

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2017080761

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on October 4, 2017, in Pomona. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by his parents.¹

Daniela Santana, Program Manager, Fair Hearings, represented the San Gabriel/Pomona Regional Center (service agency).

ISSUE

Shall the service agency increase funding for claimant's in-home respite from 16 to 40 hours per month?

¹ The names of claimant and his family are omitted to protect their privacy.

EVIDENCE RELIED UPON

In reaching this Decision, the ALJ relied upon exhibits 1-8 submitted by the service agency (claimant submitted no exhibits), as well as the testimony of claimant's parents and Ms. Santana.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a five-year-old male consumer of the service agency based on his recent qualifying diagnosis of autism.

2. As described in more detail below, for the past several months the service agency has been paying for claimant's family to receive 16 hours per month of respite, provided by a service agency vendor. On July 24, 2017, claimant's mother requested the service agency increase the respite funding to 40 hours per month.

3. In a Notice of Proposed Action dated July 31, 2017, the service agency denied the funding increase request, advising claimant's parents that service agency staff concluded the family already received an appropriate amount of respite and that state law restricted providing claimant's family 40 hours per month absent extraordinary circumstances.

4. On August 11, 2017, claimant's mother submitted to the service agency a completed Fair Hearing Request form in which she appealed the proposed denial of the respite funding increase request.

BACKGROUND INFORMATION

5. Claimant lives at home with his parents and two older siblings. According to claimant's recent individual program plan (IPP), claimant's maternal grandmother also

lives with the family. (Ex. 3.) However, claimant's mother reports the grandmother is not able to care for claimant because of her advanced age and claimant's behaviors. (*Ibid.*)

6. Claimant was diagnosed with autism spectrum disorder in March 2016 and has been a regional center client for a little over one year. The psychologist diagnosing claimant, Dr. Edward G. Frey, was unable to make a diagnosis of intellectual disability due to claimant's lack of cooperation with testing. However, Dr. Frey noted in his report that it is "somewhat likely" claimant has an intellectual disability. (Ex. 4, p. 5.)

7. In addition to receiving various special education services from his local school district, claimant also receives 15 hours per week of applied behavior analysis (ABA) funded by the family's private health insurance.

THE RESPITE INCREASE REQUEST

8. On a date not established, the service agency conducted a Family Respite Needs Assessment for claimant. That tool is used as a guideline by the service agency to help determine an estimated amount of respite hours based on individual client needs. In claimant's case, the service agency initially estimated 10 hours per month of respite was warranted. However, the service agency recognized claimant's behavior issues and long work hours of claimant's parents warranted granting an additional six hours per month, for a total of 16 hours per month of respite. (Ex. 7.)

9. Because claimant is under 18 years of age, lives at home with his parents, and is not eligible for Medi-Cal, the respite provided to claimant's family is subject to the Family Cost Participation Program approved by the Department of Developmental Services. The result is that claimant's family pays for 40 percent of the total respite hours authorized by the service agency.

10. A. While claimant's parents are appreciative of the respite currently funded, they testified more is necessary to both ensure proper supervision of claimant and provide them with relief from the constant stress and demands of caring for him.

B. Claimant's parents are full-time registered nurses with long commutes. One works during the day and the other at night so that one parent is always at home with claimant. However, claimant's parents have found it increasingly difficult to do their jobs, care for their other two children, supervise claimant, and get enough sleep for the next day. Claimant has no safety awareness, which makes his constant desire to elope from the house alarming. He also likes to use the staircase bannister at home as a jungle gym unless prevented from doing so; falling from the second story part of the bannister could cause claimant serious injury. He is extremely active while awake, so someone must always be with him, and strong enough to prevent or stop him from partaking in dangerous activity.

C. The request for 40 hours per month of respite is broken down as follows. Claimant's parents believe an additional two hours of respite per work day will allow them to get enough sleep to carry them through the day. Since they work five days per week, they are requesting 10 hours per week or 40 hours per month of respite.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)² An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant submitted a fair hearing request to appeal the service agency's proposed denial of his funding increase request. Jurisdiction in this case was thus established.

2. A. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code,

² Undesignated statutory references are to the Welfare and Institutions Code.

§ 115.) When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

B. In this case, claimant bears the burden of proof for the requested respite funding increase, because the service agency has not previously agreed to provide the requested funding amount. (Factual Findings 1-4.)

3. Respite services under the Lanterman Act are designed “to provide intermittent or regularly scheduled temporary relief from the care of a developmentally disabled family member.” (§ 4690.2, subd. (a).) Respite is a support service that may be funded by a regional center. (*Clement v. Amundson* (1998) 60 Cal.App.4th 1094, 1103.)

4. Respite services are to be purchased by a regional center based upon the individual needs of a given consumer and his family. In making its determination of the quantum of respite services for a particular family, a regional center should consider: assistance to family members in maintaining the client at home; provision for appropriate care and supervision to ensure the client’s safety in the absence of family members; relief of family members from the constantly demanding responsibilities of caring for a client; and attendance 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 member. (§ 4690.2, subd. (a).)

5. A. In response to the most recent budget crisis, the California Legislature enacted section 4686.5, subdivision (a)(2), which provides that a regional center shall not purchase more than 90 hours of in-home respite services in a quarter. A regional center may grant an exemption to that limitation only if it is demonstrated that the intensity of the consumer’s case 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 a family member's ability to meet the care and supervision needs of the consumer. (§ 4686.5, subd. (a)(3).)

B. Also in response to the last budget crisis, the Legislature enacted section 4646.4, subdivision (a), which requires regional centers to conform to their guidelines, utilize available generic resources, and consider a family's responsibility for providing similar services to a minor child without disabilities.

6. In this case, claimant met his burden of establishing by a preponderance of the evidence that more respite hours per month are warranted, in order to ensure claimant is properly supervised while his parents receive appropriate relief from the constant demands of caring for him. The service agency previously recognized the special circumstances present in this case when awarding the family six additional hours of respite. However, the current level of funding, while consistent with the mandates of section 4646.4 and appreciated by the family, has proven to be insufficient. Nonetheless, state law restricts the service agency from funding more than 30 hours per month of respite. Claimant has not established that failing to provide him with more than 30 hours per month will jeopardize his ability to live at home or that an extraordinary event has impacted one or both of his parent's ability to care for him. Under these circumstances, claimant may receive no more than 30 hours per month of respite. (Factual Findings 1-10, Legal Conclusions 1-5.)

ORDER

Claimant's appeal is granted, in part, and denied, in part. The San Gabriel/Pomona Regional Center shall provide funding for claimant to receive 30 hours per month of in-home respite. The appeal is denied in all other respects.

DATED:

ERIC SAWYER

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.