

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

In the Matter of:

CLAIMANT

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency

OAH No. 2019120268

DECISION

Administrative Law Judge Penelope Pahl, State of California, Office of Administrative Hearings, heard this matter on February 7, 2020, in Ukiah, CA.

Claimant's Mother (Mother) represented claimant at hearing. Claimant was not present.

Kathleen Kasmire represented service agency Redwood Coast Regional Center (RCRC).

The hearing concluded and the matter was submitted for decision on February 7, 2020.

ISSUE

Does Claimant require additional funding for service hours¹ to meet her needs?

FACTUAL FINDINGS

Introduction

1. Claimant is a 22-year-old regional center consumer with complex disabilities who lives with her Mother, Stepfather, and three siblings. Mother took in Claimant as a foster child in 2002 and adopted her in 2005. Claimant is eligible for regional center services due to her diagnoses of mild intellectual disability and epilepsy.

2. RCRC is one of 21 regional centers in California to serve people with developmental disabilities and their families. RCRC provides service coordination and individualized planning to assist consumers and their families in accessing services and supports to meet the individuals' needs. Service planning may include resources in the community or services funded by the regional center, including respite for parents and caregivers, day activity/work programs for adults, and residential and community living options for individuals. Following this planning process, each regional center

¹ Although the request for fair hearing originally requested funding for personal assistant hours, at the time of the hearing, the parties agreed that the issue could be worded as stated.

"consumer" is provided with an Individual Program Plan (IPP) which is periodically updated thereafter.

3. Claimant originally requested 100 additional personal assistant (PA) hours from RCRC. On November 12, 2019, RCRC issued a Notice of Proposed Action (NOPA) denying Claimant's request.

4. On November 30, 2019, Claimant filed a fair hearing request seeking 294 additional personal assistant hours to meet her needs.

5. On December 11, 2019, an informal meeting was held during which RCRC spoke with Mother regarding her fair hearing request; and again considered the appropriate number of personal assistant hours to be allocated to Claimant. RCRC denied the request for additional personal assistant hours on the grounds that Claimant did not have additional needs warranting an increase. RCRC determined that its view of Claimant's needs differed from Claimant's and Mother's; that Claimant's failure to sleep at night was a choice she was entitled to make as an adult; and that Claimant would be entering a community day program in the future, so her needs for supervision and supports would be reduced.

Claimant's Personal Service Needs

6. Claimant was diagnosed at birth with holoprosencephaly (abnormal brain development in which the brain does not properly divide into right and left hemispheres) and hydranencephaly (cerebral spinal fluid filling cranial cavity due to absence of cerebral hemispheres). Claimant also has cerebral palsy, epilepsy, hydrocephalus and a left-side shunt.

7. Claimant's epilepsy is currently well controlled and Claimant has not had a grand mal seizure in over 12 years; however, a seizure could occur at any time.

8. Claimant is unable to function independently. According to her IPP, her disabilities render her medically fragile. She is unsteady on her feet, uses a walker and is able to walk only short distances due to a permanent movement disorder. She cannot independently take public transportation.

9. Claimant is unable to toilet or wash herself. Mother explained that the lack of brain development has resulted in her inability to feel the need to use the bathroom, or to feel hunger or satiety, or pain. As a result, Claimant eats indiscriminately and must be monitored both to avoid excessive obesity and to ensure she does not eat something patently unhealthy, such as spoiled food. Her memory is becoming less reliable and she must be reminded of her schedule for the day and her self-care needs. Claimant's cerebral palsy results in Claimant having extremely tight muscles that benefit from supervised exercise. She is unable to cook without supervision and assistance. She is unable to tell someone she is sick or in pain. Mother described an incident when Claimant broke her arm in two places and said only, "Mom, I broke my arm." When asked if she was in pain, she said, "I don't know." According to Mother, when Claimant was transported to the hospital, her heart rate was very high leading the medical providers to administer pain medication.

10. Claimant has documented difficulties sleeping. Claimant sleeps intermittently at night and, according to Mother, wakes every two to three hours. According to Mother, Claimant recently received permission from her physician to use melatonin to assist with sleeping. However, even with the melatonin, Claimant sleeps, at most, three to four hours at one time during the night and those hours are not

consistent. Mother worries that Claimant will wake and fall down the stairs in the middle of the night. Mother sleeps upstairs to monitor Claimant through the night, at the expense of Mother's own rest.

11. Claimant's behavior is unpredictable. Claimant has particular difficulty transitioning from a preferred activity to a non-preferred activity and will often do so only with outward expressions of anger, such as screaming, slamming doors or setting items down with too much force. Occasionally, she will suddenly rage, throw chairs, threaten to hit others, or bang her head against a wall, injuring herself, sometimes without apparent reason.

12. Mother is unable to leave Claimant alone when she has to attend to the needs of her other three children or when she has to attend to her own personal needs. Mother described an incident in which Claimant ate nine bananas while Mother was in the bathroom.

13. School or programs in the community Claimant can attend without the assistance of a PA are considered a generic resource for service hours to meet Claimant's needs. Claimant has not attended a public school program since October 2019. Her access to a public school education ended in December, when she turned 22 years-old.

14. As of the date of this hearing, Claimant was looking for an appropriate day program and considering visiting two. Claimant's preference is for a community based day program that does not have a strict schedule and allows her to access resources in the community. RCRC staff anticipates a community day program will last about six hours per day during the week, but stated it would depend on the program selected. Programs in Clearlake and Lakeport are being considered. If one of those is

chosen, Claimant will have two additional hours of commute time per day. The totality of these hours is considered when determining Claimant's needs for assistance.

15. Currently, Claimant is not involved in any programs in the community during the day, which results in a need for supervision and assistance during the day. As Claimant is unable to function safely unsupervised, she requires assistance during all hours that she is awake. When personal assistant and IHSS hours run out, and Claimant needs more help, Mother pays Claimant's current PA out of her own funds.

16. RCRC does not believe Claimant needs 24-hour, one-to-one care. Dwayne Nelson, RCRC Client Services Manager for the children's unit (to age 22), testified that, while there are people who receive round-the-clock, one-to-one services from the regional center, those people are usually medically fragile, bedridden, are non-verbal and require specialized medical care such as suctioning. In Nelson's experience, 24-hour assistance is provided in cases of extreme life-threatening situations. RCRC did not rebut Mother's description of Claimant's self-care abilities or needs.

Claimant's Current Service Hour Allocation

17. RCRC's goal is for Claimant to live a life "like everyone else" with supports necessary to address her special needs and allow her to engage in activities similar to same-age peers such as employment, college, and free-time activities. As Claimant's choice is to live in her parents' home, the necessary supports for her to live as independently as possible must be put in place.

18. Support needs are determined by considering Claimant's diagnosis as well as the services necessary for Claimant to be safe and function in society. In

determining support needs, RCRC looks at other available supports before funding service hours. RCRC considers natural supports, which are familial or community supports such as friends; and generic supports, such as public school, programs in the community, or In-Home Supportive Services (IHSS) available from the Department of Social Services. No evidence was submitted as to the number of hours or types of services that are expected to be contributed by natural supports.

19. RCRC currently funds 238 paid PA hours and 30 respite hours for Claimant each month. The Department of Social Services provides Claimant 191 IHSS hours for protective supervision.² Personal assistant hours are provided to support Claimant in any environment, so, if Claimant wishes to go out with her PA, they are at liberty to leave the house. Respite hours provide in-home supervision to provide the family a care-giving break. It is not anticipated that Claimant will leave the house with a respite worker.

20. RCRC service hours are allocated per month so they can be arranged in any manner Claimant chooses. Claimant's monthly IHSS service hour allotment is divided by four weeks and a maximum number per week is allowed.

21. When evaluating Claimant's requests for additional service hours, RCRC's calculations focused on justifying the number of service hours it was providing instead of calculating the number of service hours Claimant needed. In November 2019, RCRC

² Claimant's IHSS hours were reduced from 201 to 191 when the family took in a friend with special needs who needed a place to live. As both Claimant and the family friend were receiving IHSS hours, the hours were determined to be shared and Claimant's hours were reduced.

issued a NOPA denying Claimant's request for additional PA hours stating that Claimant already received 775 service hours, which is 31 more hours of support than the total number of hours in a 31-day month (744). The NOPA calculated Claimant's service hours to include 238 PA hours, 201 IHSS hours, 30 respite hours, 138 school hours and 168 sleep hours. However, Claimant had not attended school since the prior October, a fact of which RCRC was aware; and RCRC was aware Claimant did not sleep consistently throughout the night. RCRC stated that the 31-hour overage was allowed due to Claimant's needs for extra support at night when she did not sleep, and for days when she did not attend school; however, not only was the number based on a calculation of hours that did not accurately reflect Claimant's situation, the basis for determining how 31 hours per month met the extra needs described was not detailed.

22. By contrast, the December 11, 2019 decision, following the informal meeting, acknowledged that Claimant was no longer in school and did not include the sleep hours. RCRC concluded that the additional PA hours were not needed, concluding that the service hours being received (PA hours (238), IHSS hours (201)³ and respite hours (30)) which amounted to 15 hours per day of service hours was adequate. RCRC stated three bases for its decision. It rejected the idea that Claimant required supervision at night and stated Claimant should be allowed to choose not to sleep through the night because she is an adult. RCRC concluded that there was no evidence that her "nocturnal activities" (which were not described) were a risk to Claimant or others. RCRC also stated that there was disagreement over the amount and degree of assistance Claimant needs for activities of daily living (although the

³ There was no evidence presented that RCRC was aware that Claimant's IHSS hours had been reduced when these decisions were issued.

details of that disagreement or how it impacted the amount of services Claimant needed were not stated). Finally, RCRC stated that it was anticipated Claimant would begin a community day program soon. There was no discussion of how days when Claimant was not in a community day program would be addressed.

Claimant's Unmet Needs

23. Claimant requires assistance at night when she is not able to sleep. No evidence was presented that Claimant's failure to sleep was a choice as opposed to an inability to sleep. Claimant sleeps a few hours between 10:00 p.m. and approximately 6:00 a.m. and the times that Claimant sleeps are not consistent. Claimant requires monitoring for her safety during times when she is not asleep and redirection to try to get a healthy amount of sleep if possible. Therefore, Claimant requires eight hours of personal assistant hours from 10:00 p.m. to 6:00 a.m.

24. Claimant also requires assistance during the daytime hours that she is not in a community day program. Claimant requires assistance with everything from preparing meals to toileting. Therefore, Claimant requires assistance from the hours of 6:00 a.m. to 10:00 p.m., unless a generic resource for those hours provides support.

25. The evidence established that Claimant currently has service needs that are unmet. Claimant receives 459 hours of services per month (238 PA; 191 IHSS; 30 respite.) She requires 744 hours of services per month (31 days x 24 hours = 744 hours.) 744 hours of need, less 459 hours of services provided, leaves an unmet need of 285 hours of services per month.

LEGAL CONCLUSIONS

1. Claimant filed the request for additional service hours; therefore, Claimant has the burden of proving by a preponderance of the evidence that the additional service she is requesting is needed. (Evid. Code, §§ 500, 115.)

2. 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. California provides services and supports to enable persons with developmental disabilities to be empowered to make choices in all life areas and approximate the pattern of everyday living available to people of disabilities of the same age." (Welf. & Inst. Code, § 4501.)

3. Regional centers must develop and implement IPPs which shall identify services and supports, "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option . . ." (Welf. & Inst. Code, § 4512, subd. (b); see also, §§ 4646, 4646.5, 4647 and 4648.) The Lanterman Act expresses a legislative preference for services that will maximize the consumer's participation in the community. (Welf. & Inst. Code, §§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

4. The provision of regional center services to consumers and their families are intended to be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).) In implementing IPPs, regional

centers, through the planning team, shall first consider services and supports in the natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer, and, if appropriate, to her family. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

5. Claimant has met her burden of establishing that additional service hours are necessary to meet her needs. The evidence was uncontroverted that Claimant is medically fragile and is unable to keep herself safe or provide for her own basic needs without assistance. RCRC did not adequately assess Claimant's full range of needs. However, Claimant has not established that she needs an additional 294 hours of service each month.

6. As of the date of the hearing, a community day program had not been identified for Claimant, and no substitute services had been provided. It is not enough to anticipate that services will eventually be provided in the future. Claimant requires available services during the daytime hours in order to allow her to safely complete day to day tasks with assistance when necessary and to access the community.

7. Claimant's current needs include services during the day and at night when she is unable to sleep. Claimant is currently receiving 459 hours of services, including respite, IHSS and PA hours. Claimant needs supervision and assistance 24 hours per day. A 31-day month has 744 hours. Therefore, Claimant currently requires 285 additional hours of PA services each month until she begins a community day program providing a generic resource for the services she needs. The 285 hours in combination with the services already being received will cover the hours from 10:00 p.m. to 6:00 a.m., during which Claimant is scheduled to be sleeping, and the daytime hours between the hours of 6:00 a.m. and 10:00 p.m.. Should Claimant's needs change

when her participation in a community based program begins, RCRC can reassess Claimant's needs and adjust her service hours.

ORDER

Claimant's appeal is granted. Claimant is entitled to 285 additional personal assistant hours per month to meet the service needs she has at this time.

DATE:

PENELOPE S. PAHL

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.