

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT M.

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2017031432

In the Matter of:

CLAIMANT V.

v.

ALTA CALIFORNIA REGIONAL CENTER

Service Agency.

OAH No. 2017031429

DECISION

These consolidated fair hearings were heard by Administrative Law Judge Marcie Larson (ALJ), Office of Administrative Hearings (OAH), State of California, on May 2 and 11, 2017, in Sacramento, California.

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

Brittnee Gillespie, Attorney At Law, represented Claimant M. and Claimant V. (Claimants). Claimants' mother was present at the hearing.

Melany George, Russian language interpreter, translated the proceedings as needed.

Evidence was received, and the record remained open to allow submission of closing and reply briefs. Closing briefs were submitted on May 26, 2017, and reply briefs on June 2, 2017. ACRC's closing brief was marked as Ex. 21. Claimants' closing brief was marked as Ex. S. ACRC's reply brief was marked as Ex. 22. Claimants' reply brief was marked as Ex. T.¹ The record was closed and the matter was submitted for decision on June 2, 2017.

ISSUE

Is ACRC required to pay Claimants' grandmother to provide in-home respite?

FACTUAL FINDINGS

1. Claimant M. is a four-year-old boy who is eligible for ACRC services based on his diagnosis of moderate Autism. Claimant M. became eligible for Early Start services in approximately February 2015. Claimant V. is a three-year-old girl who is eligible for ACRC services base on her diagnosis of moderate Autism and Borderline Intellectual Functioning. Claimant V. became eligible for ACRC services in approximately November 2016. Claimants receive services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act. Welf. & Inst. Code, § 4500 et seq.)

¹ Claimants attached to their Reply brief, a declaration of Claimants' grandmother and evidence of her last date at work. ACRC objected to the late-filed evidence. Claimants failed to seek leave to file additional evidence. ACRC's objection to the additional evidence is sustained.

2. Claimants live with their mother, grandmother and aunt. Claimants' grandmother and aunt moved into their home in February 2015. Prior to February 2015, Claimants' grandmother and aunt lived in a home approximately 15 minutes away from Claimants' home. In 2014, Claimants' mother and father divorced. Claimants' mother did not work. She attended school part-time. Approximately three or four days per week, when Claimants' grandmother was not working at her job in a thrift store, she began helping Claimants' mother care for Claimants. Claimants' mother increasingly needed more help caring for Claimants.

In late 2014 and early 2015, when Claimants' grandmother was not working, she began helping Claimants' mother care for Claimants every day in their home. Claimants' grandmother testified that she was "practically living" in Claimants' home. In February 2015, Claimants' grandmother and aunt moved into Claimants' home so that Claimants' grandmother could provide more support and help in caring for Claimants.

3. On June 8, 2015, a meeting at ACRC concerning Claimant M.'s initial Individual Program Plan (IPP) was conducted. Cassie Nelson, Service Coordinator for ACRC, and Claimants' mother were present at the meeting. During the meeting, information was provided to Claimants' mother about respite care. Claimants' mother informed Ms. Nelson that she would consider whether she wanted to utilize respite care and would let Ms. Nelson know what she decided.

4. On June 9, 2015, Ms. Nelson sent Claimants' mother an email with a list of respite agencies and contact information so that she could contact the agencies directly to discuss the respite services provided.

5. On June 17, 2015, Ms. Nelson had a telephone conversation with Claimants' mother. They discussed a variety of issues concerning services for Claimant M. Claimants' mother informed Ms. Nelson that she wanted Claimant M.'s grandmother, who lived with them, to be Claimant M.'s respite provider. After the call, Ms. Nelson

spoke to her supervisor concerning the request that Claimant M.'s grandmother provide respite services. Ms. Nelson was informed that the request for respite services should be added to Claimant M.'s IPP and a Notice of Action (NOA) should be sent denying Claimants' mother's request that Claimant M.'s grandmother act as an in-home respite provider, because she lived with Claimant M. ACRC granted Claimant M. 60 hours of in-home respite per quarter.

6. Claimants' mother was sent an NOA dated June 23, 2015, which denied her request to have Claimant M.'s grandmother provide him in-home respite. The letter stated that the cause for the denial was because Claimant M.'s grandmother resides in the family home and is viewed as a "natural support who is available and expected to provide [Claimant M.] unpaid care and supervision." The letter further stated that "in-home respite is designed to provide the client appropriate care and supervision in the home in the *absence* of family members, and not when family members are present and available." (Italics in original.) Claimants' mother was informed that she could appeal the decision and request a Fair Hearing.

7. At hearing, Tracy Brown, Client Services Manager for ACRC, testified that ACRC's In-Home Respite Services Procedure policy, sets forth that ACRC service coordinators are required to identify natural supports that can provide services to clients free of charge. Claimants' grandmother was considered a natural support because she had been supervising and caring for Claimant M., prior to his IPP and prior to the time when information concerning respite services was provided to Claimants' mother. The policy also provides that respite providers may not live in the same home as a client receiving respite services.

8. On or about July 20, 2015, Claimants' grandmother completed a "New Employee Information" form for Mains'L, a Fiscal Management Service (FMS) agency that oversees funding for respite providers. Claimants' grandmother also completed a

W-4 form for 2015, in which she claimed three dependents and that she was the “head of the household” at Claimants’ home. Ms. Brown testified that a respite provider hired by a family to provide respite services to an ACRC client submits timesheets for payment to the FMS. ACRC pays the FMS for respite services provided to ACRC clients, and the FMS pays the respite providers. The form completed by Claimants’ grandmother indicated that she worked for Claimants’ mother and provided in-home respite services for Claimant M. as of July 20, 2015. ACRC was not aware of, nor did ACRC approve Claimants’ grandmother’s employment as an in-home respite provider.

9. On October 26, 2016, Claimants’ mother sent Nicole Neilsen, Service Coordinator for ACRC, an email requesting that beginning in January 2017, Claimant M.’s in-home respite hours increase from 60 hours per quarter to 200 hours per quarter. Claimants’ mother explained that the request for the increase in respite hours was due to her admission into a two-year full-time registered nursing program. Claimants’ mother explained that she would need to “seriously focus on studying.” Claimants’ mother was scheduled to begin the nursing program in January 2017. Ms. Nelsen responded to Claimant’s mother’s request and suggested that they schedule a planning meeting to discuss the need for services. Ms. Neilsen explained that she believed Claimants’ mother was requesting day care, and that respite is “intermittent and temporary care provided in a clients home to provide relief for a parent.” A planning meeting was scheduled for November 15, 2016.

10. On November 15, 2016, Ms. Neilsen met with Claimants’ mother to discuss her request for additional respite hours. Claimants’ mother explained to Ms. Neilsen that Claimants’ grandmother had applied to become Claimants’ day care provider through Child Action, a government assistance program that pays for child care for qualified individuals. Ms. Neilsen also discussed with Claimants’ mother, services for Claimant V. who became eligible for ACRC services in November 2016.

11. On December 15, 2016, Claimants' mother informed Ms. Neilsen that Claimants' grandmother was paid by Mains'L to provide in-home respite services for Claimant M. Ms. Neilsen informed Claimants' mother that she could not use Claimants' grandmother as a respite provider, because she lived in the family home with Claimants. Claimants' mother informed Ms. Neilsen that she could use whomever she wanted as a respite provider. Ms. Neilsen informed Claimants' mother that she needed to look for another respite provider who does not reside in the family home.

12. On or about December 21, 2016, Ms. Neilsen informed Mains'L that it should cease paying Claimants' grandmother as a respite provider for Claimant M., because she resided in the family home.

13. On or about January 14, 2017, Claimants' grandmother quit her job to take care of Claimants' full-time so that Claimants' mother could attend her nursing program. Claimants' mother attends school at least 40 hours per week and studies an additional 40 hours per week. Claimants' grandmother testified that because of her daughter's schedule, she provides care and supervision for Claimants "all the time." She takes care of all aspects of Claimants' everyday needs including dressing, bathing, feeding, toilet training, administering medication, putting the Claimants' to bed each night and attending to their erratic sleep schedules. Claimants' grandmother is compensated by Child Action to provide day care services to Claimants.

14. On February 14, 2017, Claimants' mother attended an informal meeting with her attorney Ms. Gillespie, Ms. Neilsen, Claimants' grandmother, Ms. Brown, and Ms. Black. The parties discussed the request for an increase in respite hours, respite providers, and the June 23, 2015 NOA denying her request that Claimants' grandmother be a paid in-home respite provider. No resolution was reached. The parties agreed to meet again on February 28, 2017.

15. On February 28, 2017, Claimants' mother, Ms. Gillespie, Ms. Neilsen and Ms. Brown met again to discuss the request for additional respite hours. ACRC agreed to increase Claimant M.'s respite hours from 60 hours per quarter to 90 hours per quarter. An addendum to his IPP was prepared and signed by Claimants' mother and Ms. Neilsen. The addendum explained that a "respite provider must be over the age of 18 and not residing with the client."

16. The parties also discussed services for Claimant V. An IPP was prepared for Claimant V., which provided that ACRC would fund up to a maximum of 90 hours of respite care per quarter. The IPP also provided that a respite provider must be over the age of 18 and not residing with the client.

17. On March 20, 2017, Claimants' mother filed Fair Hearing requests with ACRC concerning the June 23, 2015 NOA denying her request to have Claimants' grandmother paid as an in-home respite provider. Although ACRC did not send Claimants' mother an NOA concerning Claimant V., she did not object to consolidating her requests for a Fair Hearing concerning both Claimants. On the Fair Hearing requests, Claimants' mother wrote that "although [her] mother is sharing a living space with [her and her] children, she is not legally responsible for [her] children's care." Claimants' mother contended that her mother moved into the family home "under special circumstances" as a "live-in respite worker." Claimants' mother further wrote that Claimants' grandmother had to "move out of her home and quit her job" in order to become the respite provider, which has become a "great financial hardship." Claimant also contended that her mother "needs to be compensated so she can continue to care for [her] children [and] pay for her own bills [and] living expenses."

18. Claimants' mother testified that she wants her mother to be paid as a respite provider because she understands Claimants needs. Claimants have irregular sleeping schedules and behavior issues which Claimants' grandmother understands and

can help control. Claimants' mother contends that it is in the best interest of Claimants to have their grandmother compensated as the respite provider. Claimants' mother has not used or sought the assistance of any respite provider other than her mother.

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LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.) Claimants requested a fair hearing to appeal ACRC's denial of their request to pay their grandmother as a respite provider.

2. 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." (Welf. & Inst. Code, § 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (Welf. & Inst. Code, §§ 4646.5, 4648.)

3. Welfare and Institutions Code section 4646.4, provides in pertinent part that:

(a) 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.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

4. Welfare and Institutions Code section 4512, subdivision (e), defines "natural supports" as:

personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

5. Welfare and Institutions Code section 4690.2, provides in pertinent part that:

(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.

6. The burden is on Claimants to establish that ACRC is obligated to pay their grandmother to provide in-home respite. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code § 500.) Claimants failed to meet their burden.

7. The evidence established that in February 2015, Claimants' grandmother moved into Claimants' home in order to care for Claimants. Claimants' mother was single and attending school. She needed extra help caring for Claimants' increasing needs. Claimants' grandmother moved into the family home to provide care and support to Claimants, before the need for respite services was assessed by ACRC or included in Claimant M.'s IPP. In January 2017, Claimants' grandmother quit her job so that Claimants' mother could pursue her education full-time. Claimants' grandmother took on the role of Claimants' primary care provider. Claimants' grandmother attends to all of Claimants' needs in order to allow her daughter to pursue her education.

8. The purpose of in-home respite care is to provide "appropriate care and supervision to ensure the client's safety in the absence of family members." (Welf. & Inst. Code, §4690.2, subd. (a)(2).) Claimants' grandmother is the Claimants' primary care provider, living in the family home. The care and supervision she provides Claimants' is

not respite care, but rather care which is provided by a natural support. As a result, ACRC is not required to pay Claimants' grandmother to provide in-home respite.

ORDER

Claimants' appeal is DENIED. ACRC is not required to pay Claimants' grandmother to provide in-home respite.

DATED: June 13, 2017

MARCIE LARSON
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).)