

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017090946

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on November 6, 2017.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present.

The matter was submitted on November 6, 2017.

ISSUE

Should IRC increase claimant's respite hours from 48 hours to 250 hours per month?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 26-year-old male who receives regional center services based on a diagnosis of autism. IRC is currently funding 48 hours¹ per month of respite; 32 hours per month of in-home behavior modification; and a day program five hours per day, five days per week; including transportation for which claimant's mother is the vendored provider. Claimant also receives Social Security benefits, Medi-Cal, and 283 hours per month of In-Home Supportive Services (IHSS). Claimant's mother is the IHSS provider.

2. On August 24, 2017, IRC served claimant with a Notice of Proposed action denying claimant's request to increase claimant's respite funding to 250 hours per month. In an attached letter, IRC explained that claimant's mother should consider finding another provider to provide the IHSS hours, which would give claimant's mother a break. IRC also noted that claimant often attends his day program only three hours per day instead of the allotted five hours. Finally, IRC suggested that it could find alternative transportation to the day program, to relieve claimant's mother of this responsibility.

3. On September 22, 2017, claimant filed a fair hearing request appealing IRC's decision not to fund additional hours. The fair hearing request stated claimant's mother has lost several jobs due to lack of sleep because claimant requires care 24 hours a day. Claimant's mother previously had assistance from a family member in caring for claimant, but the family member moved out of the country.

¹ IRC originally funded 30 hours per month of respite, but following claimant's request to increase to 250 hours, IRC agreed to increase funding to 48 hours per month.

4. On October 2, 2017, a telephonic informal meeting was held between IRC and claimant's mother. Following the meeting, IRC adhered to its determination not to fund any additional respite hours. This hearing ensued.

EVIDENCE PRESENTED BY IRC

5. Kevin McCawley, Consumer Services Representative, and Tamara Hathaway, Program Manager, testified at the hearing. Ms. McCawley testified that the reason IRC denied claimant's request was because claimant's mother is currently claimant's IHHS provider. The purpose of respite is to provide family members temporary, intermittent breaks from caring for a consumer. IRC believes that to reduce claimant's mother's load, she should find another person to provide the IHHS hours.

6. Additionally, IRC understands that claimant has difficulty sleeping and is often awake throughout the night. Ms. McCawley suggested that claimant return to a physician to see if there is medication that can help claimant sleep through the night.

7. Finally, Ms. McCawley noted that it could locate a transportation service to relieve claimant's mother from having to transport claimant to his day program.

8. IRC's Purchase of Service Policy provides guidelines for funding of services, which is consistent with the requirements of Welfare and Institutions Code section 4686.5. Under the policy, IRC may not purchase more than 90 hours of in-home respite services in a quarter (3 months). An exception may be granted 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.

IRC noted that it currently funds respite hours exceeding 90 hours per quarter.

CLAIMANT'S EVIDENCE

9. Claimant's mother testified about claimant's sleep difficulties. During the night he will wake up screaming, making it difficult for her to get a good night's sleep. This has impacted her ability to work. Claimant's mother has taken claimant to the doctor about his sleep problems, but the medication that the doctor provided has not been effective. Claimant's mother stated that because claimant is often tired in the morning, she takes him to the day program later in the morning. She noted that the day program has commented on the fact that claimant appears tired and unrested at the program. She said the day program is located close to her house, so finding another transportation provider would not constitute respite for her.

10. Claimant's mother testified that she is a therapist, but has not been able to work because she is so exhausted from claimant's care. She would like additional respite hours, including 50 hours each weekend, so she can stay at her boyfriend's home. Claimant's sister currently provides respite hours, but her own schooling has been suffering as well.

11. Claimant's mother testified that she has been unable to find an IHHS provider who provides satisfactory work and who will accept the contracted rate of \$10 per hour. She said she has had five providers in the past that she had to fire because of various issues. She noted that claimant is 250 pounds and can sometimes be aggressive.

12. Claimant's mother testified that she is recently divorced and her ex-husband, who was an attorney, does not provide any financial support. Claimant's mother's aunt, who had previously helped in claimant's care, has moved out of the country. Claimant's mother said she has found a person who would provide the additional respite hours. However, this person wants to be paid \$15 per hour directly, with no withholding of income tax.

13. Claimant's mother submitted a letter from her physician stating that both claimant and claimant's mother have sleep problems. The physician recommended that claimant see a neurologist to address his sleep issues. It does not appear that this has occurred. Claimant's sister, who is claimant's primary respite provider, submitted a letter discussing her own exhaustion and the effect on her schooling.

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.)

THE LANTERMAN ACT

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) 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.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. The California Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or

support for any consumer unless that service or support is contained in his or her individual program plan.

6. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. Welfare and Institutions Code section 4646 requires that the Individual Program Plan (IPP) and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

9. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

10. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

11. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

12. A regional center may not purchase more than 90 hours of in-home respite services in a quarter, for a consumer. A regional center may grant an exemption to this requirement 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. (Welf. & Inst. Code, § 4686.5.)

EVALUATION

13. Claimant had the burden to show by a preponderance of the evidence that IRC should increase the number of respite hours he currently receives from 48 to 250. Claimant failed to meet his burden. Claimant's mother's testimony was sincere and her frustration evident. It was apparent that she has become overwhelmed by caring for claimant and is in need of assistance. However, funding additional respite hours is not authorized by statute because claimant has not demonstrated either that additional respite is necessary to maintain him in the family home, or that an extraordinary event impacts the family member's ability to meet the care and needs of claimant. (Welf. & Inst. Code, § 4686.5, subd. (b).) Since claimant's mother is his IHHS provider, for which she is funded 283 hours per month, the burdens associated with the care of claimant would be reduced by transferring her IHHS care to another provider. In other words, there is a generic resource available that could be used in a way that would meet claimant's needs and provide claimant's mother with the respite she seeks. Although claimant's mother testified that she has been unable to find a quality provider who will do this work for \$10 per hour, this does not justify an increase in respite hours. What claimant's mother essentially wants to do is to use the respite and IHHS funding to pay a provider "under the table." This is contrary to both state law and IRC's Purchase of Service Policy.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund additional respite hours is denied.

DATED: November 20, 2017

ADAM L. BERG

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.