

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2019100679

DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 20, 2019, and January 15, 2020, in Alhambra, California.

Claimant was not present, but was represented by his mother (Mother). Claimant's father (Father) was present on November 20, 2019, and testified.¹

Jacob Romero, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (Service Agency or ELARC).

¹ Claimant and his family members are identified by titles to protect their privacy. This case and OAH Case No. 2019100811 (involving a request by Claimant's half-brother for increased in-home respite service hours) were consolidated for hearing, but a separate decision has been issued in each matter.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 15, 2020.

ISSUE

Must ELARC increase in-home respite services² (respite) to 50 hours per month for Claimant?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1A-15A and 1B-10B; Claimants' exhibits 1C-5C.

Testimonial: Jacob Romero, ELARC Fair Hearing Coordinator; Delfina Barron, ELARC Service Coordinator; Mother; Father; Father of Claimant's half-brother; Maria Garcia; and Claimant's aunt.

² In-home respite services consist of non-medical care and supervision provided in the individual's home to assist in maintaining the individual at home. Respite services are intended to attend to the person's basic self-help needs and other activities of daily living. They may include interaction, socialization, and continuation of daily routines ordinarily performed by family members.

FACTUAL FINDINGS

Background Facts

1. Claimant is a regional center client based upon a diagnosis of Autism Spectrum Disorder (ASD). He resides in a two-bedroom apartment with six other family members: Mother; Claimant's Step-Father; and four minor siblings, including a set of twins. Each of the five children in the family has ASD.

2. Mother is the primary caregiver. She has hypertension, migraines with aura, tendonitis in her shoulders, and recently suffered a miscarriage. Claimant spends time with his Father, who is a truck-driver, when Father is in town.

3. Claimant is an eight-year-old boy. He is dependent on his parents for the majority of activities of daily living. Claimant is able to express himself using short phrases. He is short-tempered and impulsive, has threatened to kill people, makes weapons, engages in tantrums, goes on a "rampage," and displays aggressive behavior towards his siblings and classmates. This includes hitting, spitting, screaming, choking other children, and throwing toys. (Ex. 3A, p. 4.) Claimant must be closely monitored to prevent injury to himself or other children. He becomes upset if he is ignored. Claimant is light-sensitive, suffers from bad migraine headaches on a daily basis, and engages in self-injurious behaviors, hitting his head against the wall or the door while "yelling his head hurts." (*Ibid.*) He has limited safety skills, eats quickly when he is anxious, and must be closely monitored to prevent choking on food.

4. Claimant receives 216 hours per month of In-Home Supportive Services (IHSS),³ which includes protective supervision. Mother is Claimant's IHSS provider.

Claimant's Request for Increased Respite Care Funding

5. At Claimant's Individualized Program Plan (IPP) meeting on May 29, 2019, Delfina Barron, Claimant's service coordinator, evaluated Claimant's respite need at 30 hours per month. Mother disagreed, requesting 40 hours per month of respite, "due to [Claimant's] violent behavior and self-help and safety awareness problems." (Ex. 3A, p. 2.)

Notices of Proposed Action and Fair Hearing Request

6. On August 8, 2019, ELARC issued Notices of Proposed Action denying Claimant's request for 45 hours per month of respite. (Ex. 1A.) As the basis for its denial, ELARC cited Welfare and Institutions Code (Code) sections 4646, subdivision (a), and 4646.4, subdivision (a), and ELARC's Family Respite Needs Assessment Guideline (Guideline).

7. On October 1, 2019, Mother filed a timely fair hearing request on Claimant's behalf to appeal ELARC's denial of an increase in respite hours. In the fair hearing request, Mother requested 45 hours per month of respite for Claimant.

8. At the hearing, Mother requested that ELARC fund 50 hours per month of respite for Claimant. The parties agree that this is the funding increase at issue in this matter.

³ The IHSS program provides in-home assistance to disabled individuals as an alternative to out-of-home care to enable them to remain safely in their own homes.

ELARC's Respite Funding Determination

9. 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. This assessment is part of ELARC's Guideline. The Guideline provides that if the needs assessment yields a score of 25 to 30 points, ELARC will fund up to 30 hours of respite per month. If the assessment yields a score exceeding 30 points, an expanded planning team determination can be made to determine whether ELARC shall fund more than 30 hours of respite per month for that client. (Exhs. 4A & 4B.)

10A. At Claimant's May 29, 2019 IPP meeting, Ms. Barron assessed Claimant's needs for in-home respite services employing the 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 Adaptive Skills (0-8); Mobility (0-5); Day Program Attendance (0-5); Medical Needs (0-10); Behavioral Needs (0-16); and Family Situation (2-10.) A lower numerical value denotes a lower need in that particular area. One point is subtracted for each generic resource, including IHSS. (Ex. 4A.)

10B. Ms. Barron assessed Claimant's needs as follows: Adaptive Skills (4); Mobility (0); Day Program Attendance (0); Medical Needs (1); Behavioral Needs (12); and Family Situation (10.) This resulted in a total of 27 points. One point could have been subtracted for the IHHS hours Claimant receives, but nothing was subtracted. For a score of 25 to 30 points, the Assessment Tool provides "up to 30 hours per month" of respite hours. (Ex. 5A.) Accordingly, based on the Assessment Tool, ELARC's determination was to fund 30 hours of respite services a month to Claimant.

11. On October 21, 2019, an informal meeting was held regarding Claimant's request to increase respite hours from 30 hours per month to 50 hours per month. At the informal meeting, Mother presented detailed information to ELARC about Claimant's issues and needs. She also provided information about her upcoming surgery for tendonitis, a condition which has been exacerbated by Mother's need to physically intervene to address the behaviors exhibited by Claimant and her other four children.

12A. In connection with the informal meeting, Jacob Romero, ELARC Fair Hearing Coordinator, assessed Claimant's needs for in-home respite services, utilizing the Assessment Tool.

12B. Mr. Romero assessed Claimant's needs as follows: Adaptive Skills (4); Mobility (0); Day Program Attendance (0); Medical Needs (1); Behavioral Needs (12); and Family Situation (10.) This resulted in a total of 27 points. One point was subtracted for the IHHS hours Claimant receives. Application of the assessment tool resulted in a determination that 30 hours of respite services a month was appropriate. (Ex. 14A.)

13A. Mr. Romero acknowledged that Claimant has significant behavioral issues, Mother has medical issues, seven family members live in a small apartment, and each of Mother's five children has special needs, all of which warrants the provision of a higher allotment of respite hours. However, Mr. Romero noted that Claimant's Mother has not yet utilized any of the respite hours currently authorized. He asserted that if Mother had utilized the allotted respite hours, and were still overwhelmed, it could indicate that an increase in respite hours is warranted. However, Mother's failure to utilize the current respite hours allotted may be exacerbating the current situation, resulting in her request for additional respite hours.

13B. As a result of the informal meeting, Mr. Romero sought and received approval to have ELARC fund an additional five hours of respite hours per month, resulting in approval for 35 hours of respite per month for Claimant.

14. Mother asserted that, in the past, ELARC had agreed to fund 40 hours per month of respite hours for Claimant. She acknowledged that she has not used the currently allotted respite hours for a variety of reasons. Initially, a previous ELARC supervisor had insisted that one respite provider must provide care to three of her children at the same time. Subsequently, Mother was told that ELARC would fund a respite provider for each child, but that the company which provides respite care workers would not send more than one worker to her home at the same time, and Mother was told that she could not utilize respite care workers from multiple companies at the same time. Once those issues were resolved, Mother and several of her children were ill, and were not able to utilize respite care services.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of an increase in respite hours is denied. (Factual Findings 1 through 14; Legal Conclusions 2 through 14.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of an increase in respite hours, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156,

161 [disability benefits].) In a case where a party is seeking funding for services or items not previously approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for an increase in respite hours, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet his needs. Claimant has failed to meet his burden.

4. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).)

5. Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and

that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

6(a). Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part:

[I]t 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.

6(b). The Lanterman Act requires regional centers to control costs in its provision of services. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

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

[T]he 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. Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers

shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

9. Claimant has not presented sufficient evidence at this time to establish that requiring ELARC to fund additional respite hours would be a cost-effective use of public resources. It was established that Claimant has not utilized his current allotment of respite hours. While Mother has presented valid reasons for her failure to utilize the hours, the evidence presented does not establish that an increase in respite hours is warranted at this time. (Factual Findings 1-14.)

10. Given the foregoing, the Service Agency's denial of an increase in respite hours beyond 35 hours of respite per month for Claimant was appropriate.

11. When making determinations to acquire services and supports for its consumers the service agency must conform to its purchase of service guidelines. (Code § 4646.4, subd. (a)(1).) Pursuant to the Lanterman Act, the California Department of Developmental Services reviews the guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (Code § 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.)

12. In an IPP process, and at a subsequent informal meeting in October 2019 with Mother, ELARC appropriately considered the specific characteristics of Claimant's

developmental challenges in several domains—adaptive skills, mobility, day program attendance, medical needs, behavioral needs, and family situation—and determined that 35 hours of in-home respite services per month is needed to alleviate the constant demands and responsibility of caring for Claimant. In making that determination, ELARC complied with the standards and requirements set forth in its In-Home Respite Care Services Policy and Respite Needs Assessment Tool.

13. Claimant has not established by a preponderance of evidence that cause exists to increase his in-home respite service hours beyond the 35 hours per month currently allotted, as set forth in Factual Findings 1 through 14 and Legal Conclusions 1 through 12.

ORDER

1. Claimant's appeal is denied.
2. Eastern Los Angeles Regional Center's denial of an increase in respite hours beyond 35 hours per month for Claimant is upheld.

DATE:

LAURIE R. PEARLMAN
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.