

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency.

DDS No. CS0004158

OAH No. 2023040718

DECISION

Hearing Officer Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 14, 2023, from Sacramento, California.

Robin Black, Legal Services Manager for Alta California Regional Center (ACRC), represented ACRC.

Claimant's mother represented claimant.

Evidence was received, the record closed, and the matter submitted for decision on July 14, 2023.

ISSUE

The issue to be determined is whether ACRC shall restore claimant's unused respite hours/services for the period December 1, 2022, through April 7, 2023.

FACTUAL FINDINGS

Jurisdiction and Background

1. Claimant is a 12-year-old eligible for ACRC services and supports based on a diagnosis of Mild Autism, with substantial impairments in the areas of self-care, receptive/expressive language, self-direction, and capacity for independent living. Claimant lives at home with her adoptive mother (claimant's mother), and her biological 12-year-old brother and seven-year-old sister. Claimant's mother has an adult daughter who also lives with the family in an in-law unit, and an adult son.

2. According to claimant's 2022 Individual Program Plan (IPP), claimant would continue to live at home with her family, and ACRC's Service Coordinator would request ACRC funding for up to a maximum of 120 hours per quarter of Employer of Record (EOR) respite with Pacific Homecare through June 30, 2023. EOR respite is where an agency acts as an employer of record for the respite provider, as explained in detail below. Claimant's mother agreed to the EOR respite of 120 hours per quarter and authorized ACRC to purchase the service in the implementation of claimant's IPP. On October 6, 2022, claimant's mother signed the IPP, as did planning team members ACRC Service Coordinator Tamara Rosenfield, ACRC Client Service Manager Matthew Bollinger, and ACRC Participant Choice Specialist Cynthia Johnson. By signing the IPP, claimant's mother agreed with the services listed and authorized ACRC to purchase

those services to implement claimant's IPP. On October 11, 2022, Ms. Rosenfield placed a purchase of service (POS) for 120 hours per quarter of EOR respite effective October 11, 2022, through June 30, 2023, and placed a referral to respite provider Pacific Homecare.

3. On November 3, 2022, Ms. Rosenfield notified claimant's mother that the POS for Pacific Homecare for EOR was active. Ms. Rosenfield asked whether claimant's mother had been able to "connect" with Pacific Homecare to initiate respite services. Claimant's mother had not yet done so, as she had "inadvertently" let the POS expire for Pacific Homecare.

4. On or about February 8, 2023, claimant's mother withdrew her application for EOR respite with Pacific Homecare, stating "it has been very difficult, tedious and frustrating in trying to get through their process." Claimant's mother requested a referral for Premier Healthcare Services (now known as Aveanna Healthcare), a vendor listed on ACRC's website. On the same date, Ms. Rosenfield cancelled the POS for Pacific Homecare and placed a referral for Aveanna Healthcare (Aveanna). She cautioned claimant's mother that once she placed the referral, Aveanna would "reach out" to claimant's mother to set up the onboarding process for claimant's EOR respite worker, and "as a reminder the respite EOR workers are still employees of the vendor, and each vendor has their own set of requirements." On April 4, 2023, Ms. Rosenfield placed a POS for a maximum of 120 hours per quarter of EOR respite with Aveanna, approved to begin on April 7, 2023, and requested that the service be expedited.

5. On April 4, 2023, claimant's mother emailed Ms. Rosenfield:

If [claimant's] respite care is not approved until April 7, 2023, then how do we go back and recapture those hours that were lost during the registration process with Pacific Home Care? As I mentioned before, Pacific Home Care was chosen for [claimant] back in August 2021, as we were not given a list of vendors to choose from. The same occurred in September 2022, as she was automatically deferred back to Pacific Home Care instead of a vendor list being provided. Pacific Home Care purposely stalled the registration process due to their lack of due diligence and follow-up in regards to respite care services being provided through their agency. Therefore, we would like for respite care services for [claimant] to be approved as of December 1, 2022, instead of April 7, 2023.

6. On April 14, 2023, ACRC sent to claimant a Notice of Action. A mediation took place on May 10, 2023. Claimant's mother requested a Fair Hearing.

Notice of Action

7. On April 14, 2023, ACRC issued a Notice of Action (NOA) proposing to deny claimant's request "to pay [claimant] for respite services you claim were provided to [claimant] from December 1, 2022 to April 7, 2023, which you state were provided to [claimant] free of charge."

8. The reason for the proposed action was that "regional centers cannot pay clients or parents directly for respite services provided to clients." ACRC further explained that under an EOR respite (which claimant selected), regional centers can

only pay a Financial Management Service (FMS) agency which pays the respite provider after they have completed the hiring process. ACRC asserted it had no obligation to pay for respite services when claimant's mother chose to "unilaterally secure respite services for claimant before [her] chosen FMS agency hired [her] selected respite provider." Further, claimant did not provide evidence of claimant receiving respite services from December 1, 2022, through April 7, 2023. If so, claimant's mother "advised that those services were provided free of cost." Even if the services provided were not free, "the planning team never agreed in advance that ACRC would pay that individual, or that ACRC would reimburse [claimant] for any monies paid to an individual for in-home respite."

Fair Hearing Request

9. On May 10, 2023, claimant's mother filed a Fair Hearing Request for the following reasons: "Alta Regional reduced respite care for client 200 hours due to the difficult on boarding process with their recommended vendor. The client is asking the regional center to restore 120 of those respite hours." This hearing followed.

Claimant's Evidence

MOTHER'S TESTIMONY

10. Claimant's mother asserted she did not have a choice when she was referred to Pacific Homecare. When she began onboarding with Pacific Homecare, she had problems finding a respite care worker because the worker had to live outside of the home and needed to be fully vaccinated for Covid-19. She was "elated" when she learned that a family member who lived in the household could qualify as a respite worker. Claimant's mother's adult son agreed to be a respite worker, but he had no idea that the onboarding process required him to become an employee of Pacific

Homecare. Another issue was whether her son was fully vaccinated, and he did not want to provide Pacific Homecare with his medical records. Her son also submitted an expired driver's license which Pacific Homecare did not accept. Her son eventually withdrew his application because he did not want to be an employee of Pacific Homecare.

11. Claimant's mother then asked her adult daughter to become a respite worker because she has supported claimant's mother and "never required to be paid" for her caregiving services to claimant. On January 20, 2023, her daughter uploaded the required documents to Pacific Homecare. Her daughter received a letter from Pacific Homecare informing her that she was not qualified with just two Covid-19 vaccinations. Claimant's mother asserted she had been "given the runaround" and that Pacific Homecare was "stalling" the onboarding process. Her daughter also did not want to be an employee of Pacific Homecare, as she had a full-time job in another profession. Her daughter was only trying to help her mother as a courtesy.

12. Claimant's mother never questioned why she was referred to Pacific Homecare. She trusted ACRC's knowledge and expertise, was unaware of the EOR respite process, and did not know there were other EOR agencies she could choose from. Claimant finally onboarded with Aveanna, who have been "wonderful and responsive."

13. Claimant's mother asked Ms. Rosenfield whether the previously approved 120 hours per quarter of respite hours would be "lost." Ms. Rosenfield assured claimant's mother they would not be lost. Claimant's mother "was never asking for reimbursement or payment," rather she wanted to "[recapture] the hours not used." Claimant's mother later spoke to ACRC's Client Services Manager Matthew Bollinger. Mr. Bollinger informed claimant's mother that ACRC would not be restoring those

hours. Claimant's mother felt ACRC was treating her like she was asking for money that she was not entitled to, and asserted it was not her fault that Pacific Homecare, an agency that was not of her choosing, delayed the onboarding process. Claimant's mother did not want claimant's record to reflect that she was asking for reimbursement. She was aware she could not receive reimbursement for services not provided, and she did not expect it.

14. Claimant's mother believes claimant's rights were violated because she was not given any information or support at the beginning of the EOR respite process, and she was directed to one EOR agency. That agency was "difficult to onboard with." She questioned why respite workers needed to be onboarded as employees. Claimant's mother requested that the NOA be stricken from claimant's record because "it states something not true that [she] did not say." She conceded that she misunderstood what Ms. Rosenfield stated in October 2022 about respite hours not being lost. She took issue with Mr. Bollinger "taking over" on April 4, 2023. She asserted that all he had to say was "you misunderstood," rather than implying she was asking for payment she was not entitled to. Claimant's mother is happy now that claimant has a new EOR respite provider.

ACRC's Evidence

IN-HOME RESPITE SERVICE

15. In accordance with the ACRC's Procedures Manual, In-Home Respite Services offer intermittent or regularly scheduled temporary non-medical care and supervision necessary to provide parents with relief from the stress of caring for a family member with his or her care needs exceeding the normal care of a child of the same age. In-Home Respite Services are designed to assist family members in

maintaining the client at home, providing appropriate care and supervision to ensure the client's safety, relieving family members from the on-going responsibility of caring for the client, and attending to the client's basic self-help needs. In-Home Respite is provided through an In-Home Respite Agency, Employer of Record (EOR), or paid through a Financial Management Services (FMS) agency.

16. EOR respite is where an agency is contracted with for EOR respite services to act as an employer of record for the respite provider. The EOR agency is responsible for completing a background check and funding training for the provider to complete cardiopulmonary resuscitation and first aid. The EOR agency is responsible for hiring the respite provider as an employee assuming employer taxes and liabilities, which relieves the family of these responsibilities.

17. The number of respite hours authorized is determined during the planning team process and cannot exceed 120 hours per quarter unless the criteria for an exception are met. A client may be provided up to 120 hours if they require 24-hour care around-the-clock by family members due to a medical problem or other major medical condition, requires total care due to physical limitation or medical needs, is exhibiting severe challenging behaviors constituting a danger to him or herself, if there are two or more ACRC clients in the home, or if the client's medical care needs interfere with the primary caregiver's sleep.

18. EOR respite services are initiated after: (1) the ACRC Service Coordinator meets with the planning team to establish the need for respite and includes this objective in the IPP; (2) the planning team determines the number of respite hours needed; (3) the client's family member chooses a respite provider; (4) the service coordinator refers the respite provider to the EOR agency; (5) the EOR agency notifies the service coordinator when the respite provider is hired and ready for a POS; and (6)

the service coordinator submits a POS to their supervisor for the number of respite hours determined at the IPP meeting.

PACIFIC HOMECARE IN-HOME RESPITE ENROLLMENT PROCESS

19. Pacific Homecare's Program Design provides a 12-step procedure for onboarding EOR respite workers. First, the family selects Pacific Homecare as its respite agency and chooses to recruit its own respite worker who registers with Pacific Homecare or selects a respite worker from the agency's bank of providers. The respite worker undergoes a background check, attends cardiopulmonary resuscitation and first aid training prior to employment, and becomes an employee of Pacific Homecare. The Service Coordinator completes a POS. When Pacific Homecare receives authorization, the family and the respite worker may begin to use their respite hours. Respite workers submit monthly timesheets directly to Pacific Homecare, who pays the respite worker monthly. Pacific Homecare then bills the regional center monthly for all consumers under its care.

AVEANNA'S IN-HOME RESPITE ENROLLMENT PROCESS

20. Aveanna's Program Design also sets forth the onboarding process for EOR respite workers. Once Aveanna has received a referral from ACRC and a respite worker has been identified by the family, Aveanna will provide the family with an employee welcome packet and application. The application packet includes an employment application, Form W-4, Form I-9, criminal background check consent form, reporting of child, adult and elderly abuse form, and HIPPA. It will also include any other forms required by ACRC. Respite workers are also required to provide either a passport or both a social security card and second form of photo identification.

TESTIMONY OF ACRC SERVICE COORDINATOR TAMARA ROSENFELD

21. Ms. Rosenfield is an ACRC Service Coordinator in the Children's Unit. She supports clients with access to services in the community. In March 2022, claimant was placed on Ms. Rosenfield's caseload. Ms. Rosenfield is a member of claimant's planning team.

22. Ms. Rosenfield provided a chronology of events in claimant's case based on ACRC's Consumer Identification Notes. The notes are dated from March 13, 2020, through June 6, 2023. Specifically, Ms. Rosenfield confirmed that an IPP meeting was held in October 2022, when claimant's respite hours were increased from 90 to 120 hours per quarter. She identified Pacific Homecare as the EOR respite agency. Claimant could not access her hours until a respite worker was hired by the EOR respite agency.

23. Ms. Rosenfield explained that EOR respite is where a family identifies a respite worker, who can be a family member or a friend. Ms. Rosenfield places a referral to a respite EOR agency once the respite worker is identified, then the respite worker will "onboard" them. In order to get paid by ACRC, the respite worker must be onboarded or hired. Onboarding is the same thing as being hired. In the past, prior to the Covid-19 pandemic, the EOR respite worker could not live in the home. "Covid changed things," families are now allowed more flexibility to receive a break in care, and an EOR respite worker can live in the home provided they are not the primary caregiver. At the time of the October 2022 IPP, Ms. Rosenfield "made a change to purchase the increase in respite hours and placed a new referral because claimant's mother had not made contact with Pacific Homecare." Ms. Rosenfield stressed that claimant could not use EOR respite unless claimant had a respite worker hired with the vendor. Claimant's mother spoke about having family members be respite workers, but she was not sure they would be a "good fit."

24. Claimant's mother contacted Ms. Rosenfield on November 3, 2022, regarding her difficulties with Pacific Homecare. Claimant's mother's son did not want to sign a waiver regarding his health information and subsequently withdrew his application as a respite worker. Claimant's mother then wanted her daughter to onboard and Pacific Homecare "reached out" to her. Claimant's mother then informed Ms. Rosenfield that she let the POS expire for Pacific Homecare. However, Ms. Rosenfield confirmed that the POS was still active.

25. Regarding the unused respite hours, Ms. Rosenfield assured claimant's mother that she would still have access to the 120 hours per quarter. However, Ms. Rosenfield told claimant's mother if she did not use those hours, she would lose them. Claimant's mother became upset during that conversation and was under the impression that claimant would not get those respite hours at all. Ms. Rosenfield believed it was a misunderstanding on claimant's mother's part regarding how respite hours were allotted.

26. In January 2023, claimant's mother requested a referral to another vendor, Aveanna, due to her difficulties with Pacific Homecare. She did not request a list of other providers. Ms. Rosenfield cancelled the POS in place at the time and placed it with Aveanna. Ms. Rosenfield prepared an IPP Addendum reflecting the respite vendor change on February 9, 2023. She did not hear from claimant's mother until April 3, 2023, when she informed Ms. Rosenfield that it took Aveanna approximately a month and a half to hire respite workers for claimant. Ms. Rosenfield expedited the POS.

27. Claimant's mother then asked for unused respite dating back to December 1, 2022. Ms. Rosenfield forwarded the request to Mr. Bollinger, as Ms. Rosenfield was not authorized to add hours on to the existing purchase. Mr. Bollinger

followed up with claimant's mother and denied the request. Claimant's mother had requested the respite hours running from December 1, 2022, through April 7, 2023. Claimant's mother did not provide a reason why she selected this date range.

28. After the denial, ACRC prepared the NOA to deny the request. Ms. Rosenfield explained that the NOA is a legal document that is sent to the family.

29. Ms. Rosenfield believes she took all the necessary steps to provide claimant with EOR service. She followed up with emails in a timely manner and offered claimant's mother support when needed. She does not believe that Pacific Homecare deliberately delayed services.

TESTIMONY OF ACRC CLIENT SERVICES MANAGER MATTHEW BOLLINGER

30. Mr. Bollinger has been the ACRC Client Services Manager in the Children's Unit since November 2021. His responsibilities are to manage a unit of 17 service coordinators who carry 75 to 100 cases each. There are 1,400 children that he supports in his unit. He is Ms. Rosenfield's manager.

31. Mr. Bollinger explained the reason for denying claimant's request for the unused respite hours dating back to December 1, 2022. ACRC had an active POS with Pacific Homecare. Claimant's mother wanted ACRC to backdate the POS for Aveanna. She was asking ACRC to take approximately one quarter's worth of respite hours and add it to the respite hours claimant was already receiving. There were no providers in December 2022 that were hired by any EOR respite agency. An EOR respite agency (Aveanna) was ultimately hired at the end of March 2023, or early April 2023. An expedited POS for Aveanna occurred in one week, when the process usually takes two weeks.

32. Mr. Bollinger opined on whether Pacific Homecare unreasonably delayed respite services. He answered in the negative, as the earliest respite workers could be onboarded was two to three weeks after placement of the POS. He stated that it is the responsibility of respite workers to complete everything timely for claimant to receive respite sooner.

Analysis

33. The evidence established that, in accordance with claimant's October 2022 IPP, ACRC was to place a POS for 120 hours per quarter of EOR respite, which became effective on October 11, 2022, through June 30, 2023. Due to difficulties with onboarding respite workers with Pacific Homecare, claimant did not use her respite hours until April 4, 2023, when Ms. Rosenfield placed a POS for a maximum of 120 hours per quarter of EOR respite with Aveanna, approved to begin on April 7, 2023. At hearing, claimant's mother did not dispute ACRC's denial of her request for the EOR respite hours from December 1, 2022, through April 7, 2023. Rather, she misunderstood that respite hours approved for Pacific Homecare could not be added on to claimant's respite hours with Aveanna.

34. Claimant's mother wants the NOA to be stricken or withdrawn. However, she provided no legal authority by which a regional center may withdraw its NOA, or jurisdiction for the ALJ to strike the NOA. Thus, this request cannot be considered.

LEGAL CONCLUSIONS

1. An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, §§ 4700 through 4716.) Claimant

requested a fair hearing to appeal ACRC's denial of claimant's claim for unused respite hours/services retroactive from December 1, 2022, through April 7, 2023. The burden is on claimant to establish entitlement to the funding/hours. (*See Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must provide her case by a preponderance of the evidence. (Evid. Code, § 115.)

2. Pursuant to the Lanterman Act, regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . This term shall include intellectual disability, cerebral palsy, epilepsy, and autism." As set forth in the Factual Findings, claimant is eligible for regional center services based on a diagnosis of autism.

3. Through the Lanterman Act, the Legislature created a comprehensive scheme to provide "an array of services and supports . . . 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 and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) The purpose of the provisions of the Lanterman Act are: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750-4751; see *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. The IPP is centered on the individual and based on the preferences of the individual and family. The provision of services to consumers and their families must be effective in meeting the goals stated in the IPP, reflect the consumer's preferences, and be a cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).) As set forth in the Factual Findings, claimant's 2022 IPP set forth, among other things, that ACRC would provide funding for EOR respite in the amount of 120 hours per quarter with Pacific Homecare. Claimant agreed with the service and authorized ACRC to purchase the services to implement her IPP.

5. Welfare and Institutions Code section 4690.2, subdivision (a), defines "In-home respite services" 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.

The services are designed to assist family members in maintaining the client at home, providing appropriate care and supervision to the client when the family is not at home, relieving family members from their constant responsibilities, and attending to the client's basic self-care needs, activities of daily living, and usual daily routines.

6. California Code of Regulations, title 17, section 50612, sets forth the regional center POS requirements:

(a) A [POS] authorization shall be obtained from the regional center for all services purchased out of center funds ...

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider ...

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of the service; and

(C) Where the regional center determined that the service was necessary and appropriate.

7. As set forth in the Factual Findings claimant's mother wanted ACRC to backdate the POS for Aveanna, adding it to the respite hours that claimant was already receiving. To do so, ACRC had to comply with California Code of Regulations, title 17, section 50612, in that for a retroactive authorization to be allowed, the service had to be an emergency service rendered by a vendored service provider, among other things. Here, there were no providers in December 2022 that were hired by any EOR respite agency. Thus, no service, specifically emergency service, was provided. Therefore, ACRC is precluded from allowing any retroactive authorization and claimant's request was properly denied.

8. Claimant failed to establish by a preponderance of the evidence cause to grant her appeal of ACRC's denial of her request for unused respite hours/services retroactive to December 1, 2022, through April 7, 2023, to be added to the respite hours claimant was already receiving.

ORDER

1. Claimant's appeal of Alta California Regional Center's denial of claimant's request to restore her unused respite hours/services for the period December 1, 2022, through April 7, 2023, is DENIED.

DATE: July 27, 2023

DANETTE C. BROWN

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.