

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

E.A.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2018060430

DECISION

This matter was heard before Administrative Law Judge Timothy J. Aspinwall, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on August 7, 2018.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant, who was not present at the hearing, was represented by her mother and father.¹

Evidence was received, the record was closed, and the matter was submitted for decision on August 7, 2018.

¹ Initials are used to protect claimant's privacy.

ISSUE

May ACRC reduce funding for respite mileage from 4,000 miles per quarter to 2,000 miles per quarter?

FACTUAL FINDINGS

1. Claimant is a 13-year-old girl eligible for ACRC services based on a diagnosis of moderate cerebral palsy and severe intellectual disability. Claimant resides with her mother and father, and one younger sister in the family home in Roseville.

2. Claimant's ACRC Individual Program Plan (IPP) dated January 5, 2018, states that Objective No. 1 is that claimant will continue to live with her family with the assistance of in-home supportive services (IHSS), day care, and in-home respite care. Claimant needs assistance and reminders with activities of daily living, including dressing, bathing, and toileting. Claimant has impaired vision, and needs to have her food cut into small pieces to prevent choking on food. Claimant cannot walk independently, and is at risk of falling due to gait abnormality and seizures.

3. ACRC currently provides funding for 120 hours per quarter of in-home respite services, and respite services mileage of 4,000 miles per quarter. On May 22, 2018, ACRC sent claimant's parents a Notice of Proposed Action, proposing to reduce funding for respite mileage from 4,000 miles per quarter to 2,000 miles per quarter.

4. Claimant's parents filed a Fair Hearing Request on her behalf, dated May 30, 2018, requesting that ACRC continue to fund respite care mileage at 4,000 miles per quarter. The Fair Hearing Request states, in relevant part, as follows:

The family has not been able to find a caregiver during the week for [claimant] since 2016. UCP [United Cerebral Policy] respite agency was the only agency with staffing ability. The family is relying on the respite worker to continue work. WIC

[Welfare and Institutions Code] 4685 (b)(2) asks the agency to be flexible and creative in meeting the family needs in caring for [claimant].

5. Claimant's mother testified at hearing. She utilizes in-home respite services three to four mornings per week for approximately one hour each morning as she gets ready for work and transports her other special needs child to school. She would not be able to attend to her other child or get to work in the morning without the in-home respite services. Claimant's mother has not been able to find a day care or IHSS worker willing to provide in-home services on weekday mornings. She has, since 2014, had a posting on the electronic job board at William Jessup University and Sierra College, without positive results. She has also asked her church to help locate a provider, also without success. One obstacle that claimant's mother encountered is that the local wage for such work in Roseville is approximately \$15-\$18 per hour, which she understands to be more than ACRC will pay vendors for such work. The current respite provider travels approximately 55 miles, round trip, to claimant's home. Claimant's is conscious of the need to save mileage, but has not been able to find a provider closer to their home in Roseville.

6. Christine Franco, the ACRC Service Coordinator for claimant testified. ACRC currently funds respite services mileage of 4,000 miles per quarter. The mileage funding has gone up and down over time according to the needs of claimant. For example, in March 2018, the mileage reimbursement was increased from 3,000 to 4,000 miles per quarter because there was a death in claimant's family and additional respite care was needed. Earlier, in 2017, respite services mileage was set at 5,000 miles per quarter because claimant had undergone surgery and, again, the additional respite care was appropriate. Notwithstanding these variations, the ACRC Community Services Department has determined that respite service mileage of 2,000 miles per quarter is the standard baseline for a family living in Roseville. This determination was based on a mileage chart prepared

by UCP, which lists baseline respite services mileage for families living in different locations within the general service area. Based on the chart, it is generally anticipated that a family living in Roseville will have a respite services provider who travels 20 miles, round-trip, to provide in-home respite services, and that a respite services provider will provide an average of two hours of service per in-home visit. In this instance, claimant's family has been utilizing in-home respite services in one hour increments, which has resulted in correspondingly higher mileage reimbursements.

7. Tanya Nalley, the ACRC Client Services Manager who supervises Christine Franco testified. In-home respite services are not intended to be used as regular day care. Generic and ACRC vendored resources are available, including IHSS and day care services. Ms. Nalley understands that claimant's mother has expressed difficulty about finding generic and ACRC vendored resources, but she has never encountered a family who has not been able to find an IHSS or day care worker. In this instance, the in-home respite services provider generally provides one hour of respite services, plus one to two hours of day care services on each visit to claimant's home. The family is reimbursed \$5.50 per hour of day care services, and no mileage. ACRC compensates UCP, the provider of in-home respite services, \$26.15 per hour, and \$.545 per mile. Based on this compensation model, in-home respite services cost the family less than day care.

DISCUSSION

8. From the testimony and evidence presented at hearing, it is clear that claimant benefits from in-home respite services. It is also clear that claimant's mother has had difficulty finding an IHSS or day care provider, other than the in-home respite services provider, who also provides day care services. ACRC reasonably determined, under the circumstances set forth in the Factual Findings, that in-home respite services should not be used as a substitute for IHSS or day care services. When all of the evidence is considered in light of the applicable law cited in the Legal Conclusions below, it is reasonable and

appropriate for ACRC to reduce funding for respite mileage from 4,000 miles per quarter to 2,000 miles per quarter.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq., 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 developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. An IPP must reflect a cost-effective use of public resources. Welfare and Institutions Code section 4646, subdivision (a), states as follows:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Welfare and Institutions Code section 4685, subdivision (b), states, in relevant part, as follows:

It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

- (1) Respect and support the decision-making authority of the family.
- (2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

4. Welfare and Institutions Code section 4690.2, subdivision (a), states as follows:

(a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. "In-home respite services" means 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. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

(3) Relieve family members from the constantly demanding responsibility of caring for the client.

(4) Attend 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 members.

5. When all the evidence is considered in light of the applicable law, it was established that ACRC may reduce funding for respite mileage from 4,000 miles per quarter to 2,000 miles per quarter. Consequently, claimant's appeal must be denied.

ORDER

Claimant's appeal is DENIED.

DATED: August 15, 2018

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)