assistance to help mother get Claimant ready to attend PALS in the morning.

8. Claimant requires constant supervision because of his lack of safety awareness. He does not look both ways when crossing the street. He will wander off when in the community. Claimant is anxious when his mother is away. He requires assistance to take his medication.

9. Claimant's most recent annual IPP meeting was held on November 28, 2012. Claimant's November 2012 IPP provided for 30 hours of in-home respite per month. In addition to the agreed to 30 days per month of in-home Claimant also requested 21 days of in-home respite in lieu of out-of-home respite. Claimant wanted the 21 days of in-home respite because mother planned to travel out of the country in February 2013. Mother travels to Indonesia and China to visit family and friends. The request for 21 days of in-home respite was denied by Service Agency. Claimant filed a Fair Hearing Request, but withdrew the request because mother planned to be out of the country when the hearing was scheduled to be held.

10. At Claimant's request, a further IPP was held on April 10, 2013 and minor changes were made to the IPP. At the April 2013 IPP meeting, Claimant again requested 21 days of in-home respite in lieu of out-of-home respite. By letter dated April 17, 2013, Service Agency gave notice of its proposed action denying Claimant's request for 21 days of in-home respite in lieu of out-of-home respite. Service Agency denied mother's request on the grounds that: a) Claimant was receiving a variety of services, including community integration, adaptive skills training, behavior intervention, and personal assistance in addition to 30 hours per month of in-home respite; b) Service Agency concluded that no grounds for an exemption to section 4686.5 existed; and c) pursuant to section 4646.4, Service Agency was required to consider IHSS funds being received by Claimant as a generic resource that would be appropriate to use to fund additional in-home respite.

11. On April 24, 2013, Claimant filed a Fair Hearing Request. This appeal and hearing ensued.

#### SERVICE AGENCY'S DECISION TO DENY IN-HOME RESPITE IN LIEU OF OUT OF HOME RESPITE BASED ON ITS CONCERN FOR CLAIMANT'S SAFETY AND WELFARE

12. During the hearing in its closing argument (Exhibit 7) Service Agency based its opposition to in-home respite in lieu of out-of-home respite on concern for Claimant's

safety and welfare in mother's extended absence. These concerns involve Claimant's need for multiple caregivers over rotating shifts, the lack of caregiver oversight across multiple shifts, the need for trained staff and a secure environment to assure Claimant's safety and welfare, and the unavailability of mother to coordinate staffing. Service Agency is also concerned because Claimant has recently experienced an increase in maladaptive behaviors as evidenced by the fact that he is attending a specialized day program for individuals with challenging behavior problems, and concern that mother is unavailable if Claimant has an emergency. Finally, Service Agency expressed concern about Claimant's 19-year -old brother's availability and ability to assume significant caregiver responsibility in mother's absence. While Service Agency acknowledged brothers' concern for Claimant, Service Agency correctly noted that brother did not know the names of Claimant's regular caretakers and was uncertain about Claimant's medical needs.

13. Giselle Salas (Salas), Manager, Client Services, Transition Services team, and Daniela Santana (Santana), Fair Hearing Manager, testified on behalf of Service Agency.

14. Salas has been employed by Service Agency for 19 years. She is familiar with Claimant's case. Salas was involved in the decision to deny Claimant's request for in-home respite in lieu of out-of-home respite.

15. Salas is knowledgeable about out-of-home placement facilities, including out-of-home respite facilities, for individuals with behavior problems. According to Salas, out-of-home facilities who accept clients with behavior problems are required to provide training to 24- hour direct care staff. These facilities also provide out-of-home respite when they have vacancies.

16. According to Salas, Service Agency approved 30 hours per month of in-home respite because of Claimant's behavioral problems. Service Agency is agreeable to funding 21 days of out-of-home respite for Claimant but denied 21 days of in-home respite in lieu of out-of-home. Service Agency's decision to deny additional in-home respite was based on concerns for Claimant's safety and welfare. Service Agency considered Claimant's physical

size, his unpredictable behaviors, escalating behavior problems as reported by mother and concerns for Claimant's caretakers' ability to meet Claimant's needs when mother is out of the country. Service Agency is concerned because in-home respite involves one-to-one care by individuals who are not trained to handle behavior problems and there is no oversight so as to ensure continuity of care between shifts. Further, Service Agency is concerned that there may not be an in-home respite worker available to cover shifts in mother's absence. Service Agency reached these conclusions based on a review of Claimant's IPP, information provided by Claimant's service coordinator, progress reports provided by various service providers and medical records. According to Salas, mother has recently had increased contact with Service Agency due to Claimant's escalating behavior problems, particularly since Claimant moved from the school-based program to PALS. Salas noted that PALS is a program for individuals with significant behavioral challenges.

17. Because Service Agency was concerned for Claimant's safety in mother's absence from the home and country, Service Agency asked mother to consider out-of-home respite. Service Agency proposed using short out-of-home respite as a way to transition Claimant to a new environment. According to Salas, respite facilities are able to meet Claimant's behavioral needs with trained direct care staff, can provide continuity of care across shifts, and are safe. Mother visited one out-of-home respite facility with Claimant. Claimant did not like the facility. Service Agency admitted that it could not guarantee an appropriate facility would be available when needed.

18. Service Agency understood mother wanted 21 days of out-of-home respite so she can travel overseas. According to Santana, Service Agency recognizes mother is exhausted and stressed from the care of Claimant. Santana testified that Service Agency did not deny in-home respite in lieu of out-of-home respite because of cost. Santana agreed with Salas that Claimant needs trained direct care respite staff because of his behavioral issues.

19. Based on her testimony, Mother does not seem to have to a formalized way for various caretakers to communicate with one another across different shifts. She does not seem to have a formalized plan for emergencies, including emergency temporary placement should the need arise. Mother has not applied for a conservatorship for Claimant although she acknowledged she should do so. Mother relies on two regular respite workers from Maxim Care Services Inc. (Maxim), a respite agency vendored by the Service Agency, brother, friends, and volunteers as respite workers. She has provided some medical information to Maxim, but she was uncertain exactly what that information was.

#### ADDITIONAL GROUNDS FOR SERVICE AGENCY'S DECISION TO DENY IN-HOME RESPITE IN LIEU OF OUT OF HOME RESPITE

20. In addition to the safety and welfare concerns cited by Salas and Santana, Service Agency's Notice of Proposed Action stated that the decision to deny in-home respite in lieu of out-of-home respite was because it determined an exception was not warranted under provisions of section 4686.5. Service Agency also cited section 4646.4 requiring Service Agency to consider the availability of generic resources such as IHSS as a funding source for additional respite.

#### Respite

21. One of the services under the Lanterman Act that is available to consumers is respite. However, a regional center's authority to purchase respite is not unlimited. Section 4686.5, subdivision (a)(1) provides: "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." Section 4686.5, subdivision (a)(2) limits the authority of a regional center to purchase respite to not "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." Section 4686.5, subdivision (a)(3)(A) provides: "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." A family member is one who has a consumer residing with her, is responsible for 24- hour care and supervision of the consumer, and is not an unrelated licensed residential care facility or foster family service. (§ 4686.5, subd. (a)(3)(B).)

22. "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." (§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'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 family members."

23. 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).)<sup>3</sup>

24. Respite agencies vendored by Service Agency are required to maintain an individual consumer case file. (CCR § 56798.) The consumer file must include current copies

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<sup>3</sup> Further references to the California Code of Regulations, title 17, are cited as CCR.



of "(A) Any emergency and personal identification information, which may effect the delivery of services, including the consumer's address, telephone number, names and telephone numbers of relative's, and/or guardian or conservator, physician's name(s) and telephone number, and health plan, if appropriate; (B) Pertinent information related to consumer respite needs including: 1. Known medications; 2. Known allergies; 3. Medical disabilities; 4. Infectious, contagious or communicable conditions; 5. Special nutritional needs; and 6. Specific care needs unique to the individual consumer." The consumer file must also include, "Any other available medical, psychological, and social information which may effect the delivery of in-home respite services, including the consumer's ability and functioning level; and . . . [a]uthorization for emergency medical treatment." The consumer file must also include special incident reports, and information about important events not contained elsewhere. (CCR § 56798, subd. (c)(2)(A) and (B).)

#### In-Home Support Services

25. When developing an IPP, regional center is required to ensure that the plan conforms to the center's purchase of service policies, utilizes generic services and supports when appropriate and utilizes other services and sources of funding. (§ 4646.4.) For purposes of respite, section 4686.5 subdivision (a)(5) provides that, "A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family service plan (IFSP)."

26. IHSS supportive services are provided in every county to disabled persons "who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided." (§ 12300, subd. (a).) Supportive services include among other things, domestic services, heavy cleaning, personal care services, accompaniment for travel to health-related appointments and protective supervision. (§ 12300, subd. (b).) Personal care services may be provided in the home or other approved locations. Personal care services include "(1) Assistance with

ambulation. (2) Bathing, oral hygiene, and grooming. (3) Dressing. (4) Care and assistance with prosthetic devices. (5) Bowel, bladder, and menstrual care. (6) Repositioning, skin care, range of motion exercises, and transfers. (7) Feeding and assurance of adequate fluid intake. (8) Respiration. (9) Assistance with self-administration of medications.” (§ 12300, subd. (c).)

27. In addition to funding supportive services, IHSS may fund respite when a parent is providing services to a minor child, when the parent forgoes full time employment because no other suitable provider is available and where the inability of the parent to provide supportive services may result in inadequate care or out-of-home placement of a child. (§ 12300, subd (e).) IHSS is not authorized to fund respite for an adult child. Nothing in IHSS law or regulations prevents an IHSS recipient like Claimant from hiring a non- family member to provide supportive services, thus giving family members relief from the demands of providing care.

28. Claimant’s IPP states he is receiving 283 hours of IHSS supportive services per month. Mother testified he receives 275 hours of IHSS supportive services per month. Claimant’s 2012-2013 IPP addresses mother’s need for personal care assistance and respite. Specifically, Objective 7 addresses Claimant’s need for safety and protection when mother is away from home under extraordinary circumstances. Objective 8 addresses mother’s need for relief from Claimant’s specialized care requirements. In addressing the needs identified in Objective 7 and 8, Service Agency directed Claimant to explore natural supports, generic resources and urged mother to “complete paperwork with respite agency” and to “schedule personal assistance hours with Maxim.” (Exhibit 6.) Supportive service, including personal assistance may be purchased with IHSS funds.

29. In addition, Claimant’s IPP indicates that the agency will “explore appropriate funding and program resources. If no generic resource is available and if SGPRC funds are requested, funding for respite will be according to SGPRC Board policy.” SGPRC Board Policy (Policy) states that respite „[s]ervices can be purchased for a short period during

planned or emergency situations. Respite services are generally provided in the home; however respite on a 24 hour-basis will usually be purchased from a licensed community care or health facility.” (Exhibit 4) The Policy provides that Service Agency will give consideration to the preferences of the consumer and the family when determining the amount and need for respite. Services that provide family members relief from the responsibility of continual care are considered in determining the need and amount of respite. Such services include but are not limited to “school, adult day care services, work, day care, extended day/year programs, an In-Home Support Services (IHSS) hours that meet a respite need, such as protective supervision hours.”

30. According to mother, she is Claimant’s IHSS service provider. Mother testified that she continues to receive IHSS funds when she is out of the country. In her absence, Mother pays some of Claimant’s caretakers from IHSS funds, but others volunteer their services. The volunteers include friends and family, who make up Claimant’s natural support system.

31. By incorporating the Policy into Claimant’s IPP Objectives relating to respite and personal assistance, Service Agency has sufficiently identified IHSS as a generic service that may be considered when determining the amount of respite needed. Mother offered no evidence that an exception should be made to the Policy.

#### CLAIMANT’S RECEIPT OF IN-HOME RESPITE IN LIEU OF OUT-OF-HOME RESPITE IN PREVIOUS YEARS

32. For at least the last several years, Eastern Los Angeles Service Agency (ELARC), which served Claimant until 2011, and SGPRC have funded in-home respite in lieu of out-of-home respite. When SGPRC and ELARC approved in-home respite in lieu of out-of-home respite in the past, the authorized hours were as follows: 217.5 in 2009, 242.5 in 2010, 229 in 2011, and 242 in 2011. Service Agency funded in-home respite in lieu of out- of-home respite for 21 contiguous days in 2011 and 2012 when Claimant’s mother was traveling out

of the county. Salas testified this was done in 2011 for continuity when Claimant's case was transferred from ELARC to SGPRC. In 2012, Service Agency initially denied in-home respite in lieu of out-of-home respite. Eventually, Service Agency and Claimant's mother agreed to 280 hours of in-home respite in lieu of out-of-home respite over a 21- day period in 2012.

### CLAIMANT'S CONTENTIONS

33. Mother and Claimant's 19- year- old brother testified that they believe Claimant's well- being will be jeopardized if he is required to use out-of-home respite. Claimant becomes anxious when mother is away and when he is in unfamiliar situations. Both mother and brother point to the difficulties that Claimant has with transitions. The problem he had transitioning from school to PALS was cited as one example of this. Mother and brother believe Claimant's behavioral problems will be exacerbated if he is placed in out-of-home respite.

34. Mother disputes Service Agency's claim that inadequate provision is made for Claimant's health and safety when she is out of the country. When mother has used in-home respite in lieu of out-of-home respite in the past, there have not been any significant problems reported. Mother uses Maxim for 30 hours per month of in home respite funded by Service Agency. Two Maxim providers regularly work with Claimant. Maxim also provides personal assistance services for Claimant. Mother also uses friends and brother to provide respite. The same Maxim respite workers also provide respite when mother is away for extended periods of time.

35. Mother has not obtained a conservatorship of Claimant. In her absence, mother leaves medical information for caretakers. Respite workers and brother administer Claimant's medication from a pill box set up by mother. While Brother could not recall the names of friends and respite providers mother relies on, he testified he has phone number for people he can call in an emergency. Some of those individuals are 35 to 45 minutes away. When she travels, Mother maintains contact with Claimant through Skype.

36. Service Agency gave mother four referrals for out-of-home respite facilities. She and Claimant visited one facility. According to Mother, Claimant became sad and indicated he did not want to stay at the facility. As Salas testified, Service Agency cannot guarantee that a facility Claimant visits in anticipation of a future need will be available when the need actually arises.

## LEGAL CONCLUSIONS

1. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because Claimant dropped his appeal of Service Agency's November 2012 decision to deny funding for in-home respite in lieu of out-of-home respite, this is an appeal from the denial of a new service. Claimant bears the burden of proof. (Evid. Code, §§ 115 and 500.) In seeking government benefits, the burden of proof is on the person asking for the benefits. (See *Lindsay v. San Diego Retirement Bd.*(1964) 231 Cal.App.2d 156, 161 (disability benefits).)

2. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. The Legislature recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) Services and supports include respite services. (§ 4512, subd. (b).)

3. 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." The Lanterman Act requires a regional center to take into account consumers' individual needs

in making decisions about the appropriateness of a particular service. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

4. In enacting section 4686.5, the Legislature expressed its intent regarding the provision of respite services to regional center consumers and their families. Section 4686.5 authorizes a regional center to fund to up to 90 hours per quarter of in-home respite and 21 days of out-of-home respite in a fiscal year. The amount and type of respite is determined as part of the IPP process and an exception may be made to grant additional respite. While section 4686.5 provides for 21 days of out-of-home respite, nothing in the Lanterman Act precludes a regional center from approving in-home respite in lieu of out-of-home respite, particularly when such service furthers the two-fold goal of "prevent[ing] or minimize[ing] 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." (*Association for Retarded Citizen, supra*, 38 Cal.3d 384, 388.) Moreover, while the Policy expresses a preference that 24- hour respite be provided in a licensed community care or health facility, it does not preclude in-home respite in lieu of out-of-home respite. (Factual Finding 29.)

5. In-home respite and out-of-home respite may serve similar consumer and family needs by providing relief to caretakers from the demands of caring for a disabled individual. Service Agency and Claimant's family agreed on the need for respite services when mother leaves the country. In-home respite in lieu of out-of-home respite services has been previously provided with no problems documented in Claimant's IPP. While Claimant has experienced behavioral problems associated with his transition from school to PALS, those problems do not appear to be significantly different from the kinds of behavioral problems documented in his 2011-2012 IPP when he was still attending public school. Factual Finding 5 through 8.) Behavior problems when with family members at home and in the community do not appear to be significantly greater than in the past.

(Factual Findings<sup>5</sup> through 8.) Moreover, Claimant's behavioral problems appear to have subsided somewhat as he has adjusted to the PALS program.

6. Service Agency's concern for Claimant's well-being when mother is out of the country is not unreasonable. Mother's plan for care of Claimant in her extended absence is somewhat sketchy. She has two respite workers from Maxim she relies on. Brother and family friends fill in when needed. Brother did not know the respite workers names although he has their phone numbers. Some of the people who help with Claimant in mother's absence live 35 to 45 minutes away. There does not seem to be a formalized way for caretakers to communicate with one another. Nor is there any plan for an emergency temporary placement should the need arise. Mother has not applied for a conservatorship for Claimant although she acknowledged she should do so. Despite these deficiencies, there is no reason mother and Service Agency cannot meet to devise a written plan for Claimant's care in mother's absence. Service Agency can also ensure that the vendor, Maxim, is maintaining Claimant's consumer file, including medical and emergency information and behavior responses in accordance with CCR section 56798, subd (2).

7. In addition, Service Agency has offered behavioral consultation, but the service does not appear from the record to have commenced. This service should assist mother in managing Claimant's behavioral episodes and in developing behavioral plans that can be used by caretakers in mother's absence.

8. During the hearing, mother testified that she wants funding for 21 days of 24 hours per day of in-home respite in addition to the 30 hours per month Service Agency is currently funding. Mother's request for 24 hours per day of in-home respite in lieu of out-of-home respite fails to take into consideration the other services Service Agency is funding for Claimant, including extended day services, adaptive skills training, personal assistance and 30 hours of in-home respite. Respite funding during the hours Claimant is attending his day program, receiving adaptive skills training, and receiving personal assistance as well as receiving his regularly scheduled monthly respite would be redundant.

Claimant also fails to take into consideration funding for IHSS supportive services for 275 to 283 hours per month. Mother testified that she continues to receive IHSS funds when she is out of the county. Those funds may be used to purchase supportive services from a friend, family member, or other provider. There is insufficient evidence of a need for a respite provider in addition to a supportive service provider.

9. When SGPRC and ELARC approved in-home respite in lieu of out-of-home respite in the past, the authorized hours were as follows: 217.5 in 2009, 242.5 in 2010, 229 in 2011, and 242 in 2011. The average number of hours per year approved over the last four years was 232.75. This appears to be a sufficient number of hours to provide care for Claimant during the 21 day period when mother is traveling. Although mother testified that she thought the rate paid to Maxim for in-home respite was more than the rate paid for IHSS supportive service, Claimant did not provide evidence in support of mother's request for respite funding in excess of 232.75 hours over 21 days.<sup>4</sup>

10. During the hearing mother also testified that she wants to be able to use the additional in-home respite on an intermittent or occasional basis in increments of less than 21 continuous days. This is a change from the past when mother used the respite to travel out of the country for 21 days. Mother offered no evidence that she requires additional intermittent or occasional in-home respite. If mother wishes to have increased in-home respite to use on an intermittent or occasional basis, she should request Service Agency to increase the number of hours she receives on a monthly basis.

11. In light of Factual Findings 1 through 36 and Legal Conclusions 2 through 10, Claimant is entitled to 21 continuous days of out-of-home respite in lieu of in-home respite in an amount not to exceed 232.75 hours. The request for 24 hours per day of respite is

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<sup>4</sup> This Decision does not preclude Agency and Claimant from agreeing to provide additional hours of in-home respite or agreeing to a time period of less than 21 continuous days for in-lieu respite.



denied. The request to use the additional 21 days of in-home respite in lieu of out-of-home respite on an intermittent or occasional basis is denied.

## ORDER

Service Agency is ordered to fund 21 continuous days of out-of-home respite in lieu of in-home respite in an amount not to exceed 232.75 hours. The request for 24 hours per day of in-home respite in lieu of out-of-home respite is denied. The request to use the 21 days of in-home respite in lieu of out-of-home respite on an intermittent or occasional basis is denied.

DATED: September 17, 2013

A handwritten signature in black ink, appearing to read "Deborah M. Gmeiner", written over a horizontal line.

DEBORAH M. GMEINER

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is a final administrative decision. Both parties are bound by the decision and either party may appeal this decision to a court of competent jurisdiction within ninety days.