

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021090898

DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 6, 2021.

Claimant was represented by his mother (Mother). (Family titles are used to protect the privacy of Claimant and his family.) Qualified Spanish interpreter Salvadore Barrientos also appeared by videoconference and provided translation services.

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

Testimony and documents were received into evidence. The record was held open until December 20, 2021, for Service Agency to file and serve its October 1

through 11, 2021 Consumer Identification Notes with a Spanish translation (ID Notes), and for Mother to file an objection, if any, to the ID Notes. The ID Notes were received and marked as Exhibit 16 and Mother's objection was marked as Exhibit A. Mother's objection was overruled and Exhibit 16 was admitted into evidence.

ISSUE

Whether the regional center should fund for supervised respite hours during school hours.

EVIDENCE RELIED UPON

Documents: Exhibits 1-2, 12, 14, 15, 16, and A

Service Agency Witnesses: Ariana Acosta, Service Coordinator; Melissa Ybanez, Service Manager

Claimant's Witness: Mother

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a regional center consumer who receives services from SG/PRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon a qualifying diagnosis of Autism Spectrum Disorder (ASD). (All statutory references are to the Welfare and Institutions Code, unless otherwise noted.)

2. On September 13, 2021, Service Agency issued a Notice of Proposed Action (NOPA) denying Mother's request for "respite hours in lieu of school services." (Exh. 1, A1.) The Service Agency stated the request was being denied because "the [Service Agency] does not provide services during school hours. Mother needs to address [Claimant's] behavior towards school through the IEP [Individualized Education Program] process. SG/PRC can provide support during the IEP process. SG/PRC has also recommended for parent to explore ABA [Applied Behavior Analysis] to address [Claimant's] behavior regarding school. . . ." (*Ibid.*)

3. On September 20, 2021, Mother filed a fair hearing request on Claimant's behalf appealing the Service Agency's decision, stating that Claimant is an "extraordinary case" and that she needs the Service Agency to "review [Claimant's] health records" and that "Claimant has traumas from school and cannot attend school." (Exh. 3.)

4. All jurisdictional requirements have been met.

Claimant's Background

5. Claimant is a 15-year-old male who resides in the family home with Mother and his adult sister. Mother does not work outside the home.

6. Claimant's Individual Program Plan (IPP) meeting was held on July 28, 2021, with Mother and Service Coordinator (SC) Ariana Acosta. After the meeting, SC Acosta prepared an IPP report addressing Claimant's current status, desired outcomes, and the supports he was given or needed to reach his desired outcomes. A second discussion was held with Mother on October 11, 2021, during which Mother provided additional information and requested changes be made to the 2021 IPP. The changes were incorporated into the IPP report.

7. Claimant's Desired Outcomes and current progress were as follows:

Outcome 1: "[Claimant] will maintain good health by visiting his doctor or dentist yearly or as needed." (Exh. 12, A36.) No progress was made towards this outcome.

Outcome 2: "[Claimant] will brush his teeth, use the bathroom, shower, and dress himself independently." (*Id.*, A36.) No progress was made towards this outcome.

Outcome 3: "[Claimant] will not have tantrums or hit when he is frustrated." (*Id.*, A37.) No progress was made towards this outcome.

Outcome 4: "[Claimant] will learn to socialize appropriately with other children his age." (*Id.*, A38.) No progress was made towards this outcome.

Outcome 5: "Parent would like a break from [Claimant's] daily care." (*Id.*, A39.) Reasonable progress was made towards this outcome as Claimant is eligible for respite services.

Outcome 6: "Parent would like to learn more about [Claimant's] disability and how to support him as he develops." (*Id.*, A40.) No progress was made towards this outcome.

Outcome 7: "[Claimant] will learn how to read simple sentences." (*Id.*, A41.) No progress was made towards this outcome.

Outcome 8: "Parent would like [Claimant's] IPP to be translated to Spanish." (*Id.*, A41.) Outcome was met.

Outcome 9: "[Claimant will receive temporary supervision during school breaks." (*Id.*, A42.)

8. During the IPP, Mother reported that Claimant regularly displays maladaptive behaviors when he does not get what he wants or has to do something he does not want to do, and so Mother tends to give Claimant what he wants to avoid such behaviors. Mother informed SC Acosta that though Claimant is enrolled in high school, he refuses to attend because he has a phobia about going to school. (On October 11, 2021, Mother reported Claimant had not attended a single day of school in either the 2020/2021 or 2021/2022 school year.) SC Acosta reminded Mother that Claimant is a minor and that he must attend school and advised Mother to request an IEP so that school can provide Claimant with options.

9. Mother and SC Acosta also discussed Claimant's respite hours. Following a hearing which was held on May 10, 2021 OAH Case Number 2021010199), Claimant was granted an additional 35 respite hours per week until the first day of Claimant's 2021-2022 academic school year. (Exh. 15.) Mother stated that she did not agree with the decision as she states Claimant will refuse to go back to school. Mother then requested Extended Day services. SC Acosta informed Mother that those services were after school services intended to promote positive structure and behaviors; those services are not intended to be used in lieu of school; and that Claimant was not eligible for those services as he was not attending school.

Purchase of Service Guidelines

10. The SG/PRC Purchase of Service Policy defines respite care services as services that "are designed to provide family members with temporary relief from the continual care of a person with a developmental disability." (Exh. 14, A90.) These

services may only be purchased when “the care and supervision needs of the person exceed that of an individual of the same age without developmental disabilities” and “is not intended for use by parents as a substitute for behavior intervention.” (*Id.*, A90, A91.)

Hearing Testimony

SC Acosta

11. SC Acosta testified that Mother had been offered a number of different services which could potentially help Claimant including ABA, Adaptive Skills Training, as well as generic resources such as Mental Health Services. Mother, however, has only requested respite and day care services.

12. Respite services are not intended to substitute for behavior intervention services. Respite services are provided so that Claimant can be supervised while Mother attends to her own needs.

13. Mother has indicated that Claimant has phobias that prevent him from attending school but has not provided the Service Agency with any documentation of these phobias. The last educational document the Service Agency has on file is from 2018. SC Acosta advised Mother that she would be sending a release for Mother to sign so that the Service Agency could get access to Claimant’s current educational and medical records and asked her to sign and return the release to the Service Agency. SC Acosta mailed Mother the releases shortly after the July 2021 IPP meeting but Mother did not return the releases.

14. SC Acosta also requested that Mother advise her of when the IEP was scheduled so that she could attend the meeting and provide Mother with support. An IEP was held after the on July 28, 2021 IPP but Mother did not inform her of the IEP.

SERVICE MANAGER YBANEZ

15. Melissa Ybanez, Service Manager (SM), is SC Acosta's supervisor and is familiar with Claimant's request for respite hours. SM Ybanez explained that Mother's request for services had been denied because the proposed services were to be provided during school hours. The Service Agency does not fund for services during school hours as it is the responsibility of the school district to provide those services. The Service Agency, however, can assist consumers with ensuring the school district provides them with appropriate services by the service coordinator attending IEP meetings or getting assistance from the SG/PRC education specialist. In this case, Mother did not notify the Service Agency of the IEP, which prevented Service Agency from supporting Mother during the IEP process.

MOTHER'S TESTIMONY

16. Mother asserted that every time she has requested services from the Service Agency, they have been denied. According to Mother, Claimant has been diagnosed with autism, asthma, insomnia, and encopresis. (Encopresis is a condition which causes involuntary defecation.) A psychologist has also diagnosed Claimant as having several unspecified phobias. Claimant hardly goes outside other than to purchase games.

17. Following the IPP, an IEP took place on October 11, 2021. During the IEP, the District approved Claimant for home schooling. Mother claims that she notified SC Acosta of the IEP "about five days" before the IEP but did not get a response. Though

Mother states Claimant has been approved for home schooling, Mother has not provided the Service Agency a copy of the IEP or the psychologist report that discussed Claimant's phobias.

Consumer ID Notes and Objection

18. The ID Notes from October 1 through October 11, 2021, document calls and messages that were exchanged on October 7, 2021, and October 11, 2021. During these dates, Mother and SC Acosta discussed Mother's concerns with the IPP. In particular, Mother disputed the statement in the IPP indicating that she needed a break from caring for Claimant. SC Acosta explained that the definition respite is giving or receiving a break from providing care and Claimant is receiving respite services. There is no indication that Mother notified SC Acosta about the IEP before or on the date of the IEP.

19. On December 16, 2021, Mother filed an objection to the ID Notes stating, in part, "I just wanted to tell you I never said to the C.R. Coordinator [sic.] that I need a break to take care of my son is false. . . ." (Exh. A.)

LEGAL CONCLUSIONS

Jurisdiction

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of Claimant's request, and therefore, jurisdiction for this appeal was established.

Standard and Burden of Proof

2. The party seeking government benefits or services bears the burden of proof. (See, e.g. *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.)

3. Claimant, as the party seeking funding for additional respite hours, must prove by a preponderance of the evidence that the additional funding is necessary to meet his needs. Claimant has not met his burden.

Applicable Law

4. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as SG/PRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4640.7, 4646, 4646.5, 4647, and 4648.)

5. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans 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, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.” (§ 4646, subd. (b).)

6. “Services and supports” are defined as “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives” and include respite services. (§ 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).)

7. Although an IPP must reflect the needs and preferences of the consumer, regional centers are not mandated to provide all the services a consumer may request. The services provided must be cost effective (§§ 4512, 4646, subd. (a)), and the Lanterman Act requires regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

8. To that end, regional centers are required to identify and pursue all possible sources of funding for its consumers from other generic resources, including school districts (§ 4659, subd. (a)(1)), and to secure services from generic sources where possible (§§ 4647, subd. (a), and 4646.5, subd. (a)(4)). Regional centers are also required to take into account parental responsibilities for providing similar services and supports to children without disabilities (§ 4646.4, subd. (a)(4), Cal. Code Regs., tit.

17, § 54326); to identify and pursue all possible sources of funding for its consumers and to secure services from generic sources where possible. (§ 4647, subd. (a).)

9. A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

10. Provision of such services and supports, however, is subject to limitation. Regional centers are required to take into account parental responsibilities for providing similar services and supports to children without disabilities (§ 4646.4, subd. (a)(4); Cal. Code Regs., tit. 17, § 54326); and to secure services from generic sources where possible. (§ 4647, subd. (a).)

Analysis

11. The IPP is to be developed through a collaborative effort involving the appropriate regional center, the consumer and/or the consumer's representative, and others and must be based on information and assessments relating to the consumer's life goals, the barriers to meeting those goals, the consumer's capabilities and strengths, preferences, concerns, and other relevant information about the consumer.

12. Though regional centers, such as SG/PRC, are mandated to provide services to facilitate the implementation of the IPP, consumers and their parents have the reciprocal obligation to assist the regional center in meeting its mandate. (See Civ. Code, § 3521.) No consumer should benefit by withholding information or by refusing to cooperate with the regional center.

13. In this case, Mother has failed to fully cooperate in the IPP process. Though Mother alluded in her testimony to a psychologist who diagnosed Claimant with having various phobias, Mother has not shared that document or any of Claimant's recent educational records with the Service Agency or provided the Service Agency with a signed release, which would authorize the Service Agency to request those documents directly from Claimant's medical providers and from his school.

14. Mother has requested supervised respite hours during school hours. Under the Service Agency's POS, the express purpose for respite services is to provide family members "a break" from the continual care of a person with disability. Mother has, however, repeatedly expressed that she does not need a break from caring for Claimant. Further, as Claimant is requesting that services be provided during school hours, those are services that the school district, a generic resource, is required to provide.

15. Based on the forgoing, it was not established at the hearing that Service Agency should be required to fund for supervised respite hours during school hours.

ORDER

1. Claimant's appeal is denied.

DATE:

NANA CHIN

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.