

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

In the Matter of the Consolidated Cases by:

CLAIMANT,

vs.

North Los Angeles County Regional Center,

Service Agency.

**OAH Numbers 2022030941 (Primary), 2022030953,
2022040750, and 2022040751**

DECISION

(Case numbers 2022030953 and 2022040750)

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard these matters, which had previously been consolidated for hearing, on June 21, 2022, by video and telephone conference.

As detailed hereafter, in this case two Claimants, a brother and sister, were denied requested services, and each sibling filed two Fair Hearing Requests, causing four cases to be opened. A motion to consolidate the cases for hearing was granted,

and all four cases were heard at the same time. This Decision pertains to case numbers 2022030953 and 2022040750, which pertain to the sister's claims.

Claimants were represented by their mother (Mother). Their names are not used, in the interest of privacy. However, where the Claimants are referred to individually, they will sometimes be identified as Claimant M, for the male claimant, and Claimant F, for the female claimant.

The Service Agency, North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Monica Munguia, M.A., Fair Hearing Representative.

Ximena Blanco Fernandez interpreted Spanish to English and vice versa for Mother.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on June 21, 2022.

ISSUE PRESENTED

Should the Service Agency provide 280 hours of respite care or personal assistance to Claimant and her parents so that her parents can prepare for and participate in mediations or fair hearings?

EVIDENCE RELIED ON

Exhibits 1 through 7, 9, 10, 12 through 15, 26, 27, 50, 55, 56, 63, 66, 87, 95, 96, 97, and 98; official notice was taken of various statutes set out in exhibits 99 through

105. Testimonial evidence from Mayra Alvarado, a Consumer Services Supervisor, and Mother.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Claimant F is a 16-year-old girl who receives services from NLACRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act or the Act), California Welfare and Institutions Code, section 4500 et seq. (All statutory references are to the Welfare and Institutions Code.) She is eligible for services because she has Autism Spectrum Disorder (ASD), an eligible condition under the Act.

2. On March 10, 2022, the Service Agency issued a Notice of Proposed Action (NOPA). The NOPA stated that the proposed action was to deny a request for 280 hours of respite services, essentially in a lump sum. The reason stated in the NOPA was that personal assistance had been re-instated, and that the Service Agency had not been able to determine the need for an additional 280 hours of respite. (Ex. 1, p. A88.)

3. A letter accompanied the NOPA (NOPA Letter), which expanded on the issues raised and cited numerous statutes. In essence, the NOPA Letter stated that Claimant's parents had, on February 22, 2022, requested 280 respite hours, but NLACRC asserted that, despite requesting information regarding the need for respite services, that information not been provided by Claimant's parents. The NOPA Letter further stated:

You requested these additional hours of respite be approved to assist [parents] with the accompanying mediations and fair hearings scheduled for [Claimant F]. As in the Notice of Proposed Action sent to you on December 30, 2021 informed you NLACRC must assess need to determine whether respite services are appropriate. The same applies to your request for an additional 280 hours of respite. NLACRC must assess need. I have requested additional information from you and the support team, such as information about access to generic resources and latest educational records. However, no response was received from any of you, [parents], identified as the minor's parents.

(Ex. 1, p. A84.)

4. The NOPA Letter stated that respite care is a service that provides intermittent relief from the demands of providing care to a person with a developmental disability. It was also stated that since then-current personal assistance (PA) hours had been reinstated temporarily based on Aid Paid Pending, Claimant had 243 hours of PA hours and 30 of respite, for a total of 273 hours, and that NLACRC had not been able to determine a need for further hours. (Ex. 1, p. A86.) It should be noted that a NOPA letter sent to Mother regarding Claimant M's request spoke to the PA hours that had been allocated, while not stating the amount of them, and it essentially stated that those hours should be enough to assist the family for hearing preparation and participation. (Ex. 1, p. A71)

5. Claimant's Mother submitted a Fair Hearing Request (FHR) dated March 16, 2022, requesting respite hours so that she could prepare for cases. (Ex. 1, p. A83.)

She submitted a second FHR dated March 25, 2022, requesting respite hours so that she could attend mediations and hearings with the Service Agency. (*Id.*, at p. A50.) Just why a second FHR was submitted is not clear from the record. However, the issue was determined at the outset of the hearing to encompass a request for 280 hours, and not double that amount as might be implied by the submission of two FHRs for this Claimant.

6. NLACRC moved to consolidate the four cases that were opened, and that motion was granted. The hearing on the matters was originally set for May 25, 2022, but Mother moved to continue the hearing, which motion was granted. Mother filed a time waiver in connection with the continuance request.

7. At the outset of the hearing, it was agreed that the Claimants' requests would be deemed requests for 280 hours of respite care, or personal assistance hours, thereby expanding the scope of the FHR.

8. Jurisdiction to proceed was established.

Claimant's Background

9. Claimant lives with her parents, an older brother, and a younger brother in the Antelope Valley, which is part of the Service Agency's catchment area. Her younger brother, who just turned 14, is the other Claimant in these proceedings. Although she has ASD, her cognitive functioning has been assessed as in the average range. (Ex. 87, p. A1014.)

10. A series of Individual Program Plan annual reviews or amendments have occurred since 2017. An Annual Progress Report dated September 23, 2021 (ex. 66), indicates Claimant's parents were receiving In Home Support Services (IHSS) of 21.17

hours per month, and that Claimant continued to be eligible for Medi-Cal for medical and dental care. She was receiving special education services (described below). The Service Agency was providing Adaptive Skills Training (AST) and 30 hours per month of respite services, but at the time of that recent IPP review the respite services were not being utilized due to Covid concerns. The parents did express the need to receive a break from the care of Claimant. (Ex. 66, p. A707.) Remote social skills training was being provided as well.

11. During the September 2021 IPP meeting, it was indicated Claimant ate with her fingers, and she would sometimes put nonedible things in her mouth. She needed reminders to drink or eat during the day, as well as to use the toilet. However, she could use the toilet, but needed prompting to not waste water when washing her hands. Claimant could perform personal care activities but needed some help. Claimant also needed constant supervision, as she would not sleep through the night, and there were issues with Claimant eloping, which might occur or be attempted every day.

12. Parents reported during the September 2021 meeting that Claimant had disruptive behaviors that interfered with social interaction. It was then reported Claimant "gets anxious and dislikes waiting for shared transportation (public/ACCESS) and will engage in emotional outburst." (Ex. 66, p. A704.) It appears from the IPP that emotional outbursts were not just a product of waiting for transport; it was reported they occurred at least once per week, and Claimant's parents believed this happened due to Claimant's inability to express herself in terms of her emotions, wants, and needs.

13. An Individual Education Plan (IEP) prepared after a May 21, 2021 IEP meeting was received in evidence. (Ex. 87.) It provides that Claimant is eligible for

special education services based on autistic like behaviors. It states that her difficulties with use of language for appropriate communication, withdrawal or social impairment, and difficulty in tolerating changes in routine may negatively impact her access to and progress within the general education curriculum, unless she has support. (*Id.*, at p. A1012.) Notwithstanding that assessment, the IEP goes on to say that Claimant does initiate conversations with peers or adults, and that she has friends in class that she interacts with during lunch and in class; she is described as polite and friendly. (*Id.*, at pp. 1012-1013.)

14. Performance on standardized tests of academic achievement (Woodcock-Johnson IV) were reported. The five reading domains yielded overall average range of proficiency, with low scaled scores of 85 to 106, with the bulk of the scores in the 90s and low 100s. (Ex. 87, p. A1014.) Math performance was also average, with some scores on the lower side of average. Finally, language scores were also in the average range. (*Id.*, at pp. A1014-1015.)

15. The IEP stated that as of May 19, 2021, Claimant was refusing to attend classes or participate when she was in class. This apparently caused her grades to plummet. (Ex. 87, pp. A1016; 1015.)

The Basis for the Requested 280 Hours of Respite Care

16. As noted above, Claimant requested the 280 hours of respite care so that her parents could prepare for and participate in various mediations and fair hearings. On February 25, 2022, Claimant's father sent an email to Stephany Ceballos, a consumer services coordinator of the Service Agency overseeing Claimant F's case, by which he requested the 280 hours of respite care. He noted that a mediation was then scheduled for March 10, 2022. He stated in his email that he wanted eight hours of

respite to attend a mediation or hearing, and 12 hours to prepare for each mediation or fair hearing. These estimates were doubled, as the parents wanted that much time for each child's case. (Ex. 4, p. A94.)

17. Father then listed the cases, not by case number, but by the service in question, as follows:

Transportation. $8+8+12+12=40$

21 days of respite. $8+8+12+12=40$

Safety in the water. $8+8+12+12=40$

Personal assistant. $8+8+12+12=40$

Night Care. $8+8+12+12=40$

Recreation. $8+8+12+12=40$

ESY. $8+8+12+12=40$

For a total of 280 Respite Hours.

(Ex. 4, p. A94.)

18. Father sent a substantially similar email to Claimant M's service coordinator. (Ex. 5.)

19. By the time this matter was heard, some of the proceedings identified by Father in the email had taken place. This includes a hearing on transportation for Claimant F, conducted by the undersigned, and for personal assistance, which hearing

was held on April 6, 2022, for both siblings, by ALJ Jennifer M. Russell. This would make Claimant F's request for 80 of the hours moot.

NLACRC Service Standards

20. On May 9, 2018, the Service Agency's Board of Trustees adopted Service Standards. The Service Standards were approved by the Department of Developmental Services on November 16, 2018. A copy was received in evidence as exhibit 98.

21. One policy states:

NLACRC will not purchase any service that would otherwise be available from Medi-Cal, Medicare, In-Home Supportive Services, California Children's Services, private insurance, or a health care service plan when a consumer or family is eligible for coverage however chooses not to pursue the generic resource or private entity.

(Ex. 98, pp. A1158-1159.)

However, services may be purchased even where some generic resource is available, where health and safety are at risk, where the service is not available in a timely manner and the consumer or family agrees to pursue the generic resource or private entity. (*Id.*, at p. A1159.)

22. The NLACRC Service Standards provide the following regarding personal assistants for consumers who are children:

Personal assistant services are to assist with bathing, grooming dressing, toileting, meal preparation, feeding,

and protective supervision is a typical parent responsibility for minor children. Personal assistance 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 resources such as In-Home Support Services will be explored and accessed where possible prior to NLACRC funding as an exception.

(Ex. 98, p. A1169.)

23. Respite care is defined in the service standards as a type of family support service. Family support services are provided in an effort to help the family reside together. The Service Standards define in-home respite to be intermittent or regularly scheduled temporary non-medical care and supervision provided in the consumer's own home when the consumer lives with family members. (Ex. 98, A1165.) This Service Standard is consistent with the legislative directive that a high priority be given to developing and providing services to assist families in caring for disabled children in the home. By statute, respite care is one of those services. (§ 4685, subd. (c)(1).)

Other Matters

24. In the course of the hearing, the Service Agency's witness, Ms. Alvarado, and the Service Agency's advocate, asserted that they have not been able to obtain information that would support the parents' claims regarding Claimants' behaviors and needs. They asserted that the reports from providers of services such as AST and behavioral interventions do not reveal the level of disability and maladaptive behavior as has been reported by Claimant's parents.

25. Service Agency staff have not been able to conduct in-person assessments of either Claimant. Mother and Father have been very conscious of Covid-19.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. Jurisdiction was established to proceed in this matter pursuant to section 4710 et seq., based on Factual Findings 1 through 8.

2. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (See Evid. Code, §§ 115 & 500.) 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.) Therefore, Claimant bore the burden of proving her entitlement to the requested respite of PA services.

General Rules Applicable to Resolving Service Disputes

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) These services and supports are provided by the state's regional centers. (§ 4620, subd. (a).)

4. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388; hereafter, *ARC v. DDS*.)

5. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing decision may establish such terms. (See § 4710.5, subd. (a).)

6. Regional centers must develop and implement IPP's, which shall identify services and supports "on the basis of the needs and preferences of the consumer or, where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option." (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the

consumer's participation in the community. (§§ 4646.5, subd. (a)(2), 4648, subd. (a)(1), (2).) The IPP must be updated at least every three years. (§ 4646.5, subd. (b).)

7. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible for the consumer. (§ 4646; *ARC v. DDS*, *supra*, 38 Cal.3d at 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646; 4646.5, subd. (a)(1), (2) and (4), 4512, subd. (b); and 4648, subd. (a)(6)(E).)

8. Section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" broadly, as meaning

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 an independent, productive, and normal life.

9. Section 4512, subdivision (b) provides a list of services that may be provided, in appropriate circumstances, to a consumer of regional center services. The services and supports that may be provided are not limited to those set out in the statute. The list is extensive, running the gamut from diagnosis to advocacy to

supported and sheltered employment to paid roommates. Respite care and assistance are among the services listed in section 4512, subdivision (b).

10. Other statutes, and regulations, may impinge upon the provision of the services set out in section 4512, subdivision (b). One rule that can limit the obligation of a regional center to provide services is the general rule that the regional centers may not supply services and supports available from generic services. (§§ 4648, subd. (a)(8); 4659, subd. (a), (c).)

11. Services provided must be cost-effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so 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.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled person's every possible need or desire, in part because it is obligated to meet the needs of many people and families.

12. The IPP is to be prepared jointly by the planning team, and shall include any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be utilized, is made up of the disabled individual or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

13. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible" In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (§ 4648, subd. (a)(1).)

14. In developing or modifying an IPP, a regional center is obligated to have a process that ensures compliance with applicable laws and regulations, and when purchasing services and supports, a regional center is to ensure that it is acting in conformity with its approved policies, that generic resources are being utilized where appropriate, and there must be compliance with section 4659, which requires regional centers to pursue generic resources.

15. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies." (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer's needs, it is plain that assessments must be made by the regional centers so that services can be provided to aid the consumer in approximating everyday living, and community inclusion, in a cost-efficient manner.

16. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4501, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (2), 4648, subd. (a)(1) & (a)(2).) Under section 4640.7, subdivision (a), each regional center is to assist consumers and families with services and supports that "maximize opportunities and choices for living, working, learning, and recreating in the community."

17. Reliance on a fixed policy "is inconsistent with the Act's stated purpose of providing services 'sufficiently complete to meet the needs of each person with developmental disabilities. (§ 4501.)" (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233.) The services to be provided to each consumer are to be selected on an individual basis. (*ARC v. DDS, supra*, 38 Cal.3d at 388.)

18. One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), 4791).

19. Under section 4502, persons with developmental disabilities have certain rights, including the right to treatment services and supports in the least restrictive environment. Those services and supports should foster "the developmental potential of the person and be directed toward the achievement of the most independent,

productive and normal lives possible.” (Subd. (b)(1).) There is also a right to dignity, privacy and humane care. (Subd. (b)(2).)

20. The regional centers are to pursue generic services as part of service coordination. The core rule has long resided in section 4648, subdivision (a)(8), which provides that “Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” Traditionally, generic services or agencies were defined as those described above, agencies using public funds to serve members of the general public. Hence, public schools were and are generic sources.

21. Section 4659 has long provided that the regional centers shall identify and pursue all possible sources of funding for consumers receiving services. Section 4659 underwent substantial revision in 2009. The statute retained its mandate for the regional centers to pursue sources of funding for their consumers, such as generic resources (school systems, Medi-Cal, etc.). The statute now provides that the regional centers shall not purchase services that could be obtained by the consumer from traditional generic resources, as well as “private insurance, or a health care service plan when a consumer or family meets criteria of this coverage but chooses not to pursue that coverage.” (§ 4659, subd. (c).)

22. There are other limits imposed on the planning process. First, the regional centers are obligated to assure that IPP’s conform to the regional center’s purchase of service policies as approved by the Department of Developmental Services. (§4646.4, subd. (a)(1).) Here, NLACRC has enacted such policies, and they have been approved by the Department of Developmental Services. (Factual Finding 20.) Further, the regional center must consider the “family’s responsibility for providing similar services and supports for a minor child without disabilities in identifying the

consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care." (§ 4646.4, subd. (a)(2).)

Dispositive Legal Conclusions

23. Section 4512, subdivision (b), authorizes respite care. In-home respite services" are defined in section 4690.2, subdivision (a) as:

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.

These services are designed to do all of the following:

(1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

(3) Relieve family members from the constantly demanding responsibility of caring for the client.

(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

24. The Service Agency's service policies are consistent with the provisions of section 4690.2, subdivision (a). (Factual Finding 23.)

25. The Service Agency argues that respite services have a primary goal of relieving parents of the demands of raising a disabled child, and that has been the traditional justification for providing respite services. It argues also that under its service policies personal assistance is, essentially, to provide a second set of hands for a parent, and not to be a substitute for a parent. Thus, if a child is difficult to bathe or feed, a personal assistant would help the parent lift or bathe or feed that disabled child. This argument is consistent with the NLACRC service policies. (Factual Finding 22.)

26. Claimant has not carried her burden of establishing the need for 280 hours of respite services, above the 30 hours she receives per month. First, respite services and personal assistant services are not designed to assist parents in the dispute resolution process; section 4512, subdivision (b) does not encompass such services. Under the Act and the Service Agency service standards, the primary purpose of respite is to take a break from child care, and not to participate in litigation. Further, the requested 280 hours of services, 40 hours for each potential proceeding, per child, is unreasonable. For example, the hearing in this case lasted a little more than three hours, not the eight estimated by parents. Further, there is no evidence that there was any mediation in this case. Finally, the family had been allocated a large block of PA hours after the aid-paid pending claim was honored. (Factual Finding 4.)

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27. The weight of the evidence does not support Claimant's appeal, which must be denied.

ORDER

Claimant's appeal is hereby denied.

DATE:

JOSEPH D. MONTOYA
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.