

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

In the Matter of

CLAIMANT

v.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency

OAH No. 2021090706

DECISION

Thomas Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on January 4, 2022.

Jacob Romero, Fair Hearings Representative, appeared on behalf of the Eastern Los Angeles Regional Center (Service Agency or ELARC). Mother represented claimant. Titles are used to protect confidentiality and privacy. A Spanish interpreter assisted in the proceedings.

The ALJ took official notice of two previous Decisions following fair hearings between the Service Agency and claimant: one dated May 21, 2018, in OAH case number 2018031116, marked for identification as Exhibit 14, and the other dated

August 26, 2020, in OAH case numbers 2020060397, 2020060399, and 2020070039, marked for identification as Exhibit 15.

This matter is governed by the Lanterman Act, that is, the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code sections 4500 through 4885.

Documents and testimony were received in evidence. The record closed and the matter was submitted for decision on January 4, 2022.

STATEMENT OF THE CASE

Mother is claimant's primary caregiver. As claimant, who is nearly 17 and subject to intractable epilepsy, has gotten older and heavier, mother is having increasing difficulty in rendering care. The pandemic increased her difficulties because claimant did not respond well to remote learning. Schools are now reopening, however, and claimant has been found eligible, based on his medical condition, for specialized home instruction from a generic resource.

ISSUES

Whether the Service Agency should extend its pandemic-related funding for Personal Assistance Service at 113 hours per month, or whether, because schools have reopened, the hours should revert to their pre-pandemic level, 39 hours per month.

FACTUAL FINDINGS

1. Claimant, who turns 17 years old in February 2022, is eligible for services and supports under the Lanterman Act because of epilepsy, autism, and intellectual disability. He lives with his mother. His father is not involved in his life. His older brother lives elsewhere.

2. Claimant has many seizures each day and throughout the night. Medication has not prevented the seizures. In consequence, claimant has recently undergone surgery as a way to control his seizures, as noted below. Claimant presented no significant evidence on whether the surgery was successful.

3. Claimant's skill with language is limited. He uses only a few words, which are difficult to understand. But he has been able to communicate in other ways, such as with a word board at school, and particularly enjoys time spent with his older brother. When he is away from home, claimant often uses a wheelchair. He is able to stand and walk, but as he is unsteady and liable to fall, claimant wears a helmet by day to prevent injury during seizures. His seizures threaten his health and well-being in other ways, and his nighttime seizures must be monitored at all times.

4. Claimant receives occupational, physical, and speech therapy, which are funded by the school district. He also receives music and adaptive skills training, which are funded by the Service Agency. Mother has considered that claimant might again need ABA, applied behavior analysis. Claimant has no sense of danger and will elope if not prevented. Claimant is toilet-trained but may have accidents. Mother has had increasing difficulty caring for claimant as he has grown. He currently weighs approximately 140 pounds.

5. Mother and Service Agency personnel have jointly developed IPP's, Individual Program Plans, for claimant. IPP's are prepared under Welfare and Institutions Code section 4646 and signed to show that those who prepared the IPP have agreed on decisions concerning the consumer's goals, objectives, and services and supports as described in the IPP.

6. Holding Hands is a vendor, an organization authorized to provide pediatric therapy and adult services to the Service Agency's consumers. An assessor from the organization, Paula Barrios, and Ziba Nassab, Psy.D., prepared a June 7, 2021 adaptive skills assessment, Exhibit 5, performed by videoconference. Claimant was found to need much assistance in achieving six milestones: one, shared attention and regulation; two, engagement and relating to others; three, two-way purposeful communication; four, complex communication and problem solving; five, creating emotional ideas; and six, emotional and logical thinking, communicating, reasoning, and building bridges between ideas. The program is designed to train a parent, with the assistance of a developmental interventionist, to allow a consumer to reach various goals on the way to reaching the milestones.

7. In an August 25, 2021 initial evaluation for adaptive skills training, Exhibit 6, prepared by Elizabeth Leal, an evaluator at Future Transitions, Inc., she recommended that claimant receive training totaling 20 hours monthly, 10 for hygiene and grooming and 10 for safety skills. The recommendation was based on Service Agency documentation and an in-person interview with claimant and mother at their home. Ms. Leal noted that claimant was able to show her where the bathroom was but is unable to use it effectively and must have assistance with basic hygienic practices, like not leaving the toilet before claimant is finished urinating or having a bowel movement. Claimant needs help wiping. He cannot brush his own teeth.

8. Under the IPP for claimant most recently completed, Exhibit 3, which mother signed on June 14, 2021, following an IPP conference on February 18, 2021, the Service Agency agreed to fund 87 hours per month of in-home respite and 39 hours per month of personal assistance services. As the IPP also notes on page A35: "ELARC to temporarily fund 113 hours of personal assistant during Covid-19 and school closures May 2020 – June 30, 2021. Mother will need to submit requests in advance to consider the number of hours needed for future closures." The IPP also notes that "IHSS [that is, In-Home Supportive Services funded by Social Security] . . . [will] continue to provide 268 hours per month" The Service Agency later extended for a month the 113 personal assistance service hours while claimant was transitioning to Carlson Home Hospital School, as noted below.

9. On July 23, 2021, Martin Anderson, M.D., M.P.H., signed a Home Medical Referral, which stated that claimant was not physically capable of attending classes at a school campus based on a diagnosis of Lennox Gastaut Syndrome, a type of intractable epilepsy.

10. In a September 22, 2021 letter, Exhibit H, Dr. Anderson stated that claimant would undergo RNS, Responsive Neurostimulation, which is a type of surgery to treat seizures, like claimant's, not controlled by medication. Dr. Anderson noted that for recovery from the surgery claimant would require care by mother as "the only person who has the knowledge to care for him safe at home."

11. As set out in a January 25, 2021 note, Exhibit 8, page A92, mother advised claimant's service coordinator at the time, Michael Aguilar, of several medical problems that, along with claimant's height and weight, were making it difficult for her to provide claimant's care. She wrote that she was the sole person in charge of his care. The January 25, 2021 note is part of the Service Agency's ID notes. ID stands for

interdisciplinary. The notes are interdisciplinary because they are shared among all Service Agency personnel, skilled in various disciplines, who work on providing a consumer, in this case claimant, with services and supports.

12. In a March 4, 2021 letter, Exhibit 7, Martha Ramos, an office manager for Rashad N. Wasef, M.D., M.R.C.P., wrote that mother suffered from severe stress and back pain but as mother was the only person to care for claimant, she needed as much help as possible.

13. On December 9, 2021, mother signed the authorization, Exhibit D, for release of medical and academic records and temporary transfer of educational duties to Carlson Home Hospital School and Carlson Home Online Academy Home Instruction. Claimant is eligible for one of two options following this transfer, either up to 15 to 20 hours of online instruction per week in up to 4 or 5 subject areas in the general education curriculum or, in lieu of participating in Carlson Home Online Academy, face-to-face home instruction for 5 hours of instruction in 2 basic subject areas per week. Mother opted for the face-to-face instruction because she found that claimant did poorly with the remote, Zoom-enabled teaching the school district has offered during the pandemic.

14. Claimant pointed out that supports and services the Service Agency has offered to meet the health crisis caused by COVID-19 pandemic have been more than once extended. This is the import of two Directives, one dated September 2, 2020, which is reproduced in part in Exhibit B, the other dated December 22, 2021, Exhibit C, both issued by Nancy Bargmann, the Director of DDS, the Department of Developmental Services. The directives are not concerned solely with extensions, however. Some services and supports and the procedures for their implementation have been cut back as ways of dealing with the pandemic and the health crisis. The

crisis, which started nearly two years ago, and responses to the crisis, have changed many times in that period.

15. Claimant has a PCP, that is, a Person Centered Plan. Such plans precede a transition to the SDP, the self-determination program. The SDP, which is described in Welfare and Institutions Code section 4648.8, allows a claimant, with the Service Agency's assistance, to prepare a budget. Sums budgeted are then spent at a claimant's discretion, within certain broad guidelines. Claimant's PCP, Exhibit 4, was prepared following an August 30, 2021 planning meeting. The PCP discusses that claimant has goals regarding and will work on socialization, especially with other children, communicating with others, with help from speech therapy and technology, such as a tablet computer, and improving daily living skills so that claimant may become more independent. Under the PCP, which has not yet been implemented, claimant will determine hours and monies paid for personal assistance service and other services and supports.

PRINCIPLES OF LAW

1. Under Evidence Code sections 115 and 500, claimant bears the burden of proof by a preponderance of the evidence.

2. Welfare and Institutions Code section 4512, subdivision (e), states that a consumer's natural supports include family and friends.

3. Welfare and Institutions Code section 4646 provides in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and

supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. [¶] . . . [¶]

(d) [IPP's] shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, . . . parents

4. Welfare and Institutions Code section 4646.4 states that the Service Agency must have an internal process that ensures adherence to federal and state law and regulation, including conformance with the Service Agency's purchase of service policies and the use of generic services and supports when appropriate.

5. Welfare and Institutions Code section 4646.5 states that the planning process for an IPP must include gathering information and conducting assessments by qualified individuals.

6. Subdivision (a) of Welfare and Institutions Code section 4620.3 states that DDS must develop best practices for the administrative management of regional centers. Subdivision (d) of the section states that implementing best practices must be through IPP's.

ANALYSIS

1. Claimant did not meet his burden of proof. Claimant did not demonstrate that there is a continuing need for the extra personal service hours funded by the Service Agency while the COVID-19 health emergency kept schools closed.

2. The evidence shows, nonetheless, that mother faces great difficulties in caring for claimant. The difficulties have increased as claimant has grown older. When a child is small, it is easier for a mother to handle the physical labor of caregiving, so that mother in this case had it somewhat easier in the past keeping claimant from hurting himself by falling or eloping. Supervising his toileting needs, or his need for assistance with toileting, are likewise tasks at least as difficult for mother as they were in the past.

3. The difficulties notwithstanding, it is evident mother decided that she should be the one primarily responsible for meeting the difficulties in raising claimant. It is mother who provides IHSS for claimant. The number of these IHSS hours, 268 per month, is a heavy responsibility.

4. Mother must meet many other difficulties, such as monitoring claimant's physical health, ensuring that claimant pays attention to school lessons, and is not so shy or inward looking that he loses the chance to make friends.

5. It is no wonder, in these circumstances, that mother believes that she could be overwhelmed with her caregiving responsibilities if personal assistance service hours are reduced as the Service Agency proposes.

6. The Service Agency funded 113 hours per month of personal assistance service for a specific reason, to counter circumstances brought on by the COVID-19 emergency. Mother's pointing to the extension of directives from DDS to counter the emergency as it lengthened into late 2021 is an indication not only that the emergency has caused prolonged difficulties for consumers like claimant, and for his family, mother in this case, but also for caregivers in general and others concerned with children and young adults, like school districts.

7. The emergencies caused by COVID-19 have been prolonged and they continue, but they have also eased. One especially pertinent sign of that easing is that schools are reopening. It was because schools, including claimant's, closed, that the Service Agency funded 113 hours of personal assistance service hours per month. It did so on a temporary basis, with COVID-19 emergencies in mind.

8. The temporary provision of extra personal assistance service hours is no longer appropriate. Claimant's school is open. In addition, claimant and mother have had the benefit of the extra personal assistance service hours while claimant has been transitioning to the Carlson Home Hospital School.

9. It must be acknowledged that emergencies due to COVID-19 have not completely disappeared. Though school districts have officially reopened schools, any

particular school in a district may close again or be functionally unavailable for various reasons, such as that too many teachers and substitute teachers have fallen ill and cannot be on the job during illness.

10. It should also be acknowledged that it would be a hard adjustment if mother were suddenly to have the benefit not of 113 hours of personal assistance service, but only 39, the pre-pandemic number the Service Agency funded. The Service Agency recognized that this is so, in extending the 113 hours while claimant transitioned to his new form of instruction with Carlson Home Hospital School.

11. Claimant's personal assistance service hours, temporarily raised to 113 hours per month, should revert to 39 hours, the number he had before the pandemic health crisis and its direct effect on schools. These numbers for personal assistance hours were worked out cooperatively by the parties, as indicated in claimant's IPP.

12. In addition to his 39 hours of pre-COVID-19 personal assistance services, claimant should receive personal assistance hours for his 5 hours per week of face-to-face home instruction. In addition, in light of the pandemic's continuing uncertainties, and as a way to ease the family's transition from the higher to the lower level of personal assistance hours, claimant should have the current level of 113 hours of personal assistance services for the 30 days following this decision. After that, it is appropriate that claimant's personal assistance service hours be reduced to 39 hours per month, as they were before the pandemic, plus 5 hours per week for the face-to-face home instruction.

CONCLUSIONS OF LAW

The Service Agency need not extend its pandemic-related funding for 113 hours per month of Personal Assistance Service. Because the pandemic-related health emergency is easing, and especially because schools have reopened, the personal assistance service hours should revert to their pre-pandemic level, 39 hours per month. However, claimant established he requires an additional five hours per week of personal assistance services during his receipt of face-to-face home instruction.

ORDER

Claimant's appeal is granted in part and denied in part. The Service Agency shall fund 113 hours of personal assistance service hours for claimant for 30 days following this decision, after which the hours shall be reduced to 39 hours per month plus an additional five hours per week to be provided during face-to-face home instruction.

DATE:

THOMAS LUCERO
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.