

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2018120677

DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on April 15, 2019, in Los Angeles.

Claimant was represented by his mother (Mother).¹

Karmell Walker, Fair Hearings Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received, and argument was heard. A Spanish language interpreter translated the proceedings. The record was closed and the matter was submitted on April 15, 2019.

ISSUE

Whether Service Agency's decision to deny Claimant's request for an increase in respite services from 40 hours per month to 100 hours per month was appropriate.

¹ Claimant and his family members are identified by titles to protect their privacy.

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FACTUAL FINDINGS

1. Claimant is a fifteen-year old boy. He is eligible for regional center services based on his diagnosis of Autism Spectrum Disorder. Claimant requested that his respite hours be increased from 40 hours per month to 100 hours per month. Service Agency denied Claimant's request. Claimant appealed the denial and this hearing ensued.

2. Claimant is a tenth grade student at a public high school where he receives special education services, including specialized academic instruction, behavior intervention services, language and speech services, adaptive physical education, occupational therapy, and intensive individual services as a student with autism. Claimant has a one to one aide for the entire school day.

3. Claimant lives with Mother and his 18-year-old sister, who struggles with learning disabilities, but is not a Service Agency consumer. Claimant's parents were recently separated. Claimant's father visits him daily for approximately 30 minutes. Claimant's father does not have permanent housing and is not able to cope with Claimant's intensive needs for any substantial period of time. Mother credibly testified that her dedication to Claimant's needs took a toll on her marriage and her husband left the family home as a result.

4. Claimant is 63 inches tall and weighs 183 pounds. Claimant's outbursts, rage, and violent behaviors have been documented by the school and his Applied Behavior Analysis (ABA) therapist. Claimant has attacked other students, an ABA therapist, a school aide, and his mother. Claimant has limited verbal abilities and is easily frustrated. Claimant's behaviors and his size make it difficult for Mother or any caregiver to supervise him alone. His school has implemented a behavior intervention plan and Mother continues to work with his ABA therapist in home, community, and clinic settings. Mother is a petite woman and Claimant's behaviors and size make it difficult

for her to block or otherwise control his tantrums alone. Claimant requires supervision and assistance in all areas of daily living tasks.

5. Claimant currently has 40 hours per month of in-home respite pursuant to a fair hearing decision in 2015 in OAH case number 2015090515² based upon Mother's health. According to the decision, Mother was diagnosed with and is undergoing treatment for a blood cancer. The disease is lifelong, requires daily medication, and regular monitoring and testing by an oncologist. Claimant requests that the respite be increased from 40 hours per month to 100 hours per month based upon Claimant's intensive needs and the lack of natural supports since his father is no longer residing in the home. Mother's health also remains a concern.

6. Claimant receives 262.5 hours of In-Home Support Services (IHSS) per month. Mother is the provider. Claimant receives 3 hours per day of ABA Services, five days per week, in the home, community and a clinic, paid by Medi-Cal. Claimant also receives 4 hours per day (24 hours per week) of specialized supervision/personal assistant time paid by SCLARC to assist with community integration and activities in the home funded by the Service Agency. Additional supervision hours are provided during the summer and school breaks.

7. Claimant's most recent Individual Program Plan (IPP) is dated February 14, 2019. The IPP contains nine desired outcomes. Outcomes 3, 7, 8 and 9 are relevant here:

[3] The Circle of Support would like for [Claimant] to continue to increase his independence with his daily personal care activities reducing the amount of hands on support needed daily 7 days per week.

² Official notice is taken of the decision in OAH case number 2015090515.

[7] Circle of Support would like for [Claimant] to participate in community outings (personal errands, recreational activities) at least once a week in order to continue to develop his community and social skills.

[8] [Claimant] will continue to receive 4 hours per day (Monday through Saturday) of Specialized Supervision services to encourage his independence out in the community and at home and prevent safety concerns due to his behaviors.

[9] The Circle of Support would like for [Claimant] to continue to reside with his family, which provides him with care, love, and support in the least restrictive living environment.

8. Service Agency uses a "Respite Authorization Worksheet" (worksheet) as a rubric for analysis of respite need for its consumers. (Exhibit 8.) The worksheet lists five categories of need: medical, behavior, self-care, caregiver condition, and family stress. Across the top of the worksheet are Levels A to E representing increasing levels of respite need with Level E (over 46 hours) as the most severe. Currently, Claimant receives respite at Level D which is "up to 46 hours per month." To advance to the next level the criterion of three of five categories must be met.

9. Claimant meets the criteria of Level E based upon his attacks on his mother and others as documented in the behavior assessments conducted by the ABA service provider and the school district; self-care based upon his weight which is substantially over 80 pounds and his self-care and independent living deficits; and the health of Mother, his caregiver. Claimant also meets a fourth criteria based upon family stress. Claimant's parents are now separated due in part to the stress of his care. Claimant is dependent upon his mother, his sister, and paid supports.

10. Accordingly, Claimant's respite need, per the worksheet, is now at level E (above 46 hours). However, Mother did not establish by a preponderance of evidence that 100 hours of respite per month were warranted. As Service Agency asserts, Mother

may make adjustments to her work schedule as the IHSS provider and hire someone to provide some of the hours to Claimant, thereby providing her with additional time for rest. Because Claimant is difficult to handle, and it has been difficult for Mother to find an appropriate person to care for Claimant, adjustment to Mother's work schedule however is more of a long term goal than an answer to the immediate problem faced by Claimant. It is therefore reasonable to provide an additional 20 hours per month of respite care, a 50 percent increase, for a total of 60 hours per month. Based upon the evidence provided, the additional 20 hours and the supports in place will provide adequate respite to address the immediate stress that Claimant's family faces.

11. Several of Mother's friends who also are parents of consumers credibly testified on her behalf regarding their observations. Their testimony confirmed that Claimant's mother was very tired, stressed and constantly attending to his needs.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Finding 1.)

2. Where a change in the status quo is sought, the party seeking the change has the burden of proving, by a preponderance of the evidence, that a change is necessary. (Evid. Code, §§ 115 and 500.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act)

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

requires otherwise. (Evid. Code, § 115.) In this case, Claimant is seeking to change the status quo by requesting an increase in his in-home respite care from 40 hours to 100 hours per month. As such, Claimant has the burden to prove by a preponderance of the evidence that this change is necessary.

3. Under the Lanterman Act, regional centers are established as “fixed points of contact” to enable the state to carry out its duties to developmentally disabled persons and to allow those persons access to the services and supports best suited to their individual needs throughout their lifetimes. (§ 4620, subd. (a).) The California Department of Developmental Services (Department) is responsible for monitoring regional centers. Each regional center operates independently, has their own governing board, and enters into a separate contract with the Department. (§§ 4629, 4640, 4622.5.)

4. As part of its responsibility to monitor regional centers, the Department collects and reviews printed materials used by the regional centers, such as “purchase of service policies and other policies and guidelines utilized by regional centers when determining the services needs of a consumer,” and takes “appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of [the Lanterman Act] or any regulation adopted thereunder.” (§ 4634, subd. (d).)

5. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer’s IPP. (§ 4646, subd. (a).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The

planning process for an IPP includes gathering information and conducting assessments. (§ 4646.5, subd. (a)(1).)

6. Respite is a service that may be included in a consumer's IPP. (§ 4512, subd. (b).) In-home respite services are "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 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. (§ 4690.2, subds. (a)(1)-(4).)

7. When purchasing services and supports for a consumer, a regional center shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the [Department] pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subds. (a)(1)-(4).)

8. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

9. In this case, Claimant established by a preponderance of the evidence that the Service Agency's decision to deny his request for an increase in respite hours was improper based upon its own respite worksheet. However, Claimant did not establish that his respite hours must be increased to 100 hours per month.

10. The purpose of respite is to relieve Mother from the constantly demanding responsibility of caring for Claimant. Here, Mother is paid to provide 262.5 IHSS hours per month. At Mother's option, she may hire someone else to provide some of the IHSS hours, thereby providing her with additional relief. Currently, Claimant's family is in crisis based upon the father's departure from their home, Claimant's behavior issues, and

Mother's illness. These are extraordinary circumstances and require additional support on a short-term basis. Based on the foregoing, Service Agency is required to fund 60 hours per month of respite services, which is a 50 percent increase in respite, until otherwise assessed. Service Agency may reassess the need for respite six months from the effective date of this decision.

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ORDER

Claimant's appeal is granted in part and denied in part. South Central Los Angeles Regional Center is required to fund 60 hours per month of respite services for Claimant's family until reassessment. Reassessment may occur no earlier than six months from the effective date of this decision.

DATED:

GLYNDA B. GOMEZ

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 90 days.