

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

**In the Matter of:**

**CLAIMANT, and**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency**

**OAH No. 2019050900**

**DECISION**

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 20, 2019, in Los Angeles, California.

Karmell Walker, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant was represented by his mother. Claimant and his sister were also present. (Titles are used to protect confidentiality.)

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 20, 2019.

## **ISSUE PRESENTED**

The parties did not agree on the issue to be resolved. The Service Agency contends the issue is whether Claimant should receive retroactive payment for respite services from January 1, 2017, to January 1, 2018. Claimant contends that the issue is whether Claimant should receive retroactive payment for respite services from the time when the last respite vendor discontinued services, four or five years ago, to the present.

The ALJ determined the issue is: whether Claimant should receive retroactive payment for respite services from the time when the last respite vendor discontinued services, four or five years ago, to January 1, 2018.

## **EVIDENCE RELIED UPON**

SCLARC's exhibits 1-9, and testimony of Linda Alvarado, service coordinator, and Claimant's mother.

## **FACTUAL FINDINGS**

1. Claimant is a 21-year-old male consumer of the Service Agency who lives in the family home with his mother, father, and siblings. Claimant has received services under the Lanterman Developmental Disabilities Services Act (Welfare and

Institutions Code section 4500 et. seq., referred to as the Lanterman Act)<sup>1</sup>, based on his diagnosis of autism.

2. There was no evidence of when Claimant began receiving services from SCLARC. The earliest dated document in evidence is Claimant's Individualized Program Plan (IPP) dated October 14, 2015 (Exhibit 9), which states that Claimant's parents will receive 24 hours per month respite from Accredited Respite Services (Accredited), authorized by SCLARC through October 31, 2016. Respite for 24 hours per month was authorized again, for the periods of July 1, 2016, through June 30, 2017 (Exhibit 7), July 1, 2017, through June 30, 2018 (Exhibit 8), and July 1, 2018, through June 30, 2019 (Exhibit 6).

3. Mother testified credibly that, despite the authorizations, respite services were last provided by Accredited four or five years ago, when the respite worker told Mother she would stop coming. Mother notified SCLARC and was informed to wait until the worker actually stopped, and then paperwork could be submitted to locate a new worker. Mother was not told a reason for the worker stopping. Mother submitted paperwork to SCLARC as requested, however, no respite worker was assigned. There have been no respite services funded by SCLARC since that time.

4. At some point Mother began paying family members to provide respite, and wanted to have the family members become authorized respite workers. She submitted paperwork, which was not processed or approved, for reasons not explained

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

by the evidence, except in the instances described below. It was not always clear whether the paperwork was submitted to SCLARC, a respite vendor, or both.

5. Linda Alvarado became Claimant's service coordinator on July 7, 2018. She testified credibly that, earlier that year, SCLARC began a process to review Claimant's medical records to determine if Claimant required LVN respite. On December 6, 2018, the nursing assessment recommended that Claimant receive regular respite.

6. Alvarado first spoke to Mother about respite in August 2018, when Mother informed her of the lack of respite providers for about five years. After the December 6, 2018 nursing assessment, Alvarado contacted Accredited and learned that a W-4 form was needed to process the family member to become the respite worker. Although Alvarado prepared a purchase of service in anticipation, Alvarado learned that the worker chosen by Mother had not been approved. Mother met with Alvarado on January 28, 2019, and they called Accredited for status. For reasons not explained on the record, it was determined that the family would go to the Accredited office in Costa Mesa to submit paperwork, which occurred on February 22, 2019. For some reason not explained in the evidence, Accredited did not accept the paperwork. Mother called Alvarado and left messages that day.

7. In February 2019, Mother requested to change respite agencies, and Alvarado sent the respite information to Maxim. Unfortunately, things did not get better. When Mother reported on May 14, 2019, that she had not heard from Maxim, Alvarado sent information to Maxim again.

8. In the interim, SCLARC sent a Notice of Proposed Action letter to Mother dated February 14, 2019, denying Mother's request for retroactive payment for respite

services from January 1, 2017 to January 1, 2018. (Exhibit 2.) The reasons stated were that SCLARC does not make retroactive payments for a service that was not approved, and that respite services could not begin until the worker was found eligible and cleared a background check. The letter stated that Accredited may have been able to provide a respite worker if the family could not. The letter cited Welfare and Institutions Code sections 4646, subdivision (a), and 4512, subdivision (b), discussed in more detail below. Mother filed a timely request for fair hearing, requesting respite and noting that she had been waiting for five years for a response to her request for respite. (Exhibit 1).

9. Mother explained that she had requested reimbursement for the payments she made to family members, and at one point stated that if she could not get reimbursed for five years, she should be paid at least for the year 2017. However, she repeated that she has paid for respite for four to five years and would like retroactive repayment.

10. After the Fair Hearing Request was submitted, an informal meeting took place on May 21, 2019, with Mother and Walker, followed by Walker's letter to mother, dated June 5, 2019, summarizing the meeting. (Exhibit 4.) They discussed problems with paperwork and Accredited. During the meeting, Walker called Maxim. Maxim's representative stated that Claimant was not in their system and that paperwork would be emailed to Walker, which was done. In her letter, Walker cited Welfare and Institutions Code section 4648, subdivision (a)(15); however, the language quoted in the letter is not from that Code section. Nor is the Code section or the quoted language relevant to the respite issues. Walker also cited section 4646, subdivision (a), the same section cited in the Notice of Proposed Action.

11. On June 18, 2019, Alvarado called Maxim two times to follow up. Both times she was told that the manager in charge of the account was “on block,” which Alvarado did not understand, and did not inquire further about. Alvarado was given no information about the status of respite for Claimant. Mother testified similarly; calls to Maxim were either unanswered, or no substantive information was provided.

12. Mother has not provided to SCLARC records of her payments for respite, and she did not have any such records at the hearing. Mother testified that she did not keep records of payments, and she was never asked to provide proof of payments. She tried to limit paid respite to 24 hours per month, but sometimes exceeded that. Mother paid different family members at different times. Currently, Mother is trying to get approval for one of her daughters to be the authorized respite provider.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Act, an administrative “fair hearing” is available to determine the rights and obligations of the parties. (Section 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s proposed denial of funding for a greater number of hours of respite services. Jurisdiction in this case was thus established. (Factual Findings 3-8.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th

763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding his request for retroactive payment for respite services. (Factual Findings 1-9.)

3. 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.” (Section 4501.) These services and supports are provided by the state’s regional centers. (Section 4620, subd. (a).)

4. Respite is one of the specific services available to consumers listed in section 4512, subdivision (b). In section 4690.2, subdivision (a), “In-home respite services” are defined as “intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, . . . 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.”

An almost identical definition of in-home respite services is found in California Code of Regulations, title 17, section 54302, subdivision (a)(38).

5. The statutory and regulatory definitions of in-home respite services clearly indicate that the primary goal of respite is to provide care to a consumer that is ordinarily provided by the consumer's family, thereby relieving the family from that duty so that the family may absent themselves and be free to do other things.

6. Code section 4646, subdivision (a), states:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Code section 4512, subdivision (b), states in part:

The determination of which services and supports are necessary for each consumer 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 or, when appropriate, the consumer's family, and



shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

8. The Lanterman Act does not specifically authorize retroactive reimbursement of costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties, and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

9. As noted in Factual Finding 2, respite services were authorized for Claimant from at least October 2015 through June 2019. However, no respite funded by SCLARC has been provided for Claimant for the last four or five years.

10. In pursuing her claim for reimbursement, Mother bears the burden of proving how much was paid and for what services. Mother provided no evidence of what amount was paid to which person for what period of respite services.

11. The equities support reimbursement of Mother's expenses; respite services were authorized continuously, but not provided due to paperwork issues and lack of follow up by SCLARC. The family's efforts at follow up have also been

unsuccessful, for reasons not fully explained at the hearing. For example, the reasons for rejection of paperwork were not always clear. There was insufficient evidence that Mother was informed that an employee of an authorized respite vendor could provide services. However, it was Mother's obligation to provide proof of payments at the hearing, which she does not have. Due to the lack of that evidence, retroactive payment cannot be ordered.

12. Mother and SCLARC should continue in their efforts to have an authorized respite worker assigned for Claimant, whether the respite is provided by an approved family member or an employee of a respite vendor.

## **ORDER**

Claimant's appeal of the Service Agency's decision to deny retroactive payment for respite services paid for by Mother is denied.

DATE:

DAVID B. ROSENMAN

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.