

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH No. 2014051283

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on August 22, 2014, in Los Angeles, California.

Pat Huth, Attorney at Law, represented the Frank D. Lanterman Regional Center (FDLRC or regional center or Service Agency).

Claimant's father represented Claimant.¹

The record was held open for the receipt of additional documents from both parties, which were marked for identification as Claimant's Exhibit 2 and FDLRC's Exhibit M, and received as evidence. The matter was deemed submitted on August 29, 2014.

ISSUE

The question in this matter is whether the Service Agency should provide a back-up respite agency and reimburse Claimant's family for missed respite hours.

¹ Names have been omitted to protect the family's privacy.

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EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits A-M; Claimant's exhibits 1-2.

Testimonial: Yeny Yergara, FDLRC Service Coordinator; Amanda Alburez, Senior Community Integration Supervisor, Total Programs; Sam Suzuki, FDLRC Regional Manager; Shoghig Dikijian, FDLRC Regional Manager.

FACTUAL FINDINGS

1. Claimant is a 21-year-old male who qualifies for regional center services based on a diagnosis of autism spectrum disorder.

2. In a resolution dated January 7, 2014, FDLRC agreed to provide Claimant's family with 29 additional respite hours per month. In April 2014, Claimant's parents requested reimbursement for fees they paid to care for Claimant during missed shifts from November 2013 through July 2014. By letter dated May 1, 2014, FDLRC denied Claimant's request. The stated reason for the decision was that FDLRC "has looked at the data concerning when sessions have not been staffed by Total [respite agency]. The number of incidences is low. Since you [and your family] have been trained by Total, you should be able to fill in on the rare occasions when staff is unavailable from Total." (Ex. A.)

3. Claimant's parents disagreed with FDLRC's decision and timely filed the instant fair hearing request.

4. Claimant's most recent Individual Program Plan (IPP) Amendments dated September 2013 and February 2014 state that FDLRC will fund for "behavior respite" services as follows:

November 2013: 232 hours per month

December 2013: 288 hours per month

February 2014:	216 hours per month
March 2014:	257 hours per month
April 2014:	219 hours per month
May 2014:	232 hours per month
June 2014:	248 hours per month
July 2014:	288 hours per month

(Exs. D & E.)² Claimant's 2013 IPP also notes his extensive behavior issues, such as "punching, kicking, hitting, biting, scratching, spitting, and physical aggression toward anyone in close proximity at a high intensity level." (Ex. F.) The IPP goals include that Claimant will continue to live at home with his family.

5. Claimant's most recent progress report from Total Programs, dated June 2014, describes his maladaptive behaviors: "[Claimant] engages in episodes of agitation which include aggression towards others (kicking, biting, spitting, head-banging, pinching, punching, scratching, and physically attacking), self injury (biting his own hand, hitting his head with open hands or closed fists, head-banging on hard surfaces, property destruction, [sic] (breaking furniture, doors, windows, kicking/hitting car doors and windows while being driven) and engaging in non-compliance (refusing to follow verbal requests within 30 seconds of verbal requests).

6. The following respite hours were not provided by Total Programs even though the funding was available from FDLRC:

November 2013:	13 hours
December 2013:	9.5 hours
January 2014:	4.25 hours

² No information was provided about the amount of respite hours FDLRC agreed to fund for January 2014.

February 2014:	29.5 hours
March 2014:	31 hours
April 2014:	30 hours
May 2014:	44 hours
June 2014:	2 hours
July 2014:	22 hours
Total:	185.25 hours

8. Amanda Alburez (Alburez) Senior Community Integration Supervisor, Total Programs, testified at the hearing. She explained difficulties in staffing all of Claimant's hours. A primary reason was that there are no workers available to start at 2:45 p.m. when Claimant returns from school. Secondly, workers often get burned out dealing with Claimant and his family. Although Total Programs has approximately 150 to 200 employees, Alburez has often had to hire new personnel to cover Claimant's hours.

9. Claimant's father testified at the hearing. He described Claimant as having a lot of challenging issues. He has many self injurious behaviors and is also destructive to others. He has broken several car windshields. He explained that he and his wife fought to keep Claimant at home, and they need a lot of support to keep him and other family members in the home safely. Once, Claimant sent his mother to the hospital for three days. Claimant also suffers from insomnia, and his family members assist him through the night. As recently as the day before the hearing, Claimant eloped from his home, while under the care of two respite workers. He jumped out of a window and into the neighbor's backyard, where he removed his clothes and went swimming in the neighbor's pool. Thankfully, he was not injured, but it took two people and fifteen minutes to convince Claimant to return home. Claimant's father reiterated Alburez's testimony that there is consistently a gap of time, from 2:45 p.m. during weekdays, until

3:30 p.m. or some days 4:00 p.m., when a respite worker arrives. If a respite worker is not in place, it is not a safe situation for Claimant and his mother.

10. Claimant's brother is a trained respite worker and during the times that Total Program was unable to provide a respite worker, Claimant's brother often assisted. Claimant's father paid his son cash in unknown amounts for this work. Because there is no evidence of the amount of money paid to Claimant's brother for respite work, it will not be considered for reimbursement here. Claimant's father also paid another respite worker, Daniel Chavez, in the following amounts:

April 24, 2014:	\$114
May 4, 2014:	\$54
May 13, 2014:	\$60
May 30, 2014:	\$120
Total:	\$348

11. FDLRC met with Claimant's father to resolve this matter informally. Although the informal meeting was not successful, elements of the Service Agency's proposal are applicable to resolve this matter. In a letter dated June 11, 2014, FDLRC acknowledged that Total Program has had difficulty in staffing the time between 2:45 p.m. to 3:30 p.m., or 23 hours per month, and also Wednesday afternoons from 3:30 p.m. to 8:00 p.m., or 21 hours per month, for a total of 44 hours per month. FDLRC offered to fund 44 additional hours through Tender Touch so that Claimant's brother could be paid to be his respite worker during that time. Claimant's brother has since registered as a respite worker with Tender Touch. The evidence showed that the gap during the weekdays exists until 4:00 p.m., which is 30 minutes per day longer than Service Agency had calculated. Thus, an additional 2.5 hours per week, or 10 hours per month, should be authorized. The total number of hours to be covered from an agency other than Total Programs will be up to 54 hours per month.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal and reverse FDLRC's denial of reimbursement for missed respite hours and a back-up agency, as set forth in Factual Findings 1 through 11, and Legal Conclusions 2 through 6.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500, et seq., acknowledges the state's responsibility to provide services and support for developmentally disabled individuals. (Welf. & Inst. Code, § 4501.)

3. Welfare and Institutions Code section 4659, subdivision (a), provides that when a regional center makes decisions regarding purchase of service requests for consumers, it is mandated to "identify and pursue all possible sources of funding for consumers receiving regional center services." The regional center must consider all possible generic sources for funding the claimant's needed services. (Welf. & Inst. Code, § 4648, subd. (a)(8).) However, if a needed service is not provided by the generic agency, then the regional center must fill the gap and fund the service in order to adequately meet the goals set forth in the claimant's IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services*, (1985) 38 Cal. 3d 384, 390.)

4. Applying those provisions here, Claimant's appeal must be granted. Claimant's IPP acknowledges that he has behaviors which are dangerous to himself and others. It also provides that Claimant should remain at home. FDLRC has authorized respite hours to keep Claimant and his family safe, and Claimant's family is entitled to all of those hours. The evidence did not establish that there was an overlap between Claimant's IHSS hours and the respite hours provided by FDLRC. Thus, the fact that Claimant also receives IHSS does not relieve Service Agency of its obligation to provide the services it has agreed to. Total Programs is unable to meet all of Claimant's needs

and an alternative plan must be in place. FDLRC's offer to pay Claimant's brother through Tender Touch ensures that Claimant's IPP goals are met.

5. With regard to reimbursement, the Lanterman Act does not specifically authorize retroactive reimbursement of service costs to families in the fair hearing context. Nevertheless, general equity principles may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services*, (1985) 38 Cal. 3d 384.)

6. In this case, equitable considerations require that FDLRC reimburse Claimant's father the \$348 that he expended to privately fund a respite worker during the months that Total Program was unable to provide a worker. Claimant has repeatedly demonstrated the need to have respite workers present whenever authorized in order to remain safely in his home. FDLRC had the opportunity to fund respite workers directly through Total Programs, but for a myriad of reasons, hours remained unused. Claimant's family absorbed the cost of those hours even though they were provided for in his IPP. Equitable considerations require that FDLRC must now reimburse Claimant's father for his provable costs.

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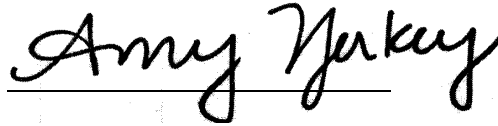
ORDER

Frank D. Lanterman Regional Center's decision denying Claimant's request for a back-up respite agency and reimbursement for missed respite hours is reversed. FDLRC shall reimburse Claimant's family in the amount of \$348. FDLRC shall fund up to 54

hours per month of respite services by Claimant's brother through Tender Touch, to fill the gap of respite hours from Total Programs.

The appeal by Claimant is granted.

DATED: September 9, 2014

A handwritten signature in black ink that reads "Amy Yerkey". The signature is written in a cursive style and is positioned above a horizontal line.

AMY YERKEY

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.