

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

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2020100538

DECISION

Administrative Law Judge Sean Gavin, Office of Administrative Hearings, State of California, heard this matter telephonically on November 19, 2020.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

No one appeared for or on behalf of claimant, her default was entered, and this matter proceeded as a default proceeding.

Evidence was received, the record closed, and the matter submitted for written decision on November 19, 2020.

ISSUE

Is ACRC required to continue funding in-home respite services for claimant at the rate of 160 hours per quarter?

FACTUAL FINDINGS

Background

1. Claimant is a nine-year-old girl. On March 8, 2016, ACRC determined she qualifies for regional center services based on her diagnosis of Epilepsy – Moderate, which cause substantial disability in her self-care, receptive and expressive language, and self-direction. Lorie Bennett is her assigned Service Coordinator.

2. Claimant lives at home with her parents and four siblings. She enjoys watching documentaries about tornadoes, natural disasters, and animals. She also enjoys DIY projects and styling her own hair. Her favorite thing to do is play with "slime." She started third grade at Arnold Adreani Elementary School in the Elk Grove Unified School District during the 2019/2020 school year.

ACRC's Service and Support Policy for Respite Services

3. ACRC's Service Policy Manual for respite services describes respite services as "intermittent or regularly scheduled temporary care and supervision for a regional center consumer who resides with a family member." Services are generally provided in the family home or a licensed facility, and they are intended to:

Relieve family members from the constant demands and responsibility of caring for the consumer.

Assist the family members in supporting the consumer at home.

Provide appropriate care and supervision to ensure the consumer's safety in the absence of family members.

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 family members.

4. ACRC's Procedures Manual for respite services provides guidelines for determining when a consumer qualifies for services. The guidelines specify that all generic and natural resources must be exhausted before ACRC will fund respite, only the least costly service that meets the consumer's needs will be funded, and "there must be the presence of a care need that exceeds that required for typically developing peers." The number of hours of services purchased "cannot exceed 120 per quarter," unless ACRC grants an exception.

An exception may be approved by staffing the request at the Family Services and Supports Committee (FSSC) if it is demonstrated that the client's care and supervision needs are such that additional respite is necessary to maintain the client in the home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the client. The exception is time limited.

An “extraordinary event” includes the death, serious illness, incapacitation, or long-term absence of a caregiver or family member, the client’s behavioral or medical emergency, or a natural disaster or epidemic.

February 11, 2019 IPP Meeting

5. On February 11, 2019, ACRC held an Individual Program Plan (IPP) meeting regarding claimant. The planning team consisted of claimant, her parents, and Ms. Bennett. Based on information provided during the meeting and the guidelines provided in ACRC’s Procedures Manual, the parties determined claimant qualified for 120 hours of in-home respite services per quarter. The IPP documented the service to be provided as follows: “ACRC SC will request ACRC funding for up to a maximum of 120 hours/quarter of respite and mileage through Pacific Homecare Services in accordance with ACRC Service and Support Policy.”

March 27, 2020 Addendum to IPP

6. Effective March 24, 2020, ACRC increased claimant’s respite care to 160 hours per quarter “due to the increase [*sic*] demands of care and pursuant to Governor Gavin Newsom’s Proclamation of a State of Emergency.”

7. On March 27, 2020, claimant’s father signed an addendum to the IPP, which provided:

Change in current status: Temporary increase in Respite hours to 160 hours per quarter plus mileage for (agency respite) is authorized during this State of Emergency while schools and day programs are closed.

[¶] . . . [¶]

Service and Supports will be added or changed as follows:

Due to the increase [sic] demands of care for [claimant] and pursuant to Governor Gavin Newsom's Proclamation of a State of Emergency, ACRC will implement a one [sic] time increase of Respite hours to 160 hours per quarter. Respite hours will return to 120 hours per quarter as indicated in current IPP dated 2/11/19, once school resumes.

March 30, 2020 IPP Meeting

8. On March 30, 2020, ACRC held an IPP meeting regarding claimant. The planning team consisted of claimant, her parents, and Ms. Bennett. Based on information provided during the meeting and the guidelines provided in ACRC's Procedures Manual, the parties determined claimant qualified for 120 hours of in-home respite services per quarter. The IPP documented the service to be provided as follows: "ACRC SC will request ACRC funding for up to a maximum of 120 hours/quarter of respite and mileage through Pacific Homecare Services in accordance with ACRC Service and Support Policy." The IPP also included the following language: "Effective 3/24/2020 there is a temporary increase in hours to 160 hours a quarter due to the State of Emergency declared by the Governor of California due to Covid 19. The temp increase will stay in effect until school resumes or the organic transition of summer break occurs."

Reduction of In-Home Respite Services

9. On September 1, 2020, Ms. Bennett sent an email to claimant's parents reminding them that the increase in claimant's respite services "was on a temporary

basis during the state of emergency.” She advised that the number of hours funded “will reduce back to the previous 120 hours a quarter” on October 1, 2020.

10. On September 8, 2020, claimant’s mother told Ms. Bennett that she had enrolled claimant in Whispering Pines Christian School, a private school in Amador County, for the 2020/2021 school year. She explained that claimant suffered multiple seizures the prior school year due to the amount of time spent in front of a computer during distance learning.

11. On September 15, 2020, claimant’s mother objected to ACRC reducing claimant’s respite hours. She explained that the pandemic is still ongoing, public schools are still closed and only a few private schools are open, and “nothing has changed as far as accessibility and other resources.” She wanted to appeal the decision to reduce hours.

12. Two days later, Ms. Bennett offered to assess claimant to determine if she “would still qualify for the additional respite hours.” She explained that to perform the assessment, she needed to know: 1) the time claimant will leave for, and return from, school each day; and 2) the number of In-Home Supportive Services hours claimant receives. Ms. Bennett also stated:

If you do not want [claimant] to be reassessed, I can issue a Notice of Action to appeal the reduction in hours. Please let me know which direction you would like to go.

13. Neither of claimant’s parents responded to Ms. Bennett’s offer to assess claimant’s need for additional respite hours or issue a Notice of Proposed Action. Nor did either of them provide the information Ms. Bennett needed to perform the assessment.

Notice of Proposed Action

14. On September 29, 2020, Ms. Bennett prepared a Notice of Proposed Action giving claimant notice of ACRC's intent to reduce the number of respite hours from 160 to 120 per quarter. The Notice informed claimant of her right to appeal ACRC's decision by requesting a fair hearing.

15. On October 7, 2020, claimant's father signed a Fair Hearing Request appealing ACRC's decision to reduce his daughter's respite hours. He attached a statement itemizing reasons why his daughter should continue receiving 160 hours of respite services per quarter, if not more.

Hearing Testimony

16. Ms. Bennett explained that claimant's respite hours were increased to help her parents with the additional responsibility of caring for her while engaged in distance learning from home when she would normally be at school. Once claimant returned to in-person learning, staff at Whispering Pines Christian School relieved claimant's parents of the responsibility of caring for claimant during the school day.

17. None of the reasons mentioned in claimant's father's Fair Hearing Request led Ms. Bennett to conclude claimant qualified for additional respite hours. The continuing pandemic and unavailability of alternative resources were not relevant because claimant returned to in-person learning and her parents are not responsible for her care during the school day. Nor was the fact that claimant's siblings may still be engaged in distance learning relevant because respite services provide temporary relief from having to care for claimant, not her siblings.

18. The IPP planning team considered claimant's father's disabilities caused by his stroke and the children's appointments at Stanford University at the IPP meeting when it agreed claimant qualified for 120 hours of in-home respite per quarter. Claimant's parents have not provided any information that the father has increased needs that interfere with his ability to care for and supervise claimant. Nor did they provide any information that they are having difficulties attending appointments at Stanford University because of their obligation to care for and supervise claimant.

Analysis

19. On February 11, 2019, and March 30, 2020, claimant's IPP planning team met and determined she qualifies for 120 hours of in-home respite services per quarter. After claimant's parents were faced with the additional demands of caring for her while engaged in distance learning when she would normally be at school, ACRC temporarily increased claimant's respite hours to 160 per quarter on the express condition that the number of hours would revert to the number authorized in the IPP "once school resumes."

20. Claimant returned to in-person learning at Whispering Pines Christian School some time before September 8, 2020. Therefore, the express terms of the March 27, 2020 IPP addendum provide that the number of claimant's respite hours reverts to 120 hours per quarter as specified in the February 11, 2019 IPP.

21. There was no evidence that claimant's "care and supervision needs are such that additional respite is necessary to maintain [her] in the home, or there is an extraordinary event that impacts [a] family member's ability to meet the care and supervision needs of [claimant]." There is no justification for granting claimant an exception to the maximum number of respite hours allowed under ACRC's Procedure

Manual, and claimant's father's reasons for needing additional respite do not establish otherwise.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. ACRC has the burden of proving it is no longer required to fund in-home respite services for claimant at the rate of 160 hours per quarter. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has "a built-in bias in favor of the status quo," and the party seeking to change the status quo has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires ACRC to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, ACRC must prove it is more likely than not that it is no longer required to fund 160 hours of respite per quarter for claimant. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the "treatment and habilitation services and supports" to enable such persons to live "in the least restrictive environment." (Welf. & Inst. Code, § 4502, subd. (b)(1).) "The purpose of the statutory scheme is twofold: to prevent or minimize

the institutionalization of developmentally disabled persons and their dislocation from family and community [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations]." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or her representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer's developmental needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), & (4); 4646.5, subd. (a); 4512, subd. (b); and 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP but must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), & 4646, subd. (a).) They must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).) Regional centers are not required to provide all the services a consumer may require but are required to "find

innovative and economical methods of achieving the objectives” of the IPP. (Welf. & Inst. Code, § 4651.)

5. Regional centers are required to adopt internal policies regarding the purchase of services for consumers. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department of Developmental Services is required to review those policies prior to implementation by the service centers, and “shall take 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 pursuant to it. (Welf. & Inst. Code, § 4434, subd. (d).) A regional center may not deny a request for services based upon the application of an inflexible policy denying such services. Whether a consumer is entitled to a particular service depends upon consideration of all relevant circumstances. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 231-234.)

Conclusion

6. ACRC met its burden of proving it is not required to continue funding claimant’s in-home respite services at the rate of 160 hours per quarter. The reason for ACRC funding additional hours – claimant’s parents’ additional responsibilities while claimant participated in distance learning – no longer exists. Under the express terms of the March 27, 2020 IPP addendum, the number of respite hours ACRC is required to fund reverts to 120 per quarter. There was no evidence to justify granting an exception to the maximum number of hours of respite authorized by ACRC’s Procedure Manual.

ORDER

Claimant's appeal from Alta California Regional Center's September 29, 2020 Notice of Proposed Action proposing to reduce the number of hours of in-home respite services funded from 160 per quarter to 120 per quarter is DENIED.

DATE: December 4, 2020

SEAN GAVIN

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. (Welf. & Inst. Code, § 4712.5, subd. (a).)