

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022090619

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconference, on November 7, 2022. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by her parents, who were assisted by a Vietnamese interpreter. The names of claimant and her family are omitted to protect their privacy.

Jorge Morales, Appeals Specialist, represented Eastern Los Angeles Regional Center (service agency).

ISSUE

May service agency terminate claimant's current funding for Personal Assistance services provided at home, 14 hours per day, seven days per week, by phasing out six hours every three months?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 1 through 26, except withdrawn exhibits 4 and 25; claimant exhibits A through M; as well as the testimony of Service Coordinator Becky Ly, claimant's father, and claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Service agency determines eligibility and provides 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 19-year-old woman eligible for services under the Lanterman Act based on her diagnosis of Autism Spectrum Disorder. (Ex. 5.)

3. As explained in more detail below, service agency provided funding for claimant to receive 14 hours per day, seven days per week, of Personal Assistance services provided at home (PA at home), on an emergency basis, after claimant suffered a psychiatric breakdown and was hospitalized in April 2022. (Exs. 7-18.)

4. By a letter and a Notice of Proposed Action dated August 23, 2022, service agency advised claimant's parents it proposed to terminate the PA at home funding, effective September 1, 2022. The stated reasons for terminating the funding were that claimant did not meet the criteria for 14 hours per day, seven days per week, of PA at home, and because claimant has natural supports at home, i.e., her parents. (Ex. 1.)

5. On September 2, 2022, claimant's father submitted a Fair Hearing Request (FHR), which appealed service agency's proposed termination of the PA at home funding. The stated reasons for the appeal were that claimant is still sick and on medication; she is not independent and still needs help; and claimant's pediatrician has recommended she receive 24 hour per day of protective supervision. (Ex. 2.) Service agency has continued providing the funding during this appeal.

6. On September 26, 2022, the parties participated in an Informal Conference. By a letter dated September 29, 2022, service agency affirmed its decision to terminate the PA at home funding. Service agency advised that other services are more appropriate to meet claimant's needs, such as mental health and behavior services, which it argued would better promote claimant's life goals and aid her in receiving the most appropriate services to achieve independence. (Ex. 24.)

7. At hearing, its representative clarified the service agency proposes to phase out the PA at home funding by reducing it six hours every three months.

Claimant's Relevant Background Information

8. Claimant lives at home with her parents and three siblings. Two of her siblings also are service agency consumers. (Ex. 5.)

9. Claimant received special education services from her local school district and graduated on time with her peers. (Ex. 5.) The only problem noted with claimant's high school experience was that she was bullied by a teammate on the swim team. The bullying caused claimant to become stressed and anxious. (Ex. 20.)

10. After graduating from high school, claimant enrolled at the Los Angeles Trade – Technical College (LA Trade Tech), where she is studying for a Culinary Arts diploma with the goal of working in the food industry. (Ex. 5.)

11. Pertinent to this case, in April 2022, service agency was providing funding for claimant to receive 20 hours per month of adaptive skills training (AST), and for her parents to receive 30 hours per month of in-home respite, among other services. In addition, claimant's family receives generic resource funding of 73 hours per month of In-Home Supportive Services (IHSS). (Ex. 5.)

Claimant's Psychiatric Breakdown

12. During the Spring 2022 semester at LA Trade Tech, claimant began experiencing stress and anxiety from her college workload. She failed a midterm and sank into a manic episode. She began to email her professors impulsively, did not sleep well, felt scared, and heard voices in her head telling her she was a failure and she should quit college. (Ex. 20.) On one occasion, claimant left the family home without telling anyone, taking with her money, her phone, and other items, intending to not return. (Ex. 7.)

13. On April 5, 2022, claimant was taken by her family to urgent care at San Gabriel Valley Medical Center and discharged later that day. She was provisionally diagnosed with Anxiety Disorder. (Ex. C, p. B32.)

14. On April 7, 2022, claimant was admitted to Huntington Hospital. Her father told hospital staff claimant was hallucinating, delusional, paranoid, believed people were after her, not sleeping well, seeing things, yelling, and unable to manage her resources or care for herself. (Ex. C, p. B18.) Claimant remained hospitalized for approximately one week, during which time she was given a complete psychiatric evaluation. (Ex. C.)

15. Claimant was discharged from Huntington Hospital on April 13, 2022. She was diagnosed with Schizoaffective Disorder. (Ex. C.)

16. The hospital discharge papers explained claimant's diagnosis:

Schizoaffective disorder is an illness in which a psychotic person also has symptoms of a mood disorder such as depression, or bipolar disorder. Schizophrenia is a chronic, often disabling mental health disorder that makes functioning in work and society difficult. It is a type of psychosis that involves perceiving reality differently from those around you. The difference between reality and what you think become blurred in your mind.

(Ex. C, p. B24.)

17. The hospital discharge papers explained the treatment:

People with this illness will generally have to treat it long-term. Medicine and psychotherapy can help.

On-going care and support helps people manage this illness. Find a healthcare provider and therapist who meet

your needs. Be sure to take your prescribed medicine as directed, even if you think you don't need it.

(Ex. C, p. B25.)

18. Claimant was prescribed four medications to treat her psychosis and mania, which she began taking after her discharge from the hospital. (Ex. C.)

19. On May 4, 2022, claimant was seen by a licensed clinical social worker (LCSW) therapist with the Los Angeles County Department of Mental Health (LADMH). Claimant's father advised claimant was having problems adjusting to her medication. The LCSW recommended claimant see her psychiatrist to adjust the medications and begin therapy. (Ex. 20.)

20. On May 5, 2022, claimant spoke on the telephone with LADMH LCSW Wendy Dang. Claimant told LCSW Dang she was not interested in therapy at that time. (Ex. 19, p. A193.)

21. On May 29, 2022, claimant was placed in isolation at Huntington Hospital for an episode of mania. She was discharged later that night. Her medication regimen was not changed. (Ex. I.)

22. Claimant saw LCSW Dang for check-ups no more than four times from early May through early July 2022. (Exs. I, H, J.) The documentation from these visits show that while claimant's behaviors have improved since being discharged from the hospital, she still experiences the same symptoms of schizophrenia, mainly, hallucinations, hearing voices telling her to quit, and her feelings of anxiety and depression. She continues to take her medications.

Personal Assistance Funding for Claimant

23. Claimant's service coordinator, Ms. Ly, learned of claimant's psychiatric hospitalization on April 8, 2022, when she was discussing with claimant's father another service funding request made by the family. (Test. of Ly; Exs. 7, 8.)

24. On April 26, 2022, claimant's mother reported to Ms. Ly that claimant was failing her classes at LA Trade Tech, not sleeping well, not acting like herself, and trying to leave the house on her own. Claimant's mother told Ms. Ly she was feeling stress from dealing with claimant's behaviors, and that she believed both she and claimant would benefit from a vacation to Vietnam. Claimant's mother requested funding for somebody to accompany her and claimant on such a vacation. Claimant's mother also requested funding for somebody to accompany claimant at school. (Test. of Ly; Ex. 7.)

25. Service Agency has an Information Sheet for the PA service which provides guidelines on how PA services are to be implemented by the service agency. (Test. of Ly; Ex. 3.)

26. The Information Sheet defines PA services as individualized assistance with activities of daily living, for example, eating, bathing, dressing, personal hygiene, toileting, transferring, or maintaining continence care. (Ex. 3.)

27. The PA Information Sheet advises that all generic resources need to be explored and considered before assessing, funding, and utilizing PA, such as IHSS. Parental responsibility and natural resources also should be considered when appropriate. PA is not intended to be a substitute for day care, respite, a behavior program, or other programs intended to meet specific individual needs. (Ex. 3.)

28. On April 28, 2022, Ms. Ly agreed to increase claimant's parents' in-home respite by four additional hours per day, from May through July 2022, to support them through claimant's recent hospitalization and schizophrenia diagnosis. Claimant's individual program plan (IPP) was amended to reflect the increase. By the end of July 2022, the funding would be re-evaluated. Claimant's parents were asked to seek an increase in IHSS funding. (Test. of Ly; Ex. 9.)

29. By early May 2022, Ms. Ly approved funding for claimant to receive PA at LA Trade Tech (PA at school) for eight hours on each of the four school days. This funding would provide a companion to support claimant while she was taking classes at LA Trade Tech, including helping her pay attention to the instruction, take notes, and interface with professors. By late May 2022, claimant's IPP was amended to reflect this funding. (Test. of Ly; Exs. 10, 23.) The PA at school is not at issue in this case.

30. Unfortunately, there was a delay in providing the PA at school service due to contractual and payment issues between service agency and the service provider, BRIA. During that delay, claimant had returned to classes at LA Trade Tech but was not behaving appropriately. (Test. of Ly, claimant's parents.) By mid-May 2022, claimant's counselor at LA Trade Tech persuaded claimant to drop her Spring semester classes, concluding "I do not believe [claimant] is ready and stable to continue this term. Summer term is better for her." (Ex. 10, p. A70.)

31. During the last two weeks of May 2022, claimant's mother frequently advised Ms. Ly her stress had increased due to caring for claimant, now that claimant was no longer in school and was at home all day. Claimant's mother reiterated her request of funding for somebody to accompany her and claimant while on vacation in Vietnam. In the alternative, claimant's mother requested claimant be placed in out-of-

home respite while claimant's mother was overseas, since her husband would be too busy at home caring for their three other children. (Test. of Ly; Exs. 11, 14.)

32. The requests for funding of a travel companion or out-of-home respite were denied. Ms. Ly and her supervisor concluded service agency could not provide service funding for claimant while she was out of the country. Out-of-home respite could not be funded while claimant's father was at home. Instead, Ms. Ly and her supervisor approved funding for 16 hours per day of PA at home, while claimant's mother was on vacation in Vietnam. (Test. of Ly; Exs. 11, 14.)

33. The PA at home funding changed shortly later to 18 hours per day, seven days per week, minus the recent four hours per day increase in respite, for a total of 14 hours per day of PA at home, seven days per week. How the initial 18 hours per day was derived is not established by the record. However, the funding was intended to be temporary support for claimant's family during claimant's mental health crisis, and for claimant's father while his wife would be away in Vietnam. (Test. of Ly; Exs. 11, 14, 12.)

34. The start of the PA at home service also was delayed, this time due to a dispute between service agency, claimant's parents, and the service provider, MAXIM. The problem was that claimant and her siblings had so many hours of PA services that needed to be covered each week. MAXIM does not pay its staff overtime, meaning each PA at home worker was limited to 40 hours per week. Up to five different workers were needed to cover claimant's PA at home if they were limited to 40 hours per week. However, claimant's parents did not want a lot of different people in their home, in light of the COVID-19 pandemic. They also wanted to use friends or relatives who already knew claimant, rather than rely on MAXIM's staff. The process of checking the background of family referrals and on-boarding them to the MAXIM payroll process led to further delays. (Test. of Ly; Exs. 13, 15, 16, 17.)

35. Throughout June 2022, while the parties debated how to staff the PA at home, claimant's father frequently contacted Ms. Ly to complain about claimant not receiving either PA at school or PA at home, even though the services had been approved. His common complaint was that he was feeling increasing stress caring for claimant. By this time, claimant's mother booked her trip to Vietnam; she would be gone from late June through mid-July 2022. Claimant's father therefore complained that his stress would increase when he had to care for all four children alone. Ms. Ly and her supervisor therefore agreed to extend the PA at home funding through August 2022. However, Ms. Ly asked claimant's father to look into mental health services for claimant. (Exs. 17, 18.)

36. By no later than early July 2022, the staffing delays and disputes described above were resolved. Claimant began receiving PA at home services no later than early July. Claimant also had a PA worker go with her to LA Trade Tech when the Summer semester began in mid-July. (Test. of Ly; Exs. 17, 21.)

37. Claimant's 73 hours per month of IHSS funding covers homemaking and personal care; none is for protective supervision. At Ms. Ly's request, claimant's family petitioned the IHSS program for protective supervision funding. The petition was signed by claimant's treating pediatrician, Dr. Nguyen. By a Notice of Action issued in August 2022, the IHSS program denied the petition and awarded claimant no protective supervision. The stated reason for the denial was that an assessment done on April 29, 2022, found claimant did not need 24-hour supervision to ensure her safety. (Exs. 6, F, G, K.)

38. At Ms. Ly's request, claimant's parents have looked into mental health resources for claimant. However, nothing in the record demonstrates claimant has seen LCSW Dang, or any other mental health care provider, since early July 2022. In

fact, claimant's parents are reluctant to seek such services. For example, claimant's mother testified her daughter does not need mental health services. Claimant's father has noted stress he felt from the process of following up with a psychiatrist and obtaining medication refills. Claimant's parents have also complained about the side effects the medications have caused their daughter.

39. As of now, claimant receives approximately six hours per day of PA at school, four days per week. The PA at school hours are typically from 6:30 a.m. to 12:30 p.m. The PA at home service is provided after school ends. Approximately two hours per day also are covered by the IHSS funding. Service Agency funds claimant to swim at a local gym two to three times per week. She still receives AST services.

Claimant's Evidence

40. Claimant's parents request the current PA at home funding continue indefinitely. They believe the service is needed after claimant returns home from LA Trade Tech and on days when she does not attend school. Claimant's parents were not clear how the PA at home service has been used, other than claimant has a companion with her at home and in the community, i.e., a relative or a friend of the family. (Test. of claimant's parents.)

41. Claimant's parents testified claimant still needs constant supervision due to her erratic behavior. She cries every day and wakes up most nights. Claimant still hears voices, telling her to do things, and she is sad and depressed. When she wakes up at night, she makes noise and wants to go outside. Claimant also gets angry more easily, and once she broke her computer because the internet was slow.

42. Claimant's parents testified they are suffering from the stress of responding to claimant's erratic behavior and the constant demands of supervising

her. Claimant's mother loses sleep supervising claimant when claimant gets up in the middle of the night. Claimant's mother testified the stress is why she needed to spend time in Vietnam. Claimant's father testified he suffered stress when he had to care for all four children alone during that time. Claimant's parents believe the PA at home service will relieve their stress.

43. In connection with the family's petition to the IHSS program for protective supervision funding, Dr. Nguyen wrote a note stating that claimant requires "24 hour/7 days supervision" due to "1. Autism- 2. Schizophrenia." (Exs. E, H.) Dr. Nguyen wrote a similar note in September 2022. Claimant's parents testified this demonstrates claimant's continuing need for PA at home. (See also Exs. F, G.)

44. Dr. Nguyen's note was not convincing. First, he did not explain why the constant supervision is needed. He attributed the need to both claimant's developmental disorder and her mental health diagnosis, but nothing in the record indicates claimant had any of her current problems before her psychiatric hospitalization and schizophrenia diagnosis. Second, Dr. Nguyen is a pediatrician, so it is not clear he understands how to treat a mental health crisis like schizophrenia in a 19-year-old patient. Third, his note was insufficient for the IHSS program to award any protective supervision.

LEGAL CONCLUSIONS

Jurisdiction and Burden 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.) An undesignated statutory reference is to

the Welfare and Institutions Code. Claimant appealed service agency's proposed action and therefore jurisdiction exists for this appeal. (Factual Findings 1-7.)

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.) Thus, service agency has the burden of proving by a preponderance of the evidence that terminating the PA at home service is warranted.

Applicable Provisions of the Lanterman Act

4. The determination of which services and supports are necessary for each consumer is through the IPP process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. When purchasing services and supports, regional centers must ensure (1) conformance with its purchase of service policies, as approved by the Department of Developmental Services (Department) pursuant to section 4434, subdivision (b), and (2) utilization of generic services and supports when appropriate. (§ 4646.4, subd. (a).)

Purchase of service best practices developed consistent with section 4646.4 may vary by service category and may establish criteria determining the type, scope, amount, duration, location, and intensity of services and supports purchased by regional centers. (§ 4620.3, subd. (e).)

6. The creation of purchase of service best practices, and requirement for regional centers to adhere to them, are intended to provide more uniformity and consistency in the administrative practices and services of regional centers throughout the state, promote appropriateness of services, maximize efficiency of funding, address the state budget deficit, ensure consistency with Lanterman Act values, maintain the entitlement to services, and improve cost-effectiveness. (§ 4620.3, subd. (a).) The Department shall ensure proper implementation of those best practices. (*Id.*, subd. (d).)

7. The mere existence or the delivery of services and supports is, in itself, insufficient evidence of program effectiveness. Agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served. (§ 4501.) To that end, services and supports should be provided to assist consumers in achieving the greatest self-sufficiency possible and to exercise personal choices. (§ 4648, subd. (a)(1).) Thus, the IPP planning team shall give highest preference to those services and supports that would allow adult consumers to live as independently as possible in the community. (*Ibid.*)

8. There is no definition or description of personal assistance services in the Lanterman Act. However, section 4648, subdivision (a)(12), provides that "personal assistance," among other service and support options, should produce "greater self-sufficiency for the consumer and cost-effectiveness to the state."

Disposition

EFFECTIVENESS AND COST-EFFECTIVENESS

9. As discussed above, services and supports must be effective in meeting goals established for a consumer, while at the same time being cost-effective.

10. In this case, the PA at home funding is no longer cost-effective. Funding 14 hours per day of any service is an extreme measure, usually meant for an emergency. Claimant's PA at home funding was intended to be temporary, not indefinite, and meant to support claimant's parents as they struggled with claimant's psychiatric crisis and hospitalization, as well as to assist claimant's father while his wife was away from home for several weeks. That situation has changed. Seven months have passed since claimant's psychiatric hospitalization and her mental health crisis has stabilized. Claimant is adjusting to life with her psychiatric diagnosis, as she has returned to school and is back in the community. Claimant's mother has returned from vacation. Continuing to provide an emergency level of funding where an emergency no longer exists is not cost-effective.

11. Nor is it clear the PA at home is effective, especially at the high level of funding now being provided. The primary concern voiced by claimant's parents is that claimant needs to be constantly supervised. Yet, many hours of the day are filled with other services and supports that should provide supervision by others. Four days of the week claimant is at school for half of the day. Another two hours of the day are funded by IHSS. Claimant receives AST services a few hours each week, and goes to the gym two or three times a week. As claimant's natural supports at home, claimant's parents also are expected to supervise claimant. Claimant's parents are provided with

many hours each week of respite, which is designed to provide them with a break from the constant demands of supervision.

12. The PA at home service also is not effective because it is not addressing most of claimant's current needs. While the service has provided claimant with supervision, it has done nothing to address claimant's erratic behaviors, depression, and sleep disruption. Addressing those problems will reduce or eliminate the need for claimant's supervision. But those problems are directly related to claimant's mental health disorder. The only treatment for her schizophrenia is for claimant to continue taking her psychiatric medications and regularly attend therapy. A behavior program and medical attention to her problem staying asleep may help as well. While claimant is taking her psychiatric medications, she is not in therapy, and her parents are not motivated to seek more targeted services because they are relying on the PA at home. However, it is not an effective use of resources to fund a service that is not directly addressing the underlying cause of the problem leading to the provision of the service.

CONFORMING TO PURCHASE OF SERVICE POLICIES AND BEST PRACTICES

13. One way a regional center can maintain effective services that are cost-effective is to follow their own purchase of service policies and best practices. Doing so will make sure precious resources are fairly and uniformly provided to the many consumers competing for the same limited funding.

14. In this case, service agency defines the PA service as individualized assistance with activities of daily living. PA is not to be used as a substitute for other services, such as respite or behavior programs. Here, the PA at home service is being used essentially as protective supervision and, to an extent, respite, which are not in line with how the service is defined. Service agency can be excused for using a service

not in conformity with its best practices and policies in an emergency situation. But it cannot be expected to do so indefinitely, otherwise the funding would be arbitrary, unfair to other consumers, and at odds with the mandate for the consistent provision of services under the Lanterman Act. This is especially true where the underlying cause of claimant's problems is her schizophrenia, which will require long-term treatment, and where claimant refuses to undergo a vital component of the required treatment, i.e., therapy.

INDEPENDENCE AND SELF-SUFFICIENCY

15. A hallmark of the Lanterman Act is increasing consumers' independence and self-sufficiency. As discussed above, the only statutory reference to personal assistance links the service with the goal of providing greater self-sufficiency.

16. In this case, indefinite funding of the PA at home service runs the risk of making claimant dependent on a companion with her at all times when she is at home or in the community, which will erode her independence and self-sufficiency over time. This is especially true where the companion is a relative or friend of the family.

CONCLUSION

17. Based on the above, service agency met its burden of establishing by a preponderance of the evidence that terminating claimant's PA at home service is warranted. In light of the unusual circumstances of this case, a sudden termination of the funding is not appropriate. Service agency's proposed gradual phasing out of the funding will better allow claimant and her parents to continue adjusting to her psychiatric condition. (Factual Findings 1-44; Legal Conclusions 1-16.)

ORDER

Service agency may terminate claimant's funding for 14 hours per day, seven days per week, of Personal Assistance provided at home.

That funding shall be phased out as follows: three months after the effective date of this decision, the Personal Assistance at home shall be reduced to eight hours per day; after three months of that reduction, the Personal Assistance at home shall be reduced to two hours per day; after three months of that reduction, the remaining Personal Assistance at home may be discontinued.

DATE:

ERIC SAWYER

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.