

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2018080778

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 2, 2018.

Claimant's mother represented claimant.

Keri Neal, Consumer Services Representative, Fair Hearings & Legal Affairs, represented Inland Regional Center (IRC).

The matter was submitted on October 2, 2018.

ISSUE

Is IRC required to increase monthly respite hours for claimant from 48 hours to 120 hours?

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Claimant is a 14-year-old girl with Down's Syndrome who qualifies for regional center services under the Intellectual Disability category. She is in the 9th grade

and attends high school six hours a day in a special day classroom. Claimant receives Supplemental Security Income (SSI) and 84 hours per month of In-Home Supportive Services (IHSS) with her mother as her provider. Through IRC claimant receives 48 hours monthly of preferred provider respite. Claimant lives at home with her mother, her mother's husband, whom she married August 2018, claimant's 10-year old sister and her baby sister.

2. Claimant's mother is seeking an increase in respite hours from 48 to 120 hours per month. IRC temporarily increased claimant's respite care, per claimant's Individual Program Plan (IPP), for three months from 48 to 60 hours per month through July 1, 2018, because claimant had tonsil surgery on June 15, 2018. Claimant's doctor, in a letter dated May 22, 2018, wrote that claimant required a two-week recovery period from this outpatient surgery where she was not able to attend day care.

#### CLAIMANT'S AUGUST 6, 2018 IPP AND HEARING REQUEST

3. In claimant's August 6, 2018, IPP, claimant is described as requiring help with medications she takes for asthma and she requires assistance with self-care including toileting and hygiene. She is able to dress herself with help. The IPP, further, identifies that claimant has behavioral outbursts which can last five minutes, claimant has tried to turn on the stove to cook and she destroyed her mother's iPad and phones. She has these outbursts once a week.

The IPP describes claimant as very curious and she requires "constant supervision in the community." According to the IPP she does not appear to understand the danger of oncoming cars, strangers or dangers in the home, "and therefore requires constant adult supervision in public."

In the IPP claimant's mother asked for an increase in respite hours to 120 hours as a new service. In a Notice of Proposed Action dated August 8, 2018, IRC denied

claimant's request, and in a fair hearing request claimant filed August 17, 2018, claimant asked for "resolution of hours. Inland Regional did not do an offer of faith."

#### CLAIMANT'S MOTHER'S TESTIMONY AND EVIDENCE

4. Claimant's mother submitted a statement she prepared and submitted as her testimony in the record. As she wrote in this statement, she is seeking four hours per day of respite so that she can go to medical appointments due to worries about her own health. She has a 10-year old daughter and a baby who also needs medical assistance. She prefers to leave claimant with someone she trusts so this person can take of her while claimant's mother may come and go to her medical appointments and not worry. She stated that claimant has asthma, migraines, engages in bad behavior, hits herself, harms objects and has burned herself when she makes soup.

Regarding claimant's mother's medical problems claimant's mother submitted a letter from her doctor that she has two medical conditions, hypothyroidism and a goiter, and Medi-Cal has approved her for treatment of both conditions. She did not present evidence, however, regarding the frequency of her medical appointments. Claimant's mother stated that she does not work outside of the home and since August 2018 she has worked as claimant's IHSS provider.<sup>1</sup> She said that she was temporarily doing this until her friend can find someone who can take care of her friend's parents. She said her son provides respite care for claimant as a preferred provider. When asked if her

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<sup>1</sup> Leigh Ann Pierce, IRC Program Manager, testified that IHSS does not require a single provider to provide IHSS services and claimant's mother may split these hours. Thus, claimant's mother may use a part of these hours, in effect, as respite hours and as such IHSS is a generic resource available to claimant.

husband could serve as a natural support, her answer was not clear but did not suggest that he was not available as a natural support for claimant.

#### IRC'S POLICY AND PROCEDURE REGARDING RESPITE CARE

5. IRC has established a Purchase of Service Policy (POS) for the purchase of respite care. In its POS Manual, IRC recites its policy to purchase services and supports that allow persons with disabilities to achieve the greatest degree of self-sufficiency and personal choice consistent with the consumer's IPP. Within the context of the IPP, IRC will give the greatest preference to those services and supports that allow minors with disabilities to live with their families. IRC will authorize the purchase of services and supports consistent with standards under applicable Welfare and Institutions Code sections. Where individual circumstances exist that may require authorization to purchase services not consistent with IRC's standards, exceptions may be granted where the Interdisciplinary Team identifies and documents in the consumer's IPP that circumstances exist to warrant an exception and the Compliance Review Team will review these service purchases before services are provided.

#### IRC'S ARGUMENTS

6. IRC argued that claimant's request to increase respite hours should be denied because IHSS is available as a generic resource and there are natural supports that are available to claimant. IRC further argued that claimant's mother did not present enough evidence of her information regarding her medical needs and/or appointments to justify increasing the respite hours, so she can make these appointments.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF AND STANDARD OF PROOF

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) Claimant has the burden to show that she is entitled to the respite hours she seeks.

2. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs, or is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### THE LANTERMAN ACT

3. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature declared that the State of California accepts a responsibility for persons with developmental disabilities and an obligation to them that it must discharge. The Legislature declared that an array of services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

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

5. Welfare and Institutions Code section 4512, subdivision (b), lists examples of the kinds of services and supports that may be funded. The determination of which services and supports are necessary for each consumer shall be made through the IPP process, a collaborative process involving consumer and service agency representatives.

6. The regional center must 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.)

### RESPITE SERVICES

7. Respite under the Lanterman Act is defined as a service intended "to provide intermittent or regularly scheduled temporary relief from the care of a developmentally disabled family member." (Welf. & Inst. Code, § 4690.2, subd. (a).)

8. Respite services are to be purchased by a regional center based upon the individual needs of a given consumer and his or her family. In making its determination of the quantum of respite services for a particular family, a regional center should consider: assistance to family members in maintaining the client at home; provision for appropriate care and supervision to ensure the client's safety in the absence of family members; relief of family members from the constantly demanding responsibilities of caring for a client; and, attendance to the client's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines that would ordinarily be performed by the family member. (Welf. & Inst. Code, § 4690.2, subd. (a).)

9. Regional centers are required to provide services in a cost-effective manner (Welf. & Inst. Code, § 4646, subdivision (a)) and may purchase respite hours only when the care and supervision needs of a consumer exceed that of an individual of the same age without a developmental disability. (Welf. & Inst. Code, § 4686.5, subd. (a)(1).)

## CAUSE DOES NOT EXIST TO GRANT CLAIMANT'S APPEAL

10. Claimant did not prove that she is entitled to receive additional hours of respite care per month under Welfare and Institutions Code section 4690.2, subdivision (a).

This decision is reached for the following reasons consistent with the factors under Welfare and Institutions Code section 4690.2, subdivision (a): Although claimant has needs in excess of an individual of the same age without a developmental disability in order to ensure her safety in the home, claimant attends school six hours a day, and claimant has natural supports in place, including claimant's brother and her mother's husband. Claimant's mother, further, did not provide evidence that she requires respite hours in order to make her own medical appointments. Thus, based on this record, the 48 hours of respite care a month claimant is receiving is sufficient to provide claimant's mother with temporary relief from claimant's care.

Accordingly, claimant's appeal for more respite hours is denied at this time.

## ORDER

Claimant's appeal of the regional center's decision not to increase claimant's respite services is denied.

Dated: October 10, 2018

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ABRAHAM M. LEVY

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 the State of California.**