

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**EASTERN LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020060725**

**DECISION**

Laurie Gorsline, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 24, December 17 and 22, 2020.

Jacob Romero, Fair Hearing/HIPPA Coordinator, appeared for the Eastern Los Angeles Regional Center (ELARC) on September 24, 2020. Jesse Valdez, ELARC Federal-Program Manager appeared for ELARC on December 17 and 22, 2020. Claimant's mother represented Claimant. Jennifer Vargas, Mariana Rudy and Doneida Marroquin provided Spanish to English and English to Spanish interpretation and translation during the hearing.

Oral and documentary evidence was received. The record was left open until January 5, 2021 for ELARC to submit additional exhibits. The July 16, 2020 Individual Program Plan, or IPP, marked for identification as Exhibits 20 and 21, along with the Spanish translation of the IPP marked as Exhibit 22 were timely received and admitted into evidence. The Notice of Proposed Action dated May 19, 2020 marked as Exhibit 23, the Addendum to the October 19, 2019 IPP dated August 5, 2020 marked as Exhibit 24, and Declaration Under Penalty of Perjury marked as Exhibit 25, were timely received and admitted into evidence. The record was closed, and the matter was submitted for decision on January 5, 2021.

## **ISSUES**

Is ELARC required to fund an additional eight hours per weekday of in-home respite services for Claimant between March 16 and April 20, 2020, and an additional four hours per weekday of in-home respite services for Claimant after April 20, 2020?

## **EVIDENCE RELIED UPON**

Documents: ELARC's Exhibits 1 through 11, 13 through 18, and 20 through 25, and Claimant's Exhibits A1 through A4.

Testimony: ELARC service coordinator Alejandro Orozco; ELARC supervisor Elizabeth Ornelas; Claimant's Mother; and Juana Gutierrez, a family friend.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant, a six-year old boy, is an eligible consumer of ELARC based on a diagnosis of autism spectrum disorder. He has been eligible for regional center services since age three. At relevant times, Claimant lived with his Mother and siblings, one of whom is also a client of ELARC.

2. On May 22, 2020, ELARC issued a Notice of Proposed Action, denying Claimant's request for funding of an additional 40 hours per week of in-home (family member) respite services retroactive to March 16, 2020. On April 17, 2020 Claimant requested additional in-home respite care funding on a temporary basis due to Covid-19 such that Claimant receives a total of eight hours per weekday since March 16, 2020, in addition to the 25 hours per month of in-home respite funding Claimant was already receiving pursuant to his IPP. On May 22, 2020, ELARC agreed to an additional four additional hours per weekday excluding holidays retroactive to April 20, 2020, but Claimant is pursuing the balance of the requested hours for the period beginning March 16, 2020 until Claimant resumes his regular activities.

3. Claimant submitted a Fair Hearing Request on June 17, 2020, to appeal the Notice of Proposed Action dated May 22, 2020.

### **Background**

#### **CLAIMANT'S 2017 INDIVIDUALIZED EDUCATION PROGRAM**

4. Claimant was made eligible for special education by Montebello Unified School District at age three, under the category of speech and language impairment.

Claimant's 2017 individualized education program, called an IEP, stated Mother's main concerns were speech and language, social skills, and behavior in that, Claimant "goes out of control, escapes from the environment," needs to be redirected to tasks," and that he is "academically very low and that he falls.'" The IEP stated that according to Mother a neurologist was following Claimant because of his falling and knocking things over. The IEP stated that occupational therapy evaluation results were within the average range. Montebello Unified School District's October 24, 2017 offer of special education and related services included specialized academic instruction, speech/language therapy services, transportation and extended school year services. Mother consented to the IEP on October 24, 2017. Claimant's next annual IEP was due by September 11, 2018. At some point, ELARC received a copy of the IEP.

### **CLAIMANT'S HOSPITAL NEUROLOGY RECORDS**

5. Based on Mother's concerns about possible neurological issues, ELARC requested and in December 2018 Mother consented to the release of Claimant's medical records from Children's Hospital. According to the records, Claimant was seen on March 23, 2017 for an initial neurology visit. Mother's primary concern was Claimant's speech development and his difficulty walking. Claimant was diagnosed with developmental delay and the hospital recommended that he have an autism assessment. The records documented that his coordination and gait were within normal range.

6. A follow-up visit occurred on September 11, 2017. Mother reported Claimant had been diagnosed with autism, was in school and had an IEP. He had no seizures, was strong, and was not very coordinated. The records documented that his walking was age appropriate.

7. Another follow-up visit occurred on August 6, 2018. Mother reported Claimant fell occasionally. His medical records reflect that he was able to go up and down the stairs, using alternative feet going up the stairs, and putting both feet on each stair going down. The neurological testing results were reported on August 28, 2018 as normal.

### **ELARC'S OCTOBER 2019 IN-HOME RESPITE NEEDS ASSESSMENT**

8. ELARC's In Home Respite Services policy required the ELARC service coordinator to use the Family Respite Needs Assessment Guideline to determine the appropriate amount of respite hours. ELARC may grant an exception for more hours of respite if a family/consumer disagrees with the hours offered as a result of completing the Family Respite Needs Assessment Guideline.

9. ELARC's Family Respite Needs Assessment Guideline defines In Home Respite Services as intermittent or regularly scheduled temporary care and/or supervision of a child or adult with a developmental disability in the family home. According to the Guideline, it is not intended to provide for all supervised care needs of the family, but rather a supplement to the family's responsibility for care and is not child daycare.

10. The Guideline states that a reassessment of a family's respite need should be conducted whenever significant changes occur in the individual's skills or functioning level, family dynamics or alternative resources are identified and secured. The Guideline requires the assessor to objectively evaluate the individual's skill level, support need, and family dynamics, choosing the most appropriate point value from a range of criteria for each component of the assessment, specifically, adaptive skills, mobility, day program attendance, medical needs, behavioral needs, and family

situation. The Guideline also requires point deductions for certain generic resources received by the consumer.

11. ELARC service coordinator Yolanda Hurtado conducted a Family Respite Needs Assessment on October 15, 2019. Based on ELARC's Family Respite Services Guideline, Claimant scored 24 points which equated with up to 25 hours per month of in-home respite services. ELARC made no point deduction for any generic resource received by Claimant.

### **OCTOBER 2019 INDIVIDUAL PROGRAM PLAN**

12. At the time of the October 15, 2019 IPP, Claimant was five years old. According to the IPP, Claimant had a provisional diagnosis of Autism Spectrum Disorder since June 2017. An August 2019 physical exam reported Claimant was in overall good health. He was fully ambulatory and was not taking medication. He communicated using short sentences but was sometimes difficult to understand. He had daily temper tantrums and was not toilet trained. He enjoyed playing ball, golf and all sports. Mother reported he had limited safety awareness and that he tripped and fell or bumped his head when bending to grab things; however, 2018 testing provided normal results. He loved spending time with the grandmother and sisters. Mother did not drive and was her children's primary caretaker. Claimant's father was not involved in his life and was living in Mexico. Mother used public transportation or got rides from family to take Claimant to his appointments.

13. Family friend, Juana Gutierrez attended the IPP. At hearing, she denied that Mother mentioned any negative behavior by Claimant during the meeting and that service coordinator Hurtado was more focused on her own family than on Claimant, although Hurtado did ask Claimant questions during the IPP.

14. At the time of his October 2019 IPP, Mother reported that Claimant's annual IEP was held in January 2018 and that he had not attended school since 2018. The IPP stated that Claimant had been enrolled in a preschool program at Montebello Elementary School, but Mother removed Claimant when she was not allowed to observe Claimant. He would otherwise have been attending transitional kindergarten during the 2019-2020 school year. He was not receiving services from the school district. Mother reported she had filed for a due process hearing against Montebello Unified School District.

15. At the time of the October 2019 IPP, Claimant was receiving Supplemental Security Income of \$670 per month, 16 hours per month of In-Home Support Services, called IHSS, and he was eligible for Medi-Cal and ACCESS transportation. Medical needs were covered by Medi-Cal and LA Care Health Plan. ELARC offered Claimant funding for 25 hours per month of in-home respite services with Premier Healthcare Services through a conversion program, 21 days of out-of-home respite services between May 25 and June 10, 2020, and nine hours per month of social skills training. Mother was encouraged to consider requesting a referral for behavioral services from LA Care Health Plan for the tantrums and toilet training, but Mother believed Claimant was not ready for toilet training and she was not interested in applied behavioral analysis services. Mother agreed to follow up with the school district regarding Claimant's educational placement and notify ELARC of IEP team meetings, changes in the school setting and to provide IEP reports and assessment information to ELARC. Mother agreed to the IPP on October 15, 2019.

16. ELARC had different mechanisms for providing respite services to families. One method was called agency respite, where a vendor agency provides the respite worker to the family. Another type was conversion respite where a family

member or friend was hired by the vendor agency to provide the respite services. Another method was a participant directed services program through a Fiscal Management System, which allowed families to become the agency vendor, which hired the worker to provide the respite services.

17. Claimant received in home respite services through conversion respite, in which a family member or friend was hired by Premier. Mother's son-in-law provided the respite services to Claimant's family, and two other family friends could also provide the respite services to Claimant.

18. Other than the 2017 IEP, Mother never provided ELARC with any subsequent IEPs or updated information regarding Claimant's placement, services, educational program or the due process filing or outcome.

19. At hearing, Mother explained that the IPP did not accurately reflect her child, but she was not specific. After the IPP, Mother asked for a change of service coordinators because Mother was unhappy with Hurtado, and the case was transferred to ELARC service coordinator Alejandro Orozco, who was supervised by ELARC supervisor Elizabeth Ornelas.

### **ELARC'S NOVEMBER 2019 PSYCHOLOGICAL EVALUATION**

20. ELARC referred Claimant for a psychological evaluation conducted on November 21, 2019 to determine the presence or absence of developmental delays which may not be attributable to intellectual disability or Autism Spectrum Disorder. The resulting report stated that although Claimant was initially difficult to engage, he did eventually cooperate with the testing. Although he presented with receptive and expressive language difficulties, his attention varied, and his manner of responding was inconsistent. The examiner was uncertain if the intellectual testing represented a



sample of his best performance. Mother reported Claimant had tantrums at home about six times per day, two minutes per episode. Mother reported it was difficult to get him to leave the house. His tantrums had reduced in frequency and intensity over time. He was active at home, liked to play and climb cars and fences. He tended not watch where he is walking and fell frequently.

21. The evaluator reported a diagnosis of Autism Spectrum Disorder, Social Communication severity level 2 requiring substantial support, restricted receptive behaviors with a severity level 1 requiring support, with accompanying intellectual impairment of borderline intellectual functioning, with accompanying language impairment. The evaluator's report stated that Claimant needed a comprehensive psychoeducational evaluation; that he would benefit from training in communication skills and participation in group socialization services sometimes provided by public schools. The evaluator also recommended that the family contact the Autism Society for support and that family become involved in an applied behavioral analysis program through insurance, and if that was not possible, through ELARC.

### **Mother's Request for Additional In-Home Respite Hours**

22. California Governor Gavin Newsom issued a Proclamation of a State of Emergency dated March 4, 2020 as a result of the threat of Covid-19, and a subsequent "Safer at Home" Order. Pursuant to the Proclamation and Governor Newsom's Executive Order N-25-20, the Director of the Department of Developmental Services, called DDS, issued various directives to regional centers waiving, modifying and extending certain requirements of the Lanterman Developmental Disabilities Services Act (Lanterman Act) and/or certain provisions of Title 17, Division 2 of the California Code of Regulations, including directives pertaining to participant directed services and certain training requirements for in-home respite workers.

23. On or around March 16, 2020, Montebello Unified School District suspended in-person instruction, and at some point, began distance learning through virtual instruction. Although Claimant had resumed school attendance after his October 2019 IPP after reaching an agreement with Montebello Unified School District, it was not until the hearing in this case that ELARC learned Claimant had been attending school.

24. On Friday April 17, 2020, after business hours, Mother emailed ELARC service coordinator Orozco requesting ten hours per day of emergency in-home respite hours due to Covid-19, starting March 16, 2020 until Claimant was able to initiate regular activities.

25. On Monday April 20, 2020, Orozco informed Mother that during the Safer at Home Order, he would be working from home. Regarding Mother's request for additional in-home respite hours, Orozco requested details regarding the reasons for the additional hours requested. He informed her that 25 hours per month of in-home respite for Claimant had previously been authorized. He advised her that such services could not be used to substitute home school schedules most school districts were granting because of Covid-19, nor could they substitute for hours of therapy authorized by the school district or some other agency, and that any hours over 40 hours per week would require using additional workers because of overtime concerns.

26. On April 28, 2020, Mother wrote to Orozco about the need for respite hours for both Claimant and his sister. Mother stated that since March 16, 2020, she did laundry six hours a day four times a week, went to the supermarket two times a week, three hours a day, and was using private transportation, as well as taking Claimant and his sister on joy rides to reduce their stress. She also claimed there was no public transportation and that it was unsafe. Mother claimed she had been going

to medical appointments that took several hours, that she took medication that made her drowsy, she was fatigued from pregnancy, and she participated in therapy by phone for one hour per week which required someone else to care for her children. She also stated that the Covid-19 situation had completely changed all her children's schedules and impacted the need for additional services. A large portion of the letter focused on matters related to Claimant's sister. Mother also explained that two individuals had been providing respite services since March 16, 2020 which she sought out herself. She agreed that if she had additional information, she would let Orozco know and that Orozco could email her with questions.

27. On April 30, 2020, Orozco asked Mother to clarify the number of in-home respite hours being sought for each child. He also informed her that there had been no commitment to pay for additional hours worked which had not been authorized. The same day, Mother responded that she had already provided extensive information and that her explanations were "useless," so ELARC should just let her know its decision. Mother accused ELARC of playing games and stated she needed the services since March 16, 2020. Mother also clarified that she was seeking 10 hours per day for each child.

28. Orozco was still confused as to why Mother needed the additional respite hours requested. On April 30, 2020, Orozco again wrote to Mother explaining that ELARC had not denied extra assistance during the pandemic but needed to obtain the most detailed information possible to justify the number of hours requested. Orozco asked her for a monthly calendar, detailing how the daily hours are used for her children and herself, as well as the other personal activities mentioned in her prior email. Orozco also asked Mother to include the number of hours and generic service

schedules, such as homeschool and IHSS, and the in-home respite and social skills hours authorized for Claimant. Mother never provided this information.

29. On May 8, 2020, Orozco informed Mother that ELARC would agree to fund 72 additional hours per month of in-home respite services for Claimant until June 12, 2020, the end of the school year. Orozco stated that ELARC recognized a need for support and did not want to delay the process, and that it would approve the hours based on the information provided taking into consideration Claimant's natural supports, generic resources and history of needs. Mother was reminded that additional hours were not intended to substitute or supplement school hours, and that the service was temporary and retroactive to Monday, April 20, 2020. The hours were offered based on the limited information ELARC had, to provide support to Claimant's family during the pandemic.

30. The same day, Mother responded that she wanted 40 hours per week, Monday through Friday for each child. At hearing, Mother explained that she requested the additional hours due to the confinement because of Covid-19 based on her telephone calls to unidentified individuals at DDS who told her "more or less" how many hours ELARC should provide to her family.

31. On May 12, 2020, Orozco wrote Mother and informed her that ELARC would send Mother a Notice of Proposed Action based on the additional 72 hours per month of in-home respite care offered to Claimant.

32. On May 20, 2020, Mother agreed to the hours proposed but stated that she would appeal the balance of hours ELARC refused to fund.

33. On May 22, 2020, Mother was informed that based on her agreement to accept the hours proposed and her request for a fair hearing, ELARC would send a new

Notice of Proposed Action, clarifying that the number of additional respite hours ELARC would fund for Claimant since April 20, 2020 until June 30, 2020 would be at a rate of four additional hours per weekday, excluding holidays. ELARC also offered Claimant's sister additional respite funding.

34. ELARC did not conduct a formal Family Respite Needs Assessment after October 2019. ELARC considered four additional hours per weekday reasonable based on the information it had at the time. Among other things, ELARC considered Claimant's age, that Mother did not work outside the home, and the generic, natural supports and other resources it understood were available to Claimant. At hearing, Orozco explained that he assumed based on the information he had that Claimant's IHSS benefits could be used for tasks such as assisting with laundry and grocery shopping and transporting Claimant, but he did not demonstrate complete familiarity with Claimant's situation, including whether Claimant was actually receiving social skills services since March 16, 2020 or attending school at that time.

## **Notice of Proposed Action**

35. By Notice of Proposed Action dated May 22, 2020, ELARC notified Claimant that the request for 40 additional hours per week of in-home respite services retroactive funding effective March 16, 2020 was denied. The stated reason for the action was that ELARC had offered Mother funding for a maximum of four additional hours per weekday excluding holidays effective April 20, 2020 (the first business day after Mother's request for additional hours) until June 30, 2020 based on the needs of the consumer; school closures due to Covid-19; generic resources, including but not limited to natural supports; IHSS and Parent's employment needs. It stated that because Mother had not yet provided the additional information requested, including a monthly calendar which gave a detailed description of current services, ELARC could

not justify Mother's request. The Notice relied on various sections of the Welfare and Institutions Code.

## **Fair Hearing Request**

36. Mother filed a Fair Hearing Request on June 17, 2020, requesting additional temporary in-home respite services due to Covid-19.

## **Continuation of Additional Respite Hours and Other Evidence at Hearing**

37. At the time of hearing, Claimant has continued to receive the same level of respite services, specifically 25 hours per month of in-home respite services in addition to temporary funding of four hours of in-home respite funding per weekday, excluding holidays. Claimant's July 2020 IPP documented that because of the Covid-19 pandemic, four additional hours per weekday of in-home respite funding, excluding weekends and holidays had been approved on a temporary basis. The July 2020 IPP stated that Claimant was receiving Supplemental Security Income of \$711 per month, 16 hours per month of IHSS, and he was eligible for Medi-Cal and ACCESS transportation. Medical needs were covered by Medi-Cal and LA Care Health Plan. It also documented that Claimant was authorized to receive nine hours a month of social skills training, but that it was only being provided remotely due to the pandemic. Mother was encouraged to consider requesting a referral for behavioral services from LA Care Health Plan, but Mother felt such services were unnecessary. During the IPP Orozco asked Mother to consent to the release of Claimant's most recent IEP, but Mother did not agree, stating she preferred to provide it herself at some later time. The IPP documented that Mother reported Claimant had engaged in tantrums an average of three times per week, was not toilet trained, would wander away when

something caught his attention, was not attending school, and that Mother would decide when it was best for him to resume school. At the time of the hearing, Mother had not agreed to the July 2020 IPP.

38. In an IPP dated August 5, 2020, ELARC documented that the October 19, 2019 IPP was amended, and that four additional hours per day of in-home respite services had been added on a temporary basis effective April 20, 2020, excluding weekends and holidays.

39. At hearing, ELARC service coordinator Orozco explained that ELARC has continued to provide the additional hours of in-home respite care because of the ongoing pandemic which had become worse. ELARC supervisor Ornelas testified that the extra four hours of in-home respite services would continue during the pandemic as long as the DDS continued to issue directives to regional centers waiving, modifying and extending certain requirements of the Lanterman Act due to Covid-19 and distance learning was in effect at schools. Ornelas stated that had she known that Claimant was in school when the additional four hours per day was offered, ELARC may not have offered Claimant an additional four hours per weekday of additional in-home respite care funding. Ornelas was unaware of how many hours Claimant spent in virtual classes, or how his IHSS hours were awarded or for what purposes. She was unclear if Claimant was receiving social skills services and the extent of the availability of natural supports. Pursuant to Mother's request, Orozco and Ornelas were removed from Claimant's case in October 2020.

40. Gutierrez has known Claimant since he was born and has had multiple opportunities to interact with him at home and in the community. She described Claimant as happy, well behaved, respectful, very social and vulnerable. She denied Claimant engaged in negative behaviors or eloped but observed that it was difficult for

him to adapt to new people and that he required redirection. She observed him during virtual instruction and saw that he was easily distracted and that it was necessary to redirect him.

41. At hearing, Mother testified that she is a stay-at-home parent, and the additional four hours ELARC agreed to fund was helpful to the family but it was not enough. She also stated she has “not accessed the 40 hours per week” of respite services because “there has been no need.” Mother claimed that the additional hours could help the family because Mother has other things to do and a new baby since October 1, 2020, they could help with Claimant’s schoolwork, and that they were necessary because of the confinement due to Covid-19. Mother was otherwise not specific or clear as to why additional respite hours funding was necessary as it related to her particular situation regarding Claimant.

## **LEGAL CONCLUSIONS**

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) All statutory references are to the Welfare and Institutions Code unless otherwise specified. An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional centers is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal ELARC’s denial of his request for funding beginning on March 16, 2020 of additional hours of in-home respite services due to Covid-19.

2. When one seeks government benefits or services, the burden of proof is on the party seeking the benefits or services. (See e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789; *Lindsay v. San Diego Retirement*



*Board* (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 funding for additional hours of in-home respite care that ELARC had not before agreed to provide, and therefore Claimant has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

3. In enacting the Lanterman Act, the Legislature assumed responsibility to provide for the needs of developmentally disabled individuals, so that individuals eligible for services and supports receive the services and supports identified in the consumer's IPP. (§ 4501.)

4. The determination of which services and supports are necessary for each consumer are made through the IPP process. (§ 4512, subd. (b).) The determination is based on 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).)

5. The planning process for an IPP includes gathering information and conducting assessments. (§ 4646.5, subd. (a)(1).) For children with developmental disabilities, this process should include review of the needs of the child and the family unit. (*Ibid.*) Assessments shall be conducted by qualified individuals and require information to be taken from the consumer, parents and other family members, friends, providers of services and supports and other agencies, among others. (*Ibid.*)

6. 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).) These services are designed to do all of the following: (1) Assist family members in maintaining the client at home; (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members; (3) Relieve family members from the constantly demanding responsibility of caring for the client; and (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization and continuation of usual daily routines ordinarily performed by family members. (*Ibid.*)

7. When purchasing services and supports for a consumer, a regional center shall ensure: (1) Conformance with regional center's purchase of service policies; (2) Utilization of generic services and supports when appropriate; (3) Utilization of other services and sources of funding as contained section 4659; and (4) Consideration of the family's responsibilities 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. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a).)

8. Regional centers must identify and pursue all possible sources of funding for consumers receiving regional center services, which include but are not limited to: (1) Governmental entities or programs required to provide or pay the cost of providing the services, including Medi-Cal, school districts, and federal supplemental security income; and (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. (§ 4659, subd. (a).)

Regional centers shall not purchase any service that would otherwise be available from Medi-Cal, In-Home Support Services, private insurance, or a health care service plan when a consumer or a family meet the criteria of this coverage but chooses not to pursue that coverage. (§4659, subd. (c).) 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).)

9. In order to best utilize generic resources, federally funded programs, and private insurance programs for individuals with developmental disabilities, regional centers are required to be trained at least once every two years in the availability and requirements of generic, federally funded and private programs available to persons with developmental disabilities, including but not limited to, eligibility requirements, the application process and covered services, and the appeal process. (§ 4659, subd. (f)(1).) Regional centers shall disseminate information and training to all service coordinators regarding the availability and requirements of generic, federally funded, and private insurance programs on the local level. (§ 4659, subd. (f)(2).)

10. Claimant contends that in-home respite services can be provided without limitations, that Governor Newsom has given these resources to families so that they can stay safe at home during the pandemic, and that no other agency provides the respite services requested. Claimant contends that he is entitled to the additional hours of respite service because of the pandemic, and that none of the evidence supports limitation of the hours to be provided to Claimant. Claimant asserts he is entitled to at least two more hours per weekday of respite funding, on top of the additional four hours per weekday, and 25 hours per month ELARC is already providing.

11. ELARC contends that it considered that the pandemic has caused hardship on families, that it responded to Claimant's request for additional in-home respite hours in a timely fashion, and that its agreement to provide four additional hours per weekday, excluding holidays was reasonable and was made in good faith. It contends that it never got the requested information from Mother supporting her request, so it made certain assumptions so as not to prevent or delay needed services to Claimant. It asserts that if additional information is later obtained, adjustments can be made as to the amount of respite hours, but that the additional four hours per weekday of temporary respite funding since April 20, 2020, excluding holidays, on top of the 25 hours per month of the regular respite care provided is appropriate.

12. Here, Claimant failed to establish by a preponderance of evidence that he is entitled to any additional funding for in-home respite hours beyond that which ELARC agreed to at the time of the May 22, 2020 Notice of Proposed Action and has since continued authorizing since that time, specifically the additional four hours per weekday, excluding holidays since April 20, 2020. ELARC's agreement to provide the additional four hours per weekday was based on the information it had at the time, including the October 2019 Family Respite Needs Assessment, the October 2019 IPP, that Mother was not employed, the limited information provided by Mother, its understanding of Claimant's educational program and his access to other resources, and the existence of the ongoing pandemic.

13. When Mother made a request for additional respite hours on a temporary basis, ELARC should have conducted an updated respite needs assessment to assess the severity of the impact of Covid-19 on the family's need for respite services. Orozco was a newly assigned service coordinator. He did not have any updated information beyond that which was in the October 2019 IPP, and as far as he

knew, Claimant had been out of school for more than a year, but that most schools were providing homeschool schedules. Notwithstanding ELARC's failure to conduct an updated respite needs assessment, Claimant did not prove that he was entitled to more than the additional four hours per weekday of in-home respite funding ELARC has continued to authorize since April 20, 2020.

14. Although Mother and Gutierrez took issue at hearing with Hurtado and/or the description of Claimant's behavior in his IPP, Claimant failed to establish that the October 2019 Family Respite Needs Assessment conducted by Hurtado or the information in the 2019 IPP resulted in Claimant receiving less in-home respite hours than he was entitled. Claimant presented no evidence that the points given to each component of the prior assessment was undervalued.

15. ELARC's in-home respite policy provides that a request for additional respite care can be requested beyond that calculated through the Family Respite Needs Assessment Guideline. Promptly upon receiving Mother's request for additional respite hours due to Covid-19, Orozco requested details regarding the reasons the hours were needed, informing Mother that respite hours could not substitute for home school or schedules or authorized therapy. Mother failed to provide enough information to justify her request. Although she did provide some limited information on April 28, 2020 as to some of her activities since March 16, 2020, she combined her justification for additional respite hours regarding Claimant with her daughter's needs, and gave no adequate specifics as to why she needed 10 hours per day for Claimant moving forward. She claimed that her children's schedules had changed but offered no details as to how that impacted the need for additional services, including whether her children's school schedules had been reduced at any point and by how many hours.

16. Orozco asked again two days later for more specific information. He asked for monthly calendars detailing how the daily hours were used, and to include service schedules for generic resources, including homeschool, IHSS, in-home respite and social skills hours. However, Mother refused to provide this information. In fact, although Mother had previously agreed to keep ELARC informed about events and reports pertaining to Claimant's education, Mother never provided this information or the status of the due process case against the school district. Because Mother refused to provide this or any other additional detailed information, ELARC agreed to fund an additional four hours per weekday, excluding holidays, based on the limited information it had about Claimant and his family. Mother failed to prove that proposal was insufficient.

17. Although Mother reduced her additional respite hours demand to 40 hours per week or eight hours per weekday, and at the end of the hearing asserted she was entitled to at least two additional hours per weekday beyond that ELARC had agreed to fund, her explanations were nonetheless inadequate to justify more than the additional four hours per weekday since April 20, 2020 that ELARC authorized. Among other things, Claimant was only five years old when Mother first made her request and there was no evidence that Claimant's behavioral needs justified more in-home respite care. In fact, at hearing, Gutierrez minimized the behavioral concerns documented in the IPPs, denying that she had ever observed Claimant engaged in negative behaviors or elopement. Further, Mother refused to provide Orozco with the more detailed information he requested. Even as late as July 2020, ELARC tried to obtain updated information about Claimant's education, but Mother refused to consent to the release of Claimant's most recent IEP. While ELARC witnesses were unaware of the amount of time Claimant was in school when Mother made her requests for additional respite

hours, Claimant failed to prove this entitled him to additional respite hours beyond the four hours per weekday ELARC agreed to fund.

18. Mother claimed at hearing that no other agency provided respite service. However, she failed to establish that the type of activities referenced in her letter of April 28, 2020 to justify the need for additional hours of respite, such as laundry and supermarket shopping, were not activities covered by other resources available to Claimant. Nor did Claimant otherwise adequately justify her request for the balance of the additional hours. Similarly, Claimant failed to prove that behavioral services impacting the need for respite care were not available from Medi-Cal or the family's health care provider. The preponderance of evidence established that Mother never attempted to obtain such services despite repeated attempts by ELARC to have Mother apply for such services. Although Orozco and Ornelas did not demonstrate complete familiarity with all aspects of Claimant's available resources, Claimant did not prove the assumptions they made were incorrect such that Claimant was entitled to the balance of the additional respite funding at issue.

19. Turning to the period between March 16 and April 20, 2020, the evidence did not establish Claimant was entitled to eight hours per weekday of additional in-home respite services for Claimant. Inexplicably, Mother did not make her request for additional respite hours until after business hours on Friday April 17, 2020. In addition, Mother seemed to be under the mistaken impression that because of the "Safer at Home" Order, Claimant was automatically entitled to additional respite time due to the confinement as of March 16, 2020. However, Mother appeared to rely on an order which did not go into effect until March 19, 2020. Specifically, on March 19, 2020, Governor Newsom mandated that all individuals living in the State of California stay

home except as needed to maintain continuity of operations of the federal critical infrastructure sectors. (Governor's Exec. Order No. N-33-20 (March 19, 2020).)

20. Even as of March 19, 2020, Claimant did not establish by a preponderance of the evidence that the confinement entitled him to additional respite hours before April 20, 2020, the effective date ELARC agreed to fund the additional four hours of temporary respite due to Covid-19. For example, Mother claimed in her correspondence to Orozco that her children's school services were impacted by the pandemic, but she provided ELARC with no specific information about Claimant's school schedule after March 16, 2020, particularly the distance learning schedule and when it began, nor did Claimant present any persuasive evidence at hearing on this issue. Claimant failed to prove that distance learning impacted the considerations in section 4690.2, subdivision (a), for in-home respite care such that Claimant was entitled to the balance of the respite hours at issue here. Based on Mother's testimony at hearing, Claimant was attending school in March and April 2020.

21. Mother's email correspondence did not provide enough detail to justify the balance of additional hours Claimant seeks, and her testimony at hearing was unconvincing that additional hours were required. Mother claimed that the additional hours ELARC agreed to fund were not enough, but also stated she had not accessed 40 hours per week of respite care because it was not needed. She also testified that the amount of her request for additional hours was based on conversations with unidentified people at DDS, but there was no evidence presented as to what those people knew, or the basis for any recommendation she obtained from them. In any event, one purpose of respite care is to relieve a parent from the constantly demanding responsibility of caring for a developmentally disabled child. Claimant did



not prove the balance of additional hours of respite care at issue was necessary to fulfill that purpose or the other purposes listed in section 4990.2, subdivision (a).

22. Mother's contention that she is entitled to the additional respite hours without limitation because of Governor's orders was unconvincing. The various directives issued by DDS to the regional centers as a result of the Governor's Proclamation and Executive Order N-25-20, did waive, modify and extend certain requirements of the Lanterman Act and/or certain provisions of Title 17, Division 2 of the California Code of Regulations. However, those directives, including the directives pertaining to participant directed services and certain training requirements for in-home respite workers, do not justify the amount of the requested in-home respite hours.

23. Orozco acknowledged at hearing and in his May 8, 2020 email, that Claimant's family had a need for additional support based on the hardships created by the pandemic beyond the 25 hours per month offered as a result of completing the respite assessment guideline. During his closing argument, Valdez also acknowledged Claimant's ongoing need for temporary respite support because of the pandemic beyond the 25 hours per month offered pursuant to the assessment. Ornelas stated that the additional respite care authorized for Claimant would continue during Covid-19 as long as distance learning was in effect at schools and the DDS Director was issuing directives to regional centers waiving, modifying and extending certain requirements of the Lanterman Act due to Covid-19. Ornelas also stated that, had she known Claimant was in school, she may have not authorized the number of additional hours ELARC agreed to fund. However, neither Ornelas nor Orozco demonstrated complete familiarity with Claimant's situation, including but not limited to the number of hours he spent in school. Accordingly, since the length of the pandemic is unknown,

before there is any reduction in the temporary respite being funded by ELARC regarding Claimant, it should conduct appropriate assessments by qualified individual(s) in accordance with section 4646.5 who have received the information and training mandated by section 4659, subdivision (f).

## **ORDER**

1. Claimant's appeal is denied.
2. ELARC is not required to fund an additional eight hours per weekday of in-home respite services for Claimant between March 16 and April 20, 2020.
3. ELARC is not required to fund an additional four hours per weekday of in-home respite services for Claimant after April 20, 2020.

DATE: January 19, 2021

LAURIE GORSLINE  
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.