BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2015080610

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California on October 1, 2015.

Claimant's father represented claimant, who was not present for the hearing.

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

This matter was heard with OAH number 2015080605[1] and was submitted on October 1, 2015.

ISSUE

Should IRC be required to fund 30 hours per month of behavioral respite services?

[1] Claimant's brother also filed a Fair Hearing Request in which he raises the same behavioral respite services issue.

FACTUAL FINDINGS

1. Claimant, a 12-year-old male, receives IRC services based on a diagnosis of Autism. Claimant has a twin brother who also qualifies for IRC services under diagnoses of Autism and Mild Intellectual Disability (formerly referred to as Mental Retardation). Claimant lives in the family home with his parents, older brother, twin brother, and sister. Claimant has very few self-help skills. He can eat with a fork but makes a mess. He is not completely toilet trained and needs help when he has a bowel movement. He does not have control of his bladder or bowels and he has "accidents" every evening. Additionally, claimant exhibits the following behaviors:

> . . . [Claimant's] disruptive behaviors occur almost everyday which consist of hitting, hitting the dog, hitting his brother, throwing, and yelling. These behaviors occur when he does not get what he wants. [Claimant's] aggressive social behaviors do not cause injury but can make a red mark. [Claimant's] self[-] injurious behaviors occur with not [sic] injury. [Claimant] has caused major damage within the past 12 months when throwing objects. He has destroyed furniture including beds, couches and kitchen appliances. [Claimant] will run or wander away if they [sic] get the chance. [Claimant's] emotional outbursts occur at least once a week and usually require intervention. His behaviors consist of crying, screaming, throw[ing] things and hitting himself. He will urinate in the home on the floor and smear feces on the walls. . . . (Exh. 4.)

2. Claimant has been receiving the following IRC-funded services and

supports: 56.25 hours of behavioral modification services through University Enterprises; wrap-around and crisis intervention services through EMQ FamiliesFirst[2]; and 30 hours per month of "in home routine respite services."

3. Currently, claimant is receiving the following generic services and supports: approximately 190 hours per month of In Home Support Services (IHSS)[3]; and a non-public school program funded by the local school district (claimant is in school from 8:00 a.m. until 2:00 p.m., in "a full ABA environment," from Monday through Friday.)

4. As previously mentioned, IRC is currently funding 30 hours per month of "in home routine respite services." "Routine" respite services are not meeting claimant's needs. Claimant's numerous, severe behaviors cannot be properly addressed by a "routine" respite worker. Claimant requires a respite worker who is trained in behavior modification techniques in order to address his many behavioral needs. Consequently, claimant's parents have requested that the 30 hours per month of "in home routine respite services" be converted to "behavioral respite services," to be provided by TOTAL Programs LLC.

5. On July 15, 2015, IRC notified claimant's parents of the following:

> This letter is written in regards to your request for a Behavioral Respite through Total Programs. . . . You indicated

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[2] Claimant's parents have had some significant problems with EMQ Families First and they have discontinued using EMQ.

[3] Claimant's IHSS hours were recently reduced from 260 hours per month to 190 hours per month due to budget cuts.

that you are requesting a behavior respite given by someone who can be with [claimant] all the time and who can assist with reducing [claimant's] ongoing physical aggression, non-compliance, emotional outbursts (tantrums), eloping and property destruction.

[¶] . . . [¶]

Your request for Behavioral Respite has been denied because Total Programs is vendored for Personal Support and Behavioral Analysis. IRC cannot fund behavioral support for the purposes of providing respite. Additionally, IRC feels that [claimant's] needs are currently being met by other services currently in place, including Wrap Around, behavioral modification services, as well as respite . . . .

If you feel that [you] need additional assistance, IRC recommends that you utilize [claimant's] IHSS hours to pay for someone to care for [claimant]. A person may have more than one IHSS provider to assist with their care. Alternatively, you may use the funds that you receive from IHSS to pay someone else to care for [claimant] to provide you with additional respite. (Exh. 1)

6. Claimant timely appealed IRC's determination by filing a Fair Hearing Request and the instant hearing ensued.

7. During this hearing, it was established that the level of claimant's services

and supports had been reduced, and IRC was not aware of the reductions at the time of its determination to deny claimant's request to have his current 30 hours per month of routine respite converted to 30 hours per month of behavioral respite. At the time IRC made its determination, it did not know that claimant had cancelled the EMQ FamiliesFirst services and that his IHSS hours had been reduced from approximately 260 hours per month to approximately 190 hours per month. Toward the conclusion of the hearing, IRC indicated that it was willing to convert the 30 hours per month of "routine" respite to 30 hours per month of "behavioral" respite if there was an agency in the IRC catchment area vendored to provide behavioral respite. According to IRC, because of the rate limitations in the IRC catchment area, there are no agencies vendored to provide behavioral respite. The agency claimant wants to use, TOTAL Programs LLC, is vendored by IRC to provide Personal Support and Behavioral Analysis, not "behavioral respite." IRC indicated that if an agency in its catchment area ever became vendored to provide behavioral respite, claimant would be "first on the list" to receive behavioral respite. In sum, IRC conceded the fact that claimant needed, or could benefit from, 30 hours of behavioral respite in lieu of regular respite.

8. Claimant presented evidence that TOTAL Programs LLC has a "Behavior Respite Program" available for consumers in the IRC catchment area. A copy of the internet information concerning TOTAL Programs LLC was received in evidence as Exhibit A. The internet article states:

> **Behavior Respite Program**
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> The behavior respite program is designed to help families in their home environment by providing relief so they can attend to their own needs. Our staff is trained to provide optimal care and supervision to ensure the individual's safety

especially in the absence of family members. The staff is trained to use research based interventions that are based on Applied Behavior Analysis and the individual's current behavior plan. The focus of the program is to help individuals improve their ability to take care of their own needs and perform daily living skills, such as communications, socialization and daily routines that would normally be performed by family members. This program is goal-oriented and the staff focuses on strengthening the individual's self-help and daily living skills every session. (Exh. A)

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing Individual Program Plans (IPP), for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded and sets forth the process through which

such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives:

> "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. 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, where 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 . . . .

4. In this case, 30 hours of behavioral respite is necessary and appropriate for claimant. As set forth in Finding 7, IRC conceded this fact. Furthermore, as set forth in Finding 8, even though TOTAL Programs LLC is not currently vendored by IRC to provide behavioral respite, the company, nonetheless, has the ability to provide behavioral respite services to claimant. Welfare and Institutions Code section 4648, subdivision (a), addresses a regional center's obligation to secure needed services and supports for a

consumer. In part, it provides:

> (1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible 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 . . . .

IRC and claimant agree that 30 hours of respite is necessary and claimant established that regular respite is not meeting his needs; rather, he needs behavioral respite. TOTAL Programs LLC is vendored by IRC to provide other services to consumers and is ready to provide behavioral respite to consumers in the IRC catchment area. Consequently, IRC shall fund 30 hours per month of behavior respite for claimant through TOTAL Programs LLC, or another qualified provider approved by claimant.

ORDER

Claimant's appeal is granted. IRC shall fund 30 hours per month of behavior respite services through TOTAL Programs LLC, or another qualified provider approved by claimant.

Dated: October 14, 2015

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ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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