

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2020060940

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter by video/telephone on July 29, 2020, at Los Angeles, California.

Latrina Fannin, Manager of Rights and Quality Assurance with the Harbor Regional Center (Service Agency), appeared and represented the Service Agency.

Claimant's mother appeared and represented claimant.

The matter was submitted for decision at the conclusion of the hearing on July 29, 2020.

ISSUE

The issue in this matter is whether the Service Agency shall increase funding for respite services from 40 hours per month to eight hours per day, or 160 hours per month.

EVIDENCE CONSIDERED

Documents: Service Agency's Exhibits 1-11; Claimant's Exhibits A-B, D-E, and I-K.

Testimony: Susan Methven, Client Services Manager; William Rosas; Mayra Garcia; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 20-year-old male, eligible for regional center services based on a diagnosis of autism spectrum disorder. Claimant is not the subject of a conservatorship proceeding and has appointed his mother as his agent pursuant to a medical and financial power of attorney. Claimant lives with his mother, a single parent, and his older brother. Claimant graduated from high school and enrolled at Long Beach Community College. He was taking general education classes until he withdrew from school due to the anxiety caused by the COVID-19 pandemic. Claimant's mother is claimant's primary caregiver.

2. Claimant currently receives 45 hours per month of In-Home Support Services (IHSS) through Medi-Cal to assist with his personal care needs. Claimant may qualify for additional services or protective supervision through IHSS. Claimant's

assigned service coordinator at the Service Agency is willing to advocate to increase the hours of assistance through IHSS, but to date, claimant's mother has declined to provide the necessary consent.

3. Using respite assessment tools to determine the appropriate amount of respite hours to be provided per month, the Service Agency initially determined claimant's family needed 11 to 20 hours per month of respite care. However, the Service Agency considered the impact of the family's medical issues on the need for additional respite services. Specifically, claimant's mother was diagnosed with uterine cancer in 2013 and breast cancer in 2016. She was treated with chemotherapy and underwent mastectomy surgery two years ago. Considering these circumstances, the Service Agency agreed to provide 30 hours per month of respite services through Cambrian Healthcare.

4. The Service Agency, claimant, and his mother most recently participated in the development of an Individual Program Plan (IPP) on February 21, 2020. Since then, the State of California declared a state of emergency in relation to the COVID-19 pandemic. The disruption of daily routines and the fear of serious illness have caused claimant to suffer heightened anxiety. A family friend testified that, on a recent occasion, she and claimant's mother spent more than two hours trying to get claimant to leave the house and into the car for an emergency because he was afraid to get infected by the coronavirus. Claimant's heightened state of anxiety has caused his mother to suffer increased stress. She was recently taken to the emergency room as a result of debilitating headaches attributed to tension.

5. On May 12, 2020, claimant's mother requested the Service Agency to provide eight hours per day of respite, which would increase respite funding from 40 hours per month to 160 hours per month. Pursuant to the Service Agency's purchase of

service policies, respite services are limited to “non-medical care and supervision” to provide “intermittent relief or rest from the additional demands that may be placed on a family caring for a son or daughter with a disability.” (Ex. 9.) The policy further provides that respite services are intended to be “periodic as opposed to continuous ... and not expected to meet a family’s total need for relief from the on-going care of a disabled family member.” (Ex. 9.)

6. The Service Agency denied the mother’s request on the grounds that an increase in respite care service would not be the appropriate support to meet claimant’s need to help ease his anxiety. However, the Service Agency increased funding for respite care services to 40 hours per month or 120 hours per quarter to alleviate the extra demands that have been placed on claimant’s mother in response to his anxiety about the COVID-19 pandemic. In addition, the Service Agency offered to schedule claimant for a consultation with a psychologist to address anxiety, and the parties are in the process of arranging a convenient time for the proposed consultation.

LEGAL CONCLUSIONS

1. An administrative hearing to determine the rights and obligations of the parties is governed by the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, §§ 4500-4885.)

2. The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence. (Evid. Code, § 550, subd. (a).) Accordingly, the burden of proof is on claimant as the party seeking to establish an entitlement to government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The applicable standard requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

3. A service agency is required to secure services and supports that meet the individual needs and preferences of consumers. (Welf. & Inst. Code, §§ 4501 and 4646, subd. (a).) A service agency must secure those services and supports that meet the needs of the consumer within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. Respite is one type of service provided to consumers. Respite provides intermittent care and supervision to a consumer who resides with a family member. As provided by Welfare and Institutions Code section 4690.2, subdivision (a), respite services are designed to: (a) assist family members in maintaining the consumer at home; (b) provide appropriate care and supervision to ensure the consumer's safety in the absence of family members; (c) relieve family members from the constantly demanding responsibility of caring for the consumer; and (d) attend to the consumer's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

5. Welfare and Institutions Code section 4659 provides:

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

supplementary program; (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] . . . [¶]

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

6. Regional centers are required to ensure all of the following: (1) conformance with the regional center's purchase of service policies, as approved by the Department of Developmental Services; (2) utilization of generic services and supports when appropriate; (3) utilization of other services and sources of funding as contained in Welfare and Institutions Code section 4659; and (4) consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. (Welf. & Inst. Code, § 4646.4.)

7. The Lanterman Act requires a service agency to control costs in its provision of services. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Consequently, while a service agency is obligated to secure services and

supports to meet the goals of each consumer's IPP, it is not required to meet a consumer's every possible need or desire, but must provide a cost-effective use of public resources.

8. Claimant's mother gave compelling testimony that she needs additional assistance. However, the evidence presented does not establish that an increase in respite hours from 40 hours per month to eight hours per day, or 160 hours per month, is the appropriate remedy. Claimant has heightened anxiety relating to the COVID-19 pandemic and has not fully utilized IHSS as an available generic resource that more appropriately serves those needs. While claimant's mother has presented valid reasons for her diminishing ability to provide care, respite services are intended to provide temporary non-medical care, to provide relief from the demands of care, and to tend to a consumer's basic needs. Other services may better complement the available generic resource.

9. The request for an increase in respite care does not comport with the Service Agency's purchase of service policy for respite care. The Service Agency currently funds 40 hours per month of respite services and claimant may be eligible for additional personal assistance through IHSS. Treatment by a psychologist may provide relief to claimant's anxiety, but claimant has not yet availed himself of the treatment. In light of other resources available to address the circumstances caused by claimant's heightened anxiety, granting additional respite services would not be a cost-effective use of public resources.

10. The Service Agency's denial of an increase in respite hours to 40 hours per week for Claimant is affirmed. The parties are encouraged to use the IPP process to explore the availability of other services that may provide relief.

ORDER

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

DATE:

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.