

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

**In the Matter of:**

**CLAIMANTS**

**vs.**

**REGIONAL CENTER OF THE EAST BAY, Service Agency.**

**OAH Nos. 2020110502, 2020110506, 2020110511**

**DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on December 7, 2020, by videoconference.

Claimants were represented by their mother. Claimants were not present.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay, the service agency.

The record closed and the matter was submitted for decision on December 7, 2020.

## **ISSUES**

Did the Regional Center of the East Bay (RCEB) improperly deny claimants' request for an increase in the number of respite care hours to 30 hours per month for each of the three claimants?

## **FACTUAL FINDINGS**

### **Introduction**

1. These three appeals involve common questions of law and fact, and were consolidated for hearing under Welfare and Institutions Code section 4712.2.

2. Claimants are three siblings who receive RCEB services due to autism. Claimant 1 is a 14-year-old girl. Claimant 2 is a nine-year-old boy. Claimant 3 is an eight-year-old girl. Claimants live at home with their mother and older brother.

3. RCEB issued notices of proposed action and letters for each claimant on October 13, 2020, denying claimants' requests for an increase in respite care hours.

4. Claimants submitted fair hearing requests on November 17, 2020.

5. An informal meeting was held by telephone with claimants' mother and RCEB staff on November 23, 2020. In a letter dated December 2, 2020, RCEB denied claimants' request for increased respite. This hearing followed.

### **Respite Care**

6. RCEB's purchase-of-service policy for respite care defines respite services as "intermittent relief for families from the constant care and supervision of their

family member with a developmental disability who resides in the family home.”

In-home respite is provided in the family home during the consumer’s waking hours and does not include overnight supervision. It is intended to provide breaks for family members, not full day care.

7. Claimant 1 and Claimant 2 currently receive 20 hours per month of respite care, at a dual-client rate. This means that one respite worker provides care for both siblings at the same time. Claimant 3 currently receives 45 hours per calendar quarter (15 hours per month) of respite care, at a single-client rate. This means that a respite worker provides one-on-one supervision. Thus, a single respite worker cannot simultaneously provide respite care to all three children.

8. For four months during the COVID-19 pandemic, RCEB provided additional respite hours of 10 hours per month. These were one-time increases according to Department of Developmental Services directives.

9. Claimants’ mother requests an increase in respite hours, up to 30 hours per month for each child (an increase of 10 hours per month for Claimant 1 and Claimant 2, and an increase of 15 hours per month for Claimant 3).

10. Manos Home Care is the agency providing respite services to claimants. A respite worker is limited to working 40 hours per week (8 hours per day). A person named Ruby is the only respite worker who is approved by claimants’ mother to provide respite care for claimants.

11. Joy MacIntyre is the case manager for Claimant 2 and Claimant 3, the two younger children. She has been working with this family for almost three years. Tammy Quan has been the case manager for Claimant 1, the older child, since Spring 2020.

MacIntyre and Quan work together regarding the “big picture” of provision of services to the family. Mariana Varela is their case management supervisor.

12. In determining the amount of respite services to be provided, the law and the regional center’s respite care policy require RCEB to assess a consumer’s need, including what other types of services are being provided and at what level, and what natural supports<sup>1</sup> are available. RCEB needs to know the number of hours of services that claimants receive during waking hours, including scheduled school time, in-home supportive services (IHSS) hours, applied behavior analysis (ABA) therapy, and respite hours, and the days and times those services take place, to ensure that there is no overlap or duplication between respite care and generic resources, and to determine the number of hours of respite care that are needed weekly.

13. RCEB uses a respite assessment tool, which is a calendar for all seven days of the week, from the hours of 6:00 a.m. to 11:00 p.m. (for a total of 17 hours per day, or 119 hours per week). The assessment tool is to be completed by the parent, with assistance from the case manager as necessary. Claimants’ case managers offered assistance to claimants’ mother in completing this tool by telephone but they were not able to get complete information about what activities were happening at what times.

14. Each claimant receives ABA therapy several days a week in the afternoon. These services take place in a clinic setting rather than in the home, which provides a break to their mother in caregiving. Claimant 1 receives ABA therapy from 12:00 to 5:00 p.m. on Monday, Tuesday, and Wednesday (15 hours per week). Claimant 2

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<sup>1</sup> “Natural supports” are personal associations and relationships typically developed in the community, including family relationships and friendships.

receives ABA therapy from 12:00 to 5:00 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday (25 hours per week). Claimant 3 receives ABA therapy from 12:00 to 5:00 p.m. on Monday, Tuesday, Wednesday, and Thursday (20 hours per week). Sometimes the provider has to cancel (for example, six appointments for Claimant 3 were cancelled in November 2020), so claimants' mother has to provide care herself or use respite care during those hours.

15. Each claimant receives IHSS through the county, with a monthly allotment of paid hours for a parent or another person to provide personal care and protective supervision. IHSS is considered a generic resource. There are two paid providers of IHSS for claimants: Ruby (who also provides respite care) and claimants' mother. It is not clear how many hours per week Ruby provides IHSS for claimants. Claimants' mother reports that she herself provides 90 hours a week in IHSS.

The siblings collectively are authorized for 737.21 hours per month of IHSS. Claimant 1 is authorized for 255.03 hours per month (roughly 8 hours per day). Claimant 2 is authorized for 259.18 hours per month (roughly 8 hours per day). Claimant 3 is authorized for 223 hours per month (roughly 7 hours per day).

The respite assessment tool completed by claimants' mother shows that Claimant 1 and Claimant 2 receive IHSS from 4:30 p.m. to 11:00 p.m. seven days a week (45.5 hours per week), and that Claimant 3 receive IHSS from 4:00 p.m. to 11:00 p.m. seven days a week (49 hours per week). It was not established whether the information about the start times of IHSS is still accurate, given that claimants currently have ABA therapy from 4:00 to 5:00 p.m. several days a week.

16. During the pandemic, claimants are not attending school in person, and are instead doing distance learning. The exact number of scheduled school hours was

not established, but claimants' mother reports the children are supposed to attend sessions during several hours on weekday mornings. She reports it is difficult to get the children to sit in front of the computer, and most days they do not attend classes.

17. Claimants' mother reports that she is primarily using respite hours on the weekends. The respite assessment tool she completed shows that for Claimant 1 and Claimant 2, the mother is currently using respite care from 8:30 a.m. to 11:30 a.m. on Saturday and Sunday. It is not clear when she is using respite care for Claimant 3.

18. It was not established at hearing during which hours claimants' mother proposes to use respite care if additional hours were to be allotted.

19. Ruby is the only respite worker claimants' mother has approved, and Ruby and claimants' mother are the only IHSS providers. It was not clear that Ruby could work more hours providing respite care than she already does. RCEB has encouraged claimant's mother to find additional caregivers. However, claimants' mother has decided not to seek an additional care worker during the pandemic.

20. Claimants' mother testified credibly that she is working hard to care for her children, and that she needs breaks.

21. RCEB contends that the current level of respite hours is sufficient, when considered along with generic resources and natural supports. The regional center is willing to reassess these needs if claimants' circumstances change. RCEB wants to support the family and work collaboratively with claimants' mother to explore other available resources. RCEB acknowledges the difficulties faced by claimants' mother in caring for three children with autism. This situation has been made more challenging during the pandemic due to distance learning.

22. Claimants' mother disputes that the number of IHSS hours is relevant to a determination of needed respite hours.

23. Their mother reports that Claimant 1 and Claimant 2 have problems sleeping at night, and that Claimant 3 sleeps six hours per night. However, RCEB's respite policy provides that respite care is for daytime care, not overnight care.

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act, found at Welfare and Institutions Code<sup>2</sup> section 4500 et seq.). The Lanterman Act provides 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 carry out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) Regional centers are directed to develop and implement an Individual Program Plan (IPP) for each person who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and the services and supports that will be purchased by the regional center or obtained from generic resources. (§§ 4646, 4646.5, & 4648.)

2. Respite care is one type of service provided to consumers. In-home respite services provide intermittent care and supervision to a consumer who resides

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code.

with a family member. As provided by section 4690.2, subdivision (a), respite services are designed to:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) 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."

3. While regional centers have a duty to provide a wide array of services to consumers, they are also directed by the Legislature to provide the services in a manner that reflects the cost-effective use of public resources. (§§ 4646, subd. (a), 4640.7, subd. (b).) Accordingly, regional centers may not fund duplicate services that are available through another public agency that has a legal responsibility to serve the general public. This prohibition against "supplanting generic resources" is contained in section 4648, subdivision (a)(8). Regional centers must identify and pursue all possible sources of funding for services, including generic services (§ 4646.4, subd. (a)(2)), utilization of governmental entities or programs required to pay the cost of providing services (§ 4659, subd. (a)(1)), and private entities that may be liable for the cost of services to the consumer (§ 4659, subd. (a)(2)).



4. Given the number of hours of other services claimants receive, including IHSS hours and ABA therapy, as well as scheduled school hours, and given the lack of clarity as to when any additional respite hours could be used and with what respite worker, it has not been established that RCEB erred in determining the current respite hours are adequate at this time.

## **ORDER**

Claimants' appeals are denied.

DATE:

HOLLY M. BALDWIN

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).)