

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2020070535**

**DECISION**

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter via videoconference on August 27, 2020.

Karmell Walker, Fair Hearing Legal Compliance Officer, represented South Central Los Angeles Regional Center (RC or service agency).

Claimant's mother (mother) represented claimant. Claimant was not present for the hearing.<sup>1</sup>

Maria Guadalupe Meza of Hanna Interpreting provided Spanish to English and English to Spanish interpreting services for mother.

## **History of Case**

Testimony and documentary evidence were received on August 27, 2020. At the close of the hearing, the ALJ left the record open until September 8, 2020, to allow claimant to submit additional documentary evidence as discussed on the record. RC was given until September 15, 2020, to file any objection.

On August 28, 2020, claimant submitted "exhibits 1-6" (each with subparts).

On September 4, 2020, claimant submitted a 10-page written agreement between claimant and Ochoa's Consulting.

On September 4, 2020, claimant submitted a three-page document entitled "Additional Participant-Directed Services" written by the Department of Developmental Services and dated March 30, 2020.

Claimant did not provide a proof-of-service regarding the service of the post-hearing documents on RC. Claimant also submitted additional documents which were not discussed during the hearing.

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<sup>1</sup> To preserve confidentiality, claimant and claimant's mother are not identified by name.

The ALJ marked claimant's submitted documents for identification as follows:

Exhibit A Notice of Proposed Action (and in Spanish),  
14 pages.

Exhibit B Undated NOPA Spanish, 1 page.

Exhibit C Notices of Hearing (July 30 and August 5,  
2020), 5 pages

Exhibit D Fair Hearing Request (July 3, 2020), 1 page.

Exhibit E "Person Centered Plan" for claimant, 10 pages.  
(duplicative to exhibit G)

Exhibit F Documents Related to and Regarding  
Guadalupe Puente (various dates), 16 pages.

Exhibit G "Person Centered Plan for claimant" written  
agreement between claimant and Ochoa's Consulting  
(dated October 15, 2019), 10 pages.

Exhibit H "Additional Participant-Directed Services"  
written by the Department of Developmental Services,  
dated March 30, 2020, (3 pages.)

Exhibit I Written Statement of Socorro Fernandez (in  
Spanish) dated August 21, 2020, (2 pages)

On October 6, 2020, the ALJ issued an Order Reopening the Record. Claimant was ordered to serve RC with the documents previously submitted to OAH (on August

28 and September 4, 2020). RC was given 20 days from the date of the Order to file any objection. No objection was filed by RC.

RC's exhibits 1-8 were admitted into evidence. Claimant's exhibits A-I were admitted into evidence. The record was closed, and the matter was submitted on October 29, 2020.

## **ISSUE**

Shall the RC be ordered to continue funding 40 hours per month of respite to be provided by Certified Nursing Assistant (CNA) Guadalupe Puentes instead of a Licensed Vocational Nurse (LVN) after the Department of Developmental Services (DDS) Self-Directed Respite Services waiver/directive (respite waiver) expires?

## **FACTUAL FINDINGS**

1. On June 11, 2020 the RC issued a Notice of Proposed Action (NOPA), which denied claimant's request that 40 hours of nursing respite services be provided CNA Puentes. RC contends that nursing respite must be provided by an LVN.
2. On July 30, 2020, claimant filed a Fair Hearing Request.
3. Claimant is a 12-year-old male with a diagnosis of cerebral palsy, intellectual disability, and epilepsy. He currently has a gastronomy tube (G-tube) and he has a history of seizures. Claimant requires total care and supervision at all times.

4. The RC currently funds 30 hours per month of FloorTime services and 80 hours per month of nursing respite services. This nursing respite is provided by an LVN from Carson Home Health.

5. In June 2020, because of the COVID-19 crisis (crisis), RC began funding an additional 40 hours per month of nursing respite services, for a total of 120 nursing respite hours per month.

6. In response to the crisis, DDS issued waivers and exemptions to its normal policies. Claimant received a respite waiver which allowed claimant to choose a service provider who would not normally be approved by RC. Claimant chose Puentes to provide these additional 40 hours of nursing respite. Puentes has been working in claimant's home since June 2020.

7. The respite waiver authorized Puentes to provide nursing respite services through September 26, 2020, which was the expected date the respite waiver would expire.<sup>2</sup> When the respite waiver expires, RC wants to change the 40 additional hours of nursing respite so that services are provided by an LVN and not by Puentes. RC is not proposing to eliminate the 40 additional hours.

8. Naomi Hagel, Program Manager II, manages the "Self-Determination Section" at RC. Hagel testified that claimant is currently only using half of the 80 hours per month of the available nursing respite which must be provided by an LVN. The

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<sup>2</sup> The "expected expiration date" was as of the hearing date. On that date, the crisis situation seemed to be improving in California. It is unknown if the respite waiver actually expired on September 26, 2020, or if the waiver was extended.

LVN who provides respite services is only available for 10 hours per week. It was not established if other LVN's are available to provide respite services for the other 40 hours per month of LVN respite.

9. Claimant and his mother want the additional nursing respite hours to be provided by Puentes on an on-going basis. Puentes works well with claimant and mother. Claimant and mother are very happy with Puentes services.

10. Claimant is a participant in the "soft roll-out" of the Self-Determination Program (SDP), which is a program that allows additional flexibility in service delivery. Under SDP, consumers will no longer need to use DDS approved vendors as service providers. Claimant is currently working on a developing his spending plan for his first year in the program. In developing his spending plan, claimant requested that Puentes services be authorized on an ongoing basis, past the cessation of the crisis and respite waiver.

11. While the SDP allows for additional flexibility in service delivery, the services purchased under this program must still abide by the rules and regulations of the Lanterman Act. RC also is permitted to use its purchase of service (POS) guidelines to assist in determining appropriate service in the SDP pursuant to Welfare and Institutions Code section 4646, subdivision (a)(1).

12. On December 7, 2019, RC sent a nurse consultant Nasreewn Asaria (Asaria) R.N., to visit claimant and complete a nursing assessment. Asaria has 25 years of nursing experience and she has worked at RC since 2007. Claimant has had a G-tube since March 2018 and was taken to the emergency room on several occasions during 2018 due to choking on food. Claimant has a history of seizures due to his epilepsy. He requires the administration of medication if he has a seizure lasting more

than 5 minutes. Asaria determined that claimant meets the criteria to receive LVN respite hours.

13. Asaria testified that a CNA is unable to provide the level of care that claimant requires. For example, a CNA is not authorized to do G-tube feeding. Asaria is concerned that claimant has an increased risk of choking especially during G-tube feedings and she believes an LVN is required to render the appropriate level of care to claimant.

14. RC's clinical team has reviewed claimant's situation and request regarding receiving care from Puentes. The team concluded that claimant is not eligible for a waiver that would allow for ongoing post COVID-19 crisis services from a CNA instead of an LVN.

15. Mother noted during her testimony that she is not an LVN and she regularly does G-tube feedings for claimant. She stated that claimant has not had any seizures since February 2019. Mother testified that claimant eats through his mouth during the day and through the G-tube at night. Mother has not always had a positive experience when using LVN's to care for claimant. From her perspective, many of the LVN's that have cared for claimant seemed to only be willing to attend to his medical needs. Mother prefers to have a caregiver who is more interactive with claimant and she is very satisfied with Puente's interaction with claimant. Mother states that when she has LVN's care for claimant, their lack of interaction with claimant result in her being unable to leave claimant alone with the LVN and she is unable to spend time with her other son or take a break for herself.

16. Puentes began working with claimant in approximately June 2020 at an average rate of three times per week. She enjoys taking care of claimant and she likes

claimant's mother. Puentes helps claimant with bathing, dressing, grooming, meals and snacks, various activities, and she enjoys interacting with claimant. Puentes has completed the following training: phlebotomy training program (July 2018), "Feeding Tube Home Skill Program for Patients" (August 2020) offered by the American College of Surgeons, and a 10-hour autism training program offered by Eastern Los Angeles Regional Center (August 2019).

## **LEGAL CONCLUSIONS**

1. Welfare and Institutions Code section 4646, subdivision (a), states

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.



2. Welfare and Institutions Code section 4646, subdivision (a)(1), provides that regional centers must ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan, the establishment of an internal process, which ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies, as approved by [DDS] pursuant to Welfare and Institutions Code section 4434, subdivision (d).

3. Welfare and Institutions Code section 4685.7 defines the procedure and rules for consumers and the operation of the Self-Directed Service Program. Included among the "self-directed services" is skilled nursing services. (Welf. & Inst. Code, §4685.7, subd. (b)(6).)

4. Welfare and Institutions Code section 4686, subdivision (g)(1) states: "Prior to the purchase of incidental medical services through a trained respite worker, the regional center shall do all of the following: Ensure that a nursing assessment of the consumer, performed by a registered nurse, is conducted to determine whether an in-home respite worker, licensed vocational nurse, or registered nurse may perform the services.

5. RC has a legal obligation to have a nursing assessment performed in order to assess claimant's condition and medical needs before determining what level of nursing respite to provide. Asaria recommended that an LVN provide nursing respite because claimant has a G-tube and a history of choking and seizures. Specifically, a CNA is not allowed to perform G-tube feedings. Also, if claimant has a seizure that lasts more than five minutes, he requires medication and a CNA is not authorized to administer medication.

6. However, claimant is not receiving G-tube feedings during the daytime hours when CNA Puentes is present in claimant's home. Also, the risk of a seizure has diminished markedly. Claimant has not had a seizure since February 2019. Given those facts, it is reasonable to allow CNA Puentes to provide respite care for the 40 additional hours per month. Claimant still has 80 hours per month of LVN respite, which can be used if the need arises for daytime G-tube feedings or claimant begins having seizures more regularly. Claimant and his mother have also had limited success in finding LVN providers who are willing to interact with claimant for more than medical issues. While medical care and safety are important, so too are claimant's choices regarding services providers, his interaction with those providers, and the relationship claimant and his family build with a caring provider like CNA Puentes.

## **ORDER**

Claimant's appeal is granted. When the Self-Directed Respite Services waiver/directive issued to claimant expires, South Central Los Angeles Regional Center shall allow CNA Guadalupe Puentes to be the service provider for 40 hours per month of nursing respite. The regional center is not required to fund these 40 hours at the LVN nursing respite rate and may reduce funding to the appropriate rate for CNA Puentes.

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.