

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0013651

OAH No. 2024030652

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 6, 2024.

Claimant's adoptive mother (called adoptive parent or Grandmother in this decision) represented claimant. Claimant and family members' names are omitted to protect claimant's privacy.

Hilberto Echeverria, Jr., Fair Hearings Representative, represented Inland Regional Center (called regional center in this decision).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 6, 2024.

ISSUE

Is the regional center required to increase funding for respite services to the requested 132 hours per month?

EVIDENCE RELIED UPON

This decision is based on the regional center's documentary evidence, Exhibits 1 through 11, and the testimony at hearing of regional center employees and Grandmother. Claimant did not offer any documentary evidence.

DECISION SUMMARY

Claimant appealed the regional center's denial of her request to increase respite service to 132 hours per month. The regional center denied the request and instead approved an increase in respite to 48 hours per month with a temporary increase to 60 hours per month through the summer until claimant returns to school. The evidence showed the regional center's decision to be appropriate. For the reasons stated below, claimant's request to increase respite is denied and the regional center's decision is affirmed.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The regional center determines eligibility and provides funding for regional center services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.; undesignated statutory references are to this code.)
2. Claimant is a five-year-old female who is eligible and receives regional center services due to a diagnosis of autism spectrum disorder.
3. On March 11, 2024, regional center issued a Notice of Action (NOA) denying claimant's request to increase respite service funding to 132 hours per month.
4. Claimant's representative submitted an appeal request form to the Department of Developmental Services on March 19, 2024. This hearing followed.

Claimant's Background and Family

5. Claimant lives with her adoptive parents, who are also her paternal grandparents. In the Individual Program Plan (IPP) dated April 16, 2024, claimant is described as "an adorable girl who enjoys being with family and likes playing with dolls and stuffed animals. [She] enjoys fragrant body lotions, . . . and finds pride in herself smelling good." She is the only child living in the home. Her biological father is involved and visits when adoptive parents are present. She is in contact with her biological mother, but visits are "not consistent." Claimant's adoptive father (called

Grandfather in this decision) works full-time, and Grandmother stays home to care for claimant.

6. The family receives adoption financial assistance of \$3,000 per month and in-home supportive services (IHSS) of 230 hours per month. Claimant's Grandmother is the IHSS provider. Claimant also receives applied behavioral analysis services (ABA) through the family's primary health insurance. The regional center has authorized up to \$100 per month reimbursement for social recreational activities. Assessments are currently pending at the regional center for occupational therapy, physical therapy, and speech therapy.

7. Grandmother testified that claimant was developmentally exposed to drugs. She is mostly nonverbal and is not toilet trained. She exhibits challenging behaviors, including anger, screaming, pushing objects, hitting, and self-pinching and head banging. Other caregivers have difficulty changing her diapers because she fights them. She climbs objects and runs away from caregivers. She requires constant one-to-one supervision for her safety. Grandmother does her IHSS hours "mostly at night" because claimant fights her medications and resists going to sleep.

8. Grandmother and Grandfather are very involved in ministry services with their church. They spend all day on Sundays at church and work in youth ministry during the week. In the summer, they are involved with a youth ministry camp. They bring claimant with them to church on Sundays. There are childcare services at the church, but due to claimant's special needs, the childcare workers often call Grandmother out from services to change claimant's diaper or help with other behavior issues. Both grandparents are also attending school for ministry certifications.

Regional Center Reorganization of Preschool Unit and Staff Shortages

9. In March 2023, the regional center began reorganizing how it serves families of preschool children. Previously, preschool consumers were served by the same service coordination team that served school age children from ages 3 to 16. The regional center “carved out” a separate unit to serve consumers ages three to six in a new preschool unit.

10. The reorganization caused staffing shortages at the regional center. To address families’ current needs during the transition to the new preschool unit, the regional center set up a “call duty” system in which service coordinators were assigned call duty. If a consumer or representative called in to the regional center and could not contact the family’s assigned service coordinator, the telephone system allowed the parent to press “0” and speak to a service coordinator assigned to call duty. The duty coordinator would handle the call and become the service coordinator for that consumer to serve the family until a permanent service coordinator from the preschool unit could be assigned.

Claimant’s Respite Service History and Request for Increase

11. In claimant’s IPP in 2023, the regional center agreed to fund preferred provider respite services at 32 hours per month. Grandmother testified that the service coordinator at that time told her this would be a six-month trial period to “see how it goes.” Claimant’s family uses relatives and family friends as the respite service providers through a third-party respite agency.

12. Grandmother testified that no one from the regional center contacted her at the end of the six-month period. She tried to contact the regional center in 2023 to request an increase in respite but was not able to reach anyone. She testified that

pressing "0" to reach a duty service coordinator "did not work." The evidence showed that during this time of regional center transition, while it was staffing up the new preschool unit, there was no permanent service coordinator assigned to claimant.

13. In March 2024, Grandmother called the regional center and reached call duty service coordinator Regina Perdom. Grandmother told Ms. Perdom that she wanted to request an increase in respite hours to 132 per month. This is the first record the regional center has of claimant's request to increase respite hours, although Grandmother testified that she had been trying to get the respite hours increased since 2023.

14. Service coordinator Perdom discussed the request with Amy Clark, the regional center's manager of the preschool unit. After reviewing claimant's current and past IPPs, records, current generic supports from IHSS and adoption services, and the family situation, Ms. Clark approved an increase in monthly respite hours to 48, with a temporary additional increase to 60 hours per month to allow the family additional support while ABA services were being started through the summer. The temporary increase would expire in September 2024, when claimant returned to school. In September, the approved respite would return to 48 hours per month.

15. On March 11, 2024, the regional center issued its Notice of Action in which it denied the requested increase to 132 respite hours per month and "alternatively" agreed to the increase to 48 hours with a temporary increase to 60 hours effective March 1, 2024, through August 31, 2024.

Claimant's Justification for 132 Hours Per Month Respite

16. Claimant's Grandmother believed the increase the regional center approved was insufficient. At a mediation, Grandmother agreed to give the regional

center additional information about the basis for her request for 132 respite hours per month. On May 2, 2024, she sent an email to fair hearing representative Echeverria describing her schedule to justify the 132-hour request.

17. Grandmother explained that this was their schedule before they took over care for claimant. She testified that since taking on claimant's care, they have not been able to spend as much time in ministry service, self-care, and time together in their relationship. The family spent six and a half hours in church on Sundays. On Mondays, Grandmother spent six hours on appointments and household shopping. On Tuesdays, Grandmother spent three hours in youth ministry. On Thursdays, Grandmother and Grandfather had date night for seven hours. On Fridays, five hours were devoted to self-care. On Saturdays, Grandmother and Grandfather went to brunch or lunch for four hours.

18. Grandmother testified that they pay for daycare and also enroll claimant in activities but have never sought reimbursement, although they are approved to receive up to \$100 per month reimbursement for social recreational services. She testified that it has been very hard on her caring for claimant, and she has very little time for herself or time for her and her husband to be together.

19. Grandmother believed that the regional center should have been responsive when she first reached out in 2023 to request an increase in respite hours, and that she would have gotten an increase six months ago, and then she would be able to request another increase to revisit the issue of respite again. The regional center should have given her a six-month review in 2023.

Regional Center's Explanation for Respite Hours

20. Ms. Clark explained that respite hours are intended to give the primary caregivers a temporary break from providing the additional care that a disabled child needs compared to what is needed to care for a non-disabled child of the same age. It is short-term, not intended to replace daycare, and must take into consideration the parent responsibility for caring for their children as natural supports.

21. Ms. Clark testified that most families with a disabled preschool child receive 24 to 30 hours of respite per month. Grandmother's request amounts to 25 hours per week, which is essentially daycare. The requested amount exceeds what the regional center is authorized to approve according to the Lanterman Act and its Purchase of Service Policy.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. 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.)

2. The Lanterman Act enumerates the legal rights of persons with developmental disabilities. (Welf. & Inst. Code, § 4502.) These include the "right to treatment and habilitation services and supports in the least restrictive environment" and the "right to dignity, privacy, and humane care," with treatment, services and supports provided in natural community settings to the maximum extent possible. (Welf. & Inst. Code, § 4502, subds. (a) & (b).)

3. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. (Welf. & Inst. Code, § 4620 et seq.) Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” (Welf. & Inst. Code, § 4640.7, subd. (a).) The Department of Developmental Services allocates funds to regional centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (Welf. & Inst. Code, §§ 4620, 4621, 4787.)

4. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

5. While the Lanterman Act affirms the importance of honoring the consumer’s choices and preferences, these choices and preferences must be balanced against competing factors such as cost. Indeed, as the Lanterman Act repeatedly makes clear, regional centers must select the most cost-effective method of providing services and supports to consumers. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b); & 4648, subd. (a)(6).) Generic resources must be utilized when possible. (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

6. A regional center consumer, or their authorized representative, may request a fair hearing to appeal a regional center decision or action. (Welf. & Inst. Code § 4710.5.)

7. Neither the Lanterman Act appeal process (Welf. & Inst. Code, § 4710 et seq.) nor its implementing regulations (Cal. Code Regs., tit. 17, § 50900 et seq.) assigns burdens or standards of proof. The burden of proof is generally on the person requesting government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code § 500.) Here, claimant is requesting an increase in services and supports and therefore claimant bears the burden of proof. And, as there is no statute that provides otherwise, the standard of proof in this proceeding is the preponderance of the evidence. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

8. Welfare and Institutions Code section 4418.6 provides that respite care services may be available to regional center consumers and their families for temporary and intermittent care for short periods of time. The regional center's Purchase of Service Policy, dated July 31, 2019, defines respite care services as:

[T]emporary and intermittent care provided for short periods of time [. . .]. It is intended to relieve family members of the demanding responsibility of caring for the consumer by providing care and supervision to ensure consumer's safety in the absence of family members. [. . .] A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

9. Claimant's justification for increasing respite services to 132 hours per month was based on Grandmother's schedule of church, household, and self-care

activities before she and her husband adopted claimant and assumed legal responsibility for her care. The schedule goes well beyond the intended purpose of respite services as temporary relief from the additional burdens of caring for a child with disabilities. Respite is not intended to restore a parent to their condition before they had their child. The regional center must find the most cost-effective method to deliver services and must ensure that natural supports from family and generic resources from other private and government sources are used first.

10. The regional center correctly evaluated claimant's disability and unique needs and goals in her IPP, the family's natural supports that would be given to a child of a similar age without disabilities, the generic resources of IHSS, adoption financial support, and family health insurance, to approve 48 hours of respite per month with a temporary increase to 60 hours from March 1, 2024, to August 31, 2024. As discussed at the hearing, if claimant has a change in circumstances, Grandmother can submit a new request to the regional center for its consideration.

ORDER

Claimant's request to increase respite services to 132 hours per month is denied. The regional center's decision to approve 48 hours of respite per month with a temporary increase to 60 hours per month from March 1, 2024, to August 31, 2024, is affirmed.

DATE: May 16, 2024

ALAN R. ALVORD

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.