

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2019030970

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on May 8, 2019.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant's father represented claimant, who was not present.

The matter was submitted on May 8, 2019.

ISSUE

Is it in the best interest of claimant, who has Autism Spectrum Disorder (autism), to have IRC fund out-of-home residential placement rather than have IRC continue to provide services and supports to maintain him in the family home?

FACTUAL FINDINGS

CLAIMANT'S BACKGROUND¹

1. Claimant is a 14-year-old male who qualifies for regional center services based on a diagnosis of autism.

2. Claimant receives social security income as a beneficiary of his biological mother, who passed away in 2011. Claimant lives at home with his father, two college-aged siblings, and stepmother. Claimant's father raised claimant on his own until he married claimant's stepmother in 2016.

3. Claimant has received services and supports from IRC since approximately 2016. Claimant receives 60 hours per month of routine respite services provided by Desire Home Care Services; 60 hours per month of specialized individual training (SIT) provided by California PsychCare; 15 hours per week of Applied Behavioral Analysis (ABA) therapy from the Center for Autism Related Disorders in Temecula, near claimant's home; and approximately 212 hours per month of In-Home-Supportive Services (IHSS) from a provider who is a family friend. Although it has been highly recommended for claimant to enhance the progress he has made in his ABA therapy by having sessions in his home with his family so that they may also learn the appropriate redirection techniques, claimant's father and stepmother refuse to permit ABA therapy to be provided in the family home.

4. According to claimant's most recent Individual Program Plan (IPP), dated August 24, 2018, claimant is ambulatory and has complete use of his hands and legs. He takes prescribed medication for his behavior and requires assistance to take

¹ The information concerning claimant's background was compiled from exhibits admitted, as well as testimony provided, by all those who testified at the hearing.

medications. He uses utensils when eating, but prefers to use his fingers. He will use utensils when prompted. Nonetheless, claimant is a messy eater and spills food. Claimant is able to use the restroom but requires assistance. Claimant has wetting incidents at night approximately once per week, but his parents prompt him to use the bathroom before bed to reduce those incidents. Claimant no longer uses diapers at night. Claimant requires assistance while bathing because he stands in the shower and stares at the water. Claimant dresses himself but requires assistance with zippers, buttons, and tying his shoes.

Claimant is able to maintain his attention span for approximately 15 minutes at a time if he is engaged in a preferred activity. He enjoys reading, writing, coloring, and drawing. Claimant has a very creative mind and likes using electronics. Claimant can communicate and has a broad vocabulary, although he often uses words in the wrong context. Claimant engages in echolalia at times and will also reverse pronouns and make up words. Claimant initiates interaction with his parents when he wants something but does not maintain interaction, making a conversation difficult. Claimant does not understand boundaries and has difficulty in a large crowd when in the community. Claimant prefers to play by himself.

Claimant's IPP, which pre-dated his SIT and ABA therapy, noted some aggressive behaviors and self-injurious behaviors such as biting, yelling, eloping, hitting, slapping, and kicking, but stated that these behaviors typically occurred when claimant was transferring from a preferred to non-preferred activity. Since the ABA therapy and SIT has been implemented, however, none of the service providers have reported these types of behaviors.

5. Claimant typically wakes up at approximately 5:30 a.m. He attends school from 8:00 a.m. to 2:45 p.m. five days per week. At school, claimant has a 1:1 aide; receives speech and occupational therapy; and attends Adaptive Physical Education.

Claimant's IHSS provider is a family friend, and she both prepares him for school in the morning and picks him up after school. After she picks claimant up from school, she transports claimant to her house. Claimant's IHSS provider then transports him to his ABA therapy, which occurs after school five days per week, and on Saturday. After claimant's ABA therapy, claimant's IHSS provider brings claimant to his home around 5:30 p.m. At that time, she either gets claimant ready for bed, turns over care to the respite provider, or turns over his care to SIT, depending on the schedule. Claimant has SIT on Sundays as well. Claimant goes to sleep around 6:30 p.m., although he does wake sometimes during the night.

With all of the services and supports provided, claimant's parents are only responsible for claimant's care approximately six hours per day.

REQUEST FOR OUT-OF-HOME PLACEMENT

6. On February 12, 2019, claimant's father sent an e-mail to IRC, stating that he had requested out-of-home placement over a year-and-a-half ago, which was denied by IRC. The matter did not proceed to a fair hearing because the family decided to wait to give the ABA therapy time to help "with his behavior situation at home." Claimant's father further stated that they had "not seen significant changes" in claimant's "behavior" and that claimant's stepmother suffers from "chronic conditions" so she needs her "stress" level reduced. Claimant's father further stated that although the services help, it is "very stressful" to "always" have "strangers" in the home.

7. Following receipt of the e-mail from claimant's father, IRC inquired of claimant's service providers whether they had experienced any problematic behavioral changes. Claimant's respite provider wrote that claimant has been using hours consistently; has two steady providers; and had no reported incidents of behavioral problems. According to claimant's SIT provider, they "have had the same staff" working with claimant since he began services, and they have an excellent rapport with claimant.

They stated that they had not experienced any significant behavioral problems with claimant except on one occasion, where claimant threw a book on the floor, but they were able to “redirect the behavior with ease.” There was no evidence presented showing that either claimant’s IHSS provider or claimant’s school have experienced problematic behaviors or any significant negative behavioral changes. Finally, claimant’s ABA provider similarly had not observed any behavioral changes and their most recent report showed claimant making consistent progress in his ABA therapy (i.e. meeting many stated behavioral goals, thus improving significantly from the date of his last IPP).

8. On February 21, 2019, IRC sent claimant’s father and stepmother a Notice of Proposed Action denying the request for out-of-home placement. IRC wrote:

Your request has been denied for several reasons. Regional Centers must consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interests of the child, before considering out-of-home placement alternatives. IRC must also consider parent responsibility for providing similar services and supports for a minor child without disabilities. Additionally, generic resources such as IHSS, private insurance, Medi-Cal, the school district, and/or Riverside County Mental Health are resources that may provide additional assistance.

[¶] ... [¶]

A Notice of Proposed Action (NOA) dated July 6, 2017, denied your request for residential placement. IRC stands by its July 6, 2017, decision. Since that time, IRC increased claimant’s respite from 30 to 60 hours per month with Desire

Home Care. IRC also authorized California Psychcare's Specialized Individual Training (SIT) program at the rate of 60 hours per month ongoing to assist claimant with attending a fully included community program.

You informed your CSC that claimant has been receiving Behavioral Health Treatment with your private insurance provided through [the] Center for Autism Related Disorders (CARD). Claimant is receiving 15 hours per week of center-based Applied Behavioral Analysis (ABA) therapy services. During the Individual Program Plan (IPP) [meeting on] July 23, 2018, you informed the CSC that claimant receives 220 hours per month in In Home Supportive Services (IHSS) supports. IHSS provides additional assistance with claimant's personal care and supervision needs. The IHSS care provider is a family friend, Shannon Harrison. On February 21, 2019, you informed the CSC that you think claimant receives around 130 hours per month of IHSS supports. Your CSC has been unable to verify the actual hours with IHSS. If claimant does in fact receive 130 hours of IHSS, IRC recommends that you request an increase of hours if you believe he requires additional support. ...

9. On March 18, 2019, claimant's father filed a fair hearing request, stating as the basis for requesting out-of-home placement for claimant the following: "Claimant requires around the clock care and his needs are more than our family can endure for everyone's health and well-being, including claimant.

REPORTS CONCERNING CLAIMANT

10. Claimant's Client Development Evaluation Report (CDER) describes claimant as 61 inches tall and weighing 100 pounds. Claimant requires constant care. Claimant is not independent. Claimant uses both of his hands and fingers; walks alone with good balance; toilets with assistance but has wetting incidents once per week; eats with utensils; conducts personal care activities with assistance; initiates interaction with others; focuses on activities from 5 to 15 minutes at a time; and sometimes has disruptive behaviors that make social interaction difficult. Physical aggression may occur once per month but claimant has not caused any injury to himself or others in the past year. Claimant has engaged in self-injurious behavior but no injury has actually occurred. Claimant has caused property damage more than once in the past year and engages in eloping behavior. Outbursts may occur once per week and require intervention to stop them.

11. The report by CARD, dated January 24, 2019, shows claimant is excelling in his ABA therapy. With respect to noncompliant behaviors that jeopardize his safety and the safety of others, claimant has steadily progressed from October 2017 to November 2018. The CARD report provided a graph showing the steady progress, and noting that 17 goals in the area of noncompliance had been met, showing claimant has met the overall goal in that behavioral area. New goals have been set in order to continue building on his progress in this area.

With respect to language, claimant requires very substantial assistance as he confuses pronouns and has difficulty asking for things to meet his needs. However, between October 2017 and November 2018, claimant had met seven of the stated goals, showing claimant has met the overall goal in the area of language. New goals have been set in order to continue building on his progress in this area.

With respect to executive functioning, claimant requires very substantial assistance because he cannot consistently wait appropriately and has difficulty sustaining attention. However, between October 2017 and November 2018, claimant had met nine of the stated goals, showing claimant has met the overall goal in the area of executive functioning. New goals have been set in order to continue building on his progress in this area.

With respect to vocal stereotyping, claimant engaged in no more than 1.5 episodes per hour for a period of two months, during the time period from January 2018 to January 2019, meaning claimant has met that goal. New goals have been set in order to continue building on his progress in this area.

With respect to adaptive skills, such as clothing care, telephone skills, self-care, and other personal skills, claimant has either met stated goals or improved in each area, and new goals have been set in order to continue his progress.

Finally, the CARD report stated that caregiver participation is a “crucial step” in claimant’s continued treatment, as caregiver participation is what permits claimant to learn how to generalize what he has learned in ABA to his family home. The report noted:

Claimant’s father and step-mother have limited involvement with ABA therapy. Sessions occur at the nanny’s house or at the center. Claimant’s father has attended 0 clinics and 0 parent training meetings All other meetings are attended by the nanny. ... Claimant’s father will continue to be encouraged to attend the meetings. ...

12. A report by claimant’s SIT provider dated November 9, 2018, SIT provides supervision for claimant and coordinates ABA training with claimant’s ABA provider. SIT has been able to provide all required services, and supervises claimant while claimant’s parents go to church, spend personal time together, or run errands. The SIT provider did not report any significant change in claimant’s behaviors since services began. The

report stated that claimant is in good health, has had no serious injuries, and has not been hospitalized since services began.

TESTIMONY OF AMY CLARK

13. Amy Clark, a Program Manager for IRC, testified at the hearing. The following is a summary of her testimony and referenced exhibits.

When IRC considers a request for out-of-home placement, it looks at the family unit, needs of client, daily living schedule, behavioral needs, natural supports, community supports, generic resources, and other factors. The goal is always to keep a consumer in the family home. Only if all the services and supports together were insufficient to accomplish that goal, would IRC consider out-of-home placement.

Out-of-home placement is not the appropriate option for claimant because it is not in his best interest. As discussed above, claimant's family is only responsible for six hours per day of care. As a minor, claimant's parents do bear some responsibility to provide natural supports. No evidence indicates that claimant is experiencing problematic behaviors to the degree that would warrant out-of-home placement, and no evidence indicates that there has been anything but a positive change in claimant's behaviors over the past year since his last IPP. Moreover, additional generic supports and services are available, such as an increase in IHSS to the maximum allowed under law (283 hours per month). She also noted that ABA is designed to be applied in the home, not just a facility, for the purpose of teaching the family how to redirect any problem behaviors and allowing claimant to apply what he has learned in ABA in the family home. Claimant's parents are not attending the ABA sessions, are not allowing ABA in the home, and thus not reinforcing the techniques in the home. Without allowing ABA therapy to be applied in the home, the full and intended benefit of ABA therapy is not being realized.

Claimant's SIT provider, respite provider, and IHSS provider also have not indicated that claimant is experiencing problematic behaviors such that they are having difficulty performing their services. According to a January 24, 2019, progress report provided by CARD, claimant has been doing well in ABA therapy by meeting many goals to the point where it would be appropriate to change the ABA therapy to Adaptive Skills Training, which would permit claimant to become more independent in the home. Further, the way these programs are supposed to work is by starting with ABA, progressing to Adaptive Skills Training as a consumer gets older, and eventually relying on parental training to help the adult consumer live more independently. Put another way, these services are not intended to run indefinitely; the goal is always to help the behaviors to, in turn, help claimant live more independently in the family home.

Ms. Clark described claimant as a person with a "pleasing" personality that reacts very positively with his father. She recalled a clinic meeting that took place in April 2019 between herself, claimant's consumer services coordinator, claimant's IHSS provider, three technicians, two supervisors, SIT, and other service providers. The purpose of the clinic meeting was to make sure all service providers were on the same page regarding medication, behavior, and other important issues concerning claimant. Claimant's father attended the meeting via an iPad. During the meeting, claimant greeted some of the participants. He demonstrated affection towards one of the technicians. He interacted well with his IHSS provider. He did not exhibit any noncompliant behaviors. He was very "high energy" but when he strayed from appropriate behavior he was easily redirected. She also noticed that when claimant's father appeared on the iPad, claimant became very happy and reacted positively to seeing his father.

Ms. Clark believes it would not be in his claimant's best interest to place him in a group home setting due to the progress he has made. Ms. Clark further explained that there are different types of group homes. Due to the level of services claimant needs, he

would be required to be in a Level 4I group home because those are the only type of residential facilities that are required to have a behaviorist, psychiatrist, psychologist, and other monitors on site – which is what claimant would need. In these types of homes, however, it is very common for there to be residents that have very severe behavioral problems, and claimant's behaviors do not fit into the category of this type of home. Thus, placing him in that environment would not be appropriate.

EVIDENCE PRESENTED BY CLAIMANT'S FATHER

14. Claimant's father testified that he loves his son but that his son's autism "brings a lot of stress." Claimant's mother passed away in 2011, and he became a single father. He did have people help him with raising claimant. He met his current wife and ultimately married her in 2016. When they were first married, his wife had "some health issues" but nothing significant. Now, she has "auto immune disorders" and needs to reduce her stress. It is "bittersweet" having caregivers in the home and will cause more stress having ABA providers in the home.

Claimant's father understands that the ultimate goal is to keep claimant in the family home. He has a "nanny" and IHSS provider that he trusts that go to the ABA therapy sessions to "represent the family." Claimant's father said he works full-time and travels sometimes for his job so "it's not like I can be involved."

Claimant does wake up in the middle of the night and can be loud. I have to get up and "deal with him." Because he is loud, it is a lot of stress on everyone. Claimant's father said it is not his goal to get claimant out of the house, however, it is his goal to "bring peace" to everyone including claimant.

Claimant's father said claimant engages in a lot of echolalia, and repeats things all the time. For example, if you tell claimant he is going to get a haircut, he will repeat it all day. Claimant's father does not agree with ABA to redirect the behavior, rather, it is better to "just avoid it." In other words, just do not tell claimant he is going for a haircut

and instead, take him. It is not about redirecting behavior, it is about “keeping your sanity.”

Claimant’s father said that he has two college-aged daughters who live in the home but do not participate in claimant’s care.

Claimant’s father travels for work sometimes, and when he does, his wife is left in the home to care for claimant. It is very stressful for her to do so and she does not need the stress. Claimant’s father submitted a letter from claimant’s step-mother’s doctor, Kelly Boyatt, M.D., who did not testify. The letter, dated March 20, 2019, stated that claimant’s step-mother has told her that her life is “completely erratic and stressful” due to claimant. Claimant’s step-mother has told her doctor that even with the services, just having them in the home is stressful. The letter stated that claimant’s step-mother suffers from several “debilitating conditions” that make “normal life” a challenge, although, the alleged disorders were not specified. The letter also states that because claimant’s father travels and the siblings are gone most of the time, “a majority” of claimant’s care falls “squarely on claimant’s step-mother’s shoulders.”

Claimant’s doctor, Michael T. Ricciardi, D.O., M.P.A, who did not testify, submitted a letter dated April 16, 2019, in support of claimant’s father’s request for out-of-home placement. The letter listed claimant’s medications and some of the behaviors consistent with claimant’s most recent IPP. The letter stated that claimant’s father “is employed full-time and his step-mother suffers multiple medical problems” and is “unable to assist” in claimant’s care.

Neither letter contains any information regarding whether the authors are aware of the level of services and supports claimant receives; whether they are aware that claimant’s parents are only responsible for claimant’s care approximately six hours per day; or how it would be in *claimant’s* best interest to be placed outside his family home.

Claimant's father testified that he understands the Lanterman Act but feels that many families have fallen apart because of special needs children. Claimant's father said it is "not like taking him out of the home means he is not part of the family" and that someday "that is going to happen anyway because [he] will be too old to deal with it."

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD 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.)

2. 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. Under the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.), the State of California accepts responsibility for persons with developmental disabilities. The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501 & 4502; *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.)

4. Keeping developmentally disabled minors at home has been expressly granted a high priority, with regional centers required to consider every possible way to

help their families do so. (Welf. & Inst. Code, § 4685, subds. (a) and (c)(2); *Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 314.)

5. Welfare and Institutions Code section 4685, subdivision (a), states:

Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. ...

6. When a disabled child lives at home, his or her individual plan must include a family support component describing those services needed to help the family keep the child at home when that is in the child's best interests. (*Id.* at 308.) A regional center must secure services and supports that meet the needs of a consumer, as determined by the consumer's IPP, and "within the context of the IPP." (Welf. & Inst. Code, § 4648, subd. (a)(1).)

7. Welfare and Institutions Code section 4646 requires that the provision of services and supports be centered on the individual with developmental disabilities, and also reflect the cost-effective use of public resources.

Welfare and Institutions Code section 4646.4 requires the regional center 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.

8. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services and prohibits regional centers from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, CCS, private insurance, or a health care service plan.

EVALUATION

9. It was not established by a preponderance of the evidence that out-of-home placement is in claimant's best interest.

Claimant receives ABA, SIT, respite, and IHSS services. Claimant attends school every day for most of the day, and his IHSS provider cares for him before and after school. He does not arrive home until just before he goes to bed. All of the services coordinating together, has left only approximately six hours unaccounted for in claimant's day where claimant's family must act as a natural support. The care during this time typically might fall on claimant's step-mother, when claimant's father is not present. It is not unreasonable to expect the parents of a developmentally disabled minor to tend to his needs for six hours per day.

Although it is claimed that the stress of "strangers in the home" and caring for claimant is a strain on the family, the evidence does not support that claim. Claimant's college-aged siblings are often away from the home and do not participate in claimant's care. The evidence related to his step-mother's medical condition was vague, at best. Claimant's service providers have noted no unusual problems with claimant's behaviors that would warrant out-of-home placement. Claimant's IHSS provider is a family friend, not a stranger. Claimant's respite and SIT providers have been consistently the same. Claimant's ABA provider has seen steady and significant progress with his behaviors, and claimant is meeting many of the stated goals to the degree where goals are

constantly being revised to achieve even more progress. Generalizing the ABA techniques in the home, which has not been permitted to date, would benefit claimant and claimant's family by redirecting any poor behaviors in the home. In fact, claimant's behaviors have progressed to the point where his ABA provider feels that Adaptive Skills Training would be more appropriate to help claimant be more independent in the home. Finally, exploring the possibility of an increase in IHSS hours – a generic resource – is also a viable option to cover the six hours for which claimant does not have outside supervision.

Caring for a developmentally disabled child is, indeed, a challenge. However, as a minor, claimant's parents must bear some of the responsibility as a natural support. It is in claimant's best interests, consistent with the Lanterman Act, to remain in the family home. He appears to have the necessary services and supports to help maintain him in the family home. Removing claimant from his home environment, eliminating the consistent training and care he has been receiving from the same providers, and placing him in an unfamiliar group home with individuals exhibiting much more severe behavior problems, would be detrimental to claimant's progress.

Accordingly, on this record, claimant's appeal must be denied.

ORDER

Claimant's appeal from IRC's determination to deny claimant's request to coordinate and arrange for out-of-home placement is denied.

DATED: May 20, 2019

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.