

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2017051360

OAH No. 2017071040

(CONSOLIDATED)

DECISION

Irina Tentser, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this consolidated matter¹ on September 15, and October 30, 2017, in Culver City, California.

Claimant was represented by her mother and authorized representative.² Claimant's father was present throughout the hearing.

Westside Regional Center (Service Agency or WRC) was represented by its Fair Hearing Specialist, Lisa Basiri.

¹ On August 16, 2017, OAH ordered Claimant's May 18, 2017 fair hearing request (FHR) for an increase in respite services and specialized services were consolidated for hearing.

² Names are omitted throughout this Decision to protect the parties' privacy.

Oral and documentary evidence was received, and argument was heard on September 15, 2017. The parties did not complete presentation of evidence and argument by the conclusion of the day. The matter was therefore continued to October 30, 2017 for an additional day of hearing. On September 15, 2017, the record was also left open by the ALJ, without objection by the parties, for Claimant to submit additional medical evidence and to provide a translation from Spanish to English of a document admitted into evidence.

Additional oral and documentary evidence was received on the second day of hearing and the matter was submitted for decision on October 30, 2017.

ISSUES

1. Should the Service Agency increase Claimant's respite from 21 to 70 hours per month, effective retroactively to March 23, 2017;
2. Should Service Agency fund 20 hours per week of Personal Assistant (PA) services for Claimant, effective retroactively to June 30, 2017; and,
3. Should Service Agency reimburse Claimant \$2,400 for Extended School Year (ESY) expenses paid by Claimant's mother during the summer of 2017.

EVIDENCE

Documentary: Service Agency exhibits 1-23;³ Claimant's exhibits 1-12.

³ After the record closed, the ALJ noticed that WRC Exhibit 22 (Personal Assistance Services – Health and Human Services Agency - Department of Developmental Services 2002 publication excerpt) was incorrectly numbered during hearing. WRC Exhibit 22 was renumbered to Exhibit 23 by the ALJ to reflect the correction.

Testimonial: Claimant's mother and WRC Program Manager, Julien Hernandez.

FACTUAL FINDINGS

1. Claimant is a seven-year-old female client of WRC who lives with her mother and her triplet brother⁴ (also a WRC client). Claimant's mother is also the legal guardian for Claimant's six-year-old cousin. Claimant's older adult sister has moved out and is currently attending college. The older sister resides at the home on weekends. Claimant's mother and father are separated. However, the father provides care to Claimant and her brother, sees Claimant every weekend, and is the respite provider for the family.

2. Claimant qualifies for regional center services under a diagnosis of Cerebral Palsy and Borderline Intellectual Functioning. She also has diagnoses of Reactive Airway Disease, Mild Intermittent, uncomplicated, with Acute Exacerbation, Chronic Lung Disease of Prematurity, Chronic Constipation, Gastroesophageal Reflux, and Extreme Prematurity.

3. Claimant attends an elementary school program seven hours per day, five days per week, where she receives Special Education services. Claimant's brother also attends an elementary school program seven hours per day, five days per week, where he receives Special Education services.

4. Claimant's mother previously reported to WRC that she was not employed and that her full-time job was the care of her children.

5. *Respite Increase.*

⁴ Claimant's triplet sister died from complications of liver cancer approximately two years ago. (Claimant, Exh. 7.)

- a. Service Agency was providing 21 hours of respite services to Claimant at the sibling rate. In March 2017, Claimant requested a funding increase, and a change of rate from the sibling rate to the individual rate, for respite services for Claimant provided by 24Hr Homecare agency based on the care demands of Claimant and her brother. (WRC Exh. 4.) On April 6, 2017, Service Agency notified Claimant's mother and father that the request for increase in respite hours was denied, but that the request for a change in vendor rate from the sibling rate to an individual rate was approved. (WRC Exh. 2.) On May 18, 2017, Claimant's mother filed the Fair Hearing Request (FHR) as Claimant's representative appealing the denial of the increase in respite hours.
- b. Service Agency changed the rate from a sibling rate to an individual rate based on Claimant's mother's report to Service Agency that due to the children's individual needs, each child required their own caregiver and it was too difficult for one person to watch both clients' together. (WRC Exh. 2.) However, since the rate change, Claimant's father remains the sole respite provider for both children together. (Testimony of Claimant's mother.)
- c. Service Agency's decision that Claimant qualified for 21, as opposed to 70, hours per month of WRC funded respite services was based on Claimant's parents' description of the needs of the consumer children, and the results of the March 28, 2017 completed Family Respite Needs Assessment Guideline. (WRC Exh. 2.) The Family Respite Needs Assessment Guideline is a tool that allows the Service Agency to objectively evaluate the individual's current skill level, support need, and family dynamics by providing a value to each guideline. The

guidelines include: age of individual, adaptive skills, mobility, communication, day program attendance, medical needs, behavioral needs, family situation. Generic resources, such as In-Home Support Services (IHSS), are also considered, not in lieu of respite, but as additional support.

- d. At the fair hearing, Claimant's mother testified on Claimant's behalf. In support of her request for additional respite, ESY reimbursement, and PA services, Claimant's mother asserted that she is Claimant's only source of individualized care for the household's children. For example, Claimant's mother is responsible for executing Claimant's intense daily agenda of complex medical and disability issues. Additionally, Claimant's mother described a home environment for Claimant that is shared by Claimant's brother, a WRC client, who also has individualized needs. Also, Claimant's older sister is a full time college student who is consumed with the demands of college and is unavailable to serve as a provider or babysitter for her siblings. Claimant's mother must also attend to the needs of Claimant's six-year-old cousin, who was traumatized by the death of her father. Claimant's mother is separated from Claimant's father and is the sole provider of daily care to Claimant, her brother, and her cousin, and also ensures her older daughter's needs are addressed. Accordingly, Claimant's mother requested that WRC take into account Claimant's family's circumstances and her individualized needs, as described in the agenda she provided to WRC that outlined her daily duties concerning

Claimant's, her brother's, and cousin's care, particularly Claimant and her brother's complex medical and disability issues. (Claimant Exh. 3.)⁵

- e. Claimant's mother further argued that Claimant is a consumer on waiver implemented by Federal Medicaid laws and, is therefore, entitled to unrestricted respite. To further support her argument of unrestricted respite, Claimant's mother submitted an August 3, 2017 memo from the Department of Developmental Services to regional center executive directors regarding the repeal, effective January 1, 2018, of that portion of Welfare and Institutions Code section 4686.5, which currently limits the current 90 hours per quarter of in-home respite. (Claimant, Exh. 11; Legal Conclusion 3.) Claimant's mother further argued that Claimant has the right to receive the services and

⁵ In summary, Claimant's mother's agenda describes a schedule wherein Claimant's mother wakes up at 4:50 a.m.; prepares Claimant, her brother, and cousin and takes them to school between 5:00 a.m. and 7:55 a.m.; does laundry, prepares meals and drives to pick up the kids from school and returns home between 8:00 a.m. and 3:45 p.m.; feeds Claimant, her brother, cousin, and herself until 5:00 p.m.; tutors each child until 6:20 p.m.; bathes each child until 8:15 p.m.; administers medicine to Claimant and her brother until approximately 9:00 p.m. and puts the children to bed; and prepares for the next day by reviewing Claimant and her brother's health journal, sets up breakfast, and prepares medications until 11:45 p.m., when Claimant's mother goes to bed. Claimant's mother's agenda also reported doctor and therapy appointments for each child on a regular basis and the driving times to/from each appointment. (Claimant, Exh. 3.)

supports that she needs per her Individual Program Plan (IPP) and that the Lanterman Act does not allow regional centers to limit the amount or kind of services based on its Service Standard guidelines.

- f. In addition, Claimant's mother asserted that Claimant's IHSS hours are used when she is in school or when she is sleeping and that IHSS does not pay for accompaniment to Claimant's clinical appointments, which include her: Medical Doctor, Orthopedic, Pediatric Ophthalmology, Orthodontist, Pulmonary, and Gastrointestinal physician, dental, occupational, physical, or speech therapies, weekly bible study, first communion classes, tutoring services and grieving counseling to cope with the loss of Claimant's triplet sister. Claimant's mother submitted Claimant's medical records and the time and distances necessary to transport Claimant and her brother to and from school, doctor(s), and therapies to support that the time demands of the appointments required additional support. (Claimant, Exhs. 3, 4, 6, and 10.)
- g. Claimant's mother testified that IHSS pay rate of \$11.18 per hour made it impossible to hire help to be at par with the needed skills to independently care for Claimant. For example, Claimant's mother described that Claimant's gastrointestinal issues, including constipation, involved a demanding food preparation menu and was labor intensive. In sum, Claimant's mother argued that the Lanterman Act states that services must be tailored to the needs of each individual; that IHSS hours cannot be used as respite; and that

Claimant's religious beliefs need to be accounted by the Service Agency to allow Claimant to be included in the community.⁶

- h. At hearing, WRC Program Director Julien Hernandez testified as to why WRC did not find that Claimant satisfied the Lanterman Act requirements for additional respite. Specifically, Mr. Hernandez discussed Claimant's Family Respite Needs Assessment Guideline results⁷ (WRC Exh. 3), his impressions of Claimant from their brief meeting to evaluate Claimant's former service coordinator,⁸ and his communications with Claimant's mother regarding her service requests.

The overall value score from the Guidelines for Claimant was 16. Scores that fell into the 15 through 19 point range corresponded with the provision of 21 hours of respite services. (WRC Exh. 3.) Mr. Hernandez explained the results, testifying that for Age of Individual, the value was assigned a score of four based on Claimant's age; for Adaptive Skills, the value was assigned a score of three

⁶ Claimant's mother testified about their religious beliefs as evidence of the time required for Claimant to attend religious classes and church.

⁷ Claimant's Family Respite Assessment was completed by Claimant's former Service Coordinator Candice La Mere based on Claimant mother's report.

⁸ Mr. Hernandez testified that during his meeting with Claimant, she was verbal; had no difficulty understanding him; was a little shy at first; answered questions; played patty cake with him; followed directions; transitioned to the floor; laughed and joked around; and helped clean up without assistance when Claimant's mother asked Claimant to put toys away.

based on Claimant being over the age of four and requiring total care in some aspect of eating, dressing, grooming, toileting, but not all; for Mobility, the value was assigned a score of one based on Claimant being mobile, but wearing braces; for Communication, the value was assigned a score of zero based on Claimant's verbal skills; for Day Program Attendance, the value was assigned a score of zero based on Claimant attending school; for Medical Needs, the value was assigned a score of three based on Claimant's frequent medical and various therapy appointments; and for Behavior Needs, the value was assigned a score of zero based on there being no excesses in Claimant's behavior. With regards to the Family Situation, Mr. Hernandez testified that the relationship between Claimant's parents was unclear since Claimant's mother reported that they were married, but separated, and that father provided care to the children. As a result, for Claimant's sake, Claimant was scored at the higher value of five, typically assigned to single parent households with two or more children with a Developmental Disability. Generic Resources, however, such as the IHSS provided to Claimant, were not considered.⁹

- i. Another reason for the denial of additional respite hours stemmed from the absence of documentation addressing ongoing major medical issues aside from those that were already considered as part of Claimant's developmental disability. For example, Claimant does not require oxygen or suctioning, is ambulatory, is able to move around on her own, can communicate her needs and wants, does not have

⁹ At the time, Service Agency was under the impression that Claimant was receiving 200 IHSS hours. Subsequently, Service Agency became aware that Claimant was receiving 283 IHSS hours.

uncontrollable seizures, does not take seizure medication, does not take psychotropic medication, and does not engage in severe behaviors that would warrant health and safety issues. At hearing, Claimant's mother also asserted that Claimant's intellectual skills demanded additional support services be provided based on the results of a psychological evaluation (Claimant, Exh. 4); however, a review of the results indicate Claimant's skills are within normal limits based on Claimant's Intellectual Quotient (IQ) scores on the Stanford-Binet Intelligence Scales, Fifth Edition, Standard Battery. (*Id.* at p.11.) Accordingly, Claimant's mother did not provide evidence of additional major medical issues that had not been previously considered by WRC in rendering its decision to deny additional respite.

- j. At hearing, Claimant's mother confirmed that Claimant's receives 283 hours per month of IHSS services. Sonia Torres is listed as the sole provider on IHSS's correspondence, with a list of authorized services provided to Claimant by Ms. Torres that includes feeding, rubbing skin and repositioning, care and assistance with prosthetics and medication, accompaniment to medical appointments, and paramedical services. (Claimant, Exh. 5.) However, Claimant reported at hearing she is the provider for 180 of those hours; the provider for the other 103 hours is Ms. Torres. Claimant's mother further testified that Ms. Torres does not provide care to Claimant and her brother as part of her IHSS services, but is primarily engaged in housekeeping activities. Claimant's mother testified she uses her current respite hours to, among other things, attend WRC board meetings as a board member. Claimant's mother initially testified that Claimant and her brother's respite provider was a

"friend." She later testified that the respite provider was Claimant's father. No additional information was provided by mother about how respite hours are utilized. (Claimant, Exh. 3.)

6. *Findings – Respite*

- a. Claimant is part of a very active household. There is no doubt Claimant's mother faces daily demands on her time and energy as Claimant's and her brother's primary care provider. However, in reviewing the agenda and the evidence presented at hearing, most of the described activities that are not provided for by existing respite services and generic sources (such as school and IHSS), fall into the category of parental responsibilities for minor children without disabilities pursuant to Welfare and Institutions Code section 4646.4, such as transporting to and from school. Claimant's mother argues that Service Agency is required to consider the needs of Claimant's cousin, who is not a WRC consumer, in providing services to the family. However, the daily normal parental demands Claimant mother's care for Claimant's cousin, who is not a WRC consumer, does not constitute an extraordinary event or fall under one of the other categories of exceptions to the 90 hour respite rule per quarter under the current guidelines established by Welfare and Institutions Code section 4686.5.
- b. As noted above, Claimant's mother provided an agenda of the Claimant's household schedule to support her service requests that did not discuss how respite hours were utilized and provided vague and inconsistent testimony at hearing regarding how respite is used and who was the respite provider. Specifically, Claimant's mother initially testified that a "friend" was the respite provider for Claimant and her

brother, but later admitted that the respite provider was Claimant's father. In addition, aside from testimony about attending WRC board meetings, Claimant's mother provided no details as to how she used the existing 21 hours of respite. Further, while Claimant's mother insists that she is the household's only source of care, Claimant's mother previously reported to Claimant's doctor that Claimant's maternal grandparents "live next door and are very helpful." (Claimant, Exh. 7 at page 3 to 10-21-16 Well Child Visit note of Dr. Guiterrez.) Accordingly, insufficient information exists to support an increase in hours.

Additionally, in regard to Claimant's claim that she required additional support to address her medical needs, the evidence shows that, with the exception of an increase in the frequency of doctor's appointments related to Claimant's 2016 eye surgery, her doctor's appointments are approximately four to six months apart and are not a regular occurrences. (Claimant, Exh. 6.) Also, the record lacks evidence of intense health care needs that would require additional services. (*Id.*) For example, on October 18, 2017, Claimant was described as "doing well" by Dr. Cunningham. (Claimant, Exh. 10.) In addition, Claimant's mother's agenda indicates that some of the appointments and therapies occur while Claimant and her brother are normally in school, thereby not requiring additional supervision. (Claimant, Exh. 3.)

- c. Ultimately, taking into account the 283 monthly hours of IHSS, 21 monthly hours of respite, and the 7 school hours five days a week provided to Claimant, there are approximately 7 to 8 hours a day when Claimant is not receiving some type of service. At least part of that time, Claimant is presumably sleeping. IHSS services are not being

provided by Ms. Torres to care for Claimant's needs, as authorized, but are being utilized as housekeeping based on Claimant's mother's choice. The IHSS hours are a generic resource which is, however, available to care for Claimant and her brother. Based on the totality of the circumstances, including the description of the household agenda, there were no intensity of care and supervision needs provided that would warrant an exception in respite hours beyond the 90 per quarter authorized by Welfare and Institutions Code section 4686.5. Claimant has not established additional extraordinary need to increase the level of respite service already provided.

7. *Personal Assistant (PA) and ESY.*

- a. Service Agency previously authorized 27 hours per month of specialized day care supervision with 24Hr Homecare agency at the twin rate. The support was approved as an exception (because Claimant's mother did not work outside the home) based on, among other things, Claimant and her brother's medical and therapy appointment schedules. On March 28, 2017, at Claimant's IPP meeting, Claimant's mother requested that the specialized supervision be terminated effective March 31, 2017, and requested 20 hour per week of PA hours instead. (WRC Exh. 4.) In addition, Claimant's mother requested 200 hours of ESY retroactive payment for summer 2017 when Claimant and her brother were not in school. At hearing, Claimant's mother clarified Claimant's request for 2017 ESY hours as reimbursement for the reported \$2,400 cost of 2017 summer day care

paid by Claimant's mother to her relative to care for Claimant.¹⁰ (WRC, Exh. 13.)

- b. On July 12, 2017, Service Agency issued a Notice of Proposed Action denying Claimant's request for 20 hours of PA services and for ESY reimbursement. (WRC, Exh. 11.) Claimant's mother filed a FHR as Claimant's representative. (*Id.*)
- c. Service Agency denied the requests based on its review of Claimant's case file, WRC Service Standards (WRC, Exh. 15), and the Lanterman Act. However, Service Agency offered to fund, as an exception, 27 hours per month of specialized day care supervision services, at a single rate per minor child. (WRC, Exh. 11.) Service Agency cited Claimant's mother's report that Claimant and her brother have very full schedules, and that each child has multiple therapies during the week that are provided separately, as a basis for agreeing to fund the specialized supervision as an exception. (*Id.*)
- d. In denying Claimant's request for PA services and ESY reimbursement, WRC cited Welfare and Institutions Code section 4646.4, requiring families to use "generic supports and services" and ensuring "consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities . . ." (WRC, Exh. 11.) WRC also cited its Service Standards which provide that day care services are provided to school-aged children with a

¹⁰ Claimant's mother did not provide evidence at hearing as to why Service Agency should fund Claimant's ESY, which is normally offered in Special Education programs at public schools.

developmental disability while family caregivers are at work or attending a vocational/educational program leading to future work, and have no other means to provide care and supervision. In addition, WRC cited its Service Standards which provide that normal parental responsibilities will be considered in determining eligibility for day care services. Under most circumstances, when funding day or after-school care services for a child under the age of 13, WRC may pay only the cost of care that exceeds the cost of normally providing day/after-school care to a child without disabilities of the same age. (*Ibid.*)

- e. On August 25, 2017, Claimant's mother and WRC met to discuss and attempt to resolve Claimant's service requests. On August 31, 2017, WRC sent a letter to Claimant's parents stating, among other things, that WRC will fund ESY within its guidelines if Claimant's mother showed proof of employment and work schedule, other than the 180 hours per month Claimant's mother served as Claimant's IHSS provider. (WRC, Exh. 12.) WRC also requested proof of employment and proof of funds spent for child care within WRC guidelines during summer of 2017 to justify retroactive reimbursement. The letter further explained that Claimant did not qualify for PA hours, because Claimant was not in any therapy at that time, her medical status was stable, and because she received 283 hours per month of IHSS. WRC further explained that driving a child to and from appointments was a typical parental responsibility even when there was more than one child in the family with divergent needs. WRC notified Claimant's parents that if they no longer needed the 27 hours of specialized supervision provided to Claimant as an exception, it would be terminated. WRC also explained

that specialized supervision and PA were not interchangeable. (*Ibid.*)

No proof of employment was provided by Claimant's mother in response to WRC's request.

- f. At hearing, in support of Claimant's request for 20 hours of weekly PA, Claimant's mother cited the fact that WRC had funded 18 hours per week of PA services in 2014 for Claimant. (Claimant, Exh. 8.) Claimant's mother further argued that there were no age requirements or limits for PA services in the Lanterman Act. Claimant's mother argued that specialized services did not meet the demands of the household because specialized services are limited to after school hours and the care provider can only supervise Claimant in the home when the parent is not home. Claimant's mother argued that PA services are necessary so that she can be in the home attending to Claimant's siblings or working while Claimant is supervised by the PA and that the PA can accompany Claimant to her doctor's appointments and therapies.
- g. In support of Claimant's request for \$2,400 in reimbursement for ESY for summer 2017, Claimant's mother testified that WRC should fund ESY for summer of 2017 because of Claimant's mother's summer 2017 work demands and because WRC had previously found that Claimant was eligible for ESY payment for summer 2015 and 2016.
- h. Claimant's mother testified that she does not work outside the home. She runs a home-based business/foundation for funeral advocacy services. She denied that she had previously reported to WRC that her full-time occupation was the care of her children, testifying that she had notified WRC about her home-based business since 2015. In the past, Claimant's mother had indicated to WRC that she intended to

start a foundation/business. As part of her services request, on September 1, 2017, Claimant's mother also reported that she was working 20 hours per week. (Exh. 13.) The first time, however, Claimant's mother provided any detailed information regarding her work was at hearing. To support her testimony that she worked approximately 20 hours per week, Claimant submitted a May 26, 2015 billing statement from GoDaddy for a business website, a March 26, 2015 email to Claimant's father referencing web designers, a billing email from RingCentral covering the period of March 22 through April 21, 2017, a March 1, 2017 proposal for website design, Spanish and English copies of Claimant's mother's business card for "www.amomentofloss.com," and one July 27, 2017 text message exchange between Claimant's mother and a client. (Claimant, Exhs. 9 and 12.) The website related documents do not identify Claimant's mother's business name. The agenda describing the household schedule previously provided to WRC and at hearing makes no mention of Claimant's mother's home-based business. (Claimant, Exh. 3.) Aside from anecdotal and vague testimony and documents, Claimant's mother provided no detailed work schedule, documentation of work hours, income, or other evidence of income to establish that she is engaging in part-time or full-time employment.

8. *Findings – PA and ESY.*

- a. WRC funded PA hours as an exception in 2014 when Claimant and her brother were four years-old because the family was dealing with the highly stressful extraordinary circumstances of dealing with the illness of their now deceased triplet child. WRC Service Standard provide for

PA services to be granted for adult consumers who have physical limitations, behavioral issues, and where parents are no longer responsible for the consumer because the consumer has reached the age of majority. (WRC, Exh. 23.) On the other hand, specialized services are normally funded by WRC for minor children where the parent works outside of the home or attending vocational/education program leading to future work. (Testimony of Mr. Hernandez.) Specialized services are not normally provided for parents, like Claimant's mother, who do not work outside the home, because parents who do not work outside the home are expected to provide normal parental responsibilities to their developmentally disabled children. However, because of the multiple therapies that occur at the same time for Claimant and her brother, WRC agreed to fund the 27 hours of specialized services as an exception.

- b. Because Claimant's mother has provided insufficient proof of employment, the Service Agency cannot fund Claimant's request for ESY or PA. After considering the evidence, it is reasonable to expect parents to be responsible for the care of their children for seven to eight hours out of a day without paid support, at least some of which time is presumably dedicated to sleeping. Claimant has not established an exception that would warrant the funding of additional service based on the level of support the family is already receiving from public sources including, the Los Angeles County Department of Social Services, IHSS (283 hours); In-home respite hours (21 hours); and the children's school schedule (22 days, 154 hours per month).

- c. Based on the foregoing, Claimant has not established additional extraordinary need to increase the level of service already provided. WRC has indicated that it would fund 27 hours of specialized services per month as an exception (based on Claimant's mother not working outside the home), in order to allow the time needed to accommodate the children's schedule and in light of the father's absence from the home. The service remains available should Claimant's mother change her decision to reject WRC's offer of specialized services.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of Claimant's request for: (1) an increase respite from 21 to 70 hours per month retroactive to March 23, 2017; (2) 20 hours per week of PA services retroactive to June 30, 2017 ; and, (3) reimbursement of the \$2,400 ESY services paid for Claimant for summer 2017, is denied. (Factual Findings 1 through 8; Legal Conclusions 2 through 5.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.) In requesting increased respite, PA, and ESY reimbursement for summer 2017, Claimant bears the burden of proving by a preponderance of the evidence that the services are warranted and necessary. Claimant has not met her burden based on the evidence.

3. Welfare and Institutions Code section 4686.5¹¹ provides, in relevant part:

¹¹ Claimant's mother's argument that there is no limit on respite hours because section 4686.5 will be repealed effective January 1, 2018, is unpersuasive. In this matter, the administrative law judge is bound by the applicable law. The

- (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.

[¶] . . . [¶]

- (5) (d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

4. Welfare and Institutions Code section 4646.4 provides:

- (a) Effective September 1, 2008, 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 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and

law in effect at the time Claimant filed the FHR provides for a 90 hour limit for in-home respite per quarter.

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. [¶]
- (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. . . .

5. WRC Service Standards – Day Care Services state, in pertinent part:

Day care services include after school supervision and supervision during school breaks (extended year services). Day care services are provided to school-aged children with a developmental disability while family caregivers are at work or attending a vocational/educational program leading to future work, and have no other means to provide care and supervision. This service is designed to provide basic care and supervision only. It is provided to those whose health and/or safety would be in jeopardy without such care because of the nature of their disability or at risk status.

Day care may be provided to those who meet all of the following criteria:

1. Alternative resources for supervision have been ruled out;
2. The individual resides in single family household with parent working or attending a vocational/educational program full-time, or a two-parent household with both parents working or attending a vocational/educational program full-time;
3. The person is in need of constant supervision or total support due to severe physical and/or medical challenges; or
4. The individual has severe behavior challenges that constitute a threat to the health and safety of the individual, or the safety of the others in the environment, or a threat to property;
5. Other circumstances which the IPP team and Regional Center management deem qualify the individual for these services.

Normal parental responsibilities will be considered in determining eligibility for day care services.

(WRC, Exh. 15.)

6. WRC Service Standards – ESY Services state, in pertinent part, that “[ESY] Services are provided in accordance with the individual needs of persons attending school whose parents are unavailable to provide supervision because of their employment during customary school hours.” (WRC, Exh. 15.)

7. a. In this case, pursuant to Welfare and Institutions Code sections 4686.5, WRC funded 21 hours of respite based on a careful review of Claimant’s needs. (Factual Finding 5.) WRC cannot grant an exemption and fund the requested increase in respite hours because Claimant has failed to establish

through a preponderance of the evidence that the intensity of the Claimant's care and supervision needs are such that additional respite is necessary to maintain Claimant 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 Claimant, as required by Welfare and Institutions Code section 4686.5. (Factual Findings 5 and 6.)

b. Further, in this matter, pursuant to Welfare and Institutions Code section 4646.4, and WRC's Service Standards for Day Care and ESY services, WRC may fund day care and ESY services only while Claimant's mother is employed or in vocational training. Claimant has provided insufficient documentation of her at-home work schedule or other evidence that she is engaging in part-time or full-time employment. (Factual Findings 7 and 8.) Since Claimant's mother has provided insufficient proof of employment, WRC's denial of funding Claimant's ESY and PA services is warranted at this time.

//

//

//

//

ORDER

Claimant's appeal is denied.

DATED:

IRINA TENTSER

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 90 days.