

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

Inland Regional Center,

Service Agency.

OAH No. 2013080486

DECISION

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on January 21, and February 11, 2014.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Vicki Smith, Executive Director, State Council on Developmental Disabilities Area Board #12, represented claimant, who was not present. Claimant's mother was present throughout the hearing.

Oral and documentary evidence was received. The record was kept open for the submission of written closing argument and a letter previously prepared by claimant's mother that had been sent to the regional center. Claimant's Closing Brief was received as argument and marked as Exhibit C-32. IRC's Closing Argument was received as argument and marked as Exhibit R-28. The letter written by claimant's mother was received and marked as Exhibit C-33. The record was closed, and the matter was submitted on February 13, 2014.

ISSUE

What is the appropriate number of personal attendant care hours the regional center should fund for claimant each month?

FACTUAL FINDINGS

JURISDICTIONAL AND PROCEDURAL MATTERS

1. Claimant is eligible to receive regional center services.
2. On August 1, 2013, the Inland Regional Center (IRC) notified claimant, through his mother, that the regional center intended to eliminate the 210 personal attendant care hours the regional center had been providing for claimant each month since August 2012 and that the elimination of the personal attendant care hours would take place in phases over the next six months.
3. Claimant filed a timely appeal and requested a fair hearing. At the onset of the hearing, the regional center representative stated that the regional center was no longer seeking to eliminate claimant's personal attendant care hours. Instead, it asked that claimant's personal attendant care hours be reduced from 210 to 120 hours each month.
4. Near the end of the first day of the hearing, evidence was produced that claimant's mother had recently requested that the regional center increase claimant's personal attendant care hours to 389 hours per month, that the regional center had not yet formally responded, and that it intended to deny the request. Both parties agreed that the evidence each party intended to rely upon would be the same regardless of whether the question was whether claimant's personal attendant care hours should be *reduced* or *increased*. As a result, the parties agreed that claimant's new request would be deemed denied by the service agency, timely appealed by claimant, and consolidated into this hearing. The parties agreed that the ultimate issue to be resolved is: What is the

appropriate number of personal attendant care hours the regional center should fund each month for claimant?

EVIDENCE PRESENTED AT THE HEARING

1. Claimant is a 35 year old, unconserved adult.
2. Claimant has been a regional center consumer since he was a young child displaying severe intellectual delays. He has an IQ of 40. A few years ago, a Stanford Binet assessment determined that claimant has the cognitive abilities of a three and one-half year-old child.
3. In April 2010, Paul Greenwald, Ph.D., an experienced psychologist with the regional center, conducted a re-evaluation of claimant, who was then 31 years old, to determine if he was also autistic. Dr. Greenwald concluded that claimant was severely mentally retarded, had a co-morbid affective disorder, and had severe deficits in all aspects of his life. Dr. Greenwald's report identified some of claimant's challenging issues and behaviors and stated:

[Claimant] is very impulsive, obsessive/compulsive and anxious. He pours liquids out of open containers that he finds and closes open doors. Although not aggressive with family members and friends, he may become agitated to new people and lash out against them if they get too close. He has grabbed hair, scratched, pushed, cried, and removed his shoes, socks and shirt. [Claimant] has aggressed against peers and property at day programs he has attended. As a result he has been banned from most local programs without a one-to-one aide.

There is a strong obsessive compulsive feature to many of [claimant's] behaviors. He turns water faucets on and off and repeatedly flushes toilets. This is especially true when he is agitated. . . .

Sleep patterns are fitful and sporadic in spite of medication regimens. Although he is given neuroleptic sedative and sleep medicines, [claimant] has catastrophic night terrors during which he may have an encopretic¹ accident and smear or eat feces. Incontinence is a permanent feature and reported as a side effect of now discontinued medication, requiring adult diapers and close supervision.

[Claimant] is minimally aware of his surroundings, does not have safety awareness and, for instance, will try to open doors and bail out of moving cars. Elopement is always a concern. Choking is a possibility as he eats frenetically. He requires constant supervision to insure safety.

4. Claimant's mother testified about the painful and difficult path of trying to receive and provide appropriate care and supervision for her son. When claimant was a young child, he was abused by his father. Claimant's parents divorced, and his father had no further contact with claimant. Claimant's needs were great and his siblings' needs suffered. For a few years, claimant lived with a family friend. Claimant's mother remarried and tried to bring claimant home. Claimant's mother struggled with

¹ "Encopretic" is a psychiatric term used to refer to involuntarily defecating.

managing his behaviors. He was hyper. He did not sleep. He had limited verbal abilities and could not clearly communicate his needs. He would smear his feces. Claimant's mother pursued placement. Claimant went to live at a board and care called the Robinson Home. Mrs. Robinson provided a loving and caring environment, and did her best to manage claimant's difficult behaviors. Claimant made significant progress. Claimant referred to both Mrs. Robinson and his own mother as "Mom," and he lived successfully at the Robinson Home until he became 15 or 16 years old, when things changed. Claimant became the most difficult child in Mrs. Robinson's care. His OCD behaviors increased. He became aggressive. Claimant's mother, who had remarried, was living out of state, where her husband had a good job. Mrs. Robinson became fearful of claimant's aggression.

5. Claimant began tackling Robinson family members to the ground. Mrs. Robinson called the authorities. Claimant was placed on psychiatric hold under Welfare and Institutions Code section 5150, and he was brought to the psychiatric unit of the county hospital. Claimant was placed on psychotropic medications for the first time. He had an adverse reaction to the drugs and developed Neuroleptic Malignant Syndrome (NMS), a rare but life-threatening reaction to antipsychotic drugs. His body began to shut down. Claimant was transferred to Loma Linda Children's Hospital, and he was in the ICU for six weeks. His mother stayed with him at the hospital. As a result of his NMS, claimant, who was then 16 years old, lost all his motor skills and could no longer walk or talk. Claimant's mother took him home and tried to help him recover. Over time, his speech returned and he became able to walk without a wheelchair. He never became continent again. Claimant's issues proved too much for claimant's step-father, and claimant's mother and step-father divorced.

6. Claimant lived with his mother from 1994 through 2000. As claimant got better physically, his behaviors got worse. He attended special education classes but was

a constant problem at school, even with a 1:1 aide at all times. Claimant's mother again remarried. Her older children moved out of the house.

7. By 2000, claimant's behaviors again became overwhelming for his family. He was now a large man, over 6 feet tall and weighing over 200 pounds. He would aggressively grab and drag his mother. He jerked her and injured her. Claimant's mother asked the regional center for help but did not know what help to ask for. She was provided with respite, but claimant's behaviors became too much for her. She again tried placement for her son. Over the course of the next several years, claimant had a series of placements. Each time, problems arose and his board and care home would call the authorities. In 2002 claimant was overmedicated by staff at his board and care; he again suffered NMS, was hospitalized, and almost died. He was in the hospital for two months, at times completely "out of it," at other times crying and in a fetal position. Claimant was kept in physical restraints. When he was well enough to be discharged, he returned to his mother's home.

8. In a letter dated June 5, 2002, Keith Gordon, M.D., chair of the department of psychiatry at Arrowhead Regional Medical Center, wrote that claimant had been tried on almost every psychotropic medication available, that the benefits had been minimal, that he developed NMS in response to the use of antipsychotic medications, and that he was recovering from another bout of NMS. Dr. Gordon wrote that, in his opinion, claimant "should never be given another antipsychotic medication until a new generation of medications is developed that are completely risk free for the development of NMS." He urged the regional center to find a placement that could manage claimant's behaviors without the use of chemical restraints or calling authorities that would result in his being placed on another 5150 hold.

9. Claimant's mother testified that she "begged" for the regional center's help. The regional center authorized respite hours. Claimant received the maximum IHSS

hours for care and supervision, which was, at that time, 283 hours per month. From 2002 through 2009, claimant had many ups and downs, but he was able to remain in his mother's home. Claimant's mother tried many day programs for claimant. He was often asked to leave programs because of his aggressive and difficult behaviors. In 2005, following a change in the structure of his day program, claimant's aggressive and problematic behaviors increased. He started hitting people. When he threw a chair that lodged in a wall, he was no longer welcome in that day program. Claimant's mother tried to provide constant care. Day programs were refusing to accept claimant. While some progress was being made at home, other behaviors were not improving. Claimant was aggressive. He was not sleeping. He would wander off if not supervised closely. He was smearing his feces.

10. The IPP signed in 2007 stated that claimant's "long term goal" was to "live at home with his family."

11. Claimant's mother asked for more help from the regional center. At the time, claimant's mother was married. Claimant's siblings assisted with his care, and claimant's mother and new step-father received 80 hours of respite each month. Claimant's mother requested additional help. Her request was denied.

12. By 2009, claimant's mother felt at her wit's end. Claimant's step-father threatened to leave claimant's mother over claimant's all-consuming care. Claimant's mother did not feel she had sufficient help to provide the care needed for claimant. Claimant's mother's sister and the sister's boyfriend would sometimes come by and offer an ear, moral support, or even supervision for claimant, but it was not enough.

13. In 2009, claimant's mother tried placement once again. Claimant was placed in the McKinley Care Home, a Level 4(I) home, which is the highest level of care available in a board and care home. The administrators assured claimant's mother that they could handle claimant's behaviors and needs and that they could provide medical

care if needed. Claimant's mother emphasized the need to follow claimant's medical regimen precisely because of his history of NMS and his serious medication sensitivity. Claimant moved into the McKinley Home.

14. About one month later, claimant's mother was visiting her family in Arizona when she received a call from McKinley. Claimant was in distress, agitated, and was acting strangely. When claimant's mother inquired about the medications the staff was providing to her son, she learned that the staff had not followed the doctor's orders. Claimant was again hospitalized for an overdose. He required 2:1 attendants. Four people were needed to give him a shower. The hospital also made a medical error that caused additional medical and psychiatric ramifications for claimant.

15. Claimant returned to the McKinley Home. One of his caregivers advised claimant's mother that he had concerns about claimant's care at McKinley. That staff member was terminated. In July 2011, claimant's mother decided to bring claimant home from McKinley.

16. Upon his return home, claimant's needs appeared to be even greater than before he went to McKinley. His behaviors were more extreme and difficult to control. Prior to going to the McKinley Home, claimant was usually cooperative with his mother when she would give him a bath or change his diaper. Now he was uncooperative and it required two people to accomplish these tasks. Claimant's mother began paying people out-of-pocket because of the huge need for assistance. She again contacted the regional center for help with claimant.

17. Claimant's mother learned that in appropriate cases, personal attendants could be funded by the regional center. In May 2012, claimant's mother requested the regional center to provide 389 personal attendant care hours each month to assist in claimant's care so he could stay at home, where claimant's mother felt he would be safest if she had sufficient assistance. The regional center denied the request. Claimant's

mother requested a hearing. An informal meeting was held. The regional center staff and claimant's mother discussed looking for a new day care program. They discussed personal attendant care hours. The regional center and claimant's mother agreed to resolve the matter with the regional center providing funding for 210 hours of personal attendant care for claimant each month and to review the hours quarterly. The regional center offered to send claimant's mother information about Pathways, Inc., which provides personal attendant care services. Stephanie Zermeño, Consumer Services Representative for IRC, sent claimant's mother a letter dated July 12, 2012, confirming the resolution. It stated in part:

Per our conversation on July 11, 2012, we agreed to the following resolution. IRC is willing to fund 210 hours per month of Personal Attendant Care for [claimant.] The hours will be reviewed no less than quarterly to assess for appropriateness. Furthermore, as discussed during the July 11th call, [claimant's] Consumer Service Coordinator, Brian Tremain, will be delivering a referral packet today to Pathways, Inc., for services. A representative from Pathways, Inc., will contact you to set up an intake very soon. If you are comfortable with the service provider and wish to proceed with service from Pathway, Inc., please notify IRC and the authorization for service will be set up.

18. Ms. Zermeño and Tamara Hathaway, IRC Program Manager, testified that it was their understanding the 210 hours were offered to provide personal attendant care hours only until a day program could be found and that if the day program was successful, the regional center would phase out the personal attendant hours. Claimant's

mother testified that it was her understanding claimant was to receive the 210 personal attendant hours each month in addition to the day care program in order to allow claimant to live safely at home, and she did not understand it to be transitional in nature.

19. During the hearing, the parties focused on what each felt was agreed to in July 2012 and whether the regional center's funding of personal attendant hours was intertwined with the claimant's participation in a day care program. It is noteworthy that the regional center's July 2012 letter did not mention a day care program or condition the personal attendant care hours on the absence of a day care program. However, what was agreed to or intended in July 2012 is not relevant today. In July 2012, claimant was in a state of flux, still recovering from his most recent hospitalization and establishing a routine in his mother's home. Claimant's mother had never received the assistance of personal attendant hours funded by the regional center. The 210 hour resolution was a reasonable estimate at the time. Since then, the parties have had the benefit of seeing what has worked and what has not worked.

20. In June 2012 claimant began attending the First Step Program, a day care for developmentally disabled adults. He is authorized to attend 123 hours each month.

21. Today, claimant currently receives the following services and supports on a monthly basis:

- 260.1 hours In Home Supportive Services (IHSS) funded by the county.²
- 123 hours for the First Step day care program (funded by IRC)

² Claimant receives the maximum currently allowed by IHSS. Claimant's IPP indicates that he receives 283 hours IHSS, but those hours were reduced 8 percent by the county for budgetary reasons, and the amount he actually receives is 260.1 hours per month.

- 48 hours preferred provider respite (funded by IRC)
- 210 personal attendant care (funded by IRC and the subject of this appeal)
- 10 hours behavioral intervention services through Toward Maximum Independence (TMI) (funded by IRC, but not considered care or supervision)

22. Claimant lives alone with his mother. Claimant's mother is his IHSS provider. She does not work outside the home because she feels claimant's needs are currently too great for her to do so.

23. Jillian Graham, a licensed clinical social worker with TMI, testified that claimant's mother has been a receptive and willing learner of the behavioral instruction Ms. Graham has provided to assist claimant's mother in managing claimant's difficult behaviors. They have worked on learning proactive intervention techniques and targeting claimant's mood when approaching difficult tasks like showering and diaper changes. Ms. Graham has worked with claimant and claimant's mother since October 2011. She has found claimant's mother to be excellent at diffusing claimant's problem behaviors. Ms. Graham also works with claimant's day care providers. Ms. Graham has found that on a good day, claimant resists about 50 percent of commands; on a bad day he resists them all. She considers this progress from where he was a year ago, but he still has many serious needs. Many tasks still require two adults to assist claimant. In her opinion, if claimant's mother did not have at least the same level of personal attendant care she is receiving today, claimant's difficult behaviors would increase.

24. Claimant has excellent attendance at his day program, First Step. He always has a one-on-one aide at the program. He has good and bad days, and whether it will be a good or bad day is unpredictable. On a bad day, his behaviors can become so extreme that the program calls his mother to pick him up, and she does so. (This happened about a month before the hearing; claimant attacked two staff members at the day care program and his mother needed to be called to pick him up.) Claimant's

mother drives him to and from the program, and this is paid for by the regional center. Claimant's mother has requested that alternative transportation be provided and the regional center is looking into it.

25. Claimant cannot be left alone, even for one minute. (One of his care providers estimated that claimant could be left alone safely for 30 seconds; another stated that he could be left alone safely for no more than one minute.)

26. Claimant has erratic sleep patterns. Sometimes he does not sleep. Sometimes he can sleep for up to four hours. His sleep is unpredictable. Once, an experienced and trusted personal attendant fell asleep while claimant was sleeping. Claimant woke up, destroyed the house, emptied the refrigerator, and killed a pet bird before the caregiver awoke. As a result, a caregiver must stay awake with claimant while he is sleeping.

27. The weight of the evidence established that claimant requires two adults to assist him in safely completing many necessary tasks. These include diaper changes, showering, meal preparation, transportation, personal grooming, any medical appointments or laboratory tests outside the home, taking blood pressure inside the home, and getting ready for bedtime. Claimant needs several diaper changes a day. If he has urinated, those diaper changes can be completed by two people in about 15 minutes. If he has defecated, the amount of time required is longer because he will also need a shower. Meals require two people – one to prepare the meal and another to supervise claimant because claimant is not safe in the kitchen. He will dump everything out of the refrigerator or burn himself on the stove.

28. During the hearing, regional center staff argued that claimant has natural supports in his mother, his aunt, her aunt's boyfriend, and in claimant's siblings; that they can provide assistance to claimant; and that their availability, taken in conjunction with claimant's time at day care, justifies reducing the personal attendant hours funded

for claimant. However, claimant's current CSR had never met them, never seen them at the house, and had no idea where they live. In the past, claimant's aunt and his aunt's boyfriend have provided some assistance to claimant and his mother. Ms. Graham, from TMI, discussed some behavior techniques with them. Occasionally, claimant's mother has paid her sister's boyfriend to assist with claimant, but that is no longer feasible on a regular basis. Claimant's mother is 57. Her sister is 48 years old, lives in another city, is in poor health, and now receives disability. The sister's boyfriend is 57 years old. He is also disabled. Claimant's mother's sister and her boyfriend provide moral support for claimant's mother and help to the extent they can, but they are not able to provide regular or reliable assistance in claimant's care. Claimant's sister is married, has a child with special needs, and lives two hours away. She comes to visit, but she is afraid of her brother and cannot help. Claimant's brothers live out-of-state. Claimant's step-sister is in recovery from addiction and is working on taking care of her own children. Claimant's mother is the only natural support available to provide reliable and consistent help with claimant's needs.

29. Claimant's mother has considered hiring someone else to provide the IHSS services to claimant but she feels claimant is still fragile and unstable. She does not want to interrupt the progress he is finally making and is fearful that if she gets a job outside of the home, claimant's needs will not be appropriately met or that she will not be available to leave her job on a moment's notice to assist with claimant if he has a problem.

30. In addition to supports funded by IHSS or the regional center, claimant's mother hires individuals to provide assistance to claimant approximately 18 hours each week. She pays these individuals out of her own pocket to assist her in performing those aspects of claimant's care that requires two people and that is not otherwise funded.

She indicated that this is the bare minimum of what she would need to enable claimant to remain in the home.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, the regional center bears the burden of demonstrating that claimant's monthly personal attendant care hours should be reduced from 210 to 120 hours each month. Claimant bears the burden of demonstrating that he requires more than 210 hours and up to 389 personal attendant care hours each month.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (the Act). (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The

Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501. To that end, section 4501 states:

An array of services and supports should be established 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

6. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

‘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, and normal lives. . . . Services and supports listed in the individual program plan

may include, but are not limited to, . . . personal care³, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements, . . .

7. In order to be authorized, a service or support must be included in the consumer's individual program plan (IPP.) (Welf. & Inst. Code, § 4512, subd. (b).)

8. In implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Natural supports include family relationships and friendships developed in the community that enhance the quality and security of life for people. (Welf. & Inst. Code, § 4512, subd. (e).)

9. The Act identifies the Legislature's finding that "children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families." (Welf. & Inst. Code, § 4685, subd. (a).) As a result, it places a "very high priority" on the "development and expansion of services and supports" designed to assist families caring for a developmentally disabled child at home, when that is the preferred objective in the IPP. (Welf. & Inst. Code, § 4685, subd. (c)(1).) "Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives." (Welf. & Inst. Code, § 4685, subd. (c)(2).) That principle also applies to adult children when the adult child's

³ "Personal care" is also referred to as personal attendant care or personal assistance services.

continued residency in his or her parent's home is in the best of interest of that adult child. (Welf. & Inst. Code, § 4685, subd. (c)(5).)

10. The Act also places "high priority" on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live "in their own homes" with "support available as often and for as long as it is needed." (Welf. & Inst. Code, § 4689. The range of supported living services and supports identified under section 4689, subdivision (c) include "recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; [and] providing respite and emergency relief for personal care attendants" Personal assistance is also a service and support option that may be provided where it would "result in greater self-sufficiency for the consumer and cost-effectiveness to the state." (Welf. & Inst. Code, § 4648, subd. (a)(11).)

EVALUATION

11. Claimant has severe developmental disabilities and co-morbidities that impact every part of his life. He requires constant, 24-hour care and supervision in order to be safe. For several activities of daily living, he requires the care and supervision of two people.

12. Claimant's Individual Program Plan (IPP) provides that claimant "wishes to remain at home with his family where he is safe." The weight of the evidence supports the conclusion that claimant is safe when he resides at home and is at greater risk when he does not. Undisputed evidence established that it is in claimant's best interest to reside in his home with his mother.

13. The regional center made numerous arguments against increasing personal attendant hours and in favor of decreasing them. It correctly emphasized that natural supports must be considered. The weight of the evidence established, however, that the only reliable natural support for claimant is claimant's mother. Although an

adult child's family member has no legal obligation to serve as a natural support for an adult consumer, claimant's mother has identified herself as claimant's natural support. Her assistance as a source of natural support has been taken into consideration in determining the appropriate number of personal attendant care hours that should be funded by the regional center to enable claimant to live at home, which is both the least restrictive environment and the safest environment for him.

14. The regional center argued that it should not be required to fund a personal attendant for the time that claimant sleeps. That argument is rejected. The weight of the evidence established that claimant requires the presence of an appropriately trained person who is awake and in claimant's room while he is sleeping because of his erratic sleep patterns and the serious damage he can do to himself, to other living things, and to property when he awakes alone.

15. During the hearing, regional center representatives argued that the Act does not permit the regional center to fund personal attendant care hours to the extent that a consumer will be provided supports and services totaling 24 hours a day, and that if care and supervision is required for 24 hours a day, placement would be preferable. The regional center provided no legal support for these conclusions. Indeed, the purpose of the Act is to foster an entirely different policy - to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) Claimant may never be able to lead as "independent" a life as some consumers, but he is entitled to live in the least restrictive setting, in the setting that is best for his safety, behavioral and medical needs, and in the setting identified in his IPP as his and his family's preference. That place is his mother's home. Nothing in the Act prohibits the regional center from providing sufficient personal attendant hours to enable this to occur. On the contrary,

the Act places a very high priority on providing services and supports that will assist families caring for a developmentally disabled child at home when that is the preferred objective in the IPP. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232- 233; Welf. & Inst. Code, § 4685, subd. (c)(1).) “Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child” (Welf. & Inst. Code, § 4685, subd. (b).) Claimant’s status as an adult does not change this important principle. When an adult child’s continued residency in his or her parent’s home is both the family’s preference and in that adult child’s best interest, regional centers must take reasonable steps to help that happen. (Welf. & Inst. Code, § 4685, subd. (c)(5).)

16. The Act requires that every consumer be looked at individually. As such, “services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.” (Welf. & Inst. Code, § 4648, subd. (a)(2).) Claimant’s severe needs require this tailoring. His negative behaviors are slowly improving from where they were a year ago. That is in large part due to the consistency and support he receives at home (including the personal attendant care he receives there), in conjunction with his day care and behavioral assistance program. Everyone who testified was pleasantly surprised that claimant has been able to attend the day program with relative consistency, even with his continued periodic aggression and outbursts that present problems for him and his day care program. His attendance at the program has required coordinated efforts by all who provide him care. The overwhelming evidence established that if claimant’s mother had the level of support she needed, claimant’s mother would not have placed him to live outside the home in the past. Claimant’s path and his mother’s tireless efforts to obtain the assistance she needs to best care for claimant has been, in his mother’s words, a “nightmare.” The Act’s provisions are intended to help avoid this nightmare. Claimant has always needed a high level of care,

but with every placement, the level of care required increased. Since becoming an adult, claimant's placements outside the home have never had a successful outcome.

Claimant's severe disabilities require more support than claimant has been provided, and as long as it is in his best interest to do so, it is critical that he receive sufficient support to enable him to remain in his family home. At a minimum, he requires enough personal attendant hours to ensure that he has someone with him 24 hours a day.

17. The weight of the evidence did not support the regional center's decision to reduce personal attendant care hours from 210 to 120 hours per month, or to any lower amount. Nor did the weight of the evidence support the arguments made on claimant's behalf that he requires 389 personal attendant hours each month.

18. The evidence established that claimant requires more assistance than he is currently provided. With 730 hours in each month⁴, claimant's current level of supports and services (including 210 personal attendant hours) cover 1:1 care and supervision for all but 2.9 hours each day (88.9 hours each month). Claimant requires at least 299 personal attendant care hours each month. This would provide claimant one attendant at all times. Many daily tasks require two people. Claimant's mother is currently a natural support who can be that second person.

19. Providing claimant 299 personal attendant care hours will help ensure that claimant may remain in his home, which is the least restrictive environment, his stated preference in the IPP, and in his best interest. This conclusion is supported by the totality of the evidence and the mandate that provisions of the Act be interpreted

⁴ The determination that there are 730 hours in a month was arrived at as follows: Multiplying 365 days per year by 24 hours a day equals 8,760 hours. Taking 8,760 hours in the year and dividing it by 12 months equals 730 hours in a month.

broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347).

20. The determination in this Decision should be reviewed at least once a year to determine if claimant's needs, best interests, or natural supports have changed.

ORDER

The Inland Regional Center shall fund 299 personal attendant care hours each month for claimant.

DATED: February 27, 2014

_____/s/_____

BETH FABER JACOBS

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 ninety days.