

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,**

**Service Agency.**

**OAH Nos. 2022010536, 2022020377, and 2022030526**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on April 6, 2022.

Monica G. Munguia, M. A., Fair Hearing Coordinator, represented the North Los Angeles County Regional Center (NLACRC or service agency). Parents, with assistance from a Spanish language interpreter, represented Claimant, who was not present. Parents and Claimant are not specifically identified to preserve their privacy and maintain confidentiality.

Testimony and documents were received in evidence, the parties made arguments, the record closed, and the matter was submitted for decision at the conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order dismissing Claimant's appeal.

## **ISSUES FOR DETERMINATION**

1. Whether NLACRC should fund 82 hours per week of personal assistant services for Claimant.
2. Whether NLACRC should fund 21 days per year of out-of-home respite services for Claimant.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Parents requested NLACRC to fund 82 hours per week of personal assistant services with aid paid pending a final administrative decision and 21 days of out-of-home respite services for Claimant. The service agency denied their request.
2. On behalf of Claimant, Parents filed Fair Hearing Requests appealing NLACRC's denial. These proceedings, respectively denoted OAH case numbers 2022010536 and 2022020377, ensued; they were subsequently consolidated with OAH case numbers 2022010537, 2202010538 , 2022030521, and 2022030526 pursuant to Welfare and Institutions Code section 4712.2.

3. At the outset of the hearing, the Fair Hearing Request, denotated OAH number 2022030526, was dismissed as moot because NLACRC has authorized personal assistant services for Claimant on an aid-paid-pending basis retroactive to January 31, 2022.

4. All jurisdictional requirements are met.

### **Claimant's Background**

5. Claimant is a 16-year-old female consumer of NLACRC due to her qualifying diagnosis of autism. Claimant resides with Parents and two siblings, one of whom is also a NLACRC consumer. Claimant receives specialized academic instruction from her school district.

6. Claimant's most recent Individual Program Plan (IPP), dated October 16, 2019, documents she requires reminders and prompting to tend to her hygiene, toileting, and grooming. Claimant requires constant supervision across all settings during waking hours to prevent self-injury and harm. Claimant puts non-edible items, such as Legos, buttons, and napkins, in her mouth. Claimant attempts eloping two to three times daily. Claimant plays with matches and lighters. Claimant engages in emotional outburst and displays tantrums each week. Claimant engages in disruptive behaviors which interfere with social participation. Claimant is selectively mute.

### **Claimant's Personal Assistant Services**

7. The *North Los Angeles County Regional Center Service Standards*, Adopted by the Board of Trustees May 9, 2018, Approved by the Department of Developmental Services November 16, 2018 (*NLACRC Service Standards*), defines personal assistant services for minor children as follows:

Personal assistant services are to assist with bathing, grooming, dressing, toileting, meal preparation, feeding, and protective supervision is a typical parental responsibility for minor children. Personal assistant services for minor children will be considered on an exception basis when the needs of the consumer are of such a nature that it requires more than one person to provide the needed care. There may be exceptional circumstances as a result of the severity and/or intensity of the developmental disability that may impact the family's ability to provide specialized care and supervision while maintaining the child in the family home. Eligibility and/or use of generic services such as In-Home Support Services [IHSS] will be explored and accessed where possible prior to NLACRC funding as an exception.

(Exh. 89 at p.26.)

8. During a March 16, 2020 teleconference, Parents expressed concerns about Claimant's lack of safety awareness and informed Claimant's IPP team Claimant requires 24/7 care. Parents noted Claimant breaches the locks on doors and windows, leaves home without their knowledge during the night, and then experiences difficulty returning home. Claimant regularly provides her personal information to strangers who have appeared at the family's residence. Consumer Service Coordinator (CSC) Elizabeth Lamarque prepared a Consumer Interdisciplinary Note (I.D. Note) memorializing the teleconference which states, "IPP team explained and discuss Personal Assistance (PA) services. Parents reported that PA will be a support and

service that will be able to help them care for [Claimant]. IPP team discuss possibly providing PA services between 10pm [to] 4am since parents reported that is the time when [Claimant] leaves home.” (Exh. 53 at p. 26.)

9. As a consequence of the COVID-19 pandemic emergency, commencing in March 2020, respondent’s school suspended in-person classroom instruction. Claimant remained at home during school hours. Parents reported difficulty and stress motivating Claimant to engage in distance learning. CSC Lamarque prepared additional I.D. Notes documenting NLACRC’s approval for “An additional temporary PA services . . . : 4 hours Monday-Friday and 8 hours on Sunday to help parents care for [Claimant] during COVID-19 with a total of 70 hours per week.” (Exh. 53 at p. 47.)

10. On September 23, 2021, Parents and Claimant’s IPP team met to discuss Claimant’s progress. During this meeting, Parents reported PA services “have not been provided due to Personal assistance providers were exposed to covid19.” (Exh. 51 at p. 8.) Parents also reported Claimant’s needs for PA services were ongoing. “Parents would like to receive [PA] hours for [Claimant] to have the supervision she requires while parents sleep through the night and during the daytime to ensure [Claimant’s] safety. Target dates 5/13/2020 through October 31, 2022.” (*Ibid.*)

11. Parents subsequently requested NLACRC to increase Claimant’s PA service hours. As reported in a January 4, 2022 NLACRC Staffing Committee Review, Parents sought eight hours of night PA service seven days per week (56 hours), six hours of day PA services Monday through Saturday (36 hours), and four hours of day PA services on Sunday for Claimant. (Exh. 64.)

12. Acting on the premise that circumstances supporting Parents’ request for additional PA service hours may have changed, NLACRC requested additional

documentation from Parents. NLACRC also required Parents to exhaust generic resources. Parents had applied for and, on September 9, 2021, were granted 21.17 IHSS hours. Parents have not yet exhausted Claimant's IHSS appeal rights.

### **Claimant's Respite Services**

13. The *NLACRC Service Standards* defines respite services as follows:

In-home respite services mean intermittent or regularly scheduled temporary non-medical care and supervision provided in the consumer's own home when the consumer resides with a family member.

Cost-effective out-of-home respite service options may include temporary residential services, vendored weekend program(Saturday program), and other services designed to provide planned relief from the ongoing care and supervision of the consumer.

(Exh. 89 at p. 22.)

14. NLACRC funds 30 hours per month of in-home respite services for Claimant. Claimant's 18-year-old sibling serves as her respite provider.

15. In March 2020, Parents requested 21 days of out-of-home respite services to take vacations at unspecified times. The I.D. Note documenting Parent's request states, "IPP team discuss 21 day respite services and informed parents that CSC will need to be informed three months in advance. Parents will need to provided [sic] CSC with vacation location, dates of the vacation, and the designated person

while the family is on vacation. Parents stated that they will informed [*sic*] CSC once they have planned a family vacation.” (Exh. 53 at p. 27.)

16. At hearing, Consumer Services Manager Silvia Renteria-Haro testified out-of-home-respite service is for intermittent or regularly scheduled temporary care outside a consumer’s home when the care and supervision needs of the consumer exceed that of an individual of the same age without developmental disabilities. Ms. Renteria-Haro explained, typically parents are responsible for the care of their children when engaged in planned activities such as vacation. However, in exceptional circumstances NLACRC does fund out-of-home respite services for parents needing relief from the ongoing care and supervision of their developmentally disabled child. She explained parents are required to establish an exception with supporting information and documentation. She further explained NLACRC only funds for the specific number of days needed for a planned activity, and when that planned activity is a vacation, NLACRC requires parents to submit a travel itinerary along with the identify of an alternate caregiver. NLACRC does not fund an entire block of unspecified 21 days. Out-of-home respite service requests are determined, Ms. Renteria-Haro testified, “on a case-by-case, situation-by-situation basis.”

17. Ms. Renteria-Haro testified NLACRC has not denied Parents’ request for 21-days of out-of-home respite services. She explained Parents are required to establish an exception with supporting information and documentation, submit their travel itinerary for a planned trip, and identify an alternative caregiver. At the time of hearing, Parents had not yet provided NLACRC with the required information and documentation.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) regional centers, including NLACRC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including NLACRC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including NLACRC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. To those ends, the Lanterman Act specifically obligates regional centers, including NLACRC, to purchase services and supports in conformity with their purchase of service policies approved by the Department. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department reviews regional centers' guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (*Id.* at § 4434, subd. (d).) The guidelines are deserving of deference because they reflect the regional center's expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, guidelines regional centers promulgate, including NLACRC, must account for consumers' individual needs when making eligibility determinations for services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Regional centers, including NLACRC, must ensure "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646, subd. (a)(2).)



3. The Lanterman Act requires Claimant to pursue and exhaust all generic funding sources, including IHSS, before obtaining NLACRC funds. Parents have not yet exhausted Claimant's IHSS appeal rights. (Factual Finding 12.) Under these facts and circumstances, until generic resources are exhausted, Claimant is not entitled to NLACRC-funded personal assistant services under the Lanterman Act.

4. Parents have yet to submit information and documentation required for NLACRC to determine whether Claimant presents with care and supervision needs warranting out-of-home respite service. (Factual Findings 15 through 17.) Under these facts and circumstances, Claimant is not entitled to out-of-home respite services under the Lanterman Act.

5. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has not met her burden.

6. Based on Factual Findings 5 through 12 and Legal Conclusions 1 through 3 and 5, at this time no cause exists for NLACRC to fund 82 hours per week of personal assistance services for Claimant.

7. Based on Factual Findings 5, 6, and 13 through 17 and Legal Conclusions 1, 2, 4 and 5, at this time no cause exists for NLACRC to fund 21 hours of out-of-home respite services for Claimant.

## **ORDER**

Claimant's appeals in OAH case numbers 2022010536 and 2022020377 are denied.

DATE:

JENNIFER M. RUSSELL

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.