

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL / POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021040311

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 16, 2021.

Claimant's mother (Mother) represented Claimant as her Authorized Representative. (Claimant and her family members are identified by titles to protect their privacy.)

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on August 16, 2021.

ISSUE

Should Claimant's father (Father) be allowed to provide Claimant's adult day services through Accredited Respite Services that are funded by Service Agency?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1 to 15.

Testimonial: Raul Alvarez, SGPRC Service Coordinator, and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a non-conserved adult female (age 39) who is eligible for regional center services based on her diagnoses of cerebral palsy, epilepsy, and severe intellectual disability.

2. On March 11, 2021, Mother spoke by telephone with Claimant's service coordinator (SC) Karla Monroy and requested to have Father become the provider of day care services for Claimant. On the same day, after discussion with her manager, SC Monroy notified Mother the request was denied because Father was a "natural support" for Claimant.

3. On March 11, 2021, Mother filed a Fair Hearing Request, on Claimant's behalf, to appeal Service Agency's denial of the request to have Father as the provider of day care services for Claimant. (Exh. 2.)

4. Service Agency sent Mother a letter dated March 18, 2021, and a Notice of Proposed Action dated March 16, 2021, which documented Service Agency's decision denying the request for Father to be the provider of Claimant's day care services because he is a "natural support." (Exh. 1.) This hearing ensued.

5. The parties refer to the service at issue as "day care." According to SGPRC's Purchase of Service (POS) Policy, the term "day care" refers to a service that provides care for a minor child while the parent is working. Since Claimant is an adult, the service at issue is defined in the POS Policy as "adult day service." (See Findings 18 and 22, below.) Therefore, for purposes of this Decision, references to Claimant's care and supervision during the day as "day care" are construed to mean "adult day service."

Claimant's Background

6. Claimant lives at home with Mother, Father, and one of her sisters (Sister-1).¹ Mother currently works from home. Father is currently unemployed. Mother is Claimant's primary caregiver.

7. Claimant is non-ambulatory and uses a manual wheelchair for mobility. She requires adult support to move about her surroundings while she sits in her wheelchair. Claimant also uses a walker, but only with adult support and close

¹ The documentary evidence indicates Claimant has two sisters. The Individual Program Plan (IPP) refers to one sister (see Exhibit 3, page 7), while emails between Service Agency and Accredited Respite Services refer to another sister (see Exhibit 13, page 2).

supervision, because she is unable to walk or stand for a long period of time. Claimant's feet are the weakest part of her body as they are clubbed. When walking, Mother assists Claimant the whole time by holding Claimant from her armpits as she walks a few steps.

8. Claimant is non-verbal. She communicates with others through grunting, facial expressions, hand direction and body language. Her communication actions become a pattern that, over time, her caregivers can recognize to discern her wants and needs. Claimant is described as friendly and kind to others. She is easy to get along with and does not display any disruptive or negative behaviors.

9. Claimant requires assistance for all activities of daily living and personal care. She can provide helpful body movements during bathing and dressing. She can feed herself using one utensil with spillage. However, due to her history of choking, Claimant requires adult supervision during meals to ensure that all solid foods are cut into bite size pieces. She completes toileting activities according to a schedule and with assistance and prompting. Claimant requires adult assistance at all times, as she may endanger herself due to her limited mobility and limited cognitive levels.

10. Effective August 1, 2020, the County of Los Angeles found Claimant eligible to receive 283 hours per month of In-Home Supportive Services (IHSS). (Exh. 10.) Mother is the IHSS provider. Mother testified the IHSS hours are used for Claimant's supervision from the end of Mother's workday until the next morning, about 10 hours per day. Mother noted there are a total of 720 hours in a month, but IHSS only pays her for 283 of those hours.

Claimant's Individual Program Plan

11. Pursuant to Claimant's IPP dated October 9, 2018 (Exhibit 3), and subsequent IPP Progress Reports dated October 21, 2019, September 23, 2020, and October 1, 2020 (Exhibits 4 through 6), Service Agency has authorized funding for Claimant to receive the following services: (1) 24 hours per month of in-home respite through Accredited Respite Services; (2) adult day program service at OPARC Montevista ADC, an adult developmental center (OPARC), Monday through Friday, 9:30 a.m. to 3:30 p.m.; (3) transportation to OPARC through Access Services; and (4) supplemental day program services (for additional care and supervision) because Claimant must be dropped off at OPARC before 9:30 a.m. to accommodate Mother's work schedule.

12. Claimant attended the adult day program at OPARC in 2018 and 2019. In March 2020, due to the COVID-19 pandemic, the OPARC program shut down and was no longer available to Claimant.

13. On September 23, 2020, Claimant's service coordinator (SC), Karla Monroy, held an annual IPP meeting by telephone with Mother. (See Exh. 5.) Mother asked about day care in the future if OPARC was not an option due to health concerns. Mother reported OPARC was still closed due to the COVID-19 pandemic. Mother did not plan to send Claimant back to OPARC because of Claimant's inability to keep her mask on, which was a safety concern.

14. During the September 23, 2020 telephone meeting, SC Monroy and Mother discussed the need for Claimant's supervision while Mother is working. Mother works from home, full-time, as a payment representative for Change Healthcare. She is

also an actress and needs to prepare for auditions, as well as participate in trainings and meet-and-greet events on Zoom.

15. On October 1, 2020, Claimant's IPP was amended to add a new goal, Outcome #4, that "Claimant will be supervised while her mother is working." (See Exh. 6.) The IPP Progress Report documenting this change states, in part:

She [i.e., Claimant] is unable to keep her mask on and cannot attend her programming due to COVID-19. Her mother requested 40 hours per week of day care and they were approved. The hours are to be used Monday through Friday during the hours of the program's schedule and will be reviewed by 12/31/20. The family has a preferred provider who has been hired through Accredited Respite Services. [Mother] agreed to temporarily terminate [Claimant's] day program services until she feels it is safe for [Claimant] to continue attending.

Because of this change, the following action has occurred:
[T] Addition of Outcome(s) #4 [Claimant] will be supervised while her mother is working[.]

(Exh. 6.)

16. The IPP Progress Report dated October 1, 2020, states that, to support Claimant in meeting Outcome #4, Service Agency "agrees that 174 hours per month of day care are appropriate. Day care service funding by SGPRC and provided through Accredited Respite Services effective 10/01/2020 – 12/31/20." (Exh. 6, p. 6.)

SGPRC's POS Policy

17. SGPRC's POS Policy regarding the purchase of "Adult Day Services and Supports" provides, in part:

Adult day services and supports purchased by the regional center are designed to develop, maintain or increase self-care, self-advocacy, employment training, community integration, and social, mobility, and behavior skills. The types of programs include activity centers, adult development centers, behavior management programs, and adult day health care centers. Priority will be given to services and supports that utilize natural environments for training, empowerment, encourage the development of natural supports, and work toward the ultimate goal of employment.

(Exh. 12, p. 6.)

18. The POS Policy provides that respite services "are designed to provide family members with temporary relief from the continual care of a person with a disability." (Exh. 12, p. 27.) The purchase of in-home respite for a consumer is limited to no more than 108 hours in a quarter (or 36 monthly hours). (*Id.*)

Participant-Directed Services

19. The Department of Developmental Services (DDS) issued Directive 01-033020 dated March 30, 2020, pursuant to the Governor's State of Emergency Proclamation and Executive Order N-25-20, related to the COVID-19 pandemic. The

Directive waives or modifies certain requirements of the Lanterman Act in order for regional centers and consumers to have the flexibility needed to receive and provide services and supports. The Directive states in part:

Participant direction provides consumers the option to exercise more authority over how, and by whom, services are provided. Currently, consumers can coordinate respite, day care, transportation, nursing and day services through participant direction. With participant direction, consumers have employer authority and responsibilities including choosing, scheduling and supervising workers. The intent of this Directive is to provide consumers, regional centers and service providers the greatest flexibility to support consumers and their families.

(Exh. 14.)

20. In October 2020, the DDS issued a document entitled, "Summary of FAQs for Self-Advocates and Families About Participant-Directed Services During the COVID-19 Pandemic" (DDS Summary). The DDS Summary explains that participant-directed services "let the consumer or family choose who to hire, schedule, and supervise the work for some types of Individual Program Plan (IPP) services. The services can be used by individuals who live in their own home, their family home and some community living arrangements." (Exh. 15, p. 1.)

21. The IPP services that can be participant directed include respite, day care, and day services. The DDS Summary states: "All services must be provided by someone who is at least 18 years of age and the individual must have the skills, training or

education needed to provide the services. They must also meet any additional qualifications identified below [in the DDS Summary]." (Exh. 15, p. 3.)

22. The DDS Summary defines "day services" and sets forth the provider qualifications as follows:

Day Services are individually designed services that provide opportunities to support or develop employment, volunteer activities or post-secondary education. Day services may assist with self-help, social or other adaptive skills. The services must be provided in natural environments in the community, separate from where the consumer lives. During COVID-19 the requirement that services be provided outside of the consumer's home does not apply. A family member, friend or other qualified individual may provide these services.

(Exh. 15, p. 4, underline in original.)

23. The DDS Summary defines "respite services" in part as follows:

Respite Services give family members who care for a consumer, a break from the care. In-home respite is provided in the family home. Family members, friends, or other qualified individuals may provide respite services. The family who provides care for a consumer and needs a break from that care, cannot be the respite worker. A respite provider must be familiar with the consumer's daily routines and needs and be trained in any specialized supports. . . .

Because of COVID-19, DDS waived the requirements for in-home respite workers to have First Aid and CPR training before beginning work. Training must be obtained within 30 days of starting work."

(Exh. 15, p. 3, underline in original.)

Service Agency's Contentions

24. Raul Alvarez testified at the hearing. Mr. Alvarez is currently employed by Service Agency as a Human Resources Specialist. Prior to that, he worked as a SC and was assigned as Claimant's SC in 2006.

25. Mr. Alvarez testified that Service Agency authorized Claimant's other sister (Sister-2) to be Claimant's respite provider as an exception. Typically, family members living in the same household as the consumer are not allowed to be the respite provider. However, an exception was made for Sister-2 to be the provider for parent-choice respite. (See Finding 11, above.)

26. Mr. Alvarez testified Sister-2 is employed as Claimant's respite provider through Accredited Respite Services. In July 2017, Service Agency confirmed to Accredited Respite Services that Sister-2 was authorized to be the respite provider even though she lived at home with Claimant. An email dated July 31, 2017, from Mr. Alvarez, who was Claimant's SC at the time, to Accredited Respite Services explained: "Due to [Claimant's] delicate situation and severe deficiencies we have been granting family this permission for years now. Please allow this to continue until further notice." (Exh. 13.)

27. Mr. Alvarez testified he did not receive any information from Accredited Respite Services that Father wanted to be the respite or day services provider for Claimant. Mr. Alvarez explained that if Father does not work outside the home, and he is available to care for Claimant during the day, Father cannot be the care provider for services funded by Service Agency because, as a parent, he is considered a "natural support" under the Lanterman Act. (See Legal Conclusion 7.) However, Father could be the IHSS provider for Claimant, because that service is funded by another agency, i.e., Los Angeles County. During the time Mr. Alvarez worked as a SC, he never had a situation where Service Agency authorized funding for a parent living in the same home as their adult child to provide respite or day care for the consumer.

Mother's Contentions

28. Mother testified at the hearing. Claimant has been at home during the COVID-19 pandemic. She has not been vaccinated. Her parents have been providing her care and supervision at home. Because Mother works full-time from home, Father cannot leave the home to look for work because there is no one to provide care for Claimant. Father is not currently employed, and he has decided to stay at home to care for Claimant while Mother is working. If Father works outside the home, then Mother cannot work because she would have to care for Claimant. Mother testified it has been difficult to locate care providers because of the COVID-19 pandemic, and she does not want outside people to come inside her home because of safety concerns.

29. Mother testified that Claimant stopped attending the day program at OPARC because of the COVID-19 pandemic. She recalls it was three days before the Los Angeles Unified School District closed its schools. Mother testified that Claimant is susceptible to becoming ill from the virus. Claimant will not wear a mask, she pulls it

off, and she cannot be taught to keep her mask on. After one year at home, Claimant's parents decided not to have Claimant return to OPARC due to safety concerns.

30. Mother testified Claimant's other sister (Sister-2) was previously the provider of both respite and day service. Sister-2 has since moved, which makes it difficult for her to travel to the family home. Therefore, at the present time, Sister-2 only provides respite services for Claimant.

31. Mother contends Service Agency should provide funding for Father to provide Claimant's day care services. She disagrees with Service Agency's contention that Father is a natural support for Claimant. Mother contends that Father's decision to stay home to care for Claimant is not natural. Father would normally be working outside the home and, thus, would not be available to care for Claimant. Mother notes that she received an exemption to have Sister-2 provide respite. Due to the COVID-19 pandemic, Claimant is unable to attend an adult day program. Father has chosen to stay home and provide care for Claimant. Mother feels Father should get paid for his care like any other family member.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)² A state level fair hearing to

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant, through Mother, timely requested a fair hearing and, therefore, jurisdiction for this case was established. (Factual Findings 1-4.)

2. When one seeks government benefits or services, the burden of proof is on her. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

3. In this case, Claimant requests to have Father as the provider of her adult day services funded by Service Agency. Therefore, Claimant has the burden of proving by a preponderance of the evidence that she is entitled to the requested services and funding. (See Evid. Code, § 500.)

4. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The services and supports that may be listed in the IPP include personal care and daycare. (§ 4512, subd. (b).)

5. A regional center is required to purchase services and supports for a consumer pursuant to vendorization or contract. (§ 4648, subd. (a)(3).) "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).) The requirements for vendorization are set forth in detail at California Code of Regulations, title 17, sections 54302 to 54334.

6. When purchasing services and supports for a consumer, a regional center is required to ensure: (1) conformance with its purchase of service policies, as approved by the DDS; (2) utilization of generic services and supports when appropriate; and (3) utilization of other services and sources of funding as contained in Section 4659. (§ 4646.4, subd. (a)(1)-(3).)

7. Natural supports means "personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities." (§ 4512, subd. (e).)

Analysis

8. Under the Lanterman Act and applicable regulations, Father cannot be the provider of Claimant's adult day services that are funded by Service Agency. Father is not vendored with Service Agency as a provider of that service. Adult day services are designed to provide specialized training and opportunities for adult consumers. No evidence was presented that Father has "the skills, training or education needed to

provide” the service. No evidence was presented that Father has even applied to be an adult day service provider with Accredited Respite Services. Although Service Agency has authorized funding for Sister-2 to provide respite services as an exception, the same cannot be true for adult day services, which is a different and more specialized type of service than respite. Therefore, Claimant’s request to have Father provide Claimant’s adult day services, through Accredited Respite Services and funded by Service Agency, was properly denied.

9. Service Agency contends Father cannot be the provider of the adult day services it funds for Claimant because Father and Claimant live in the same household. Family relationships are considered a natural support. Regional centers do not typically fund parents of an adult consumer who lives with them to provide care and supervision because that, in effect, would be paying the parents to care for their own child. Service Agency raises a fair point. But the primary reason Father cannot be the provider of Claimant’s adult day services is because he is not a vendored or qualified provider for that service.

10. Based on the foregoing, Claimant’s appeal shall be denied.

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ORDER

Claimant's appeal is denied. Service Agency is not required to authorize funding for Father to be the provider of Claimant's adult day services.

DATE:

ERLINDA G. SHRENGER

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.