

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**HARBOR REGIONAL CENTER, Service Agency**

**OAH No. 2019070946**

**DECISION**

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 6, 2019, in Torrance, California.

Claimant's mother, with assistance from a Spanish language interpreter, represented Claimant who was present throughout the proceedings.

Latrina Fannin, Manager of Rights and Quality Assurance represented Harbor Regional Center (HRC or Service Agency).

Evidence was received, the matter argued, and the case submitted for decision on the hearing date.

## **Issues Presented**

Whether the Service Agency should grant Claimant's request to increase his 30 hours of respite to 40 hours a month.

Whether the Service Agency should grant Claimant's request to make his 20 hours of interim personal care services permanent and increase the hours of personal care services to 80 hours a month.

## **Evidence**

Documentary: Exhibits 2 through 13<sup>1</sup> and A through D

Testimonial: Bjoern Petersen, Client Services Manager, and Claimant's mother

## **Parties and Jurisdiction**

1. Claimant is a 19-year-old conserved male, who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act),<sup>2</sup> based on his qualifying diagnosis of mild intellectual disability. Claimant has additional

---

<sup>1</sup> On her own motion., the Administrative Law Judge marked the Notice of Hearing dated July 24, 2019, as Exhibit 13. The document was admitted into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i).

<sup>2</sup> Welfare and Institutions. Code, § 4500 et seq.

diagnoses of enthesitis related arthritis, ankylosing spondylitis, and schizophrenia. Mother is Claimant's authorized representative. (Welf. & Inst. Code,<sup>3</sup> § 4701.6.)

2. The Service Agency issued a Notice of Proposed Action (NOPA), dated June 13, 2019, notifying Claimant that it was denying his request for "[o]ngoing funding of personal care services beyond the agreed upon interim timeframe and at an increased rate from 20 hours per month to 80 per month" and "[r]espice hours at an increased rate from 90 hours per quarter to 120 per quarter." (Exhibit 3.)

3. On July 18, 2019, Claimant's mother submitted a fair hearing request on her son's behalf to appeal the Service Agency's decision.

4. All jurisdiction requirements have been met.

### **Claimant's Individual Program Plan**

5. Claimant's most recent Individual Program Plan (IPP) meeting was held with Claimant's mother and Claimant's HRC service coordinator, Steven Campos on June 6, 2019.

6. Claimant resides with his mother in the family home. Claimant's older brother resides in a neighboring city, and he is the primary source of support for Claimant and his mother. During the week, Claimant attends a nonpublic school (NPS) under contract with the Los Angeles United School District (LAUSD) where he is provided with supports and accommodations including 1:1 aide services.

---

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

7. Claimant is semi-independent. He requires moderate support with activities of daily living (ADLs). Claimant cannot be left alone at home. He requires constant supervision as he lacks safety awareness and has a history of eloping from the home. Claimant's diagnosis of schizophrenia adds unpredictability to his behaviors, which is an additional stressor for his mother.

8. During the IPP meeting, Claimant's mother reported Claimant was receiving Supplemental Security Income (SSI) from the federal government; 58 hours per month of In-Home Supportive Services (IHSS); and health coverage through the California Medical Assistance Program (Medi-Cal).

9. To support Claimant's continuing placement in the family home, the Service Agency agreed to fund 30 hours of respite a month. In addition, the Service Agency agreed to fund 20 hours of personal care services a month on an interim basis from January 1, 2019, until September 30, 2019.

### **Respite, Personal Care Services, and In-Home Supportive Service Hours**

10. HRC Respite Care Policy defines "respite" as "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." (Exhibit 11.)

11. Funding for respite hours "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." (Exhibit 11.)

12. According to Bjoern Peterson, the Client Services Manager (CSM) supervising Claimant's service coordinator, the Service Agency assessed Claimant's need for in-home respite by employing the HRC Respite Needs Assessment Tool (Assessment Tool). The Assessment Tool assigns numerical values to the consumer's needs based on the consumer's level of functioning in the areas of 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." (Exhibit 9.) The Service Agency assessed Claimant's needs in the areas of self-care and medical as intermediate and his needs in the areas of behavioral and family support as high. Application of the assessment tool resulted in a determination that 30 hours of respite services per month was appropriate.

13. CSM Peterson acknowledged that Claimant has significant behavioral issues warranting additional assistance. However, CSM Peterson did not believe that Claimant's needs would be met by additional respite and personal care hours. CSM Peterson opined the services Claimant requires are protective supervision, Applied Behavior Analysis (ABA) services, and mental health services.

14. In 2017, the Service Agency recommended that Claimant appeal the determination to provide Claimant with 58 hours per month of IHSS. The Service Agency funded a nursing assessment to assist Claimant's mother with the IHSS appeal. The nursing assessment was conducted by Laurie Garabedian, R.N., on April 12, 2018.

Nurse Garabedian concluded that Claimant required 283 hours per month of IHSS. These additional hours were necessary, in large part, due to Claimant's need for protective supervision.

15. The Service Agency agreed to fund the 20 hours of personal care services per month until the end of September 2019. These hours were being funded on an interim basis while the IHSS appeal was pending and were also to allow Claimant's mother to access ABA services for Claimant.

16. CSM Peterson claimed Claimant's mother has a history of not sharing information which would assist the Service Agency in assessing Claimant's needs and of not following through with accessing generic resources. According to CSM Peterson, in his experience, decisions regarding IHSS appeals are made in a matter of a few weeks or, at a maximum, a few months, if the family is responsive.

17. The personal care services were being funded on an interim basis for a limited purpose. Claimant's mother, however, had not provided the Service Agency with any information which would justify continued funding. The Service Agency did not know if a decision had been received on the 2018 IHSS appeal or even if Claimant's mother had followed through with the appeal. Additionally, the Service Agency had not been given any indication that Claimant's mother was seeking the ABA services.

### **Mother's Testimony**

18. At hearing, Claimant's mother testified about the stress associated with her caring for Claimant. Respite hours would provide her with some measure of relief from her constant care for Claimant. She explained that she wanted both "inside" and

"outside" respite hours. According to Claimant's mother, Claimant needs "outside respite hours" so that Claimant could go outside with the supervision he requires.

19. Claimant's mother testified Claimant receives 168 IHSS hours per month but asserted that Claimant's IHSS hours were irrelevant to her request for respite hours. When asked when she received the decision on her IHSS appeal, Claimant's mother's demeanor changed and she somewhat disjointedly claimed she had received it sometime that week, after the evidence exchange for the fair hearing.

20. Claimant's mother also submitted a physical therapy (PT) evaluation from Stepping Stones Pediatric Therapy dated January 16, 2018 (2018 PT Evaluation); an initial psychiatric evaluation from Del Amo Behavioral Health System of Southern California dated January 29, 2018 (2018 Psychiatric Evaluation), with supportive documents; a neuropsychological evaluation from the Center of Pediatric Neuropsychology with testing dates of August 24 and 31, 2018 (2018 Neuropsychological Evaluation); a neuropsychological evaluation from the Stramski Children's Developmental Center with testing dates of November 14, 22 and 24, 2017; and a psychological report from Armando de Armas, Ph.D., Inc. with evaluation dates of November 1 and 8, 2016.

21. The 2018 PT Evaluation assessed Claimant's need for educationally based PT intervention in order for him to access his educational environment. The evaluator noted that, during the assessment, Claimant "displayed marked mood variations with a few outbursts when frustrated" and that "[h]e mumbled and talked quietly to himself throughout the entire assessment." (Exhibit A.) Following the assessment, it was determined that Claimant's current supports were meeting his education needs and that he did not require educationally based PT intervention.

22. The 2018 Psychiatric Evaluation indicates that Claimant was admitted to the Del Amo Hospital with a diagnoses of “[u]nspecified schizophrenia spectrum” on January 29, 2018, and appears to have been discharged on February 2, 2018.<sup>4</sup> There is no indication from the evaluation what prompted Claimant’s hospitalization.

23. The 2018 Neuropsychological Evaluation was conducted “to inform decision making pertaining to special education classification and placement, classroom accommodations and intervention planning.” (Exhibit C.) According to the assessment, Claimant’s mother reported Claimant exhibits severe psychosis, ongoing behavioral problems, which included aggression, social difficulty and significant adaptive functioning. Following the assessment, a number of recommendations were made, including the recommendation that Claimant’s mother follow up with HRC for in-home behavioral therapy services, respite care services, and vocational services.

24. Though Claimant’s mother apparently had the 2018 PT and Psychiatric Evaluation assessments at the time of the June 2019 IPP, they were not shared with the Service Agency prior to evidence exchange.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Pursuant to section 4710.5, subdivision (a), “Any ... authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient’s or

---

<sup>4</sup> Many of the notations on the 2018 Psychiatric Evaluation are illegible.



applicant's best interests, shall ... be afforded an opportunity for a fair hearing." Claimant timely requested a hearing to appeal the Service Agency's decision to deny funding for increased respite and personal care service hours. Jurisdiction in this case is established. (Factual Findings 1 through 4.)

## **Standard of Proof**

2. The party seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161). As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Claimant, as the party seeking funding for additional respite and personal care service hours, bears the burden of proof in this matter.

## **Applicable Law**

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

4. The "services and supports" which may be provided to a consumer as part of their IPP may include personal care and respite. (§ 4512, subd. (b.)

5. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be

included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (§ 4646, subd. (b).)

6. Although regional centers are mandated to provide a wide range of services to facilitate the implementation of the IPP, they must do so in a cost effective manner. (§§ 4512, subd. (b) and 4646, subd. (a)) Regional centers are required to identify and pursue all possible sources of funding for its consumers and to secure services from generic sources where possible. (§§ 4647, subd. (a), and 4646.5, subd. (a)(4)). The regional center is further prohibited from using regional center funds "to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).)

## **Respite and Personal Care Hours**

7. The IPP is to be developed through a collaborative effort involving the appropriate regional center, the consumer and/or the consumer's representative(s), and others and must be based on information and assessments relating to the consumer's life goals, the barriers to meeting those goals, the consumer's capabilities and strengths, preferences, concerns, and other relevant information about the consumer.

8. Though regional centers, such as HRC, are mandated to provide services to facilitate the implementation of the IPP, consumers and their parents have the reciprocal obligation to assist the regional center in meeting its mandate. (See Civ.

Code, § 3521.) No consumer should benefit by withholding information or by refusing to cooperate with the regional center, even if such conduct is well intentioned.

9. Claimant's mother asserts Claimant requires additional respite care service hours in order for her to obtain relief from the constant care and supervision Claimant requires. IHSS is a generic support that provides assistance to eligible individuals. With IHSS funds a family can hire outside help or pay one of their own to provide care and supervision. Although IHSS is not respite, Claimant's mother would have relief during the time that an IHSS worker cares for Claimant.

10. Additionally, Claimant's mother stated that her request for respite "outside the home" was so that Claimant could be supervised when outside. The stated purpose of her request is inconsistent with respite as defined by HRC Respite Policy, in that respite is to be provided within the home or a licensed facility. Protective supervision is an IHSS service for people who, due to a mental impairment or mental illness, need to be observed 24 hours per day to protect them from injuries, hazards or accidents. It is, therefore, the more appropriate service to address Claimant's need for supervision when he is outside the home.

11. At the time of the June 2019 IPP, Claimant's mother reported that Claimant was receiving 58 IHSS hours, which she and Claimant's service coordinator agreed were insufficient to meet Claimant's needs. It was agreed through the IPP process that the Service Agency would provide funding for 20 personal care hours during the IHSS appeal process on an interim basis.

12. The appeal was partially successful in that it resulted in an increase of more than 100 hours. The IHSS hours are intended to be used to provide assistance with activities of daily living and protective supervision. It was not established at the

hearing that Claimant's needs have changed since the June 6, 2019 IPP meeting to warrant deviation from the plans as set forth in Claimant's June 2019 IPP.

## **ORDER**

1. Claimant's appeal is denied.
2. HRC shall continue to fund 30 hours a month of respite services and discontinue funding of personal care as set forth in Claimant's June 2019 IPP.
3. Within 30 days of the date of this Decision, the Service Agency will convene an IPP meeting with Claimant's mother and other members of the IPP team as appropriate to consider whether the evidence provided by Claimant's mother warrants amendment of the IPP and to address whether an additional appeal of the IHSS decision is warranted.

DATE:

NANA CHIN

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.