

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J.M.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013060931

DECISION

This matter was heard by Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 30, 2013, in Whittier.

Claimant J.M. was present and represented herself, assisted by her mother, L.E.¹

Judy Castañeda, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 30, 2013.

ISSUE

Whether the Service Agency should increase the hours of claimant's personal assistance (PA) services by 103 hours per month, from 160 hours per month to 263 hours per month.

¹ Initials and family titles are used to protect the privacy of claimant and her family.

EVIDENCE CONSIDERED

Testimony: Judy Castañeda; Catherine Martinez; claimant J.M.; claimant's mother L.E.; Francine Evangelisti.

Documents: Service Agency exhibits 1-10; claimant's exhibits A-H.

FACTUAL FINDINGS

1. Claimant is a non-conserved 30-year-old woman who is a consumer of ELARC based on her qualifying diagnosis of Cerebral Palsy. She is partially sighted and uses only her right eye. She suffers from multiple cranial nerve dysfunctions that render her unable to move her eyes from side to side, focus from far to near, and use both eyes at the same time. She has undergone over two dozen brain surgeries.

2. Claimant lives with her mother and stepfather in Whittier. Claimant attends Sierra Adult School five days per week from 8:00 a.m. to 12:00 p.m. Claimant walks in her home and sometimes for short outings, but she falls easily. She has a manual and an electrical wheelchair for use in the community. At home, claimant does her own grocery shopping, cleans her room and the bathroom, does her laundry, and sometimes cooks.

3. In accordance with claimant's most recent Individual Program Plan (IPP) dated December 11, 2012, the Service Agency provides funding for 130 hours per month of PA services to support claimant's educational pursuits, and 30 hours per month to support community integration, through Listo, Inc.; the PA services hours decrease to 115 hours per month when school is not in session. The Service Agency also provides funding for respite for eight hours per month through Cordova Consulting, and claimant receives 24 hours per month of In-Home Supportive Services (IHSS); claimant's mother is the IHSS service provider. Claimant also uses ACCESS and Dial-A-Ride for transportation when needed; she received a driver's license some years ago, but she has never owned a car and is not capable of driving now due to her visual impairment. The IPP requires claimant to submit a calendar of school and personal activities that substantiates the need for PA

services, states that PA hours “will not be used for social recreation activities,” states that the Service Agency will provided funding for software to allow claimant to do her homework, and notes that the Service Agency will “monitor whether PA hours can be reduce [*sic*] (could be a duplication of resources).” (Ex. 3.)

4. Claimant requested an additional 103 hours of PA services per month. By a Notice of Proposed Action dated May 23, 2013, ELARC notified claimant of its decision to deny her request. ELARC wrote that classroom instruction might be optional, and that some activities in claimant’s monthly calendar, such as shopping, could be serviced through IHSS. ELARC also suggested greater use of a walker or wheelchair to overcome mobility challenges in the community because “[u]sing the durable medical equipment would be more cost-effective than using PA services as a support.” (Ex. 1.) ELARC cited in support of its position Welfare and Institutions Code² sections 4646.5, subdivision (a)(2) (erroneously cited as “4646.5 (2)”), 4647, and 4648, subdivision (a)(8) (erroneously cited as “4648 (8)”).

5. On June 14, 2013, claimant submitted a Fair Hearing Request to ELARC, appealing the denial of an increase in funding.

6. At an informal meeting on July 2, 2013, claimant informed the Service Agency that her mother prepares her meals, takes her to doctor appointments, and assists with personal hygiene, such as leg shaving. She would like additional PA hours to help her with shopping and at the gym. The Service Agency offered to fund an additional 10 hours of PA services per month; claimant said that would be insufficient to support her in her school- related and community-integration activities, some of which would be social recreational. The Service Agency also offered to fund an advocate to appeal claimant’s IHSS hours, and to fund for Movement Unlimited, a gym that has staff trained to work with

² All further statutory references are to the California Welfare and Institutions Code, unless otherwise stated.

people with special needs; no PA hours would be available for gym use. The Service Agency indicated that it might decrease PA hours if claimant obtains more IHSS hours or begins to attend Movement Unlimited.

7. The Service Agency believes that some of the tasks claimant needs help with can be covered by additional IHSS hours; the Service Agency offered to fund an advocate to assist in seeking additional IHSS hours. Catherine Martinez, claimant's former service coordinator, testified that claimant needs PA services in school and at the gym. She testified that claimant's desire for additional hours to assist her with shopping and baking should be balanced against the need to explore generic services. She provided claimant with a scholarship application for the Center for the Blind, and offered to help try to reopen claimant's Department of Rehabilitation case. Claimant did accept the Service Agency's offer of Coordinative Life Services, which tries to identify additional resources for claimant. She discussed with claimant the use of Movement Unlimited in Arcadia, which has adaptive equipment, a personal trainer, and a focus on stretching; they would meet claimant at the door to ensure claimant's safety.

8. Claimant testified that additional IHSS hours would not obviate the need for additional PA hours, because the services IHSS provides are all in the home, other than transportation to medical appointments and grocery shopping. Claimant testified that she does not need more in-home services than she is already receiving; she needs hours to enable her to access the community. In the community, when claimant is walking on a sidewalk, she cannot see cracks in the sidewalk and she trips; even when using her wheelchair, she needs someone to "be her eyes." Her left hand and left leg are weak, and she has difficulty using the wheelchairs for any significant distance. When she is riding on a bus, she cannot read street signs or business signs or addresses, so she cannot take the bus independently. If she goes to a movie, she needs someone to hold her purse as she takes out money, and to walk with her to the bathroom. Claimant testified that she tries to go to her gym, the YMCA, every day. Gym sessions can take up to three hours, including

the time necessary to change her clothes, get on the equipment, and use the equipment. Claimant does not want to use Movement Unlimited as her gym. The YMCA allows her to work out with a mainstream population; Movement Unlimited caters primarily to people with disabilities and the elderly. It is also much farther from home than the YMCA, transportation to the gym is unreliable, and she is forced to wait for a ride in an unsafe location at night, in a community that claimant cannot navigate independently. Claimant has lost 10 pounds working out at the YMCA; her doctor recommended she lose weight. Claimant testified that, while she has had 160 hours of PA per month funded, she has been able to receive assistance at school and at the gym, as well as grooming appointments and non-grocery shopping. But claimant volunteers at a church day care center; she wants to be able to devote more time to volunteer activities. And while the computer software funded by the Service Agency helps her with her homework, it does not make necessary corrections; claimant needs personal assistance with this task, due to her vision impairment. The 160 hours, she testified, does not allow her to go to school, do her homework and correct her homework, and attend the gym each day, while also going shopping and otherwise participating in the community and in her volunteer endeavors. When her personal assistant leaves at the end of the work day, claimant is left alone in front of her computer, and cannot go out and access the community. Her mother, who gets home late from work, prepares dinner, but does not have time to take claimant out.

9. Claimant's personal assistant, Francine Evangelisti, testified about the services she performs. She picks claimant up at 8:15 a.m., and helps her with her backpack, water, and lunch. After parking at school, Evangelisti carries all of claimant's belongings while they walk to the classroom. At claimant's desk, Evangelisti takes out of the pack whatever claimant needs, takes notes for claimant, and hands in claimant's assignments. After class, Evangelisti takes claimant to the car and then to lunch; Evangelisti picks up any food, and is always at claimant's right side so claimant can grab her when claimant is unsteady. Then they go to the gym; Evangelisti parks the car very close to the YMCA. She

carries everything claimant needs. First she helps claimant to the restroom, then walks downstairs with claimant to the machines. A personal trainer there assessed claimant's goals and created a plan for her. Evangelisti keeps track of claimant's exercises in a log; she adjusts the machines for claimant and helps her on and off. She adjusts the weights, and helps position claimant's feet. Evangelisti encourages claimant to push herself, and claimant has made a good deal of progress. Evangelisti also accompanies claimant to Target or the mall; claimant is usually in a wheelchair during these activities, and Evangelisti helps get things off the shelves. Evangelisti testified that the classroom and gym activities, and sometimes some shopping, can be accomplished in the 160 PA hours currently provided.

DISCUSSION

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding for an additional 103 hours per month of personal assistance services. (Factual Findings 3 through 5.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that she is entitled to Service Agency funding for an additional 103 hours per month of personal assistance services. (Evid. Code, § 115.)

FUNDING FOR PERSONAL ASSISTANCE SERVICES

3. The Lanterman Act is a comprehensive statutory scheme to provide “[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (§ 4501.) The services and supports should “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. Claimant established the need for additional PA hours to further her integration into the community. She established that additional IHSS hours would not meet her community integration needs, including non-grocery shopping and volunteer activities, or her unmet homework needs, as identified in the IPP process, or that Movement Unlimited is an appropriate substitute for the YMCA in this instance. The Service Agency testified that using PA hours for time at the gym is appropriate. The YMCA, based on the evidence, is more appropriate for mainstreaming than the specialized gym suggested by the Service Agency, as contemplated by section 4501. Also, at the YMCA, claimant has been able to meet goals of physical habilitation (§ 4512, subd. (b)) recommended by her physician. (Factual Findings 6 through 9.)

LEGAL CONCLUSION

Cause was established to require the Service Agency to increase claimant’s personal assistance services hours by 103 hours per month. (Factual Findings 1-9, and Discussion.)

ORDER

Claimant J.M.'s appeal is granted.

DATE: August 30, 2013

A handwritten signature in black ink, appearing to read "Howard W. Cohen", is written over a horizontal line.

HOWARD W. COHEN

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.