BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2018070523

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on September 24, 2018.

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

Claimant's mother represented claimant, who was present.

The record was closed and the matter submitted on September 24, 2018.

ISSUE

Should IRC increase the respite hours claimant receives from 40 hours per month to 94 hours per month?

FACTUAL FINDINGS

CLAIMANT'S BACKGROUND

1. Claimant is a 22-year-old girl who qualifies for regional center services based on a diagnosis of epilepsy and profound intellectual disability. Claimant requires continuous care.

2. On May 17, 2018, IRC sent claimant a Notice of Proposed Action denying claimant's request to increase her respite hours to 94 hours per month.[1] The reason IRC gave for not increasing claimant's respite hours beyond 40 hours per month was because claimant was approved for 120 hours per month of nursing services, 283 hours of In Home Supportive Services (IHSS), and IRC could provide day program so claimant's mother could have more free time.

3. On June 28, 2018, claimant's mother filed a fair hearing request contesting IRC's determination that claimant should not receive an increase in respite hours. In the fair hearing request, claimant's mother wrote that claimant had recently lost 172 hours of nursing care due to her age, and thus the additional respite was needed.

4. IRC provided claimant's most recent Individualized Program Plan (IPP), an IPP addendum, claimant's client development evaluation report (CDER), and a 2011 OAH decision. None of the documents provided show any significant change in claimant's needs to warrant additional respite hours.

5. Melinda Rivas is claimant's consumer services coordinator. She testified at the hearing. Ms. Rivas testified that claimant's care is handled by a Licensed Vocational

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[1] Claimant was unaware that, at that time, IRC had already increased her respite hours from 30 hours per month to 40 hours per month. As of the date of this hearing, claimant was made aware of the increase.

Nurse (LVN) and her family. Over the past year, claimant's health and needs have not changed. Claimant has not been hospitalized or needed any emergency care. Her health is stable. Claimant receives 40 hours per month of respite care, 120 hours per month of LVN hours funded by Medi-Cal, and 283 hours of IHSS (grandmother is provider). Claimant's father is the payee of claimant's social security check. Ms. Rivas said that in June, IRC offered adaptive skills training to claimant but they were never able to get anything set up with claimant's mother. IRC also offered a day program for claimant to attend, but claimant's mother was "not interested." IRC told claimant's mother to justify additional respite hours they needed medical documentation, but to date, no medical documentation showing a change in claimant's level of care has been provided.

6. Anthony Duenaz is a Program Manager at IRC and testified at the hearing. Mr. Duenaz concurred with Ms. Rivas's conclusion. Mr. Duenaz said that in order to make a determination, IRC considers all documentation including the IPP, CDER, and medication records. Nothing showed a change in claimant's diagnosis or a change in claimant's level of care to warrant the additional respite hours. Mr. Duenaz concluded that the 40 hours per month of respite care is appropriate for claimant's needs. Mr. Duenaz further explained that when the request was originally presented to IRC, claimant's mother said she needed the additional respite hours due to a loss of 172 hours in nursing care. Mr. Duenaz explained that, prior to the age of 21, claimant was receiving 172 hours of nursing care through MediCal, but once she turned 21, she no longer qualified for those 172 hours. However, claimant began receiving 120 hours per month of nursing services from Medi-Cal under a different program for people over 21 years of age. Regardless, IRC does not look at loss of services when determining whether to increase respite hours. They consider whether needs have changed. In this case, no evidence showed a change in claimant's needs that warranted granting the request.

7. Claimant's mother testified that she did not request additional respite hours because of the loss in nursing hours; rather, she requested the hours because of claimant's needs. However, she stated that claimant's care level has not changed, and that her needs are "the same." Claimant's mother went on to explain that claimant needs 24-hour care and when she requested the additional respite, the best way she could explain it to IRC was that she needed it due to the loss in services. Claimant's mother said claimant plays with her feces, has a feeding tube, and has ambulatory issues. Claimant has seizures and needs assistance with all her self-care. This is the reason she is requesting an additional 54 hours per month of respite. Claimant's mother also testified that she never told IRC she did not want adaptive skills training or other services, but at the time those services were offered, claimant had just lost her milk vendor and there were also other personal issues concerning claimant's self-care so she was busy addressing those issues.

8. Claimant's mother provided a letter from claimant's doctor dated September 24, 2018, along with a home health certification and plan of care. Claimant's doctor wrote that claimant's condition has not "changed or improved" since claimant was last examined on August 23, 2018.

LEGAL CONCLUSIONS

BURDEN 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 Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) 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.

3. 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.

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

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. 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.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) 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 IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. 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.)

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage. As the family is eligible for IHSS, but has not chosen to pursue it, IRC cannot fund the requested services.

EVALUATION

12. Claimant had the burden of demonstrating the need for the requested service or support, in this case, an increase in respite hours from 40 per month to 94 hours per month. Claimant did not meet that burden. An increase in respite hours would only be authorized if there was a significant change in the level of care claimant required. The documentary evidence established that claimant's needs have not changed. Even claimant's mother testified that there has been no change in claimant's level of care. Claimant's mother's difficult situation is understandable. Nonetheless, a preponderance of the evidence does not support the request for an increase in respite hours. To that end, the Lanterman Act requires denial of claimant's appeal.

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ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund an increase in respite hours from 40 hours per month to 94 hours per month is denied.

DATED: October 4, 2018

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KIMBERLY J. BELVEDERE

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.