

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

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020020615 (Primary)

OAH No. 2020020616 (Secondary)

OAH No. 2020020617 (Third)

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard the above-entitled consolidated matters on September 17, 2020, and October 22, 2020, by videoconference and telephone.

Karmell Walker, Fair Hearings Coordinator, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Claimant was represented by his mother (Mother), who is also his limited conservator. Claimant and Mother are identified by titles to protect their privacy.

A Spanish-language interpreter provided interpreter services for each day of the hearing.

Oral and documentary evidence was received, and argument was heard. The record was closed and the matters were submitted for decision on October 22, 2020.

ISSUES

The parties agreed that the issues presented for decision in the above-entitled matters are as follows:

1. Should SCLARC be required to increase claimant's in-home respite hours from 61 hours to 104 hours per month? (OAH No. 2020020615.)
2. Should SCLARC be required to provide funding for claimant's family member to act as claimant's independent living services (ILS) provider? (OAH No. 2020020616.)
3. Should SCLARC be required to increase claimant's personal assistance hours from 90 to 224 hours per month? (OAH No. 2020020617.)

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-1 through 1-7 (respite); 2-1 through 2-6 (ILS), and 3-1 through 3-7 (personal assistance); and claimant's exhibits A through D, and H.

Testimonial: Daisy Merino-Contreras, SCLARC Service Coordinator; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 22-year-old male diagnosed with mild intellectual disability and Down Syndrome. He is eligible for regional center services based on his diagnosis of intellectual disability. Claimant is a conserved adult. Mother is his limited conservator.

2. In or around September 2019, Mother requested that Service Agency increase claimant's personal assistance hours and in-home respite hours and provide funding for claimant's family member to provide claimant's ILS.

3. By Notice of Proposed Action (NOPA) Letters dated December 13, 2019, Service Agency notified Mother of the denial of her requests for additional respite hours and personal assistance hours and funding for a family member to provide claimant's ILS.

4. In January 2020, Mother filed three fair hearing requests to appeal Service Agency's denial of her service requests. On February 25, 2020, Service Agency held an informal meeting with Mother to discuss her requests for additional respite and personal assistance hours and funding for a family member to provide claimant's ILS. Following the informal meeting, on March 3, 2020, Service Agency notified Mother in writing that it was upholding its decision to deny her requests.

5. The three fair hearing requests filed by Mother were consolidated for hearing by OAH. Service Agency and Mother agreed to have the ALJ issue one decision for the three matters.

Claimant's Background

6. Claimant lives at home with Mother and his younger siblings. Mother is a single parent and the primary caregiver for claimant. Spanish is the primary language spoken in the home.

7. Claimant is ambulatory and can walk independently. He attempts to use words to communicate, but his speech is not easily understood by strangers. He also communicates through simple gestures, like pointing, shaking his head, and leading by the hand. Claimant can use the restroom on his own and can sign when he needs to go. He requires full assistance with physical prompts to shower, brush his teeth, and complete his personal care activities to ensure proper hygiene. Claimant requires full assistance with dressing, as he is unable to use buttons, zippers, or tie his shoelaces.

8. Claimant requires supervision during waking hours in all settings. Mother reported Claimant also needs night-time supervision because he gets up in the middle of the night. On one occasion, claimant went to the kitchen in the middle of the night, opened the refrigerator and threw away food in the trash and poured milk down the sink. Since that time, Mother must get up at night and ensure that claimant is sleeping.

9. Claimant has a history of displaying challenging behaviors. Mother reported that many of claimant's behaviors have improved as a result of ABA services he has been receiving for the past two years. However, claimant continues to require redirection when he displays disruptive social behavior. He can be stubborn when he wants things to go his way. Claimant also displays physical aggression because of his

tendency of trying to defend others. When claimant is upset or frustrated, he will hit himself on his face or waist, and will scratch his arms or face. Mother reported claimant has difficulty expressing himself verbally and gets frustrated when he is not understood. Claimant lacks safety awareness and is unable to comprehend dangers. Mother reported that if an opportunity is present, claimant will wander away, which is why she keeps him within her line of vision when he is under her care.

Claimant's Services

10. Daisy Merino-Contreras testified at the hearing. She has been claimant's SCLARC service coordinator since January 2019. Ms. Contreras testified regarding Service Agency's efforts to assist claimant's family and address Mother's requests for additional services.

11. Pursuant to claimant's individual program plan (IPP) dated July 9, 2019, Service Agency agreed to fund the following services for claimant: (1) 46 hours per month of in-home respite services; (2) 20 hours per month of ABA services, for a six-month period through Howard Chaudler & Associates; and (3) 75 hours per month of personal assistance services. In addition, the IPP indicates claimant receives 190 hours per month of In-Home Supportive Services (IHSS), which is a county program. Mother is claimant's IHSS provider.

12. The July 9, 2019 IPP indicates that claimant completed his program at the Widney Career Transition Center. Service Agency provided a list of programs for Mother and claimant to visit, so they could choose a day program for claimant. The IPP states that Mother indicated an interest in the program at Training for Tomorrow, and she would inform the service coordinator if that would be the program she chose for claimant.

13. During the ensuing months, Mother requested additional service hours for claimant. Service Agency agreed to increase claimant's respite hours from 46 hours to 61 hours per month, increase his personal assistance hours from 75 hours to 90 hours per month, and increase his ABA services from 20 hours to 32 hours per month. Mother continued to request additional service hours.

14. On September 5, 2019, Service Agency held an interdisciplinary team meeting with Mother to discuss her service requests. Service Agency held the meeting in an attempt to reach an agreement with Mother regarding her requests. Mother requested that Service Agency increase claimant's respite hours from 61 hours to 104 hours per month. Mother also stated she wanted the increase in claimant's personal assistance hours offered by Service Agency (discussed below) to be permanent, not temporary. Service Agency explained the reasons why Mother's requests could not be accommodated. Mother disagreed and asked for a "letter" so she could "appeal." Service Agency sent Mother the NOPA Letters in December 2019.

In-Home Respite

SERVICE AGENCY'S EVIDENCE AND CONTENTIONS

15. Service Agency denied Mother's request to increase claimant's respite hours from 61 hours to 104 hours per month. Service Agency determined that additional respite hours were not warranted under SCLARC's POS Funding Standards for Respite Services (respite policy). (Exh. 1-4.)

16. The respite policy states, in part: "Respite services provide intermittent or regularly scheduled non-medical care and supervision of the developmentally disabled minor or adult. . . . Regional center may only purchase respite services when the care

needs of the individual exceed those of a person of the same age without a developmental disability.” (Exh. 1-4.)

17. The policy further states, in part: “When indicated as a necessary service on the consumer’s IPP/IFSP, respite services may provide support and assistance for the family. Respite services are not intended to meet a family’s total need for relief from on-going care or parenting their developmentally disabled child/adult. . . . It is not meant to provide personal attendant care (one-on-one aide to assist in activities of daily living, e.g., toileting, dressing, feeding, and bathing, etc.), except as required to provide care to the consumer during the hours of respite. (Exh. 1-4.)

18. The respite policy includes a “Respite Authorization Worksheet” that shows the criteria that must be met for the purchase of respite services. The respite policy defines different levels of respite services, from Level A (up to 24 hours per month) to Level E (over 46 hours per month). Service Agency determined that claimant does not meet the requirements for Level E respite services. Level E requires that at least three of the following criteria, in the areas noted below, are met:

1. Medically fragile; requires care on periodic basis during day (G-tube feedings, etc.) Stable condition. Nursing assessment required.
2. Demonstrating ongoing challenging behaviors beyond age-expectation (aggression, self-abuse, etc.). Behavioral Assessment required.
3. Consumer has physical or medical condition requiring frequent treatment.

4. Caregiver has physical or medical condition requiring frequent treatment.
5. 2 or more South Central Los Angeles Regional Center consumers in family.
6. At risk of being abused.
7. Family receiving counseling for stress issues.

(Exh. 1-2.)

19. Ms. Contreras testified regarding the September 5, 2019 interdisciplinary team meeting, which she arranged and attended. During the meeting, Mother explained that she needed the additional respite hours because she was a single parent and suffering from depression and anxiety, and she needed the additional respite hours so she could attend her medical and doctor appointments. Ms. Contreras testified that Mother did not provide a schedule showing how she intended to use the additional respite hours she was requesting. Ms. Contreras testified that since she became claimant's service coordinator in January 2019, Mother had requested an increase in respite hours two or three times.

MOTHER'S TESTIMONY AND CONTENTIONS

20. Mother testified that she needs 104 hours per month of in-home respite. Service Agency is only funding 61 hours per month of respite. Mother contends she needs more respite hours because she has other children to care for, not just claimant. She testified claimant has "a few disabilities" and needs to be supervised 24 hours a day. She testified that Service Agency has denied her request for more hours "many times." Mother testified she needs 104 hours per month of respite so she can take a

break. Mother testified that she has ongoing medical problems, and claimant has problems and cannot be left unsupervised. Mother testified that a "case worker" came to her house and told Mother that she needs more hours. Mother could not recall the case worker's name or agency. Mother testified that she gave the case worker "all the information."

21. Mother explained that she needs the additional respite hours on Saturdays and Sundays. Mother testified that she normally rests on Saturday. She testified she is a diabetic and would be able to rest on Saturdays and Sundays if someone else could take care of claimant. Mother stated that she cannot be with claimant 24 hours a day and she needs to rest. Mother testified she organizes claimant's services hours. Mother testified she needs respite hours on Saturdays from 5 a.m. to 9 p.m., and on Sundays from 6 a.m. to 9 p.m.

22. Mother confirmed that she is claimant's IHSS provider. On cross-examination, when asked if she ever considered using the IHSS hours to have another person care for claimant so she can rest, Mother responded defensively, stating she is always being attacked and questioned about what she does to take care of claimant. She stated that she takes care of claimant and pays with her own money. Mother complained that she has already provided information about claimant's needs multiple times. She repeated that claimant does not sleep all night long, which requires her to take care of him all night long. Mother testified she sometimes pays her nephew to watch claimant so she can sleep.

23. Mother testified that she feels pressure with claimant at home all the time. She feels Service Agency is not providing her with programs for claimant. She claimed that when claimant completed high school, Service Agency left the burden on her to care for claimant alone. She testified her doctor recommended that she take

anti-depressants and receive therapy to overcome the pressure she was bearing. Mother testified she has been in therapy since her divorce. Mother contends she has provided all information requested and that Service Agency should provide her the services she is requesting.

Personal Assistance

SERVICE AGENCY'S EVIDENCE AND CONTENTIONS

24. Service Agency denied Mother's request to increase claimant's personal assistance hours from 90 hours to 224 hours per month.

25. (A) SCLARC's Personal Assistance and Specialized Supervision policy (personal assistance policy) states that personal assistance services for adults "are to assist consumers who require support in the following areas of activities of daily living, including bathing, grooming, dressing, toileting, meal preparation, feeding, and protective supervision. Personal assistance services are intended to provide adult consumers with appropriate care and supervision, for community integration purposes and to assist consumers in maintaining community living arrangements, including a living arrangement in the family home, if that is the consumer's preference." (Exh. 3-4.)

(B) The personal assistance policy further states: "In addition, adult consumers may receive specialized supervision if the consumer requires additional supervision due to the disability, for health and safety reasons, will maintain the consumer in the family home, allows for integration into the community, and/or having difficulties with securing a day program that meets the individual's needs." (Exh. 3-4.)

26. The personal assistance policy provides that personal assistance/specialized supervision may be provided when there is a gap in day program services (e.g., the consumer's transition from a school program to a day program). The policy requires, among other things, that the consumer must have completed school with a high school diploma or certificate of completion; the number of personal assistance/specialized supervision hours will be based on consumer need; the parent or caregiver must develop a schedule reflecting the proposed number of hours requested; once a day program that meets the consumer's needs and satisfies the parent/caregiver's request is secured, the specialized supervision/personal assistance hours will be terminated; "[t]he utilization of personal assistance hours is the preferred type of assistance, however the consumer may demonstrate challenging behaviors that constitute the use of specialized supervision hours, the hour type will be determined on a case by case basis"; "[t]he number of hours should not exceed those of a typical day program (currently maximum of 6 hours per day)." (Exh. 3-4.) The policy further states: "Specialized Supervision/Personal Assistance for consumers receiving hours for gap in day program is a time limited service (6 months) and can be renewed based on need and progress." (Exh. 3-4.)

27. Service Agency offered to temporarily increase claimant's personal assistance hours from 90 hours to 150 hours per month, in lieu of a day program, until claimant's name comes up on the waiting list for the day program requested by Mother. The personal assistance services would return to 90 hours per month once claimant has a day program. At the September 5, 2019 interdisciplinary meeting, Service Agency acknowledged that claimant was still waiting for a day program and offered 150 hours of personal assistance on a temporary basis until a day program became available for him. Ms. Contreras testified that Mother disagreed with the offer

of 150 hours. Mother felt the amount was too small and wanted 224 hours per month along with a day program.

28. In her testimony, Ms. Contreras also explained that the increase in claimant's personal assistance services from 75 hours to 90 hours per month was due to a directive from the California Department of Developmental Services (DDS). Because of school closures and program closures due to Covid-19, DDS authorized regional centers to support eligible consumers with eight hours per day of respite or personal assistance, up to 40 hours per week. This is what Service Agency provided for claimant starting in April 2020 and extending to August 2020. DDS then required regional centers to obtain written statements from families describing how their Covid-19 hours were being used. Ms. Contreras explained that the 40 hours per week of Covid-19 hours provided to claimant is in addition to his 61 hours per month of respite and 90 hours of personal assistance. Ms. Contreras explained that Service Agency's management is still reviewing claimant's case, because of the amount of respondent's hours, which are all provided by one person.

MOTHER'S TESTIMONY AND CONTENTIONS

29. Mother claimed the additional hours of personal assistance were needed because claimant has been at home since completing high school. In her testimony, Mother reiterated that she asked for 224 hours per month of personal assistance because claimant does not have a day program. She testified Service Agency did not give her additional hours right away, but finally increased the personal assistance to 90 hours per month. Mother disagrees with Service Agency's offer to increase claimant's hours only on a "temporary" basis. She stated, in her testimony, "my son is not temporary" and "my son needs services."

30. Mother provided Service Agency with a "Daily Schedule-Without Day Program." (Exh. H.) The schedule covers Monday through Friday and shows personal assistance hours used from 5 a.m. to 8 a.m. to "Get ready for the program of the day," and IHSS hours used from 9 a.m. to 2 p.m. The schedule is blank for the hours from 3 p.m. to 8 p.m., and shows IHSS and sleep from 9 p.m. to 4 a.m.

Independent Living Services (ILS)

SERVICE AGENCY'S EVIDENCE AND CONTENTIONS

31. Service Agency denied Mother's request that claimant's ILS be provided by a family member.

32. Service Agency has agreed, and continues to agree, to fund ILS for claimant. Service Agency offered to fund ILS for claimant through other agencies and explained to Mother that ILS agencies already have their own ILS providers. Mother asked if claimant could receive ILS through Volunteers of America. She also asked to have a person she chose be the ILS provider for claimant. Service Agency explained to Mother that a family member or person of Mother's choosing cannot provide claimant's ILS funded by Service Agency unless the individual is hired by an ILS agency. It was explained that even if Mother's chosen person or family member was hired by an ILS agency, there would be no guarantee that Mother's chosen person would be assigned to claimant. Ms. Contreras contacted Volunteers of America to inquire about ILS and was informed that they did not have ILS services.

33. Ms. Contreras testified regarding a DDS directive regarding self-directed services, which is when a parent requests a service and can provide guidance on how to obtain the service. The directive is temporary, as it is based on Governor Newsom's emergency proclamation regarding the Covid-19 emergency. To Ms. Contreras'

knowledge, the directive has been in place since March 2020 and will be in effect until November 25, 2020. Ms. Contreras testified that the directive would allow a family to provide ILS as a self-directed service. However, Mother's request to have a family member provide claimant's ILS was made in September 2019, before the DDS directive was in place. Ms. Contreras testified that when the DDS directive ends, so does Service Agency's authorization for the self-directed services.

34. Service Agency contends that it has not denied ILS to claimant. Service Agency agrees to fund ILS for claimant through a vendored ILS agency, as required under the Lanterman Act and regulations. Service Agency disputes Mother's contention that Service Agency does not want a family member to provide claimant's ILS. Service Agency's position is that it must comply with the Lanterman Act and regulations that require services to be purchased from vendored providers.

MOTHER'S EVIDENCE AND CONTENTIONS

35. Mother testified she has been asking for ILS for claimant since March 2, 2019. Mother asked for ILS because claimant is learning a lot right now and "absorbing everything" because of his age. Mother wants claimant to become more independent. She and other family members are helping claimant as much as they can. Mother testified her family has been helping her with claimant, as she has had to deal with her own medical issues.

36. In her testimony, Mother claimed that Service Agency denied her request to have a family member provide claimant's ILS because "they don't want to give me the services and they don't want my family to help me with [claimant]." Mother complained that when other companies have come to her home, all the workers do is talk on the phone and leave her to do everything for claimant. Mother does not like

workers coming to her home but not helping her with claimant. Mother feels she is doing their job. Mother wants Service Agency to give her family the opportunity to provide ILS for claimant.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)¹ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-5.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) 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.) In this case, claimant requests additional hours of respite and personal assistance services, and funding for ILS provided by a family member, that Service Agency has not before agreed to provide. Therefore, claimant has the burden of proving by a preponderance of the evidence that he is entitled to the requested services and funding.

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

3. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

4. The Lanterman Act requires regional centers to control costs in its provision of services. (§§ 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.

5. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(1) and (2).) Regional center funds "shall not be used to supplant the budget of any agency that 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).)

6. (A) Respite is a service that may be included in a consumer's IPP. (§ 4512, subd. (b).) In-home respite services are "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional

center client who resides with a family member." (§ 4690.2, subd. (a).) Respite services are designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living which would ordinarily be performed by the family members. (§ 4690.2, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(38).)

(B) 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 rest or do other things.

Analysis

7. In this case, Service Agency has acted diligently to assist claimant and his family, and to address Mother's concerns, as required under the Lanterman Act and consistent with its purchase of service policies. Service Agency has made every effort to identify all possible sources of funding for claimant's services, and to assist the family in obtaining the maximum services to which claimant is entitled. To that end, Service Agency has requested information from Mother, which she has unfortunately and mistakenly construed as an attack on the care she provides claimant. Service Agency properly denied Mother's requests for additional respite and personal assistance hours, and funding for ILS provided by a family member. Service Agency is currently funding the highest level of respite hours, and has offered to temporarily increase claimant's personal assistance hours while he awaits placement in Mother's preferred day program, consistent with its purchase of service policies.

8. Mother's evidence was insufficient to establish that the services and supports currently provided by Service Agency are not sufficiently meeting claimant's needs identified in his IPP. Mother's testimony established that she needs rest from the constant obligation to provide claimant's daily care. Service Agency is already providing more than the maximum level of respite under its respite policy. In addition, claimant's family also receives 190 hours per month of IHSS. Mother could get some of the rest she needs if she uses some of claimant's IHSS hours to have another person or family member provide care and supervision for claimant. Mother has chosen not to do so.

9. Service Agency has agreed, and continues to agree, to fund ILS for claimant through a vendored ILS agency. Mother has requested that a family member provide the ILS. Under the Lanterman Act, Service Agency is required to purchase services through vendored providers. (§ 4648, subd. (a)(3); Cal. Code Regs., tit. 17, § 54302.) Service Agency has explained to Mother that meeting her request would require the family member to be employed by a vendored ILS agency and, even then, there is no guarantee the family member would be assigned to work as claimant's provider. The vendored agency, not Service Agency, has sole discretion on how to assign work to its employees. Furthermore, the evidence was insufficient for the ALJ to make a determination regarding whether claimant's ILS could be provided as a self-directed service pursuant to the DDS directive currently set to end on November 25, 2020. A copy of the DDS directive was not included in the parties' exhibits.

10. Based on the foregoing, Claimant's appeals shall be denied as set forth in the Order below. (Factual Findings 6-36; Legal Conclusions 1-10.)

ORDER

1. Claimant's appeal in OAH No. 2020020615 is denied. Service Agency is not required to increase claimant's in-home respite from 61 hours to 104 hours per month.

2. Claimant's appeal in OAH No. 2020020616 is denied. Service Agency is not required to fund ILS provided by claimant's family member.

3. Claimant's appeal in OAH No. 2020020617 is denied. Service Agency is not required to increase claimant's personal assistance services from 90 hours to 224 hours per month.

DATE:

ERLINDA G. SHRENGER

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.