

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017020190

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 21, 2016.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant's grandmother, his guardian, represented claimant.

The matter was submitted on March 21, 2017.

ISSUE

Is IRC required to coordinate and fund out-of-home placement for claimant?

FACTUAL FINDINGS

1. Claimant is a 9-year-old male who qualifies for regional center services under the intellectual disability category. He receives Supplemental Security Income (SSI) and In Home Supportive Services (IHSS). Claimant's grandmother is his legal

guardian. His mother is allowed by court order to visit claimant 14 days a month. His mother works in Las Vegas as a seasonal worker.

On December 7, 2016, IRC issued a Notice of Proposed Action that denied claimant's request that IRC coordinate and place him in a residential care facility. On January 19, 2017, claimant requested a fair hearing. In that request claimant's grandmother stated as follows:

I'm not getting a solution or answer with any help for my grandson. He has a lot of medical problems physical, [mental] situation [sic]. I have asked for him to be placed to get help.

Also in the fair hearing request, claimant's grandmother described what is needed to resolve claimant's complaint as follows: "Getting help that he needs to be placed for his situation [sic]."

2. On February 7, 2017, IRC held an informal telephonic conference with claimant's grandmother. As detailed in a summary of this conference, claimant's grandmother presented concerns about claimant's behaviors, his grandmother's need for respite services and for "a break." IRC told claimant's grandmother that it believed that placing claimant in an out-of-home placement would be detrimental to his mental health and would not appropriately address his issues or decrease his problem behaviors. IRC advised claimant's grandmother that consistent with the Lanterman Act it must consider every possible way to assist claimant to maintain him in his home before considering placing him out of the home. IRC further advised claimant's grandmother that it offered claimant increased respite and Applied Behavioral Analysis (ABA) services, but she declined these additional supports.

IRC summarized the supports and services claimant has been receiving as follows: He receives in home counseling through his school and anger management, and support from Desert Mountain Children Center's Child Intensive Services once a week, which began in January 2017. Claimant also receives therapy at school three times per month. In addition, he receives ABA services through Howard J. Chudler and Associates through IRC and 45 hours of respite funded by IRC.

### CLAIMANT'S APRIL 2016 IPP

3. Claimant's most recent Individual Program Plan (IPP) was developed with claimant's grandmother, mother, claimant's Consumer Services Representative, Shunae Wasket, and Steven D. Traylor, claimant's temporary guardian, in April 2016 with additions to the IPP through March 9, 2017. Its clear goal was to provide supports and services to claimant to allow him to live at home.

The IPP documents that IRC funds 45 hours of respite care through a provider, Alta Home Care; 19 hours a month of ABA services with 9 out of office visits per month through Howard Chudler and Associates. IRC increased the respite care from 30 hours on March 9, 2017, and increased ABA services in March 2017. In addition to these services, claimant receives 58 hours of IHSS services.

Claimant is described in the IPP as able to walk, run, jump and climb, but he is limited in his activities per his neurologist due to seizures. Claimant can follow simple directions.

His grandmother stated that he appeared to regress in his ability to perform his activities of daily living last summer due to a "large seizure." She said he used to be toilet trained, but since the seizure "a few years ago," he has accidents during waking hours at least once a week. She has to send him to school with a change of clothes. She said that claimant has to be constantly watched in all settings. He can communicate, but his speech is not understandable by people who do not know him.

Claimant's grandmother reported that claimant has behaviors that concern her. He is verbally aggressive. He will come at her in a physical manner and once a week he has a tantrum. His tantrums consist of kicking, crying, swinging and throwing things at people. When defiant he will break a pencil, scream or "growl." She said that he does not injure himself directly but he will put items in his mouth. He is disruptive consistently throughout the day and he cannot sit still.

Claimant's grandmother added that once a week he will run away and come back. She said that he needs to be watched all the time because he will put hazardous items in his mouth as discussed. She said he does not appreciate the risks involved in talking to strangers and will go with anyone. Claimant's grandmother added that she has to put all medications in her room because claimant has threatened to take the medications.

His grandmother is concerned because he will eat the wheels of toy cars, lead from pencils, plastic bags and paper clips. She said he only sleeps 4 to 5 hours a night. He has low concentration level at school and the school has set as a goal for him to focus on a task for 90 seconds over the next year. Claimant's grandmother stated that she is seeking 1:1 assistance for claimant in the classroom in order to achieve his school individualized education plan (IEP) goals. At school claimant has speech therapy. He also receives occupational therapy, adaptive physical education, counseling through the special education location plan area (SELPA) and transportation.

Claimant takes Zyprexa at night "for psychosis"; montelukast for Attention Deficit Hyperactivity Disorder, melatonin for sleep, divalproex for seizures and hydroxyzine for anxiety. He sees a neurologist, a psychiatrist, and has a primary care doctor. In addition to claimant's grandmother, claimant has his mother and a relative as natural supports. Claimant's grandmother testified that this relative, her niece, is available as a respite care provider.

## PROGRESS REPORTS FROM HOWARD CHUDLER AND ASSOCIATES

4. Howard Chulder and Associates, claimant's ABA provider, submitted three progress reports to IRC from May 18, 2016, through January 13, 2017. These reports detailed the trainings and supports provided to claimant and his grandmother during this period in order to encourage claimant to modify and change his problem behaviors.

In the most recent report dated January 13, 2017, Onofre Gascon, Behavior Specialist, commented that claimant's outburst behaviors likely occur when his mother visits through the month. When she left, he appeared to present with high arousal/stress. The Specialist recommended that the behavior intervention services continue at the requested rate of 18 hours per month with 9 out-of-office visits to address claimant's emotional outbursts, non-compliance and eating inedibles. The Specialist reported that the concerns with claimant eating inedibles "were reported to have [been] reduced" while "his current rates of emotional outbursts" was 1 or more times daily.

## CLAIMANT'S FEBRUARY 27, 2017, IEP

5. Claimant's most recent IEP from the Desert/Mountain Special Education Plan Area, dated February 27, 2017, stated that according to his teacher and aide, claimant did not exhibit the behaviors at school that his grandmother reported he exhibited at home. As stated in the report, "there are no concerns with his behaviors." As also noted in the IEP, claimant's grandmother stated that she would like to see the positive behaviors he shows at school to continue at home.

The areas of concerns in the IEP mostly were in academic areas of reading, written expression, and math. Claimant was otherwise noted to be a "very good student and gets along with his peers."

## TESTIMONY OF CLAIMANT'S GRANDMOTHER

6. Claimant's grandmother emphasized at the hearing that she needs help with claimant and wants to get claimant help because of his problem behaviors at home. She is afraid at some point claimant will "crash and burn" unless he gets the help he needs.

In addition to the behaviors she detailed at the IPP meeting, she said that he wanders at night from his room, and she is concerned because he threatens to cut himself and was voluntarily admitted to Loma Linda Hospital in November for observation because he tried to cut his wrist. Starting in December, she noted that he is increasingly wetting himself, he tries to get sharp objects, he will climb the fridge, and he steals. Claimant's grandmother described claimant's anger as unmanageable; she said he suffers from psychosis, and she has to lock him in his room with a portable toilet.

To address his behaviors and to assist her, claimant's IHSS hours were increased from 34 to 58 hours. Since January, a therapist comes to the home once a week. Claimant also receives therapy at school three times a month and he sees a psychiatrist. She said that IHSS told her that claimant cannot get protective supervision, but it is not clear if she asked for a hearing to dispute IHSS's position in this regard. Claimant's grandmother stressed that claimant's psychiatrist is not helpful or responsive to claimant, and the medications he is prescribing are contributing to claimant's problem behaviors. In June claimant will see a new psychiatrist. He inadvertently missed a February 2017 appointment with this new psychiatrist.

At the hearing, claimant's grandmother acknowledged that on April 11, 2017, there will be an IEP conference at the school. Claimant's Consumer Services Coordinator, Ms. Wasket, offered to attend and claimant's grandmother was agreeable to this. She noted that she has appreciated Ms. Wasket's efforts to help claimant. IRC is also

arranging to set the date of claimant's April 2017 IPP meeting, and at the hearing, the parties discussed a convenient date for this to occur as well as information claimant's grandmother will bring to this meeting, including a report from the school psychologist. The school psychologist recently administered a series of psychological assessments of claimant and is preparing a report. The parties are advised that this report may allow for a better understanding of claimant's behaviors in the home.

#### TESTIMONY OF IRC PROGRAM MANAGER KATHLEEN DECLOUD

7. Kathleen DeCoud is IRC Program Manager for school age children. She has worked at IRC for 19 years and has a master's degree in counseling. She is familiar with claimant and has worked closely with claimant's CSC, Ms. Wasket, regarding claimant.

Ms. DeCoud testified that IRC must consider a number of factors before considering out-of-home placement including crisis in the home and the safety of the child and the family. In general, she noted, children with developmental disabilities do better in their homes with their families than they would in a residential placement. Also, she commented there is no guarantee IRC can find a placement for any consumer because any placement facility would have to agree to the placement.

But, fundamentally, in her opinion, out-of-home placement is not the appropriate option for claimant because it is not in his best interest. She believes that claimant is acting out due to abandonment issues he has when his mother visits and then leaves. She said supports and services are available, including generic psychiatric services, to help "talk [claimant] down" when he exhibits problem behaviors. Ms. DeCoud also suggested that claimant may be eligible for IHSS protective supervision hours. She said that these services have not been tried and should be tried before consideration can be given to out-of-home placement for claimant.

## LEGAL CONCLUSIONS

### THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

2. 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. Under the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.), the State of California accepts responsibility for persons with developmental disabilities. 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; *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.)

4. A person is eligible for services under the Lanterman Act if he or she can establish that he or she is suffering from a substantial disability that is attributable to intellectual disability, cerebral palsy, epilepsy, autism, or what is referred to as the fifth category – a disabling condition closely related to intellectual disability or requiring treatment similar to that required for intellectually disabled individuals. (Welf. & Inst. Code, § 4512, subd. (a).) A qualifying condition must also start before the age 18 and be expected to continue indefinitely. (Welf. & Inst. Code, § 4512.)

## THE GOAL OF KEEPING DEVELOPMENTALLY DISABLED CHILDREN IN THEIR HOMES UNDER THE LANTERMAN ACT

5. Under the Lanterman Act, keeping disabled minors at home has been expressly granted a high priority (Welf. & Inst. Code, § 4685, subd. (a)), with regional centers required to consider every possible way to help their families do so. (Welf. & Inst. Code § 4685, subd. (c)(2); *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 314.) To this point, Welfare and Institutions Code section 4685, subdivision (a), states:

Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

6. When a disabled child lives at home, his or her individual plan must include a family support component describing those services needed to help the family keep the child at home when that is in the child's best interests. (*Id.* at 308.) A regional center must secure services and supports that meet the needs of a consumer, as determined by the consumer's IPP, and "within the context of the (IPP)." (Welf. & Inst.

Code, § 4648, subd. (a)(1).)

Regional centers must consider "every possible way" to help families maintain their disabled child at home. (Welf. & Inst. Code, § 4685, subd. (c)(2).)

#### EVALUATION

7. Claimant did not prove that out-of-home placement is in claimant's best interest and consistent with the goals of claimant's IPP and the Lanterman Act to provide supports and services to claimant to allow him to continue to live at home with his grandmother. While claimant's grandmother understandably is concerned with claimant's behaviors at home, additional supports and services, including generic resources, appear to be available to claimant. These supports and services will be discussed with claimant's grandmother at his IPP and IEP meetings this coming April, and IRC indicated that it will work with claimant's grandmother to help her obtain and access these services. Further, the report from the school psychologist that will be available at that time will hopefully offer insight into claimant's condition so that strategies can be developed to correct or lessen the problem behaviors.

#### ORDER

Claimant's appeal from IRC's determination to deny claimant's request to coordinate and arrange for out-of-home placement is denied.

DATED: March 23, 2017.

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ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.**