

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DAVID C.,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2016080622

DECISION

This matter was heard before Administrative Law Judge (ALJ) Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on January 23, 2017.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant was represented by his mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on January 23, 2017.

ISSUE

Is ACRC required to fund additional respite hours for claimant?

FACTUAL FINDINGS

1. Claimant is a 15-year-old young man who resides in the family home with his mother and older sister. He is eligible for ACRC services based on a diagnosis of autism. His sister is also an ACRC consumer based on a diagnosis of autism. Claimant's mother is

their full-time caregiver and she also homeschools claimant and his sister. Both claimant and his sister receive services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et seq.)<sup>1</sup>

Claimant's Individual Program Plan (IPP) provides for services and supports from ACRC, which include in-home respite.

2. On March 11, 2016, claimant's mother submitted a letter to ACRC from Catherine Jo Shao Ho, D.O., Department of Internal Medicine, Kaiser Permanente, which stated:

[Claimant's mother] is a patient of mine and currently under my care and supervision. My patient [claimant's mother] is currently in need of temporary respite and needs extra assistance with her disabled children due to current condition of tendonitis. Duration will be 2 months until May 15, 2016. If you have any further questions please contact my office at [telephone number].

3. Claimant's ACRC Interdisciplinary Notes state that claimant was approved for 90 hours per quarter of respite services at the time this letter was received. On March 25, 2016, Jennifer Bloom, ACRC Client Services Manager, notified claimant's mother that respite hours would be temporarily increased from 90 to 120 hours for that quarter and the next based on this new information.

4. On May 18, 2016, claimant's mother submitted an additional letter from Dr. Ho, which stated:

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

[Claimant's mother] is a patient of mine under my care and supervision. [Claimant's mother] is placed on modified duty at work and at home from 5/16/2016-6/17/2016. This note is to support patient needing additional help with care of her children due to medical condition for which she is under treatment. If you have any questions or concerns, please contact my office at [telephone number].

5. On June 15, 2016, Ms. Bloom notified claimant's mother that claimant's respite hours had been increased an additional 30 hours through the end of June 2016. This increased the total respite hours to 150 hours per quarter.

6. On June 29, 2016, claimant's mother submitted a letter from Jeanne Taylor, D.O., Family Practice, Internal Medicine, Kaiser Permanente, which stated:

[Claimant's mother] is a patient under my care at Kaiser Permanente. Due to wrist pain, [claimant's mother] needs three hours per day respite help per child. If you have questions or concerns, feel free to contact me at [telephone number].

7. On July 25, 2016, ACRC issued a Notice of Proposed Action (NOPA) to claimant advising, "ACRC is denying your request for an increase in in-home respite from 90 hours per quarter to 279 hours per quarter for your son, [claimant], which you state is necessary due to the fact that your doctor has stated your activities and range of motion should be restricted."

The NOPA advised claimant that the reason for this action was as follows:

Effective July 1, 2009, a regional center shall not purchase

more than 90 hours of in-home respite services in a quarter for a client unless the client qualifies for an exemption. ACRC has determined that [claimant] does not qualify for an exemption because it has not been demonstrated that the intensity of his care and supervision needs are such that additional respite is necessary to maintain him in the home, nor has there been an extraordinary event which impacts your ability to meet [claimant's] care and supervision needs. Rather, you are currently [claimant's] sole IHSS chore worker. In order to reduce the physical activity you perform in caring for [claimant], you have the option of transferring some or all of [claimant's] IHSS hours to another chore worker. You also have the option to discontinue home schooling [claimant], which would serve to further reduce your physical activity. Thus, you have the ability to reduce your physical activity related to [claimant's] care without the need for ACRC to fund additional in-home respite to do so.

Moreover, in-home respite is designed to provide **intermittent** care and supervision in the absence of the regular caregiver. As such, it is not designed to provide **daily** care and supervision in place of a caregiver's responsibility to provide daily care and supervision, which is how you are proposing to utilize the increased in-home respite. Further, in-home respite is designed to provide regular caregivers a **break from the constantly demanding responsibility** of caring for a client. In-home respite is not designed to provide clients care

in order to accommodate **ongoing restrictions on a caregiver's physical activity or range of motion.**

(Bolding in original.)

8. Claimant timely filed a Fair Hearing Request appealing that decision. The following was the stated reason for the Fair Hearing Request:

To stop unfair reduction of respite support. Regional Centers [sic] is using inaccurate information to make their determination without communicating with me to clarify the circumstance. They have discriminated against my family.

In describing what is needed to resolve claimant's complaint, the request stated:

Appropriate support for my children until Doctor releases me to work without support. Stop discriminating against my children and family.

9. Regional centers are governed by the provisions of the Lanterman Act. Section 4690.2, in relevant part, specifies:

(a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide those services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for

setting rates. "In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of the usual daily routines which would ordinarily be performed by the family members.

10. Section 4648.5 limits the amount of respite that regional centers may provide for consumer caregivers as follows:

- (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.

(B) For purpose of this section, "family member" means an individual who:

(i) Has the consumer residing with him or her.

(ii) Is responsible for the 24-hour care and supervision of the consumer.

(iii) Is not a licensed or certified residential care facility or foster family home receiving funds from any public agency or regional center for the care and supervision provided.

Notwithstanding this provision, a relative who receives foster care funds shall not be precluded from receiving respite.

(4) A regional center shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care,

protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both.

(5) 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 individual program plan (IPP) or individualized family services plan (IFSP).

11. Ms. Bloom testified that, in response to these mandates, ACRC determined that claimant did not qualify for additional in-home respite hours beyond the authorized 150 hours per quarter. The approved increases in claimant's respite hours from the standard maximum of 90 hours per quarter were based on the exemption allowed for an "extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer" as set forth in Section 4648.5, subdivision (3)(A). Claimant's mother's wrist injury was found to qualify as an extraordinary event.

Ms. Bloom explained that to qualify for an exemption, the law requires that the extraordinary event be for a limited time and have an end date. ACRC's Service Policy Manual supports that requirement by specifying "Respite services are intermittent or regularly scheduled temporary care and supervision for a regional center consumer who resides with a family member."

ACRC considered established criteria to assess respite need and concluded that the increase to 150 hours per quarter met claimant's need. The request for an additional increase to 279 hours per quarter was denied.



12. Claimant's mother testified that she is a single parent caring for two children with significant needs due to their autism diagnoses. They depend on her "for almost all of their support educationally, socially and functionally." She testified that she injured her wrist, which has compromised her ability to care for her children. She has been advised to restrict physical activities but has found that difficult to do with all the tasks she must perform within the day. She requested additional respite support from ACRC in an effort to recover from her wrist injury. She stated her belief that the June 29, 2016 request for additional respite was not intended to be ongoing but was needed as temporary assistance while her wrist healed.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... to support their integration into the mainstream life of the community ... and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a), provides:

(a) 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 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.

3. Section 4646.4, subdivision (a), in pertinent part provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

4. The burden in this matter is on claimant to establish that respite hours should be increased beyond the statutory maximum set forth in Section 4686.5.<sup>2</sup> Claimant did not

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<sup>2</sup> California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of

meet that burden. The June 29, 2016 letter from Dr. Taylor did not establish either that: (1) the intensity of claimant's care and supervision needs were such that additional respite was necessary to maintain claimant in the family home; or (2) there was an extraordinary event that impacted the ability of claimant's mother to meet claimant's care and supervision needs.

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## ORDER

The appeal of claimant is denied. ACRC is not required to fund additional respite hours for claimant.

DATED: February 3, 2017

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SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent**

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which is essential to the claim for relief or defense that he is asserting."

**jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**