

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

In the Matter of:

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2021061073

DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video conference on September 7, 2021.

Candace Hein, J.D., Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by his mother (Mother).¹

¹ Names are omitted and family titles are used to protect the privacy of the Service Agency's consumers and their families.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 7, 2021.

ISSUE

Is WRC required to continue funding in-home respite services for Claimant at the rate of 100 hours per month?

EVIDENCE RELIED UPON

In making this Decision, the ALJ relied upon exhibits 1 through 8 submitted by the Service Agency, and the testimony of Candace Hein, J.D., Fair Hearing Specialist and Mother.

FACTUAL FINDINGS

Background

1. Claimant is a 26-year-old male. On September 5, 1997, WRC determined Claimant qualifies for regional center services based on his diagnosis of Autism.

2. Claimant lives with Mother and attends a day program six hours per day, 23 days per month, while Mother is at work. Claimant's visual perception skills are strong, and he is skilled in using a computer. He is well liked by his peers and likes to engage in group activities. With respect to activities of daily living, Claimant can make simple meals but needs reminders regarding hygiene and supervision to ensure that he is adequately cleaning himself and brushing his teeth. Moreover, when Claimant is

frustrated or transitioning from one activity to the next, he exhibits maladaptive behaviors. He requires prompting to use appropriate social language and direct support when accessing the community.

3. In 2019, a former WRC employee, through WRC's Purchase of Service Committee, approved Mother's request for funding of 100 hours per month of respite services based upon Claimant's needs and Mother's medical condition.

WRC's Guidelines for Respite Services

4. WRC's Respite Guidelines (Guidelines) describe respite services as "intermittent or regularly scheduled non-medical care and supervision of a minor or adult with a developmental disability. It is provided only to minors or adults residing in the home of a family member who is responsible for the 24-hour care and supervision of the individual." (Ex. 6, p. 1.) The Guidelines state that WRC can only purchase respite services "when the needs of the individual exceed those of a person of the same age without a developmental disability," and that respite services are not intended to be a substitute for day or after-school care for working parents. (*Ibid.*)

5. WRC uses a Family Respite Needs Assistant Guideline and Summary (Respite Assessment) to determine the number of in-home respite hours per month that it can fund. The Respite Assessment, which is completed with the input of the consumer and the consumer's family, takes into consideration, among other things, age, mobility, behavioral needs, attendance in a school or day program, family situation and the availability of generic resources, including whether an individual receives In-Home Supportive Services (IHSS), when the approved IHSS services meet the consumer's needs identified in the consumer's individual program plan (IPP).

6. Pursuant to the Guidelines, WRC may consider an exception to fund additional respite hours in the following circumstances:

[W]hen there are extenuating family circumstances that warrant consideration for additional respite such as, but not limited to, parent has left their employment in order to care for the child, additional medical condition of the client that impacts the family, extreme/excessive behavioral challenges, recent event impacting the ability of the primary caregiver to meet the care and supervision needs of the client, client support needs not addressed with current resources (natural supports, generic resources, regional center funding resources), a demonstrated change in the client's level of care and supervision needs not previously discussed in the most recent IPP or Family Respite Needs Assessment.

(Ex. 6, p. 51.)

April 4, 2019 IPP Meeting

7. On April 4, 2019, an IPP meeting was conducted with Claimant, Mother, and Marissa Barredo, WRC Service Coordinator (SC). Based on information provided during the meeting, the first desired outcome for Claimant (Outcome Number 1) was that Claimant would continue to develop self-care and independent living skills, and refrain from temper tantrums and aggressive behaviors during transitions. In support of that outcome, the IPP documented that WRC agreed to fund 100 hours of respite hours per month with Premier Healthcare Services (Premier) from July 1, 2018, to May

31, 2020. The need for respite services was to be reviewed at Claimant's annual meeting and reauthorized if it was determined to be appropriate. The IPP was approved in June of 2019.

8. An April 7, 2021 IPP Annual Progress Report indicates that an Addendum to the IPP was prepared on July 23, 2020. However, that Addendum was not submitted as evidence at the hearing.

April 7, 2021 IPP Annual Review

9. On April 7, 2021, the planning team consisting of Claimant, Mother, and SC Barredo reviewed the April 9, 2020 IPP and amended the IPP to include that WRC would fund 100 hours of respite hours per month with Premier Healthcare Services from June 1, 2020, to July 31, 2021. The IPP Annual Progress Report regarding this amendment was approved on July 12, 2021.

May 27, 2021 Respite Assessment

10. On May 27, 2021, SC Barredo, with Mother's input, completed a Respite Assessment of Claimant using the guidelines contained within it. SC Barredo gave Claimant the following scores in the associated areas:

- Age of Individual – score of 7, given for individuals 18 and over;
- Activities of Daily Living – score of 3 (individuals requires total care in some aspect of dressing, eating, grooming and toileting);
- Mobility – score of 0 (individual is independently mobile);
- Communication – score of 1 (individual uses simple speech, is difficult to understand, uses non-verbal cues or uses augmentative communication);

- School/Day Program – score of 1 (individual attends school or day program 20 to 24 hours per week);
- Medical Needs and Impact on Supervision or Care – score of 0 (individual has no health problems – stable with preventative and routine care);
- Behavioral Needs – score of 5 (individual displays severe behavioral excesses at least daily (e.g. aggressive towards others, severe self-injury);
- Family Situation/Caregiver Condition – score of 6 (caregiver has chronic or ongoing illness that affects providing of care and supervision, caregiver has physical or mental disability, caregiver has advancing age-related decline, and caregiver is a single parent);
- Group 2 under Family Situation/Caregiver Condition – score of 2 (intermittent single parent, spouse periodically absent or shared custody situations);
- Safety and Supervision Needs – score of 7 (individual displays severe to profound behavior excess throughout the day in any environment, elopes from home on a regular basis, displays behaviors endangering themselves out in the community and requires constant supervision, and wanders when out in the community, requiring constant supervision).

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11. Respite Assessment scores correlate to authorized respite hours as follows:

0-6 points	Routine supervision
7-11 points	7 hours per month
12-16 points	14 hours per month
17-21 points	21 hours per month
22-26 points	28 hours per month
27-31 points	35 hours per month
32-36 points	42 hours per month
37 + points	Expanded Planning Team Determination

(Ex. 4, p. 24.)

12. Based upon Claimant's score of 32 points, SC Barredo determined Claimant requires 42 respite hours per month.

Notice of Proposed Action

13. On June 22, 2021, WRC issued a Notice of Proposed Action giving Claimant notice of WRC's intent to reduce funding for respite services from 100 hours per month to 42 hours per month effective August 1, 2021. The Notice informed Claimant of his right to appeal WRC's decision by requesting a fair hearing. On June 30, 2021, Philomena Morais, WRC Program Manager, sent a letter to Mother

explaining that the reduction of respite hours was based upon the Respite Assessment and WRC's Respite Service Standard, which PM Morais enclosed with the letter. PM Morais notified Mother in the letter that if Mother timely submitted a Fair Hearing Request, Claimant's respite services would continue to be funded at a rate of 100 hours per month throughout the fair hearing process.

14. On June 28, 2021, Mother signed a Fair Hearing Request appealing WRC's decision to reduce Claimant's respite hours. She noted that she "decompressed" from caring for Claimant by attending concerts and sporting events, and that she ran an Airbnb to make ends meet, performed volunteer service, and took language classes. (Ex. 2, p. 11.) Mother contended in the Fair Hearing Request that 100 respite services hours per month was needed for Mother to care for her mental health and that the reduction was unfair and excessive. Mother indicated that she may accept a "more reasonable" decrease. (*Ibid.*)

15. On July 21, 2021, Mary Rollins, WRC's Director's Designee (DD), met with Claimant and Mother at Fox Hills Park in Culver City, California to observe Claimant and obtain additional information from Mother about her request for WRC to maintain funding for respite at the current level. In a letter dated July 22, 2021, DD Rollins notified Mother that she was denying Mother's request based upon DD Rollins's observations, information from Mother, DD Rollins's review of Claimant's file and WRC's policies and procedures, and the fact that Claimant receives 138 hours per month of personal assistance, he is with his father 24 hours per week, and he receives IHSS specialized supervision services provided by Mother.² However, DD Rollins

² The amount of authorized IHSS hours Claimant receives was not made clear by the record.

granted funding for 50 hours of respite hours per month effective September 1, 2021, to be reviewed at Claimant's next IPP meeting.

Services Currently Funded by WRC

16. WRC currently funds 105 hours per month of personal assistance services for Claimant effective July 1, 2021 to May 31, 2022; 100 hours of in-home respite services, effective July 1, 2021 to October 31, 2021; program support group services at a rate of 138 hours per month so that Claimant can have a one-to-one staff ratio at his day program, effective July 1, 2021 to May 31, 2022; community integration services for Claimant's day program at a rate of 23 days per month or 6 hours per day; and transportation services to and from Claimant's day program 23 days per month, effective July 1, 2021 to May 31, 2022.

Hearing Testimony

17. Candace Hein, JD, WRC's Fair Hearing Specialist, explained that personal assistance is an all-encompassing service that can be used for assistance with accessing the community, completing tasks in the home, supervision or care. She further explained that although WRC authorized the purchase of respite services at the rate of 100 hours per month until October 31, 2021, WRC will grant an extension if there is no final decision in this matter by that date.

18. Ms. Barredo conducted the Respite Assessment because it was time for reauthorization of respite services. WRC took into account all the services it funds for Claimant, and the fact that Claimant receives IHSS specialized supervision hours when determining the amount of respite hours Claimant needs. IHSS services do not replace respite services; rather IHSS supplements them.

19. According to Ms. Hein, WRC is not discounting that Mother works full-time and suffers from a health condition. However, WRC believes that 205 hours per month (personal assistance and respite services combined) was more than what was necessary to address Claimant's care and supervision needs.

20. Mother is a teacher with the Los Angeles Unified School District. She testified that Claimant needs supervision 24 hours per day, seven days per week because he cannot be left alone. Claimant has a history of leaving the stove on, continuously taking food out of the refrigerator, overeating to the point of vomiting in the middle of the night if he is not monitored, and eloping. Mother also must tell Claimant how to brush his teeth and wash his hands. She has to assist Claimant with these activities as well as cleaning his ears and cutting his toenails.

21. The day before the hearing, Mother took Claimant to the park. Mother told Claimant to stay put while she used the bathroom, but Claimant wandered off. Mother described the fear and upset she experienced before locating Claimant. Claimant also wandered off when Mother took him to the beach two days before the hearing.

22. Mother asserted that she tries to handle all aspects of Claimant's care, but she cannot. At times, Claimant does not want to visit his father or for Mother to leave the home, which can be draining for Mother. Mother also asserted that she is close to admitting Claimant to a facility.

23. Mother lives in fear of experiencing technical difficulties with her home Wi-Fi because Claimant "will go crazy." She stated that Claimant attacked her at the park when they met with DD Rollins because the meeting was a deviation from

Claimant's routine. There have been changes in Claimant's care providers once or twice per year because of his behavior.

24. According to Mother, she was previously paid directly to access respite services. When Mother asked for \$25 per hour, she was informed that Premier would be providing the services.

25. Mother believes that her and Claimant's rights were violated, and they were not treated with respect and dignity when WRC made the decision to reduce Claimant's respite hours and when WRC notified Mother that she could not be Claimant's respite provider. According to Mother, she received an email on a Friday that there needed to be a different respite provider that following Monday or respite services would be discontinued.

26. In addition, Mother contends that Claimant's May 2021 respite hours were "lost" while waiting for WRC to authorize respite services through Premiere.

27. When Mother originally requested and was approved for 100 hours of respite services per month, she expected to receive 75. The WRC representative did not use the Respite Assessment when approving the hours. Mother did not have a basis for requesting 100 or 75 hours. She stated she just "like[d] those numbers."

28. Mother contends that she did not know that SC Barredo was completing the Respite Assessment on May 27, 2021, because it was conducted over the phone and Mother does not recall SC Barredo mentioning it.

29. Mother uses two and one-half hours of personal assistance hours in the morning, and two and one-half hours in the afternoon. With respect to respite hours, Claimant's sister cares for Claimant while Mother goes to the gym or the movies,

cleans her Airbnb rental unit, works as a notary public, takes classes at West Los Angeles and Santa Monica Colleges, or volunteers at her school. Mother has considered obtaining a IHSS provider but has not taken steps to do so because she "just tries to put one foot in front of another."

30. Mother stated that she will not accept 50 respite hours per month.

Analysis

31. On April 27, 2021, the Claimant's IPP planning team, which included Mother, met and agreed that WRC would fund 100 hours of respite services until July 31, 2021. Prior to July 31, 2021 SC Barrendo completed the Respite Assessment with Mother's input, which revealed that Claimant's care and supervision needs warranted respite hours in the amount of 42 hours per month. There was no evidence that the Respite Assessment was flawed or that additional respite is necessary for Claimant to remain in his home. In addition, there is no justification for granting Claimant an exception to the authorized respite hours under WRC's Guidelines, and Mother's testimony regarding Claimant's needs and behavior did not establish otherwise.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. WRC has the burden of proving it is no longer required to fund in-home respite services for Claimant at the rate of 100 hours per month. (*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 [except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence].) This evidentiary standard requires WRC to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. In other words, WRC must prove it is more likely than not that it is no longer required to fund 100 hours of respite per month for Claimant. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320 [A preponderance of the evidence standard, on the other hand, “simply requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence . . . [Citation]’.”].)

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); 4646.5, subd. (a); and 4648.) 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 desire but are required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.)

5. Welfare and Institutions Code section 4690.2, subdivision (a) provides:

(a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for

setting rates. "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. Regional centers are required to adopt internal policies regarding the purchase of services for consumers. (Welf. & Inst. Code, § 4646.4, subd. (a).) 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.)

Conclusion

7. WRC met its burden of proving it is not required to continue funding Claimant's in-home respite services at the rate of 100 hours per month. WRC conducted a Respite Assessment pursuant to its Guidelines and determined that Claimant's care and supervision needs require 42 hours of respite services per month. In addition, WRC funds 105 personal assistance hours per month and Claimant receives IHSS supervision services. There is no evidence to justify granting an exception to the number of hours of respite hours calculated and authorized by the Respite Assessment and WRC's Guidelines.

ORDER

Claimant's appeal from Westside Regional Center's September 22, 2021 Notice of Proposed Action proposing to reduce the number of hours of in-home respite services funded from 100 per month to 42 hours per month is denied.

DATE:

CARMEN D. SNUGGS-SPRAGGINS
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.