

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2018070458

OAH No. 2018110771

DECISION

These consolidated matters were heard before Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, on December 5, 2018 and January 11, 2019, in Nevada City, California.

Carly Pacheco, Deputy Director of FREED Center for Independent Living, represented claimant¹ on December 5, 2018. On December 21, 2018, Ms. Pacheco withdrew her representation of claimant. Valerie M. Logsdon, Attorney at Law, represented claimant on January 11, 2019.

Robin Black, Legal Services Manager, Alta California Regional Center (ACRC), represented ACRC.

¹ Names are not being used for claimant or claimant's mother/father to protect claimant's privacy.

Oral and documentary evidence was received at the hearing. The record was left open to allow the parties to submit written closing arguments. On January 28, 2019, ACRC's closing brief was received and marked as Exhibit 19, and claimant's closing brief was received and marked as Exhibit R. The matter was submitted for decision on January 25, 2019.

ISSUES

1. Should ACRC fund respite services in excess of 120 hours per month for claimant?
2. Should ACRC fund extra respite of 30 hours per month due to claimant's father being injured in a car accident?
3. Should ACRC fund a tailored day program of six hours per day, or other appropriate service? Until a tailored day program or other appropriate service is put in place, should ACRC fund additional respite hours of six hours per day?

FACTUAL FINDINGS

1. Claimant is 23 years old and has been diagnosed with autism. Claimant is developmentally disabled and qualifies for services from ACRC under the Lanterman Act, including respite care. Claimant currently resides with claimant's adoptive parents, who are claimant's conservators. Claimant is ambulatory and non-verbal, and communicates with body language, non-verbal gestures and hand leading. Claimant relies on claimant's family for all activities of daily living. Claimant needs hand-over-hand assistance with showering, brushing/flossing claimant's teeth, brushing claimant's hair, and washing claimant's hands. Claimant's parents control the temperature for the shower, load the sponge with soap, and tell claimant where to wash. Claimant cannot use a razor and needs assistance with dressing and tying shoes. Claimant can go to the

toilet with assistance, and has occasional bladder accidents. Claimant is on a specialized diet, known as the GAP Diet, where claimant eats fresh fruits and vegetables.

2. Claimant engages in self-injurious behavior (self-hitting on the face and head with claimant's hand) which has resulted in broken teeth. The frequency of claimant's self-injurious behavior is in dispute. Claimant wears a helmet when necessary to avoid further injury. Emotional outbursts can occur when demands are placed on claimant or when triggered by loud or specific frequency noises. Claimant does not have any safety awareness. Claimant requires constant supervision.

3. Claimant qualifies for and receives 283 hours per month of In Home Supportive Services (IHSS). Claimant's mother is the provider of claimant's care and provides all IHSS. Claimant also receives Supplemental Security Income (SSI) of approximately \$462 per month. Claimant's mother is claimant's payee.

4. The current level of ACRC-funded in-home respite hours that claimant receives is 180 hours per quarter, as a result of a mediation on August 24, 2017. The mediation agreement states:

Alta Regional Center agrees to increase the respite care hours [from 120] to 180 per quarter. The respite hours will be re-assessed at [claimant's] annual IPP² scheduled for January 2018. This will serve as an addendum to [claimant's] current IPP.

5. Claimant's 2018 IPP did not take place in January as scheduled. The planning team met over several months, on March 23, April 3, April 10, May 14, and June 22, 2018. Due to claimant's high level of care needs, the planning team discussed

² IPP stands for Individual Program Plan.

requesting ACRC funding for up to a maximum of 120 hours per quarter of in-home respite services. The planning team agreed that both in-home and out-of-home respite services would be made available in accordance with ACRC service and support guidelines for respite services, set forth in ACRC's Service Policy Manual (Manual). In an addendum to claimant's 2018 IPP, claimant's services and supports were to include ACRC review, recommendation, and referral to Applied Milestones to help claimant improve his adaptive skills.

6. Claimant's mother requested 570 hours per quarter of in-home respite services in the absence of an appropriate day program in their community. The 570 hours included the current 180 hours per quarter that claimant currently receives. ACRC disagreed with claimant's mother's request, and proposed a decrease in in-home respite hours to 120 hours per quarter. In its Notice of Proposed Action dated July 5, 2018, ACRC denied claimant's mother's request for an increase in in-home respite of 570 hours per quarter. ACRC's reason for the denial was because there was no assessed need for the additional in-home respite hours. ACRC stated:

Since 2017, [claimant's] care needs have reportedly decreased, and [claimant's] level of independence in some activities of daily living reportedly have increase ... the frequency of [claimant's] maladaptive behaviors has decreased, and [claimant's] ability to be redirected has increased. Additionally, [claimant's] health is good at this time, and [claimant's] father is home and no longer working out of town, and is therefore available to take on a share of [claimant's] care and supervision. As such, the increased respite hours granted to give you an extra break are no longer needed.

ACRC further directed claimant's mother to generic resources available to allow her to obtain an additional break from her care and supervision responsibilities. ACRC pointed out that claimant's mother could hire another individual(s) to be claimant's IHSS workers which would provide claimant's mother an added break. ACRC asserted that it was not obligated to fund additional respite on a long-term basis just because claimant's mother chose to remain the sole IHSS worker for claimant.

ACRC also suggested ABA³ -based behavioral health treatment to address claimant's maladaptive behaviors through the family's healthcare plan, and to consider vendored day program services, which claimant's mother previously declined. Her declination did not obligate ACRC to fund in-home respite hours. ACRC has recommended on multiple occasions that claimant access such treatment.

ACRC emphasized that in-home respite is designed to provide intermittent care and supervision in the absence of the regular caregiver. Respite is not designed to provide daily care and supervision in place of a caregiver's responsibility. Furthermore, respite is not designed to provide clients with care and supervision in order "to accommodate [the] caregivers' ongoing desire to have time to perform business tasks and daily household chores and duties." Claimant is also authorized to receive out-of-home respite services in a licensed residential care facility. The ACRC Service coordinator was made available to claimant's mother if she wished to explore potential out-of-home respite for claimant.

7. Claimant's mother requested a fair hearing on the Notice of Proposed Action. The fair hearing was set for August 10, 2018, but it was continued to allow ACRC and claimant to investigate new service providers that might be able to provide ABA and tailored day services to claimant.

³ ABA stands for Applied Behavioral Analysis.

8. In late August 2018, claimant's mother requested 30 hours per month of "emergency respite" due to her husband's two emergency surgeries after a car accident. In its Notice of Proposed Action dated October 12, 2018, ACRC denied claimant's request for the additional 30 hours, reasoning that if granted, claimant's respite hours would have totaled 210 hours of in-home respite. ACRC asserted that such an amount was not consistent with claimant's assessed need of 120 hours. ACRC also asserted that claimant was not in any day program, which claimant's mother reported was the reason for ACRC to provide additional respite hours. ACRC identified two behavior-based day programs, Southside Auburn Passage and REACH, which it believed met claimant's needs. However, ACRC had been unable to explore these programs with claimant's mother, as she insisted that claimant attend a day program within the Nevada County region.

9. Claimant filed another request for fair hearing to include claimant's additional request of 30 additional hours of in-home respite. Claimant's two requests for fair hearing were consolidated into the present hearing.

ACRC'S EVIDENCE

10. In accordance with ACRC's guidelines for respite services, an individual can qualify for up to 120 hours per quarter of in-home respite based upon the criteria set forth in the Manual. The number of hours authorized will be determined in the Planning Team process and cannot exceed 120 per quarter, based on a calendar year (Jan.-March; April-June; July-Sept.; Oct.-Dec.). (Manual, p. 4.) A client may qualify to receive 91 to 120 respite hours per quarter if he requires:

- 24-hour care around-the-clock by family members due to a medical problem (such as tracheostomy, continuous mechanical ventilation, or other major medical condition that requires [licensed vocational nurse] or skilled nursing care ...

- Requires total care due to physical limitation or medical needs.
- The client is exhibiting severe challenging behaviors constituting a danger to self or others.
- Parent's ability to cope with the routine demands of child care is compromised by severe medical or emotional problems.
- The client's medical care needs interfere with the sleep of the primary caregiver.

An exception may be approved if it is demonstrated that the client's care and supervision needs are such that additional respite is necessary to maintain the client in the home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the client. The exception is time limited.

(Manual, p. 5.) Examples of an "extraordinary event" include death, serious illness, or incapacitation of a caregiver, a behavioral or medical emergency, or catastrophic occurrence such as flood, earthquake or epidemic. (Ibid.)

11. In looking at whether an exception applies to exceed 120 hours per quarter, ACRC asserts that claimant presented no evidence to show that unless claimant receives additional respite, claimant is at risk for placement outside the home. Claimant's parents intend for claimant to live in an apartment downstairs from his parent's residence, when claimant is ready. ACRC asserts that this criterion for an exception was not met.

12. ACRC further asserts that claimant failed to cite any "extraordinary event" to justify funding more than 120 hours of respite. None of the examples cited in the Manual – death, serious illness, or incapacitation or claimant's caregiver(s), behavioral or medical emergency of claimant, or catastrophic events have occurred. However, ACRC did acknowledge the incapacity of claimant's father due to his car accident. ACRC has been funding 180 hours per quarter of in-home respite since August 2017, which is

significantly above the minimum 121 hours per quarter that a qualified client may receive pursuant to an exception. ACRC argues that the additional 60 hours (out of the 180 total hours already funded) is appropriate to meet the increased need due to the father's incapacity, who is one of two caregivers for claimant.

13. ACRC also asserts that claimant's parents have been provided behavioral services and supports to apply to claimant's self-injurious and aggressive behaviors. Client case notes by CBEM, LLC, (CBEM) an ACRC vendor providing crisis behavioral services for claimant, show that claimant's family was aware of appropriate techniques to use with claimant, but were unable or chose not to apply them.

CBEM attempted to provide support from March through June 2017, including recommendations that claimant's parents model calm and relaxing behavior around claimant when claimant is agitated. In their initial visit in March 2017, CBEM was able to redirect claimant. CBEM recommended claimant explore resources to communicate better, and claimant's mother responded that claimant does not use communication devices regularly. CBEM recommended the family track claimant's food intake and bowel movements to provide data to claimant's doctor to address any stomach issues. Claimant's mother reported that it would be difficult for her to do so. CBEM suggested claimant's parents contact the police if claimant presented a danger to self or others. Claimant's mother stated she would not do so. CBEM noted in April 2018 that claimant was doing very well at school and home, that claimant's behaviors decreased and became more manageable, and target behaviors almost completely disappeared. However, claimant's mother focused on continuing with CBEM's assistance in the school setting, which was not the goal of ACRC funding its services.

14. Claimant's former respite workers credibly testified at hearing. They collectively asserted that claimant did not exhibit extreme behaviors, nor did claimant require extraordinary care. They were asked to complete household and personal

business tasks for or alongside claimant's mother during respite shifts. Jana Cassell and Sandra Moller testified that they spent a lot of time listening to claimant's mother share her own personal difficulties and complaints, rather than focusing on claimant.

Claimant's mother reported to Ms. Cassell that she spent her time caring for claimant, which was the reason why she was unable to address all of her financial problems. Ms. Cassell reported feeling as though she was providing services and supports to claimant's mother rather than claimant.

Ms. Moller observed claimant act as if claimant was going to grab claimant's mother's hair, but did not do so. Another time, claimant attempted to do so when claimant's mother attempted to restrain claimant to put claimant on a "time-out," but it was not observed to be a regular or frequent occurrence. Respite worker Michael May, in his sworn declaration, stated that he was a respite worker for 10 months. Mr. May was uncomfortable observing claimant's parents arguing, and claimant's mother confiding in him about personal matters. Claimant's mother occasionally asked Mr. May to assist her with in-home projects, "particularly her loft-style bottom floor of their family home. Mr. May did not feel that respite services should be used to assist with construction-related projects. Mr. May stated, "in light of [claimant's mother's] frequent presence around me, coupled with her and [claimant's father's] arguments, my services did not appear wholly needed."

15. Applied Milestones is an Adaptive Skills Training Program and ACRC vendor. In its report for claimant dated December 5, 2018, Applied Milestones noted that "per direct observation and direct interaction with [claimant] no SIB⁴ was observed by Applied Milestones' staff, and no aggressive or other clinically significant behaviors related to safety were observed or documented." Applied Milestones did note, however,

⁴ SIB stands for Self-Injurious Behavior.

a single instance of indirect sexual exposure that occurred during the first assessment meeting where claimant grabbed claimant's genitals in claimant's pants. Applied Milestones determined claimant's adaptive functioning to be in the low to moderately low range, and with minor problem behaviors in the intermediate range. The program goals set for claimant included toilet training, reducing claimant's need for prompts for self-help activities, choosing activities or tasks from a menu and increasing nonverbal or gestural communication exchanges, and completing cooperative activities with others for 10 minutes. The report did not note any goals related to addressing aggressive or self-injurious behaviors, or identify any that needed to be addressed.

16. Jessica Markov, ACRC Client Services Manager, testified on behalf of ACRC. She previously worked as a Services Coordinator and Behavioral Analyst. Ms. Markov was on the IPP Planning Team for claimant. Ms. Markov testified that there were multiple IPP meetings in claimant's case, where the team had limited time to conduct a full assessment of claimant's needs, typically a full day of discussion. Ms. Markov addressed the issue of in-home respite hours for claimant. Respite is designed to provide a care provider with a break from their duties caring for the child in their home. In addition to respite, ACRC looks to other resources that might be available. The ultimate goal is to provide support for the client in order to assist them with daily needs and social interactions.

Respite providers assist with adaptive living skills, social interactions, play activities, daily leisure activities, preparing snacks or mealtime, and providing daily needs in the absence of the care provider. In providing respite, ACRC looks at the assessed needs of the client. Respite hours are approved up to 120 hours per quarter. ACRC looks at the client's living supports, medical needs, and any other resources that the client can access to determine the number of hours appropriate for the client and the family.

Previously, there was a legal cap on the number of respite hours that could be provided. Now, ACRC has a policy of 120 maximum respite hours per quarter.

In addition to in-home respite hours that the family now receives, ACRC can also fund out-of-home respite. This also provides the family with a break from caregiving. Out-of-home respite can provide 24-hour supervision at a licensed residential facility. If the family were to go out of town or on vacation, out-of-home respite could provide that support.

ACRC can also fund day programs or adult day services. Such services are available to a client transitioning from an education program. It is intended to provide ongoing support for a client within a day program setting. Day programs can work on social goals, daily self-help goals, provide volunteer opportunities, and address a client's behavior. Staff ratios vary, but if a client needs a one-to-one support, it can be done. Transportation to and from the facility would be considered.

Tailored day services can also be funded by ACRC. Such services are for clients interested in employment opportunities as well as those pursuing a secondary education. This is a different type of service than a day program.

17. Ms. Markov testified that the planning team discussed volunteer opportunities for claimant, but did not discuss any goals related to claimant pursuing a secondary education or competitive employment. She also testified about Applied Milestone's Assessment Report dated December 5, 2018. She noted that Applied Milestones recommended that claimant receive 20 hours per month in adaptive skills training focused on increasing parents' training skills so they can teach claimant new skills and adaptive behaviors. The report was not available to ACRC for its review until the hearing. Having reviewed the report, Ms. Markov testified that Applied Milestone's findings do not change ACRC's position on providing extra respite hours for claimant.

18. Rebecca Myers, ACRC Service Coordinator, also testified on behalf of ACRC. She testified that claimant's mother was not using respite hours the way they were designed to be used, in that respite hours are not intended to provide daily care for claimant. Respite hours provide a break for the parent to "step away to get rejuvenated and rested," so that the parent can come back home to care for the client. On the other hand, personal attendant services are provided to the client to help meet claimant's personal goals. ACRC can also fund a personal attendant in the parent's absence, should the parent want to step out of the home. However, Ms. Myers asserted that a personal attendant request is not an issue in this hearing.

CLAIMANT'S EVIDENCE

19. Carly Pacheco testified on behalf of claimant. She has acted as claimant's advocate, and represented claimant on the first day of hearing. Ms. Pacheco conceded that she is not a developmental psychologist. Ms. Pacheco has personally observed claimant's challenges. She has worked in claimant's home, and has observed claimant's challenges in the community. She believes that claimant requires 24-hour supervision, as claimant "is at the extreme end of [claimant's] level of needs." Claimant has "very significant communication skills, self-direction skills, and is definitely in the top five percent of people with significant disabilities."

Ms. Pacheco conceded that she has not witnessed claimant exhibiting self-injurious behavior. Her assertion that claimant is self-injurious is not based on firsthand knowledge, but rather reports by claimant's parents, and reports that she has reviewed. She asserted that claimant's aggressive behaviors appear cyclical, and are triggered when claimant is denied access to preferred items or activities, inconsistent routines, or when claimant is tired, hungry, hears loud noises, or receives unwanted physical touch from others. Ms. Pacheco identified the school district's Functional Behavior Assessment

Report dated April 19, 2018 as a report she relied on in finding that claimant exhibits self-injurious and aggressive behaviors.

20. Claimant's mother also testified on behalf of claimant. She asserted that claimant can never be unsupervised, and that claimant is unpredictable. Claimant puts everything in claimant's mouth and drinks anything put in front of him. Claimant eats claimant's clothes, feces, dirt, and plants. When claimant becomes aggressive, claimant is put on a "timeout," where claimant has to sit in place. Claimant's mother will put a helmet on claimant during timeout in case claimant bangs claimant's head. Claimant's mother claims that she and her husband have been injured by claimant. She asserted that claimant's father has been scratched "very badly," and that claimant has torn claimant's mother's hair off, and ripped her glasses from her face. She asserted that the family has continually asked the school district (when claimant was attending school) and ACRC for training for addressing claimant's aggressive behavior. Claimant's mother asserted that "there is no training for [claimant] when [claimant] gets that bad."

21. Claimant's mother then admitted that she has a "binder full of trainings" she obtained when she and her husband first adopted claimant. Those foster care trainings helped her "learn how to deal with these types of people and regular children." Claimant's mother did not explain what she learned in those trainings to address aggressive and self-injurious behavior by claimant.

22. Claimant's mother described claimant as someone who elopes from the home, throws and steals food, wakes and walks around the house at night, occasionally wets the bed, cannot wash or groom himself, cannot cook at all, cannot communicate when claimant is sick or hurt, and does not use claimant's voice box to communicate. When claimant was in school, claimant was more anxious. Now that claimant is not in school, claimant is "quiet and laid back." However, claimant's mother described claimant being home as a "strain." She has a "business, a home, a husband, and autistic child, and

rentals." Claimant's mother is clearly overwhelmed by her responsibilities. She stated, "I'm 71 and in the fast lane."

23. Claimant's mother has rejected the adult day program options provided to claimant. She is not willing to try any of the programs for claimant. She did not believe the REACH program was appropriate for claimant because claimant cannot sit still, and has no attention span. REACH has rooms where participants do projects. She asserted that claimant always wants to move, and would not participate. She observed REACH to have 45 severely disabled adults that are "touchy feely," which claimant would not like, and could exhibit aggressive or self-injurious behavior. If there were any loud noises during the program, claimant is likely to self-injure. In addition, REACH is 90 minutes each way from their home. She believes the long drive, and the low fencing around the facility for claimant to jump over, would be inappropriate for claimant. She also asserted that REACH received bad reviews on the Internet.

24. Claimant's mother also dismissed Southside Passages as an appropriate adult day program. It is located 45 minutes away from their home. Claimant's mother asserted that the employees had no training with autism. The reviews of the facility were poor. Claimant's mother asserted that Southside Passages is inappropriate because claimant "has such sensory needs and needs to be watched 24-7."

25. Claimant's mother suggested that In Alliance would be appropriate because "they would come to the house and work with him and us. [Claimant] would grow as a person." However, claimant's mother learned at the March IPP meeting that it would be two to three months before In Alliance would come to their area. They were placed on a waiting list. Claimant's mother has since learned that In Alliance will not be coming to the Grass/Penn Valley area.

26. Claimant's mother prefers a tailored day program for claimant. Her understanding of such a program is that it is tailored for whatever claimant needs,

where one individual takes claimant into the community to do preferred activities. She looked up tailored day programs on the Internet, and learned about this option from ACRC at the IPP meetings.

27. Claimant's mother is aware that she could give some of her IHSS hours to another worker to provide her a break. However, she believes that she is the best person to provide IHSS services to claimant, suggesting that she will not consider the option to have another IHSS worker substitute in her place. She believes she knows claimant best, and is "the only one that really knows [claimant to] provide protective services for [claimant]." If she cannot read to claimant, no one else can. If an IHSS worker were to be in her home during the night to provide her some rest, she asserted that she would not be able to go to sleep because she does not trust a stranger to be in her home at night.

28. Claimant's mother acknowledged that the family used respite services inappropriately in the past, but this has changed since they have learned that the purpose of respite is to provide the parents a break from their caregiving duties. Claimant's mother had difficulties with some respite workers. For example, she blamed respite worker Ms. Cassell for stealing her watch, when, in fact, the watch was not stolen and was found by claimant's father. In another instance, claimant's mother blamed respite worker Ms. Moller for missing work all of the time. However, claimant's mother's complaints about the respite workers is not relevant to the assessed need for claimant's respite services.

29. Claimant's father was involved in a serious car accident in the summer of 2018. Claimant's mother explained that her husband hit a tree while driving his van. He shattered his femur and "messed up his knee and hip on the right side." He had two emergency surgeries. Claimant's mother applied for extra respite due to her husband's incapacity. Her husband is now home and tries to help with claimant's care.

DISCUSSION

Additional Respite Hours

30. Claimant is due for another IPP in January 2019. Claimant requests that this decision on services be part of the IPP for 2019 to ensure that the parties are not back in hearing for the same issues in two months. ACRC did not object to or address claimant's request.

31. ACRC has been providing a total of 180 hours per quarter of respite services to claimant's family since August 2017, based on a mediation agreement, rather than a needs assessment determined by claimant's planning team or ACRC. The mediation provided that claimant's need for in-home respite would be reassessed at the January 2018 IPP. A January 2018 IPP did not take place, and was delayed and held over several months, from March through June 2018. The IPP proposed reducing claimant's respite hours to 120 hours in accordance with the Manual. Claimant filed a fair hearing request on the reduction in respite hours. After claimant's father's car accident, claimant filed another fair hearing request for additional respite hours, and asked for a tailored day program. ACRC denied the request, and claimant filed another fair hearing request. The matters were consolidated into the present hearing.

32. In order to receive more than 120 hours per quarter of in-home respite, claimant must demonstrate that claimant's care and supervision needs are such that additional respite is necessary to maintain claimant in the home, or there is an extraordinary event that impacts claimant's parents' ability to meet claimant's care and supervision needs. Claimant's mother asserted that claimant is aggressive, self-injurious, and must be watched 24 hours a day. Ms. Pacheco testified that claimant requires 24-hour supervision, although she has not witnessed claimant exhibiting self-injurious behavior. Claimant's former respite workers credibly testified that they did not observe

aggressive or self-injurious behaviors. All of the respite workers were asked to complete household and business tasks for claimant's mother during their respite shifts.

33. Moreover, the evidence did not establish that claimant is at risk for placement outside of his home. Claimant's mother is insistent on claimant remaining in the family home, and there are future plans for claimant to reside downstairs in claimant's own apartment. Lastly, claimant's mother asserts that her husband's incapacity is an extraordinary event warranting additional respite hours. However, there was no evidence to show the extent of claimant's father's incapacity. The father is present in the home, and assists claimant as he is able. Claimant has been receiving 180 per quarter in-home respite while claimant's father has been recuperating. The extra 60 hours were reasonable to accommodate the extraordinary event of the father's injury. Claimant has not presented any evidence to show that the father's incapacity is permanent.

34. Claimant has not identified any exceptional service needs or catastrophic circumstances that warrant an increase above the assessed 120-hour per quarter level at this time. For these reasons, claimant's appeal for increased respite services at the 270⁵ hour per quarter level should be denied, as well as claimant's request for 30 hours per quarter of extra respite due to the father's incapacity. ACRC has demonstrated that its proposed decision in reducing claimant's in-home respite hours to 120 hours per quarter was correct. ACRC's decision was based upon the assessment of needs criteria set forth in the Manual.

⁵ Claimant initially requested 570 hours per quarter of in-home respite. It is unclear how claimant arrived at this number, or the 270 hours per quarter currently being requested. If requested in lieu of an adult day program, respite is not to be used as a "filler" in lieu of other services.

Tailored Day Program

35. Claimant requests a 1:1 tailored day program despite a lack of evidence to support it, and has rejected the adult day program options provided to claimant by ACRC, primarily because the programs are too far from where claimant lives, they do not provide the proper environment for claimant's sensitivities or proclivities, or they received bad reviews on the Internet. However, claimant was open to attend In Alliance Adult Day Program, but it is not located where claimant resides. ACRC asserted that despite the long distance of some of the offered adult day programs, those programs could offer support and training to assist claimant in being safely transported to and from the program. Such training is a common component of day program services. Claimant's mother has shown an unwillingness and has not attempted to determine if the program would work for claimant. Her choice should not obligate ACRC to fund alternative services in lieu of the rejected services.

36. Tailored day programs provide claimant opportunities to develop or maintain employment or volunteer work, or further his post-secondary education. (Welf. & Inst. Code, § 4688.21, subd. (b)(1).) Claimant's mother suggests that claimant needs 24-hour care and supervision, and did not express a desire for claimant to explore future employment, volunteer work, or to further his education. Claimant's 2018 IPP focused on service and supports related to adaptive services and self-care/activities of daily living supports, rather than employment or volunteer work, or post-secondary education. Claimant is encouraged to try the adult day programs offered by ACRC. If claimant tries and determines that the adult day programs are not suitable, then the planning team can consider other viable options for claimant.

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. The Lanterman Act gives regional centers, such as ACRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

4. Burden of Proof: A service agency seeking to change a service contained in a consumer's IPP typically has the burden of demonstrating that its proposed decision is correct.

5. In this matter, ACRC has determined that respite services above 120 hours per quarter are no longer authorized and that claimant did not otherwise qualify for an "extraordinary event" exception. ACRC has met its burden. It has relied upon a recent assessment of claimant's respite needs, and actually increased claimant's base level quarterly IPP respite hours from 120 to 180 hours. Claimant has not identified any exceptional service needs or catastrophic circumstances that warrant an increase proposed 120-hour per quarter level at this time.

6. ACRC has further explained how a tailored day program is not necessary or appropriate for claimant. Claimant's rejection of the adult day programs offered by

ACRC does not automatically establish that ACRC must fund tailored day services as claimant has requested.

ORDER

1. The appeal of claimant is denied with regard to in-home respite services in excess of 120 hours per quarter.

2. The appeal of claimant is denied with regard to extra in-home respite services in the amount of 30 hours per quarter due to claimant's father being injured in a car accident.

3. The appeal of claimant is denied with regard to a tailored day program of six hours per day. Claimant's request for additional respite hours of six hours per day until a tailored day program or other appropriate service is put in place is denied.

DATED: February 12, 2019

DANETTE C. BROWN

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).)