

**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. 2022010537, 2022010538, and 2022030521**

**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 112 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 21 days of out-of-home respite services and 112 hours per week of personal assistant services for Claimant with aid paid pending a final administrative decision. The service agency denied their request.
2. On behalf of Claimant, Parents filed a Fair Hearing Request appealing NLACRC's denial. These proceedings, respectively denoted OAH case numbers 2022010537 and 2022010538, ensued; they were subsequently consolidated with OAH case numbers 2022010536, 2022020377, 2022030521, and 2022030526 pursuant to Welfare and Institutions Code section 4712.2.

3. At the outset of the hearing, a February 28, 2022 Fair Hearing Request, denoted OAH number 2022030521, 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 13-year-old male consumer of NLACRC due to his qualifying diagnosis of autism. He presents with a heart murmur and scoliosis. Claimant resides with Parents and two siblings, one of whom is also a NLACRC consumer. Claimant is matriculated in special education classes at his middle school.

6. Claimant's most recent Individual Program Plan (IPP), dated August 11, 2020, documents he requires constant supervision across all settings to prevent elopement and self-injury or harm to others. He has a history of inserting objects into his nose and ears. He lacks stranger and danger awareness. He is resistant to commands. He requires prompting and assistance with his hygiene and self-care. His weekly outbursts require intervention. His inconsistent sleep pattern causes random wakefulness, and when he returns to sleep, he positions himself between the mattress and box spring thereby risking asphyxiation.

### **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; emphasis supplied.)

8. During the COVID-19 pandemic emergency, respondent's school suspended in-person classroom instruction. Claimant remained at home during school hours. According to his August 11, 2020 IPP, Claimant engaged in disruptive behaviors that interfered with social interaction each day. With authorization from the Department of Developmental Services, NLACRC funded personal assistant service hours in lieu of school hours for Claimant at a frequency of six hours per day, Monday through Friday, for the August 16 through September 30, 2020 period. (See Exh. 3.)

9. On September 21, 2020, Claimant's IPP team convened to review the family support plan in place related to the school closures due to the COVID-19 pandemic. The resulting IPP Addendum contains the following notes:

The team reviewed the current school schedule and supports being provided by the school district as well as the generic and natural resources that are available to the family. . . . [T]he team is in agreement to continue the current family support plan. The team further agrees that should school reopen for in-person learning prior to the end of the current semester, then the currently authorized services will terminate on the date of reopening. Should schools reopen under a modified or hybrid model that includes both in-person and online teaching, the team will reconvene to determine appropriate adaptations to the current plan.

(Exh. 4.) NLACRC therefore continued funding personal assistant service hours in lieu of school hours at a frequency of six hours per day, Monday through Friday, until December 31, 2020, to provide Mother with "extra assistance in order to ensure [Claimant's] safety and well being [*sic*]." (*Ibid.*)

10. On December 11, 2020, Claimant's IPP team again convened to address developments since his August 11, 2020 IPP. The resulting IPP Addendum notes Claimant's family received information his school was extending its distance learning orders due to the COVID-19 pandemic. Claimant's IPP team therefore determined Claimant had a continuing need for personal assistance service hours in lieu of school hours. The resulting IPP Addendum notes, among other things, "[Mother] indicated

[Claimant] needs assistance during distance learning as he gets distracted and frustrated . . . ." (Exh. 7.) Claimant's NLACRC-funded personal assistant service hours in lieu of school hours were extended to June 30, 2021, provided Claimant's school district did not resume in-person learning prior to the end of the semester.

11. Due to the COVID-19 pandemic, on May 24, 2021, Claimant's IPP team extended his personal assistant service hours in lieu of school hours one more time to May 30, 2022. (Exh. 10.)

12. Mother participated in a June 22, 2021 telephonic meeting with Consumer Service Coordinator (CSC) Raul Gonzalez for an annual review of Claimant's NLACRC-funded and generic services. According to notations in the resulting Annual Progress Report, CSC Gonzalez explained to Mother "COVID 19 services has been extended to 05/30/2022 at which time needs will be reevaluated." CSC Gonzalez reviewed the school schedule with Mother, who informed him Claimant "will not be going back to school when school resumes in September [2021]." (Exh. 11.) Mother informed CSC Gonzalez she was fearful Claimant would become sick because he presents with a pre-existing health condition.

13. Testimony and documents offered at hearing did not establish whether Claimant's school resumed in-person classroom instruction or whether Claimant attended.

14. Independent of Claimant's six personal assistant service hours in lieu of school hours, in October 2020 Mother requested personal assistant services at a frequency of 112 hours per week for Claimant. CSC Gonzalez testified Mother informed NLACRC these personal assistant service hours "would be generalized and used overnight to get a break." CSC Gonzalez testified he directed Mother to submit

her request to the exception staffing team and, in the meantime, apply for IHSS benefits for assistance with Claimant's care and supervision needs.

15. At hearing, Transition Unit Supervisor Myara Alvarado, who oversees implementation of the Department's Self-Determination Program (SDP), testified the exception staffing team typically conducts an in-person clinical observation and collects pertinent information from school personnel and records, healthcare providers and medical records, and vendored service providers. The exception staffing team analyzes and evaluates the collected data to determine whether the severity or intensity of a consumer's developmental disability impacts their family's ability to provide them with specialized care and supervision in the family home.

16. Parents declined the team's request to conduct an in-person clinical observation of Claimant. Ms. Alvarado explained, alternatively, NLACRC agreed to observe Claimant using the Zoom videoconference platform. The virtual observation did not occur because Parents wanted it scheduled during nighttime hours when the observers had already concluded their duty hours. Ms. Alvarado testified, "Nighttime observation was a barrier." Mother did not provide information and documentation NLACRC requested. Claimant's Consumer Interdisciplinary Notes document Mother's position that on prior, unspecified occasions she provided NLACRC information and documents. (See Exh. 17 at pp. 14-16.) Without the information and documentation NLACRC requested from Mother, the exception staffing team lacked sufficient sources to assess Claimant's needs. The exception staffing team denied Mother's request for 112 hours per week of personal assistant services for Claimant.

17. On behalf of Claimant, Mother applied for but was denied IHSS benefits because of a failure to "return to the county the medical certification with information about applicant health as required to approve services." (Exh. 29.) Claimant's appeal

rights for IHSS benefits have not been exhausted. NLACRC has offered to assist Parents with advocacy for generic resources, including appealing the adverse IHSS determination. Parents have yet to consent to the service agency's advocacy.

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

18. 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.)

19. NLACRC funds 45 hours per month of in-home respite services for Claimant. Claimant's 18-year-old sibling serves as his respite provider.

20. In August 2021, Parents requested 21 days of out-of-home respite services to take vacations at unspecified times.

21. 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 specific planned activity. When that planned activity is a vacation, NLACRC requires parents to submit a travel itinerary and identify 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."

22. 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. Claimant has yet to complete the relevant assessments for identifying whether and the extent to which he presents with specialized care and supervision needs warranting personal assistant services. Assuming completed assessments establish Claimant presents with care and supervision needs warranting services and supports, the Lanterman Act requires Claimant to pursue and exhaust all generic funding sources before obtaining NLACRC funds. Claimant has not done so. (Factual Findings 14 through 17.) Under these facts and circumstances, Claimant is not entitled

to the requested 112 hours per week of 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 20 through 22.) 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 his burden.

6. Based on Factual Findings 5 through 17 and Legal Conclusions 1 through 3 and 5, at this time no cause exists for NLACRC to fund 112 hours per week of personal assistance services for Claimant.

7. Based on Factual Findings 5, 6, and 18 through 22 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.

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## **ORDER**

Claimant's appeals in OAH case numbers 2022010537 and 2022010538 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.