BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

EASTERN LOS ANGELES REGIONAL CENTER, Service Agency

OAH No. 2019120377

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on January 30, 2020, at Alhambra, California.

Jacob Romero, Fair Hearing Coordinator, appeared and represented the Eastern Los Angeles Regional Center (Service Agency).

Claimant's mother appeared and represented claimant. Claimant was also present.

The record was held open for claimant to submit letters from a doctor and nursing agencies to the Service Agency by February 19, 2020, and for the Service Agency to file the exhibit with any objections by February 21, 2020.

On February 20, 2020, the Service Agency filed a series of documents marked for identification as Exhibits A through E on behalf of claimant. The Service Agency did not assert evidentiary objections, but filed a response to claimant's exhibits, along with a printout of the website from Easter Seals, collectively marked as Exhibit 15. Exhibits A through E and 15 are admitted.

The matter was submitted for decision on February 21, 2020.

ISSUES

The issue in this matter is whether the Service Agency should increase respite services from 40 hours per month to 40 hours per week.

EVIDENCE CONSIDERED

Documents: Service Agency's Exhibits 1-15; Claimant's Exhibits A through E.

Testimony: Asusena Torres, Service Coordinator; Hamid Shiwoku, Administrator with Alliant; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 12-year-old boy, eligible for regional center services based on diagnoses of mild intellectual disability, Down Syndrome, Hirschsprung Disease, chronic lung disease, pulmonary hypertension, hypothyroidism, adrenal insufficiency, and obstructive apnea. Claimant is non-ambulatory, is dependent upon a portable oxygen tank, and requires a gastrostomy tube (G-tube) for nourishment. Claimant lives

with his mother, a single parent, and his siblings Louis (age 24), Claudia (age 23), and Alexa (age 19). Claimant's mother is claimant's primary caregiver. Louis and Claudia assist with claimant's substantial personal care needs.

2. The Service Agency, claimant, and his mother have participated in the development of an Individual Program Plan (IPP), most recently on August 29, 2019. The IPP participants agreed that claimant's parents will continue to provide for all of claimant's self-help needs and that claimant will receive "optimum medical and dental care." (Ex. 4.)

3. Claimant's mother receives 40 hours per month of respite through Premier Healthcare and is eligible to receive 21 days of respite in lieu of out-of-home placement with a maximum of 16 hours per day. Claimant receives Medi-Cal, Supplemental Security Income (SSI), In-Home Supportive Services (IHSS), and California Children's Services (CCS). Claimant's mother recently requested personal assistant services, but the issue has not yet been resolved by the Service Agency and is not an issue on this appeal.

4. Claimant is eligible for 40 hours per week of licensed vocational nursing (LVN) services through Medi-Cal's EPSDT program. Alliant Home Health Care Services is a nursing agency that attempted to implement a plan of care with 23 objectives ranging from checking vital signs, feeding, aspiration management, medication schedule, bowel elimination, colostomy bag maintenance, G-Tube care, oxygen saturation, fall precautions, infection control, emergency protocol and needed supplies. (Ex. 8.)

5. Claimant's mother has attempted to engage an LVN through three different agencies vendered with the Service Agency, including Alliant. Claimant's

mother credibly testified that nurses have declined serving claimant because of the distance, were unavailable 40 hours per week, or refused to do heavy lifting (as is required to provide care for claimant). Some nurses have accepted the assignment, but failed to show without notification. Many nurses provided by agencies are older, and claimant fares better with younger nurses. Some agency nurses are male, and claimant's mother does not feel comfortable taking a shower or using the restroom with a male nurse in the home 40 hours per week.

6. The Service Agency presented evidence that claimant's mother has not always responded to emails and telephone calls from the staff of the Service Agency or nursing agencies. Claimant's mother credibly testified that she gets overwhelmed with caring for claimant and acknowledged that she does not always respond. She affirmed that she is willing to use a nurse to help with care and will continue to search for a qualified and willing nurse. The weight of the evidence does not establish that claimant's mother has refused to cooperate in the placement of a suitable nurse.

7. Because of the difficulties she was having finding a suitable nurse, claimant's mother requested the Service Agency to provide 40 hours per week of respite, intending to use the money to pay Louis and Claudia to provide the necessary care. Claimant's mother is an inactive registered nurse and has trained her adult children in the tasks that need to be performed on a daily basis, including colostomy bag maintenance, G-Tube care, oxygen saturation, and other similar tasks. To support her request, the mother presented medical records from a neurologist and Children's Hospital, which corroborate the extent of claimant's disabling conditions. Claimant presented two letters written by claimant's primary physician, dated March 27, 2018, and August 31, 2018, which recommend the continuation of respite services "currently

in place." The records presented by claimant do not indicate that nursing services are not required for claimant's proper care.

8. Pursuant to the Service Agency's purchase of service policies, as approved by the Department of Developmental Services, respite services are limited to "temporary non-medical care and supervision" and are intended to assist family members in maintaining the consumer at home and to provide "appropriate care and supervision to ensure the individual's safety in the absence of family members." (Ex. 5.) The policy further provides that respite services are intended to "relieve family members from the constantly demanding responsibility of caring for the individual [and to] attend to the individual's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would be performed by family members." (Ex. 5.)

9. The Service Agency denied mother's respite increase request on the grounds that claimant has complex medical needs and regular respite service is not appropriate for his level of care. The Service Agency offered assistance through Coordinated Life Services, a vendor that addresses complicated medical cases and assists families with streamlining care.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties is governed by the Lanterman Act. (Welf. & Inst. Code, §§ 4700-4716.) 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. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

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

3. A regional center must secure those services and supports that meet the needs of the consumer within the context of the IPP. The planning team must give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families and that allow all consumers to interact with persons without disabilities in positive, meaningful ways. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. Welfare and Institutions Code section 4659 provides:

> (a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following: (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program; (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

> (c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

5. Regional centers are required to ensure all of the following: (1) conformance with the regional center's purchase of service policies, as approved by the Department of Developmental Services; (2) utilization of generic services and supports when appropriate; (3) utilization of other services and sources of funding as contained in Section 4659; and (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. (Welf. & Inst. Code, § 4646.4.)

6. The Lanterman Act requires regional centers to control costs in its provision of services. (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. Claimant's mother gave compelling testimony that she needs additional assistance and that her children provide help. However, the evidence presented does not establish that an increase in respite hours from 40 hours per month to 40 hours per week is the appropriate remedy. Claimant has complex medical needs and has not fully utilized an available generic resource that more appropriately serves those needs. While Mother has presented valid reasons for her difficulties in finding a suitable LVN through Medi-Cal's EPSDT program, respite services are intended to provide temporary non-medical care, to provide relief from the demands of care, and to tend to a consumer's basic needs. Other services may better compliment the available generic resource, including personal assistant services to fund family assistance with daily care and Coordinated Life Services to assist claimant's mother in procuring suitable nursing care.

8. The request for an increase in respite care does not comport with the Service Agency's purchase of service policy for respite care. The Service Agency currently funds 40 hours per month of respite services and claimant is eligible to receive 21 days of respite in lieu of out-of-home placement with a maximum of 16 hours per day. In light of other resources available to claimant to remedy his exceptional circumstance, granting additional respite services would not be a cost-effective use of public resources.

9. The Service Agency's denial of an increase in respite hours to 40 hours per week for Claimant is affirmed. The parties are encouraged to explore the availability of personal assistant services and the suitability of Coordinated Life Services to assist claimant's mother in retaining an acceptable LVN.

ORDER

Claimant's appeal is denied. The Service Agency shall not increase respite services to 40 hours per week.

DATE:

MATTHEW GOLDSBY
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.