

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

In the Matter of:

Claimant,

vs.

South Central Los Angeles Regional Center,

Service Agency.

OAH No. 2022110560

DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 8, 2023.

Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (SCLARC or Service Agency). Mother appeared on behalf of Claimant and was assisted by Armida Ochoa. (Names are omitted and family titles are used to protect the privacy of Claimant and his family.) Mother and Ms. Ochoa received Spanish language interpretation services.

Testimony and documents were received in evidence. The record was held open until March 27, 2023, for SCLARC to translate and upload pages A24 through A25 of

Exhibit 3; pages B57 through B58 of Exhibit M; and pages B63 through B64 of Exhibit O to Case Center; and for Claimant's representative to review the translated documents and upload a preferred translation onto Case Center if there is any objection to the SCLARC translation.

SCLARC timely submitted the translated documents to OAH, which were marked respectively as Exhibit 3A, MA and OA. but did not upload the documents. The ALJ therefore uploaded the translated documents to Case Center. Claimant's representative did not object to Exhibits 3A, MA, or OA. The record closed and the matter was submitted for decision on March 27, 2023.

ISSUE

1. Should SCLARC fund 175 hours per month of personal assistance (PA) services for Claimant?
2. Should SCLARC fund 91 hours per month of In-Home Respite Care (respite) for Claimant?

EVIDENCE

Documents: Exhibits 1-9, A-Q, and 3A, MA and OA.

Testimony: SCLARC Program Manager Albert Armenta and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a regional center consumer who receives services from SCLARC under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.).

2. On September 30, 2022, Parents requested 91 respite hours per month and 35 PA hours per week or 175 PA hours per month.

3. SCLARC issued: (1) a Notice of Proposed Action (NOPA) denying Claimant's request for additional PA hours on October 1, 2022, and (2) a NOPA on October 6, 2022, denying Claimant's request for additional respite hours.

4. Parents submitted a Fair Hearing Request (FHR) dated October 19, 2022, appealing the denial of Claimant's requests.

5. All jurisdictional requirements are met.

Claimant's Background

6. Claimant is a seven-year-old consumer diagnosed with autism spectrum disorder (ASD). Claimant lives with Parents in the family home and his two siblings, both of whom are regional center clients. Other than Father's employment as an In-Home Support Services (IHSS) worker for one of Claimant's siblings, Parents do not have any employment and do not attend school or any other vocational training program.

7. Claimant's current educational status is somewhat unclear. Mother stated during the hearing and in communications with SCLARC the Claimant is being home schooled. The exhibits, however, indicate Claimant is attending school in-person. (Exhs. 4, p. A38 & O, p. B63.) In either event, the School District, a generic resource, is responsible for providing Claimant with all resources needed for his Free and Appropriate Public Education (FAPE) during the school day.

Claimant's Individual Program Plan

8. An annual review of Claimant's Individual Program Plan (IPP) was conducted on May 19, 2022, with Parents, Ms. Ochoa and Claimant's Service Coordinator (SC) Fernanda Escamilla (collectively, IPP team).

9. During the IPP meeting, the IPP team noted that Claimant was receiving the following generic supports: Supplemental Security Income (SSI) from the federal government; health coverage through the California Medical Assistance Program (Medi-Cal); and Speech, Occupational Therapy (OT), Language, and Physical Therapy services through the School District.

10. The IPP report describes Claimant's current status in the various areas of his life, the desired outcomes for Claimant and plan of services and supports being provided to Claimant to meet the desired outcomes. (The IPP report, however, appears to contain some errors, especially when describing the plans of support being provided.)

11. The areas in the IPP report that relate to SCLARC's provision of PA and respite hours are as follows:

A. Under "Health and Safety," Parents reported Claimant had no hospitalizations in the past year or health concerns which required significant medical care. His last two visits to his doctor, which occurred on December 16, 2020, and on April 12, 2022, were routine physicals. Although it was reported that Claimant was seeing a psychiatrist, the IPP did not indicate the reason for or the frequency of Claimant's psychiatric visits. (Exh. 4, p. A30.)

B. Under "Skills Demonstrated in Daily Life," Claimant was reported to be ambulatory and able to use his fingers to manipulate items. Claimant, however, needed to be supervised when eating to ensure he does not choke; required prompting and assistance in toileting and completing personal care tasks; and required constant supervision to ensure safety. It was also noted Claimant was receiving 46 respite hours of respite and 125 PA hours. Two of the desired outcomes included: (1) "close supervision in all settings to ensure his safety; he will continue to receive Personal Assistant [*sic*] for assistance in community settings" and (2) "46 hours of in-home respite with the exception of medical condition in order to provide some relief to [Parents] of the constant need that [Claimant] requires." (Exh. 4, p. A35.)

C. Under "Challenging Behaviors," Claimant was described as being disruptive when upset and in engaging in acts of aggression against himself and others (without any reported injuries). (Exh. 4, p. A36.) The IPP report noted Claimant was receiving 125 hours of personal assistance hours and applied behavioral analysis (ABA) therapy.

D. Under "Community and Social Life," the IPP notes Claimant was regularly integrated into his community, participated in many recreational activities with his family, and he continued to receive 125 PA hours. (Exh. 4, p. A39.)

E. Under "Living Arrangements," the IPP indicates that Claimant lives in the family home with two siblings who are regional center clients and that Claimant receives a monthly SSI benefit, 46 respite hours and 125 PA hours. (Exh. 4, p. A40.)

12. The IPP team concluded that SCLARC would continue to fund 46 respite hours and 125 PA hours on a monthly basis. SC Escamilla also recommended Claimant apply for IHSS hours. Mother, however, noted that her legal status does not allow her to be Claimant's IHSS worker.

Personal Assistance Hours

13. SCLARC's Personal Assistance and Specialized Supervision Policy (PA Policy), which was approved by the Department of Developmental Services (DDS) on January 15, 2019, states, in relevant part, that "[p]ersonal assistance services or minor children will be considered on an exception basis" but that "[e]ligibility and/or use of generic services such as In-Home Support Services must be explored and accessed where possible prior to SCLARC funding as an exception." (Exh. 5, p. A47.)

14. Under the PA Policy, childcare for consumers under the age of 13 is considered a "typical parental responsibility." (Exh. 5, p. A48.) However, in certain circumstances, specialized supervision services are granted to consumers whose parents are unable to provide care and supervision because "[the parents] are engaged in full time work, school or vocational training and will address health and safety issues." (*Ibid.*) Parents requesting specialized supervision services for their minor child are required to provide a schedule to SCLARC reflecting the proposed number of hours requested, the purpose, and number of days using a weekly schedule.

15. On September 30, 2022, Parents requested SCLARC increase funding to 175 PA hours per month.

16. At SCLARC's request, Parents submitted a schedule of daily activities. According to the schedule, Parents propose to use four or five hours per day of personal assistance each day of the week. On the weekends, Parents propose using three respite hours in the morning and five PA hours for various types of recreational activities. On the weekdays, Parents would provide care to Claimant without support for approximately one hour during the day and while Claimant is sleeping, The remainder of the time, Claimant would be receiving PA, respite, schooling, OT, ABA and other therapies.

17. SCLARC denied the request for additional PA hours on October 1, 2022. According to the October 1, 2022, NOPA, PA hours terminated effective September 30, 2022. (Exh. 2, p. A18.) There was no evidence presented at hearing that Claimant received a NOPA regarding the termination of PA hours and no explanation provided as to why the hours were being terminated.

In-Home Respite

18. SCLARC's Funding Standards for Respite Services (Respite Policy), which was approved by DDS on January 15, 2019, defines "respite services" as "intermittent or regularly scheduled non-medical care and supervision of the developmentally disabled minor or adult." (Exh. 6, p. A58.) Respite services may only be purchased "when the care needs of the individual exceed those of a person of the same age without a developmental disability." (*Ibid.*) Unlike the PA hours, IHSS services is "only" considered a generic resource "when the approved services meet the respite need as identified in the consumer's individual program plan or individualized family service plan." (Exh. 6, p. A59.)

19. To be approved for more than 36 hours of respite, the Respite Policy requires "documentation" "to demonstrate the intensity of the consumer care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer." (Exh. 6, p. A59.)

20. The available levels of respite are as follows: Level A (up to 24 hours per month); Level B (up to 30 hours per month); Level C (up to 36 hours per month); Level D (up to 46 hours per month); and Level E (over 46 hours per month). The level of service is determined considering the consumer's medical needs, behaviors, self-care, caregiver condition and family stress. The POS Funding Standards provide for exceptions on a case-by-case basis. (Exh. 6, p. A62.)

21. SCLARC will assess a consumer's needs as Level B and fund up to 30 hours per month of respite of the conditions if Level A is met and three or more of the following are present:

B.1 MEDICAL: Consumer has medical condition requiring ongoing supervision, *i.e.*, requires equipment periodically, frequent hospitalizations. Requires consultation with SCLARC's Nurse Consultant.

B.2 BEHAVIORAL: Consumer is demonstrating challenging or atypical behavior(s) e.g., aggression, self-abuse, disruptive/destructive behaviors, extreme irritability, atypical behavior related to a psychiatric disorder). (see A.2)

B.3. SELF-CARE: Consumer requires constant prompting or assistance in two or more self-care areas beyond typical age expectations or physical challenges beyond age expectations (can be considered if consumer is over 18 years of age).

B.4 CAREGIVER CONDITION: Single parent with limited social supports, or [1] Adolescent parent (under 18 years of age), or [1] Parent has a developmental disability, or [1] Caregiver has physical or medical condition causing more difficulty in caring for consumer. [1] Geriatric parent with limited supports (over age 70)

B.5 FAMILY STRESS FACTORS: Family is evidencing significant disruption related to the consumer's disability, or Caregiver requires hours to attend regular support groups or counseling. . .)

(Exh. 6, p. A60.)

22. SCLARC only submitted the odd numbered pages of the Respite Policy into evidence but the Respite Policy includes a Respite Authorization Worksheet (Worksheet) which is used by the SCLARC in assessing a consumer's respite needs.

A. A consumer is assessed as Level C, needing up to 36 respite hours per month of respite if three or more of the following are present: MEDICAL: consumer is medically fragile but stable, requiring care on a periodic basis (G-tube feedings, etc.) during the day; BEHAVIOR: consumer demonstrates ongoing challenging behaviors (aggression, self-abuse, etc.); SELF-CARE: consumer has physical or medical condition

requiring frequent treatment; CAREGIVER CONDITION: caregiver has physical or medical condition requiring frequent treatment; or FAMILY STRESS: there are two or more SCLARC consumers in the family, consumer is at risk of being abused, family is receiving counseling for stress issues. (Exh. 6, p. A63.)

B. A consumer is assessed as Level D, needing up to 46 respite hours per month if three or more of the following are present: MEDICAL: consumer is medically fragile and unstable, requiring care on a periodic basis during the day; BEHAVIOR: exhibiting severe behavioral concerns, injuring self or others or requires continuous supervision due to disruptive or destructive behavior (*e.g.* biting, smearing of feces, periodic AWOL); SELF-CARE: consumer is over 18 years old and requires total care in areas of personal hygiene, bathing, feeding, etc.; CAREGIVER CONDITION: caregiver has chronic physical or medical condition impacting consumer's care, caregiver also cares for another family member with a chronic illness, or caregiver experiences nightly sleep disruption; or FAMILY STRESS: there are two or more SCLARC consumers in the family, one with challenging behavior or medical needs, or the caregiver is a single parent and Claimant exhibits Level C behavior or medical needs and has no other supports. (Exh. 6, p. A63.)

C. A consumer is assessed as Level E, needing over 46 respite hours per month if three or more of the following are present: MEDICAL: consumer is medically fragile, requiring care on an hourly basis and is at risk for choking and aspiration at any time; BEHAVIOR: behavior assessment or ongoing behavioral services are required; SELF-CARE: non-ambulatory, requires hands-on assistance for self-care and weighs over 80 pounds; CAREGIVER CONDITION: caregiver has life-threatening medical condition which interferes with consumer's care (*e.g.* cancer, etc.); caregiver

experiences nightly sleep disruption; or FAMILY STRESS: severity and/or combination of Level D criteria necessitates additional hours. (Exh. 6, p. A63.)

23. Albert Armenta, a SCLARC Program Manager (PM) who supervises Claimant's service coordinator, testified SCLARC uses the Worksheet to determine the appropriate number of respite hours for each consumer. PM Armenta also explained SCLARC's rationale in approving 46 respite hours for Claimant.

24. According to PM Armenta, the purpose of respite services is to alleviate parental stress related to the care and supervision of an individual with a developmental disability. SCLARC assessed Claimant's need for respite by considering Claimant's "medical," "behavioral," "self-care," "caregiver condition" and "family stress" factors. (Exh. 6.) Application of the assessment resulted in a determination that 30 to 36 respite hours per month was appropriate.

25. Parents requested additional respite hours advising SCLARC that they both had medical conditions which affected their ability to care for their children. SCLARC requested medical records to substantiate their conditions but did not receive them before Parents submitted the FHR. Ultimately, though Claimant was assessed as needing anywhere between 30 and 36 respite hours a month, SCLARC deemed Parents reported medical conditions to be an exception and authorized 46 respite hours per month.

Informal Meeting

26. On December 6, 2022, an informal meeting was held with Mother and Ms. Summerville, which was memorialized in a letter dated December 8, 2022. During the meeting, SCLARC agreed to provide Claimant funding for 46 respite hours and 75 PA hours per month.

27. Mother disagreed with SCLARC's decision, asserting Claimant needed additional PA hours for community integration purposes and assistance with homeschooling.

28. Ms. Summerville explained the reason SCLARC was denying the request was because: (1)there was a generic resource, IHSS, available; (2)Claimant did not demonstrate a need for the services that did not fall beyond the realm of "parental responsibility;" and (3) the purchases were not in accordance with SCLARC's POS policies. (Exh. F, p. B28.)

Mother's Testimony

29. Claimant has been diagnosed by a mental professional with autism, bipolar disorder and anxiety. His diagnoses have made a major impact in every aspect of Claimant's life.

30. Mother testified that Parents needed more PA and respite hours to get relief from the work of caring for Claimant and his two siblings. Parents needed the respite hours "to be able to have a life," to exercise, and follow up with medical appointments.

31. Mother reported she and Father have medical conditions, which affect their ability to care for their children. Father has diabetes, high blood pressure, and cholesterol for which he has to take medicine daily. Mother has "generalized weakness" for which she takes natural medications.

32. Mother contends more hours of Respite and at least as many Personal Assistance hours as were funded before are necessary for relief from the hard work of

caring for Claimant and his two brothers all through the day, every day, week after week.

33. Mother s requests additional PA hours so that Claimant can become more independent and integrate into the community. Mother believes this would allow Claimant to learn new skills and prevent Claimant from regressing on learned abilities.

34. Claimant has not been approved for IHSS hours as a decision is pending.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." (All further statutory references are to the Welfare and Institutions Code unless noted otherwise.) As Claimant timely requested a hearing to appeal SCLARC's October NOPAs, jurisdiction in this case was thus established.

Standard and Burden of Proof

2. Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See, Evid. Code, § 500.) As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence. (See, Evid. Code, § 115.)

Applicable Law

3. In enacting the Lanterman Act, section 4500 et seq., the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. (Welf. & Inst. Code, § 4501.)

4. The consumer's needs are determined through the IPP process. (Welf. & Inst. Code, § 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (Welf. & Inst. Code, § 4646, subd. (b).)

5. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the particular desires and preferences of the consumer and the family when appropriate. (Welf. & Inst. Code, §§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a)(4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

6. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), a regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of

Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(1) and (2).) Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (Welf. & Inst. Code, § 4648, subd. (a)(8).)

Personal Assistance

1. SCLARC bears the burden of proof with respect to the decreasing Claimant's PA hours to 75 PA hours per month, while Claimant bears the burden of proof with respect to increasing the PA hours to 175 hours per month.

2. Here, it was determined through the 2022 IPP meeting that SCLARC would provide Claimant with 125 PA hours per to support Claimant's needs and goals. Admittedly SCLARC's PA Policy indicates that PA hours are not available to consumers under the age of 13 unless parents are engaged in full-time work, school or vocational training. It further states that before such an exception is made, consumers must explore the availability of generic resources, including IHSS hours.

3. Claimant is under the age of 13 years old and therefore PA hours would not typically be available to him. Further, he does not appear to fall under an exception as parents do not work full-time, attend school or vocational training and Claimant's eligibility for IHSS hours was not fully explored. it is unclear how the IPP team determined Claimant required PA hours. SCLARC did not, however, did not present any evidence to explain the decision to fund PA hours which would indicate that that determination had been made in error, nor did it present any evidence which

would point to changes in Claimant's condition which would justify the reduction in PA hours.

4. Claimant similarly failed to present any evidence which would justify increasing PA hours.

Respite Hours

5. As the party seeking a change in the status quo, Claimant bears the burden of proving the increase in respite hours is necessary.

6. Claimant presents with some behavioral challenges. SCLARC additionally acknowledges Claimant is one of three children with developmental disabilities in his family's household. SCLARC determined in-home respite care service hours are necessary to provide Parents with relief from stress caring for and supervising Claimant as well as to provide them with time to attend to other responsibilities, including caring for their own health and pursuing desirable educational goals.

7. The evidence established that Claimant's needs were assessed to require 30 to 36 hours of respite (Level B or Level C). However, SCLARC made an exception based on Parents verbal representation of their medical conditions.

8. Though Mother asserted Claimant is medically fragile, Mother presented no evidence to support her testimony. Instead, the evidence revealed that Claimant's physical and medical needs were intermittent at best. Claimant had no significant hospitalizations and visited the doctor only twice in the past two years. However, even if Claimant were assessed as being medically fragile, Claimant would have to qualify in three other areas in Level E to qualify for more than 46 respite hours. There is no evidence that Claimant met the qualifications in those other areas.

Conclusion

9. Though Claimant argued during hearing that SCLARC's purchase of service policies should not be followed as the policies were "old" and had not been recently updated, the Lanterman Act requires regional centers to both: (1) utilize generic resources such as IHSS hours, when purchasing services and supports for a consumer; and (2) ensure that any purchase of services and supports conform to their POS policies.

ORDER

1. Claimant's appeal is denied.
2. South Central Los Angeles shall continue to fund 125 hours per month of personal assistance services for Claimant unless or until any further assessment or evaluation of Claimant's needs warrants modification of those personal assistance service hours.
3. South Central Los Angeles shall fund 46 hours per month of in-home respite care services for Claimant unless or until any further assessment or evaluation of Claimant's needs warrants modification of those in-home respite care service hours.

DATE:

NANA CHIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.