

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

**In the Matter of:**

**CLAIMANT**

**And**

**SAN DIEGO REGIONAL CENTER, Service Agency**

**OAH No. 2023090226**

**DDS No. CS0009293**

**DECISION**

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 19, 2023, at the San Diego Regional Center in San Diego, California.

Neil Kramer, Fair Hearings Manager, represented San Diego Regional Center (SDRC).

Claimant's mother represented claimant.

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

## **ISSUE**

Should SDRC fund an increase in respite hours to 145 hours per month (435 hours per quarter) for claimant?<sup>1</sup>

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a three-and-a-half-year-old regional center consumer 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 intellectual disability. Claimant has the chronic major medical condition of Angelman Syndrome (AS). Claimant resides at home with her single mother and has no other siblings.

2. As of May 2023, claimant was approved to receive 30 hours per month of respite services.

3. On an unknown date thereafter, claimant requested to increase the respite hours from 30 hours per month to 145 hours per month based on claimant's need for constant supervision and behavioral issues.

---

<sup>1</sup> At hearing, the parties agreed that this was the only issue for resolution. Another issue mentioned in the fair hearing request regarding speech therapy had been resolved prior to hearing.

4. In a letter dated June 28, 2023, SDRC served claimant with a Notice of Proposed Action denying the request to fund an increase of respite hours above the already funded 30 hours per month. The reason for the denial was as follows:

Based on the respite assessment completed on 5/23/23, 30 hours have been deemed appropriate to support her current needs. Planning team attempted to discuss any changes in care needs since the assessment was completed and parent declined to provide any further information. Generic resources, such as EPSDT, are also available to provide additional paid caregiver support that have not yet been accessed by family.

5. On September 1, 2023, claimant submitted a fair hearing request objecting to SDRC's decision, and this appeal followed.

6. On September 14, 2023, SDRC held an informal meeting with claimant's mother regarding the fair hearing request. Gabby Ohmstede, Director of Client Services at SDRC, sent an email to claimant's mother summarizing the informal meeting, as well as offering claimant's mother a "temporary/time-limited increase of LVN level respite hours – additional 90 hours/month for a total of 120 hours/month through 3/31/24," and noting that an Individual Program Plan (IPP) meeting would be held in February 2024 and respite needs would be assessed at that time, and that SDRC would require documentation showing that Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program through medical coverage has been pursued.

7. On September 15, 2023, claimant's mother responded to the email wherein she wrote, "I'd like to accept the offer of 120/month, but still move forward with the mediation/appeal for the full request of 145/month."

## **SDRC's Evidence**

8. SDRC presented documentary evidence and the testimony of one witness at the hearing, specifically Sarah Ramos. The following factual findings are based on the testimony of Ms. Ramos, as well as supporting documents received in evidence.

### **TESTIMONY OF SARAH RAMOS**

9. Sarah Ramos is employed by SDRC as a Program Manager, a position she has held since April 2023. Prior to this position she worked at SDRC as a Service Coordinator, a position she held for five years. Her duties as a program manager include oversight, training, and managing of a team of service coordinators, who support consumer families. Ms. Ramos supervises the service coordinator assigned to claimant's case.

10. Ms. Ramos explained that on May 23, 2023, the previous planning team assigned to claimant's case used the "respite needs assessment" tool to determine the appropriate number of respite hours for a consumer based upon their specific needs. The planning team assigns a score to eight different areas of: (1) age of individual; (2) medical needs; (3) activities of daily living; (4) mobility; (5) emotional/behavioral needs; (6) safety/supervision; (7) family situation; and (8) day program attendance. The higher score corresponds to a higher number of respite hours that would be appropriate. Ms. Ramos explained that the previous planning team for claimant was very generous in the scoring, for example some of the scores, such as activities of daily living and safety and supervision, should have been zero based on the fact that claimant is under the

age of five, but the team gave claimant a score of three for each of those areas because of her needs. The planning team also gave a higher score of seven for the area of family situation because claimant's mother is a single parent and claimant does not sleep. Based on these scores, the respite needs assessment tool recommended that claimant receive 30 hours per month of respite care. Ms. Ramos explained that SDRC does not always abide by the recommended respite hours from that tool and will take other factors into account to adjust the respite hours provided because each case is specific. SDRC based the 30 hours per month of respite hours claimant received on the respite needs assessment tool.

11. Claimant's mother requested an increase in respite hours from the previous planning team, which was denied. Then the case was transferred to Ms. Ramos. Ms. Ramos attempted to contact claimant's mother to discuss how the requested respite hours would be used, but she was not afforded the opportunity to do so because claimant's mother wanted to wait until a Notice of Proposed Action was issued so she could appeal.

After the appeal was filed, an informal meeting was held with claimant's mother on September 14, 2023, during which Ms. Ramos obtained additional information regarding additional challenges claimant is facing, such as an increase in seizure activity that SDRC was not aware of. During that meeting Ms. Ramos discussed with claimant's mother how the requested respite hours were to be utilized, as well as generic resources such as EPSTD, which she explained is a service through Medi-Cal for children with medical needs providing up to 40 hours per week of private duty nursing care. As of now, claimant's mother has not attempted to obtain EPSDT services. Furthermore, Ms. Ramos also learned at the meeting that claimant is not yet accessing school services either. During the informal meeting, Ms. Ramos also learned

that the L.V.N. that provides the respite care to claimant is providing all 30 hours at one time once per month, meaning that the L.V.N. will stay with claimant for 30 hours straight and not spread those hours out throughout the month. Ms. Ramos stressed that claimant has high needs, and if SDRC had known this additional information SDRC would have increased the number of respite hours for claimant.

12. As a result of the information learned during the informal meeting, SDRC increased the number of respite hours for claimant from 30 hours per month to 120 hours per month until March 31, 2024. She explained that the increase in hours was for six months in order to allow claimant time to access the generic resources such as EPSDT and school services. SDRC is required to consider generic resources such as EPSDT and school services because SDRC is a payor of last resort. Ms. Ramos stated, and the document was provided, that SDRC created an IPP addendum signed on September 19, 2023, to reflect the increase in respite hours to 120 per month. She stated that since the increase in respite hours, SDRC has not received any documentation from claimant's mother on how the hours are being used.

13. Ms. Ramos stated that SDRC quadrupled the respite hours provided to claimant, but claimant seeks more respite hours. Ms. Ramos stated that the 120 respite hours is enough to meet claimant's needs, particularly until claimant is able to access other generic resources such as EPSDT. Ms. Ramos also stressed that respite hours are for the purpose of giving the caregiver a break in care and not for the purpose of providing the entirety of the family's childcare needs.

## **Testimony of Claimant's Mother**

14. Claimant's mother testified at the hearing and provided information regarding AS, a rare and severe neurological condition arising from the loss of

function of a gene on the 15<sup>th</sup> chromosome that results in profound developmental delays, problems with motor coordination and balance, difficulty sleeping, and epilepsy. Claimant's seizure disorder is difficult to treat, and she has challenging behaviors, such as self-harm and hyperactivity. Claimant's mother explained that children with AS, such as claimant, are nonverbal, and have profound intellectual disability. Claimant's mother testified extensively about the problems she experiences caring for her daughter, particularly because claimant's mother is a single mother with no family assistance.

15. Claimant explained that claimant needs 24-hour supervision seven days per week, and claimant's mother provides that supervision. Claimant may sleep six to seven hours per day, and many days does not sleep at all. As a result, claimant's mother is sleep deprived, which she described as a safety issue. Claimant's mother stated that she is currently taking full-time classes online to "increase her skills and education" so that she can have "a way to generate income" in a "way that will work with my lifestyle." Claimant's mother stated that she needs respite hours so that she can study, read, write research papers, and eventually have a job. Claimant's mother stated that she does receive In-home supportive services (IHSS) payments as claimant's caregiver, which averages seven to eight hours per day. Claimant's mother also testified that it is difficult to care for claimant when she is doing other things like cooking. Claimant's mother stated that she needs the increased respite hours from the currently provided 120 hours per month to 145 per month so that claimant's mother can go to school, work, go to the gym, run errands, and have a social life. She stated that the increase of those hours would help her to feel rested. Claimant's mother stated that she simply wants to advocate for her daughter.

16. Claimant's mother also testified that she has a baby-sitter who comes to her home for 10 hours per week, and that claimant started school two weeks ago at the Child Development Center in Solana Beach. Claimant attends school four days per week from Monday through Thursday, from 8:45 a.m. to 12:45 p.m.

## **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 respite care hours totaling 145 respite hours 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 Lanterman 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 Lanterman 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 Lanterman 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 4648, subdivision (a)(8) provides:

Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

14. Welfare and Institutions Code section 4659, subdivision (c), prohibits SDRC from purchasing services available from generic resources, such as EPSDT. If the family is eligible for generic services, but has chosen not to pursue it, SDRC 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**

15. 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 additional hours per month of respite care totaling 145 hours per month, and claimant did not meet that burden. The evidence established that claimant has high needs and claimant's mother needs assistance with caring for claimant, including her behavioral needs and her medical needs. However, claimant has not yet accessed the generic resource of EPSDT, which could provide up to 40 hours of nursing care for claimant per week. SDRC is precluded from funding such care when another agency would provide it pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8). Additionally, claimant just started school two weeks ago, providing a further assistance to claimant's mother. Given that SDRC has provided a temporary increase in respite hours for claimant to 120 per month, and the other generic resources available to claimant to address the challenging medical and other needs of claimant, claimant has not met her burden to demonstrate a need for any additional respite hours.

//

//

//

## **ORDER**

Claimant's appeal is denied.

DATE: October 31, 2023

DEBRA D. NYE-PERKINS

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.