

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

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

OAH No. 2021010335

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and video conference on March 15, 2021.

Paula Noden, Manager of Fair Hearing and Vendor Appeals represented the Regional Center of Orange County (RCOC or service agency). Mother, with assistance from a Spanish language interpreter, represented Claimant, who was not present. Mother and Claimant are not identified by name to preserve their privacy and maintain confidentiality.

Testimony and documents were received in evidence, the parties made arguments, the record closed, and the matter was submitted for decision at the conclusion of the hearing.

ISSUE FOR DETERMINATION

Whether the service agency should fund more than 24 hours of in-home respite service per month for Claimant during Extended School Year (ESY) or when Claimant has a holiday break from school.

FACTUAL FINDINGS

Jurisdictional Matters

1. In November 2020, Mother requested RCOC funding for in-home respite service when Claimant has holiday breaks from school.
2. The service agency sought to commence a planning team meeting (PTM) to address Mother's request but no PTM occurred when Mother maintained she previously provided the service agency with all the information necessary for its consideration and on which it should grant the requested in-home respite service.
3. By letter dated December 15, 2020, the service agency informed Mother, it was denying the requested additional in-home respite service based on information in Claimant's Individual Program Plan (IPP) which "does not clearly identify the needs that warrant an exception respite request (Welfare and Institutions Code 4646, 4646.4) . . . In the absence of current information related to this request, RCOC is unable to

authorize the hours at this time (Welfare and Institutions Codes 4646, 4624)." (RCOC Exh. 2.)

4. On December 19, 2020, Mother filed a timely Fair Hearing Request.

5. All jurisdictional requirements are met.

6. At the outset to the hearing, the parties stipulated Mother is also requesting in-home respite service for Claimant during ESY.

Claimant's RCOC-Funded In-home Respite Service Hours

7. Claimant is a 10-year-old consumer of RCOC based on his diagnosis of autism. Claimant resides with his parents and his two older siblings, one of whom is also a RCOC consumer.

8. Claimant's most recent IPP, executed on April 9, 2020 (April 2020 IPP), chronicles his challenging behaviors, which include non-compliance, aggression, tantrums, emotional outbursts, and property destruction. Claimant requires Mother's support to meet his daily living needs, including toileting, grooming, and meal preparation. Claimant always requires adult supervision to prevent injury and harm to himself. Claimant attends a private school funded by his public-school district.

9. RCOC has been providing in-home respite service for Claimant in accordance with its *Regional Center of Orange County Purchase of Service Guidelines (Purchase of Service Guidelines)*, which defines respite as "the provision of intermittent temporary care to consumers with developmental disabilities in order to relieve families of the constant responsibility of caring for a family member with a developmental disability." (Exh. 13 at p. 16.) RCOC's *Purchase of Service Guidelines* provides for four levels of in-home respite service—"four to eight hours per month";

“nine to 16 hours per month”; “seventeen to 24 hours per month”; and “up to 32 hours per month”— in accordance with criteria considered by an RCOC Multidisciplinary/Planning Team in consultation with a consumer’s family about the consumer’s needs. (See Exh. 13.)

10. The April 2020 IPP documents RCOC-funded in-home respite service for Claimant at Level 3 (24 hours per month) because the following two criteria are met: “The consumer is exhibiting severe challenging behaviors and is a danger to self and other” and “There are two or more RCOC consumers residing in the family home, for which the caregiver is providing care and supervision.” (Exh. 13 at p. 19.) Claimant’s April 2020 IPP provides, between July 1, 2019 and June 30, 2020, “24 HRS/MO, NOT TO EXCEED 288HRS, 12MOS” to address “Toileting, Bladder Control, Personal Care-Residence, Dressing, Safety Awareness, Disruptive Social Behavior, Aggressive Social Behavior, Destruction of Property, Running or Wandering Away.” (Exh. 3 at p. 2.) As noted in the April 2020 IPP, these 24 hours per month of in-home respite service for Claimant are ongoing until revoked.

11. The *Purchase of Service Guidelines* provides for Level 4 (up to 32 hours per month) in-home respite service on “an exception basis.”

On an exception basis, due to extraordinary circumstances or crisis situations, e.g., the hospitalization of a primary caregiver, RCOC may authorize more than 32 hours per month. The hours authorized are time-limited, and a plan of action is to be developed with the family.

RCOC staff will work with the family to identify community resources, which may provide respite services in the local community.

Exh. 13 at p.19.)

Claimant's RCOC-Funded In-home Respite Service Hours During the COVID-19 Pandemic Emergency

12. In March 2020, the COVID-19 pandemic emergency required closure of Claimant's school, which then delivered instruction to its students, including Claimant, via online platforms from a distance. Mother assisted Claimant with his distance learning. The April 2020 IPP documents the pandemic emergency necessitated additional RCOC-funded in-home respite service hours for Claimant: between March 23, 2020 and June 30, 2020, "AS SUPPORT 48 HOURS EXCEPTION" to address "Personal Care-Residence, Dressing, Safety Awareness Disruptive Social Behavior, Aggressive Social Behavior, Destruction of Property, Emotional Outbursts." (Exh. 3 at p. 2.)

13. A June 15, 2020 Addendum to the April 2020 IPP documents re-authorization for 10 additional hours per week (which is 40 hours per month) of RCOC-funded in-home respite service occasioned by the pandemic emergency commencing April 20, 2020 through June 30, 2020: "AS SUPPORT 2 HOURS PER DAY/MONDAY-FRIDAY EXCEPTION" to address "Safety Awareness, Disruptive Social Behavior, Aggressive Social Behavior, Emotional Outbursts." (Exh. 6 at p. 1.) The June 15, 2020 Addendum articulates the rationale for the additional in-home respite service hours as follows:

[Claimant] is 9 years old with dx [diagnosis] Autism. He continues to receive school district services; however, is not attending school physically due to school closures.

[Claimant] continues to engage in distant learning, which has proved to be a difficult task for [Claimant's] mother as she has other children that also require her support.

[Claimant's] mother would like to continue the support as long as possible to support the at home.

(Ibid.)

14. Subsequent IPP addenda, dated July 16, 2020, August 11, 2020, and September 9, 2020, memorialized further re-authorizations for the 10 additional RCOC-funded in-home respite service hours for the duration Claimant was engaged in distance learning at home with Mother's assistance. Each of these re-authorizations reiterated Mother's need for increased support caring for Claimant and his developmentally disabled sibling at home during the pandemic emergency as rationale for the 10 additional in-home respite service hours per week, which amount to 40 hours per month. (See Exhs. 7 through 9.)

15. On September 8, 2020, Claimant physically returned to the classroom at his private school for instruction. Commencing September 9, 2020, authorization was cancelled for the additional RCOC-funded in-home respite service hours provided during the pandemic emergency when Claimant could not physically attend school and had to receive his educational instruction through a distance learning format.

Mother's Request for Continuing RCOC-funded Additional In-home Respite Service Hours

16. Mother maintains she has a continuing need for the additional RCOC-funded in-home respite service hours. She testified, "These extra hours would help my son with his daily routine and his behavior. These last days were very difficult for me. I had to ask neighbors for help. My older son has extraordinary services. He needs more support and that leaves [Claimant] with less support."

17. In response to mother's request for continuing the additional in-home respite service hours, RCOC attempted, without success, to convene a meeting with members of its Multidisciplinary/Planning Team and Mother to determine whether Claimant presents with respite needs consistent with its *Purchase of Service Guidelines*. Mother declined RCOC's invitations to meet. Mother asserted RCOC already possessed all the information needed to decide her request.

18. Three parents supporting Mother's request for additional in-home respite service hours testified their developmentally disabled children participate in ESY, which enables them to attend training, relax, sleep, or otherwise recharge their batteries. One of the parents testified, "I've never met a mother who has not received this service. Every mother requesting this service has received it." Another parent testified, "The majority of families in the community receives these services. It is the exception to the rule not to have these services."

19. Mother also offered several letters from mothers of developmentally disabled children participating in ESY who expressed appreciation for ESY. For example, one of those letters states the following:

. . . I'm a parent of 2 clients of Harbor Regional Center. They provide the service of Extended School Year (ESY) every summer it's very helpful for my family and my son gets supervised why I work or run errands for anything I need to get done. With this service my son can go to summer camp or day care community park with 1-1 supervision or stay home. Is a piece of mind knowing my son is taking care.

(Claimant Exh. 12; unedited.)

20. These testimonies and statements are not credited because they express a fundamental misunderstanding of ESY services. School districts, not RCOC or other service agencies, in accordance with an individualized education program provide students with a disability with ESY services beyond the regular school year. Whether ESY is necessary is separate and distinct from determining whether and at which level in-home respite service hours are warranted based on an RCOC consumer's individual needs and circumstances.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), which 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 of life in the community." (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (*Id.* at §

4620 et seq.) Regional centers are responsible for considering the individual consumer needs and preferences, and for ensuring service cost effectiveness. (*Id.* at §§ 4646, 4646.5, 4647, and 4648.)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (*Id.* at § 4512, subd. (b).) Services and supports include in-home respite services. (*Id.* at §§ 4686.5 and 4690.2.)

3. Section 4686.5 provides for the purchase of up to 90 hours of in-home respite services in a quarter (30 hours each month) when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. Section 4690.2, subdivision (a) provides that “In-home respite services’ means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s home, for a regional center client who resides with a family member.”

4. In-home respite service is designed to achieve the following objectives set forth in section 4690.2, subdivision (a):

- (1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision in maintaining the client at home.

(3) Relieve family members from the constantly demanding responsibility of caring for the clients.

(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 family members.

5. When making determinations to acquire services and supports for its consumers the service agency must conform to its purchase of service guidelines. (*Id.* at § 4646.4, subd. (a)(1).) Pursuant to the Lanterman Act, the Department of Developmental Disability reviews the guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (*Id.* at § 4434, subd. (d).) The guidelines are deserving of deference because they reflect the service agency's expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, guidelines the service agency promulgates must account for its consumers' individual needs when making eligibility determinations for services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

6. Claimant has the burden of establishing by a preponderance of the evidence he meets the eligibility criteria for an increase of his in-home respite service hours. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits); *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 (retirement benefits).) Claimant has not met his burden.

7. Claimant is the recipient of Level 3 in-home respite service hours. When the pandemic emergency caused Claimant's school to pause in-person instruction, Mother assumed additional responsibilities assisting Claimant with his education in a distance learning format from his home while she also cared for Claimant's sibling, who is also an RCOC consumer. RCOC provided additional in-home respite service hours to Claimant for Mother to relieve the constant and demanding responsibility of caring for Claimant during the pandemic emergency.

8. Claimant has returned to in-person instruction at school. To determine whether Claimant further presents with needs warranting in-home respite service hours beyond Level 3, RCOC must conform to the processes and criteria set forth in its *Purchase of Service Guidelines*. RCOC's *Purchase of Service Guidelines* mandates a Multidisciplinary/Planning Team's consideration of applicable criteria in collaboration with Claimant's family to determine the extent of Claimant's needs for in-home respite services at a level beyond Level 3. To date, no individualized program planning process in collaboration with Mother has occurred. In the absence of any such planning process, it is yet to be determined whether Claimant's individual needs satisfy criteria set forth in RCOC's *Purchase of Service Guidelines* to warrant a level of services greater than Claimant's current Level 3 in-home respite service hours. For that determination to occur, Mother must meet and collaborate with members of RCOC's Multidisciplinary/Planning Team. Under these facts and circumstances, the RCOC's denial of Claimant's request for additional in-home respite service hours is appropriate.

9. By reason of Factual Findings 6 through 16 and Legal Conclusions 1 through 8, Claimant has not established by a preponderance of evidence cause exists

to increase his in-home respite service hours beyond Level 3, the current level of authorization for those services.

ORDER

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL

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.