

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2016090455

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on November 2, 2016, in Tehachapi, California.

Mark Meyer, Program Manager, Special Projects, represented Kern Regional Center (Regional Center or Service Agency).

Claimant's grandmother represented Claimant.¹

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on November 2, 2016.

ISSUE

Should Regional Center reduce Claimant's in-home respite service hours from 120 hours per month to 30 hours per month over a six-month period?

¹ Claimant's name and the names of his family members have not been used to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a nine-year-old Service Agency consumer with qualifying diagnoses of autism, epilepsy, and intellectual disability. He resides with his grandparents, who are his legal guardians.

2. Claimant has also been diagnosed with Angelman Syndrome, a rare neurological condition that causes him to have irregular sleep patterns. Claimant has problems falling and staying asleep at night. He often takes naps at irregular hours during the day.

3. Claimant is dependent on his grandparents to assist him in all areas of self-care and with all daily living activities. His grandmother described Claimant's functioning at the level of a one year old. Claimant is not toilet trained, and wears diapers at all times. He is mobile, but often requires help when walking. In a June 2, 2016 assessment, his prior respite services provider, Behavior Respite In Action (BRIA), notes that Claimant needs to be picked up several times during his sessions and that he leans his body weight on others, which limits his mobility and creates constant physical demands on those around him.

4. In its report, BRIA lists several behaviors that require attention, such as physical aggression, self-stimulatory behavior, and self-injurious behavior. In brief, the agency reports that Claimant pulls his hair, digs his nails into skin, bites, kicks, and grabs faces, typically to receive attention. His self-stimulatory behaviors include biting his hands, flapping his hands, nodding his head right to left, and knocking objects to the ground. His self-injurious behavior includes biting his hands and arms.

5. Claimant has been receiving respite services for several years in accordance with the individual program plan (IPP) process. In June 2011, respite hours were increased from 30 hours per month to 60 hours per month due to his care and supervision needs.

6. In 2014, the number of respite hours increased to the current 120-hours-per-month level because of an increase in seizures. His grandmother described the seizures as "drop seizures," in which Claimant would suddenly fall to the ground, and reported he suffered about 200 seizures per day. The increased seizure activity required constant visual supervision and someone by his side to prevent Claimant from falling and hurting himself

during one of the seizures.

7. The seizures are adequately controlled by medication at present. Seizure activity does spike if the medication is changed, but has not returned to the level experienced in 2014.

8. Claimant's grandmother testified that she now uses between 80 to 90 respite hours per month and would like services to remain at this level.

9. On September 1, 2016, in order to assess the family's respite needs, Service Agency completed a "Needs Assessment Guideline" form. The assessment tool provides for points to be awarded for certain specific needs. The document contains a formula to award respite hours based on the point total, where the higher the total the higher the number of respite hours. No expert or other testimony was presented at the hearing to explain the formula contained in the form or its applicability to Claimant. In the form, Claimant received points based on his age, adaptive skills, safety awareness, mobility, day program, medical needs, behavioral needs, and family situation. In the formula used by Service Agency, the total points received, 23, translates into 25 hours of respite services per month. In recognition of Claimant's care and supervision challenges, Service Agency decided to approve 30 hours per month.

10. On September 2, 2016, Service Agency issued a Notice of Proposed Action proposing to decrease respite hours from 120 per month to 30 per month over a six-month period. On September 13, 2016, Claimant's grandmother filed a Fair Hearing Request challenging the proposed action.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code² section 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

² All further statutory references are to the Welfare and Institutions Code.

choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

2. Section 4512, subdivision (b), defines the services and supports that may be funded, in pertinent part, as: "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 services that may be provided include respite services.

3. Section 4686.5, upon which Regional Center relies in its Notice of Proposed Action, provides, in pertinent part:

"(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. . . ."

The statute therefore sets a cap of 90 hours of respite services per quarter, unless 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.” (Welf. & Inst. Code, § 4686.5, subd. (a)(3)(A).)

4. An exemption pursuant to section 4686.5, subdivision (a)(3)(A), is warranted because the intensity of Claimant’s care and supervision needs are such that additional respite is necessary to keep him in the family home. As set forth in factual finding numbers 1 through 9, Claimant has significant care and supervision needs. Moreover, the parties have recognized such needs through the IPP process. They have agreed that Claimant’s care and supervision needs require an exceptional level of respite services, and have in the past agreed on the level of services required to meet his needs.

5. As Claimant’s needs for care and supervision change, so does the level of support required to provide respite to those who provide care for him. Since the emergency situation that prompted the increase to the current respite service level is no longer present, the 120-hour per month level of respite is no longer necessary to support Claimant and his family. The family’s respite needs were being met prior to 2014 at the 60-hour per month level, and it is appropriate to return to that level given Claimant’s current care and supervision needs. Future adjustments may be made if supervision needs temporarily increase because of a change in medication or due to a more pronounced change in seizure activity.

6. Accordingly, Service Agency may reduce Claimant’s respite services to 60 hours per month, by reason of factual finding numbers 1 through 9 and legal conclusion numbers 1 through 5.

ORDER

Claimant’s appeal is sustained in part and denied in part consistent with the foregoing, and Service Agency may reduce Claimant’s respite services to 60 hours per month.

Dated:_____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.