

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

In the Matter of:

CLAIMANT

vs.

INLAND REGIONAL CENTER

DDS Case No. CS0011738

OAH No. 2024010385

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 2, 2024.

Hilberto Echeverria, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother appeared on behalf of claimant, who was not present.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on April 2, 2024.

ISSUE

Is claimant entitled to an increase in respite from 60 hours per month to 150 hours per month?

FACTUAL FINDINGS

Background

1. The following factual findings were derived from documentary evidence and the testimony of Ana Carrera, IRC consumer services coordinator, and Yvonne Navarro, IRC program manager.

2. Claimant is a 9-year-old girl who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder (autism). Claimant's mother informed IRC recently that claimant also has epilepsy.

3. Claimant lives in the family home. She has two siblings, aged 12 and 17. She attends school daily from approximately 7:45 a.m. to 2:45 p.m., and has a minimum day one day per week.¹ Claimant is in the fourth grade. Claimant exhibits some problematic behaviors, such as outbursts, when required to quickly change tasks or if her routine is interrupted. Claimant receives applied behavioral analysis services

¹ It was unclear exactly what claimant's school hours were because testimony differed between the witnesses, the calendar provided by claimant's mother, and the hours noted in IRC's position statement. As such, all times noted in this decision are approximations.

(ABA) a few times per week from 3:30 p.m. to 5:30 p.m., and receives speech therapy at least twice per week after school. Claimant receives 199 hours of in home supportive services (IHSS) and a relative is the provider. According to an addendum to claimant's Individual Program Plan (IPP), as of May 1, 2023, claimant was approved for a temporary increase in respite from 48 hours per month to 123 hours per month. The increase was because, at that time, claimant did not have the needed IHSS protective supervision hours and did not have ABA (both, of which, have since been put in place). The IPP addendum notified claimant that effective November 1, 2023, the respite hours would be reduced back to 48 hours.

4. In approximately November 2023, when the respite hours were to be reduced, claimant's mother requested respite in the amount of 150 hours per month due to her need to attend medical appointments and needing a break. IRC required claimant's mother to provide them with a calendar showing how she intends to use the respite hours. The calendar was in Spanish and an English translation was not provided. However, in looking at the calendar, it appeared generally that from 12:00 a.m. to 7:00 a.m. daily, claimant uses IHSS hours. Claimant is in school most of the day, until she receives ABA and/or speech therapy after school. The schedule indicates that claimant's mother would then use respite hours from the time claimant gets out of school or ABA/speech therapy until midnight daily, when the IHSS hours begin.

5. Following a review of that calendar, consideration of the extensive services and supports in place, consideration of the fact that parents are a natural support, and given the nature and purpose of respite being only a temporary break, IRC determined that claimant could receive 60 hours of respite and provided 15 hours of personal assistance services, effective December 1, 2023.

6. On November 13, 2023, IRC provided claimant with a notice of action, denying claimant's request for an increase in respite to 150 hours per month. The notice stated claimant lives with both parents, siblings, and her grandmother. Claimant attends school Monday through Friday and has both ABA and IHSS services. Respite services are intended for short, intermittent, breaks from providing care for claimant. As such, additional respite hours were not supported by the information provided.

7. On January 9, 2024, claimant's mother filed an appeal request on claimant's behalf, seeking to have claimant's respite hours increased from 60 hours per month to 150 hours per month. This hearing followed.

Claimant's Mother's Testimony

8. Claimant's mother testified at the hearing. The following is a summary of her testimony. Claimant's mother has three children, including claimant. Two of those children have autism, and one has learning problems. Only claimant is a regional center consumer. Claimant's mother has diabetes, and the condition has worsened. She needs the extra respite time requested to "take a break." Although claimant does have ABA, they do not always attend because the providers do not have sufficient staff. Claimant has many activities to attend, and claimant's mother has other children that have activities. Claimant's older brother has basketball and football. As a family, they like to participate in religious services, but claimant does not like to do that. They like to go out as a family, but sometimes there are places that have noise, and claimant does not like noise. When she takes claimant's brother to his therapy, she cannot take claimant with them. Claimant's mother does not want to use the IHSS hours for a break because those hours are used during the night as claimant "does not sleep like a normal child." Claimant's father needs to sleep so he can go to work. Claimant's niece is currently claimant's respite provider because she is a licensed nurse

and is good with claimant. Claimant requires a demanding level of care, and claimant's "family is different than other families."

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. 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.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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, normal lives. 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. 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.) 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.)

5. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. 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. Welfare and Institutions Code section 4690.2, subdivision (a), defines respite services as "*intermittent* or regularly scheduled *temporary* nonmedical care" for a consumer who resides with a family member. [Emphasis added.]

12. Respite services are designed to: assist family members in maintaining a consumer in the home; provide appropriate care and supervision to ensure the consumer's safety in the absence of family members; relieve family members from the constantly demanding responsibility of caring for the client; and tend to the consumer'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 the family members. (*Ibid.*)

13. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a

consumer or family meets the criteria of this coverage but chooses not to pursue this coverage.”

Evaluation

14. Claimant had the burden of proving that an increase in respite hours from the current 60 hours per month to 150 hours per month is necessary. Claimant did not meet her burden.

Respite services are services that are provided to assist a family in maintaining a developmentally disabled person in the home, by *temporarily* relieving a caregiver for *short* periods of time. Respite hours are not an unlimited bank of hours to dedicate to a consumer so that the consumer’s family can have around the clock care. Put another way, under the Lanterman Act, respite is not intended to be provided on a continuous long-term basis so that the caregivers can tend to other activities such as raising other children, maintaining full-time jobs, or attending events outside the home on a regular basis.

There has been no significant change in claimant’s level of care in the past year. Claimant spends approximately seven hours per day in school during the week and has approximately six hours per day of IHSS (199 hours per month divided by 30 days in a month). That is approximately 13 hours per weekday that claimant’s mother can tend to other tasks and have a break from claimant’s care. And, this is before the additional 60 hours per month – or two hours per day – of respite care. Thus, that is a total of approximately 15 hours per day that claimant’s mother has a break from claimant’s care, with slightly less on weekends. Notably, however, claimant’s mother is free to move around the IHSS or respite hours accordingly when her schedule demands. Claimant also has an additional 15 hours of personal assistance, which

claimant's mother may elect to use anytime, and schedule perhaps, on weekends when claimant is not in school. On this record, given the extensive services and supports in place, it is not unreasonable to expect claimant's parents (or other relatives such as claimant's grandmother or niece) to act as natural supports for the few remaining hours each day to assist in claimant's care.

On this record, to order additional respite hours would not be a cost-effective use of public resources or fiscally responsible. Accordingly, the request for additional respite hours must be denied.

ORDER

Claimant's appeal to increase her current 60 hours per month of respite to 150 hours per month of respite is denied. Claimant shall continue to receive 60 hours per month of respite.

DATE: April 16, 2024

KIMBERLY J. BELVEDERE

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.