

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

**In the Matter of the Appeal of:**

**CLAIMANT,**

**vs.**

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,**

**Service Agency.**

**DDS No. CS0012646**

**OAH No. 2024020474**

**DECISION**

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 16, 2024.

Claimant was represented by her older sister and her mother. The names of Claimant and her family members are not used in this decision to protect their privacy.

Tami Summerville, Appeals and Governmental Affairs Manager, represented the South Central Los Angeles Regional Center (SCLARC).

Ana Salazar provided Spanish interpreter services during the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on April 16, 2024.

## **ISSUE**

Whether SCLARC correctly determined that Claimant's respite care must be performed by a licensed vocational nurse.

## **EVIDENCE RELIED UPON**

Documents: SCLARC exhibits 1 through 4; Claimant's exhibits A and B. Testimony: Gala Fair; Christina Hernandez; Churchill Onuselogu; Claimant's sister; Claimant's mother.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. SCLARC determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500; unspecified statutory references are to this code.)

2. Claimant is a 20-year-old woman with a diagnosis of mild intellectual disability that qualifies her for Lanterman Act services and supports. Claimant also has diagnoses of Prader-Willi Syndrome, congenital malformation syndromes predominantly associated with short stature, diabetes, hypertension, and obstructive

sleep apnea. Claimant lives with her mother and two sisters. Claimant's older sister is Claimant's conservator and assists their mother with Claimant's personal and medical needs. Claimant also receives regular monitoring and care from her primary care physician, nutritionist, endocrinologist, ophthalmologist, pulmonologist, and psychiatrist.

3. For years, Claimant's services and supports have included funding from SCLARC for in-home respite to give Claimant's mother relief from the stress related to Claimant's care needs. Until shortly before this appeal, SCLARC funded 16 hours per month of in-home respite through Maxim Healthcare Respite Agency, with Claimant's older sister as the respite caregiver. Claimant's most recent IPP, dated August 3, 2023, states Claimant will continue to receive 16 hours per month of in-home respite services through that agency "in order to meet her level of care and supervision" through August 31, 2024. (Exhibit 2, p. A38.)

4. In October 2023, Claimant was assigned to a new Service Coordinator at SCLARC, who concluded that a nursing assessment was required to determine the appropriate level of respite care for Claimant. Crystal Howard, a Nurse Consultant for SCLARC, evaluated Claimant to make that determination. In a report dated December 29, 2023, Howard "[r]ecommend[ed] . . . consideration . . . be given to provide hours per month of skilled nursing Licensed Vocational Nurse (LVN) respite care to promote physical and emotional wellbeing of primary caregiver the Mother." (Exhibit 3, p. A57.) According to Howard, "[r]est time is needed by a caregiver that must administer prescribed medications, perform fingerstick blood glucose checks every 2 hours, monitor blood glucose levels as ordered and needed, and administer insulin subcutaneous injections for insulin dependent Diabetes management." (*Ibid.*) "Furthermore, to monitor consumer breathing while sleeping for apneic episodes that

will require apnea monitor and use of a CPAP [i.e., Continuous Positive Airway Pressure] machine with a history of Obstructive Sleep Apnea." (*Ibid.*)

5. Based on the assessment, SCLARC concluded that an LVN was required for Claimant's respite care services. SCLARC offered Claimant's family that level of respite care, but the family did not accept it and asked that Claimant's older sister, who is not an LVN, remain as Claimant's respite caregiver. On January 23, 2024, SCLARC issued a Notice of Proposed Action stating it was unable to grant the family's request for in-home respite hours performed by someone who was not an LVN. On February 14, 2024, Claimant's older sister and mother timely appealed the Notice of Proposed Action on Claimant's behalf.

## **Hearing**

### **SCLARC'S CASE**

6. SCLARC contends Claimant's medical care needs require LVN-level respite care, and a lower level of care is a threat to her health and safety. According to Gala Fair, the Lead Nurse Consultant at SCLARC, Claimant has a multitude of medical diagnoses; however, the nursing recommendation for LVN-level respite is based solely on the overall care and tasks related to Claimant's diagnosis of insulin-dependent diabetes. Claimant requires blood glucose monitoring using a fingerstick every two hours, and insulin injections as needed according to a sliding scale of different dosages that depend on Claimant's blood glucose levels and other factors. Blood glucose monitoring and insulin injections are not among the incidental medical services that a non-licensed respite provider may perform. Furthermore, the required frequency of the blood glucose monitoring means it will necessarily be required during respite care.

7. Christina Hernandez is Claimant's current Service Coordinator at SCLARC. She was assigned to Claimant's case on October 10, 2023. After speaking to her supervisor, Hernandez concluded Claimant needed a nursing assessment to determine the appropriate level of care for Claimant. This led to Howard's assessment recommending LVN-level respite care. Hernandez testified Claimant's older sister fully cooperated with the assessment process and is a strong advocate for Claimant.

8. Churchill Onuselogu is a Service Coordinator and leads a team of other Service Coordinators at SCLARC. Onuselogu approved the most recent IPP continuing respite care for Claimant through Maxim Healthcare Respite Agency. At the time of the approval, Claimant had a different Service Coordinator, and Claimant had not received a nursing assessment from SCLARC to determine the appropriate level of care for her. Following the assessment, Onuselogu agrees that LVN-level respite care is required for Claimant. Onuselogu is unaware of the reason why Claimant did not receive a nursing assessment earlier.

9. SCLARC does not dispute that Claimant's family has provided excellent care to Claimant; their dedication to Claimant is evident. SCLARC shares the family's goal of ensuring Claimant's wellbeing, and SCLARC must follow its regulations and policies to ensure Claimant's safety. According to SCLARC, those regulations and policies require LVN-level respite care. SCLARC remains willing to fund respite care for Claimant, but the funding must be for that level of care.

### **CLAIMANT'S CASE**

10. Claimant's family believes SCLARC's decision to change Claimant's respite care after so many years is unjust. The family provides excellent care to Claimant, who is most comfortable with her family members. Requiring LVN-level

respite care will be a significant disruption in the family's life. Furthermore, SCLARC personnel have visited Claimant every year and have never said anything before about Claimant needing LVN-level respite care, even though they knew Claimant requires blood glucose monitoring and insulin injections.

11. Claimant's older sister testified she started providing services as Claimant's respite caregiver in 2018. She checks Claimant's blood glucose and administers insulin according to the sliding scale and instructions from Claimant's endocrinologist. Claimant's older sister testified she is fully able to do so and ensure Claimant's wellbeing during respite and at all other times.

12. Furthermore, in August 2023, Luis Garcia, the SCLARC Service Coordinator for Claimant at the time, came to Claimant's house and said he could help Claimant get additional respite hours. But instead, SCLARC took away all of Claimant's respite hours. According to Claimant's older sister, the family has not received respite funding for Claimant since October 2023, and SCLARC also eliminated previously-funded personal assistant hours.

13. Claimant's mother testified Claimant's older sister has been a strong and responsible advocate and caregiver for Claimant. The family wants the best for Claimant, and they believe the best is for Claimant's respite care not to change.

14. In support of Claimant's appeal, Claimant presented letters from two of Claimant's physicians. Jeffrey Reiss, MD, wrote that Claimant's older sister "has been a very strong advocate for [Claimant] [and] she also has been administering multiple insulin injections on a daily basis for 8 years." (Exhibit A, p. B1.) Clement Chung, MD, Claimant's endocrinologist, wrote that Claimant's older sister "has been one of the strongest advocates I have ever met in my career. She cares for [Claimant] diligently by

administering multiple insulin injections and checking blood glucose daily, administer[ing] vitamin D daily, applying [a] transdermal estrogen patch biweekly, and [administering] Medroxyprogesterone on the first 10 days of each month for her hypogonadism. She also administers Mounjaro injection weekly and phentermine daily for her weight management.” (Exhibit B, p. B2.) Both physicians requested that Claimant be able to continue to receive the care she needs.

### **ANALYSIS OF EVIDENCE**

15. The evidence does not establish a compelling health or safety need for Claimant to have LVN-level respite for her diabetes care. Outside of hospitals and other licensed healthcare facilities, “insulin is normally administered by laypersons according to a physician’s directions, most often by the diabetic persons themselves or by friends or family members.” (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 576 (*Torlakson*)). A responsible layperson is fully capable of testing and injecting Claimant according to her physician’s directions, and Claimant’s older sister has proven herself to be an exceptionally responsible layperson in caring for Claimant. Furthermore, Claimant’s blood glucose monitoring and sliding scale for insulin administration were not proven to be too unusual or too difficult for a layperson to follow. Moreover, Claimant needs blood glucose tests and insulin injections all the time, not just during respite, and Claimant’s older sister has routinely tested and injected Claimant successfully for years, both during respite hours and otherwise. Shifting that responsibility to an LVN during respite is unlikely to have a significant health or safety impact.

16. But the absence of a compelling health and safety need for Claimant to have LVN-level respite care does not end the case. There is still the question to consider as to whether some provision of law nonetheless requires an LVN to provide

Claimant's respite care. As described below, the Lanterman Act includes provisions that limit the incidental medical services that an in-home respite worker who is not a licensed health professional may perform, and Claimant's diabetes care needs are not among the allowed services. Those provisions compel the conclusion that SCLARC was correct in determining that Claimant's respite care must be provided by an LVN.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under the fair hearing and appeal procedures in the Act. (§ 4706, subd. (a).) "'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." (§ 4512, subd. (b).) The determination of Claimant's services and supports "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." (*Ibid.*; see also § 4646, subd. (a).)

2. One such service and support is in-home respite, which is "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." (§ 4690.2, subd. (a).) In-home respite is designed to assist family members in maintaining a disabled person at home, provide appropriate care and supervision to ensure safety in family members' absence, relieve family members from the constant demands of caring for the person, and attend to the person's basic self-help needs and other activities of daily living. (§ 4690.2, subd. (a)(1)-(4).) SCLARC funds and monitors respite from vendors to ensure the safety and satisfaction of consumers. (See § 4697, subd. (a)(3).)

3. While in-home respite is "nonmedical care and supervision" (§ 4690.2, subd. (a)), a properly trained in-home respite worker who is not a licensed health care professional may still perform some "incidental medical services for consumers of regional centers with stable conditions . . . ." (§ 4686, subd. (a).) But those incidental medical services for consumers "shall be limited to the following: [¶] (1) Colostomy and ileostomy: changing bags and cleaning stoma. [¶] (2) Urinary catheter: emptying and changing bags and care of catheter site. [¶] (3) Gastrostomy: feeding, hydration, cleaning stoma, and adding medication per physician's or nurse practitioner's orders for the routine medication of patients with stable conditions." (*Ibid.*)

## **Burden of Proof**

4. SCLARC changed Claimant's long-standing respite arrangement, determining that an LVN was required for Claimant's respite care. As the party that changed the status quo, SCLARC bears the burden of proving the change was justified. (See Evid. Code, § 500; *In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) The standard of proof is proof by a preponderance of the evidence (Evid. Code, § 115), which means "'evidence that has more convincing force than that opposed to

it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Analysis**

5. The Lanterman Act prohibits SCLARC from continuing to fund in-home respite for Claimant by a person who is not a licensed health care professional where the respite work includes Claimant’s diabetes care. In-home respite is “nonmedical care and supervision” (§ 4690.2, subd. (a)), and the Lanterman Act limits the “incidental medical services” of an in-home respite worker who is not a licensed health care professional to routine care of a colostomy, ileostomy, urinary catheter, or gastrostomy. (§ 4686, subd. (a).) Fingerstick blood glucose testing and insulin injections are not among the few allowed “incidental medical services.” (*Ibid.*) SCLARC therefore may not continue to authorize in-home respite for Claimant by a layperson, including Claimant’s older sister, where that respite work includes Claimant’s fingerstick blood glucose testing and insulin injections. This is true even though Claimant’s older sister continues to provide exceptional care to Claimant, and she and other family members may test Claimant’s blood glucose level and administer insulin injections when they are not acting as respite caregivers.

6. In *Torlakson*, the court held that California law permits trained, unlicensed school personnel to administer insulin to diabetic students in accordance with written statements of students’ treating physicians, with parental consent. (*Torlakson, supra*, 57 Cal.4th at p. 591.) But the Lanterman Act requires a different result for unlicensed in-home respite workers, by expressly limiting the allowed incidental medical services of an in-home respite worker who is not a licensed health care professional. (§ 4686, subd. (a).) Claimant’s diabetes care needs are not among the

allowed incidental medical services. (*Ibid.*) Therefore, SCLARC is correct that LVN-level respite care is required for Claimant.

7. According to Claimant's family, they have not received respite funding for Claimant since October 2023, even though Claimant's IPP authorized respite care through Maxim Healthcare Respite Agency until August 2024. But SCLARC had an obligation to fund those services as provided by Claimant's older sister while this appeal was pending. Subject to exceptions not applicable here, "if an appeal request is postmarked or received by the department or by another agency designated by the department to receive the appeal request, no later than 30 days after receipt of the notice of the proposed action sent pursuant to subdivision (a) of Section 4710, but no later than the effective date of the action, services that are being provided pursuant to a recipient's individual program plan shall be continued during the appeals process up to and including the 10th day after receipt of any of the following: [¶] . . . [¶] (3) Receipt by the recipient of the final administrative hearing decision of the hearing officer or state agency pursuant to subdivision (a), (d), or (e) of Section 4712.5." (§ 4715, subd. (a).) Claimant's appeal met these requirements, and SCLARC's Notice of Proposed Action was not issued until January 2024, several months after SCLARC stopped funding respite care. Therefore, the order below requires SCLARC to pay for Claimant's respite care as provided by Claimant's older sister from October 2023 through the date of Claimant's receipt of this decision.

8. Claimant's older sister also testified regarding a termination of funding for personal assistant hours. There is no notice of proposed action or other documentation in the record about that issue, and the evidence presented is insufficient to address it. Nothing in this decision prevents a separate appeal as to that issue.

## **ORDER**

SCLARC shall reimburse Claimant for respite services provided pursuant to Claimant's IPP by Claimant's older sister through the date of Claimant's receipt of this decision. Claimant's appeal is otherwise denied.

DATE:

THOMAS HELLER

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.