

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL  
CENTER,

Service Agency.

OAH No. 2018010663

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Lancaster, California on February 26, 2018.

Claimant's father represented Claimant, who was not present. The names of Claimant and his father are omitted to protect their privacy.

Stella Dorian, Fair Hearing Representative, represented the North Los Angeles County Regional Center (NLACRC).

Doris E. Panameño provided Spanish interpreter services to Claimant's father.

The matter was submitted on February 26, 2018.

ISSUE

Whether NLACRC properly changed Claimant's respite care authorization to require care by a licensed vocational nurse instead of Claimant's brother.

## EVIDENCE RELIED UPON

Documents: NLACRC exhibits 1 through 16; Claimant's exhibit A. Testimony: Cesar Hernandez; Joyce MacConnell; Kathryn Watts; Claimant's father.

## FACTUAL FINDINGS

1. NLACRC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)<sup>1</sup>

2. Claimant is a 20-year-old man with autism spectrum disorder who lives with his father, mother, and older brother. Due to his developmental disability, he needs help with personal care activities and near-constant supervision during waking hours to prevent injury or other harm. For years, his Lanterman Act services have included funding from NLACRC for in-home respite to give his parents time away from his care and supervision needs. Until just before this appeal, NLACRC funded in-home "parent conversion" respite that allowed Claimant's parents to choose his respite caregiver, whom NLACRC then authorized as a respite worker through a home health agency vendor. Claimant's brother was that chosen caregiver.

3. Claimant also has type 1 diabetes and needs blood glucose testing and insulin injections several times per day, which his parents or brother normally perform. In early 2015, Joyce MacConnell, a nurse consultant for NLACRC, reviewed Claimant's medical records and determined he required a licensed vocational nurse as his respite

---

<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

caregiver to perform the necessary testing and injections during respite hours.

Claimant's brother is not a licensed vocational nurse or other health professional.

4. MacConnell noted her determination in Claimant's file, but NLACRC did not act on it. In June 2017, Cesar Hernandez, Claimant's service coordinator, requested another review of Claimant's level of respite care. MacConnell performed a new review and determined again that Claimant required a licensed vocational nurse as his respite caregiver, noting that he still needed blood glucose testing and insulin injections several times per day, with many injections on a "sliding scale" of dosages that varied depending on his blood glucose level.

5. On November 8, 2017, Hernandez spoke to Claimant and his father about MacConnell's determination. Although concerned about a change, they agreed to try respite with a licensed vocational nurse. As a result, Hernandez terminated the existing parent conversion respite and authorized 30 hours per month of in-home respite by a licensed vocational nurse beginning December 1, 2017. Hernandez also contacted one of NLACRC's home health agency vendors to determine if the vendor could provide such a caregiver.

6. The respite change did not start as scheduled due to problems finding a suitable caregiver. On December 13, 2017, Claimant and his father asked Hernandez to undo the change, stating that they no longer agreed with it. NLACRC denied that request on January 10, 2018, citing Claimant's testing and injection needs, his elevated hemoglobin A1C level of 8.1 percent, and other signs in his medical records of poor diabetes management, including foot ulcers, frequent urination, and polydipsia (i.e., abnormal thirst).

7. NLACRC received Claimant's fair hearing request on January 16, 2018, appealing the denial.

8. As of the hearing date, NLACRC's vendor had not provided a suitable licensed vocational nurse caregiver who spoke both Spanish and English, and Claimant had received no respite services since November 2017.

#### TESTIMONY

9. Kathryn Watts, a consumer services supervisor for NLACRC, testified that NLACRC's failure to change Claimant's respite care sooner was an oversight. Hernandez testified about his work as Claimant's service coordinator and the events leading to this appeal. MacConnell testified in support of her determinations that Claimant requires a licensed vocational nurse for respite care, emphasizing Claimant's testing and injection needs, the signs of poor diabetes management in his medical records, and descriptions of his diabetes in those records as "uncontrolled," albeit "stable." MacConnell also opined that Claimant's brother could not inject insulin as a respite worker without violating the laws prohibiting the unauthorized practice of nursing.

10. Claimant's father testified that his family has provided good care to Claimant, who has never had to be hospitalized for high or low blood glucose levels. Claimant's father described his older son as a responsible college graduate, and expressed concern that a change would upset Claimant, who is happiest with just his family. Furthermore, Claimant needs blood glucose tests and insulin injections all the time, not just during respite, and Claimant's parents and brother have routinely tested and injected Claimant for years. Shifting that responsibility to a licensed vocational nurse during respite would involve just a few tests and injections per month, which Claimant's father believes would have no impact on Claimant's health or safety.

#### DISCUSSION OF EVIDENCE

11. The evidence did not establish a compelling health or safety reason for Claimant to have a licensed vocational nurse as his respite caregiver. Outside of

hospitals and other licensed health care facilities, "insulin is normally administered by laypersons according to a physician's directions, most often by the diabetic persons themselves or by friends or family members." (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 576 (*Torlakson*)). A responsible layperson is fully capable of testing and injecting Claimant according to his physician's directions, and MacConnell's testimony did not establish that Claimant's "sliding scale" for some insulin shots is unusual or too difficult for a layperson to follow. While Claimant's medical records report some signs of poor diabetes management, his condition is stable, and he has never required hospitalization for high or low blood glucose levels. The signs of poor management suggest, at most, a need to adjust Claimant's treatment regimen or follow it more closely, not a need for a licensed vocational nurse to take it over during respite hours.

12. Absent a compelling health or safety reason for the respite change, the question to answer is whether some provision of law nonetheless requires it. The answer is yes, as described below, because the Lanterman Act limits the incidental medical services that an in-home respite worker who is not a licensed health professional may perform, and Claimant's diabetes care needs are not among the allowed services.

## LEGAL CONCLUSIONS

### LEGAL STANDARDS

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under the fair hearing and appeal procedures in the Act. (§ 4706, subd. (a).) "'Services and supports for persons with developmental disabilities' means 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.” (§ 4512, subd. (b).) The determination of Claimant’s services and supports “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.” (*Ibid.*; see also § 4646, subd. (a).)

2. One such service and support is in-home respite, which is “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.” (§ 4690.2, subd. (a).) In-home respite is designed to assist family members in maintaining a disabled person at home, provide appropriate care and supervision to ensure safety in family members’ absence, relieve family members from the constant demands of caring for the person, and attend to the person’s basic self-help needs and other activities of daily living. (§ 4690.2, subd. (a)(1)-(4).) NLACRC funds and monitors respite from vendors to ensure the safety and satisfaction of consumers. (See § 4697, subd. (a)(3).)

3. While in-home respite is “nonmedical care and supervision” (§ 4690.2, subd. (a)), a properly trained in-home respite worker who is not a licensed health care professional may still perform some “incidental medical services for consumers of regional centers with stable conditions . . . .” (§ 4686, subd. (a).) But those incidental medical services for consumers “shall be limited to the following: [¶] (1) Colostomy and ileostomy: changing bags and cleaning stoma. [¶] (2) Urinary catheter: emptying and changing bags and care of catheter site. [¶] (3) Gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician’s or nurse practitioner’s orders for the routine medication of patients with stable conditions.” (*Ibid.*)

## BURDEN OF PROOF

4. NLACRC changed Claimant's long-standing "parent conversion" respite, determining that his brother could no longer be his respite caregiver. (Factual Findings 2-5.) As the party that changed the status quo, NLACRC bears the burden of proving the change was justified. (See Evid. Code, § 500; *In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.). Claimant's initial agreement to the change was too brief and tentative to shift the burden of proof to him. (See Factual Findings 5-6.) The standard of proof is proof by a preponderance of the evidence (Evid. Code, § 115), which means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## ANALYSIS

5. The Lanterman Act does not allow NLACRC to resume funding in-home respite from Claimant's brother where the respite work includes Claimant's diabetes care. In-home respite is "nonmedical care and supervision" (§ 4690.2, subd. (a)), and the Lanterman Act limits the "incidental medical services" of an in-home respite worker who is not a licensed health care professional to routine care of a colostomy, ileostomy, urinary catheter, or gastrostomy. (§ 4686, subd. (a).) Blood glucose testing and insulin injections are not among these few allowed "incidental medical services." (*Ibid.*) NLACRC therefore may not authorize in-home respite for Claimant by a layperson, including Claimant's brother, where that respite work includes Claimant's blood glucose testing and insulin injections. This is true even though Claimant's brother may test and inject Claimant at other times.

6. The Lanterman Act compels this conclusion even though the laws prohibiting the unauthorized practice of nursing do not. Under the "medical-orders exception" to those laws, a layperson may "carry out a physician's medical orders for a

patient, even orders that would otherwise fall within the definition of nursing practice, without thereby violating the rule against unauthorized practice." (*Torlakson, supra*, 57 Cal.4th at p. 585; Bus. & Prof. Code, § 2727, subd. (e).) To fall outside that exception, "one must go further by holding oneself out, explicitly or implicitly, to be a nurse in fact." (*Ibid.*) No evidence suggests that Claimant's brother ever held himself out to be a nurse in fact.

7. In *Torlakson*, the court held that the Education Code authorized trained, unlicensed school personnel to administer insulin to diabetic students with physician and parental consent, finding that the injection of insulin according to physician instructions fell within the medical-orders exception. (*Torlakson, supra*, 57 Cal.4th at p. 591.) Similarly here, the laws prohibiting the unauthorized practice of nursing do not foreclose the result that Claimant desires. But the Lanterman Act does, and requires a different result for unlicensed in-home respite workers than for the unlicensed school personnel in *Torlakson*, by expressly limiting the allowed incidental medical services of an in-home respite worker who is not a licensed health care professional. (§ 4686, subd. (a).) Claimant's diabetes care needs are not among the allowed incidental medical services. (*Ibid.*) Therefore, the order below is warranted.

## ORDER

Claimant's appeal is denied.

DATE:

---

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.