

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0017194

OAH No. 2024050907

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 3, 2024.

Claimant's mother appeared on claimant's behalf.

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

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on July 3, 2024.

ISSUE

The issue to be decided in this decision is whether IRC is required to fund 179 hours per month of respite care, which would be an increase from the 96 hours of respite care per month claimant currently has in place through September 30, 2024.

FACTUAL FINDINGS

Background

1. The following factual findings are derived from documentary evidence and the testimony of Ninnette Estrada, IRC consumer services coordinator, Jonathon Eckrich, IRC Program Administrator, claimant's parents, and Abigail Anderson, who works with claimant as a behavioral therapist at the Center for Autism and Related Disorders (CARD).

2. Claimant is a 9-year-old boy who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder (autism).

3. Claimant lives in the family home with his mother, father, and 14-year-old sister. He requires assistance with all his self-care needs. He receives 272 hours of In-home Supportive Services (IHSS) per month, and claimant's mother is the payee and provider. The IHSS program provides employment funds for the IHSS provider to be home and care for claimant's needs.

4. IRC has authorized claimant to receive 96 hours of respite care per month through September 30, 2024. After September 30, 2024, the 96 hours will be reduced to 40 hours.

5. Claimant receives Applied Behavioral Analysis (ABA) services through CARD. This service is center-based. He is supposed to receive 25 hours of this service per week, but he has been receiving only 10 hours per week, three days per week, because of staffing issues. Claimant receives this service through the family's health care plan.

6. Claimant attends public school and has an Individualized Education Program in place. At school he is in an alternate program and receives speech, occupational, and adaptive physical education services.

Claimant's Request for Increased Respite Hours

7. Claimant is seeking an increase in respite hours from 40 to 179 per month with two respite workers present because he is at constant risk of elopement and cannot be left alone.¹ As noted, IRC increased respite hours to 96 hours from April 1, 2024, through September 30, 2024. On May 15, 2024, IRC denied claimant's request.

8. IRC made its decision to deny claimant's request for 179 hours of respite after reviewing claimant's level of care, the natural supports of his family, the services in place, activities, and daily routines. IRC believes that the services and supports in place are sufficient to maintain claimant in the family home and provide a periodic break from his care and supervision. Claimant timely appealed IRC's decision.

¹ Claimant in his appeal states he is seeking 170 hours of respite. This appears to be a typo.

Claimant's Problem Behaviors

8. Claimant's risk of elopement poses an imminent danger to himself. He will run without hesitation into traffic because he is not aware of his surroundings and does not understand the concept of danger. As an example of the danger his eloping poses to claimant, on March 17, 2024, claimant eloped from a park where he was with a respite worker, and several concerned citizens called the police. Police responded to the incident.

9. Claimant's mother does not work outside the family home to care for him and monitor him. His father is busy working in the family business. Claimant's mother must attend to his self-care needs. He is not able to use the toilet. Because claimant has sleep issues and will get up at various times at night, claimant's mother sleeps in the same room as claimant to monitor him. She does not trust a stranger to stay with him at night. Other than claimant's parents, claimant does not have other immediate family members nearby to help care for him.

10. As claimant has grown, he has gotten taller, stronger, and faster, and he has more access to things in the home that can cause potential danger or harm to him.

11. Claimant's elopement behavior poses an increasing challenge to claimant's mother because she has an arthritic condition that causes her pain, which has gotten worse. The pain and discomfort from this condition limits her ability to monitor and chase claimant when he elopes.

12. Claimant's parents testified they believe that claimant requires 2:1 care, meaning they believe two respite workers need to be with claimant to "corral" him because of his speed and propensity to elope. Per the Person-Centered Plan for claimant dated January 11, 2024, which was prepared for claimant's transition to the

Self-Determination Program (SDP), claimant needs this 2:1 ratio to support him when he is out in the community.

13. Claimant's father said the incident where claimant ran from a respite worker while a respite worker watched him at a park shows the danger claimant's elopement represents. As a result, they do not trust one respite worker to be able to monitor him. Claimant's mother believes the increase in respite hours is an urgent need because one week after the hearing in this matter claimant's school is on summer break.

14. Ms. Anderson, who is an ABA therapist and has worked with claimant for four years at CARD, stated that claimant frequently has eloped both from his home and at CARD. She said that when this has occurred at the CARD, three people were needed to catch and redirect him. She does not term his behavior as elopement because it falls into the category of behavior for inappropriate attention seeking. She further stated that claimant is making minimal progress towards his goals, and she anticipates his elopement behavior will continue through the year, even with ABA therapy.

15. Ms. Anderson believes claimant needs two persons with him on community outings, with one of these persons "preferably" a behavioral therapist. She was not able to say, however, that "two caregivers" are needed to decrease his self-injurious behaviors on such community outings. She agrees, however, that community outings are needed for claimant to help decrease his problem behaviors and to improve his social skills.

IRC's Position

16. IRC recognizes that claimant and his family need support but, as Mr. Eckrich said in his testimony, 2:1 respite care to attend to claimant is not the appropriate service. Respite is intended to provide a periodic break from the duties of caring for claimant. To provide relief while ABA services are established to address claimant's elopement problem, IRC increased respite hours from 40 to 96 through September 30, 2024. IRC also encouraged claimant's participation in recreational activities outside of the home, giving caregivers more respite hours to provide a break from his care, while enabling claimant's community integration and fostering the development of appropriate social skills. IRC noted further that it can fund recreational activities through its reimbursement program and facilitate recreational activities through the use of a social skills coach.

17. An SDP Plan budget is being developed, but the budget is not finalized. Claimant's mother expressed frustration regarding the progress in the development of the budget, noting the SDP process began in November 2022.

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 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.)

Evaluation and Disposition

2. Claimant's appeal is denied in part and granted in part. Claimant has the burden of proving that an increase in respite hours from the current 96 hours per month to 179 hours per month is warranted. IRC authorized 96 hours of respite until September 30, 2024. After September 30, 2024, IRC authorized claimant to receive 40 hours of respite.

3. The evidence does not establish that claimant requires 179 hours of respite care per month. The evidence does establish, however, that 96 hours per month is warranted beyond September 30, 2024. These conclusions are reached for these reasons:

4. Claimant's problem behaviors pose a challenge to claimant's family to ensure he is safe in the family home, and he requires constant monitoring. Claimant cannot now appreciate dangers around him, and when given a chance, he will elope and endanger himself. His mother cannot keep up with him due to her medical problems and claimant's physical development, where he has gotten faster and stronger. She is largely responsible for his safety and self-care needs. Claimant's mother needs the break that respite services provide her so claimant can remain safely in the family home.

5. Claimant, in essence, is not seeking respite care but some other kind of service for claimant when he is out in the community. "In-home respite services" means "*intermittent* or regularly scheduled *temporary* nonmedical care" for a consumer who resides with a family member. [Emphasis added.] (Welfare and Inst. Code, § 4690.2, subd. (a).) 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.*)

6. Respite services are not a substitute for ABA therapy, or other services which claimant needs. IRC and Ms. Anderson recognized that ABA therapy, which would include community outings with a behavioral therapist should help decrease his elopement behavior and improve his social skills.

7. When IRC increased respite hours to 96 hours per month through September 30, 2024, it recognized the challenge claimant's behavior posed until claimant's elopement behaviors decrease. This amount is sufficient to allow claimant's mother to obtain a break in her care of claimant until his behaviors improve with ABA therapy.

8. IRC authorized this increase until September 30, 2024, to allow claimant to benefit from ABA therapy in the hope that by this date, his elopement behavior would decrease. His problem behavior has not decreased. And Ms. Anderson, his behavioral therapist, stated that his elopement behavior will likely continue through the next year. This may be due, at least in part, to staffing issues at CARD. Claimant has been receiving only 10 hours of ABA therapy per week instead of 25 hours.

9. Until these problem behaviors decrease, respite hours in the amount of 96 hours per month is thus warranted. Claimant's mother is free to move around the IHSS or respite hours to fit her schedule.

ORDER

Claimant's appeal to increase his current 96 hours per month of respite to 179 hours per month of respite is denied, in part. Claimant will continue to receive 96 hours per month of respite beyond the September 30, 2024, date that IRC authorized for this amount of hours, until his elopement behavior decreases.

DATE: July 15, 2024

ABRAHAM M. LEVY

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.

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

In the Matter of:

CLAIMANT

vs.

INLAND REGIONAL CENTER, Service Agency.

OAH No. 2024050907

DDS No. CS0017194

ORDER ON APPLICATION FOR RECONSIDERATION

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a decision in this matter on July 15, 2024. On July 30, 2024, claimant applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713. The application for reconsideration was timely submitted. Claimant gave appropriate notice of the application to Inland Regional Center (IRC). The undersigned hearing officer did not hear the matter or write the decision for which reconsideration is requested.

A party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions

Code section 4712, subdivision (g). Here, claimant seeks reconsideration on the following grounds: IRC's position that 48 hours of funding for social recreation would not provide respite because claimant's mother is still required to attend any social recreation activity due to elopement issues; having an ABA therapist included in community outings has not been realized since the vendor has not made a commitment to a long-term schedule; and IRC has not provided any social recreation funding.

IRC did not provide a response to claimant's application.

ANALYSIS

Claimant did not identify a mistake in fact or law in the decision. Based on the documentary and testimonial evidence, the hearing officer found that the 96 hours per month of respite was sufficient to meet claimant's needs. Although claimant disagrees with this conclusion, no error in the decision was established. Accordingly, the application for reconsideration must be denied.

ORDER

The application for reconsideration is DENIED.

DATE: August 12, 2024

ADAM L. BERG

Presiding Administrative Law Judge

Office of Administrative Hearings