

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**vs.**

**HARBOR REGIONAL CENTER, Service Agency**

**OAH No. 2019050786**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Torrance, California on July 12, 2019.

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or service agency). Claimant's mother (Mother) represented Claimant, who was not present at the hearing.<sup>1</sup>

Testimony and documentary evidence was received and the case was argued. The matter was submitted for decision on July 12, 2019. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

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<sup>1</sup> To preserve confidentiality, Claimant and Mother are not identified by name.

## ISSUE

Whether the service agency should grant Claimant's request for an increase of his in-home behavior respite service hours to 55 hours per month or 165 hours per quarter.<sup>2</sup>

## FACTUAL FINDINGS

1. Claimant is a 16-year-old male consumer of HRC due to his qualifying diagnosis of Autism. Claimant resides with Mother, who serves as Claimant's in-home supportive service (IHSS) provider.<sup>3</sup> Claimant's most recent Individual Program Plan (IPP), which is dated March 22, 2019, documents his maladaptive behaviors, including elopement, lack of safety and community awareness, night-time wakefulness, difficulty transferring from one activity to another, and inability to attend to his self-care needs without prompts or assistance. Claimant requires supervision at all times.

2. HRC has been providing in-home behavior respite services for Claimant in accordance with its *Respite Care Policy*, which defines respite and sets forth the circumstances for its purchase consistent with Welfare and Institutions sections 4686.5 and 4690.2 as follows:

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<sup>2</sup> At the outset of the hearing, the parties confirmed that all issues in connection with Claimant's request for applied behavioral analysis services were dismissed without prejudice pursuant to a June 11, 2019 Order Setting Aside the Dismissal of the Fair Hearing without Prejudice and Granting Claimant's Request for Dismissal without Prejudice of One Issue Only. (See Exh. HRC 5.)

<sup>3</sup> Claimant receives 283 hours of IHSS per month.

## DEFINITION

“Respite” means intermittent relief or rest from the additional demands that may be placed on a family caring for a son or daughter with a disability. It is provided in the client’s own home or in a licensed setting for caregivers whose children or adult children are residing with them. Respite service includes non-medical care and supervision of the client which is intended to be periodic, as opposed to continuous; it is time-limited and not expected to meet a family’s total need for relief from the on-going care of a disabled family member.

## PHILOSOPHY

All families, at times, experience the need for respite. Parents of children with developmental disabilities are expected to provide the same level of care as they would for a child without disabilities and, in some cases, they may be able to rely on the assistance of family members, friends and paid sitters. . . . .

## POLICY

Harbor Regional Center may purchase respite care for families under the following circumstances:

1. the person with a developmental disability has behavior challenges or special medical needs or supervision needs that exceed those of people of the same age without developmental disabilities; and
2. there are few or no natural or generic supports available to provide necessary supervision during times when family members are away; [¶]

In the above circumstances, the purchase of respite care may be authorized in accordance with the following:

1. respite is provided in the family home or a licensed setting;
2. the amount of respite is provided pursuant to a needs assessment which takes into account the self-care, behavioral and medical needs of the client as well as the support needs of the family;
3. the respite is provided by an appropriate caregiver as follows:
  - a. for clients with complex medical needs, care is provided by a licensed nurse;
  - b. for clients without complex medical needs, care may be provided by an unlicensed caregiver who is employed by an authorized respite agency (NOTE: The family may identify

a caregiver known to them who may be employed by the authorized respite agency).

(Exh. HRC 14.)

3. In connection with the preparation of Claimant's March 22, 2019 IPP, HRC assessed Claimant's needs for in-home respite services employing the *Harbor Regional Center Respite Needs Assessment Tool (Respite Needs Assessment Tool)*. The *Respite Needs Assessment Tool* assigns certain numerical values according to an individual consumer's skills or functioning in domains labeled self-care, behavioral, medical, and family support. A numerical value of one point denotes "LOW Need," two points denote "INTERMEDIATE Need," three points denote "HIGH Need," and four points denote "EXCEPTIONAL." (See Exh. HRC 6.) In the case of Claimant, HRC's application of the *Respite Needs Assessment Tool* resulted in an assignment of numerical values as follows: self-care-three points;<sup>4</sup> behavioral-three points;<sup>5</sup> medical-one point;<sup>6</sup> and family support-two points<sup>7</sup> for a total numerical value of nine points, which warrant in-

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<sup>4</sup> HRC assigned three points to Claimant in the self-care domain to indicate that, among other things, Claimant presents with "[n]eeds . . . much greater than typical peers" and "[n]eeds help with transfers." (See Exh. HRC 6.)

<sup>5</sup> HRC assigned three points to Claimant in the behavioral domain to indicate that Claimant presents with "[b]ehavioral issues . . . much greater than typical peers" and "[i]ntense behaviors (intensity, frequency, duration." (See Exh. HRC 6.)

<sup>6</sup> HRC assigned one point to Claimant in the medical domain to indicate that Claimant's "[n]eeds are similar to typical peers," for example, "[s]imple medication management" and "[r]egular medical check-ups." (See Exh. HRC 6.)

<sup>7</sup> HRC assigned two points to Claimant in the family support domain to indicate that, among other things, he resides in a "[o]ne parent/caregiver household."

home behavior respite services at a frequency of 90 hours per quarter or 30 hours per month. (*Ibid.*)

4. At the hearing, Bjoern Peterson, the Client Services Manager supervising Claimant's service coordinator, explained HRC vendored Behavior Respite-in-Action (BRIA) to provide the 30 hours of in-home behavior respite services for Claimant on a monthly basis, but BRIA encountered "staffing challenges." For example, Mother complained BRIA personnel arrived late to her residence to provide respite services, and then left early to take public transportation. Mother expressed dissatisfaction with BRIA personnel's inability to manage effectively Claimant's maladaptive behaviors. BRIA personnel frequently called Mother for instructions and guidance while Mother was taking respite, thus disrupting Mother's respite and requiring Mother to abandon preferred activities, including attending church, socializing with friends, and advocating on Claimant's behalf. Mother restricted BRIA personnel to sitting on specifically designated furniture (plastic folding chairs) when in her residence providing respite services. Mother required the removal of BRIA personnel from her residence because she questioned the provider's rapport with Claimant.

5. In light of these staffing challenges, BRIA commenced a search for personnel suitable to Mother. To prevent a lapse of in-home behavior respite services for Claimant, HRC proposed that another provider—24 Hour HomeCare—staff 25 hours of Claimant's 30 monthly respite services hours on a temporary basis.<sup>8</sup> To date,

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<sup>8</sup> Claimant's March 22, 2019 IPP notes that "HRC will fund for 25 hours of personal care with 24 hour homecare from 2/1/19 to 6/3/20." (Exh. HRC 4 at Page 5 of 20.) Testimony at the hearing establishes that the notation is imprecise because it creates the mistaken impression that those 25 hours are in addition to the "90 hours per calendar quarter of respite services" set forth in the IPP (see *id.*), when they are not

Mother has not used the maximum number of authorized in-home behavior respite service hours. Peterson's unrefuted testimony and corroborating documentary evidence<sup>9</sup> establish that the utilization rate associated with the 90 hours of in-home behavior respite service HRC granted Claimant is less than 20 percent. Mother nonetheless has requested an increase of in-home behavior respite service hours to a total of 165 hours per quarter or 55 hours per month.

6. By Notice of Proposed Action letter dated May 14, 2019, HRC has declined Mother's request. On behalf of Claimant, Mother filed a Fair Hearing Request. Thereafter, these proceedings ensued.

7. At the hearing, Mother detailed Claimant's maladaptive and age-inappropriate behaviors. She explained that support from members of her family is limited because they reside elsewhere, including abroad. She explained her need for in-home behavior respite service hours to conduct her consulting business, complete errands, attend church, and socialize with friends. She additionally explained that BRIA staffed in-home respite service hours with providers lacking the knowledge and the skills to manage Claimant's behaviors, and she objected to such staffing. "They don't have a behavior background. . . .The person who is assigned should attend to [Claimant's] needs in the same fashion as his mother. . . . I am asking for appropriate respite services so that I can get a break." Mother offered letters from a respite caregiver (Exh. 60) and a licensed clinical psychologist acquainted with Mother (Exh.

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intended as such. The imprecision was attributed to case management that "was not that great in this case."

<sup>9</sup> See Exhs. HRC 7, 8 and 9.)

61) in support of Claimant's need for a provider capable of implementing applied behavior analysis strategies with Claimant during respite service hours.

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), which 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 of life in the community." (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (*Id.* at § 4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as "specialized 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 rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (*Id.* at § 4512, subd. (b).) Services and supports include in-home respite services. (*Id.* at §§ 4686.5 and 4690.2.)

3. Section 4686.5 provides for the purchase of up to 90 hours of in-home respite services in a quarter (30 hours each month) when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. Section 4690.2, subdivision (a) provides that "In-home respite services' means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's home, for a regional center client who resides with a family member."

4. In-home respite service is designed to achieve the following objectives set forth in section 4690.2, subdivision (a):

(1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision in maintaining the client at home.

(3) Relieve family members from the constantly demanding responsibility of caring for the clients.

(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 family members.

5. When making determinations to acquire services and supports for its consumers the service agency must conform to its purchase of service guidelines. (*Id.* at § 4646.4, subd. (a)(1).) Pursuant to the Lanterman Act, the Department of Developmental Disability reviews the guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (*Id.* at § 4434, subd. (d).) The

guidelines are deserving of deference because they reflect the service agency's expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, guidelines the service agency promulgates must account for its consumers' individual needs when making eligibility determinations for particular services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

6. Claimant has the burden of establishing by a preponderance of evidence that he has met the eligibility criteria for an increase of his in-home behavior respite service hours to 55 hours per month or 165 hours per quarter. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

7. In an individualized program planning process, which involved collaboration with Mother, HRC appropriately considered the specific characteristics of Claimant's challenges in several domains—self-care, behavioral, medical, and family support—and determined that 90 hours of in-home behavior respite services per quarter (30 hours each month) are needed to relieve Mother from the demanding and constant responsibility caring for Claimant. In making that determination, HRC complied with the standards and requirements set forth in its *Respite Care Policy* and *Respite Needs Assessment Tool*. BRIA, the vendor providing Claimant with a respite service provider has confronted staffing challenges, which it is attempting to resolve to Mother's satisfaction. Chief among those staffing challenges is the retention of a respite service provider or providers with the knowledge and skill set necessary for the effective care and supervision of Claimant when Mother is taking respite. Those staffing challenges do not, however, establish cause warranting an increase of Claimant's 90 hours per quarter of in-home behavior respite services. The unrefuted

evidence establishes that the utilization rate of the 90 hours of in-home behavior respite service granted Claimant is less than 20 percent.

8. Claimant has not established by a preponderance of evidence that cause exists to increase his in-home behavior respite service hours to 165 hours per quarter or 55 hours per month by reason of Factual Findings 1 through 7 and Legal Conclusions 1 through 7.

### **ORDER**

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

This is a final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.