

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020090571

DECISION

Rita Defilippis, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 29, 2020. Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant was represented by her mother, who is also her conservator.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 29, 2020.

ISSUE

Did Claimant require an additional 24 hours per day of in-home respite services, in lieu of out-of-home respite services, for the time period of July 3, 2020 through July 7, 2020?

EVIDENCE

Documentary: Service Agency exhibits 1 through 16; Claimant exhibits 1(A-C), 2(A and C), 3(A-E), and 4(A and B).¹

Testimonial: Elva Rama, ELARC Service Coordinator; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a conserved 24-year-old woman who is a consumer of ELARC. She has been diagnosed with autism, mild intellectual disability, expressive language disorder, and major depressive disorder. Claimant lives at home with her mother and sibling. Claimant's mother is her conservator and primary caretaker.

2. Claimant's Individual Program Plan (IPP), dated January 27, 2020, indicates that Claimant has significant behaviors related to her diagnoses. When frustrated, she cries, whines, engages in tantrums, hits herself on the head, legs, and

¹ Any Service Agency exhibits will be referred to using numbers only. Any Claimant exhibits will be referred to using numbers and letters.

arms with a closed fist, and throws objects. Claimant has difficulty sleeping and has eloped from her home in the middle of the night. Claimant lacks skills to access the community and requires someone nearby to avoid injury or harm in unfamiliar settings. She is vulnerable to exploitation due to her lack of safety awareness. Claimant requires supervision at all times to ensure her health and safety at home and in the community.

3. Claimant receives 196 hours per month of in-home support services (IHSS) for protective supervision, through Los Angeles County Department of Social Services. Mother is Claimant's IHSS provider. ELARC funds 48 hours per month of community integration training (CIT), provided by Good Living Community Services, Inc., and 30 hours per month of in-home respite. ELARC funds up to 21 days per fiscal year of out-of-home respite services for Claimant, upon request.

4. ELARC's Out-of-Home Respite Services Purchase of Services Guidelines (guidelines), effective May 2, 2011, set forth purchasing guidelines for funding of out-of-home respite.² The guidelines define out-of-home respite services as intermittent, or regularly scheduled, temporary care provided outside the consumer's home by a vendored service provider. These services are intended to assist the family in securing temporary outside support in providing appropriate care and supervision of the consumer. In-home respite, in lieu of out-of-home respite, may be used only when there is no out-of-home respite arrangement available. The following information

² These guidelines as well as ELARC's in-home-respite purchase of service guidelines, contain references to Welfare and Institutions Code, section 4686.5, subdivision (a)(5), which is no longer in effect. (Exh. 6, p. 3 of 4; Exh.7, p. 3 of 14.)

must be submitted to the service coordinator prior to the implementation of the in-home respite in lieu of out-of-home respite: proof of vacation plans; information on the respite caretaker, if different from the provider on the original vendor application; and written authorization for regional center to make unannounced visits to the home, school, or day program, to ensure the person's health and safety. The daily number of hours will be calculated on individual need, not exceeding 16 hours per day. Respite hours cannot be provided during hours of the day that the consumer attends school/day program, after school care, social/recreational program, or during hours of sleep. Generic services and natural supports must be explored and secured prior to ELARC's purchase of out-of-home respite services. (Exh. 6.)

5. According to Claimant's interdisciplinary notes (Exh. 5), on February 4, 2020, Mother contacted Claimant's service coordinator, Ms. Jacqueline Lopez, to request out-of-home respite for Claimant. Mother provided proof of her travel plans for a four-day trip in March 2020. No out-of-home placements were available for Claimant due to the Covid-19 pandemic. At some point, Mother was informed that in-home-respite, in lieu of out-of-home respite, would have to be utilized. On March 20, 2020, Mother informed Claimant's service coordinator that her trip was cancelled as her hotel was shut down due to Covid-19. Mother informed the service coordinator that she would use her in-home respite in May 2020.

6. In April 2020, Ms. Lopez left her employment with ELARC, and Ms. Simone Huerta became Claimant's service coordinator. Mother had a sudden opportunity to reschedule her trip during the dates of July 3, 2020, through July 7, 2020. Mother left a voice message with Ms. Huerta on July 2, 2020, informing her of the trip. Cordova Consulting, Claimant's vendor for in-home respite services, provided 24 hours per day of in-home respite services for Claimant's care from July 3, 2020,

through July 7, 2020, at the rate of \$14.25 per hour. Good Living Community Services, Inc. provided three hours of CIT services on July 7, 2020. CIT services are provided in Claimant's home and in the community. Good Living Community Services, Inc. agreed that home services will only be delivered to Claimant when a second home provider is present.

7. During the time of Mother's trip, Claimant did not have an assigned service coordinator. Her new service coordinator, Elva Rama, began working with Claimant on July 9, 2020. On July 17, 2020, Ms. Rama had her first telephone conversation with Mother. In the conversation, Mother informed Ms. Rama that Ms. Lopez, Claimant's previous service coordinator, approved in-home respite services in lieu of out-of-home respite in March 2020. Mother informed Ms. Rama that she was requesting additional in-home respite services, in lieu of out-of-home respite, for Claimant's care during her July 2020 travel. Ms. Rama informed Mother that ELARC would fund additional in-home respite, in lieu of out-of-home respite. (Exh. 2, p. 1.)

8. On July 31, 2020, Ms. Rama informed Parent that ELARC will fund 40 hours of additional respite for the time frame of July 3, 2020, through July 7, 2020. Claimant was already receiving 30 hours per month of in-home respite services pursuant to her IPP, calculated at one hour per day. Ms. Rama determined that Claimant slept for eight hours per day and that no respite care was required for the sleep time. Ms. Rama divided Claimant's 196 hours of IHSS protective supervision services per month by 30 days, and she determined that Claimant received 6.5 hours per day of funding for IHSS, which she considered a generic resource. Ms. Rama determined that Claimant received three hours of CIT services on July 7, 2020, which she also considered to be a generic resource. After deducting all the generic services per day, she calculated that Claimant required 40 additional hours of in-home respite,

in lieu of out-of-home respite, during the 120 hours in the five-day time frame of July 3, 2020, through July 7, 2020.

9. On August 10, 2020, Mother requested 24 hours per day of funding for in-home, in lieu of out-of-home, respite for the time frame of July 3, 2020 to July 7, 2020.

10. On August 11, 2020, Cordova Consulting emailed Ms. Rama copies of the timesheets submitted by the two respite providers who provided care for Claimant from July 3, 2020, through July 7, 2020, which documented a total of 24 hours of care for Claimant per day.

11. On August 25, 2020, ELARC issued a Notice of Proposed Action denying Mother's request for additional in-home respite hours for July 3, 2020, through July 7, 2020, in lieu of out-of-home respite.³

12. On August 31, 2020, Claimant filed a request for fair hearing appealing ELARC's Notice of Proposed Action, denying Claimant 24 hours of additional in-home respite, in lieu of out of home respite, for July 3, 2020, through July 7, 2020.

13. Ms. Rama testified at hearing. She conceded that in-home respite, in lieu of out-of-home respite, was required to meet Claimant's needs July 3, 2020, through

³ Although ELARC's Notice of Proposed Action denies Claimant's request for 18 hours per day of additional respite, the Notice of Proposed Action also documents that Mother requested 24 hours per day of additional in-home respite on August 10, 2020, which continues to be Claimant's contention.

July 7, 2020, given the unavailability of any out-of-home respite placements due to Covid-19. Because of this, an exception was made to allow in-home respite, in lieu of out-of-home respite, despite Mother's lack of sufficient advance notice of her trip. ELARC would have funded 24 hours per day of out-of-home respite had there been a placement available for Claimant.

14. Mother testified at hearing. Mother contends that Claimant is entitled to up to 21 hours of out-of-home respite per fiscal year. Mother contends that Claimant would have qualified for 24 hours per day of out-of-home respite from July 3, 2020, through July 7, 2020. Mother maintains that 24 hours of in-home respite services should be funded by ELARC because no out-of-home respite placements were available, and Claimant's IPP requires that she is supervised at all times in the home and community for her safety. Mother contends that ELARC's refusal to provide in-home respite during sleep hours and deduction of hours for CIT services on July 7, 2020, was unreasonable because a home provider must accompany Claimant in the home during hours of sleep and CIT services. Mother contends that ELARC's deduction of IHSS hours was unreasonable because Mother used her IHSS hours on days in July 2020, other than July 3, 2020 through July 7, 2020, in order to meet Claimant's respite needs.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)⁴ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 11-12.)

2. Where a change in the status quo is sought, the party seeking the change has the burden of proving, by a preponderance of the evidence, that a change is necessary. (Evid. Code, §§ 115 and 500.) 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 is requesting 24 hours per day of additional in-home respite, in lieu of out-of-home respite, for Claimant, for the time period of July 3, 2020 through July 7, 2020. As such, Claimant has the burden to prove by a preponderance of the evidence that this change is necessary.

⁴ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

General Provisions of the Lanterman Act

3. Under the Lanterman Act, regional centers are established as “fixed points of contact” to enable the state to carry out its duties to developmentally disabled persons and to allow those persons access to the services and supports best suited to their individual needs throughout their lifetimes. (§ 4620, subd. (a).) The California Department of Developmental Services (Department) is responsible for monitoring regional centers. Each regional center operates independently, has their own governing board, and enters into a separate contract with the Department. (§§ 4629, 4640, 4622.5.) Each regional center provides services to consumers within its assigned catchment area. (§ 4640; Cal. Code Regs., tit. 17, § 50501, subd. (a)(18).)

4. As part of its responsibility to monitor regional centers, the Department collects and reviews printed materials used by the regional centers, such as “purchase of service policies and other policies and guidelines utilized by regional centers when determining the service needs of a consumer,” and takes “appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of [the Lanterman Act] or any regulation adopted thereunder.” (§ 4634, subd. (d).)

5. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of 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).)

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).) In-home respite services are designed to do all of the following:

- Assist family members in maintaining the client at home.
- Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- Relieve family members from the constantly demanding responsibility of caring for the client.
- Attend to the client'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. (§ 4690.2, subds. (a)(1)-(4).)

7. When purchasing services and supports for a consumer, a regional center shall ensure all of the following:

- Conformance with the regional center's purchase of service policies, as approved by the [Department] pursuant to subdivision (d) of Section 4434.
- Utilization of generic services and supports when appropriate.

- Utilization of other services and sources of funding as contained in Section 4659.
- 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. 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, subds. (a)(1)-(4).)

8. ELARC's Out-of-Home Purchase of Services Policy and Procedure, effective May 2, 2011, states, "In-home respite in lieu of out-of-home respite may be used only when there is no out-of-home respite arrangement available." Out-of-home respite is funded by ELARC at 24 hours per day. Out-of-home respite, as is the case here, is appropriate when a consumer's primary caretaker or other family members are not available to care for the consumer due to a vacation. In the present case it is undisputed that in-home respite, in lieu of out-of-home respite, was required to meet Claimant's needs from July 3, 2020, through July 7, 2020, as no out-of-home respite placements were available due to the effects of Covid-19. Claimant's IPP identified Claimant's service needs, and it did not contemplate any need related to out-of-home placement. The July 3, 2020, through July 7, 2020 unavailability of Claimant's primary caretaker and IHSS provider presented a new service need by Claimant which necessitated additional services. ELARC is responsible to fund the additional services in an amount equivalent to the services it would have had to provide if an out-of-home placement was available, 24 hours per day, for July 3, 2020, through July 7, 2020. The services Claimant was receiving before this new service need arose, should not be used

to supplant Claimant's additional need for in-home respite, in lieu of out-of-home respite.

9. Claimant's IPP states that Claimant requires supervision at all times while in the home and community. Claimant has difficulty sleeping at night and demonstrates aggressive behavior when prompted to go back to sleep. She also has a history of leaving the home in the middle of the night. ELARC's position that it was not responsible to provide in-home respite during sleep hours was unpersuasive. There was no evidence presented at hearing that third party IHSS providers were available to care for Claimant during the timeframe at issue in this case. Therefore, ELARC's position that they are cannot fund 6.5 hours of in-home respite per day due to the availability of IHSS services was unpersuasive. CIT services are partially provided in the home. CIT agreed that a home provider needs to be present in the home during the delivery of the CIT services. ELARC's position that they cannot fund in-home respite for hours of the CIT service delivery is unpersuasive. Accordingly, cause exists to grant Claimant's request for 24 hours per day of additional in-home-respite services, in lieu of out-on-home respite services, for the period of July 3, 2020, through July 7, 2020.

ORDER

1. The appeal of Claimant is granted.
2. ELARC shall fund a total of 24 hours per day of in-home-respite services, in lieu of out-of-home respite, for the period of July 3, 2020, through July 7, 2020.

DATE: 11/09/2020

RITA DEFILIPPIS

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.