

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANTS 1-3,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2014060413

OAH No. 2014060414

OAH No. 2014060416

DECISION

These consolidated matters were heard by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 18, 2014, in Alhambra, California.

Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Rhoda Tong, Community Residential Services Supervisor. Claimants, who were not present at the hearing, were represented by their Father.¹ Claimants' Mother was also present. A Vietnamese language interpreter provided services to the parents during the hearing.

Father filed three identical fair hearing requests on behalf of Claimants. All three matters were heard concurrently, and the parties agreed that a single decision shall be issued for all three matters.

¹ Titles instead of names are used herein to protect Claimants' privacy.

ELARC presented Exhibits A-R and the testimony of Christina Han, ELARC Service Coordinator; Jesse Carlos, ELARC Placement Coordinator; Anna Aguilar, ELARC Residential Service Coordinator; and Jollie Rey Ramos, Adult Residential Facilities Administrator for People's Care, Inc. Claimants presented Exhibits 1-6 and the testimony of Mother, Father, and a family friend. The exhibits were admitted into evidence, pursuant to Welfare and Institutions Code section 4712, subdivision (i).

Documents and testimony having been received, the Administrative Law Judge submitted this matter for decision on July 18, 2014, and finds as follows:

ISSUE

Must the Service Agency fund in-home respite care, in lieu of out-of-home respite care, while Mother is out of the country for travel?

FACTUAL FINDINGS

1. Claimants are siblings and consumers of ELARC. Claimant 1 and Claimant 2 are ten-year-old twins (a male and a female, respectively.) Claimant 1 has been diagnosed with Autism and Borderline Intellectual Functioning. Claimant 2 has been diagnosed with Autism and Enuresis and needs assistance with most of her hygiene, dressing, and grooming tasks. Claimant 3 is a seven-year-old boy. He has a twin sister who is not a regional center consumer. Claimant 3 has autism, short-bowel syndrome, feeding difficulties, food allergies, and suspected cystic fibrosis. His mother prepares a special hypoallergenic formula for him because he is allergic to milk, soy, egg whites, wheat, and peanuts. Claimants are eligible for services pursuant to the Lanterman

Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.²

2. ELARC issued a Notice of Proposed Action (NOPA) on May 23, 2014, denying Claimants' request for in-home respite care, in lieu of out-of-home respite care, during the period when Mother is out of the country.³ On May 31, 2014, Father filed a Fair Hearing Request (FHR) on behalf of each Claimant. All jurisdictional requirements have been met.

3. Claimants live at home with Mother, Father and their seven-year-old sister, within ELARC's catchment area. Father has a disabling back injury. Mother is exhausted and overwhelmed from the demands of the four children, three of whom have extraordinary needs. She has been suffering from severe headaches. Because she is caring for Claimants, Mother has delayed having surgery to remove a brain tumor. As set out in each Claimant's Individual Program Plan⁴ (IPP), ELARC provides 30 hours of in-home respite services per month to each Claimant. This is the maximum amount under controlling statutes, absent a finding that more respite services are needed to maintain the child in

² All statutory references are to the Welfare and Institutions Code.

³ The NOPA and FHR referenced Mother's planned travel to Vietnam from May 19-June 8, 2014. Although she cancelled her trip, she does hope to travel to Vietnam in the near future. ELARC did not argue that the appeal is moot, and since the issue is likely to repeat, the appeal went forward.

⁴ IPPs for Claimants 1 and 2 are dated September 23, 2013. The IPP for Claimant 3 is dated December 11, 2013. (Exhibits D-F.)

the home, or to cope with an extraordinary event that has impacted the family's ability to care for the child.

4. Since May 2011, ELARC's purchase of service (POS) guidelines regarding the use of out-of-home respite care have provided that "[i]n home respite in lieu of out of home respite may be used only when there is no out of home respite arrangement available." The guidelines also provide that ELARC "shall not purchase more than 21 days of out of home respite services in a fiscal year." ELARC's POS guidelines were set forth in each Claimant's IPP. Father signed each IPP and acknowledged that "if an [out of home respite] facility comparable to the individual's needs is found then additional in-home respite is not an option." (Page 4 of Exhibits D, E and F.) Each IPP further states that "Mother would like to go out of state for vacation each year. Service coordinator discussed ELARC POS guidelines with the parents at the time of the IPP meeting. The parents understand that in home respite in lieu of out of home respite may be used only when there is no out of home respite arrangement available. . . . The parents request the children to be placed in the same facility when out of home respite is needed. Service Coordinator explained to the parents that ELARC . . . cannot create a permanent exception to ELARC's POS guidelines for any individual consumer." (Page 8 of Exhibits D, E and F.)

5. In mid-April, 2014, Mother made plans to travel to Vietnam from May 19 to June 8, 2014, in order to see her mother, who is elderly and has been ill. As ELARC had previously instructed him to do, Father contacted ELARC a month ahead to request out of home respite hours for the dates that Mother would be in Vietnam. Due to a misunderstanding as to whether Mother's travel plans were firm or only tentative, ELARC did not provide the parents with a list of proposed homes until May 16, 2014.

6. Three homes accepted the referral to provide out of home respite for Claimants. Candlelight Home Montebello children's residential facility only accepted Claimant 1. Casa Hermosa children's residential facility and Kaiser Children's Home children's residential facility were willing to accommodate all three Claimants, but each had only two vacancies. Therefore, Claimants could not be placed together in one facility, as the parents preferred. Claimants 1 and 3 would have shared a bedroom in Casa Hermosa and Claimant 2 would have shared a bedroom with another girl at Kaiser. The two facilities are located 1.1 miles apart. A few days before Mother's planned departure, Christina Han, ELARC Service Coordinator, toured Casa Hermosa and Kaiser Children's Home with Claimants' father. Ms. Han testified credibly that the facilities were well-maintained, not located on a busy street, presented no risks, and were appropriate to meet Claimants' needs.

7. Both Mother and Father testified credibly at the hearing. After visiting the two homes proposed for respite care, the parents believe these placements would be inappropriate for Claimants for a number of reasons: the other children in the facility would be older than Claimants; their children would be in two different facilities; the bedrooms would be too small; the yard had a lot of leaves; one home was "messy" with a ripped couch, and an unlocked storage room; and the facilities' staff was not dressed professionally and would be incapable of managing the Claimants' behaviors, safety, eating difficulties, self-help, and complex medical needs. Claimant 2 began crying when she visited the home proposed for her and saw an older boy jumping on the couch. She was also bothered by the strong smell of cleaning products. Father stated that in home respite care would be best for Claimants as care would be provided in the safe and familiar surroundings of Claimants' own home, during the period when Mother is in Vietnam. Mother cancelled her trip to Vietnam which had been

planned for May and June, because of her concern about leaving her children in these placements, but would like to schedule another trip because she wants to see her mother, who is nearly 90-years-old.

8. Jesse Carlos, ELARC Placement Coordinator, testified credibly at the hearing. Mr. Carlos selected the out of home respite placements for Claimants and testified credibly that he was "confident these homes could meet Claimants' needs" and that he "had no concerns with these referrals" for Claimants. Mr. Carlos has made unannounced visits to inspect these homes and he has successfully placed other consumers in these facilities for out of home respite. If he had had any concerns, he would not have recommended these placements for Claimants.

9. Anna Aguilar, ELARC residential services coordinator, testified credibly at the hearing. She is the liaison between the regional center and the three homes that had agreed to accept Claimants. Twice a year, she makes unannounced visits and an annual scheduled visit to these facilities. She assesses the physical condition and cleanliness, whether the environment is safe, whether the rooms are clean, whether there is enough food, and whether residents' medical needs are appropriately being addressed. Ms. Aguilar noted that special dietary needs are posted in the kitchens and are enforced. Any necessary behavioral intervention plans are put in place. The Department of Social Services, which licenses these homes, also conducts announced and unannounced visits to evaluate the homes. In selecting a placement for out of home respite, Ms. Aguilar reviews the consumer's IPP and the psycho/social assessment. She then considers the age, diagnosis, medical conditions, behaviors, and self-help needs of each consumer. She did so in this case and "had no concerns" about placing Claimants into these facilities for out of home respite. Ms. Aguilar "was confident" that the homes selected would meet Claimants' needs.

10. Jollie Rey Ramos testified credibly at the hearing. Mr. Ramos is the administrator for Casa Hermosa and Kaiser Children's Home. He reviewed Claimants' IPPs and was present when Father visited. The homes had just been cleaned when Father arrived. Father complained about the strong smell of Pine-Sol. To accommodate Father's concerns as to Claimant 2's asthma, Mr. Ramos would direct the staff to use unscented cleaning products, to clean when she was in school or out of the house, and to air out the house before she returned. The homes would be able to meet all of Claimants' needs and would safely provide respite care for them.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)⁵

2. 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, normal lives. (§ 4512, subd. (b).) Services and supports may include physical and occupational therapy,

⁵ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

recreation, behavior training, community integration services, daily living skills training, and social skills training. (*Ibid.*)

3. The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4685, subd. (c)(3) and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

4. Further, section 4648, subdivision (a)(8), provides that the regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

5. Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision. Services and supports for persons with developmental disabilities includes respite which may be included in a consumer's IPP. (§ 4512, subd. (b).)

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6. In-home respite services mean intermittent or regularly scheduled temporary non-medical care and supervision provided for a regional center client

in his or her own home and who resides with a family member. (§ 4690.2, subd. (a).) Respite care is designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and 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 family members. (§ 4690.2, subd. (a)(1 - 4).)

7. Effective July 1, 2009, a regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. (§ 4686.5, subd. (a)(1).) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year for a consumer. (§ 4686.5, subd. (a)(2).) A regional center may grant an exemption to this limit of 21 days 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 (§ 4686.5, subd. (a)(3).)

8. Under ELARC's POS Guideline for Out-of-Home Respite Services, dated May 2, 2011, a consumer who resides with a family member is eligible for out-of-home respite care when the occasional needs of the consumer and/or family are more than the support of friends and natural and community supports can provide. In such a case, out-of-home respite care may be used as a support option should family members have planned activities, such as a vacation. Out-of-home respite care may be provided to a consumer and the family when the care and supervision needs of the consumer exceed that of an individual of the same age without developmental disabilities. In-home respite in lieu of out-of-

home respite care may be used only when there is no out-of-home respite arrangement available.

9. Here, the dispute is whether the Service Agency must fund in-home respite care in lieu of out-of-home respite care during the period in which Mother is out of the country. Father failed to establish that appropriate out-of-home respite care was unavailable. The parents failed to present sufficient evidence establishing that the identified facilities were inappropriate for Claimants. Moreover, neither the Lanterman Act nor the Service Agency's guidelines require that siblings must be placed in the same out-of-home respite facility, and Father presented no other authority establishing that Service Agencies are required, when determining appropriateness and availability of an out-of-home facility, to keep siblings together. Given the above, ELARC is not required to fund in-home respite care in lieu of out-of-home respite care during the period in which Mother goes out of the country.

ORDER

Claimants' appeal is denied. The Service Agency may deny Claimants' request for in-home respite care in lieu of out-of-home respite care.

DATED: August 1, 2014

A handwritten signature in black ink, reading "Laurie R. Pearلمان". The signature is fluid and cursive, with a horizontal line drawn underneath it.

LAURIE R. PEARLMAN

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 the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)