

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

In the Matter of:

CLAIMANT

v.

GOLDEN GATE REGIONAL CENTER, Service Agency.

OAH No. 2020100331

DECISION

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter on January 22, 2021, by telephone and videoconference.

Claimant was represented by his mother.

Lisa Rosene, L.C.S.W., Chief, Regional Center Services, represented Golden Gate Regional Center (GGRC), the service agency

The record was closed and the matter was submitted for decision on January 22, 2021.

ISSUE

Is GGRC obligated to provide evening and weekend respite care, staffed by caregivers who are trained in using physical restraint?

FACTUAL FINDINGS

1. Claimant is 11 years old and lives with his parents and younger sister. Claimant's parents are dedicated to providing loving and supportive care, and their desire is to maintain claimant in their home.

2. Claimant receives services from Golden Gate Regional Center due to autism. Claimant is severely autistic. Claimant is a loving and quiet child, but he has regular episodes of self-injurious behavior, pica, and aggressive behavior, including biting. There has been a recent increase in claimant's challenging behaviors, and it is believed that this is due to bladder discomfort he is experiencing because of his tendency to retain urine. The family is working with claimant's pediatrician and others to address this issue.

3. In 2016, claimant was assessed by a multi-disciplinary team at the neurobehavioral unit of the Kennedy Krieger Institute. The team formulated a behavioral plan, which includes the use of physical restraints when necessary for claimant's safety.

4. Aaron Nystedt is a Board-Certified Behavior Analyst who has worked with claimant for seven years. Nystedt currently oversees behavioral services being provided to claimant through the agency Bay ABA. Bay ABA provides 20 hours a week

of direct service to claimant in the home, which is paid for by claimant's health insurance.

Bay ABA's behavior technicians use a safety care restraint technique to block and de-escalate dangerous behavior, based on the plan formulated by the Kennedy Krieger team. Nystedt reported that the restraint technique lasts about 10 seconds, and is being used approximately once every two hours. There is a written plan governing the use of the technique, which includes a fade plan in the hopes of reducing and eventually eliminating the use of any restraint techniques.

Nystedt believes that claimant's family needs additional support in the home in the evenings, and that it is critical that the caregivers are trained in the physical restraint technique to further the implementation of the behavior plan. Bay ABA is currently unable to provide evening respite services through GGRC because it is not vendorized and, more significantly, because its hours of operations are 8:30 a.m. to 6:30 p.m.

5. Claimant and GGRC are parties to a person-centered Individual Program Plan (IPP) dated June 22, 2018. GGRC agreed to fund 156 hours per quarter of in-home respite. An Annual Review was performed in July 2020, which documented the family's need for in-home respite care. Despite GGRC's agreement to provide respite care, none is being provided.

6. Drina Dugandzic has been claimant's primary social worker at GGRC since August 2017. She reported that claimant had been receiving respite services from Levana Autism Support Services. Levana stopped serving claimant for reasons that are unclear. Over the last several months, Dugandzic has contacted more than 10 agencies in an attempt to find a vendor to provide staff trained in the use of physical restraints

to care for claimant in the evenings and weekends. She has been unsuccessful. Traditional respite providers are not equipped to use physical restraints. Dugandzic has also looked for an out-of-home respite provider and has sent a referral to the Department of Developmental Services for assistance locating a longer term out-of-home placement.

7. Dugandzic recently identified a vendor who might be able to provide respite workers who can perform the physical restraint technique, but the vendor requested to perform its own assessment first. When Dugandzic contacted claimant's mother, she expressed reluctance to participate in a new assessment, but at hearing she confirmed that she does not object.

8. GGRC has promulgated a policy governing the use of physical restraints. The policy provides that restraints are to be used only after exhausting all other appropriate intervention procedures; be appropriately implemented by professionally-trained staff; only be used when necessary (when the individual's behavior is a threat to self or others); and never be used for punishment or coercive purposes. GGRC agrees that its policy is satisfied in claimant's case, and does not oppose the use of physical restraints pursuant to the policy.

9. On September 29, 2020, GGRC issued a Notice of Proposed Action (NOPA) to claimant, stating that it was denying his request for GGRC-funded respite vendors to restrain him while providing respite. In its explanation for this action, GGRC wrote that "GGRC vendors are not permitted to use restraints as the primary intervention." GGRC added that it is willing to work with claimant's parents and its vendors on a fade plan for the daily use of restraints, and that it is willing to provide respite services "without the expectation that restraining [claimant] is the primary goal and job duty for respite care." The NOPA cites to Welfare and Institutions Code section

4646, subdivision (d); California Code of Regulations, title 17, section 50823; and the GGRC policy on the use of restraints as the authority for its actions.

10. Claimant, through his parents, filed a Fair Hearing Request dated September 17, 2020.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers have the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the individual, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.) A goal of the Lanterman Act is to enable developmentally disabled children to remain living at home with their families. (§ 4685, subd. (a).).

2. Respite care is among the services provided to regional center consumers. (§§ 4512; 4690.2.) Respite is made available to assist family members in

maintaining the consumer at home; to provide appropriate care and supervision to ensure the consumer's safety in the absence of family members; to relieve family members from the constantly demanding responsibility of caring for the consumer; and to 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. (§ 4690.2.)

3. GGRC agrees that evening and weekend respite is a support needed by claimant to assist his family in maintaining him in the family home. GGRC further agrees that individuals providing care to claimant must be trained in physical restraint. GGRC has endeavored to locate an appropriate vendor but has been unsuccessful as of the date of the hearing.

4. By failing to provide the needed respite, GGRC is not abiding by the IPP, and is jeopardizing the family's ability to maintain claimant in the home. Because claimant has an unmet need for a support that GGRC is obligated to provide, claimant's appeal must be granted. GGRC will be ordered to fund the requested service. Claimant's family is urged to cooperate with GGRC in identifying an appropriate vendor, including participating in an assessment if needed.

ORDER

Claimant's appeal is GRANTED. GGRC shall fund evening and weekend respite services, to be performed by individuals trained in the use of physical restraint, pursuant to claimant's behavior plan, with the goal of fading the use of restraints, in accordance with GGRC's policy.

DATE:

KAREN REICHMANN

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.