BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2014080906

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 9, 2014.

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

Claimant's brother, represented claimant who was not present.

The matter was submitted on October 9, 2014.

ISSUE

Is IRC required to provide additional respite services to claimant to maintain her in her family home, or has there been an extraordinary event that impacts claimant's family's ability to meet her needs and supervision such that additional respite services are required?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 24-year-old woman who receives regional center services based on her diagnoses of cerebral palsy and mental retardation. Claimant is non-

ambulatory and spends most of her time in an electric wheelchair. She is verbal and can communicate her wants and needs. She lives at home with her father and two brothers. She attends a day program five days a week and is provided transportation to and from her home.

2. As part of the supports and services provided by IRC, claimant receives 30 hours of preferred provider respite care hours per month. Ninety hours of respite care per quarter is the maximum IRC is permitted to fund absent extraordinary circumstances.

3. By email dated July 13, 2014, claimant's representative requested that IRC fund additional respite services.[1]

4. By letter dated August 18, 2014, IRC advised claimant that it denied her request because "IRC is prohibited from funding more than 30 hours per month (or 90 hours per quarter)" unless there are extraordinary circumstances that "don't apply in this case."

5. On August 22, 2014, claimant signed a document authorizing claimant's father, and/or her brother to represent her in appealing IRC's denial of additional respite hours. On the same date, claimant's father signed a "Fair Hearing Request" on behalf of claimant appealing IRC's decision. The Fair Hearing Request challenged IRC's denial of an increase in respite services as well its "continued denial since 2011 of an increase in respite hours." The request sought "[a]n increase of respite hours of at least 110 hours per month . . . ." In documents presented at the hearing, claimant sought to receive 231.6 hours of respite care per month.

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[1] The email requesting the funding of additional respite hours was not offered as evidence and, therefore, the scope of the original request is unknown.

CLAIMANT'S INDIVIDUAL PROGRAM PLAN

6. Claimant's current Individual Program Plan (IPP) was developed on December 4, 2013. The IPP provides that it will be reviewed in December 2014. Claimant, claimant's father, claimant's brother and claimant's IRC case manager were present at the IPP meeting. The IPP noted that "[claimant] would like to continue living with her father and brother and receive respite." Claimant's father reported that claimant had "no disruptive behaviors in over a year." The IPP stated that claimant requires, among other things, "[f]requent turning in bed." At the time the IPP was developed, claimant received 272[2] hours per month of In-Home Supportive Services (IHSS)[3] funded through the California Department of Social Services (DSS)[4] and 30 hours per month of respite services funded by IRC.

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[2] A subsequent document from California Department of Social Services indicated that claimant was receiving 283 hours of IHSS services.

[3] The types of services which can be authorized through IHSS are housecleaning, meal preparation, laundry, grocery shopping, personal care services (such as bowel and bladder care, bathing, grooming and paramedical services), accompaniment to medical appointments, and protective supervision for the mentally impaired." http://www.cdss.ca.gov/agedblinddisabled/pg1296.htm.) (See also, Welf. & Inst. Code §14132.95.)

[4] The administration of the IHSS program is through local county offices. In this case, the local county was Riverside.

2014 Change in IHSS Hours Provided to Claimant

7. In 2014, the Riverside County IHSS office (County) was funding 282 IHSS hours per month for claimant's care. A notice to claimant from County dated April 25, 2014, advised her that, effective May 15, 2014, her IHSS hours would be cut from 282 per month to 128 hours and 57 minutes per month, a reduction of 154 hours and three minutes per month. The most significant decrease was the elimination of claimant's allotment of thirty-four hours and forty minutes per week for "Protective Supervision."[5]

Appeal of Decrease of IHSS Hours

8. Claimant appealed County's elimination of protective supervision services. By a Decision adopted July 2, 2014, DSS denied the appeal and concluded that claimant was not eligible for protective supervision services because the evidence did not support a finding that claimant had a mental impairment or that she was "non-self-directing or confused and needed protective supervision to safeguard against injury, hazard, or accident." (Decision 2014120263, Adopted July 2, 2014, p. 6.)

PRIOR LITIGATION WITH IRC SEEKING ADDITIONAL RESPITE HOURS.

9. Before turning 21 in April 2011, claimant received a combined total of 601 hours of services per month from agencies and providers other than IRC and 30 hours of respite care from IRC. After she turned 21, the 601 hours she received from other agencies and providers were reduced by operation of law to 373 hours per month. In

[5] Protective supervision services are designed for people who, due to a mental impairment or mental illness, need to be observed 24 hours per day to protect them from injuries, hazards or accidents.

response to this reduction, claimant requested an increase in her IRC-funded respite hours. IRC denied claimant's request and, claimant appealed that decision.

10. On June 16, 2011, Administrative Law Judge Donald P. Cole conducted a hearing on claimant's appeal. The issues were: (1) Does claimant need 228 additional hours per month of in-home care services to compensate hours lost when claimant turned 21 years old? (2) s claimant exempted from the limitation of hours of respite services authorized by Welfare and Institutions Code section 4686.5?

11. Judge Cole described claimant's condition in detail as follows:

> Claimant has spastic quadriplegia. She requires total assistance with all activities of daily living, including feeding, drinking, grooming, bathing, transferring, and her daily physical therapy routine. She cannot walk. During meals, her swallowing must be monitored so that she does not choke. She uses a manual or motorized wheelchair independently, but has difficulty steering. She needs to be repositioned every two hours throughout the day and night. She toilets without prompting, but needs assistance; soiling or wetting occur at least once a week during waking hours, and nightly, since she often cannot wake up her father in time to get to the restroom. She is able to talk to a certain extent, her articulation is developing, and her vocabulary is increasing, but she tends to gasp for air after every few words. She has become more assertive in verbalizing her needs. She is able to use her hands, e.g., to paint pictures. She wears ankle-foot orthotics (AFOs). At times, two people are needed to care for [claimant], e.g., when she is put into her walker or stander.

> [Claimant] goes to sleep for the night at about 8:30 or 9:00 p.m., and wakes up around 5:00 a.m. However, she wakes up several times each night with severe hip pain when she needs to be repositioned.

At the time of the 2011 hearing, Claimant was receiving special education services and attending a high school in her local school district.

Judge Cole denied claimant's request for additional hours of service. He found that the evidence did not establish that claimant required more personal care hours than she received. (373 hours of personal care services, 30 hours respite and 160 hours of care in school for a total of 563 hours.) Judge Cole further determined that claimant did not meet the exemptions that would qualify her to receive respite hours that exceeded the maximum provided by statute. (OAH Case No. 2011031211.)

12. Claimant filed a motion to reconsider Judge Cole's decision. She argued that it was inconsistent with the requirements of Welfare and Institutions Code section 4512 in that IRC is required to provide services that include personal care needs and because the determination of which services are provided "shall be made on the basis of the needs and preferences of the consumer." Claimant's motion to reconsider was denied. Claimant thereafter filed a Petition for a Peremptory Writ of Administrative Mandamus which was denied by the Riverside County Superior Court on July 21, 2014. (No. RIC 1116206.)

EVIDENCE PRESENTED AT THE HEARING

Mary Pounders

13. Mary Pounders is a Program Manager at IRC. She supervises 17 social workers, each of whom has approximately 75 clients. She reviewed claimant's records in preparation for the hearing.

Ms. Pounders explained that the regional center is limited by statute to providing clients with a maximum of 30 respite hours per month unless the client's needs fit within an exemption. She stated that respite hours were designed to provide a break to a family giving care to a developmentally disabled individual. Ms. Pounders stated that a client could qualify for an exemption if there were extraordinary circumstances or if a catastrophic event occurred in the client's life or living situation. She further testified that IRC is not required to provide services that can be obtained from natural supports.[6] She opined that claimant's loss of IHSS hours did not constitute a situation that warrants an exemption from the maximum respite hours permitted by statute. Ms. Pounders further noted that claimant and her family could use IHSS funded hours to hire a non-family member to help care for claimant.

Ms. Pounders has not met claimant; however, she made the decision to deny claimant's request for additional respite hours. She based her determination on the fact that there had not been a change in claimant's medical condition or her living situation. She also based her decision on the fact that respite care was not intended to take the place of in-home care received from a generic resource. She understood that her determination would mean that claimant's family would be providing unpaid care to claimant.

Mona Jaber

14. Mona Jaber is a Consumer Services Coordinator with IRC. Claimant has been Ms. Jaber's client since March 2014. Ms. Jaber contended that claimant qualified for IRC services based solely on her diagnosis of cerebral palsy. However, the current IPP, approved December 2013, contradicted her testimony and provided that claimant

[6] Natural supports include family and friends.

was receiving services "based on a diagnosis [sic] of mental retardation and Cerebral Palsy."

Ms. Jaber confirmed that claimant attends a day program five days a week for 5.5 hours per day. Claimant spends additional time away from home being transported to and from the day program.

Ms. Jaber met claimant four times at the day program she attends. She spent 5 to 25 minutes with claimant on those occasions. She has not been to claimant's home. She stated that claimant's health is considered stable, and she has not had any hospital or emergency room admissions in the past year. Claimant told Ms. Jaber that she does not sleep through the night; she told Ms. Jaber that sometimes she wakes up as many as 10 times per night. Claimant did not specify how often this occurs.

In April 2014 staff of the day program reported to Ms. Jaber that claimant was engaging in unusual and erratic behavior. Examples of the behavior that were reported included that claimant was doing "wheelies" in her wheelchair and that she was telling the staff that she wanted to cure cancer. The staff reported that this conduct was unusual for claimant. A Public Health Nurse's report dated April 18, 2014, noted that claimant had a urinary tract infection. Ms. Jaber stated that, in her experience, clients can engage in atypical behavior when they are suffering from a urinary tract infection.

Public Health Nurse Health Assessment

15. Public Health Nurse Sally Mahmoud, R.N., P.H.N., completed a protective supervision assessment of claimant on April 18, 2014; her report was received in evidence. The assessment took place at the day program claimant attends. Staff at the day program had reported that, for the preceding two weeks, claimant was exhibiting increased anxiety, anger, emotional outbursts and demands for extra care and attention. The Program Director had known claimant for two years and told Ms. Mahmoud that this "is not the [claimant] that she knows."

Ms. Mahmoud observed that claimant could maneuver her wheelchair around the day program facility without assistance. She wrote that claimant "needs total care assistance with [activities of daily living] and personal care." Ms. Mahmoud found that claimant was "alert," "insightful and pleasant" during the assessment. Claimant "was able to show understanding of basic cause and effect and exhibited clear self-directing behavior on several occasions throughout the assessment."

Claimant told Ms. Mahmoud that she wanted to live in a 24-hour care facility but expressed a concern that her father and brother would not be paid for her care if she no longer lived at home. Claimant stated that her father is sick and sometimes not able to provide all the care she needs. Claimant communicated to Ms. Mahmoud that she liked her brothers and her grandmother[7]. Ms. Mahmoud detected that claimant was hesitant to answer questions about whether she felt safe at home and how she feels about her father caring for her personal needs. She did not want to respond to a question about whether anyone at home was forcing her to do something she did not want to do.

Ms. Mahmoud found that claimant "needs 24 hours care, but not due to cognitive impairment," a requirement for IHSS protective supervision services. But claimant requires 24-hour care due to her physical limitations and medical diagnosis.

Claimant's Brother

16. Claimant's brother is 25-years old. He has degrees in physics and mathematics and works part time outside of the home. He and claimant's father are claimant's IHSS providers.

[7] Claimant's grandmother provides respite services for the family through an agency.

Claimant's brother emotionally described claimant's condition and the care he and his father provide. He testified in detail about claimant's severe form of cerebral palsy. He stated that she suffers contractions in her arms that make her unable to feed herself. Claimant had a baclofen pump inserted to try to reduce spasticity, but it was removed when it proved to be ineffective. Claimant has scoliosis with resultant back pain that has increased with age. Her hip is dislocated and her legs are "windswept;" she wears braces on her back and legs and is non-ambulatory. Claimant relies on an electric wheelchair for mobility. Claimant often has pain levels of eight to nine in her hips. Claimant's brother stated that claimant must be repositioned every two hours while she is sleeping. Claimant cannot be left alone; he agrees with Ms. Mahmoud that claimant requires 24 hour care.

Claimant's brother stated that claimant's doctor recommended that more than one person be available to transfer claimant into and out of her wheelchair and adaptive equipment. Claimant's brother does not believe that claimant requires licensed registered or vocational nurses but that she requires personal care services.

17. Claimant's brother testified that claimant has periods of mental instability. He stated that there is a history of mental illness on the maternal side of the family. Claimant's mother, who originally helped provide care for claimant, was hospitalized due to mental health issues and left the family home due to these issues in 2006.[8] Beginning around 2008, claimant's brother observed that claimant's episodes of mental instability increased in intensity. During times of instability, claimant's comments can be grandiose and/or unrealistic, her sleep patterns are significantly altered, and she wakes many times

[8] Claimant's brother cited this as another factor that should be considered in determining the amount of funded hours of care that are provided to claimant since, prior to 2006, claimant was cared for in a two-parent household.

in the night. She can have visual and auditory hallucinations. Claimant's brother stated that these episodes can occur every 16 to 18 months and last 12 to 16 weeks. Claimant's brother recalled one instance when claimant had a period of instability in 2012 and attempted to go down the stairs of her high school in her wheelchair. Claimant's brother stated that, had she not been stopped, the incident could have been life ending. He said that these episodes create an additional burden on the family as the intensity of care required is increased. Claimant's most recent episode began in mid-March and continued to mid-April. As evidenced by the concerns expressed by the staff of the day program, claimant was in one of her unstable episodes when she was interviewed by the Public Health Nurse, Ms. Mahmoud. Claimant's brother stated that it take so long to get to a doctor that claimant stabilizes or becomes uncommunicative at the medical appointment making it difficult to obtain proper treatment.

Claimant's brother felt that claimant is able to stabilize more rapidly because of the intensity of care provided by claimant's brother and father. He stated that they go above and beyond what is required but feels strongly that the care they provide should be compensated.

Claimant's brother argued that claimant satisfied the requirements for an exemption for respite care. He argued that he and claimant's father should not be considered natural supports since claimant has reached the age of majority. He reasoned that family members are expected to provide 24 hour care for a child but that this obligation ceases when the child becomes an adult. He testified that claimant cannot attend the day program when she must go to medical appointments and that there are 14 days per year the program is closed for holidays, during which he and claimant's father must provide care to claimant. Claimant's brother testified that the change in claimant's circumstances that warrant additional respite hours is the reduction

in IHSS hours, which requires him and claimant's father to provide additional uncompensated care.

18. Claimant's grandmother provides respite care through In Roads Creative Program; she is a registered home health aide. Before claimant's hours were cut, a female non-family member was hired to provide care for claimant Tuesday through Friday, approximately 4 to 5 hours per day; however, now that claimant's hours have been cut, there are not enough funded hours to hire others to provide care.

Agreed Calculation of Currently Funded and Unfunded Hours

19. The parties agreed that a reasonable calculation of service hours that are being provided to claimant plus an allotment of 5 hours of sleep per day totaled 641.02 hours per month.[9] They also agreed that there were 728 average hours in a month.[10] Using these figures, it was determined that there were approximately 3 hours in each day that claimant was expected to be awake that were not covered by funded services.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is entitled to an increase in services, the burden of proof is on the claimant to establish that he or she requires the additional services. The standard of proof required is preponderance of the

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[9] The calculation included a NF waiver (individuals who qualify for placement in skilled nursing homes may waive that placement and receive, instead, services that will allow them to remain in a family home), IHSS, day program plus transportation, and IRC-funded respite.

[10] This assumes 4.33 as the number of weeks in a month.

evidence. (Evid. Code, § 115.) 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

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (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 Lanterman 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.)

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 a mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Act acknowledges the "complexities" of providing services and supports to people with developmental disabilities and of "ensuring] that no gaps occur in . . . [the] provision of services and supports." (Welf. & Inst. Code, § 4501.

3. The Lanterman Act is intended to provide an array of necessary services and supports 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 and to support their integration into the mainstream life of the community. (Welf. &

Inst. Code, §§ 4501, 4512, subd. (b).) Such services include locating persons with developmental disabilities (§ 4641); assessing their needs (Welf. & Inst. Code, §§ 4642 – 4643); and, on an individual basis, selecting and providing services to meet such needs. (Welf. & Inst. Code, §§ 4646 – 4647.) The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685), 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. (Welf. & Inst. Code, §§ 4501, 4750.)

4. "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 care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services . . . [and] supported living arrangements. . . .

5. 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).)

6. 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).)

7. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process should take into account the needs and preferences of the consumer and his or her family "where appropriate." Services and supports are intended to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

8. "Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subd. (a)(8).

9. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b), supra.), and regional centers are required to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

10. "In-home respite services" are defined in the Lanterman Act as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client's own home, for a regional center client who resides with a family member." (Welf. & Inst. Code,§ 4690.2, subd. (a).) Welfare and Institutions Code section 4690.2, subdivision (a), states that respite services are designed to "do all of 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.

11. In 2009, limits were imposed on a regional center's ability to purchase respite care for the families of consumers. Specifically, Welfare and Institutions Code section 4686.5 provides that a regional center shall not purchase more than 90 hours of in-home respite care for each quarter of one year. (Welf. & Inst. Code, §4686.5, subd. (a)(2).) However, a regional center may grant an exemption, and provide more of such services, where it is demonstrated either that more than 90 hours per quarter of respite care is required in order to maintain the consumer in the family home, or where it has been established that there has been an extraordinary event that impacts the family's ability to meet the care and supervision needs of the consumer. (Welf. & Inst. Code, §4686.5, subd. (a)(3)(A).)

12. Welfare and Institutions Code section 4646, provides, in 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.

(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.

13. Welfare and Institutions Code section 4648 provides, in part:

> In order to achieve the stated objectives of a consumer's individualized 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 . . .

(2) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

[¶] . . .[¶]

(6) The regional center and the consumer . . . shall, pursuant to the individual program plan, consider all the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

[¶] . . .[¶]

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

(E) The consumer's, or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers.

EVALUATION

14. Claimant's Fair Hearing Request sought an increase in respite hours and this case was limited to that issue. IRC may not fund more than 90 hours per quarter of respite hours unless the additional service is required to maintain the consumer in the family home or where it has been established that there has been an extraordinary event that impacts the family's ability to meet the care and supervision needs of the consumer. Claimant's evidence did not meet either criterion. The evidence regarding claimant's recent urinary tract infection and her claims of mental instability were not sufficient to

rise to the level of an "extraordinary event" and did not indicate she needed more respite hours to remain in the family home because of those events. She did not demonstrate that her respite care needs had changed.

The evidence presented by claimant appeared directed to a claim different from that presented in her Fair Hearing Request - that IRC fund additional personal care hours to compensate for the elimination of IHSS protective supervision hours. The protective supervision hours were eliminated after a finding by IHSS that claimant did not meet the criterion required to receive those hours. In that regard, claimant asserted that there were 3 hours of "unmet needs" per day. "Unmet needs" is not a topic related to respite. Whether claimant requires 24 hour a day services was not an issue to be determined in this hearing. The only issue presented was whether an allotment of additional respite service hours was warranted.

It is noted that claimant's IPP will be reviewed in December 2014. The services and supports required to provide the level of care needed by claimant should be discussed and evaluated at the IPP meeting. Additional services and supports may be warranted if it is determined by the IPP team that, because of the effects of her severe cerebral palsy, claimant requires 24 hour care.

As relates to the request for retroactive benefits to 2011, the entitlement to additional services, including personal care and respite services, was determined by Judge Cole in 2011. Claimant appealed the decision but did not prevail. This issue was completely litigated and may not be re-litigated in this proceeding. IRC is not required to pay retroactive benefits.

A preponderance of the evidence established that IRC's analysis of claimant's respite needs was appropriate and reasonable.

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ORDER

Claimant's request that IRC fund additional respite services is denied. IRC shall continue funding 90 hours per quarter of respite services per month. Claimant's request for retroactive benefits to 2011 is denied.

DATED: October 28, 2014

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SUSAN J. BOYLE

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.