

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2021080476

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on October 7, 2021.

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

Jacob Romero, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (Service Agency or ELARC).

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

ISSUES

1. Should Service Agency be required to fund 45 hours per month of Covid respite¹ for claimant?

2. Should Service Agency be required to fund an additional 30 hours per month of regular respite² for claimant?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-11.

Testimonial: Jeanette Prado, ELARC Service Coordinator; Jacob Romero, ELARC Fair Hearing Coordinator; and Mother.

¹ As used herein, "Covid respite" refers to in-home respite hours authorized by Service Agency to support claimant with distance learning while her school was closed due to the Covid-19 pandemic.

² As used herein, "regular respite" refers to in-home respite hours authorized by Service Agency in accordance with its Purchase of Service Policy for respite.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is an 11-year-old girl who is diagnosed with Down Syndrome and Unspecified Intellectual Disability. She is eligible for regional center services.

2. By a Notice of Proposed Action (NOPA) dated July 12, 2021, Service Agency notified Mother that her request for continued funding of 45 hours per month of Covid respite, and her request for additional regular respite hours, were denied. The NOPA explained that the circumstances related to distance learning that warranted the Covid respite hours no longer existed, and Service Agency's assessment of the family's respite need under ELARC's POS Policy indicated 25 hours per month of regular respite was appropriate.

3. On July 28, 2021, Mother filed a fair hearing request, on claimant's behalf, to appeal Service Agency's denial of her request for respite services. In the fair hearing request, Mother wrote: "Requesting for care hours to be increased [11] weekly hours – 25 [11] monthly hours total 100 of care provided." (Exh. 2.) This hearing ensued.

Claimant's Background

4. Claimant lives at home with Mother and her younger sister; claimant's sister is not a regional center consumer. Mother is a licensed vocational nurse and works outside the home. Claimant's maternal grandmother (Grandmother), who lives in her own home, takes care of claimant when Mother is at work. Mother is raising her two daughters as a single mother. Mother and claimant's biological father separated in 2017. According to Mother, claimant's father visits claimant "every now and then, but does not provide any support." (Exh. 9, p. 68.)

5. Claimant is ambulatory and nonverbal. She requires assistance with all activities of daily living and self-help. Claimant eats with her fingers and does not use utensils. Claimant lacks safety awareness and must be supervised at all times. Claimant has behavioral difficulties. She has three tantrums per week, each lasting five to 10 minutes. Mother reports that claimant gets frustrated because she cannot talk. Mother also reports that claimant is physically aggressive and pushes both children and adults. She also bullies her younger sister. Claimant does not like to be told what to do. She has thrown things out of the car window and has broken two iPads.

6. Claimant receives special education services from her school district. Prior to the Covid pandemic, claimant attended school in person. She was assisted during the school day by a one-to-one aide. Claimant was provided transportation between home and school. During afterschool hours, Grandmother provided for claimant's care and supervision until Mother came home from work.

7. When claimant's school closed in 2020 due to the Covid pandemic, claimant participated in distance learning through Zoom. Mother reported that claimant's negative behaviors have increased during the time she has had to stay home and attend classes through Zoom.

Claimant's IPP

8. Pursuant to claimant's individual program plan (IPP) dated December 3, 2020, Service Agency agreed to fund respite services for claimant's family as follows: (1) 25 hours per month of in-home respite from November 2020 to November 2021, and (2) 45 hours per month of Covid respite from December 1, 2020, to February 28, 2021. (Exh. 3.) Respite is the only service that Service Agency funds for claimant.

9. The 25 hours per month of in-home respite provided in claimant's IPP is based on Service Agency's assessment of the family's respite needs in accordance with ELARC's Purchase of Service (POS) Policy, discussed below. (See Exhs. 6, 7.)

10. The 45 hours per month of Covid respite were authorized for the purpose of supporting claimant with distance learning. The IPP states:

Mother is requesting additional respite services for [claimant] due to the Covid-19 pandemic and her school closure. Mother continues to work. She works at a hospital and has long shifts (4 days per week, 12+ hour shifts). Grandmother cares for [claimant]. Mother states that [claimant's] behaviors have increased since she has been at home. ELARC will fund an additional 45 hours of respite services through Maxim per month (for a total of 70 hours per month) from December 1, 2020 until February 28, 2021. Mother will notify SC [i.e., service coordinator] if additional hours are still needed after February 28, 2021.

(Exh. 3, p. 14.)

11. Pursuant to an IPP addendum dated March 15, 2021, Service Agency agreed to continue funding 45 hours per month of Covid respite from March 1, 2021, through May 31, 2021. (Exh. 4, p. 29; Exh. 5.)

Assessment of Respite Needs

12. Jeannette Prado has been claimant's service coordinator the past eight years. Ms. Prado has worked for ELARC for 15 years.

13. ELARC's POS Policy for in-home respite states: "In-home respite service means intermittent or regularly scheduled temporary non-medical care and supervision provided in the individual's home. The individual must reside with a family member to be eligible for respite services." (Exh. 6, p. 40.) Respite services are intended to, among other things, provide appropriate care and supervision to ensure the individual's safety in the absence of family members, and to relieve family members from the constantly demanding responsibility of caring for the individual. (*Ibid.*)

14. The POS Policy provides that the service coordinator "shall use the Family Respite Needs Assessment Guideline [Assessment Guideline] to determine the appropriate amount of respite hours." (Exh. 6, pp. 42.) The Assessment Guideline states, in part: "Respite is not intended to provide for all supervised care needs of the family. It is a supplement to the family's responsibility for care. Respite is not child or adult daycare." (Exh. 6, p. 44.)

15. The Assessment Guideline requires the service coordinator to evaluate the consumer in the areas of (1) adaptive skills, (2) mobility, (3) day program attendance, (4) medical needs, (5) behavioral needs, and (6) family situation, using the scoring criteria set forth in the Assessment Guideline. (Exh. 6, p. 44.) The Assessment Guideline includes a "Summary Sheet" for recording the consumer's score (points) in each of the six areas and tabulating a total point value. The Assessment Guideline includes a chart showing the appropriate number of respite hours corresponding to different total point values, ranging from zero to 30 points, and over 30 points. (Exh. 6, p. 50.) For example, a total score of 11 to 15 points indicates a need for respite of up to 15 hours per month. (*Ibid.*)

16. On November 8, 2019, Ms. Prado conducted a family respite needs assessment for claimant. Ms. Prado completed a Summary Sheet for the assessment

showing a total point value of 20 points. (Exh. 7, p. 55.) Under the Assessment Guideline, a score of 20 points corresponds to a respite need of “[u]p to 25 hours per month.” (*Ibid.*) Ms. Prado’s November 8, 2019 assessment was the basis for the 25 hours per month of respite provided in claimant’s December 3, 2020 IPP. At hearing, Ms. Prado explained that a new respite assessment was not performed for 2020 because, due to the Covid pandemic, Service Agency was not looking to modify claimant’s respite hours.

Mother’s Request for Additional Respite

17. On July 9, 2021, Ms. Prado was contacted by Maxim, the vendor for claimant’s respite services. Maxim informed Ms. Prado that claimant’s respite worker for the 45 hours per month of Covid respite requested payment for the hours she worked in June 2021, but Service Agency had authorized funding only through May 31, 2021. (Exh. 5.) Service Agency agreed to authorize funding for 45 hours per month of Covid respite for the month of June 2021 only. (*Ibid.*)

18. On July 9, 2021, after speaking with Maxim, Ms. Prado spoke by telephone with Mother to discuss claimant’s respite hours. Ms. Prado informed Mother that authorization for the 45 hours per month of Covid respite had expired on May 31, 2021, but Service Agency extended the funding authorization for the month of June 2021 only.

19. During their July 9, 2021 telephone conversation, Ms. Prado and Mother discussed whether claimant had a continuing need for the 45 hours per month of Covid respite. Based on their discussion, Ms. Prado notified Mother that claimant no longer qualified for Covid respite because: (1) claimant was no longer attending school through distance learning, (2) claimant was not attending the extended school year

(ESY) session through distance learning, and (3) claimant would be attending school in person for the 2021-2022 school year. Mother indicated to Ms. Prado she wanted to request additional hours of regular in-home respite services. When Ms. Prado asked Mother to specify the number of additional respite hours she was requesting, Mother responded she wanted "as many hours that [claimant] qualifies for." (Exh. 5, p. 37.)

20. Subsequently, on July 12, 2021, Service Agency sent Mother a NOPA regarding the denial of her respite request, and Mother filed a fair hearing request on July 28, 2021, to appeal the denial.

Informal Meeting

21. On August 27, 2021, Jacob Romero, ELARC's Fair Hearing Coordinator, held an informal meeting with Mother by videoconference.³ Mother provided information regarding her funding request for a total of 100 hours per month of in-home respite. Mr. Romero prepared a letter dated August 27, 2021, which summarized his discussion with Mother and the information she provided during the informal meeting.

22. During the informal meeting, Mother reported that claimant requires assistance with everything from washing to crossing the street. She needs help dressing, zipping, buttoning, and tying her shoes. She is toilet trained but still needs assistance. Claimant eats with her hands and shoves food in her mouth. Mother must chop claimant's food because she has a risk of choking. Claimant is non-verbal and she

³ The purpose of an informal meeting "is to attempt to resolve the issue or issues that are the subject of the fair hearing appeal informally prior to the scheduled fair hearing." (Welf. & Inst. Code, § 4710.7.)

cannot be left unattended. Mother reported that claimant has a one-to-one aide at school.

23. Mother reported that claimant has behavioral concerns. She cannot self-regulate when she is upset. Claimant does not know her own strength and will become resistive by sitting on the floor. The sitting behavior continues in public, where claimant will sit on the floor of the bus in an act of defiance. Claimant also hits items and has broken her computer tablets. Mother reported these types of behaviors occur about two times during a five-day work week.

24. Mother reported that she uses claimant's current respite hours to pay Grandmother to watch claimant when she is at work. Claimant is now attending school in person and is home by 3:00 p.m. Mother reported she works Monday through Friday and every other Sunday, her shifts typically end around 6:30 to 7:00 p.m., and she is home by 8:30 p.m.

25. During the informal meeting, Mother explained she does not want claimant at a day care center because claimant is non-verbal and would be unable to tell Mother if she had been abused or if something happened to her at the day care center. Mother wants Grandmother to care for claimant because the last time claimant was at a day care center, she was crying and scared. Mother stated she does not have the money to pay for day care. Claimant's biological father does not provide any support.

26. During the informal meeting, Mother stated that she wants a total of 100 hours per month of respite, which would consist of claimant's current 25 hours of regular respite, plus 45 hours of Covid respite, plus an additional 30 hours of regular respite. Mother reported she has not applied for In-Home Supportive Services (IHSS),

which is a county program. Ms. Prado previously sent Mother information and an application regarding IHSS, which advised her of the following: "The IHSS Program helps pay for services provided to low-income elderly, blind or disabled individuals, including children, so that they can remain safely in their own home. IHSS is considered an alternative to out-of-home care" (Exh. 10, p. 102.)

27. (A) In considering Mother's request for 100 hours per month of respite, Mr. Romero reviewed the respite assessment completed by Ms. Prado on November 18, 2019, to determine if Ms. Prado's scores applied to claimant's current situation. Mr. Romero generally agreed with the scores given by Ms. Prado in the six areas evaluated under the Assessment Guideline.

(B) For the area of adaptive skills, Ms. Prado awarded eight points, indicating an individual who "requires total care, is not capable of self-care in any activity of daily living, or the individual lacks appropriate safety awareness, requiring an enhanced level of supervision, on a daily basis." (Exh. 6, p. 44.) Mr. Romero found that a score of eight points appeared appropriate and corroborated Mother's description of claimant's ability in this area.

(C) For the areas of mobility, day program attendance, and medical needs, Ms. Prado awarded zero points. Zero points for mobility indicates the individual "is mobile"; zero points for day program attendance indicates the individual "attends school or day program more than 20 hours per week"; and zero points for medical needs indicates the individual "has no health problems – routine care only." (Exh. 6, p. 45.) Mr. Romero found the scores in these three areas were appropriate and correctly reflected claimant's situation.

(D) For the area of family situation, Ms. Prado awarded four points, which indicates the individual “is a member of a one-parent family and they are the only person with a developmental disability residing in a home.” (Exh. 6, p. 47.) Mr. Romero found that score appropriately described claimant’s family situation.

(E) For the area of behavioral needs, Ms. Prado awarded eight points, which indicates the individual “displays moderate behavioral excesses on a daily bases [sic] (e.g. extremely irritable, extremely hyperactive, somewhat aggressive, . . . minor property destructive elopement . . .).” (Exh. 6, p. 46.) On the Summary Sheet, Ms. Prado included the following note to explain the behavior score: “Mother reports behaviors. She will look into ABA through [claimant’s] insurance. She can be aggressive. She throws things when upset (she’s broken 2 iPads). She has thrown things out of the car window.” (Exh. 7, p. 55.)

28. Mr. Romero considered whether the amount of claimant’s assessed need for respite would increase if her score in the behavioral needs area was increased to the maximum score of 16 points. Mr. Romero found that a score of 16 points in behavioral needs would increase claimant’s total point value from 20 to 28 points, which would correspond to an assessed respite need of 30 hours per month, a yield of only five additional hours of respite from the 25 hours per month Service Agency currently funds. Furthermore, under the Assessment Guideline, a score of 16 points in the behavioral needs area requires that “the family must participate in a behavioral change program,” which claimant’s family does not. (Exh. 9, p. 70.)

29. As explained in his August 27, 2021 letter, Mr. Romero concluded “the claimant may be better served by exploring what day care options are available for regional center funding if any.” (Exh. 9, p. 70.) In the letter, he noted: “Day care is a consistently scheduled amount of care during working hours, generally, Monday

through Friday, while respite is intermittent rest from care taking duties for personal time and errands.” (Exh. 9, p. 67.) In his letter, Mr. Romero proposed the following:

While it is outside of this writer’s authority to decide on the day care matter, I believe it is prudent that the IPP team fully explore and discuss all day care options, including after school programs, providing an aide for the after school program or parent funded day care, reviewing the definitions noted in [ELARC’s POS Policy for day care services] to determine what the claimant may qualify for and exploring financial hardship. As a result, I believe it is prudent for the current amount of 25 hours per month with the extra 45 hours per month continue to be authorized for a period of 3 months so that the IPP team may fully explore and discuss the [*sic*] all the day care options pursuant to the regional center policy and Lanterman Act.

(Exh. 9, p. 71.) The letter advised Mother that if she agreed with Mr. Romero’s proposal, she should sign and return the Notice of Resolution form included with the letter. (*Ibid.*) However, if Mother did not agree with the proposal, the letter advised that she did not need to do anything at this time, and the matter would move on to the fair hearing scheduled for October 7, 2021. (*Ibid.*)

30. ELARC’s POS Policy for day care services states, in part: “Day care is defined as care and supervision for a child who is residing at home and is unable to care for her or himself when both parents or a single parent (primary care-provider) is employed full/part time outside the home” (Exh. 8, p. 58.) The POS Policy states: “The regional center will only consider funding for day care when the [IPP] planning

team determines that specialized services are required. Specialized services are those that a consumer requires to meet his or her supervised needs that are beyond those of a non-disabled child" (Exh. 8, pp. 59-60.)

31. The types of day care services available under ELARC's POS Policy are "After School Day Care Services," which commence immediately after the consumer's day program and usually lasting three hours; "Extended Day Care Services," which are programs that occur during holidays and when school is not in session; and "In-Home Day Care Services – Family Member," which "refers to parents who have received prior authorization from ELARC to be reimbursed to employ a private care-provider for non-medical day care services" and is only available "if the individual is unable to be served in the community due to severe behavior deficits that him or her to be in a structured environment after school to prevent out of home placement." (Exh. 8, p. 58.)

32. The POS Policy for day care services for children under age 13 provides, in part, as follows:

As a general practice, ELARC will not fund day care services for children under age 13. ELARC may only consider funding for day care for a child under age 13, if the IPP planning team has exhausted all generic resources . . . and if it is determined that the family meets a financial need or hardship (WIC 4685 subd. (c)(6).) The Federal Poverty Guideline (FPG) will be used to verify financial need and the family must be at or below the FPG. Income verification must be provided to the regional center in the form of W-2 Wage Earners Statements, at least a quarter of payroll stubs or a copy of the prior year's state income tax return.

(Exh. 8, p. 60.)

Mother's Contentions

33. Mother testified that she requested additional respite hours because of her increased hours at work. Mother has worked as a vocational nurse at Glendale Adventist Hospital for the past five years. She currently works in the cardiac telemetry unit. Mother works 12-hour shifts in a very stressful environment. She is also a single mother. Due to her responsibilities at work, Mother testified she needs her days off as "time for myself" (her words). She asked for additional respite hours as a way "to get my own space and time" (her words).

34. In addition, Mother believes more respite hours are needed because the Covid pandemic had a big effect on claimant. Mother feels claimant has fallen behind from not going to school for a long time. Mother testified claimant is currently attending school in person. She is in the sixth grade and attends a special class with 12 students. Claimant attends school Monday through Friday, 8 a.m. to 2:55 p.m.

35. Mother testified that Grandmother watches claimant when she is at work. Mother pays Grandmother herself for the caregiver services she provides for claimant. Mother testified she is not interested in Service Agency funding for day care services. Mother believes she does not qualify for day care services because of her income. She previously applied for assistance from the Mexican American Opportunity Foundation (MAOF), a county program that assists low-income parents with funding for day care. Mother did not qualify for MAOF assistance because of her income. From that experience, Mother she believes she will not qualify for any day care program and does not wish to pursue day care services that requires submission of income information. Mother is not interested in exploring regional center funding for day care

services because she does not want to submit her income information for review. Mother testified she is hesitant to apply for IHSS because she believes she will not qualify due to her income.

36. Mother believes that Grandmother is the best person to watch claimant when she is at work. Grandmother was a physical therapist for 32 years and works well with claimant. Mother feels claimant is safest with Grandmother. Mother is not interested in having other care providers coming to the family's home. Mother also does not want to send claimant to a day care center because claimant likes to stay by herself and does not participate in group activities, and she does not do well with people she does not know.

Service Agency's Contention

37. Mr. Romero testified that Service Agency remains willing to offer funding for claimant's respite hours as set forth in his August 27, 2021 letter, specifically, that Service Agency will authorize funding for 25 hours per month of respite, along with the extra 45 hours per month of respite, for a period of three months, so that the IPP planning team may fully explore and discuss possible day care service options that claimant's family may qualify for pursuant to ELARC's POS Policy.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.)⁴ A state level fair hearing to 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 2-3.)

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 Service Agency funding for additional respite hours beyond the 25 hours per month of respite Service Agency currently funds. 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.

⁴ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(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).)

5. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(1) and (2).)

6. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).) Pursuant to section 4659, regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, including Medi-Cal. (§ 4659, subd. (a)(1).)

7. Respite is a service that may be included in a consumer's IPP. (§ 4512, subd. (b).) In-home respite services are "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." (§ 4690.2, subd. (a).) Respite services are designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family

members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living which would ordinarily be performed by the family members. (§ 4690.2, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(38).)

Analysis

8. Service Agency properly denied Mother's request to continue funding 45 hours per month of Covid respite. Service Agency authorized the Covid respite hours to support claimant while she attended school through distance learning. For the current school year, claimant has returned to attending school in person, accompanied by her one-to-one aide. As a result, she no longer has a need for Covid respite hours to support her with distance learning.

9. Service Agency properly denied Mother's request for additional in-home respite hours beyond the 25 hours per month Service Agency is currently funding. Claimant was assessed pursuant to ELARC's POS Policy for respite, which determined she had an assessed need for respite of 25 hours per month. The assessment took into account, among other things, that claimant lives in a single parent household, she has severe deficits in adaptive skills and requires total care in all activities of daily living, and she has moderate behavioral excesses on a daily basis.

10. Mother contends the family requires additional respite hours to address claimant's need for care and supervision while Mother works increased hours as a nurse, and to address claimant's increased behaviors as a result of being unable to attend school in person during the Covid pandemic. Service Agency persuasively argued that these needs are more appropriately addressed by services other than

respite, including ABA therapy (through claimant's medical insurance), IHSS (through the county), and day care services (through ELARC and other agencies).

11. Mother has expressed that she is not interested in pursuing day care services funded by Service Agency, and she is hesitant to apply for IHSS or any other service or program that requires submission and consideration of the family's income. Mother has rejected Service Agency's offer to authorize funding of a total of 70 hours per month of respite, for a period of three months, to allow the IPP planning team determine the services and supports needed to address claimant needs.

12. Based on the foregoing, claimant's appeal shall be denied.

ORDER

Claimant's appeal is denied. Service Agency is not required to fund 45 hours per month of Covid respite or an additional 30 hours per month of regular respite for claimant.

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.