

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2017010653

DECISION

A fair hearing was held on June 9 and 19, 2017, before Erin R. Koch-Goodman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's mother represented claimant, who was present at hearing on June 9, 2017, but not on June 19, 2017.

Evidence was received, the record closed, and the matter submitted for decision on June 19, 2017.

ISSUE

May ACRC reduce claimant's in-home respite hours from 150 to 90 hours per quarter or does she continue to qualify for an exemption?

## FACTUAL FINDINGS

1. Claimant was born in 1999. She is currently 17 years old. Claimant is eligible for services and supports from ACRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., under the developmental disability category of autism. Claimant lives at home with her mother, who is claimant's full-time caregiver, and her brother, who is also an ACRC consumer. Claimant's mother homeschools claimant and her brother. As of March 1, 2016, claimant was approved for 90 hours per quarter of respite services.

### CLAIMANT'S REQUESTS FOR ADDITIONAL RESPITE HOURS

March 2016 – 90 to 120 Hours

2. On March 11, 2016, claimant requested an increase in respite hours from 90 to 120 hours per quarter. To support the request, 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 child 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. On March 25, 2016, Jennifer Bloom, ACRC Client Services Manager, notified claimant's mother that claimant's respite would be increased temporarily from 90 to 120 hours for the current quarter and the next, based on the doctor's note.

May 2016 – 120 to 150 Hours

4. On May 18, 2016, claimant requested an increase in respite hours from 120 to 150 hours per quarter. To support the request, claimant's mother submitted another letter to ACRC from Dr. Ho, which stated:

[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 by email that claimant's respite hours had been increased by another 30 hours, for a total of 150 hours per quarter, until the end of June 2016.

June 2016 – 150 to 279 Hours

6. On June 29, 2016, claimant requested another increase in respite hours from 150 to 279 hours per quarter. To support the request, claimant's mother submitted a letter to ACRC 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 her wrist pain, [claimant's mother] needs three hours per day respite help per child. If you have any questions or concerns, feel free to contact me at my office 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 daughter, [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 her care and supervision needs are such that additional respite is necessary to maintain her 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 [In-home Supportive Services] 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 ACRC's decision. Claimant stated the following reason for her Fair Hearing Request: "[r]egional Centers will not honor my doctors request for more respite care." In describing what is needed to resolve claimant's complaint, the request stated: "[b]e fair and honor Lanterman Act."

9. On December 22, 2016, a Fair Hearing was held before ALJ Karen Brandt, OAH. On December 29, 2016, ALJ Brandt issued a decision, denying claimant's request for an increase in respite hours from 150 to 279. ALJ Brandt found:

[w]hile the Work Status Reports from Kaiser Permanente showed that the activities of claimant's mother were restricted by her physicians due to her hand condition, they did not contain sufficient information to establish that claimant should be granted additional respite under the exemptions applicable to this proceeding. Consequently, claimant failed to

establish that her request for additional respite should be granted.

## ACRC'S NOPAS TO REDUCE RESPITE HOURS – JANUARY 2017

Claimant – 150 to 90 Hours

10. As of January 1, 2017, claimant was approved for 150 hours per quarter of respite services. On January 11, 2017, ACRC issued a NOPA to claimant advising, "ACRC is proposing to reduce the in-home respite hours authorized for [claimant] from 150 hours maximum per quarter to 90 hours maximum per quarter." 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] no longer qualifies for an exemption because it has not been demonstrated that the intensity of [claimant's] care and supervision needs are such that additional respite is necessary to maintain [claimant] in the home, nor has there been an extraordinary event which impacts your ability to meet [claimant's] care and supervision needs. A medical condition which may require long-term restrictions on your physical activity at work does not constitute an "extraordinary event." Further, no documentation has been provided to ACRC to substantiate that any medical restrictions on your physical activity at work impact your ability to meet [claimant's] care and supervision needs at home and in the community.

11. Claimant timely filed a Fair Hearing Request appealing ACRC's decision. Claimant stated the following reason for her Fair Hearing Request: "[m]y doctor has given me MD slips requesting respite help and it has not been honored by Alta. They have honored the request on paper only while denying me access to the help." In describing what is needed to resolve claimant's complaint, the request stated: "Alta to be fair and actually help by allowing access to respite they have granted on paper only."<sup>1</sup>

#### Claimant's Brother – 150 to 90 Hours

12. On January 9, 2017, ACRC issued an almost identical NOPA to claimant's brother advising, "ACRC is proposing to reduce the in-home respite hours authorized for [claimant's brother] from 150 hours maximum per quarter to 90 hours maximum per quarter." Claimant's mother timely appealed.

13. On or about May 20, 2017, claimant's mother provided ACRC with several "Work Status Reports" from various Kaiser doctors, dated May 13, 2016, June 17, 2016, June 27, 2016, July 14, 2016, August 31, 2016, and November 30, 2016, describing limitations for work and home, because of her wrists. Claimant's mother also submitted email correspondence between Kaiser providers and herself, regarding the continued treatment of her wrists.

14. On May 26, 2017, a hearing was held. Based upon the testimony of Ms. Bloom and claimant's mother, ALJ Joy Redmon found claimant's brother qualified for a

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<sup>1</sup> Claimant's Fair Hearing Request is an appeal from ACRC's determination to reduce her respite hours. However, as phrased, her appeal also references an inability to secure her approved 150 hours of respite care. While delays occurred, including completing a new IPP, evidence established the parties have worked together to secure claimant's 150 hours of respite care as of February 2017.

Welfare and Institutions Code section 4648.5, "extraordinary event" exemption, and granted claimant's brother's appeal for 150 respite hours through August 9, 2017.

#### CLAIMANT'S CURRENT REQUEST FOR FAIR HEARING

15. At hearing, ACRC offered the testimony of Linda Savage-Mitchell, ACRC Service Coordinator, and Ms. Bloom. Claimant's mother testified on behalf of claimant.

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Jennifer Bloom, ACRC

16. Ms. Bloom approved claimant's two requests for increases in respite hours under the extraordinary event exemption found in Welfare and Institutions Code, section 4686.5, subdivision (a)(3)(A). Ms. Bloom relied on the narrative letters from Kaiser doctors, dated March 11, 2016, and May 18, 2016, detailing claimant's mother's tendonitis and her need for additional hours of respite care. Thereafter, claimant was denied a further increase in respite hours, and now is being denied the continued 150 hours, as well. In order to qualify for the extraordinary event exemption, the event has to be time-limited and not indefinite. Ms. Bloom pointed to Welfare and Institutions Code section 4690.2, subdivision (a), which, in relevant part, provides, "[i]n-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." Ms. Bloom also relied upon ACRC's Service Policy Manual, which in relevant part states, "[r]espite services are intermittent or regularly scheduled temporary care and supervision for a regional center consumer who resides with a family member." As such, the June 29, 2016 narrative letter and the Work Status Reports, did not justify respite services for



claimant that were time-limited, temporary or intermittent, and therefore, the requests were denied.

17. However, on May 26, 2017, Ms. Bloom testified in claimant's brother's hearing, and when asked to evaluate whether the Work Status Reports substantiated the continuing 150 respite hours per quarter under the extraordinary event exemption, she believed they did, through August 9, 2017. Since May 26, 2017, Ms. Bloom has had additional time to review the Work Status Reports, and reconsider the Welfare and Institutions Code and ACRC's policies defining respite care. Ms. Bloom now believes the Work Status Reports do not substantiate continuing 150 respite hours per quarter under the extraordinary event exemption. Ms. Bloom indicated that the Work Status Reports do not explain how claimant's mother's work and home limitations impact her ability to meet claimant's supervision and care needs at home and in the community. Additionally, while the reports cover a specified time period, they indicate long-term restrictions and not an "extraordinary event," as defined by statute.

#### Claimant's Mother

18. Claimant's mother testified that claimant is "severely impacted" by her autism. She has almost no language, cannot take care of herself, is impulsive, and has no safety awareness. As a result, claimant requires constant care and supervision.

19. Claimant's mother injured her wrists in 2016. She has had steroid injections, physical therapy, and is a candidate for surgery on both wrists. However, claimant's mother has not scheduled surgery and is reticent to have surgery at any time. Claimant's needs require her mother to use her hands, wrists, and arms to care for claimant. Respite hours provide care for claimant and time for her mother to heal. Claimant's mother asserted claimant's need for 150 respite hours is established by the "Work Status Reports" she provided to ACRC.

## DISCUSSION

1. The burden of proof in this matter is on claimant's mother to establish that claimant's respite hours should be maintained at 150 hours per quarter. Welfare and Institutions Code section 4686.5, provides for a maximum of 90 hours of respite care per quarter, unless an exemption applies. In this case, claimant's mother provided medical notes to ACRC, and ACRC approved additional respite hours above 90, under the extraordinary event exemption (Welf. & Inst. Code, § 4686.5, subd. (a)(3)(A).) However, the June 29, 2016 letter, along with the Work Status Reports, do not contain sufficient information to demonstrate that there was an extraordinary event that impacted the ability of claimant's mother to meet the care and supervision needs of claimant. (Welf. & Inst. Code, § 4686.5, subd. (a)(3)(A).)

2. Based upon the evidence, claimant's mother did not provide adequate evidence to meet her burden. The March 11, 2016, and May 18, 2016 letters, upon which ACRC initially granted additional respite hours under the extraordinary event exemption, were narrative letters that specifically addressed the need for temporary respite services due to claimant's mother's wrist pain and included specified timeframes. However, the June 29, 2016 letter, provided an insufficient explanation to support a request for 279 respite hours per quarter, and the Work Status Reports do not address respite hours at all, but instead, provide percentage limits for claimant's mother's work and activities of daily living including: climbing ladders, using scaffolding, intermittent neck motions, reaching, keyboarding, repetitive right and left hand movements, gripping, grasping, pushing, and pulling. Based upon the above, claimant's appeal is denied.

## LEGAL CONCLUSIONS

1. In accordance with the Lanterman Act, regional centers fund services and supports for eligible consumers with developmental disabilities to enable them to

“approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Ins. Code, § 4501.)

2. Under the Lanterman Act, regional centers may fund respite for the caregivers of eligible consumers, but the amount of respite that may be funded is limited under Welfare and Institutions Code section 4686.5, which, in relevant part, provides:

(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 purposes of this section, “family member” means an individual who:

(i) Has a 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 service plan (IFSP).

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3. In addition, Welfare and Institutions Code section 4690.2, in relevant part, provides:

(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 these 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 all of 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 usual daily routines which would ordinarily be performed by the family members.

4. When all the evidence is considered in light of the applicable law, claimant's mother failed to establish that claimant qualifies for an exemption permitting respite hours in excess of the statutory maximum. Therefore, ACRC is permitted to reduce claimant's in-home respite hours to 90 hours per quarter. Consequently, claimant's appeal must be denied.

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## ORDER

Claimant's appeal is DENIED.

DATED: July 3, 2017

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ERIN R. KOCH-GOODMAN

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