BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2019010173

DECISION

The hearing in this matter took place on April 10, 2019, at Santa Clarita, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Claimant's representative, his mother (Mom),[1] appeared on Claimant's behalf, with Armen Shagzho, attorney at law.

North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Dana Lawrence, Fair Hearings and Administrative Proceedings Manager, and Monica Munguia, Educational Advocate.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

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[1] Titles are used in the place of names to preserve confidentiality.

ISSUE PRESENTED

Claimant seeks maintenance of respite care in the amount of 100 hours per month, while the Service Agency asserts that he should receive 47 hours of respite care per month, along with 53 hours of personal assistance.

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THE PARTIES AND JURISDICTION

1. Claimant is a boy who turned 12 in November 2018. He is eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.[2] Claimant was made eligible for services based on a diagnosis of autism.[3]

2. On December 17, 2018, the Service Agency issued a Notice of Proposed Action (NOPA) to Claimant, accompanied by a letter further explaining the Service Agency's action. (Ex. SA 1, pp. 13-18.)[4] The NOPA provided that effective January 17,

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[2] All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

[3] Claimant was diagnosed with autism before the changes to the diagnostic criteria that brought about the new diagnostic criteria Autism Spectrum Disorder.

[4] Because each side identified their exhibits with numbers, the prefix SA is added to denote Service Agency exhibits, and C for Claimant's exhibits.

2019, respite services of 100 hours per month would terminate; the accompanying letter stated that the termination would be effective January 14, 2019. (*Id.*, pp. 13, 16.)

3. On January 3, 2019, the Service Agency received Claimant's Fair Hearing Request (FHR), executed by Mom on December 26, 2018. (Ex. SA 1, p. 12.)

4. Thereafter, the matter was set for hearing, but continued at Claimant's request, to accommodate counsel's schedule. The continued hearing date was advance one day to April 10, 2019, at the Service Agency's request, and to accommodate a witness' schedule. All jurisdictional requirements have been met.

BACKGROUND INFORMATION, INCLUDING SPECIAL EDUCATION SERVICES

5. The record is not clear as to when Claimant began receiving services under the Lanterman Act. It does indicate that, before he turned three, he received Early Start services from the Service Agency, which addressed delays in speech and language, and eating skills. (Ex. SA 5, p. 2.) The earliest Individual Program Plan (IPP) document in the record was generated in November 2013, when Claimant was seven years old. (Ex. SA 8.) Early assessments and an Individual Education Plan (IEP) from the period when Claimant was in kindergarten are found at exhibits SA 2 through SA 6; they were generated in November 2012.

6. A psycho-educational assessment report indicates that the November 2012 assessment process was the result of "a series of concerning behaviors that were apparent at the time that [Claimant] started Kindergarten in August [2012]. [Claimant] demonstrated extreme separation anxiety, difficulty with coping with stress, tantrums, and resistance to controls such as teacher directions and following routine." (Ex. SA 5, p. 1.) While it was noted there had been improvement in some of those behaviors, Claimant was continuing to have problems in social interaction, fine motor development, and obsessiveness. Mom reported her main concern was that Claimant

had an extremely limited diet and he showed extreme resistance to trying new foods. (*Id.*)

7. It was reported that when Claimant was two years and 11 months old his school district determined him to be eligible for special education services due to "Autistic-like behaviors." However, his parents declined services at that time, preferring to work with him in the home setting. (Ex. SA 5, p. 2.)

8. The Behavior Assessment System for Children (BASC-2) was administered to Mom and to Claimant's teacher during the 2012 assessment process. Overall scores from Mom's testing placed Claimant in average ranges, and in one case, in the high range. That is, his score for adaptive skills was 54, placing him in the 64th percentile, and his social skills score was 65, placing him in the 94th percentile. Activities of daily living scored at the 21st percentile, and functional communication at the 59th percentile. (Ex. SA 5, p. 11.) However, the same test, completed by Claimant's teacher, showed substantially lower scores: adaptive skills, sixth percentile; social skills, eighth percentile; functional communication, tenth percentile; adaptability, 13th percentile. (*Id.*, p. 12.) The responses by Mom and Claimant's teacher to the Childhood Autism Rating Scale (CARS) were more consistent, with the general impression from both tests being that Claimant suffered from Mild to Moderate Autism. (*Id.*, pp. 13-14.)

9. The 2012 psycho-educational assessment concluded that Claimant was eligible for special education services in the category "Autistic-Like Behaviors." (Ex. SA 5, p. 9.) Testing and evaluation indicated that he had significant delays in receptive and expressive language, and pragmatic skills, though his non-verbal cognitive skills appeared in the average range. Rating scales showed concerning characteristics in the areas of anxiety, a-typicality, hyperactivity, social skills, functional communication and adaptability. (*Id.*)

10. No basic assessments of Claimant, generated by the Service Agency, were offered in evidence. It is inferred that some intake assessments were generated prior to eligibility, as such would be legally required. Given the strict eligibility requirements for services under the Lanterman Act, it is inferred that the Service Agency found him eligible for services under the DSM-IV[5] for autism, and that he is substantially handicapped by the condition.

11. The most recent IEP in the record was generated in October 2017, one month before Claimant's eleventh birthday. It indicates that Claimant was then being home-schooled. (Ex SA 15, p. 3.) It provided, in part, that Claimant's autistic-like behaviors impeded his ability to interact with peers and adults, and interfered with his ability to access general curriculum. (*Id.*, p. 1.) Mom expressed concerns that Claimant would fall behind academically, and she was concerned with his functional skills. (*Id.*, p. 19.) The IEP indicates that Claimant had not been consistently receiving his services, such as occupational therapy (OT) or speech and language. Significantly, the IEP states that Claimant's behavior did not impede learning for himself, or others. (*Id.*, p. 5.)

12. (A) Notwithstanding the statement in the last IEP, that Claimant's behavior was not impeding learning, Claimant has demonstrated, at various times, numerous problem behaviors. For example, his diet is heavily restricted, and he eats only pureed foods. (Ex. SA 10, p. 1 [2013]; SA 16, p.1 [11/7/17].) He has had problems toileting; at one point, Mom was going to his school several times per week to clean him after a bowel movement. (Ex. SA 11, p. 1 [2015]; SA 13, p. 2 [12/06/16].) Mom must assist him in this way at home. (Ex. SA 18, p. 1 [1/10/18].)

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[5] The Diagnostic and Statistics Manual of Mental Disorders, fourth edition, the standard reference tool for diagnosing disorders, including developmental disorders.

(B) Another problem area is Claimant's tendency to consume non-edible materials, such as shampoo, toothpaste, or the water in which he takes a bath. (Ex. SA 9, p. 1 [2013]; SA 18, p. 1 [2018].) He continues to have trouble dressing himself, and picking appropriate clothing. He has difficulty with other activities of daily living.

(C) It is reported that Claimant continues to cause safety concerns. At age six he would dart out into traffic; Mom reported similar unsafe behavior in January 2018, at age 11. (Ex. SA 9, p. 1; SA 18, p. 1.)

13. For most of his life, Claimant lived with Mom, his father, his sister who is six years older than Claimant, and his older brother (nine years older) within the Service Agency's catchment area. His mother operated a day care business out of the family home. His father, being retired, was available every day to help in his care. (Ex. SA 8, p. 1.) Claimant attended school in his local school district, receiving special education services. However, beginning in 2016, substantial changes occurred in his life. His father died suddenly in August 2016. The family then moved twice, from the home in which Claimant had lived for several years, to an apartment, and then to another location. Mom stopped operating the day care business after Claimant's father passed away. Mom began home schooling Claimant, apparently in 2017. In December 2017, Mom had a baby, a boy who is now approximately 16 months old.

SERVICES PROVIDED BY NLACRC

14. The services provided by the Service Agency amount to respite hours. No other services have been provided, though the issue of further services has been raised on many occasions. Claimant receives 283 hours per month of In-Home Supportive Services (IHSS), a form of generic services funded by the County. Mom is the IHSS care provider, and part of the allocation is for protective supervision.

15. The record indicates that an IPP meeting has been held on an approximately yearly basis since 2013. (Ex's SA 8-14, 16-21.) This has either generated an IPP, or an IPP addendum.

16. As to the respite care that has been provided, initially, 20 hours per month was allocated to Claimant. (Ex. SA 8, p. 6.) The respite was deemed very useful by Mom and her late husband. The respite hours were increased to 30 per month in November 2015. (Ex. SA 11, p. 1.) The respite hours remained at that amount until the beginning of 2018.

17. (A) Since 2013, the Service Agency has routinely raised the issue of providing other services and supports to Claimant. His parents have not taken advantage of those possibilities.

(B) During the 2013 IPP meeting, the IPP team discussed an in home parent education program to help the parents to help address Claimant's challenges. That was declined. (Ex.SA 8, p. 2.) During a May 2014 meeting, which referenced a number of maladaptive behaviors, the team discussed behavioral program supports for Claimant, but that was declined due to conflicts with operating the in-home day care. (Ex. SA 9, p. 2.) In December 2014, where it was found that Claimant was not meeting goals of improving reciprocal communication, safety awareness, staying out of traffic, and expanded foods, Mom stated that the school's program was adequate, and she declined behavioral services, saying she would notify the service coordinator when ready to pursue such services. (Ex. SA 10, p. 1.)

(C) Social skills training was discussed in November 2015, when it was seen that the goals of improving reciprocal communication, and Claimant's perception of personal space, were not being met. Mom was satisfied with the school program—OT and speech therapy—and declined social skills training. (Ex. SA 11, p. 1.) Likewise, despite continuing problems with Claimant running into traffic, and inability to follow two step directions, Mom declined a chance to pursue behavioral services or adaptive skills training that might have ameliorated such behaviors. (*Id.*, p. 2.)

(D) The December 6, 2016 IPP contains more than two pages of discussion of various problems presented by Claimant's autism, including his need for assistance in dressing, bathing, toileting, picking out appropriate clothing, his need to be supervised in the bath so that he won't drink the bathwater, and need for help brushing his teeth. (Ex. SA 13, p. 2.) Other problem behaviors, previously discussed, remained an issue. Adaptive skills training was discussed, but Mom put the training off. (*Id.*, pp. 3-4.) Social skills training was discussed, after it was reported that Claimant had trouble with social interactions. Mom believed the school's program of OT and speech therapy was sufficient, and she decided not to pursue social skills training. *(Id.*, pp. 5-6, 10.) Mom asked to have 30 hours per month of respite care, then the statutory maximum, to give her a break from the stress of dealing with Claimant's needs for close monitoring and supervision. That level of respite care was maintained after the December 2016 IPP meeting.

THE INCREASED RESPITE HOURS

18. During the December 2017 IPP meeting, when Mom told her service coordinator about the then-imminent birth of her youngest child, she was told that more respite hours might be allocated after the first of the year, as the statutory cap was being lifted. In January 2018, the IPP team met, and an "initial respite needs assessment" was prepared. (Ex. SA 17.) On that same day—January 10, 2018—100 hours per month of respite care was allocated, with the proviso that there would be a reassessment in April 2018. (Ex. SA 18.) Claimant's older brother, who had at that point been providing

the respite services, continued to provide the services, in the increased amounts.[6] Claimant's service coordinator took steps to expedite delivery of the increased respite hours, and the change became effective January 16 or 17, 2018.[7]

THE ATTEMPTS AT ASSESSMENT

19. On March 31, 2018, Mom contacted the Service Agency and asked for a new service coordinator to be assigned, and that occurred. On April 3, 2018, Monica Munguia contacted Mom and said she would be the service coordinator handling the review of the ongoing respite services. Ms. Munguia told Mom the process might include a clinical observation. According to the ID notes, Mom was in agreement with participation in the process. (Ex. SA 29, p. 8.)

20. The ID notes indicate that for some time in April, Service Agency staff considered the matter of further respite hours. While that matter was being considered, and so that the Service Agency's exception staffing team could consider the matter, Ms.

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[6] In mid-August 2017, Mom contacted her service coordinator, and told her that her respite worker would no longer be available after the end of that month, and that the vendor was not sure they could find a replacement. Mom proposed that the older brother could fill the role, which was approved. (Ex's. SA 29, p. 3, 8/14 and 8/17 entries; SA 14.)

[7] The chart or ID notes, found in exhibit SA 29, show that Mom was told the change would be effective on the 16th, and the notes show that on January 17, 2018, the service coordinator confirmed with the vendor that updated paperwork had been received by the vendor. The IPP addendum for the increased hours was circulated on January 18, 2018. (Ex. SA 29, p. 7.) The IPP Addendum, signed by Mom on February 6, 2018, is found at exhibit SA 18.

Munguia took steps to have the 100 hours of respite extended until late in May 2018, and on April 10, 2018, Ms. Munguia prepared an IPP addendum to extend the services. On April 17, 2018, Ms. Munguia contacted Mom and advised her of the one-month extension of the 100 hours per month of respite care. (Ex. SA 29, pp. 9, 10.)

21. In mid-April senior managers concluded that a better set of supports for Claimant and his family would be a mix of 47 respite hours and 53 personal assistance hours, per month. In essence, personal assistance hours would put someone in the home to help Mom out, to put a second set of hands at her disposal, rather than to provide her a break. Ms. Munguia communicated as much to Mom in telephone calls between April 23 and April 14, 2018. Mom was not in agreement with changing the structure of the supports. (Ex. SA 29, p. 11.)

22. It was apparently recommended that Claimant go back to school full time. (Ex. SA 29, p. 11.) Mom did not agree, asserting that Claimant's difficult transitions during the previous two years caused issues, and that Claimant had serious attention issues. She did not want to pursue behavioral interventions because Claimant has challenges in dealing with new people and routines, and she did not want to feel coerced by the Service Agency. (*Id.*)

23. Mom did agree to provide some more information that would justify her position, but she balked at the Service Agency conducting a clinical observation of her son in the family home, asserting it would be intrusive to her and Claimant, and that it was not needed. She did agree to a clinical observation at the Service Agency, and according to the ID note she believed that if there was an in-home clinical observation, then services would be terminated. (Ex. SA 29, p. 12.) A meeting was scheduled at the Service Agency for May 1, 2018. Mom would not sign consent forms that would allow access to Claimant's records, wanting instead to provide select documents to Service Agency staff. (*Id.*)

24. The Service Agency's behaviorist, Ms. Lisa DiPiero was consulted about performing a behavioral assessment outside the home, and at the office. Ms. DiPiero suggested doing it in a more natural environment, such as a park. This was proposed to Mom by the service coordinator, but not approved. (Ex. SA 29, pp. 13-14.)

25. During the first two weeks of May 2018, there was back and forth communication. Rather than consenting to the behavioral assessment Mom set up a meeting with a supervisor. She gave reasons why she did not want the assessment process, and believed that the most recent IEP document, and an IHSS report were sufficient to justify her position. Ultimately, on May 15, 2018, a NOPA denying further respite hours was mailed to Mom. (Ex. SA 29, pp.16-17; ex. SA 23.) Mom requested a hearing, which led to a mediation on June 26, 2018.

26. At the mediation it was agreed that the 100 hours per month of respite would be continued until the next IPP, which would be moved back to December 2018. It was also agreed that a behavioral assessment would be conducted by a Board Certified Behavioral Analyst (BCBA) between October 15, and November 15, 2018. Prior to that, there was a schedule for selecting the assessor; a vendor list would be supplied to Mom by June 27—the day after the mediation—and Mom would designate the assessor in writing by August 27, 2018. It was agreed there would be a minimum of three observations, with none being in the bathroom, and the total observation time being seven hours. (Ex. 24.) According to Ms. DiPiero, who is a BCBA, the typical assessment would last for approximately 16 hours, although not all of that time is face-to-face.

27. Mom designated an assessor near the August deadline. The assessment was going to be performed by Star of California, which provides such services. The actual assessor assigned to the case was Wendy Piccirillo, who is a BCBA. Ms. Piccirillo

contacted Mom and discussed the process, and she told Mom that the family home would be a natural setting for the assessment.

28. Mom and Ms. Piccirillo met on October 15, 2018, at a Starbucks, and Piccirillo interviewed Mom and began administering the Vineland Adaptive Behavior Scales, so as to evaluate Claimant's adaptive skills. They could not complete the Vineland and the assessor later gave Mom a copy of it, at Mom's request. A second meeting took place at the Starbucks, without Claimant, and administration of the Vineland continued. When it could not be completed, there was a telephonic meeting to complete it, which occurred on November 20, 2018.

29. An observation of Claimant was scheduled for Starbucks, on November 29, 2018. Because the coffee shop was crowded, Ms. Piccirillo moved the meeting next door to a Subway store. She was able to observe Claimant for approximately 30 minutes that day. She recalled in her testimony that Claimant was slow to warm up, but did converse with her. Ms. Piccirillo talked with him about video games, and he asked questions about her. Claimant invited Piccirillo to visit his little brother. There was some reciprocal communication, and adequate eye contact. According to the assessor's testimony, the natural restaurant traffic was not a distraction, and it was not as crowded as the coffee shop.

30. Another observation was scheduled, but in December 2018 Mom spoke to Ms. Piccirillo and told her there would be no more assessments.

31. Communications between the Service Agency and Mom have been less than optimum since approximately March 2018. Mom testified that she felt misled by the statements of some representatives; one for example said Mom had to be out of the home for respite time, which the Service Agency acknowledges is inaccurate. Mom feels the entire process surrounding the assessment has been geared toward taking away the 100 hours of respite. When Ms. Piccirilo told Mom that she had no input on respite

decisions, Mom felt that the behavioral assessment had nothing to do with the issue, and she terminated the assessment process.

32. Plainly, respite care is warranted, but the amount that should be provided is not clear. The Service Agency has a paucity of information, and what it does have is generated primarily by Mom. It appears that only one psycho-educational assessment has been provided to the Service Agency, though they are typically performed for the triennial IEP's. Behavioral respite is an option, but without a proper behavioral assessment, it cannot be determined if that service should be provided. Mom understood there would be further assessment in March 2018, and she agreed to a behavioral assessment in June 2018. She appears to have dragged her feet in performance of her agreement, and then reneged on it in December 2018, without cause. It should be noted that she testified that she did not agree to a home observation in June 2018, but by that time it had already been communicated to her that the best place for a home observation would be at home. That was reiterated to her by Ms. Piccirillo, obviously an expert in behavioral observation.

33. While the arrival of a new child in the home has caused some changes, that event was over a year ago, and as asserted by the Service Agency during the hearing, the needs of a newborn are not the same as a child a few months old, let alone one that is over a year old. There is no information about what support, if any, the baby's father is providing, which should be a factor in considering the overall picture.

34. Based on this record, 47 hours per month of respite should be provided to Claimant. Documents provided by Claimant, such as an IHSS assessment and a letter from the company involved in the home school program, were not sufficient to justify either the high amount of hours, or the refusal to engage in appropriate assessment. The hours provided herein may be changed at the next IPP meeting, if there is adequate information to justify a change. As to the personal assistance hours, Mom does not want

service, and it cannot be justified in light of the inability of the Service Agency to do a proper assessment of Claimant's needs vis-à-vis his behaviors in all environments, including his home.

LEGAL CONCLUSIONS

JURISDICTION

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

GENERAL RULES APPLICABLE TO RESOLVING SERVICE DISPUTES:

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established … to meet the needs and choices of each person with developmental disabilities … and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

3. The California Legislature enacted the Lanterman Act "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." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.)

4. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and

conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

5. Regional centers must develop and implement IPP's, which shall identify services and supports "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of … the cost-effectiveness of each option . …" (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) The IPP must be updated at least every three years. (§4646.5)

6. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible. (§ 4646; *ARC v. DDS, supra,* 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (Code §§ 4646; 4646.5, subd. (a)(1), (2) and (4); 4512, subd. (b); and 4648, subd. (a)(6)(E).)

7. Section 4512, subdivision (b), of the Lanterman Act states in part:

> Services and supports for person with developmental disabilities" means specialized services and supports or special adaptations of generic services and support 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 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's family, and shall include consideration of … the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, … physical, occupational, and speech therapy, … education, … behavior training and behavior modification programs, … respite, … social skills training, … transportation services necessary to ensure delivery of services to persons with developmental disabilities.

(Emphasis added.)

8. Services provided must be cost effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

9. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).)

The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the disabled individual or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

10. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible . … " In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family, and an adult person with developmental disabilities to live as independently in the community as possible. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

11. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. … Assessments shall be conducted by qualified individuals . … Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies." (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer's needs, it is plain that assessments must be made so that services can be properly provided in a cost-efficient manner.

12. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d),

4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, each regional center is to assist consumers and families with services and supports that "maximize opportunities and choices for living, working, learning, and recreating in the community."

13. Reliance on a fixed policy "is inconsistent with the Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities.' (§ 4501.)" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer will be selected on an individual basis. (*ARC v. DDS*, *supra*, 38 Cal.3d at 388.)

14. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (Code § 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), and 4791).

15. Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those services and supports should foster "the developmental potential of the person and be directed toward the achievement of the most independent, productive and normal lives possible." (Subd. (b)(1).) There is also a right to dignity, privacy and humane care. (Subd. (b)(2).) The person also has the right to make choices, including where and with whom they live, and the pursuit of their personal future. (Subd. (b)(10).)

THE NEED FOR PROPER ASSESSMENT

16. Assessments are the life-blood of the IPP process. As noted in Legal Conclusion 11, the Lanterman Act calls for assessments to be performed as part of the planning process, not just to meet the consumer's needs, but assure that services are cost-effective. While the consumer's choice is a significant issue in the planning process, that choice alone is not the ruling factor. Proper assessment is necessary to determine eligibility, and after that, to guide the program.

17. Implicit in the Act's requirement that IPP's be reviewed at least every three years is the requirement that necessary assessments be conducted. (See § 4646.5.) The regional centers cannot discharge their duties if they do not have the right to obtain information, and the power to obtain that information.[8] At the same time, a person who seeks benefits from a regional center must bear the burden of providing information, and submitting to reasonable exams and assessments. (See Civil Code section 3521.) Further, a request for services essentially waives objection to the regional center and its staff and consultants obtaining access to otherwise private information. That does not mean, however, the information can otherwise be disseminated for any purpose other than to assess a consumer and provide services.

THE LEVEL OF RESPITE SERVICES

18. On this record, the Service Agency's willingness to provide 47 hours of respite care per month is reasonable. The provision of 100 hours per month, for a short period, was generous. In over 22 years of adjudicating or mediating cases arising under the Lanterman Act involving 10 of the 21 regional centers, the undersigned has only

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[8] This is a long-accepted legal concept. See Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L.J. 16 (1913).

seen one case with so many hours of respite care, which was prior to the statutory cap on respite care. While that is not binding—every case needing to stand on its own—it is instructive. (Gov. Code, §11425.50, subd. (c) [hearing officer may evaluate evidence based on experience and training].)

19. Mom reports problem behaviors by Claimant of a serious type, and based on years of reporting there has been little improvement. This has occurred in the context of Claimant's parents, and later Mom alone, refusing to take steps to obtain interventions that could lead to the "alleviation of [Claimant's] developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of [Claimant's] … developmental disability, or toward the achievement and maintenance of [an] independent, productive, normal [life] . … (§ 4512, subd. (b).) Obviously Mom needs a break from caring for Claimant. She will get the equivalent of just over one day per week of respite with the 47 hours per month ordered in this case.

ORDER

Claimant's appeal is denied. He will receive 47 hours of respite care per month beginning on the effective date of this decision.

DATED:

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision.