BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. FAR NORTHERN REGIONAL CENTER, Service Agency.	OAH No. 2013100446

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Redding, California, on January 22, 2014.

Claimant's mother represented claimant. Claimant's sister attended the hearing. Claimant did not attend the hearing.

Phyllis Raudman, Attorney, represented the service agency, Far Northern Regional Center (FNRC). Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Is FNRC required to fund an additional 140 hours per month of personal assistance to be utilized for daycare?

FACTUAL FINDINGS

1. Claimant is a 20-year-old woman eligible for services from FNRC due to a diagnosis of autism. She lives with her mother, who also serves as her conservator. Her sister serves as co-conservator.

2. On September 23, 2013, FNRC issued a Notice of Proposed Action to claimant denying an additional 140 hours per month of personal assistance services to be utilized for daycare. FNRC had authorized 160 hours per month (40 hours per week) of personal assistance to provide daycare support to claimant while her mother is working. FNRC's reason for the denial of an additional 140 hours states in part:

> In addition to the 160 hours per month of personal assistance, [claimant] is authorized to receive 230 hours [per month] of In Home Support Service through Shasta County and she attends public education from 7:15 am – 3:00 pm, this includes transportation time, Monday through Friday. The 230 hours of In Home Support Services can provide the additional support of assisting in the areas of monitoring safety, and supervision to prevent running and wandering away, as identified in [claimant's] IPP dated April 23, 2013. These hours should provide [claimant] support while her mother is building her business.

3. On October 4, 2013, claimant's mother submitted a Fair Hearing Request to FNRC asking for an additional 140 hours per month to be used for daycare.

4. FNRC has approved 160 hours of daycare per month. In addition, FNRC approved 216 hours of daycare to be used during November 2013, and 225 hours of daycare to be used during December 2013. FNRC approved these additional daycare hours for the periods when claimant had breaks from school.

5. Melissa Gruhler, Case Management Supervisor at FNRC, testified at hearing and reviewed FNRC's justification for denying an additional 140 hours per month of day care service. Claimant attends a public school program each school day and is transported

from home to school and back. Therefore, on school days, claimant is in the care of the educational agency from 7:30 a.m. to approximately 3:00 p.m., or about 7.5 hours per school day (approximately 150 hours per month). In addition, claimant receives 230 hours per month of In Home Support Service (IHSS). Claimant is also authorized by FNRC to receive 51 hours of in-home respite per quarter (17 hours per month). FNRC has also authorized 21 days per year of out-of-home respite, which claimant has not utilized.

Ms. Gruhler also explained that when claimant's school schedule was unusual, FNRC has authorized an increase in daycare hours. This was the case in November and December 2013, due to school breaks.

6. Claimant's mother testified at hearing. She is self-employed as a Notary. The notary work requires her to travel to various destinations and her hours of work are variable. She hopes to move away from the area and is trying to establish clients closer to the coast. In order to establish clients closer to the coast, she is required to travel. Claimant's mother also has a salvage business. She collects items for salvage, recycling and reuse. She testified that this work also requires travel. Claimant's sister is the only other person who provides family support to claimant. Claimant's mother currently works as claimant's provider of IHSS hours 230 hours per month, which is approximately 57 hours per week.

No documentary evidence was received supporting the assertion that claimant's mother needs more daycare hours beyond those that have been authorized by FNRC. Although claimant's mother provided a narrative summary of her work as a notary and as a salvage business operator, she did not provide a log of hours worked, a tax return documenting income from her two businesses, or a calendar showing how the daycare hours were needed.

7. Claimant's sister testified at hearing. She serves as claimant's co-conservator. It was evident that she cares deeply for claimant. She has provided daycare for her sister when claimant's mother did not have someone else to provide that service.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, a regional center provides services to a consumer with a developmental disability in accordance with the consumer's Individual Program Plan (IPP). The Lanterman Act governs the process by which an IPP is developed and services are provided.

2. FNRC has determined that claimant has autism. This developmental disability qualifies claimant to obtain services and supports from FNRC under the Lanterman Act.

BURDEN OF PROOF

3. An eligible consumer who seeks additional services and supports from a regional center has the burden of proof. (See Evid. Code, § 500; Welf. & Inst. Code, § 4712, subd. (j).) Thus, claimant has the burden of proving that FNRC should be ordered to purchase the 140 additional hours of daycare services she requests. (Evid. Code, § 115.) The standard of proof in this matter is a preponderance of evidence.

OVERVIEW OF LANTERMAN ACT

4. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled

persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

THE LAW REQUIRES REGIONAL CENTERS TO BE COST EFFECTIVE

5. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "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." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made "on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (*Ibid.*) As the California Supreme Court recognized in *Association for Retarded Citizens, supra,* 38 Cal.3d at p. 390, while a regional center has "no discretion at all in determining whether to implement" an individual program plan, it has "'wide discretion in determining how to implement" an individual program plan.

6. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

> It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the

family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

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7. However, Welfare and Institutions Code section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

18. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

> In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

9. Welfare and Institutions Code section 4686.5, subdivision (a)(4), provides that:

> A regional center shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours a day, while the parents are engaged in employment outside of the

home or educational activities leading to employment, or both.

CAUSE TO DENY CLAIMANT'S REQUEST FOR 140 ADDITIONAL HOURS OF DAYCARE SERVICE PER MONTH

10. Claimant did not submit sufficient evidence to establish that an additional 140 hours per month of daycare services are required. To the contrary, the evidence demonstrated that the number of daycare hours FNRC is currently funding, when considered in conjunction with the IHSS hours that have been approved, are sufficient to meet claimant's needs. Consequently, in accordance with Welfare and Institutions Code sections 4646, subdivision (a), 4646.4, subdivision (a), 4648, subdivision (a)(2), and 4686, subdivision (a)(4), claimant's request for additional daycare hours must be denied.

ORDER

Claimant's appeal of FNRC's decision to deny an additional 140 hours of daycare per month is DENIED.

DATED: February 3, 2014

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ELAINE H. TALLEY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)