

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

Inland Regional Center,

Service Agency.

OAH No. 2015030772

DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on June 25, September 10 and October 1, 2015.

Stephanie Zermeno, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant who was present during the hearing.

The matter was submitted on October 1, 2015.

ISSUE

1. Is IRC required to provide additional personal assistant hours to maintain claimant in her family home, and if so, how many hours must it provide?
2. Has there been an extraordinary event that impacts claimant's family's ability to meet her needs and supervision such that IRC must increase the amount of personal assistant hours it offered?
3. Is claimant's mother a natural support and, if so, is she required to provide

supports and services such that the amount of personal assistant hours otherwise required must be reduced?

FACTUAL FINDINGS

1. Claimant is a 21-year-old woman who receives regional center services based on her diagnoses of cerebral palsy, epilepsy and intellectual disability. Claimant is ambulatory but requires assistance. She also uses a walker and a wheelchair. She is verbal and is able to communicate her wants and needs. She attends school, but her attendance is inconsistent.

Claimant lives with her mother in the family home, the only home she has known. Claimant expressed her desire to continue to live with her mother; twice during the multi-day hearing, claimant wrote a note on a piece of paper, "I want to live with my mom." She also expressed that desire verbally.

Claimant's parents recently divorced; her father left the family home 11 months ago. Her father is involved in a new relationship. He is reported to have a terminal illness. According to claimant's mother, claimant's father provides claimant no monetary or physical support. He has had little contact with claimant since he left the home. The absence of her father in the home and the limited contact she has had with him, has resulted in an increase in claimant's negative behaviors. Claimant is more emotional and has threatened to and attempted to harm herself.

Claimant has two biological brothers, who are 25 and 28 years old. They do not live in the family home. According to claimant's mother, claimant's brothers are embarrassed to accompany claimant to the bathroom and provide needed assistance, so they do not spend significant time alone with her, and they do not provide support.

2. On January 27, 2015, claimant, her mother and IRC representatives met to

review and revise claimant's Individual Program Plan (IPP).¹ In the IPP meeting, claimant made several requests.

First, she requested an increase in routine respite services based on claimant's mother's statement that she is no longer claimant's natural support. The request was denied because IRC representatives stated it required additional information regarding what support claimant's mother would provide.

Claimant's second request was for an increase in adaptive skills services. This request was denied until an assessment could be completed.

Claimant's third request was for personal assistant services. Personal assistants help individuals with disabilities with tasks they would perform if they did not have a disability. Traditionally, these services have focused on health care and activities of daily living. This request was denied because In Home Supportive Services (IHSS) were designed to provide those services, and claimant received adaptive living skills training.

Claimant's fourth request was for a nutritional consultation. That request was granted, and a consultation was provided.

In January 2015, when her IPP was being discussed, claimant attended high school a maximum of four hours a day five days a week, received 263 hours per month of IHSS, 30 hours of respite services per month and 31 hours of adaptive living skills training per month.

3. On the first day of hearing, after the presentation of evidence commenced, the administrative law judge learned that, prior to the hearing, IRC had arranged for claimant to be assessed to determine if she would benefit from Supported Living

¹ Prior to the October 1, 2015 hearing, the IPP had not been signed. At the October 1, 2015 hearing, it was represented that the IPP was either signed or was close to being signed.

Services (SLS). But, later it was determined that an assessment for SLS was not appropriate, and claimant should instead be assessed for Independent Living Services (ILS). The hearing was recessed and continued to September 10, 2015, so that the ILS assessment could be performed and the results could be available at the continued hearing. On September 10, 2015, the parties attempted to resolve all issues, but were unable to come to an agreement.

4. The hearing resumed on October 1, 2105. After receipt of the results of the additional assessment, IRC argued that the following supports and services were appropriate for claimant: 90 hours per month of personal assistant services in lieu of the 31 hours of adaptive training claimant received; six hours per month of behavioral modification services, 30 hours per month of respite services; and 283 hours per month of IHSS. IRC noted that claimant was in school 720 hours per month (4 hours a day x 5 days per week), and it calculated 5 hours of sleep per night. By its calculations, claimant did not have a paid or generic service for 2.36 hours per day (7.36 if sleep was not included.) In the opinion of IRC, claimant's mother, as claimant's natural support, should be responsible for providing supervision for the unpaid hours in a day.

IRC's calculations are based on a 30 day month. They do not adjust for the seven months in which there are 31 days or for February, in which there are fewer than 30 days. They do not take into consideration 185 days that claimant is not in school.

5. IRC did not dispute that claimant requires 24 hour care or that personal assistant services are appropriate for claimant². Initially IRC suggested that the father's

² Because the parties agreed that claimant required services 24 hour a day and that personal assistant services were appropriate, it is not necessary to recite the extensive evidence related to claimant's medical conditions, diagnoses, symptoms and limitations.

absence from the home was not an extraordinary event justifying additional services because claimant's father did not provide support or supervision when he was in the home. This argument is rejected as, even if claimant's father was not as participatory in claimant's care as was claimant's mother, his physical presence in the home impacted claimant's mother's ability to do other things or be relieved of responsibility for claimant's care.³ The primary issue is whether a parent of an adult IRC consumer is required to provide services and supports to the consumer.

6. Claimant's mother stated that she no longer wants to provide support or services for claimant. She noted that claimant's father and brothers walked away with no responsibilities, and she was left to provide all of the support not covered by provided services. Although claimant lives with her mother in the family home, claimant's mother testified that claimant pays rent. Claimant's mother wants to get a job, and she cannot do that and provide services to claimant – particularly with the uncertainty inherent in how claimant's disabilities will affect her each day.

Claimant is irregular in her school attendance depending upon how well she slept and her emotional status. Claimant may have seizures at night that interrupt her sleep. Although claimant remains eligible to attend high school, she was presented a diploma dated May 2012.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is entitled to an

³ In a letter dated May 2010, claimant's father stated that he and claimant's mother "share support for her daily. Actually, more like minute to minute."

increase in services, the burden of proof is on the claimant to establish that he or she is entitled to the additional services. The standard of proof required is preponderance of the 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. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (the Lanterman Act), which is found at Welfare and Institutions Code section 4500 et seq. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.)

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 identifying 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 lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; 4750; *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.)

4. The Department of Developmental Services (DDS) is the public agency responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private, non-profit community agencies, known as “regional centers,” to provide developmentally disabled consumers with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.) 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.)

5. “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. 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 . . . personal care, day care, domiciliary care, special living arrangements, . . . behavior training and behavior modification programs, . . . community integration services, community support, daily living skills training, . . . facilitating circles of support, . . . paid roommates, paid neighbors, respite, . . . [and] supported living arrangements

6. For clients eligible to receive regional center services, an IPP meeting is held. Present at an IPP meeting is a representative from the service agency, the family and the consumer, if appropriate. During this meeting, appropriate goals and objectives are established, and a determination of the services and supports that will be provided to implement these goals is made.

7. 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).)

8. 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).)

9. 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.

[¶] . . . [¶]

(11) Among other service and support options, planning teams shall consider the use of paid roommates or neighbors, personal assistance, technical and financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state.

EVALUATION

10. Claimant seeks personal assistant services. During the course of the multi-day hearing, IRC agreed that personal assistant services were appropriate; however, claimant rejected IRC's proposal to provide 90 hours of personal assistant services but take away 31 hours of adaptive training services.

11. All parties agree that claimant requires 24 hour care. The issue is whether

claimant's mother, as a natural support, is required to provide some of claimant's care.

12. When developing the supports and services to be provided to a consumer by a regional center, the regional center may consider "the family's responsibility for providing similar services and supports for a minor child without disabilities" Welf. & Inst. Code, § 4646.4, subd. (a)(4) (emphasis added.) Nothing in the Lanterman Act requires the parent of an adult consumer to provide supports and services to the consumer.

13. A regional center may reduce the amount of paid supports it provides when a parent or neighbor – a natural support – voluntarily meets part of an adult consumer's needs. However, IRC may not assign its obligation of securing "necessary services and supports" for an adult consumer to the consumer's parents. Securing such services remains the responsibility of IRC.

14. In this case, claimant's mother meets the definition of a "natural support" to claimant. Nonetheless, claimant's mother does not want to provide supports and services to claimant. Claimant wants to remain in the family home with her mother. Nothing in the Lanterman Act requires a parent of an adult child to provide services and supports he or she does not want to provide. A regional center must consider what services a natural support agrees to perform in determining the appropriate supports and services to provide to a client. In this case, IRC must consider that there are no natural supports available to provide services to claimant.

15. During the hearing it was apparent that claimant is in a period of transition. She is an adult. Her mother and father no longer live together. She will be 22 years old in less than a year, and she will not be eligible to attend public school. IRC did not consider services and supports that will be required by claimant when school is not in session or when she is no longer eligible to attend; it based the services and supports to be provided each month by assuming claimant attended school five days a week for

four hours each day. It is likely that claimant's IPP will need to be reviewed if and when her school schedule changes.

A preponderance of the evidence established that claimant's request for additional personal assistant hours is appropriate and reasonable. Claimant requires personal assistant services at the rate of 221 hours per month in order to provide 24-hour care for claimant. These additional hours should be reduced by the number of hours provided for adaptive living skills services, if any.

ORDER

Claimant's request that Inland Regional Center fund additional hours of personal assistant services is granted. Inland Regional Center shall fund 221 personal assistant services hours per month, reduced by the number of hours provided for adaptive living services

DATED: October 15, 2015

_____/s/_____

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 90 days.