

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016010154

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 29, 2016, in San Bernardino, California.

Stephanie Zermeño, Consumer Services Representative, represented Inland Regional Center (IRC).

Claimant appeared on her own behalf with the assistance of Catherine Galloway and Paul A. Castanedo from Independent Living Systems, Inc.

The matter was submitted on February 29, 2016.

ISSUE

Should claimant's Supportive Living Hours be reduced from 29 to 25 hours a month?

FACTUAL FINDINGS

1. Claimant is a 32-year-old female who qualifies for regional center services due to Cerebral Palsy. Claimant lives with her boyfriend and receives Supplemental

Security Income (SSI) and In-Home Supportive Services (IHSS). She does not have an SSI payee.

PROCEDURAL HISTORY

2. On November 24, 2015, IRC issued a proposed notice of action that proposed to reduce claimant's Supportive Living Services (SLS) hours from 29 hours per month to 25 hours. Claimant requested a fair hearing on December 3, 2015. In her fair hearing request claimant attached a detailed narrative to explain why she opposed IRC's proposed reduction of SLS hours.

SUPPORTIVE LIVING SERVICES

3. Claimant has received SLS from Independent Living Systems (ILS) since April 2007. Catherine Galloway has been her instructor since November 2015. She receives 29 hours of habilitation services per month.

4. Training and habilitation supportive living services assist a consumer to remain in self-sustaining or supported living in the community. Specific supportive living services include: assistance with common daily living activities such as meal preparation, including planning, shopping, and cooking; performing routine household activities to keep a clean and safe home; locating and scheduling medical services; selecting and moving into a house; acquiring household furnishings; becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community; managing personal financial affairs; recruiting, screening, hiring, training, supervising, and dismissing personal attendants; dealing with governmental agencies; asserting civil and statutory rights through self-advocacy; building and maintaining interpersonal relationships, including a circle of support; participating in community life; and 24-hour emergency assistance. (Cal. Code Regs., tit. 17, § 58614, subds. (a) & (b)(1)-(16) .)

As detailed in IRC's Purchase of Service Policy for Supportive Living Services (2-13-12/Revised 5-29-12), an SLS vendor must create an Individual Service Plan (ISP) under the training and habilitation category that is intended to increase the consumer's desire and ability to meet his/her needs without assistance, establish and maintain age appropriate relationships, and increase participation in the community.

CLAIMANT'S DECEMBER 1, 2015, INDIVIDUAL SERVICE PLAN AND PROGRESS REPORT

5. Claimant's most recent ISP and Progress Report, dated December 1, 2015, from ILS documents that ILS assists claimant in five areas identified as Objective #1 through #5. Under Objective # 1, ILS helps claimant maintain her personal financial affairs and helps her with banking; shopping; identity security; and with fundamental life decisions for four visits per month for 3.25 hours per visit. Under Objective #2 claimant is taught to locate/schedule appropriate medical services; adhere to health practitioners' orders and assist with medication refills for two visits each month for one hour per visit. Under Objective #3 claimant is taught to maintain a clean/safe household, laundry efforts, and provide proper care of emotional support animal companion/safety for four visits each month for two hours per visit. Under Objective #4 claimant is taught meal planning/preparation and pursuance of healthy lifestyle for four visits each month for 1.25 hours per visit. Under Objective #5, claimant is instructed to establish/complete Disaster Preparedness Kit, and receive instruction in personal safety for one hour each month during one visit per month.

Claimant also receives In-Home Supportive Services hours. Claimant's boyfriend is her provider. She receives 7 hours of IHSS services for meal preparation, and two and 1/3 hours per week in meal cleanup, and one hour per week for laundry. She also receives 1/2 hour for food shopping and other 1/2 hour for other shopping errands. In addition, she receives 0.13 hours per week for medical appointments.

CLAIMANT'S NOVEMBER 2015 IPP MEETING

6. On November 19, 2015, claimant and her planning team met to assess her needs and services for her Individual Program Plan (IPP). Claimant, claimant's ILS Instructor, Ms. Galloway, claimant's ILS Supervisor, Margie Thompson, and Christian Vargas, claimant's Consumer Services Representative, attended this meeting.

As part of the IPP assessment, as required under Welfare and Institutions Code section 4689, subdivision (p)(1), a Supported Living Services Standardized Questionnaire was completed. As detailed in this questionnaire, claimant described her living situation, the challenges she faces, and her functional living skills. Claimant stated that she lives with her boyfriend who helps her "a lot" and is her IHSS provider; she helps her boyfriend in his business by answering calls and making appointments; she does most of the cooking for her boyfriend and her boyfriend's son; she does her own online banking; she uses transportation services; she is able to complete all of her personal care needs independently with some help because of her short stature; and she does not use a "cheat sheet" to do laundry. The Questionnaire noted there is no plan to fade out SLS.

Ms. Vargas also prepared a Client Development Evaluation Report (CDER) dated November 19, 2016. Applying claimant's skills development under the CDER evaluation, Ms. Vargas assessed claimant's "Practical Independence" at 4.80 on a 5 point scale; and claimant's Personal/Social Skills, Challenging Behaviors, Integration Level, and Well Being Level at 5 points each.

Ms. Vargas explained, in her hearing testimony, that claimant is self-sufficient and independent. She is able to complete tasks without reminders; she can cook and, as an example of her skill level cooking, for the last two years she has cooked Thanksgiving meals. Claimant can do laundry with help, though it takes her additional time. Ms. Vargas noted that claimant's home was clean when she visited her, and claimant told her that she cleaned her home on her own.

7. Based on the her assessment of claimant and claimant's needs, as

documented in the CDER and the SLS Questionnaire, Ms. Vargas recommended that claimant's SLS hours be reduced to 25 hours from 29 hours. Ms. Vargas proposed dropping medical hours from two to one hour per month because in 2015 claimant went to dental and medical appointments twice in a year as substantiated by a log of medical and dental appointments kept by ILS. For 2015, claimant had a dental appointment on March 19, 2015, and a medical appointment on June 22, 2015.

Ms. Vargas also proposed cutting household and laundry assistance hours from eight to five hours because claimant can cook meals on her own, and she only needs help with heavy blankets while doing laundry because she is unsteady. Ms. Vargas noted that claimant receives IHSS for meal preparation and laundry.¹

CLAIMANT'S TESTIMONY AND THE TESTIMONY OF CATHERINE GALLOWAY AND MARIO JULIAN

8. Catherine Galloway has been claimant's ILS Instructor since November 2015. She testified that claimant can do a lot "but her abilities limit her." Claimant wants to be independent, but she needs help getting to where she wants to be. Ms. Galloway helps claimant prepare one or two specialty meals a month. Claimant needs, she noted, to be kept aware regarding the level of flame to use when cooking and the amount of water to use. Ms. Galloway added that she sees claimant once a week during which time she needs to schedule extra time to take her to the store because of her balance problems and problems walking. Ms. Galloway said that the SLS hours she receives are needed because claimant is helping to organize the place where she lives. Claimant and her boyfriend recently moved into a new home.

Ms. Galloway did not, however, dispute Ms. Vargas's assessment regarding her need for help with laundry and making medical appointments. She said that she hasn't

¹ At the hearing, claimant's boyfriend stated that claimant continues to receive the IHSS hours identified and he is her provider.

helped claimant with laundry for the last three months, and claimant's need for help to do laundry "is not as much of a priority." She also did not dispute Ms. Vargas's testimony that claimant does not need two hours a month for medical appointments. But, Ms. Galloway said claimant may need the two hours in the future.

Ms. Galloway recognized that claimant's boyfriend, Mario Julian, is available to help claimant with meal preparation and laundry as her IHSS provider. She noted that Mr. Julian is not at the house a lot because his job requires him to travel.

9. In his testimony Mr. Julian confirmed he helps claimant but is not there all the time. Mr. Julian emphasized that claimant appears to be more capable of doing things than she actually is because she wants to live independently. As an example, he noted that claimant cannot carry a pot of water.

10. Claimant testified through a statement she attached to her fair hearing request. In this statement she explained why SLS is important to her, why she wants SLS hours to remain, and how ILS has helped her. She noted that SLS provides her the opportunity to do many things for herself and her ILS Instructors have helped her find ways to overcome her challenges, lead a productive life, and feel important and needed. She added that, while her boyfriend would do anything to help her, she does not want him to do things for her because she wants to do her "fair share" for their family and SLS has helped her achieve this.

Claimant stated that while she does not want someone to do tasks for her, it takes her much longer to accomplish some tasks. She identified specifically that she has trouble carrying heavy blankets for laundry, and it takes her much longer to do laundry than the average person due to her condition. In her hearing testimony, claimant added that that she has to have help cooking, like with boiling eggs, due to her balance problem.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, IRC bears the burden of demonstrating that the reduction of hours is appropriate considering claimant's needs.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (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

3. Pursuant to the Lanterman Developmental Disabilities Services 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 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. When an individual is found to have a developmental disability under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the

“complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.)

5. Welfare and Institutions Code section 4512, subdivision (b), defines “services and supports”:

“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

LAWS RELATING TO REGIONAL CENTER’S PURCHASE OF SERVICES

6. Regional centers shall ensure adherence with federal and state law and regulations, and when purchasing services and supports shall ensure all of the following: (1) Conformance with the regional center’s approved purchase of service policies, (2) Utilization of generic services and supports when appropriate; (3) Utilization of other services and sources of funding under Section 4659. . . (Welf. & Inst. Code, § 4646.4, subdivision (a).)

7. Regional center funds shall not be used to supplant the budget of any

agency which has a legal responsibility to serve all members of the general public and is receiving public funds. (Welf. & Inst. Code, § 4646, subd. (a)(8).) Regional centers shall identify and pursue all possible sources of funding for consumers receiving regional center services. (Welf. & Inst. Code, § 4659, subd. (a).) Effective July 1, 2009, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. (Welf. & Inst. Code, § 4659, subd. (c).)

LAWS AND REGULATIONS RELATING TO SUPPORTIVE LIVING SERVICES

8. The Lanterman Act also places "high priority" on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live "in their own homes" with "support available as often and for as long as it is needed." (Welf. & Inst. Code, § 4689.) Personal assistance is a service and support option that may be provided where it would "result in greater self-sufficiency for the consumer and cost-effectiveness to the state." (Welf. & Inst. Code, § 4648, subd. (a)(11).) The range of supported living services and supports is identified under Welfare and Institutions Code section 4689, subdivision (c), and California Code of Regulations, title 17, section 58614, subdivision (b)(1)-(16).

9. Under Welfare and Institutions Code section 4689, subdivision (b)(1), to ensure that consumers in or entering into supportive living arrangements receive the appropriate amount and type of supports to meet the person's choice of needs as determined by the IPP team, and that generic resources are utilized to the fullest extent possible, the IPP team must complete a standardized assessment questionnaire at the time of development, review, or modification of a consumer's IPP. The questionnaire shall be used during the individual program plan meetings, in addition to the provider's

assessment, to assist in determining whether the services provided or recommended are necessary and sufficient and that the most cost effective methods of supported living services are utilized.

EVALUATION

10. Claimant's appeal is denied. Considering claimant's abilities and needs, the evidence shows that 25 hours of SLS habilitation is adequate to help claimant remain self-sustaining in her home. To a great degree claimant has the ability to prepare meals and do laundry without assistance, and she also has the natural support of her boyfriend, who is also her IHSS provider, to help her in these areas when necessary. In addition, claimant does not, at present, require two hours per month for medical appointments. In 2015 claimant had a total of two medical appointments.

11. Claimant clearly has benefited from the supported living services she receives. Supported living services have helped maintain her independence and her quality of life. As a result, claimant has been able to achieve a degree of independence which she values. Should claimant's needs change, claimant's SLS hours may be reviewed and modified as warranted.

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ORDER

1. Claimant's December 3, 2015, appeal is denied.
2. Inland Regional Center shall reduce claimant's supported living services hours from 29 hours to 25 hours.

DATED: March 10, 2016

_____/s/_____
ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.