

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH No. 2014120369

DECISION

This matter came on regularly for hearing before Irina Tentser, Administrative Law Judge, on February 13, 2015, at the Eastern Los Angeles Regional Center in Alhambra, California.

Lillia Ortega, Eastern Los Angeles Regional Center supervisor, appeared and represented the Eastern Los Angeles Regional Center (ELARC).

Claimant's mother<sup>1</sup> appeared and represented Claimant as her authorized representative.

Oral and documentary evidence was received. All evidence presented at the hearing was considered. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

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<sup>1</sup> Claimant and his mother are not identified by name in order to protect their privacy.

## STATEMENT OF ISSUES

The issue in this matter is whether ELARC may reduce Claimant's respite services from 186 hours per month to 30 hours per month.

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## FACTUAL FINDINGS

1. Claimant is a thirteen-year-old girl who qualifies for regional center services under a diagnosis of autism. She has also been diagnosed with Attention Deficit Hyperactive Disorder. She is a Hispanic female, weighing approximately 141 pounds and standing 60 inches tall. The primary language in the home is Spanish. Claimant currently attends Belvedere Middle School in Los Angeles, California. She attends school from 7:50 AM to 2:50 PM. She resides at the familial home with her father, mother, and sister. (Exhibit 5.)

2. Claimant's mother is Claimant's primary caretaker. Claimant's middle sister, who attends college and resides with the family, functions as the Claimant's respite worker. Claimant's mother testified that she suffers from anxiety and depression due to her familial responsibilities. (Testimony of Claimant's mother; Exhibit A.)

3. In 2010, ELARC granted Claimant's mother a one-time temporary exception to increase the number of respite hours to six hours per day, seven days a week, for a total of 186 hours per month. The temporary increase was based on Claimant's behavioral issues, Claimant's oldest sister going through intensive Chemotherapy, and Claimant's father's imminent hand surgery, which resulted in father being unable to work and Claimant's mother being the one caring for the entire family. (Testimony of Lillia Ortega; Exhibit 1.)

4. On April 22, 2014, Claimant's parents met with ELARC representatives in an individual program plan (IPP) meeting to discuss desired outcomes from services. ELARC

agreed to continue funding services at a temporary exceptional level of 186 per month based on its belief that the family situation that gave rise to the initial exemption had not changed. As a result, ELARC continued to fund respite services at the exceptional level. (Exhibit 3.)

5. Subsequently, ELARC requested Claimant's mother to provide it with a weekly schedule detailing how she was using the respite hours. Claimant's mother did not provide ELARC with a weekly schedule. Claimant's mother, instead, provided ELARC with general family concerns. (Testimony of Lillia Ortega; Exhibit 1.)

6. On October 23, 2014, ELARC issued a Notice of Proposed Action (NOPA) to Claimant proposing a gradual respite fade out plan for six months to begin on December 1, 2014. As set forth in the NOPA, ELARC would reduce 26 hours of respite out of Claimant's mother's 186 hours each month for six months. Each consecutive month, ELARC would reduce the same amount until the month of May 2015. After May 2015, Claimant's mother would have 30 hours per month with quarterly assessments to support continuing levels. (Exhibit 1.)

7. The NOPA notified Claimant that based on the ELARC-funded services of 12 hours per month of behavior management and 12 hours of Adaptive Skills Training, the 30 hours per week the Claimant attends school, and Claimant's mother's failure to provide ELARC with a weekly schedule of how respite hours were being utilized, "there is not enough time during the day to justify the authorized number of respite hours" and concluded that the "regional center may not grant an exemption." (Exhibit 1.)

8. Claimant's mother disagreed with ELARC's decision to gradually decrease respite hours and filed a Fair Hearing Request (FHR) on November 4, 2014. (Exhibit 2.)

9. The circumstances that warranted the initial increase in the number of respite hours have changed. ELARC proposed new services to directly address behavior issues. Claimant's oldest sister no longer resides with Claimant's family, but lives

separately with her child and husband. After initially indicating that the oldest sister was not married, Claimant's mother later changed her testimony to indicate that the oldest daughter's husband resides with the oldest daughter. Claimant's mother does not regularly care for the oldest daughter aside from cleaning her apartment approximately two hours per week. The oldest daughter has not received chemotherapy treatments for two to three years. The current state of the cancer is unclear from the record. While the oldest daughter was hospitalized for an infection from February 4, 2015 to February 6, 2015, she did not require Claimant's mother's care during that time. (Testimony of Claimant's mother; testimony of Dolores Perez.)

10. Claimant's father's hand surgery occurred several years ago. The father has worked full time for the past seven months. While the father was admitted to and discharged from the hospital on January 14, 2014 due to kidney stones, the Claimant's mother is no longer required to care for Claimant's father on an ongoing basis. Claimant's mother does not work outside the home aside from the approximately two hours per week she works as an occasional housekeeper for her oldest daughter, who resides separately with her husband and son. (Testimony of Claimant's mother; Exhibit 5.)

## LEGAL CONCLUSIONS

1. Cause exists to reduce the number of respite hours from 186 hours per month, at a rate of six hours a day, seven days a week, to 30 hours per month. (Factual Findings 1-10; Legal Conclusions 2-7.)

2. 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. (Welf. & Inst. Code, § 4646, subd. (a).)

3. 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. (Welf. & Inst. Code, § 4646, subd. (d).)

4. Welfare and Institutions Code section 4686.5 states in pertinent part:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) 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.

(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (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.

5. ELARC bears the burden of proof before it may terminate services. The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

6. In this case, a change in familial circumstances required a one-time temporary exception of increase of respite hours based on the Claimant's mother's role as the primary caretaker. However, familial circumstances have changed sufficiently in the past five years so that respite hours are no longer justified at the exceptional level of 186 hours per month. Specifically, the Claimant's behaviors are being addressed through 12 hours per month of behavior management services as well as 12 hours per month of adaptive skills training. Claimant's mother is no longer responsible for the care of her husband, who has recovered from hand surgery and has worked full-time for the past seven months. Further, Claimant's oldest sister has not undergone the chemotherapy that required Claimant's mother's ongoing care in two to three years. ELARC has, therefore, met its burden to prove that the proposed change in service is necessary or more effective in meeting the goals stated in the IPP.

7. Absent the extraordinary circumstances that led to the 2010 exemption, ELARC's plan to gradually reduce the number of respite hours to the level required by Welfare and Institutions Code section 4686.5 is reasonable and appropriate.

## ORDER

Claimant's appeal is denied and ELARC may implement the fade out plan outlined in the NOPA in accordance with the provisions of Welfare and Institutions Code section 4715.

DATED: February 24, 2015

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/s/

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.