

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Case No. 2013060411

CLAIMANT,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL

CENTER,

Service Agency.

DECISION

The hearing in the above-captioned matter was held on June 24, 2013, at Alhambra, California, before Glynda B. Gomez, Administrative law Judge (ALJ), Office of Administrative Hearings (OAH). Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Margarita Duran, Supervisor. Claimant was represented by his mother (Mother) and father (Father) (collectively Parents).

Evidence was received, argument was heard, and the case was submitted for decision on June 24, 2013.

ISSUE PRESENTED

Whether the Service Agency should increase Claimant's In-home respite from 12 hours per month to 22 hours per month.

FACTUAL FINDINGS

1. Claimant is a six year-old boy who is a consumer of services provided by the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act

(Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.¹

Claimant is eligible for services based on his diagnosis of Autism and Mental Retardation. Claimant is also reported to have seizures.

2. Claimant lives with his parents in Los Angeles, California. He attends a special day class at his local public school from 8:30 a.m. to 2:40 p.m. He is also enrolled in extended school year services for six weeks during the summer. Through the school, Claimant receives speech therapy, occupational therapy, adaptive physical education and round trip transportation. Claimant has aggressive and disruptive behaviors, self-stimulatory behavior, and emotional outbursts. Claimant also wanders away if not constantly supervised. His aggressive behaviors include biting, hitting, and pinching others. He also requires assistance with bathing, dressing, feeding and self care tasks. Claimant is not toilet trained and wears diapers.

3. Pursuant to the Individual Program Plan (IPP) developed between Claimant and the Service Agency on November 20, 2012, Claimant receives 12 hours per month of respite. Claimant also receives ABA behavior modification services for 3.5 hours per day, four days per week and two hours per week of center based social skills training, both of which require Mother's attendance and participation. Claimant's parents requested that his respite be increased from 12 to 22 hours per month based upon his Mother's health problems and his parents' need to spend time with Claimant's sister who was recently determined to have a learning disability.

4. Father works nights leaving home at 2:00 p.m. and returning at approximately 9:00 p.m. at night. Mother does not work outside the home. Mother is experiencing depression, stress and anxiety from caring for her two children. Mother's

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

doctor has prescribed anti-anxiety and antidepressant medication to treat her symptoms. In 2011, Mother developed Bell's palsy which resulted in partial facial paralysis. The Bell's palsy has now resolved and Mother does not have any residual symptoms.

5. ELARC's Purchase of Service (POS) policy for In-Home Respite Services dated January 31, 2011 provides:

The In-home respite is intended to:

Assist family members in maintaining the consumer at home.

Provide appropriate care and supervision to ensure the individual's safety in the absence of family members.

(Absence is defined not by physical presence but by relief of direct care and supervision of the individual.)

Relieve family members from the constantly demanding responsibility of caring for the individual.

Attend to the individual'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.

6. ELARC's POS provides guidance for determination of the number of hours of respite to be assigned. Currently, Claimant receives 12 hours per month of respite which is Level C. The criteria for Level C of up to 12 hours, include consideration of medical fragility and care, behavior challenges, chronic self-care needs and family circumstance.

7. At level D, ELARC provides up to 18 hours of respite. With respect to Level D, the POS also provides that additional behaviors such as “severe behavioral concerns and... injuring self and/or others, or Consumer requires continuous supervision due to disruptive and destructive behaviors (e.g., constant biting, smearing feces, periodic wandering-several times a week.” and the “[s]everity and combination of factors” may also necessitate additional hours.

8. At level E, ELARC provides up to 24 hours per month of respite. Factors considered in addition to those present at Level D are severity and combination of family stress factors and medical fragility of the consumer such as special care required on an hourly basis. Examples of such care include suctioning or drip feedings.

9. Claimant’s application for In Home Support Services (IHSS) was denied when he was an infant. Parents plan to reapply for IHSS.

LEGAL CONCLUSIONS

1. The initial burden of proof is on Claimant as the party seeking to change the status quo. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

2. Services are to be provided to regional center clients in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

3. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer’s particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) and (b), 4648, subds. (a)(1) and (a)(2).)

4. Section 4512, subdivision (b), of the Lanterman Act states in part:

'Services and supports for persons with developmental disabilities' means 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 habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . respite, . . .

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

6. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The regional center is also to utilize the service coordination model, in which each consumer shall have a designated service coordinator “who is responsible for providing or ensuring that needed services and supports are available to the consumer.” (§ 4640.7, subd. (b).)

7. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

8. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable a minor child with developmental disabilities to remain with his or her family. (§ 4648, subd. (a)(1).)

9. “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."

10. Effective July 1, 2009, limits were imposed on a regional center's ability to purchase respite care for the families of consumers. Specifically, section 4686.5 was added to the Lanterman Act. It provides that a regional center shall not purchase more than 90 hours of in-home respite in a quarter of one year. (§ 4686.5, subd. (a)(2).) However, a regional center may grant an exemption, and provide more of such services, where it is demonstrated either that more than 90 hours per quarter of respite care is required in order to maintain the Claimant in the family home, or where it has been established that there has been an extraordinary event that impacts the family's ability to meet the care and supervision needs of Claimant. The new statute also makes clear that in order to obtain respite care, it must be shown that the family's needs for such exceed those of a family of a child without disabilities. (§ 4686.5, subd. (a)(1).)

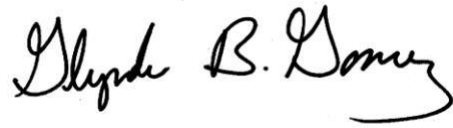
11. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the current state budget crisis. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

12. Here, Claimant has established by a preponderance of the evidence that his needs are intense and his Mother has health conditions which at this time make it difficult for her to care for him and his sibling, who has recently been determined to have a learning disability. Mother is caring for both children while Father works in the evening to provide financial support for the family. Mother's attendance and participation is required for Claimant's ABA therapy and his social skills training in addition to other care requirements for both children. Mother is exhausted, experiencing stress, depression and anxiety, is under a physician's care, and taking medication for her condition. The extraordinary circumstances of Mother's health problems and the additional needs of Claimant's sibling taken together with Claimant's extreme behavior challenges warrant an exemption to the 90 hours per quarter limit on in home respite. An increase in respite hours to 22 hours per month based upon the above factors would comply with ELARC's POS policy and provide appropriate relief to Claimant's primary caregiver, thus enabling him to remain in his home. Accordingly, ELARC shall fund 22 hours of respite per month for Claimant.

ORDER

The Eastern Los Angeles Regional Center shall fund 22 hours per month of respite for Claimant for twelve months from the effective date of this decision.

July 2, 2013

A handwritten signature in black ink, reading "Glynda B. Gomez". The signature is fluid and cursive, with a long horizontal stroke at the end of the last name.

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings