

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER, Service Agency**

**Agency Case No. CS0003916**

**OAH No. 2023030203**

**DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on April 19, 2023.

Stephanie Zermeño, Fair Hearings Representative, represented Inland Regional Center (IRC).

Claimant's father represented claimant.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 19, 2023.

## **ISSUE**

Should IRC fund an increase in respite hours by an additional 40 hours per month from the already funded 80 hours per month for claimant?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a five-year-old consumer of services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et. seq. Claimant is eligible for services based on her diagnosis of autism spectrum disorder (ASD). Claimant resides in the parental home with both biological parents, a sibling, and maternal grandparents.

2. As of June 1, 2022, claimant was approved to receive 80 hours per month of preferred provider respite, and the maternal grandmother is the provider.

3. On September 12, 2022, by email claimant requested an increase of respite hours of 40 hours per month from the already funded 80 hours per month to 120 hours per month, based upon claimant's need for constant supervision and increased behavioral issues. On February 10, 2023, IRC served claimant with a notice of proposed action denying the request to fund an increase of respite hours by 40 hours per month "because after reviewing [claimant's] level of care, natural supports, services, activities, and daily routines, it has been determined that the services and supports currently in place are sufficient to maintain [claimant] in the family home and provide you with a periodic break from [claimant's] care." Additionally, IRC wrote,

"Inland Regional Center (IRC) must also consider parental responsibility for caring for their minor children in their home."

4. On February 25, 2023, claimant submitted a fair hearing request objecting to IRC's decision, and this appeal followed. In the fair hearing request, claimant wrote as follows regarding the reason for the fair hearing:

We are requesting increase [sic] hours for [claimant] for specialized supervision. She needs constant supervision because she can get items that could hurt her and climb on furniture for ladders [sic] if not carefully watch [sic] for her safety [sic] [claimant] require 24 hr. supervision because of her Autism.

5. On March 7, 2023, IRC held an informal meeting with claimant's parents regarding the fair hearing request. IRC sent a letter to claimant's parents on March 13, 2023, summarizing the informal meeting. In the letter IRC stated it stands by its decision to deny the request to fund the additional 40 hours per month of respite because claimant is requesting additional respite hours due to behavioral concerns, but respite is not designed to address behavioral concerns and is for the purpose of providing temporary and intermittent care for short periods of time in order to relieve family members from the constantly demanding responsibility of caring for the client. Furthermore, IRC wrote that "when IRC looks at all services in the home and considers natural parental responsibility, there are less than seven hours per day that . . . are not covered by either a generic service or regional center funded service," including the time that claimant is sleeping. IRC wrote that "it is not unreasonable to expect that parents provide unpaid supervision for less than seven hours per day for a child this age, especially when one considers this includes sleep hours."

## **IRC's Evidence**

6. IRC presented documentary evidence and the testimony of two witnesses at the hearing, specifically Kaylie Reynolds and Gabriela Hernandez. The following factual findings are based upon the testimony of Ms. Reynolds and Ms. Hernandez, as well as supporting documents received in evidence.

### **TESTIMONY OF KAYLIE REYNOLDS**

7. Ms. Reynolds is employed by IRC as a Consumer Service Coordinator, a position she has held since September 2021. Her duties include case management, communication with families, monitoring progress of clients, assisting in the development of Individual Program Plans (IPP), and implementing services for clients. Claimant is one of the consumers on Ms. Reynold's case load. Claimant has been on Ms. Reynold's case load since November 2021. Ms. Reynolds was involved in the development of claimant's 2022 IPP and addendums thereafter.

8. Ms. Reynolds testified that claimant lives in her family home with her parents, sibling, and maternal grandparents, all of whom are considered to be natural supports. Ms. Reynolds stated that claimant's health is generally stable, but she needs assistance for activities of daily living. Claimant is a picky eater and needs to be fed completely, usually with her food in a "smoothie" form. Claimant is not toilet trained and wears diapers. She does not communicate, is non-verbal and uses limited sign language, and does not perform any of her personal care activities. Claimant also has difficulty sleeping at night, wanders or runs away at any given opportunity, had daily emotional outbursts, and gets upset and pulls her own hair or the hair of others. Claimant's parents report that claimant has no safety awareness, gets into things that can hurt her, and has recently learned to open doors, which concerns her parents.

9. Ms. Reynolds stated that claimant currently attends pre-school five days per week from Monday through Friday from 7:40 a.m. to 1:30 p.m. Claimant's father reported to Ms. Reynolds that claimant receives speech therapy (ST) services and physical therapy (PT) services at school, and she will soon receive occupational therapy (OT) services at school. The family has not yet provided Ms. Reynolds with a copy of the individual education plan (IEP) for claimant but has agreed to do so. Claimant's father reported on April 12, 2023, that claimant has been recently approved to have 20 hours per week of applied behavioral therapy (ABA) funded by the family's insurance. Claimant also receives OT services for one hour per week and is currently on a waiting list for ST services funded by insurance. In addition to these services, as of June 17, 2022, claimant has received in-home supportive services (IHSS) of 259 hours per month. Ms. Reynolds testified that claimant's maternal grandfather is the provider for those IHSS hours. Ms. Reynolds also stated that claimant currently receives 80 hours of respite funded by IRC, and claimant's maternal grandmother is the current respite provider. Ms. Reynolds explained that respite is a service that provides temporary and intermittent care in the family home to relieve the family from the demanding responsibility of care of the child.

10. Ms. Reynolds received an email from claimant's father requesting an increase of 40 respite hours per week for claimant because claimant needs "specialized supervision" because claimant has outbursts, wanders away, has sleeping issues, puts objects in her mouth, and is noncompliant during self-care tasks. Ms. Reynolds suggested to claimant's father that he speak to the family doctor regarding the sleeping issues, and to reach out to get ABA therapy for the behavioral issues. Ms. Reynolds discussed claimant's request for an increase in respite hours with her manager to discuss the request. The decision was made to deny the request and

claimant's father was notified of the decision by email and in the notice of action letter.

### **TESTIMONY OF GABRIELA HERNANDEZ**

11. Gabriela Hernandez is currently employed by IRC as a Program Manager, a position she has held for the past seven years. Her duties include direct oversight of Consumer Service Coordinators and coordination and assistance in the approval of services requested by the Consumer Service Coordinators on behalf of families. Ms. Hernandez is Ms. Reynold's Program Manager and was involved in the decision to deny claimant's request for an increase in respite hours.

12. Ms. Hernandez reviewed claimant's request for an increase of 40 hours per week in respite hours. She explained that in making the decision to fund this or any request, IRC must consider the reason that the service is being requested. In this case claimant requested the respite hour increase because of behavioral issues with claimant. She explained that respite hours are not provided to address behavioral issues, and ABA therapy is the service meant to address behavioral issues. When deciding whether to approve a request for increased respite hours, IRC looks at "the whole situation in the family unit," including the already existing daily schedule for the child, the services already in place, when IHSS is in the home and the provider for IHSS services.

13. Ms. Hernandez also discussed claimant's history of respite hour increases. She stated that IRC has already provided at least two increases in respite hours for claimant in the span of one-and-a-half years. Specifically, in May 2021 claimant was receiving 20 hours per month of respite, which was increased effective March 1, 2022, from 20 hours to 48 hours per month of respite. The respite hours were increased

again effective June 1, 2022, from 48 hours to 80 hours per month of respite. Ms. Hernandez explained that these respite hour increases happened during the COVID-19 pandemic when "not a lot of services were already in place." She also explained that IRC was aware of claimant's mother's mental health issues at the time these increases were made. At the time of the June 1, 2022, increase in respite hours, IRC was not aware of any IHSS hours being awarded to claimant, but Ms. Hernandez specifically discussed the need to obtain protective supervision from IHSS. She explained that protective supervision from IHSS is a higher level of childcare provided when the child has that need. Ms. Hernandez stressed that IRC is not responsible for funding 24-hour childcare. Also, it is noted that claimant's maternal grandmother is the respite provider, and the maternal grandfather is the IHSS provider, but the family can add additional care providers for either IHSS or respite hours if needed.

14. Ms. Hernandez explained that IRC made the decision to deny claimant's request for an additional 40 hours per month of respite because there were no significant changes from the last increase in respite hours for claimant, and because the reason for the request was behavioral issues, as noted. Respite does not address behavioral issues, but instead is used to provide a temporary or intermittent break for the family in caring for the child. Behavioral issues are addressed by ABA therapy. Additionally, Ms. Hernandez calculated the number of hours claimant has in a month for unpaid services, which is only 6.66 hours per day including time for sleeping. Specifically, she calculated 720 hours for a 30-day month (24 hours times 30), of those 720 hours 259 hours are for IHSS services, respite is 80 hours, claimant is at school for 113 hours, she receives 4 hours per month of OT services, and has been approved to receive 64 hours per month of ABA services. As a result, only 200 hours remain in the month with no paid services, which equates to only 6.66 hours per day that claimant is not receiving services. Ms. Hernandez stated that 6.66 hours per day is a very low

number of hours that the parents must care for their five-year-old child. As a result, IRC denied the request to increase respite hours for claimant.

## **Claimant's Evidence**

15. Claimant's father testified on behalf of claimant. He stated that in addition to claimant, he and his wife have a six-year-old son, who lives in the family home along with the claimant's father and mother, and the maternal grandparents. Claimant's mother does not work at all, and on August 24, 2020, claimant's mother was diagnosed with depression and anxiety. Claimant's father provided medical records related to claimant's mother's diagnosis of depression and anxiety. He stated that the reason claimant is requesting more respite hours is "to help my wife with those types of conditions and to relax more." He stated that his mother-in-law takes care of claimant while he takes care of their son.

16. Claimant's father stated that he appreciates the services IRC provides to claimant, and those services have helped claimant.

## **LEGAL CONCLUSIONS**

### **The Burden and Standard of Proof**

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to receive funding for an additional 40 hours in respite care per month.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **The Lanterman Act**

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. . . .”

6. "Services and supports" are defined in Welfare and Institutions Code section 4512, subdivision (b):

"Services and supports for persons with developmental disabilities" means 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 independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements, . . . .

7. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

8. In order to be authorized, a service or support must be included in the consumer's individual program plan (IPP). (Welf. & Inst. Code, § 4512, subd. (b).) In implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

9. "Natural Supports" is defined in the Lanterman Act as "personal associations and relationships typically developed in the family and community that enhance or maintain the quality and security of life for people." (Welf. & Inst. Code, § 4512, subd. (e).)

10. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process is to consider the needs and preferences of the consumer and his or her family, "where appropriate." Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).) The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.)

12. "In-home respite services" are defined in the Lanterman Act as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client's own home, for a regional center client who resides with a family

member.” (Welf. & Inst. Code, § 4690.2, subd. (a).) Welfare and Institutions Code section 4690.2, subdivision (a), states that respite 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 in maintaining the client at home.
- (3) Relieve family members from the constantly demanding responsibility of caring for the clients.
- (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 family members.

13. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS. If the family is eligible for IHSS services, but has chosen not to pursue it, IRC cannot fund the requested services. Welfare and Institutions Code section 4659, subdivision (c), states as follows:

Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children’s Services, private insurance, or a health care service plan

when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

## **Evaluation**

14. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for funding for an additional 40 hours per month of respite care, and claimant did not meet that burden. The evidence established that claimant needs some assistance with behavioral issues, which are not respite care services. Claimant has received approval for 64 hours of ABA services per month. Respite services are not provided to address behavioral issues, but ABA services are. IRC has already taken into consideration the mental health issues of claimant's mother when providing the current level of respite care hours to claimant. Currently, there are only 6.66 hours per day that claimant is not receiving paid services. Given the natural supports in the home, this is not an unreasonable number of hours for the family to care for their five-year-old child. Claimant has not met her burden to demonstrate a need for any additional respite hours for claimant.

//

## **ORDER**

Claimant's appeal is denied.

DATE: May 1, 2023

DEBRA D. NYE-PERKINS  
Administrative Law Judge  
Office of Administrative Hearing

## **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.