

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020030930**

**DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 12, 2020, by videoconference.

Alyson Dykes, Esq., associated with the Law Office of Armen Shaghzo, represented claimant. Claimant's mother (mother) was also present.

Dana Lawrence, Fair Hearings and Administrative Proceedings Manager, represented North Los Angeles County Regional Center (RC).

Documentary evidence and witness testimony was received into evidence. The record was then held open until December 4, 2020, for the parties to submit closing

briefs. Claimant's closing brief was timely filed and was marked for identification as Exhibit K. RC's closing brief was timely filed and was marked for identification as Exhibit 15.

The record was closed, and the matter was submitted for decision on December 4, 2020.

## **ISSUE PRESENTED**

RC is currently funding 47 hours of respite per month for claimant. Claimant is seeking funding for an additional 53 hours of respite per month. Shall RC be ordered to fund 100 total hours of respite per month for claimant?

## **FACTUAL FINDINGS**

### **The Parties and Jurisdiction**

1. Claimant is a 14-year-old boy who is eligible to receive services from RC based on his diagnosis of autism.

2. On February 5, 2020, claimant requested 53 additional respite hours per month.

3. On February 11, 2020, RC re-assessed claimant's needs by considering his care and supervision needs, the availability of natural supports, and by reviewing the family's weekly schedule.

4. On February 20, 2020, RC informed claimant and mother that in order to fully assess claimant's and his family's needs, and as part of the Individual Program Plan (IPP) process, an Adaptive Skills Assessment (ASA) was required.

5. On February 21, 2020, mother refused to agree to an ASA, claiming that only additional respite was needed.

6. On February 24, 2020, RC issued a Notice of Proposed Action (NOPA) to claimant. The NOPA denied claimant's request for 53 additional respite hours.

7. On February 25, 2020, RC sent a letter to claimant which explained RC's NOPA denial. RC stated claimant's request was denied because RC was unable, without conducting an ASA, to thoroughly assess the needs of claimant and his family. RC's letter referenced Welfare and Institutions Code sections 4690.2, subdivision (a), and 4646.5, subdivision (a)(1), which provide that the planning process for an IPP requires "[g]athering information and conduction assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person developmental disabilities."

8. On March 9, 2020, claimant filed a Fair Hearing Request (FHR) with RC, challenging RC's decision to deny claimant's request for 53 additional respite hours per month.

## **Background Information**

9. Claimant received Early Start services from the RC, which addressed delays in speech and language, and eating skills.

10. Claimant's school district found him eligible for special education services due to "Autistic-like behaviors" at age three.

11. Past psycho-educational assessments performed by the school district concluded that claimant had significant delays in receptive and expressive language, and pragmatic skills, though his non-verbal cognitive skills appeared in the average range. Rating scales showed concerning characteristics in the areas of anxiety, hyperactivity, social skills, functional communication and adaptability.

12. For most of his life, claimant lived with his mother and father, and his older sister (six years older) and older brother (nine years older) within RC's catchment area. Claimant's mother operated a day care business out of the family home. His father was retired and was available every day to help with claimant's care. Claimant attended school in his local school district and received special education services. In 2016, claimant's father died suddenly. Thereafter, the family moved twice, and mother closed the day-care business.

13. In 2017, Mother began home-schooling claimant.

14. In December 2017, Mother gave birth to a boy, who is now approximately four years old.

15. Currently, the only service RC is funding for claimant is respite hours. RC has previously offered, suggested, or recommended, other assessments or services for claimant. RC has offered various assessments to claimant, which could have resulted in additional services and supports being provided to claimant. Claimant and his family have declined all of RC's past offers of assessments and possible services, which included: home parent education program; behavioral assessment and services; social skills assessment and training; and adaptive skills assessment and training.

16. Claimant receives 283 hours per month of In-Home Supportive Services (IHSS), a form of generic services funded by Los Angeles County. Mother is the IHSS care provider.

### **The Initial Increase in Respite Hours**

17. During the December 2017 IPP meeting, mother told her RC service coordinator about the then-imminent birth of her child. RC told mother that additional respite hours might be available after January 1, 2018, because the statutory limit was being removed.

18. On January 10, 2018, RC approved 100 hours per month of respite care. However, the approval was with the proviso that there would be a reassessment in April 2018. Claimant's older brother continued to serve as the respite provider.

### **Prior Attempts to Assess Claimant**

19. On March 31, 2018, RC service coordinator Monica Munguia (Munguia) informed mother that the issue of respite might require a clinical assessment and mother agreed. RC extended funding for 100 hours of respite through late May 2018 while RC staff considered the needs of claimant and his family.

20. In April 2018, RC decided claimant and his family would be best served with 47 respite hours per month and 53 Personal Assistance (PA) hours per month. PA hours would provide funding for an additional person to be in claimant's home to assist claimant and mother. Unlike respite care, a PA would not provide mother with a break. Mother did not agree with RC's decision.

21. RC continued seeking an agreement from mother to conduct a clinical observation of claimant in the family home. Mother agreed to a clinical observation on

May 1, 2018, which was to be conducted at RC's location. However, mother refused to sign consent forms for claimant's records and the assessment did not occur.

22. On May 15, 2018, RC mailed a NOPA to claimant and mother, denying claimant's request for additional respite hours. Mother then requested a fair hearing, which led to a mediation.

23. On June 26, 2018, a mediation was held. The parties agreed that the 100 hours per month of respite would be continued until the next IPP, which was scheduled for December 2018. The parties also agreed that a behavioral assessment would be conducted by a Board-Certified Behavioral Analyst (BCBA) between October 15 and November 15, 2018. The assessment process began, but was terminated by mother who believed the behavioral assessment was unrelated to the issue of respite.

24. On December 17, 2018, RC sent a NOPA to claimant, which provided that, effective January 17, 2019, respite services of 100 hours per month would terminate.

25. On December 26, 2018, mother signed and filed a Fair Hearing Request on behalf of claimant.

26. On April 10, 2019, a fair hearing was heard by ALJ Joseph D. Montoya (ALJ Montoya).

### **Prior Administrative Decision**

27. On April 23, 2019, in OAH case number 2019010173, ALJ Montoya issued a decision (exhibit 2). The "Issue Presented" was: "Claimant seeks maintenance of respite care in the amount of 100 hours per month, while the Service Agency asserts

that he should receive 47 hours of respite care per month, along with 53 hours of personal assistance."

28. ALJ Montoya's Decision denied claimant's appeal of RC's decision. The Decision states, on pages 8-9, paragraphs 32-34:

Plainly, respite care is warranted, but the amount that should be provided is not clear. The Service Agency has a paucity of information, and what it does have is generated primarily by Mom. It appears that only one psycho-educational assessment has been provided to the Service Agency, though they are typically performed for the triennial IEP's. Behavioral respite is an option, but without a proper behavioral assessment, it cannot be determined if that service should be provided. Mom understood there would be further assessment in March 2018, and she agreed to a behavioral assessment in June 2018. She appears to have dragged her feet in performance of her agreement, and then reneged on it in December 2018, without cause. It should be noted that she testified that she did not agree to a home observation in June 2018, but by that time it had already been communicated to her that the best place for a home observation would be at home. That was reiterated to her by Ms. Piccirillo, obviously an expert in behavioral observation.

While the arrival of a new child in the home has caused some changes, that event was over a year ago, and as

asserted by the Service Agency during the hearing, the needs of a newborn are not the same as a child a few months old, let alone one that is over a year old. There is no information about what support, if any, the baby's father is providing, which should be a factor in considering the overall picture.

Based on this record, 47 hours per month of respite should be provided to Claimant. Documents provided by Claimant, such as an IHSS assessment and a letter from the company involved in the home school program, were not sufficient to justify either the high amount of hours, or the refusal to engage in appropriate assessment. The hours provided herein may be changed at the next IPP meeting, if there is adequate information to justify a change. As to the personal assistance hours, Mom does not want service, and it cannot be justified in light of the inability of the Service Agency to do a proper assessment of Claimant's needs vis-à-vis his behaviors in all environments, including his home.

29. ALJ Montoya's Decision further states, on page 13, paragraphs 18-19:

On this record, the Service Agency's willingness to provide 47 hours of respite care per month is reasonable. The provision of 100 hours per month, for a short period, was generous. In over 22 years of adjudicating or mediating cases arising under the Lanterman Act involving 10 of the 21 regional centers, the undersigned has only seen one case



with so many hours of respite care, which was prior to the statutory cap on respite care. While that is not binding—every case needing to stand on its own—it is instructive. (Gov. Code, §11425.50, subd. (c) [hearing officer may evaluate evidence based on experience and training].)

Mom reports problem behaviors by Claimant of a serious type and based on years of reporting there has been little improvement. This has occurred in the context of Claimant's parents, and later Mom alone, refusing to take steps to obtain interventions that could lead to the "alleviation of [Claimant's] developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of [Claimant's] . . . developmental disability, or toward the achievement and maintenance of [an] independent, productive, normal [life] . . . . (§ 4512, subd. (b).) Obviously Mom needs a break from caring for Claimant. She will get the equivalent of just over one day per week of respite with the 47 hours per month ordered in this case.

30. As to the future, ALJ Montoya's Decision stated, "The hours provided herein may be changed at the next IPP meeting, if there is adequate information to justify a change."

### **Events Subsequent to ALJ Montoya's Decision**

31. IHSS continues to provide 283 hours per month for claimant. Mother is still the IHSS provider for claimant.

32. Claimant's older brother is still providing all respite hours for claimant. RC is allowing claimant's brother to serve as the respite worker because claimant and mother do not like "new" people in their home because claimant has challenges in dealing with new people and routines. As a general rule, RC classifies family members of consumers as "natural support" who can provide care for their consumer family member without compensation.

33. On January 24, 2020, claimant and RC held the most recent IPP meeting. Mother reported that claimant's situation remained the same, but that the 47 hours of respite ordered by ALJ Montoya were insufficient and she had appealed that decision to the Superior Court<sup>1</sup>. Mother continued to assert that 100 total hours of respite are needed (exhibit 9).

34. At the January 24, 2020 IPP meeting, Debbie Rombeau (Rombeau) of the RC offered assessments for claimant for Adaptive Skills Training and Behavioral Skills Intervention, which Rombeau believes may help claimant and his family. Mother declined these offered assessments. Both of these assessments are for services which would require mother's agreement and participation.

35. The COVID-19 pandemic has not impacted claimant's situation, except that instead of going to his school's physical location<sup>2</sup> for three hours per week, those

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<sup>1</sup> The record does not contain any corroborating evidence that an appeal of ALJ Montoya's April 23, 2019 Decision was filed.

<sup>2</sup> The record is unclear as to why claimant travels to his school's physical location since he has been home-schooled since 2017.

three hours of schooling are currently provided to claimant at home. Mother is spending approximately seven hours per month assisting claimant with his schoolwork and during speech and occupational therapy previously provided by the school. Mother has not sought any additional assistance from the school district.

36. Mother testified at the November 12, 2020 fair hearing. Mother stated that claimant entered puberty in approximately December 2019. Claimant has started changing his clothes after every bathroom visit. Claimant is also growing and is eating more and, therefore, he uses the bathroom more frequently. This results in claimant changing his clothes multiple times during the day, with which claimant requires assistance. Claimant has also become more emotional since entering puberty and he can be difficult to control at times. Mother did not provide this information to RC at the January 24, 2020 IPP meeting or at any time prior to the instant hearing.

37. It was not established that claimant's behaviors or situation had changed when the parties met at the January 24, 2020 IPP meeting. At that meeting, mother told RC that claimant's condition had not changed. Therefore, claimant did not provide sufficient information at the IPP meeting to justify an increase in respite hours.

38. Claimant has also had on-going behavioral issues with toileting for years. RC's offers of assessments, and possible services, which may have reduced or eliminated these behaviors, have been declined.

## LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Welfare and Institutions<sup>3</sup> section 4710, et seq.
2. RC provides services in conformity with the IPP, per section 4646, subdivision (d). Where the parties cannot agree on the terms and conditions of the IPP, a decision after a fair hearing can establish such terms. (See § 4710.5, subd. (a).)
3. Regional centers must develop and implement IPP's, 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 . . . ." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.)
4. Section 4512, subdivision (b), states, in pertinent part:

Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, physical, occupational, and speech therapy, . . . education, behavior training and behavior modification programs, . . . respite, social skills training, [and] transportation services necessary to ensure delivery of services to persons with developmental disabilities.

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<sup>3</sup> All further statutory references are to the Welfare and Institutions Code.

5. The IPP is to be prepared jointly by the planning team, which determines the content of the IPP and the services to be provided. The planning team is made up of the consumer or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).) RC services are provided to a consumer after an agreement between the RC representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible . . . ." In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family, and an adult person with developmental disabilities to live as independently in the community as possible. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

7. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. (§ 4646.5, subd. (a)(1).)

8. Where a claimant seeks a service not previously agreed to by the RC, the burden is on claimant to demonstrate RC's decision to deny claimant's request is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct.

(Evidence Code §115.) In this case, claimant has the burden of establishing the need for 53 additional hours of respite per month. (§ 4646.)

9. Claimant and RC are both required to utilize the IPP process to discuss all issues regarding services RC provides for claimant. If the parties discuss an issue at an IPP meeting and are unable to reach an agreement, then either party may request a fair hearing. However, neither party can bypass the IPP process and request a fair hearing. (§4646.) At the most recent IPP meeting, claimant did not state that his condition had changed. Therefore, claimant did not establish any reason to increase the respite hours currently being provided by RC.

10. RC is tasked with the responsibility of assessing and evaluation each consumer's needs and addressing those needs. RC is staffed with personnel and experts in developmental disabilities. The consumer and his family's desires are part of that evaluation, but they are not controlling and cannot substitute for RC's independent analysis. In considering a request for new services, the RC is required to assess claimant as part of its review. Claimant or his representative cannot demand services and then refuse to cooperate in assessments that RC deems necessary. To find otherwise would allow for unilateral requests from consumers without the checks and balances inherent in the IPP process. Similarly, claimant is required to provide, at an IPP meeting, the facts and information which he believes support his claim for increased respite. Claimant cannot withhold information and then raise it for the first time during a fair hearing. To conclude otherwise would render the IPP process discretionary rather than mandatory. (§§4646, 4646.4, 4646.5)

## **ORDER**

Claimant's fair hearing request for 53 additional hours of respite is denied.  
Claimant will continue to receive 47 hours of respite care per month.

DATE:

CHRIS RUIZ

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.