

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2020090974 (PRIMARY)

OAH No. 2020100084 (SECONDARY)

DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on November 30 and December 18, 2020. Candace Hein, Fair Hearings Specialist, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by his mother, with the assistance of a Spanish language interpreter.

Testimony and documentary evidence were received. The record closed and the matter was submitted for decision on December 18, 2020.

ISSUES

1. Should WRC be required to fund 80 hours per month of respite, rather than the 43 hours recently approved?
2. Should WRC be required to continue funding Claimant's 27 hours of specialized supervision after school?

EVIDENCE

Documentary: For Case No. 2020090974 (Primary) - Service Agency Exhibits SA-1 through SA-10; For Case No. 2020100084 (Secondary) - Service Agency Exhibits SAS-1 through SAS-9; Claimant Exhibits 1 through 8.

Testimonial: Myriam Garcia, WRC Program Manager; Magali Ochoa; Norma Gonzalez; Dora Vazquez; Naiby Dominguez; Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a nine-year-old male client of WRC. He qualifies for regional center services under a diagnosis of Autism Spectrum Disorder (ASD) and Mild Intellectual Disorder.
2. Claimant lives with his mother in their own home. Claimant engages in several maladaptive behaviors, and he requires constant supervision to ensure his safety.

3. According to Claimant's most recent Individual Program Plan (IPP), dated August 24, 2020, Claimant's mother was recently laid-off from her part-time employment.

4. Claimant receives In-Home Supportive Services (IHSS), and his mother is his IHSS provider. The number of IHSS hours Claimant receives per month was not reported by his mother.

5. During the day, Claimant is a fulltime student at the local elementary school. He also receives occupational therapy, speech and language therapy, and adaptive physical education services funded by his school district.

6. Due to the COVID pandemic, Claimant's education is provided remotely via a distance learning model that primarily utilizes the Zoom video-conference platform. Zoom is not an ideal learning platform for Claimant because he is unable to focus on or engage with the other Zoom participants. Claimant does not understand there is an individual on the screen who is attempting to communicate with him. Consequently, Claimant's mother must take a very active role in his instructional day.

7. Claimant receives behavioral intervention services provided by Families First and funded by his health insurance. However, he is unable to adequately utilize these services because they are provided via videoconference. Additionally, attempts to virtually implement these services result in increased maladaptive behaviors. Consequently, Claimant's mother is the sole person attempting to implement Claimant's behavioral intervention.

8A. Claimant's occupational therapy continues to be provided in-person. Claimant's mother previously reported that Claimant experiences extreme difficulty during transportation to his occupational therapy sessions. Claimant becomes very

agitated, kicks his mother's seat, pulls her hair, and engages in severe self-injury throughout the ride to therapy. Claimant's mother became concerned for their safety while driving, and she frequently had to stop on the highway shoulder.

8B. Claimant's mother requested Personal Assistance services to hire an aide to accompany them in the vehicle and to help calm Claimant during his transportation. Although this service is usually provided only to adult consumers, WRC made an exception for Claimant's mother because she was having such difficulty transporting Claimant to therapy sessions. To support Claimant in accessing his occupational therapy, WRC is funding 15 hours per month of Personal Assistance services, as an exception, provided by Premier Healthcare Services.

9A. To support the least restrictive environment for Claimant and to provide Claimant's mother with a break from the stresses of caring for a child with exceptional needs, WRC has funded 36 hours per month of respite services. Claimant previously transferred from a regional center in another catchment area where he was receiving 36 hours per month of respite services, and WRC continued providing that same number of hours.

9B. Claimant's mother recently requested an increase of respite to 80 hours per month.

9C. WRC's purchase of service policy for respite services, entitled Respite Guidelines, states in pertinent part:

Family Respite Needs Assessment Guideline and Summary
(incorporated by reference) will be used to establish the
number of hours per month of in-home respite that can be
funded by the Regional Center. The Family Respite Needs

Assessment Guideline considers such factors as: age, adaptive skills, mobility, communication, school or day program attendance, medical needs, behavioral needs, family situation, and availability of "generic resources." The Assessment Guideline is filled out with input from the consumer, family, or guardian and yields an estimate of the amount of hours needed.

(Exhibit SA-8, p. 84.)

9D. During Claimant's most recent IPP meeting, held on August 12 and 24, 2020, WRC conducted a respite needs assessment using the Family Respite Needs Assessment Guideline (Respite Needs Assessment). Claimant's Service Coordinator, Alex Marquez, and Program Manager, Myriam Garcia, met with Claimant's mother on August 12, 2020, to complete the Respite Needs Assessment, which includes a scoring tool to determine a consumer's needs. After starting the meeting, they had to stop until Claimant's respite provider arrived to take Claimant into another room. Thereafter, Mr. Marquez, Ms. Garcia, and Claimant's mother completed the Respite Needs Assessment together. Claimant's mother was allowed to take a copy of the Respite Needs Assessment home to review it. Although Mr. Marquez and Ms. Garcia speak fluent Spanish, they noticed that Claimant's mother, who speaks and understands some English, disagreed with some of their translation during the August 12, 2020 meeting. Consequently, for the second day of the IPP meeting on August 24, 2020, they hired a neutral Spanish language interpreter to ensure that no miscommunication occurred.

9E. On August 24, 2020, Mr. Marquez and Ms. Garcia met with Claimant's mother with the assistance of a Spanish language interpreter. On that date, they

reviewed the Respite Needs Assessment and determined that Claimant was eligible for 35 hours per month of respite services. However, WRC determined that, as an exception, it would continue to fund 36 hours per month of respite services provided by Premiere Health Services.

9F. At the fair hearing, Claimant's mother asserted that the Respite Needs Assessment incorrectly assessed Claimant's needs. However, a review of the Respite Needs Assessment at hearing revealed no inaccuracies in applying the assessment tool.

9G. Ms. Garcia testified credibly at the fair hearing. She recalled that Claimant's mother was afforded an opportunity to review the Respite Needs Assessment between the August 12 and August 24 meeting days. Claimant's mother did not object to the responses they had jointly placed on the form, nor did Claimant's mother provide additional information to change the responses. Nevertheless, Claimant's mother disagreed with the number of respite service hours determined by completing the Respite Needs Assessment. She maintained her request for 80 hours of respite services.

9H. In addition to the 36 respite hours per month, WRC approved funding of seven respite hours per month. These additional hours were authorized by a Department of Developmental Services (DDS) directive approving seven additional respite hours per month due to the COVID pandemic. Consequently, seven COVID respite hours were added to Claimant's 36 respite hours for a total of 43 hours of respite services per month.

10. Claimant's mother disagreed with the 43-hour total of respite hours, and she continued to request 80 hours per month of respite. On September 9, 2020, WRC

sent Claimant's mother a Notice of Proposed Action (NOPA) denying her request for 80 hours per month of respite.¹ Claimant's mother filed a Request for Fair Hearing, and this matter (Case No 2020090974 - Primary) ensued.

11. WRC is currently funding 36 hours per month of respite services for Claimant, provided by Premier Healthcare Services with authorization dates from October 1, 2020, through September 30, 2021. WRC is also currently funding seven hours per month of COVID respite provided by Premier Healthcare Services, as an exception, based on current DDS directives. The original authorization dates were October 1, 2020 through December 31, 2020, with possible earlier termination by DDS directive. DDS recently issued an updated directive extending the COVID respite funding authorization until the end of March 2021. Consequently, WRC will continue to fund 43 hours per month of respite services for Claimant until the end of March 2021.

12. To support the least restrictive environment for Claimant and to provide Claimant's mother with afterschool care while she worked, WRC has been funding 27 hours per month of specialized supervision services (also called afterschool daycare services).

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¹ The September 9, 2020 NOPA incorrectly indicated that WRC would continue to fund 42 hours per month of respite rather than 43 hours.

13. WRC's purchase of service policy for specialized supervision, entitled Daycare Services, states in pertinent part:

Day care services include after school supervision and supervision during school breaks (extended year services). Day care services are provided to school-aged children with a developmental disability while family caregivers are at work or attending a vocational/educational program leading to future work and have no other means to provide care and supervision. This service is designed to provide basic care and supervision only. It is provided to those whose health and/or safety would be in jeopardy without such care because of the nature of their disability or at risk status. . . .

Day care may be provided to those who meet all of the following criteria:

1. Alternative resources for supervision have been ruled out;
2. The individual resides in a single parent household with parent working or attending a vocational/educational program full-time, or a two-parent household with both parents working or attending a vocational/educational program full-time;

3. The person is in need of constant supervision or total support due to severe physical and/or medical challenges;
or
4. The individual has severe behavior challenges that constitute a threat to the health and safety of the individual, to the safety of others in the environment, or a threat to property;
5. Other circumstances which the IPP team and Regional Center management deem qualify the individual for these services.

(Exhibit SAS-9, p. 78; Emphasis added.)

14. Per WRC purchase of service standards, a parent must be employed fulltime or attending school fulltime in order to be eligible for specialized supervision. Due to Claimant's mother's recently reported unemployment status, WRC determined Claimant is currently ineligible for specialized supervision services.

15. On August 31, 2020, WRC sent Claimant's mother a NOPA notifying her that it would discontinue funding 27 hours of specialized supervision on September 30, 2020. Claimant's mother filed a Request for Fair Hearing, and this matter (Case No. 2020100084 - Secondary) ensued.

16. On Claimant's mother's request for aid paid pending, WRC is currently funding 27 hours per month of specialized supervision provided by Premier Healthcare Services.

17. At the fair hearing, Claimant's mother submitted documentation of her attendance at several conferences and workshops, and her acceptance to a community college for the Fall 2020 semester. However, Ms. Garcia testified credibly that this documentation was insufficient to establish fulltime enrollment in a school or vocational program. WRC would need an official school enrollment indicating fulltime status.

18A. Despite Claimants' ineligibility for 27 hours of specialized supervision/daycare, pursuant to a DDS directive, Claimant is eligible for additional COVID specialized supervision hours (COVID hours) to support families with distance learning during the pandemic. The COVID hours have different qualifying criteria than specialized supervision and do not require fulltime parental employment. The number of authorized COVID hours is based on a child's age and "school calendar" days. Children 13 years old and younger receive funding for four COVID hours per school day, and children over 13 years old receive funding for six COVID hours per school day.

18B. WRC initially approved funding 320 COVID hours for Claimant for the fall 2020 semester, based on his age (under age 13 receiving four hours per day) multiplied by the number of school days (80 days per his school district's calendar). However, Claimant's mother disagreed with Claimant receiving four hours per academic day, and she requested an additional four hours, for a total of eight hours per school day. The request was presented to the WRC Purchase of Service Committee, and an exception was made to fund an additional two hours per day based on Claimant's extensive needs. Claimant's mother was informed that her request for an additional four hours of COVID hours was denied, but two additional COVID hours was approved, as an exception, for a total of six COVID hours per academic day.

Consequently, Claimant receives the same number of COVID hours as a child over 13 years old.

18C. To support Claimant in accessing his education, WRC is funding 320 COVID hours, provided by Premier Healthcare Services, as an exception based on current DDS directives. WRC is also funding an additional 160 COVID hours, as an exception based on Claimant's needs, for a total of 480 COVID hours for the fall semester.

19A. At the fair hearing, Claimant's mother noted that, due to Claimant's severe behaviors, "not just any person can work with [Claimant]," and Claimant does not listen to anyone except her. Although Claimant's mother has respite and specialized supervision providers, they do not have training in behavioral intervention, so she cannot leave them alone with Claimant. For example, the person providing COVID hours for schoolwork cannot be alone with Claimant because he hits the table and scratches the care provider unless Claimant's mother is there to redirect him.

19B. Claimant's mother would like to have respite and specialized supervision provided by staff who have training and experience working with behaviors like Claimant's. She asked Premiere Health Services about trained care providers, but she was informed that they do not have personnel who specialize in behaviors like Claimant's. WRC informed Claimant's mother that Claimant may qualify for behavioral respite, which is respite provided by staff who are trained and have experience in behavioral intervention. WRC explained to her that, in order to fund behavioral respite, WRC must make a separate determination that Claimant is eligible for that service. However, she did not provide copies of Claimant's behavioral intervention progress reports to assist WRC in making that determination because "nobody gave me assurance they would give the service to my son." She does not understand why WRC

requires the documentation since the "service coordinator knows [Claimant's] behavior."

20. At the fair hearing, Ms. Garcia testified that, based on Claimant's behavioral needs, behavioral respite might be a more appropriate service for him. Behavioral respite providers are specially trained to work with individuals who have specific behaviors. In order to assess his eligibility for this category of services, WRC needs authorization from Claimant's mother to take additional steps. This authorization would allow a WRC behavioral specialist to contact the agency providing Claimant's behavioral intervention and to review the behavioral intervention progress reports in order to make a recommendation for funding. Claimant's mother has not given consent for a WRC behavioral specialist to talk to Claimant's behavioral intervention provider.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for these appeals was established.

2A. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid.

Code, § 500.) The standard of proof in this case is a preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, § 115.)

2B. In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. Although Claimant is not seeking funding for a new service, he is seeking an increase in funding, representing a change to the service. In seeking increased funding for additional respite hours (increased to 80), Claimant bears the burden of proof that the increased funding is necessary to meet his needs. Claimant has not met his burden.

2C. In terminating Claimant's 27 specialized supervision hours, the Service Agency bears the burden of proving by a preponderance of the evidence that the termination is necessary. The Service Agency has met its burden of proof.

General Provisions of the Lanterman Act

3. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPPs. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

4. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

5. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

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6. Welfare and Institutions Code section 4646.4 provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5. . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

Claimant's Request for Increased Respite Funding to 80 Hours

7. WRC's purchase of service policy requires use of the Respite Needs Assessment to establish the number of respite hours per month the Service Agency can fund. With input from Claimant's mother, WRC completed the Respite Needs Assessment and determined that Claimant was eligible for 35 hours per month of respite services. However, WRC also determined that, as an exception, it would continue to fund 36 hours per month of respite services. Claimant's mother failed to

establish that the Respite Needs Assessment incorrectly assessed his needs. In addition to the 36 respite hours, WRC approved funding for seven COVID respite hours per month in accordance with the DDS directive, for a total of 43 hours of respite services per month. Current funding of Claimant's respite hours conforms to WRC's Purchase of Service Policy, and Claimant did not establish a need for an increase to 80 hours of respite.

Service Agency's Termination of 27 Hours of Specialized Supervision

8. Per WRC purchase of service standards, a parent must be employed fulltime or attending school fulltime in order to be eligible for specialized supervision. Due to Claimant's mother's unemployment status, WRC correctly determined Claimant is currently ineligible for specialized supervision services. Consequently, WRC established that termination of the 27 hours of specialized supervision is necessary.

ORDER

1. Case No. 2020090974 (Primary): Claimant's appeal of the Service Agency's denial of increased funding for 80 respite hours is denied.

2. Case No. 2020100084 (Secondary): Claimant's appeal of the Service Agency's termination of 27 hours of specialized supervision is denied.

DATE:

JULIE CABOS-OWEN

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.