

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2020120805

DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically and by video on February 3, 2021, due to the ongoing COVID-19 pandemic.

Stephanie Zermeño, Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present. A Spanish language interpreter translated the proceedings.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 3, 2021.

ISSUE

Should IRC's decision to deny claimant's request to increase respite hours from 120 hours per month to 160 per month be affirmed?

Jurisdictional Matters

1. On December 15, 2020, IRC notified claimant that his request to increase his respite hours to 160 per month was denied. Claimant timely filed a request for fair hearing and this appeal followed.

Current Services Provided

2. Claimant receives 40 hours per month of ongoing routine respite and an additional 80 hours per month of temporary respite due to the COVID-19 pandemic and to assist his mother for the duration of her high-risk pregnancy. The temporary hours will remain in effect until the state of emergency is declared over by the governor. Claimant receives 112 hours per month of behavioral services (ABA) funded by his health insurance. He receives 24 hours and 26 minutes of In-Home Support Services (IHSS), with his mother as the provider.

Evidence Presented at Hearing

ALBERTA SOQUI, CSC

3. As an IRC consumer service coordinator (CSC), Alberta Soqui's role is to determine the needs of consumers per their Individual Program Plan (IPP). She has been claimant's CSC for the past three years. Ms. Soqui clarified that claimant's mother requested additional respite due to her high risk pregnancy and claimant's behaviors,

and not for help with distance learning. Claimant's mother confirmed that she did not request additional respite to assist claimant with distance learning. This was contrary to IRC's letter to claimant's mother, dated December 15, 2020, which listed distance learning as one of the reasons for her request.

Claimant is five years old and qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder. Claimant lives in the family home with his parents, two siblings, and his maternal grandmother. His father works outside the home. Ms. Soqui stated that claimant's natural supports include his parents and grandparents; claimant's mother testified that this is incorrect and the grandfather is not involved in claimant's care. In addition to respite, IHSS, and ABA, claimant has MediCal and Supplemental Security Income (SSI) benefits. His health is stable. Claimant attended school five days per week prior to the COVID-19 pandemic. He currently participates in distance learning weekdays from 8:45 a.m. to 11:20 a.m.

Ms. Soqui helped develop claimant's IPP and addendums, which detail his abilities and level of care. Claimant needs assistance with his daily needs, including personal hygiene and dressing. He displays challenging behaviors, including: aggressive behaviors such as hitting himself or others; destroying things; difficulty transitioning from a preferred activity to a non-preferred activity; becoming upset when hearing "no"; and running or wandering away. These behaviors occur at least once per week.

After claimant's November 2020 annual IPP meeting, his mother requested an increase in respite to 30 hours per week. At a December 10, 2020, meeting, claimant's mother met with Ms. Soqui and Leigh-Ann Pierce, an IRC program manager. Ms. Pierce approved 40 temporary hours for a total of 120 respite hours per month, 80 of which are temporary due to COVID-19 and taking into consideration the mother's high-risk

pregnancy. Claimant's mother then requested an additional 40 temporary respite hours, for a total of 160 hours per month. Ms. Pierce denied her request. On December 15, 2020, Ms. Pierce issued a Notice of Proposed Action (NOPA), denying the 40 additional respite hours. Claimant appealed.

At an informal meeting held on January 14, 2021, Ms. Soqui first learned that claimant was receiving ABA services. IRC has not been provided a treatment plan or a progress plan regarding his ABA goals.

Claimant's parents have appealed the amount of IHSS hours he receives, and IRC provided an advocate, Martha Haynes, to assist them with their appeal. Ms. Soqui completed an IPP addendum to reflect the advocacy services.

4. Ms. Pierce has been a program manager at IRC for four years. She has been with IRC for 18 years. Ms. Pierce oversees 14 staff members and approximately 1,200 cases, and she reviews requests from CSCs for services. In considering granting respite hours, Ms. Pierce looks at the family situation, and ensures that natural supports and generic services are available and are being used by the consumer.

Ms. Pierce is familiar with claimant. She reviewed his file and discussed with Ms. Soqui his mother's most recent request for additional respite. Ms. Pierce attended the December 10, 2020, meeting, along with Ms. Soqui, claimant's mother, and a member of the Integrated Community Collaborative Parental Advocate group (ICC). Claimant's mother confirmed that she wanted a total of 30 hours per week or 120 hours per month of respite. Ms. Pierce stated that respite cannot be used during the day for distance learning, and claimant's parents should speak with his ABA provider about additional services. Claimant's mother explained she is pregnant and her doctor has advised that her pregnancy is "high-risk." Ms. Pierce approved an additional 40 hours

per month of temporary respite, taking into consideration COVID-19 and the mother's high-risk pregnancy, bringing the total temporary hours to 80. The ICC advocate said that claimant's mother wanted an additional 40 hours, for a total of 160 hours per month. Ms. Pierce said, "No," but that she would begin the approved 40 hours as of December 1, 2020, and then send an NOPA denying the extra 40 hours. Ms. Pierce testified that when she originally approved the temporary respite hours on September 1, 2020, she was not aware that claimant was already receiving ABA services.

Ms. Pierce reviewed a list of behavioral concerns from claimant's mother. Ms. Pierce reviewed a January 26, 2021, Behavioral Health Summary prepared by claimant's ABA provider. She said it appears that ABA is only addressing claimant's eloping (running away) issues, and his parents can request that the provider address claimant's other behaviors noted by his mother. Martha Haynes, the advocate assisting claimant's parents with their IHSS appeal, is also an educational advocate, and she could advocate for the parents regarding ABA services.

CLAIMANT'S MOTHER

5. Since the pandemic began in March 2020, claimant's mother has had two children at home that require a lot of assistance. She was upset that IRC did not contact her soon after the pandemic began to ask what she may need or how claimant was doing at that time. No one from IRC told her "that these services were available," so she did not request additional respite until August 2020.

Ms. Soqui responded that at some point DDS tried to contact families, although she did not know the exact date. IRC staff is available and parents can call if they have concerns, as claimant's mother did in August 2020.

Claimant's mother is seeking additional respite as she needs more assistance because she is nearing the end of a difficult pregnancy. She provided a letter from her doctor stating that she is "high risk." She said "everything has stopped with IHSS." She is also asking for additional IHSS hours, as she said no one wants to provide service for 20 to 30 minutes per day.

Claimant's pediatrician advised that claimant needs more help at home. His mother acknowledged that she does have help "but not enough to be with him all the time." She does not have anyone to be with him while ABA providers are present. She confirmed that she did not request additional respite to assist claimant with distance learning.

TESTIMONY FROM THREE INTEGRATED COMMUNITY COLLABORATIVE PARENTAL ADVOCATES

6. Elizabeth Gomez said that during the pandemic, generic services have become more of a barrier than a source of assistance to consumers of regional services. While parental responsibility has increased since March 2020, the "measurement tools" IRC used to make this decision were those of the "old" or pre-pandemic days.

7. Rubi Saldana is the mother of two children with special needs. She said that at the start of the pandemic, "a lot of regional centers called their families and asked if they needed help." Ms. Saldana has assisted several families in other regional centers, and those regional centers "are all helping families because they know that these services are available."

8. Teresa Ayala's child has special needs and belongs to a different regional center. Ms. Ayala has received help from her regional center since March 16, 2020, and she was not asked why she needed the additional services.

9. Ms. Zermeño responded that each regional center is independent, and IRC cannot provide all services that a consumer may be lacking during this time.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. Except as otherwise provided by law. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) Claimant had the burden of establishing that an increase in respite was warranted.

The Lanterman Act and Regional Centers

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.)

3. The Lanterman Act provides a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. 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, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4690.2, subdivision (2), states, in part:

"In-home respite services" means 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. These services are designed to do all of the following:

- (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.

6. Welfare and Institutions Code section 4648.5, subdivisions (a) and (c) state in part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended . . . :

(3) Education services for children three to 17, inclusive, years of age.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

7. Welfare and Institutions Code section 4644, subdivision (a) states:

. . . In no case, shall regional center funds be used to supplant funds budgeted by any agency which has a

responsibility to provide prevention services to the general public.

8. Welfare and Institutions Code section 4646.4, subdivision (a) states,

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan . . . or of an individualized family service plan . . . 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 . . .

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

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

(4) 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.

9. Welfare and Institutions Code section 4648 states:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

[¶] . . . [¶]

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

10. Welfare and Institutions Code section 4659, subdivision (a) requires that regional centers "shall identify and pursue all possible sources of funding for consumers receiving regional center services." These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal

supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

Evaluation

11. IRC granted claimant's requests and between September 1, 2020, and December 1, 2020, approved 80 hours of temporary respite, bringing his total respite to 120 hours per month. In approving the additional respite, IRC took into consideration the COVID-19 pandemic and the mother's high risk pregnancy. On December 15, 2020, claimant requested an additional 40 hours of respite. IRC denied the request.

IRC has provided an advocate to assist claimant's parents in their appeal to increase his IHSS services. Claimant is currently receiving ABA services which could be expanded, and the advocate may be able to assist with his obtaining additional ABA services. The evidence did not support a finding that claimant is in need of additional respite services. The combination of services claimant is already receiving, in addition to the potential for additional resources to be obtained, is sufficient to meet his needs and those of his family. Claimant's appeal of IRC's decision must be denied.

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ORDER

IRC's decision to deny claimant's request to increase respite from 120 hours per month to 160 hours per month is affirmed.

DATE: February 18, 2021

MARION J. VOMHOF

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.