

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER

Service Agency.

OAH No. 2017080751

DECISION

This matter was heard by Nana Chin, Administrative Law Judge with the Office of Administrative Hearings, on September 28, 2017, in Los Angeles, California.

Claimant was represented by Matthew Pope, attorney at law, and by her mother.¹

Aaron Christian, Associate Director, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision September 28, 2017.

¹ The names of Claimant and her mother are omitted to protect their privacy.

ISSUES

The parties agreed on the following issues to be decided:

- (1) Should SGPRC be required fund two-to-one respite care, 30 hours per month, pursuant to Claimant's Individual Program Plan (IPP).
- (2) Should SGPRC be required to fund two-to-one extended day services, as provided in Claimant's IPP.²

EVIDENCE

Documentary: Service Agency exhibits 1-6 and 10; Claimant's exhibits A-C.

Testimonial: Griselda Gastelum, SGPRC Manager for Transition Services; Aaron Christian, SGPRC Associate Director of Community Services; and Claimant's mother.

² It should be noted that there was an inherent inconsistency regarding this issue. At the fair hearing, the parties agreed that the issue was: "Should SGPRC be required to fund two-to-one extended day services, Monday through Friday from 4:00 p.m. to 8:00 p.m., as provided in Claimant's IPP." Claimant's most recent IPP provides for 30 hours of two-to-one extended day services and 30 hours of two-to-one respite services for a period of four months. Claimant's request at the fair hearing for extended day services to be provided Monday through Friday from 4 p.m. until 8 p.m. results in approximately 80 hours of extended day services. Such a request is inconsistent with Claimant's IPP and not within the parameters of Claimant's Fair Hearing Request. (See Factual Finding 11.) As Claimant has not submitted a Fair Hearing Request for an increase in extended day services, there is no jurisdiction to consider a request for extended day service hours Monday through Friday from 4:00 p.m. to 8:00 p.m.

FACTUAL FINDINGS

1. Claimant is a 14-year-old consumer who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon qualifying diagnoses of autism and moderate intellectual disability. In addition to her qualifying diagnoses, Claimant has been diagnosed with anxiety, epilepsy, panic attacks, agoraphobia, attention deficit hyperactivity disorder (ADHD), Sundowner's Syndrome and PseudoBulbar Affect (PBA).

2. Claimant lives with her mother in Covina and receives 256 hours of In-Home Supportive Services (IHSS) each month. Claimant's mother is her IHSS worker.

3. Claimant attends a nonpublic school (NPS) under contract with the Covina Valley Unified School District. The school district provides Claimant with a one-to-one aide during the school day and a one-to-one bus aide.

4. In 2015, Claimant began receiving respite hours at a two-to-one ratio which were funded through SGPRC. These services were provided by Behavior Respite in Action (BRIA).

5. An IPP meeting was conducted between Claimant's mother and SGPRC representatives on June 21, 2016. At that time, Claimant's mother noted that Claimant required assistance with personal care activities and constant close supervision during waking hours to prevent injury or harm in all settings. It was agreed during the IPP meeting that 20 hours of respite care per month was appropriate. It was further agreed that SGPRC would continue to temporarily fund those respite hours at a two-to-one ratio through BRIA. The June 21, 2016 IPP does not mention funding for extended day services.

6. On September 1, 2016, Claimant and her mother moved from Covina, which is within the SGPRC catchment area, to Victorville, which is within the Inland Valley Regional Center (Inland Valley) catchment area. An IPP meeting was conducted between Claimant's mother and representatives of Inland Valley on September 26, 2016. During the IPP meeting, Claimant's mother requested funding for 67 hours per month of two-to-one specialized training with California Psychcare, asserting that Claimant had been receiving those services at SGPRC.³

7. According to Claimant's mother, a month following the September 26, 2016 IPP, Claimant began receiving two-to-one respite services and extended day services from California Psychcare, funded by Inland Valley.

8. At the end of December 2016, Claimant and her mother moved back to Covina. An IPP meeting was conducted between Claimant's mother and SGPRC on January 31, 2017. During the IPP meeting, Claimant's mother asserted that Inland Valley had been funding 30 hours per month of two-to-one behavioral respite. Based on her representation, SGPRC agreed that, for a period of four months, SGPRC would honor the Purchase of Services (POS) from Inland Valley for 30 hours per month of two-to-one ratio behavioral respite services.

9. On July 26, 2017, Claimant's annual IPP meeting was conducted with SGPRC. At that time, the parties again agreed that the POS from Inland Valley would be honored. Based on Claimant's mother, the services provided by Inland Valley included up to 30 hours per month of two-to-one ratio behavioral

³ The Department of Developmental Services publishes a list of service codes grouping vendors according to the type of services they provide. "Specialized training" falls under the service code 103; in-home respite agencies utilize service code 862, and in-home respite workers utilize service code 864.

respite and 30 hours per month of two-to-one ratio extended day services. These services were to be provided for a period of four months as soon as TOTAL Programs (Total) was able to provide the staffing to continue the services. In the interim, SGPRC agreed to fund 87 hours per month of one-to-one ratio extended day services.

10. Though funding for the two-to-one ratio behavioral respite and two-to-one ratio extended day services has been approved, SGPRC has been unable to locate either a vendorized provider willing and able to provide Claimant with two-to-one services or a provider willing to become vendorized to provide two-to-one services. While SGPRC continues its search for a vendor to provide two-to-one respite and extended day services, SGPRC is funding 87 hours per month of one-to-one ratio extended day services through BRIA, an out-of-area vendor.

11a. Claimant's mother filed a Fair Hearing Request dated August 2, 2017.

11b. The Fair Hearing Request stated the reason for the hearing was that "Client is not receiving services written in IPP." (Exhibit 1.)

11c. In order to resolve the complaint, Claimant's mother sought the following action: "Providing services as soon as possible that are written in the IPP." (*Ibid.*)

12. The Fair Hearing Request was not filed in response to a Notice of Proposed Action (NOPA). SGPRC has not proposed reducing, terminating, or changing the services set forth in Claimant's IPP, nor has SGPRC denied the initiation of a service or support requested for inclusion in the IPP.

TESTIMONY OF SGPRC SERVICE MANAGER

13. Griselda Gastelum is the Manager for Transition Services at the SGPRC. As part of her duties, she oversees nine service coordinators. Claimant's case was transferred from Inland Valley to Ms. Gastelum's unit on January 26, 2017.

Ms. Gastelum testified credibly as to the efforts made by SGPRC to obtain services for Claimant.

14. When Claimant's file was transferred back to SGPRC, SGPRC understood that Claimant's mother wanted to obtain two-to-one services through BRIA. When SGPRC contacted the vendor to obtain two-to-one services, SGPRC was informed that BRIA did not have sufficient staff to provide those services to Claimant. After Claimant's mother was notified of BRIA's staffing shortage, Claimant's mother indicated that she would be willing to utilize another vendor.

15. SGPRC proceeded to contact other service providers but has been unable to secure two-to-one services for Claimant. According to Ms. Gastelum, SGPRC has had difficulty securing services for Claimant because there is an insufficient number of vendors available to provide the requested services. In addition, the vendors who provide two-to-services lack sufficient staffing during the hours requested by Claimant's mother. Due to the difficulty obtaining services for Claimant, the matter was referred to Aaron Christian, SGPRC Associate Director for Community Services.

TESTIMONY OF SGPRC ASSOCIATE DIRECTOR

16. Mr. Christian testified credibly about SGPRC's difficulties in obtaining services for Claimant. As part of Mr. Christian's duties as Associate Director, he is responsible for overseeing the Vendorization Unit, the Transportation Unit, and Resource Development. Mr. Christian became familiar with Claimant's case after he received a request to procure a vendor to provide Claimant with a two-to-one ratio for behavioral respite and extended day services.

17. When Mr. Christian first received the referral, he attempted to obtain services for Claimant through California Psychcare, the provider that had been providing two-to-one services for Claimant in Victorville. As California Psychcare is

an out-of-area vendor, Mr. Christian contacted Inland Valley to obtain their vendorization information so that SGPRC could utilize California Psychcare as a resource. Contrary to Claimant's mother's recollection (see Finding 7 above), Inland Valley informed Mr. Christian that California Psychcare was not vendorized to provide two-to-one respite or extended day services.

18. Mr. Christian was subsequently advised that Claimant's mother was seeking services through BRIA, which had been providing two-to-one services to Claimant prior to her move to Victorville. Mr. Christian discontinued his efforts to obtain services through California Psychcare and initiated efforts to secure services through BRIA. BRIA is an out-of-area provider that is vendorized by Tri-Counties Regional Center and North Los Angeles County Regional Center. Mr. Christian contacted both regional centers to get their vendorization information. Neither regional center had payment codes for two-to-one services through BRIA. Mr. Christian then contacted Manfred Rodriguez, BRIA's Director of Operations. Mr. Rodriguez advised Mr. Christian that BRIA did not have a two-to-one rate in their system, but he indicated that BRIA would be willing to negotiate such a two-to-one rate. Mr. Christian forwarded Mr. Rodriguez the cost analysis spreadsheet SGPRC requires vendors to complete to cover the cost of additional staffing. Mr. Rodriguez declined to provide the cost information and advised Mr. Christian that BRIA would not be willing to negotiate a rate.

19. Following his conversation with Mr. Rodriguez, Mr. Christian expanded his search to all providers vendorized by a regional center to provide two-to-one services. The providers Mr. Christian identified as being vendorized for two-to-one services were found to have insufficient staffing to accommodate Claimant's needs. Mr. Christian then reached out to various vendored providers of respite services to see if they would willing provide additional documentation in

order to include two-to-one services as part of their vendorization. Mr. Christian was unable to locate a vendor who would be willing to provide the additional documentation.

20. At hearing, Mr. Christian admitted that the rates for two-to-one services were not attractive. However, there are procedures for regional centers to provide rates which are higher than what is proscribed. In order to obtain those rates, the regional center would have to obtain a Health and Safety Waiver. The rate would then have to be approved by the Department of Developmental Services (DDS or Department). These waivers are vendor-initiated and would require a vendor to provide cost information and perform an assessment which would support payment beyond the median rate. Mr. Christian testified that the process is quite lengthy but that SGPRC would be willing to submit a request to the Department for a vendor to obtain such a waiver. Mr. Christian has not, however, been able to find a vendor willing to submit such information to obtain a waiver in Claimant's case.

21. Mr. Christian further credibly testified that SGPRC is unable to pay for one-to-one services to be provided by two workers as this could result in an unfavorable audit finding.

22. Mr. Christian testified that Claimant remains eligible for two-to-one services as provided in her current IPP. SGPRC continues to recognize the need for Claimant's mother to receive a break from her care giving responsibilities. SGPRC has not denied funding or proposed to reduce, terminate, or change this service, and continues to search for providers who would be willing to provide this service.

LEGAL CONCLUSIONS

JURISDICTION

1. Pursuant to Welfare and Institutions Code section 4710.5,⁴ subdivision (a), "Any ... authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall upon filing a request ... be afforded an opportunity for a fair hearing." Pursuant to her fair hearing request expressing dissatisfaction with the Service Agency's action, Claimant is entitled to this fair hearing. (Finding 11.)

APPLICABLE LAW

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with a developmental disability. (§ 4501.) The Lanterman Act gives regional centers, such as SGPRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

3. A regional center is required to secure services and supports that: meet the individual needs and preferences of consumers (§§ 4501 and 4646, subd. (a)); support their integration into the mainstream life of the community (§§ 4501 and 4646, subd. (a)); "foster the developmental potential of the person" (§ 4502, subd. (a)); and "maximize opportunities and choices for living, working, learning and recreating in the community" (§ 4640.7, subd. (a)).

⁴ All further statutory references are to the Welfare and Institutions Code.

4. Pursuant to Section 4512, subdivision (b), "services and supports" mean "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives" and include respite services.

5. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (§4646, subd. (b).)

6. A regional center "shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region. If suitable care cannot be found within the region, services may be obtained outside of the region." (§ 4652.)

VENDORIZATION TO PURCHASE NEEDED SERVICES AND SUPPORTS

7. "A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan." (§ 4648, subd. (a)(3).)

8. As required by section 4648, subdivision (a)(3)(B), the Director of the Department enacted regulations governing the vendorization process, which regulations are found in California Code of Regulations (CCR), title 17, section 54300 et seq. CCR, title 17, section 54310 sets forth the vendor application requirements and requires submission of an application to the "vendoring regional center."

9. Vendors operate under a categorized rate structure that details allowable fees within a range of services. The Rates & Fiscal Support Section of the Department establishes the vendor's rate for in home respite based on procedures and methodology are governed by regulation. (See CCR, tit. 17, § 58000, et seq.)

CLAIMANT'S REQUEST FOR TWO-TO-ONE SERVICES

10. Claimant argued⁵ that SGPRC could obtain two-to-one respite services if SGPRC would be willing to pay whatever the respite agency demanded. Claimant has further argued that the two-to-one services could have been provided if SGPRC would pay two workers at a one-to-one payment rate. There was no evidence by Claimant or SGPRC that there are any respite agencies willing to enter such an arrangement. Additionally, as discussed in Legal Conclusion 9, services provided by a vendor are subject to a mandated payment rate. Payment in the manner suggested by Claimant could subject the vendor or the Service Agency to an unfavorable audit finding. In recognition of the low payment rates

⁵ At hearing, Claimant proposed becoming vendorized by SGPRC to administer respite services. As Claimant's mother had not submitted a request to become vendorized prior to the hearing and as SGPRC has not rendered a decision as to any such request, there is no jurisdiction to determine that issue.

for vendors providing two-to-one services, SGPRC has indicated its willingness to assist in obtaining a Health and Safety waiver for a vendor willing to provide services to Claimant. SGPRC, however, has been unable to identify a vendor willing to provide two-to-one services for Claimant.

11. Claimant's need for two-to-one services was not disputed by SGPRC. The evidence offered at the fair hearing establishes SGPRC's ongoing good faith efforts to procure these services for Claimant. However, as set forth in Factual Findings 13 through 22, circumstances beyond both the SGPRC and Claimant's control have precluded SGPRC from providing these services. In the interim, SGPRC is providing 87 hours per month of one-to-one extended day services. Under these circumstances, the interim services are currently the best services to meet Claimant's needs until SGPRC's search produces a vendor willing and able to provide two-to-one services for Claimant.

ORDER

1. Claimant's appeal is denied.
2. SGPRC shall continue its efforts to obtain a vendor willing and able to provide two-to-one services which will best suit Claimant's individual needs.
3. While continuing its efforts to obtain two-to-one services, SGPRC shall continue funding interim services consisting of 87 hours per month of one-to-one extended day services until Claimant's next IPP.

DATED:

NANA CHIN

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.