BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal of: CLAIMANT, vs. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2014020142

DECISION

This matter was heard by Administrative Law Judge Coren D. Wong (ALJ), Office of Administrative Hearings, State of California, on May 29, 2014, in Sacramento, California.

Michael Rosenberg, Advocate with Developmental Disabilities Area Board III, represented claimant, who appeared at hearing through his mother and court-appointed conservator.

Rob Franco, Supervising Counselor, represented Alta California Regional Center (ACRC). Tricia Cummings, Supervising Counselor, also appeared on behalf of ACRC.

Evidence was received, and the record was left open for the parties to submit simultaneous written closing arguments. On July 1, 2014, the parties filed their respective written closing arguments, which are marked as Exhibit M (claimant's) and Exhibit 13 (ACRC's). Claimant attached additional evidence to his closing argument as Exhibit 1. ACRC filed written objections to claimant's additional evidence. The written objections are marked as Exhibit 14.

On July 1, 2014, an Order Keeping the Record Open was issued, allowing claimant to file a written response to ACRC's objections by 5:00 p.m. on Wednesday, July 9, 2014. Claimant filed and served his Response to Service Agencies [*sic*] Objections to Claimant's Closing Arguments' Exhibit 1, which is marked as Exhibit N, on July 8, 2014. The following day, ACRC filed and served its Reply to Claimant's Response to Service Agency's Objections to Admission into Evidence of Exhibit 1 to Claimant's Closing Argument. For the reasons discussed in more detail in the separate Order Sustaining ACRC's Evidentiary Objections to Exhibit 1 to Claimant's Closing Argument and Striking ACRC's Reply, ACRC's objections are sustained and Exhibit 1 to claimant's Closing Argument is not admitted for any purpose. Additionally, ACRC's Reply is stricken from the record, and was not considered, as having been filed without leave of court.

The record was closed and the matter submitted for written decision on July 9, 2014.

ISSUE

May ACRC deny claimant's request for funding for additional hours of in-home respite care each month?[1]

[1] As discussed below, claimant originally requested an additional 300 hours of in-home respite care each month. Then, he changed his request to an additional 415 hours each month. In his Closing Argument, claimant requested an additional 392 hours of in-home respite care each month.

FACTUAL FINDINGS

PROCEDURAL BACKGROUND

1. On January 13, 2014, Sharon Kurpinsky, claimant's service coordinator with ACRC, received an e-mail from claimant's mother requesting that ACRC fund an additional 300 hours of in-home respite care each month for claimant. At the time, ACRC was, and currently is, funding 90 hours of in-home respite care each quarter for claimant.

2. Ms. Kurpinsky brought the request to ACRC's Best Practices Committee, and was told to obtain from claimant's mother a monthly calendar showing when she: 1) uses the In-Home Supportive Services (IHSS) provided to claimant; 2) uses the 90 hours of in-home respite care already provided claimant; and 3) proposes to use the additional hours of in-home respite care requested.

3. On January 27, 2014, Ms. Kurpinsky received an e-mail from claimant's mother changing her request for additional hours of in-home respite services from 300 to 415 hours.

4. On January 31, 2014, ACRC issued a Notice of Proposed Action (NOPA) denying both requests for additional hours of in-home respite care. Additionally, Ms. Kurpinsky and Ms. Cummings sent claimant's mother correspondence explaining the basis for issuing the NOPA. They wrote, in pertinent part:

> This is to advise you that ACRC is denying both your request to increase [claimant's] in-home respite from 90 hour [*sic*] per quarter to 300 hours per month of in-home respite, as well as your more recent request to increase [claimant's] in-home respite hours from 90 hours per quarter to 415 hours per month. This decision is made for the following reasons:

ACRC is currently funding 90 hours per quarter in-home respite for [claimant], based upon assessed need. The Lanterman Act provides that regional centers may not purchase more than 90 hours per quarter of in-home respite for a consumer, unless the consumer qualifies for an exemption to that limit. ACRC has determined that [claimant] does not qualify for an exemption to that cap because it has not been 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 that there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

Additionally, generic resources may be available to meet any needs for additional care and supervision for [claimant]. ACRC may not fund for services which are available from a generic or other resource when a client or family chooses not to pursue or utilize those services.

In this case, ACRC understands that [claimant] receives 283 hours per month of In Home Supportive Services (IHSS), and that both his mother and his cousin are his IHSS workers. ACRC has therefore requested a schedule from [claimant's mother] to show how and when IHSS and respite hours are being employed for [claimant's] care and supervision, including information about who specifically is providing

those services at which times. ACRC has requested this information from you, but you have not provided it. ACRC cannot assess [claimant's] potential need for additional services without this information.

Further, ACRC understands that [claimant] became eligible for services through the Medicaid NF Waiver program on June 3, 2010, and then was removed from the waiver program on February 29, 2012, because his family did not access those services for [claimant's] care. ACRC is prohibited from funding services which may be available from a generic resource such as the Medicaid NF Waiver when a client is eligible for but does not access those services.

Also, on 10/4/13 ACRC Nurse Consultant, Holly Smith, R.N., visited your home and completing [*sic*] an assessment of [claimant's] needs for nursing care, and assisted your family in again completing an application for the Medicaid NF-AH Waver. On November 14, 2013, [claimant] was placed on the waiting list for those services, with a wait time of approximately two years before [claimant] can expect to receive those services through that program. Additionally, priority for NF-AH Waiver eligibility and services is based upon the level of care required by the patient. In this case, [claimant's] family has reported that [claimant's] care needs are increasing, so ACRC offered to once again send ACRC's Nurse Consultant Ms. Smith back to assess whether recent

changes in [claimant's] level of care might warrant an increase in his priority for NF-AH Waiver eligibility and services. However, you have declined this offer.

Moreover, during Ms. Smith's nursing assessment on 10/4/13, [claimant's] mother … advised that hospice services had been offered to [claimant] by Dr. Tagore, and that although she had turned those hospice services down at that time in October [claimant's mother] was then ready to pursue obtaining hospice services for [claimant]. Hospice can provide benefits such as case management by a hospice team, durable medical equipment, and home based services by hospice nurses, social workers, home health aides, etc. However, [claimant's mother] has again declined to access hospice services for [claimant].

And ACRC has also suggested that it might be possible to design and fund a Tailored Day program for [claimant], which could provide him with 36 hours per month of a day programming [*sic*] in his own home, and therefore would provide him additional care and supervision during those hours. His family has declined this service. Again, [claimant's] family's decision to not pursue services which may be available from other generic or private resources does not obligate ACRC to fund additional respite hours to meet his care and supervision needs.

> Finally, in-home respite services are designed to provide intermittent or regularly scheduled temporary nonmedical care and supervision to assist family members in maintaining the client at home by relieving family members of the constantly demanding responsibility of caring for the client. In-home respite is not designed to meet the majority of a client's care and supervision needs. For ACRC to fund 300 or even 415 hours per month would indicate your intention to use respite care to provide daily care and supervision for more than half the total hours in the month (722). This is an inappropriate use of in-home respite as respite services offer intermittent or regularly scheduled temporary nonmedical care. Respite is not designed to meet a client's needs for shift nursing care. Furthermore, ACRC cannot fund in [*sic*] home respite to provide day care of a client to allow family members to work outside of the home.

5. On February 12, 2014, claimant's mother signed and filed a Fair Hearing Request challenging ACRC's decision to deny her request for additional hours of in-home respite.

6. On March 3, 2014, the parties met for an informal meeting in an effort to resolve this matter without going to Fair Hearing. After that meeting, ACRC issued an Informal Meeting Decision, which stated, in part:

> [Claimant's mother] also agreed to provide the ACRC Service Coordinator with a calendar showing the supports and services currently in place for the client, specifying which

> hours are being covered by IHSS and who is providing the IHSS hours, as well as showing which hours are being covered by in-home respite, and who is completing the in-home respite hours. Additionally, [claimant's mother] will indicate for which hours in client's schedule she is seeking additional care.

7. Claimant requested funding for an additional 392 hours of in-home respite services per month in his Closing Argument.

CLAIMANT'S NEED FOR 24-HOUR HEALTH CARE AND SUPERVISION

8. Claimant is 25 year old, and is eligible for regional center services based on his diagnosis of Joubert's Syndrome, mild intellectual disability, and substantial handicaps in the areas of learning, mobility, and self-direction. He was made eligible in 1989. Claimant also suffers from severe portal hypertension, which has caused his liver and spleen to become enlarged. He has been diagnosed with congenital hepatic fibrosis, esophageal varices, gastric varices, polycystic kidney disease, asthma, scoliosis, sleep apnea, and Methicillin-resistant Staphylococcus aureus.

9. Claimant is non-ambulatory, and uses a wheelchair. He is nonverbal, and communicates through hand gestures and facial expressions.

10. It is undisputed that claimant requires total care, and cannot be left unattended for any period of time.

GENERIC SERVICES

11. Claimant has been approved for, and has been receiving, 90 hours of in-home respite each quarter funded by ACRC. Pacific Homecare Services is the current

provider of services, and Isaac Rodriquez is the person who actually provides the services.

12. As discussed further in Legal Conclusion 7, ACRC is precluded from funding services that may be available from a generic resource when a client is eligible for but does not access those services.

13. Claimant has been approved for, and has been receiving, 283 hours of IHSS each month.[2] It is undisputed that he is receiving the maximum number of hours of IHSS permitted by law. Claimant's mother provides the majority of claimant's IHSS, but his aunt and nephew also help.

14. On June 3, 2010, claimant became eligible for services through the Medicaid NF Waiver program.[3] He was subsequently removed from that program on February 29, 2012, because his family did not access those services for his care. Claimant's mother explained at hearing that she attempted to access those services, but there were no nurses available to care for claimant. Her explanation was not contradicted and was credible.

Claimant's mother reapplied for the NF/AH Waiver program, and on November 14, 2013, claimant was placed on the waiting list to receive those services. The waiting period is estimated to be two years. Since one's placement on the waiting list is based in

[2] IHSS is a program funded and operated as an optional benefit under California's Medi-Cal State Plan. The program is administered by county social service programs and the California Department of Social Services to provide eligible participants with assistance with activities of daily living and instrumental activities of daily living.

[3] The NF/AH Waiver program is a Medi-Cal program that pays for home and community-based services for people who would otherwise qualify for care in a nursing facility.

part on the level of care s/he requires, ACRC offered to have claimant's health status reassessed when his family said his health was declining to determine if he was eligible for advancement on the waiting list. Its offer has thusfar been declined, and claimant's mother provided no explanation why.

15. Claimant's most recent Individual Program Plan (IPP) noted that he was not currently attending any type of day or vocational program due to his immune system and medical needs. His mother was interested in having claimant participate in some type of program, and a referral was made to ACRC's Adult Services Committee to get a referral for a tailored day program for claimant. No evidence of the status or outcome of that referral was introduced the hearing.

16. ACRC had previously recommended that claimant's mother explore obtaining hospice services for claimant because she had mentioned on many occasions that his condition was "terminal," as well as services from Sutter Health's program Advanced Illness Management (AIM). Claimant's mother introduced credible evidence at hearing that she explored both programs, and claimant did not qualify for either.

CLAIMANT'S MOTHER'S HEALTH CONDITION

17. At hearing, claimant's mother described herself as claimant's "primary caregiver." But she explained that caring for him is becoming more difficult because of his deteriorating health condition. Additionally, she explained that she has arthritis in both knees, and that the right knee is "bone on bone." She wakes up each morning with a pain level of a 7 or an 8 on a scale of 1 to 10. Even with pain medication, she said the pain never gets better than a 3, and that is only on a "good day." Claimant's mother's orthopedic surgeon has recommended surgery, but claimant's mother has so far declined because of the long recovery time after surgery and her need to care for claimant.

18. Claimant's mother also suffers from severe carpal tunnel syndrome in her right wrist and hand, which causes numbness, weakness, and symptoms that make it difficult for her to perform gripping, grasping, and lifting activities. Prior to her May 20, 2014 surgery, she suffered constant numbness from her wrists to the tips of her fingers. She said sometimes the pain was so intense, she could not grasp items and it felt like needles were poking her wrist and hand. Claimant's mother explained that she decided to have surgery because of the severe daily pain and limited use of her hand. Surgery has provided only minimal relief.

19. Claimant's mother is employed by Sacramento County as an intake coordinator for the County Office of Education's Infant Development Program. She has been on a leave of absence since February 2014 due to the demands of caring for claimant. She explained at hearing that she would eventually like to return to work, but currently has no immediate plans to do so.

ACRC'S POSITION AT HEARING

20. At hearing, ACRC conceded that claimant qualifies for an exemption from the 90-hour per quarter limit on in-home respite services. It argued however, that it has no factual basis for determining how claimant's mother determined she needed an additional 300 or 415 hours per month because she never provided the requested information showing which hours of the day are being covered by IHSS, who is providing those hours, which hours are being covered by in-home respite, and who is providing those hours. ACRC also requested that claimant's mother indicate the hours of the day for which she was seeking additional in-home respite hours. She did not do so prior to hearing.

21. At hearing, claimant's mother was asked to provide sufficient information from which the ALJ could determine the number of additional in-home respite hours she needed if he concluded that she had in fact established her entitlement to an

exemption. Specifically, she was instructed to take a 24-hour period and identify who provided care for claimant, which program (i.e., IHSS or in-home respite), if any, paid for that care, and what portion of that time period she was seeking additional in-home respite services for.

22. Using the 24-hour period that ended at 2:00 p.m. the day before hearing as an example, claimant's mother explained that Isaac Rodriquez provided respite care from 9:30 a.m. to 2:00 p.m. She also explained that she tries to divide her quarterly allotment of in-home respite hours so that she uses 30 hours each month. This equates to roughly two five-hour days for three weeks or three days a week if a little less than five hours is used each day.

23. While claimant's mother did not explain who cared for claimant for the first 19.50 hours of the 24-hour period, a reasonable inference is drawn from the lack of such explanation, as well as her other testimony, that she did. And while claimant's mother did not explain which portion of that 24-hour period she was seeking additional in-home respite care for, a reasonable inference is drawn from the entirety of her testimony and the context within which it was provided that she is seeking coverage for any portion not already covered by in-home respite or IHSS.

DISCUSSION

24. The evidence discussed above demonstrates that claimant meets the requirements for an exemption from the statutory limitation that precludes ACRC from funding more than 90 hours of in-home respite services in a quarter. The persuasive evidence established that the intensity of claimant's care and supervision needs necessitate additional respite in order to maintain him in the family home. Additionally, claimant's mother's own deteriorating health has been negatively impacting her ability to meet her son's care and supervision needs.

Therefore, claimant is entitled to more than 90 hours of in-home respite services per quarter. But he is not entitled to an additional 392 hours per month. His mother has a statutory duty to support him because he is her child. (Fam. Code, § 3910, subd. (a).) Neither IHSS nor in-home respite services are intended to supplant that duty. Instead, the purpose of IHSS is to assist claimant's mother with providing for his maintenance needs, which includes his laundry, bathing, hygiene, and assistance related to his activities of daily living. In-home respite services are intended only as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's home … ." (Welf. & Inst. Code, § 4690.2, subd. (a).) Such services are intended to accomplish the following:

(1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision to ensure 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 the family members.

(*Ibid.*) Giving claimant an additional 392 hours of in-home respite services each month would reduce his mother's obligation to care for him (or obtain care for him at her own expense) to only 15 hours each month, or only 30 minutes each day, which would be inconsistent with her statutory obligation to provide for his care.[4]

[4] There are 720 hours in a month, based on a 30-day month. Claimant is currently receiving 313 hours of services each month, either in the form of IHSS or respite services. That leaves 407 hours each month during which claimant's mother is responsible for providing or obtaining care for claimant at her own expense.

Nor is claimant entitled to an additional 415 hours of additional in-home respite service each month. Providing that many additional hours, when combined with the services he already receives, would provide him with more hours of services each month than there are hours in a month.[5]

25 For the reasons discussed above, claimant established that he is entitled to more than 90 hours of in-home respite services per quarter. But he is not entitled to an additional 392 or 415 hours per month. While claimant did not introduce sufficient evidence to establish the specific number of additional hours he is entitled to, it is undisputed that he requires 24-hour care and cannot be left alone. It is also undisputed that he qualifies for additional hours of in-home respite services. As such, ACRC has an affirmative duty to convene a meeting of the planning team for the purpose of reviewing and amending claimant's IPP to determine the number of additional hours of in-home respite services to which he is entitled. (Welf. & Inst. Code, § 4640.7, subd. (a) [a regional center has an affirmative duty to help consumers and their families identify and obtain "those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community."]) Therefore, claimant's appeal of ACRC's denial of his request for funding for additional hours of in-home respite services each month is granted, in part, and denied, in part, as specified in the Order below.

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Subtracting the 392 additional hours requested from the remaining 407 hours equals 15 hours.

[5] No decision is made about whether claimant is entitled to an additional 300 hours of in-home respite services per month.

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LEGAL CONCLUSIONS

APPLICABLE BURDEN/STANDARD OF PROOF

1. Claimant has the burden of proving by a preponderance of the evidence that ACRC should approve his request for funding additional hours of in-home respite care services. *(Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [standard of proof is preponderance of the evidence, unless otherwise provided by law].)

APPLICABLE LAW

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible. (Welf. & Inst. Code, § 4502, subd. (a).) The state agency charged with implementing the Lanterman Act is the Department of Developmental Services, which is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (Welf. & Inst. Code, § 4520.) Regional centers are required to establish "an array of services and supports … which [are] sufficiently complete to meet the needs and choices of each person with developmental disabilities … at each stage of life and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.)

3. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, §4646; *Association for*

Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 389.)

Welfare and Institutions Code section 4646 provides, in relevant part:

> (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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> (b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.
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> (c) An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be

completed within 60 days of the completion of the assessment. At the time of intake, the regional center shall inform the consumer and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, of the services available through the local area board and the protection and advocacy agency designated by the Governor pursuant to federal law, and shall provide the address and telephone numbers of those agencies.

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

[¶] ... [¶]

(f) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or

when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

(g) An authorized representative of the regional center and the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative shall sign the individual program plan prior to its implementation. If the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative, does not agree with all components of the plan, he or she may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative. If the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative, does not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.

4. Welfare and Institutions Code section 4646.5, subdivision (a)(1), provides the following, in relevant part, regarding the planning process for developing an IPP:

The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop

relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

[¶] ... [¶]

(5) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The individual program plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

5. Once the regional center and individual consumer have gone through the planning process and developed an IPP, the regional center must obtain the services and supports necessary for implementing the IPP.

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(Welf. & Inst. Code, § 4648.)

6. Regional centers are required to adopt internal policies regarding the purchase of services for consumers. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department of Developmental Services is required to review those policies prior to implementation by the service centers, and "shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of" the Lanterman Act or any regulation adopted pursuant to it. (Welf. & Inst. Code, § 4434, subd. (d).) As discussed in the Order below, ACRC shall immediately convene a meeting of the planning team to determine the number of hours of in-home respite services claimant will receive each month in addition to the 90 hours per quarter

already provided. Such determination shall be made in accordance with Welfare and Institutions Code 4646.4, subdivision (a)(1), as well as ACRC's internal policies regarding the purchase of respite services adopted pursuant to that statute.

7. Although regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP, they must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services which a consumer may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.) They are specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as "supplanting generic resources." Where a service is available elsewhere, the regional center is required to "identify and pursue all possible sources of funding." (Welf. & Inst. Code, § 4659, subd. (a).) However, if the service specified in a consumer's IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (Welf. & Inst. Code, § 4648, subd. (A) (1); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d 384, 390.)

8. A regional center may not deny a request for services based upon the application of an inflexible policy denying such services. Whether a consumer is entitled to a particular service depends upon consideration of all relevant circumstances. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 231-234.)

9. With regard to in-home respite services, "a regional center shall not purchase more than … 90 hours of in-home respite services in a quarter, for a consumer." (Welf. & Inst. Code, § 4686.5, subd. (a)(2).) But "a regional center may grant an exemption to the requirements set forth in [paragraph (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." (Welf. & Inst. Code, § 4686.5, subd. (a)(3)(A).)

10. ACRC is required to fund additional hours of in-home respite services each month for claimant. For the reasons discussed in Factual Findings 24 through 25, claimant demonstrated that he qualifies for an exemption from the statutory limitation that ACRC not purchase more than 90 hours of in-home respite services in a quarter. And while he did not introduce sufficient evidence from which the specific number of additional hours he is entitled to can be calculated, claimant is not entitled to an additional 392 hours or 415 hours per month. But ACRC has an affirmative duty to convene a planning team meeting to determine the specific number of additional hours of in-home respite services claimant is entitled to each month. Therefore, claimant's appeal is granted, in part, and denied, in part, as specific in the Order below.

ORDER

The appeal of claimant is GRANTED, in part, and DENIED, in part. Alta California Regional Center shall fund additional hours of in-home respite services each month for claimant, but not in the amount of 392 hours or 415 hours per month. ACRC shall immediately convene a meeting of the planning team for the purpose of determining the number of additional hours of in-home respite services claimant shall receive beyond the 90 hours per quarter already provided. During such meeting(s), claimant shall identify: 1) those hours of the day that are currently covered by IHSS; 2) who is providing those hours; 3) those hours of the day that are currently covered by in-home respite; 4) who is providing those hours; and 5) those hours of the day for which she seeks additional in-home respite services. Additionally, claimant shall provide all information reasonably requested by ACRC for calculating the additional number of hours of in-home respite claimant will receive. Not later than 30 days from the date of

this Decision, claimant's IPP shall be amended to reflect the number of additional hours of in-home respite services claimant shall receive each month in addition to the 90 hours per quarter he currently receives.

DATED: July 18, 2014

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COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.