

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

In the Matter of:

Claimant

v.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2020030824

DECISION

Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on May 6, 2020, in Sacramento, California.

Claimant's mother represented claimant.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC or service agency).

Oral and documentary evidence was received. The record was held open to allow claimant to submit additional evidence. On May 7, 2020, OAH received complainant's additional evidence, marked as Exhibit 7. On May 14, 2020, ACRC filed a timely objection to Exhibit 7, marked as Exhibit U, noting that claimant did not serve ACRC with Exhibit 7 as instructed by the court. Consequently, Exhibit 7 was not

admitted. On May 15, 2020, the record was closed and the matter submitted for decision.

ISSUE

Is ACRC required to fund an additional 79 hours per month of Personal Attendant (PA) services to provide claimant with care and supervision while her mother is at work, attending medical and therapy appointments, and spending time with her other children?

Background

1. Claimant is diagnosed with autism resulting in substantial disabilities in expressive and receptive language, learning, self-care, and self-direction. Claimant currently receives 283 hours of In-Home Support Services (IHSS¹); 40 hours of in-home respite²; 140 hours of school services, including transportation; 62 hours of Personal Attendant (PA) Services; and 120 hours of "sleep" services per month. Claimant's mother is her sole IHSS worker.

¹ IHSS hours are used for personal care, paramedical services, housecleaning, cooking, shopping, laundry, and accompaniment to medical appointments. They almost always need to be provided in the family home.

² Respite hours are primarily used to relieve family members from the constant demands and responsibility of caring for the consumer. (ACRC Service Policy Manual, Respite Services.)

2. Claimant's Individual Program Plan (IPP) established three goals: (1) receiving specified educational services; (2) receiving regular medical, psychiatric, and dental care; and (3) continuing to live with her family. In an addendum to claimant's IPP, dated January 16, 2020, ACRC agreed to fund a maximum of 62 PA hours per month to assist the family with claimant's care and supervision, due to recent changes in the family and additional medical needs of claimant's mother.

3. On January 21, 2020, claimant's mother requested 95 additional PA hours for claimant due to personal and medical reasons. On February 6, 2020, claimant's mother asked ACRC to expedite that request. ACRC's Family Services and Support Committee determined that there were only 79 hours per month, or 2.63 hours per day, not covered by services. Claimant's mother then changed her request to 79 hours of additional PA time to ensure 24-hours paid coverage for claimant.

4. On February 24, 2020, ACRC issued a Notice of Proposed Action denying claimant's request to fund an additional 79 hours per month of PA services. ACRC explained that there was no assessed need for additional PA services, and that day care services were more appropriate for claimant's care and supervision.

5. On March 18, 2020, claimant's PA hours were temporarily increased from 62 to 173 hours per month due to the COVID-19 crisis. ACRC was to review the increase every 30 days in accordance with claimant's IPP. On the same date, claimant's mother filed a Fair Hearing Request because she disagreed with ACRC's denial of her request for an additional 79 PA hours. The matter was set for an evidentiary hearing before an ALJ in accordance with Welfare and Institutions Code section 4712.

6. On March 27, 2020, claimant's mother informed ACRC that claimant needed the following monthly PA hours: the 173 hours granted at the start of the

COVID-19 crisis to substitute for school time, and the additional 79 hours she requested prior to the COVID-19 crisis. Claimant's mother could not identify the specific times of day that claimant needed the PA hours, which she explained were to be used for gaps in claimant's care. Those gaps occurred because claimant only slept two hours per day, needed to be watched all night, and needed supervision while at home and in the community.

Claimant's Evidence

7. Claimant's mother testified that claimant needs 24-hour supervision to ensure her safety. Claimant is 19 years old with the mind of a child. Claimant is vulnerable, and a stranger can easily take advantage of her. Claimant's mother and father are her natural supports. However, claimant's parents separated in May 2019 and again in October 2019, and her father was not present, necessitating the need for more PA hours. Claimant's father has since returned to the family home and is employed, but purportedly does not care for or supervise claimant at all.

8. According to her mother, claimant wishes to live in the family home, and has a right to live a normal and productive life. The additional 79 PA hours requested will ensure claimant's safety in the home, and will assist claimant in getting out into the community to shop, go to the hair salon, and eat. Such activities increase her independence. Despite her request for an additional 79 PA hours, claimant's mother did not know the purpose of PA services and specifically what claimant's current PA does. Claimant's mother rejected day care services as an option, because she learned that the family would have to pay its share of day care costs, which would constitute a financial hardship.

9. Claimant's mother provided a "Consumer Schedule for Personal Attendants," which showed the various support services typically provided each day during the school year. On Monday through Friday prior to the COVID-19 crisis, claimant attended school from 7:30 a.m. to 3:00 p.m. Claimant's mother worked IHSS hours from midnight to 2:00 a.m., 5:30 a.m. to 7:30 a.m., and 4:00 p.m. to 8:00 p.m. The PA worked on Thursdays from 4:00 p.m. to 8:00 p.m., and Fridays, from 12:00 a.m. to 7:00 a.m. On Saturdays and Sundays, claimant's mother worked IHSS hours from 12:00 a.m. to 5:00 a.m. Respite services covered weekend afternoons from 11:30 a.m. to 6:00 p.m.

10. Claimant's mother could not identify specific tasks or times during the day for which additional PA hours were warranted, because claimant's schedule is "different every day." Claimant's mother wishes to ensure that claimant is constantly supervised in the home, particularly in the kitchen when using the microwave or taking food items out of the refrigerator (claimant has eaten raw bacon), and when she is in the bathroom (claimant has reached in the trash can to use paper refuse during toileting). Claimant also needs supervision when out in the community, and she needs "eyes on her all of the time." However, there is no history of claimant eloping from the home.

11. Claimant's mother had recent surgery for a tumor and is concerned for her health, noting that she "could have another tumor tomorrow and die." In case of her death, she wants claimant to have 24-hour services in place, including the additional 79 PA hours.

12. Amanda Santistevan testified on claimant's behalf. Ms. Santistevan, a family friend and claimant's godmother, has known claimant since 2009, and was also claimant's Applied Behavioral Analysis (ABA) tutor. Ms. Santistevan has not provided

paid care to claimant for the past year, but has accompanied claimant to outings in the community to get ice cream or go to Rite Aid, and has seen claimant at softball games or at the grocery store with claimant's father. Ms. Santistevan also stayed with claimant one weekend when the family went out of town for softball tournaments. She has observed claimant doing things that are "questionable," such as microwaving popcorn for over 10 minutes, constantly looking in the refrigerator, leaving shampoo in her hair, walking out of the bathroom without a towel, walking from table to table at a restaurant and eating other customers' food, taking things that do not belong to her, and being unaware of her safety around traffic. Ms. Santistevan also believes claimant needs supervision 24 hours a day.

ACRC's Evidence

SHARON KURPINSKY, SERVICE COORDINATOR

13. Sharon Kurpinsky is an ACRC Service Coordinator. She was assigned to claimant's case in January 2020 as a temporary service coordinator when claimant's previous service coordinator transferred to another unit.

14. PA services are a category of care to help clients remain in their current living situation and attain specific goals like attending college. PA services have specific goals and limitations. According to ACRC's Service Policy Manual, PA services include assistance with personal care needs such as eating, toileting, dressing, grooming, and hygiene, and may also include assistance with routine household activities, medical appointments, and coordination of "transportation for errands such as bill paying, picking up medications, and banking." Furthermore, "ACRC may provide payments for personal assistance through attendant care services" where "natural

supports³ and/or generic resources⁴ are insufficient . . . ” PA services are not meant to be used for social or recreational activities in the community.

15. Additionally, ACRC’s Service Policy Manual defines day care and after school care as “specialized care and supervision for regional center consumers through age 21 who reside with a family member.” ACRC may fund a portion of the cost where the parent of a single parent household or both parents are employed outside the home. Specialized care includes supervision of consumers between 12 and 21 years of age. With day care, the family is responsible for funding “the usual and customary rate of day care services.” ACRC may fund a portion of the day care service under certain circumstances. If the family cannot afford to fund the market rate, the family can claim a financial hardship. Here, ACRC temporarily authorized 62 hours of PA services for claimant until day care services could be approved and funded. Claimant did not

³ “Natural supports are defined as ‘associations and relationships typically developed in the community that enhance or maintain the quality and security of life for people.’ It is the responsibility of the Service Coordinator and Planning Team to ensure that all natural supports and generic services are utilized prior to purchasing services.” (ACRC Procedures Manual, Personal Attendant/Homemaker Service (Nonmedical Services), p. 2.)

⁴ “Generic resources are defined as ‘voluntary service organizations, commercial businesses, nonprofit organizations, generic agencies, and similar entities in the community whose services and products are regularly available to those members of the general public needing them.’ Examples include but are not limited to In-Home Support Services (IHSS) . . . ” (ACRC Procedures Manual, Personal Attendant/Homemaker Service (Nonmedical Services), p. 2.)

qualify for a financial hardship; thus, the family was required to pay its portion of day care for claimant.

16. ACRC authorized 590.75 hours of day care for claimant from January to July 2020, as follows: "1/2020=51.25 hrs. 2/2020=40.50 hrs. 3/2020=48.00 hrs. 4/2020=65.00 hrs. 5/2020=40.00 hrs. 6/2020=173.00 hrs. 7/2020=173.00 [hrs.]" However, claimant's mother did not sign the final vendorization paperwork for day care, because she did not believe she should have to pay for the family's share of costs of \$8.50 an hour.

17. Any request for more than 62 PA hours must be reviewed by ACRC's Family Services and Support Committee (committee) for approval. The committee requested, and claimant's mother provided, a schedule of claimant's IHSS hours, school hours, PA hours, and respite hours. Ms. Kurpinsky met with the committee on February 12, 2020. The committee reviewed the basis of the request and determined claimant was already receiving generic, respite, and PA services. There were only 2.63 hours remaining in the day that were not covered by paid services. If claimant's mother needed a break from her caregiving duties, or to care for her other children, or to care for herself, respite hours were to be used for this purpose, or claimant's mother could have had another person work some of her 283 IHSS hours. The committee also determined that the PA request did not meet the requirements for PA services, but did meet the requirements for day care. Lastly, the committee determined that claimant's parents could participate in caring for claimant during those 2.63 hours in the day that services did not cover.

18. Ms. Kurpinsky communicated the committee's determination to claimant's mother. Claimant's mother then reduced her request from 95 to 79 PA hours, which ACRC subsequently denied.

19. Ms. Kurpinsky introduced timesheets from Maxim, the PA services provider. The PA worker billed approximately 128 hours from April 1 to 24, 2020. Claimant had 173 PA hours due to the COVID-19 crisis, and did not use all of those allotted hours. Ms. Kurpinsky believed that claimant already had an adequate number of PA hours.

TRICIA CUMMINGS, CLIENT SERVICES MANAGER

20. Tricia Cummings, ACRC Client Services Manager, supervises 10 service coordinators, including Ms. Kurpinsky. Ms. Cummings signed the letter which accompanied the Notice of Proposed Action denying claimant's mother's request for additional PA hours. She confirmed that the reason for denial was that there was no assessed need for the additional PA hours, that PA services were not meant to provide care and supervision of claimant while claimant's mother was working, and that day care services were more appropriate for this type of situation. Moreover, it was expected that claimant's mother provide some unpaid care and supervision of claimant.

21. Ms. Cummings noted that claimant also used PA services for social and recreational purposes, like bowling and eating out. She emphasized that ACRC cannot fund social recreation activities, because it is prohibited by the Welfare and Institutions Code.

ACRC's Motion to Dismiss Fair Hearing Request and Request for Judicial Notice

22. At hearing, ACRC submitted a Motion to Dismiss Fair Hearing Request, and requested that the court take judicial notice of the Decision in *C.C. v. Alta California Regional Center*, OAH Case No. 2016070912 [held evidence did not establish

that ACRC should be ordered to pay claimant's parents for a PA to accompany claimant at various community activities]. Although ACRC did not articulate the basis for its motion to dismiss, it appears to have relied on the above holding to support said motion.

23. ACRC's motion to dismiss is denied. This case presented triable issues of fact and law for this court to determine. Official notice was taken of *C.C. v. Alta California Regional Center*, OAH Case No. 2016070912, in accordance with Government Code section 11515, and Evidence Code sections 452 and 453.

Discussion

24. ACRC must ensure that services provided to consumers meet the goals stated in the consumer's IPP. (Welf. & Inst. Code, § 4646, subd. (a).) Claimant's goals in her most recent IPP are that she receive educational services; regular medical, psychiatric and dental care; and continue to live with her family.

25. To meet the goal of claimant continuing to live with her family, claimant's mother asserted, and Ms. Santistevan confirmed, that claimant needs 24-hour care and supervision for her safety. Claimant's mother thus requested 79 additional hours of PA services to fill any gaps in service. However, that request is unsupported for several reasons.

First, ACRC is required to explore and use unpaid natural supports and generic resources rather than supplant them with state funding. Parents are expected to provide some unpaid care and supervision. Available generic resources also include IHSS hours. Claimant has 283 IHSS hours per month - the maximum number of IHSS hours that can be provided. Claimant's mother is claimant's sole IHSS worker despite claimant's father currently residing in the home.

Second, PA hours are intended to be used for personal care needs, household and common daily living activities, attending medical appointments, and coordinating transportation for errands. Day care services are more appropriate to provide the specialized care and supervision envisioned by the request.

Third, ACRC is not obligated to ensure that claimant receives paid care and supervision 24 hours a day. ACRC's role is to ensure that claimant's care and supervision needs are being met by the services offered, including the unpaid natural supports, generic resources, and daycare services referenced above. Indeed, claimant's mother could not specify any particular hours of the day that claimant needed the additional requested PA hours.

Although claimant's mother also requested additional PA hours for claimant to establish independence by getting out into the community, this goal is not identified in claimant's IPP.

Finally, ACRC is prohibited from funding social recreational activities absent extraordinary circumstances. Claimant has not met her burden of establishing extraordinary circumstances for ACRC to fund social recreational activities.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), the State of California accepts responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.)

2. In seeking government benefits, the burden of proof is on the person asking for the benefits. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because claimant is requesting services and supports not authorized by ACRC, claimant bears the burden of proof.

3. Welfare and Institutions Code section 4646, subdivision (a), provides, in pertinent part, that the Legislature's intent is to ensure that the services provided to consumers and their families are effective in meeting the goals stated in the IPP, reflect the preferences and choice of the consumer, and reflect the cost-effective use of public resources.

4. When purchasing services and supports, Welfare and Institutions Code section 4646.4 requires regional centers to establish an internal process that ensures, among other things, conformance with the regional center's purchase of service policies, utilization of generic services and supports when appropriate, and utilization of other services and sources of funding as contained in section 4659.

5. Welfare and Institutions Code section 4659 requires the regional center to identify and pursue all possible sources of funding for consumers receiving regional center services. Sources include governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, school districts, federal supplemental security income, and the state supplementary program.

6. Family is among the natural supports contemplated by the Lanterman Act. "'Natural supports' means personal associations and relationships typically developed in the community that enhance the quality and security of life for people,

including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; associations with fellow students or employees in regular classrooms and workplaces; and associations developed through participation in clubs, organizations, and other civic activities.” (Welf. & Inst. Code, § 4512, subd. (e).)

7. Welfare and Institutions Code section 4648.5 prohibits regional centers from funding social recreation activities, except for those activities vendored as community-based day programs. However:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs.

(Welf. & Inst. Code, § 4648.5, subd. (c).)

8. As set forth in the Factual Findings as a whole, claimant has not established that ACRC should be ordered to fund an additional 79 hours of PA services for claimant’s care and supervision, or in the alternative, for claimant’s social recreational activities.

ORDER

Claimant's appeal of Alta California Regional Center's denial of a request to fund an additional 79 hours per month of Personal Attendant services is DENIED.

DATE: May 27, 2020

DANETTE C. BROWN

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.