

**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. 2023050724

DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 20, 2023, by videoconference.

Tami Summerville, Appeals Manager, represented the South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant was represented by his father and aunt. (Titles are used to protect confidentiality.)

The matter was submitted for decision on June 20, 2023.

ISSUE

Should Claimant's receive the services of a Personal Assistant (PA) for 135 hours per month?

Should Claimant's PA hours be reduced from 100 hours per month to 75 hours per month?

SUMMARY

Claimant requested an increase in his PA hours from 100 hours per month to 135 hours per month or more. After months of discussion with SCLARC, the request was denied and SCLARC instead reduced his PA hours to 75 hours per month. SCLARC contends that the combination of 75 hours per month of PA, 30 hours a month of in-home respite and generic resources such as public school, In-Home Support Services (IHSS) and Applied Behavior Analysis (ABA) meet Claimant's needs when typical parental responsibility for care and supervision are considered. For the reasons set forth below, Claimant's request to increase his PA hours is denied and SCLARC's reduction in PA hours is disallowed. Claimant shall continue to be provided 100 PA hours each month.

FACTUAL FINDINGS

1. Claimant is an almost seven-year-old boy eligible for SCLARC's service under the qualifying diagnoses of Autism. Claimant is non-verbal, uses an augmentative communication device and has maladaptive behaviors including

elopement, aggression, no understanding of danger and difficulty sleeping. Claimant needs assistance with all aspects of daily living.

2. Claimant lives with his father and his three older siblings. Claimant's father, his sole parent, works outside the home as a heavy equipment operator for a railroad company. He is the sole provider for the family.

3. Claimant attends a public school and pursuant to his Individualized Education Program (IEP), attends a special day class and is accompanied by two paraeducators: a classroom aide and an assigned one-to-one aide. A functional behavioral assessment (FBA) was recently completed and a behavior plan will be developed for Claimant at school. Claimant is transported to school by school bus and is accompanied by a one-to-one aide on the school bus. The school bus picks Claimant up at approximately 8:00 a.m. Claimant's IHSS worker waits with him for the bus. Claimant attends school until 2:30 p.m.

4. Claimant's father leaves home at 5:00 a.m. each workday and returns home in time to meet Claimant's school bus in the afternoon and participate in ABA sessions from 3:00 pm to 5:00 p.m. in the home four days per week. After the ABA sessions, Claimant, his father, and his personal assistant go on outings in the community. The outings range from going out to eat, to trips to the park, the store and regular trips to Disneyland. In addition to community integration, father hopes to tire Claimant out so Claimant sleeps at night. Claimant does not sleep well and is up and down during the night. Claimant's IHSS worker stays with him at night to prevent elopement and so that father can sleep and safely operate heavy equipment during his workdays.

5. Claimant's father, aunt and family friend all testified about the family's need for support with Claimant's care and the need for two people to be with Claimant due to his activity level, elopement and other behavior challenges. Claimant's father has several work related injuries which impact his knees and shoulders and will require surgery. Claimant's father sometimes struggles with Claimant's care due to his own physical limitations.

6. Claimant receives 200 hours per month of IHSS hours, 30 hours per month of in-home respite, eight hours per week of ABA in-home therapy and 100 hours per month of PA.

7. Claimant has received 100 hours per month of PA hours since at least some time in 2022. SCLARC Program Manager Albert Armenta was not able to give an exact date. According to Armenta the 100 hours of PA were in place pending Claimant's application for IHSS hours and were to be discontinued at the end of 2022. Neither the IPP (Exhibit 2) nor any evidence in the record documents the 100 hours of PA time or that the purpose for the 100 hours of PA time was pending an IHSS application. Claimant's father has had an ongoing discussion with SCLARC including Claimant's service coordinator and Program Manager Albert Armenta about his request for 135 or more PA hours per month. According to Mr. Armenta, he was willing to recommend and advocate to the SCLARC funding committee that Claimant receive 125 hours per month of PA. However, when Claimant's father insisted on his requested 135 hours per month, Armenta made no recommendation.

8. On January 23, 2023, SCLARC sent Claimant a Notice of Proposed Action (NOPA) notifying Claimant that his request for 135 hours of PA hours had been denied but was approved for 75 hours per month of PA hours (a 25 hour per month

reduction). SCLARC did not send a NOPA separately addressing its proposed reduction in PA hours.

9. A new Individual Program Plan (IPP) was developed at a recent IPP meeting but has not yet been reduced to writing or signed by the parties. The current signed IPP dated June 15, 2021, also the initial IPP, was in place at the time Claimant made his request for an increase of 135 or more PA hours per month. The IPP does not list Claimant's services and supports.

10. SCLARC takes the position that Claimant has adequate resources to care for Claimant when generic resources (IHSS, ABA and public school) are considered with Claimant's 30 hours per month of IHSS and its proposed reduced 75 hours per month of PA. Furthermore, SCLARC asserts that Claimant's father bears the bulk of the responsibility for his care as "typical parental responsibility" for a child under the age of 13.

11. SCLARC's Purchase of Service (POS) Policy provides that specialized supervision hours may be used when a "[c]hild has behavioral challenges that constitute a threat to the health and safety of the individual and safety or others or a threat to property therefore is unable to attend a regular child day care." (Ex. 4.)

12. SCLARC's POS policy also provides that for children, "Personal assistance services" are meant "to assist with bathing, grooming, dressing, toileting, meal preparation, feeding and protective supervision that is a typical responsibility for minor children. Personal assistance services for minor children will be considered on an exception basis when the needs of the consumer are of such a nature that it requires more than one person to provide the needed care. There may be exceptional circumstances as a result of the severity and/or intensity of the developmental

disability that may impact the family's ability to provided specialized care and supervision while maintaining the child in the family home. Eligibility and/or use of generic services such as In-Home Support Services must be explored and accessed where possible prior to SCLARC funding an exception." (Ex. 4.)

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established.

3. 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.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes 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.) In this case, Claimant has the burden of proving by a preponderance of the evidence that his PA hours should be increased above 100 hours per month because he is seeking funding for a new or increased service. Conversely, Service Agency bears the burden of proof regarding its reduction of PA hours from 100 hours per month to 75 hours per month because the service had been previously funded.

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Lanterman Act mandates that an “array of services and supports” should be established to meet the needs and choices of each person with developmental disabilities, and to support their integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

5. 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.) 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.” (Welf. & Inst. Code, § 4620.)

6. A consumer’s needs and goals, and the services and supports to address them are determined through the IPP process, described in Welfare and Institutions Code section 4512, subdivision (b), which states in part: “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 an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

7. Use of the IPP process to determine the services to meet the needs of a consumer is referenced in Code section 4646, subdivision (a): It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in Code section 4659. (Welf. & Inst. Code, § 4646.4, subd. (a).) Service Agency 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.)

9. Welfare and Institutions Code, section 4646.4, subdivision (a)(4), requires regional centers to consider a family's responsibility for providing "similar services and supports for a minor child without disabilities"

10. Welfare and Institutions Code section 4648, subdivision (a)(8), prohibits regional centers from supplanting the budget of any other agency which may provide the funding in question.

Disposition

11. Claimant is one of four children of a single father who has his own physical challenges. Claimant has significant behavior issues which are addressed in the public school setting and on a school bus by one or more aides. Father participates in ABA sessions with Claimant and takes every opportunity to take Claimant on outings and to integrate him into the community. Because Claimant elopes and does not sleep through the night, father has elected to use his IHSS hours at night and in the early morning so that he can sleep at night and leave for work by 5:00 a.m. Father works handling heavy equipment and machinery at a railroad yard. Mistakes from sleep deprivation and inattention can have devastating consequences including death and serious injury in his profession. PA hours are used when Claimant is taken out into the community because more than one adult is needed to care for and contain Claimant in a community setting because of his various maladaptive behaviors and elopement. Claimant's situation is precisely the type contemplated by the exception language in the Service Agency's purchase of service protocols.

12. Claimant has demonstrated by a preponderance of the evidence that the supports and services that are in place assist in meeting Claimant's basic needs and maintaining him in the family home. SCLARC has not established any rational basis for the reduction of PA hours especially in light of its Program Manager's testimony that he was willing to advocate to its funding committee for 125 hours per month of PA, but elected not to do so when Claimant persisted in his request for 135 hours per month.

13. Claimant failed to meet his burden of establishing by a preponderance of the evidence that given his daily schedule, and the constellation of services and supports in place from generic resources and SCLARC-funded resources provided to him, he requires in excess of 100 hours of PA per month.

14. SCLARC failed to meet its burden of establishing by a preponderance of the evidence that reduction of Claimant's PA hours from 100 per month to 75 per month was anything other than arbitrary, was appropriate or met Claimant's needs.

ORDER

1. Claimant's request for an increase in Personal Assistant hours from 100 hours per month to 135 hours per month is denied. The South Central Los Angeles Regional Center is not required to fund in excess of 100 hours per month of Personal Assistant hours for Claimant.

2. The South Central Los Angeles Regional Center's shall not reduce Claimant's Personal Assistant hours from 100 hours per month to 75 hours per month. The South Central Los Angeles Regional Center is required to fund Claimant's Personal Assistant for 100 hours per month.

3. Any future changes to Claimant's Personal Assistant hours must be made as part of an IPP team meeting.

DATE:

GLYNDA B. GOMEZ

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.