

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

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022080808

DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 4 and 12, 2023.

Jorge Morales, Fair Hearing Specialist, represented Eastern Los Angeles Regional Center (ELARC).

Claimant did not attend the hearing. His mother (Mother) was present and represented claimant. Mother used the assistance of a Spanish language interpreter. Names are omitted to protect the privacy of claimant and his family.

The ALJ received oral and documentary evidence. The record closed and the matter was submitted for decision on January 12, 2023.

ISSUES

1. Did ELARC improperly terminate funding of COVID-19 respite support provided to claimant's family?
2. Should ELARC be required to increase the respite support provided to claimant's family by 20 hours each month to 50 hours per month?

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied on ELARC exhibits 1 through 14; claimant exhibits A through Q; and the testimony of Service Coordinator Gladis Oropeza, Service Coordinator Alexandra Aguilar, and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. ELARC is the regional center designated by the Department of Developmental Services (DDS) to provide funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a 15-year-old male eligible for services and supports under the Lanterman Act based on his diagnoses of cerebral palsy, epilepsy, and intellectual disability.

3. During a February 26, 2021 planning team meeting, ELARC granted claimant's request to fund 20 hours per month of COVID-19 respite support, to be reviewed on a month-to-month basis. ELARC also agreed to continue funding the previously approved 30 hours per month of respite support, for a new total of 50 respite hours per month. At the time, claimant was not attending in-person school or services due to the pandemic, which was the basis for ELARC's decision to grant claimant's request for the 20 additional respite hours.

4. During a February 28, 2022 planning team meeting, Mother requested the 20 hours per month of COVID-19 respite support become permanent, rather than a temporary measure due to the pandemic. Either during the planning team meeting or during the following months, ELARC informed Mother it intended to discontinue funding 20 additional COVID-19 respite support hours per month because claimant had returned to in-person school and services. ELARC did not immediately decide whether to grant Mother's request to convert the 20 hours of COVID-19 respite support to permanent, or regular, respite hours.

5. On July 28, 2022, Service Coordinator Alexandra Aguilar conducted a family respite needs assessment for claimant's family. (Ex. 14.) In conducting the assessment, Ms. Aguilar used factors set forth in ELARC's in-home respite services policy, effective April 25, 2018 (Respite Policy). (Ex. 4.) Based on the assessment, ELARC declined Mother's request to convert the 20 hours of COVID-19 respite support to regular respite hours.

6. By a Notice of Proposed Action (NOPA) dated August 4, 2022, ELARC notified claimant it would reduce claimant's respite services to 30 hours per month, effective September 3, 2022. The NOPA served as a denial of Mother's request for 20 additional hours per month of regular respite services and notification to claimant that ELARC would no longer fund any COVID-19 respite hours.

7. By a Fair Hearing Request signed on August 14, 2022, Mother appealed ELARC's termination of claimant's COVID-19 respite support, as well as ELARC's denial of her request for 20 additional hours of regular respite services. ELARC received the Fair Hearing Request on August 15, 2022. (Ex. 2.)

8. On August 30, 2022, ELARC and Mother conducted an informal meeting. In a letter written the same day, ELARC Fair Hearing Coordinator Jorge Morales informed Mother he re-assessed claimant's family's respite needs, pursuant to ELARC's Respite Policy. Mr. Morales concluded claimant's family qualifies for up to 25 hours per month of respite support. (Ex. 13.)

Relevant Background Information

9. Claimant lives at home with his parents and attends a non-public school at the Speech and Language Development Center in Buena Park.

10. Claimant's operative individual program plan (IPP) is dated February 2022. According to the IPP, ELARC funds 30 hours per month of respite services, 184 hours per month of personal assistance or day care, nine hours per month of socialization courses, 28 hours per month of Adaptive Skills Training, swimming lessons, and two educational conferences per year for claimant's parents. (Ex. 6.) Respite services are intended to relieve stress for families who care for an individual with developmental disabilities.

11. Claimant and his family also receive 80 hours per month of In-Home Supportive Services (IHSS) and two hours per month of occupational therapy, funded by generic resources.

Issue 1: COVID-19 Support

12. Mother contends claimant's family continues to require 50 hours of respite support per month, even after claimant's resumption of in-person school and other services. In the Fair Hearing Request, Mother wrote the family requires 50 hours per month "base[d] [on] client need, and documentation provided." (Ex. 2, p. A7.)

13. ELARC elected to discontinue funding claimant's COVID-19 respite support hours once claimant resumed attending both school and services in-person. Service Coordinator Gladis Oropeza testified ELARC funded 20 hours per month of COVID-19 respite support because claimant was receiving remote schooling and services due to the pandemic, causing claimant's family to require extra support at home. Service Coordinator Oropeza testified ELARC no longer believed the additional 20 hours per month were warranted once in-person services resumed. She informed Mother of ELARC's decision sometime during 2022, but she could not recall exactly when.

14. During her testimony at the hearing, Mother conceded she always understood the COVID-19 respite support hours were temporary and that is why she requested an additional 20 hours of regular respite services to replace the COVID-19 hours.

15. ELARC's decision to discontinue funding 20 hours per month of COVID-19 respite support was appropriate, given the change in the delivery of claimant's schooling and services from virtual to in-person.

Issue 2: Additional Respite Hours

16. ELARC's Respite Policy sets forth factors to consider when evaluating a family's respite needs, to include an individual's current skill level, support need, and family dynamics. An ELARC evaluator assigns scores in each of the following areas: adaptive skills, mobility, day program attendance, medical needs, behavioral needs, and family situation. The scores are used to determine the appropriate number of respite hours needed by the family.

17. In her July 2022 evaluation, Service Coordinator Aguilar determined claimant's family qualified for up to 20 hours per month of respite support. (Ex. 14.) In making her determination, Service Coordinator Aguilar considered various documents provided by Mother, including claimant's weekly schedule, medical records related to claimant's father, an Applied Behavior Analysis assessment, and a progress report from claimant's social skills program. (Exs. 9, 11, 12, D.) In claimant's 2022 IPP, ELARC agreed to continue funding 30 hours of respite services per month, as in previous years, despite the results of Service Coordinator Aguilar's evaluation.

18. Both Service Coordinator Oropeza and Aguilar testified an increase in respite support was not justified after reviewing claimant's overall situation. Service Coordinator Oropeza has known claimant for about 12 years. She testified claimant's schedule is "back to normal," meaning it resembles his pre-pandemic schedule, which called for 30 hours of respite support for claimant's family. Despite appreciating claimant's and Mother's challenges, Service Coordinator Oropeza was unaware of any significant change warranting an increase in respite support.

19. Mother testified credibly about the challenges and stress she experiences as claimant's primary caretaker. Claimant's father works lengthy hours and is unable to

contribute significantly to claimant's care. Claimant's grandmother, who lives with claimant's family, is also the caretaker of claimant's grandfather, which limits her ability to care for claimant. Mother expressed frustration with the delayed implementation of services authorized by claimant's IPP. She also noted she accompanies claimant to many of his services and participates in some of them, meaning the time dedicated to claimant's services is not a break for Mother.

20. Claimant did not establish a need for an additional 20 hours per month of respite support. ELARC followed its policy in evaluating the family's respite needs. In making its determination to continue funding 30 hours per month of respite support, ELARC considered the information Mother provided about claimant's overall situation. ELAC intends to re-evaluate claimant's family's respite needs when creating claimant's 2023 IPP, at which time Mother may provide further input or information.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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. (Welf. & Inst. Code, §§ 4700–4716.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) On the other hand, when one seeks government benefits or services, the burden of proof is on them. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, ELARC has the burden of proving by a preponderance of the evidence terminating claimant's COVID-19 support was warranted, while claimant has the burden of proving by a preponderance of the evidence his request for funding of additional respite hours is warranted.

Applicable Provisions of the Lanterman Act

4. Developing the IPP for a regional center consumer is the cornerstone of the Lanterman Act. The IPP process must consider the needs and preferences of the consumer and, where appropriate, the family, to determine the services and supports to be funded. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, 4648.) The planning process includes gathering information and conducting assessments to determine the "life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) The IPP process must ensure conformance with the regional center's purchase of service policies and utilization of generic services and supports when appropriate. (Welf. & Inst. Code, § 4646.4, subds. (a)(1), (a)(2).)

5. While a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible need or desire but must provide cost-effective use of public

resources. (E.g., Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4685, subd. (c)(3)(A), & 4697, subd. (b)(2).)

Determination of Issues

COVID-19 SUPPORT

6. ELARC established by a preponderance of evidence that termination of claimant's COVID-19 respite support was appropriate. When ELARC elected in 2022 to discontinue funding COVID-19 respite support, claimant had returned to in-person services and school. Claimant's family no longer required extra support once justified by pandemic-related restrictions on in-person services and learning. Mother conceded she understood ELARC's funding of COVID-19 respite support was a temporary measure to address additional burdens experienced during the pandemic.

ADDITIONAL RESPITE HOURS

7. Claimant failed to establish by a preponderance of the evidence he required more than the currently allotted 30 hours per month of respite services. Based on Service Coordinator Aguilar's July 2022 assessment, claimant already receives more hours of respite services than determined under ELARC's Respite Policy. Claimant's family also receives 80 hours per month of IHSS, funded by generic resources. Although claimant's family certainly experiences challenges in caring for claimant, claimant did not present sufficient evidence of changed circumstances warranting an increase in respite services. Mother may renew her request during the 2023 IPP process.

ORDER

Claimant's appeal is denied.

ELARC's termination of claimant's COVID-19 support is upheld.

ELARC is not obligated to fund more than the currently allotted 30 hours per month of respite services.

DATE:

HARDEN SOOPER

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.