

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2015020734

DECISION

This matter was heard by John E. DeCure, Administrative Law Judge with the Office of Administrative Hearings, on March 18, 2015, in Alhambra, California. Claimant was represented by his mother (Mother) and authorized representative.¹ Eastern Los Angeles Regional Center (Service Agency or ELARC) was represented by Judy Perez, Fair Hearing Manager. Eduardo Kogan, court interpreter, translated the proceeding on behalf of Mother, who is a Spanish-language speaker.

Oral and documentary evidence was received, and argument was heard. The record was left open for Mother to submit further documentary evidence of in-home-respite-care costs she incurred in December of 2014, the reimbursement of which is at issue in this case. Mother was given until March 23, 2015, to submit her additional evidence, and ELARC was provided until March 30, 2015, to make any objections. Mother timely submitted her additional evidence, which was

¹ Claimant's and his mother's names are omitted throughout this Decision to protect Claimant's privacy.

received and marked as Claimant's Exhibit BB. ELARC did not submit an objection to Exhibit BB, which was thus admitted into evidence. The record was thereafter closed, and the matter was submitted for decision on March 30, 2015.

ISSUE

Should ELARC be required to fund nine days of in-home respite hours in lieu of out-of-home respite, and therefore reimburse Claimant's mother for the costs she incurred in paying for in-home respite care, covering the ten-day period when Claimant's mother was attending a conference in Florida in December of 2014?

EVIDENCE

Documentary: Service Agency exhibits 1-11; Claimant's exhibits A through N, P, R, S, U through Z, AA, and BB.

Testimonial: Ana Maria Bonilla, Service Coordinator II (Service Coordinator Bonilla), ELARC; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 14-year old male consumer who was found eligible for ELARC services when he was diagnosed with autism in 2005. He is fully ambulatory and able to communicate using complete sentences. He lives with his mother, 16-year-old sister, and paternal grandmother in the family home. Claimant's mother and father are legally separated. Claimant's father does not live in the family home but does contribute to Claimant's financial needs and spends time with him. The primary languages spoken at home are English and Spanish.

2. Pursuant to the January 15, 2015 Individual Program Plan (IPP),

Claimant requires constant reminders and prompts to complete tasks, and supervision while out in the community. ELARC funds 30 hours per month of in-home respite services and 30 hours per month of Personal Assistance (parent vendor). Claimant's mother assists with his meal preparation, laundry, and cleaning. Claimant's mother receives 260 hours per month of In-Home Support Services (IHSS) through the Los Angeles County Department of Public Social Services (DPSS). Claimant is home-schooled five days per week in a converted classroom setting of Mother's design. He receives in-home instruction and weekly speech and language services from multiple instructors funded by his school district. His primary in-home instructor is Esmeralda Santiago.

3. Mother recently obtained a degree in Psychology with an emphasis in Applied Behavior Analysis. At the fair hearing, she testified that she earned this degree in order to obtain a better understanding of her son's needs and challenges and how she might meet them. Mother described herself as very active when it comes to her son's care and needs. She regularly attends workshops offered by ELARC and other service organizations and has educated herself regarding the rights of disabled persons. Recently she founded a non-profit organization in her home country of Mexico that is dedicated to helping children with autism and their parents.

4. Service Agency issued a Notice of Proposed Action in this matter on January 13, 2015, denying Mother's request for ELARC to fund nine days of in-home respite in lieu of out-of-home respite for the time-period of December 14-22, 2014. On January 26, 2015, Mother timely submitted a Fair Hearing Request on behalf of Claimant, appealing Service Agency's denial. Mother's request led to the fair hearing described herein.

THE TMIP CONFERENCE

5. On December 2, 2014, Mother contacted Service Coordinator Bonilla and requested that temporary out-of-home placement be arranged for Claimant from December 14, 2014, through December 22, 2014. Mother was planning a trip to Florida during that time to attend an informational and training conference regarding the "Therasuit Method Intensive Program" (TMIP)², and she needed adult supervision for Claimant, particularly overnight, while she was away. Service Coordinator Bonilla explained to Mother that on 12-days' notice, it might be difficult for ELARC to find suitable out-of-home placement for Claimant, but within several days an ELARC placement coordinator identified two homes as potential options for Mother to consider, and by December 10, 2014, Mother was provided with detailed information from ELARC about the homes. One residence, Candlelight Home, was located in Montebello, California. The other residence, Pacific Horizon III, was located in Temple City, California.

6. On December 11, 2014, Mother visited Candlelight Home and spoke with the manager, Grace Milan. Ms. Milan informed Mother that Claimant would share a room with another client, which Mother viewed unfavorably because Claimant sometimes got up during the night, and sometimes wet his bed. In addition, because of Claimant's educational regimen, his teachers would be coming and going during the day, so a private bedroom to accommodate Claimant's studies and visitors would be needed. When Mother informed Ms.

² The Therasuit Method Intensive Program is intended to assist children with disabilities affecting their mobility. It involves the use of a specialized soft canvas suit connected with cords that, together, help the child learn better patterns of movement.

Milan of Claimant's educational regimen and needs, Ms. Milan told her it was doubtful that Claimant could stay at Candlelight Home because under California law, any teacher entering a licensed home to provide services must be first subjected to prior fingerprinting and background checking, and such security measures would take significant time to complete.

7. On December 11, 2014, Mother contacted Service Coordinator Bonilla via email and described her visit to Candlelight Home and her conversation with Ms. Milan. Mother reiterated Ms. Milan's doubts about Claimant's suitability for placement due to his need for a private room and his teachers needing background checks. Mother also raised concerns about Claimant's dietary needs, stating, "he doesn't eat just anything." Mother concluded that in her view, the home did not suit Claimant's needs. She then proposed a solution which she had apparently suggested before, stating "I would like to request again additional respite hours for the month of December. However, I do not want it to affect the hours that I have for the following months. Please call your supervisor again to see what she says."

8. On December 12, 2014, Mother visited the Pacific Horizon III residence in Temple City. When Mother learned that this residence was no different than Candlelight Home regarding fingerprinting and background checking requirements for Claimant's teachers, she ruled it out as a suitable temporary placement for Claimant.

9. Service Coordinator Bonilla testified that during early December of 2014, as soon as she learned of Mother's request for out-of-home placement, she informed Mother that Claimant would need to take a Tuberculosis (TB) test and undergo a physical examination in order to be eligible for temporary placement outside his family home. Mother testified that she had Claimant TB tested on

December 10, 2014. However, she did not come back three days later to have a physician interpret the test results as required because she knew that neither the Candlelight Home, nor the Pacific Horizon III residence, were suitable, and thereby, she considered ELARC's efforts to find Claimant out-of-home placements to be a failure. During this time period in December, Mother did not have a physical examination performed upon Claimant because she was told that one could not be scheduled until January of 2015.

10. Before Mother attended the TMIP conference in Florida, she discussed with Service Coordinator Bonilla her impressions of the Candlelight Home and Pacific Horizon III residences, explaining that she found both to be unsuitable for Claimant. Service Coordinator Bonilla asked Mother what she planned to do in terms of providing overnight care for Claimant while she was on her trip. At the fair hearing, both Service Coordinator Bonilla and Mother testified regarding this conversation and what was said. According to Mother, she told Service Coordinator Bonilla that Claimant's primary instructor, Esmeralda Santiago, would provide the additional in-home care necessary. By contrast, Service Coordinator Bonilla recalled Mother saying that Claimant's grandmother and father would provide the in-home care necessary. Service Coordinator Bonilla testified credibly that if, in that conversation, Mother had mentioned "Esmeralda Santiago" as the care-giver, Service Coordinator Bonilla clearly would have remembered that name being used.

11. Before Mother left on her trip, Service Coordinator Bonilla recommended that Mother use 90 hours of in-home respite services from the quarter of December 1, 2014, to March 1, 2015, and/ or in the alternative, use natural supports (i.e., personal associations and relationships) as an option.

12. Mother attended the TMIP conference in Florida between

December 14 and 22, 2014. While Mother was away on her trip, Esmeralda Santiago provided between 7.5 and 16 hours per day of in-home respite care to Claimant, totaling 128 hours, for which Mother paid Ms. Santiago at a rate of \$10.71 per hour, totaling \$1,370.88. (See Claimant's Exhibit BB.)

CLAIMANT'S IN-HOME CARE DURING MOTHER'S TRIP

13. Service Agency contends that Mother is not entitled to reimbursement for the in-home respite care Ms. Santiago provided because Mother instead must use the 30 hours per month, 90 hours per quarter, of currently funded in-home respite hours to account for those services. Mother contends that because she attends conferences and workshops frequently and uses her allotted hours for these purposes, Service Agency should increase the quarterly in-home respite hours awarded to Claimant to compensate for the 128 hours of Ms. Santiago's in-home respite care in December of 2014. In the alternative, Mother seeks reimbursement from Service Agency for her out-of-pocket expenses as set forth in paragraph 12.

14(a). Welfare and Institutions Code section 4686.5, subdivision (a), provides:

- (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.

14(b). Mother asserts that ELARC should grant an exemption under Welfare and Institutions Code section 4686.5, subdivision (a)(3)(A), to the 90-hours-per-quarter limit set forth in Welfare and Institutions Code section 4686.5, subdivision (a)(2), because the TMIP conference was an "extraordinary event" giving rise to such an exemption. At the fair hearing, Mother testified that she attended the conference for the benefit of Claimant because she was there to learn about how TMIP could potentially improve Claimant's movement and body control. ELARC's position is that the TMIP conference was not an "extraordinary event" and therefore would not trigger an exemption under the law.

14(c). At the fair hearing, both ELARC and Mother compared the TMIP conference with another trip Mother took to Mexico in order to visit her gravely ill father in 2013 (the 2013 Mexico trip). Mother argued that ELARC had awarded her with additional in-home respite hours for that trip, so therefore, they should award her the hours she was requesting for the TMIP conference. ELARC disagreed. They saw the 2013 Mexico trip as an "extraordinary event" because it represented a family emergency for Mother, and accordingly, they had awarded additional in-home respite hours to Mother. However, to ELARC, the TMIP conference represented no such family emergency but, instead, was discretionary.

14(d). Despite Mother's commendable efforts to improve Claimant's quality of life by attending the TMIP conference, it was not an extraordinary

event. The TMIP conference did not represent a family emergency for Mother akin to the 2013 Mexico trip.

15(a). ELARC follows a "Purchase of Service Guideline," effective May 2, 2011 (ELARC's out-of-home respite POS Guideline), which sets forth its policies and procedures for purchasing out-of-home respite services. The guideline provides:

. . . .

II. CRITERIA

ELARC consumers who reside with a family member are eligible for consideration of out-of-home respite services when:

Occasional family and/or consumer needs are more than the support of friends, natural and community supports can provide. Additionally, out of home respite may be used as a support option should family members have planned activities which preclude the participation of the consumer such as vacations, hospitalizations and family emergencies.

Out-of-home respite is requested by the family, consumer and/or authorized representative, under the above criteria, and identified as a preferred objective on the IPP.

When the care and supervision needs of the consumer exceed that of an individual of the same age without developmental disabilities. WIC 4686.5(a)(1).

III. AMOUNT OF SERVICE

A regional center shall not purchase more than 21 days of out of home respite services in a fiscal year. ELARC may grant an exemption to this requirement 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 individual 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 individual. WIC 4686.5(a)(2).

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 following information must be submitted to the service coordinator prior to implementation of the in home respite In lieu of out of home respite service:

Proof of vacation plans – (i.e. flight arrangements, receipts/hospitalization, emergency (i.e. detailed documentation from hospital or physician))

Information on respite caretaker, if different from provider on original vendor application (Name, address, phone number and social security number)

Written authorization for regional center to make unannounced visits to the home / school / day program to ensure the person's health and safety.

The daily amount of hours (within the 21 or less days) will be calculated on individual need, not exceeding 16 hours per day. Hours are calculated by taking into account the amount of time that the consumer attends school/day program during the day, after school care, social/recreational program, hours of sleep, etc. Respite hours cannot be provided during these times.

IV. ALTERNATIVE FUNDING RESOURCES

Generic services and natural supports (extended family, friends, etc.) must be explored and secured prior to ELARC's purchase of out-of home respite services. Resources include but are not limited to:

IHSS (A regional center shall only consider in-home supportive services a generic resource when the approved in home supportive services meets the

respite need as identified in the consumer's IPP or IFSP [WIC section 4686.5, subd. (a)(5)].³

Private insurance

Private trusts

Medi-Cal benefits

Parents responsibility to provide care and supervision to a minor under 13 years of age.

....

15(b). Mother was aware of this ELARC policy when she planned her trip to Florida, particularly the portion which states 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." At the fair hearing, Mother testified that she had discussed this point with Service Coordinator Bonilla prior to the conference. While planning her trip, Mother complied with the requirement of first seeking an outside placement through ELARC. However, several of Mother's actions, and omissions to act, frustrated ELARC's process of finding suitable out-of-home arrangements for Claimant.

15(c). Mother unnecessarily delayed giving notice to ELARC that she was planning her TMIP conference trip and requesting out-of-home placement for Claimant. The flight-booking confirmation Mother submitted as proof of her planned upcoming trip shows that Mother booked her flight to Tampa, Florida, on November 10, 2014. Due to the 2013 Mexico trip, Mother was aware that

³ (Brackets appear in original.)

ELARC required 30-day notice to arrange for out-of-home placement. However, by giving ELARC only 12 days of notice of her trip on December 2, 2014, Mother put ELARC at a disadvantage in finding a suitable placement option. At the fair hearing, Mother testified that she delayed giving ELARC notice because she was still waiting for funding for her Florida hotel stay to come through her non-profit organization, and as a result, she had not yet committed fully to the trip. This claim was unpersuasive. Even if Mother's plans were tentative, ELARC needed as much time as possible to find a suitable placement for Claimant. One way or the other, had Mother's plans fallen through no outside placement would have occurred, rendering ELARC's endeavors unnecessary. The possibility of wasted effort by ELARC, in such an event, may have been real, and Mother's sensitivity to that is creditable. However, by delaying notice, Mother ensured that ELARC would be working under a tight deadline.

15(d). Without TB testing and a physical examination, Claimant would not have been admitted to reside in any outside placement. Mother did not have Claimant undergo a physical examination due to a routine scheduling delay. Although she had him TB tested, she did not return to have a physician interpret the results of that TB testing in a timely fashion as required. These deficiencies alone precluded Claimant's outside placement.

15(e). Mother's demands that Claimant maintain his in-home instruction with several teachers, coupled with the short notice she gave ELARC regarding her request for outside placement, likewise made it impossible for ELARC to place Claimant. Any instructors visiting Claimant in an outside placement would have been required to undergo fingerprinting and background checks to gain admission to the premises. Such security measures could not have been implemented on such a brief timetable. In addition, at the fair hearing Mother

testified that Esmeralda Santiago, Claimant's primary instructor, also instructs another child who lives nearby Claimant's family home, and she sees that child on the same days she teaches Claimant, going back and forth between the two locations. According to Mother, Ms. Santiago could not have visited Claimant in either the Montebello or Temple City homes and maintained her teaching duties with the other child because the distances between the two pupils' locations would have been too great to travel in the time Ms. Santiago had to teach them.

15(f). Given the foregoing, Mother did not establish that out-of-home placement was unavailable, and therefore, in-home respite in lieu of out-of-home respite could not be used under the Purchase of Service Guideline.

REIMBURSEMENT

16. Mother takes the position that if she is not awarded additional in-home respite hours, she should be reimbursed for the \$1,370.88 she paid in wages to Esmeralda Santiago for providing in-home care during December of 2014. ELARC believes Mother is not entitled to monetary reimbursement because, per ELARC's out-of-home respite guideline, in-home respite in lieu of out-of-home respite may be used only when there is no out-of-home respite available, and in this case, Mother frustrated the process of finding available out-of-home respite. ELARC contends that to reimburse Mother for these expenses would be to reward her for frustrating the process of finding suitable out-of-home placement. ELARC also maintains that Mother could have relied upon Claimant's father as a first option to provide in-home care while Mother was in Florida, but she chose not to do so.

17(a). At the fair hearing, Mother testified that Claimant's father typically only played a small role in Claimant's life and was rarely available due to his teaching jobs at the high school and college levels. Mother further testified that

Claimant's father did not help with Claimant's care while she was in Florida. However, ELARC credibly refuted Mother's contention regarding Claimant's father's availability by producing daily service logs from SEEK and Intercare Therapy, two vendors that had provided in-home services to Claimant in December of 2014. Such service logs are required for all vendors who provide services to Regional Center clients. The service logs must list the date, the activity, the start and end times of service, and the total time claimed. Each entry must also bear a signature of the parent or caretaker endorsing the entry.

17(b). The service log from SEEK bears Claimant's father's signature for the following entries while Mother was attending the TMIP conference: December 15, 3:00-5:30 p.m.; December 18, 5:30-6:30 p.m.; December 20, 2:30-5:00 p.m.; and December 22, 3:00-5:30 p.m. (See Exhibit 9.)

17(c). The service log from Intercare Therapy bears Claimant's father's signature for the following entries while Mother was attending the TMIP conference: December 16, 6:15-7:45 p.m.; and December 18, 6:15-7:45 p.m. (See Exhibit 10.)

17(d). At the fair hearing, Mother identified each signature for the entries described above as belonging to Claimant's father.

17(e). As a result, Mother's testimony that Claimant's father could not, and did not, help with Claimant's care while she was in Florida was not supported by the evidence. Claimant's father's significant presence in the family home while Mother was away, and the fact that his own mother lives in the family home permanently, suggests that Mother could have relied upon him significantly to provide substantial care for Claimant while she was at the TMIP conference.

LEGAL CONCLUSIONS

1. Cause does not exist to grant Claimant's appeal and to order the

Service Agency to fund Claimant for nine days of in-home respite hours in lieu of out-of-home respite, or to reimburse Claimant for costs for in-home care incurred while Claimant's Mother was attending the TMIP conference. (See Factual Findings 1 through 17, and Legal Conclusions 2 through 10.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing on receipt of the Service Agency's denial of funding for in-home respite hours, and therefore, jurisdiction for this appeal was established. (See Factual Finding 4.)

3. 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.)

4. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Specifically, in a case where a party is seeking funding not previously provided or approved by a regional center, that party bears the burden of proof. In this case, Claimant made a new request for Service Agency to fund additional in-home respite hours. Claimant therefore bears the burden of proof. He has failed to meet his burden.

5. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, e.g., Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

6. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

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.

7(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t 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.

7(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

8. Regional centers may promulgate POS Guidelines to assist in providing the appropriate level of services and supports to the consumer. (Welf. & Inst. Code, § 4646.4, subd. (a).) This section requires regional centers to ensure that a consumer's IPP complies with federal and state law and regulations, and when purchasing supports and services, conforms with the regional center's purchase of service policies and guidelines which must be approved by the Department of Developmental Services (DDS) to be effective. (Welf. & Inst. Code, §§ 4646.4, subd. (a)(1); 4434, subd. (d).) As long as the POS Guidelines are reasonable and comply with the law, regional centers are free to rely upon these guidelines.

9(a). Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

"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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification

programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

9(b). While section 4512, subdivision (b), includes respite, Service Agency is presently funding in-home respite hours at the maximum amount allowed by statute, which is 90 hours per quarter, without Claimant showing that he is eligible for an exemption.

9(c). In this case, Service Agency was justified in denying additional in-home respite hours to allow Claimant's Mother to attend the TMIP conference, which was related to Claimant's disability. Pursuant to Claimant's January 16, 2014 IPP, Service Agency was funding in-home respite hours at the maximum allowable amount. Claimant's Mother's attendance at the TMIP conference did

not constitute an extraordinary event that impacts the family's ability to meet Claimant's care and supervision needs.

10(a). Under Service Agency's POS Guidelines, a family member must use existing authorized respite hours to attend conferences and workshops. The Service Agency may rely upon its POS Guidelines to determine an appropriate level of in-home respite. In this case, the Service Agency properly concluded that Claimant's Mother must use her existing authorized in-home respite hours to meet her needs to attend the TMIP conference.

10(b). Although Claimant's Mother initially attempted to comply with the Service Agency's POS Guidelines by requesting out-of-home placement first, her follow-through efforts were insufficient. Mother's failure to obtain a TB test and physical examination for Claimant made him an unacceptable client for admission in any home. Her decision to give short notice to ELARC regarding her upcoming trip severely limited the Service Agency's ability to find an out-of-home placement setting. Mother's demand to continue with Claimant's normal in-home educational instruction while he was in an out-of-home placement made such placement unrealistic and essentially out of reach because none of Claimant's teachers could have completed fingerprinting and background checks swiftly enough to gain admission to out-of-home facilities. Moreover, Claimant's primary instructor, Ms. Santiago, could not have accommodated Claimant in an out-of-home placement and kept up with her schedule of teaching another student. Taken together, Mother's actions prompted the out-of-home placement to fail.

10(c). Mother was also advised to use natural supports as an option for in-home care while she was away at the conference. Service Coordinator Bonilla testified credibly that Mother had told her she would rely on Claimant's father and paternal grandmother for in-home care during her trip. The evidence showed

that Claimant's father was present in the home and acting as the responsible parent for Claimant on five of the ten days that Mother was away. Mother, apparently by her own choice, had decided not to rely on Claimant's father for full-time in-home care.

10(d). Service Agency was justified in denying Claimant's request to reimburse Mother for payment of \$1,370.88 for in-home respite services paid during her trip from December 14-22, 2014. Claimant may not use in-home respite services in lieu of out-of-home respite unless Claimant submits a request to Service Agency to use in-home respite in lieu of out-of-home respite, and Service Agency is given an opportunity to locate an appropriate short-term out-of-home placement and is unable to obtain such placement. Mother failed to follow the process for requesting out-of home respite pursuant to Service Agency's POS Guideline, and thus, it could not be determined whether an appropriate out-of-home arrangement was available for Claimant.

11. Based on the foregoing, Claimant has not established that the Service Agency must fund nine days of in-home respite hours in lieu of out-of-home respite, or reimburse Claimant's mother for the costs she incurred in paying for in-home respite care, covering the nine-day period when Claimant's Mother was attending a conference in Florida in December of 2014.

///

///

///

///

///

///

ORDER

Claimant's appeal of Service Agency's decision is denied.

1. Service Agency is not required to fund nine days of in-home respite covering Mother's attendance at the TMIP conference from December 14-22, 2014.

2. Service Agency is not required to reimburse Mother's costs incurred in paying for in-home respite services covering Mother's attendance at the TMIP conference from December 14-22, 2014.

DATED: April 6, 2015

/s/

JOHN E. DECURE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.