

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

and

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0021686

OAH No. 2024100874

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 15, 2025.

Claimant was represented by his sister, who is his co-conservator along with his mother, who also attended the hearing. The names of Claimant and his family members are not used in this decision to protect their privacy.

Tami Summerville, Fair Hearings Manager, represented the South Central Los Angeles Regional Center (SCLARC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 15, 2025.

ISSUE

Should SCLARC provide funding for in-home respite care services for Claimant by a family member who is not a licensed vocational nurse (LVN)?

EVIDENCE RELIED UPON

Exhibits: SCLARC exhibits 1 through 8; and Claimant's exhibits A through O.
Testimony: Deisy Villanueva; Nasreen Asaria; Teodoro Bilbao; Roxana Romero; and Claimant's sister.

FACTUAL FINDINGS

Background

1. The Department of Developmental Services (Department) administers the Lanterman Developmental Disabilities Services Act (the Lanterman Act or the Act) to ensure that necessary services and supports are provided to persons with developmental disabilities to help them lead more independent, productive, and normal lives. (Welf. & Inst. Code, § 4500.) SCLARC is one of 21 nonprofit regional centers established by the Act to "evaluate the developmentally disabled persons (whom the Act calls 'consumers'), develop individually tailored plans for their care, enter into contracts with direct service providers to provide the services and support set forth in the plans, and monitor the implementation of those contracts and the

consumers' plans. [Citations.]" (*Shalghoun v. North Los Angeles County Regional Center, Inc.* (2024) 99 Cal.App.5th 929, 937.) Each regional center serves consumers within a particular geographic area of the state known as a "service catchment area," as specified in a contract with the Department. (Welf. & Inst. Code, §§ 4620, subd. (a), 4640, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(58).)

2. Claimant is a 35-year-old man who is eligible for Lanterman Act services and supports from SCLARC. His diagnoses include profound intellectual disability, cerebral palsy, seizure disorder, gastrostomy tube (G-tube) dependence, and maple syrup urine disease, a metabolic disorder that requires a specialized diet and medication delivered through Claimant's G-tube at specific intervals. Claimant is non-verbal and cannot walk, and he requires constant supervision to prevent injury or harm due to his disability and medical conditions. He lives with his mother, who is his primary caregiver and In-Home Supportive Services (IHSS) provider.

3. Claimant became a SCLARC consumer in about 2019, after many years as a consumer at two other regional centers (Harbor Regional Center and Inland Regional Center). One service he received at the other regional centers was in-home respite to give Claimant's mother relief from his constant care and supervision needs. A family friend or relative provided the in-home respite, not an LVN or other licensed health care professional.

4. In early 2020, SCLARC referred Claimant for a nursing assessment to determine if he met the criteria to continue receiving regular in-home respite, or instead required nursing respite due to his care needs. Nurse Consultant Nasreen Asaria assessed Claimant and "determined that [he] meets the criteria of receiving LVN respite hours (per guidelines) for care and supervision." (Exhibit 3, p. A51.) The "Nursing Problems" Asaria identified were: "1. Consumer is on [sic] g-tube dependent

[¶] 2. Consumer needs care and supervision at all times. [¶] 3. Mother stated consume[r] may attend day program if they find one suitable for him and that can provide care and supervision. [¶] 4. Mother is requesting relief time.” (*Ibid.*) Based on these considerations, Asaria recommended that SCLARC “grant consumer LVN hours (per guidelines) to assist mother with consumer’s care and supervision.” (*Ibid.*)

5. The COVID-19 pandemic delayed SCLARC’s implementation of Asaria’s recommendation until about early 2023. At that point, problems with identifying a vendor led to long periods without respite services, which prompted Claimant’s mother to ask SCLARC to fund in-home respite services by a family member instead of an LVN. SCLARC denied the request, and Claimant’s mother filed a fair hearing appeal that resulted in a confidential mediation agreement in July 2023.

6. After the agreement, SCLARC continued to have problems identifying a vendor that was able to provide LVN-level respite care for Claimant. After several vendor assessments and many more months, a few LVNs eventually provided respite services for Claimant, but staffing and quality of care problems ultimately prompted Claimant’s mother to ask SCLARC again to fund respite services by a family member rather than an LVN.

7. On September 16, 2024, SCLARC sent Claimant’s mother a notice of action denying the request, explaining that it did not align with Claimant’s medical care needs. On October 16, 2024, SCLARC received an appeal of the notice of action requesting an administrative hearing. Claimant later added a request to mediate the case, but the mediation did not resolve the dispute. The administrative hearing was originally set for December 9, 2024, but it was continued upon requests from both parties after Claimant’s representative waived the time limits for a fair hearing and a final administrative decision on the appeal.

8. The evidence also includes a notice of proposed action from SCLARC regarding funding for personal assistant services. Those services are not at issue in this appeal.

Hearing

SCLARC'S EVIDENCE

9. SCLARC contends Claimant's medical care needs require LVN-level respite care, and a lower level of care is a threat to his health and safety. SCLARC called four witnesses to testify in support of that contention. First, Deisy Villanueva, Claimant's service coordinator at SCLARC, testified SCLARC's clinical department denied the request for ordinary in-home respite due to Claimant's medical needs. Given those needs, the clinical department determined that an exception to SCLARC policy allowing ordinary respite was not possible. In addition, Villanueva explained that SCLARC is not denying respite services to Claimant; in fact, it has agreed to fund 40 hours of LVN-level respite per week for Claimant, which exceeds SCLARC's ordinary in-home respite limit of 46 hours per month. SCLARC has also approved additional funding for a home health aide to accompany the LVN to assist with moving Claimant during respite hours. That additional funding is time-limited while SCLARC works to arrange the purchase of a Heuer lift and hospital bed for Claimant.

10. Second, Asaria testified in support of her determination that Claimant needs LVN-level respite care. Asaria assessed Claimant's medical needs in January 2020, and she testified another more recent nursing assessment determined that Claimant's condition was unchanged. The report of the more recent assessment was not offered into evidence, but according to SCLARC, it occurred in November 2023.

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11. Asaria testified she has been a registered nurse consultant for SCLARC for over 10 years. In her opinion, LVN-level care is needed for Claimant during respite, particularly to check the placement and patency (i.e., openness) of Claimant's G-tube. Claimant is completely dependent upon his caregiver, and the risks to Claimant of errors in G-tube feeding or medication administration include vomiting, seizures, aspiration, respiratory arrest, and coma. According to Asaria, only LVNs or registered nurses have the skills and scopes of practice that legally permit them to administer the medications prescribed to Claimant through his G-tube.

12. While the Lanterman Act allows trained, unlicensed respite workers to perform gastrostomy care for consumers "with stable conditions," (Welf. & Inst. Code, § 4686, subd. (a)), Asaria opined that Claimant's condition is unstable and medically fragile. In addition, Asaria testified that SCLARC policy requires LVN-level respite for Claimant. SCLARC has a "POS [i.e., Purchase of Services] Funding Standards" policy for nursing services that was approved by the Department of Developmental Services in 2010, stating in relevant part that "[c]onsumer conditions which require at least LVN level of care for respite services" include "Gastrostomy," "Uncontrolled seizures, leading to respiratory and cardiac complications," and "Prescribed medication required during respite hours Medically Fragile," among other conditions. (Exhibit 7.) Asaria testified that Claimant's medical conditions fit within those categories.

13. Third, Teodoro Bilbao, SCLARC's Chief of Case Management Services for its Adult Department, testified SCLARC cannot move forward with regular in-home respite for Claimant due to the nursing assessment for him. There is a liability issue in allowing family members who are not licensed or certified to provide SCLARC-funded services to consumers with critical and dangerous medical conditions. The only

approach that SCLARC may follow in this case is a referral to a home health agency that has nursing personnel to meet Claimant's need for services.

14. Bilbao acknowledged that Claimant's family has had problems with the LVNs providing respite care for Claimant, including at least one who fell asleep during a shift. SCLARC believes this is an issue with a particular LVN, not an issue with LVN respite for Claimant as a whole. Bilbao testified SCLARC has other vendors available who can provide the necessary LVN-level respite services for Claimant.

15. Fourth, Roxana Romero, a Program Manager for SCLARC, testified she oversees Claimant's case management and Villanueva's work as a service coordinator. Romero testified that Claimant's case was forwarded to the clinical department because he uses a G-tube. The clinical department determined that LVN-level respite was necessary and denied subsequent requests for an exception because Claimant's medical needs do not permit one.

16. Romero also testified that Claimant had a seizure during a Zoom meeting between SCLARC and Claimant's family in November or December 2024. Romero contacted paramedics to assist the family with the seizure. Romero understands that at the time, Claimant's dietary formula had recently changed. SCLARC contends the seizure is additional evidence that Claimant requires LVN-level respite.

CLAIMANT'S EVIDENCE

17. Claimant's sister testified that many of vendors that SCLARC identified could not provide LVN respite services for Claimant. Furthermore, there have been long gaps in respite services, during which Claimant's mother paid a family member or friend to assist with Claimant's needs. After May 2025, SCLARC finally provided some LVN respite services through vendors, but the quality of caregivers has been poor. One

LVN regularly arrived late, and more than one fell asleep during their shift. The LVN who was most recently providing respite services fell asleep and fell out of a chair. That LVN also recently forgot to administer medication to Claimant at the scheduled time and had difficulty lifting Claimant, even with help from an assistant.

18. Claimant's sister testified the seizure described by Romero was the first Claimant has had in over 10 years. At the time, Claimant had seen a dietician who changed his meal plan and dietary formula. Now, his diet has been adjusted, and he has regular checkups and blood work to ensure his condition is stable.

19. Claimant's evidence also includes an undated letter from two physicians stating that "the parent and primary caregiver of the patient . . . has demonstrated proficiency and comfort with all aspects of gastrostomy care management. . . ." (Exhibit A.) Therefore, it is the physicians' opinions that "the patient may safely receive respite care services, with the understanding that the caregiver is comfortable and competent in all aspects of gastrostomy tube management." (Exhibit A.)

ANALYSIS OF EVIDENCE

20. Asaria's determination that LVN-level respite is required is based largely on Claimant's G-tube dependence, the associated medical risks, and SCLARC's purchase of services policy for nursing respite services. That policy states gastrostomy is a consumer condition that requires at least LVN-level respite services, without exception. (Exhibit 7.)

21. But the Lanterman Act provides more latitude for trained, non-licensed personnel to provide respite services that include gastrostomy care than SCLARC's policy. Specifically, the Lanterman Act allows a properly trained in-home respite worker who is not a licensed health care professional to perform gastrostomy care for

a consumer "with stable conditions." (Welf. & Inst. Code, § 4686, subd. (a).) Claimant's representative requests that a family member be allowed to provide respite care for Claimant under this exception. SCLARC contends the exception does not apply because Claimant's condition is unstable, as evidenced by Asaria's opinion and the seizure Claimant had late last year.

22. The weight of the evidence supports a finding that Claimant's medical conditions are stable for purposes of the exception. Claimant is 35 years old and has had the same medical conditions since childhood. Claimant's sister testified her brother is currently stable, and that the seizure he experienced months ago was the first one he had in over 10 years. The seizure occurred during a change to Claimant's dietary formula, an issue that was subsequently addressed and is being monitored regularly. The note from Claimant's physicians also indicates approval for respite services by an unlicensed caregiver, "with the understanding that the caregiver is comfortable and competent in all aspects of gastrostomy tube management." (Exhibit A.) The letter is additional evidence that Claimant's medical conditions are stable.

23. Asaria's contrary opinion is based primarily on Claimant's need for G-tube care, which Asaria testified only an LVN or registered nurse is sufficiently trained and legally authorized to provide as an in-home respite worker. But Claimant's need for G-tube care alone does not prove his medical conditions are unstable. Furthermore, Asaria's opinion (and SCLARC's policy) that only an LVN or registered nurse can provide gastrostomy care during respite is inconsistent with the Lanterman Act itself, which allows a properly trained respite worker who is not a licensed health care professional to provide such care. Therefore, Asaria's opinion does not preclude relief in this case.

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LEGAL CONCLUSIONS

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. (Welf. & Inst. Code, § 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.” (Welf. & Inst. Code, § 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 Welf. & Inst. Code, § 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.” (Welf. & Inst. Code, § 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. (*Id.*, subd. (a)(1)-(4).) SCLARC funds and monitors in-home respite from vendors to ensure the safety and satisfaction of consumers. (See Welf. & Inst. Code, § 4697, subd. (a)(3).)

3. While in-home respite is “nonmedical care and supervision” (Welf. & Inst. Code, § 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” (Welf. & Inst. Code, § 4686, subd. (a).) As relevant here, those incidental medical services for consumers include: “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.” (*Id.*, subd. (a)(3).) The training required must be performed by physicians, registered nurses, or through a gastroenterology or surgical center in an acute care hospital. (*Id.*, subd. (c).) The in-home respite worker must also provide proof of successful completion of a cardiopulmonary resuscitation course within the preceding year. (*Id.*, subd. (b).) The in-home respite agency providing the training must do so according to a protocol approved by the Department of Developmental Services. (*Id.*, subd. (d).)

4. Claimant’s authorized representative has requested that SCLARC fund non-LVN respite services for Claimant in lieu of the LVN respite services currently being provided. As the party proposing to change the status quo, Claimant bears the burden of proving the change is justified. (See Evid. Code, § 500; *In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) The burden of proof requires proof by a preponderance of the evidence, because nothing in the Lanterman Act or another law provides otherwise. (Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].)

Analysis

5. Claimant’s evidence proves that SCLARC should be required to fund in-home respite services for Claimant from a properly trained respite worker who is not a

licensed health care professional. Under the Lanterman Act, such a person is expressly authorized to provide gastrostomy care during respite to a consumer with stable conditions. (Welf. & Inst. Code, § 4686.) Claimant's medical needs during respite are for gastrostomy care, and the preponderance of the evidence proves Claimant's medical conditions are stable. Therefore, a properly trained person who is not a licensed health care professional may serve as an in-home respite worker for Claimant. (*Ibid.*)

6. SCLARC's contention that LVN-level respite is required for Claimant is not in accord with Welfare and Institutions Code section 4686. In addition, SCLARC's contention that only an LVN or higher-level health professional can legally provide gastrostomy care as an in-home respite worker is incorrect. Welfare and Institutions Code section 4686 expressly allows such care by an appropriately trained respite worker who is not a licensed health care professional, "[n]otwithstanding any other provision of law or regulation to the contrary" (Welf. & Inst. Code, § 4686.) This language supersedes other laws and regulations defining the scope of practice for health care professionals and prohibiting unlicensed persons from acting within that scope of practice in other contexts.

7. Welfare and Institutions Code section 4686 has specific training requirements for an unlicensed in-home respite worker performing gastrostomy care for a consumer with stable conditions. The family member chosen to provide in-home respite for Claimant must complete that training as a condition of funding from SCLARC for respite services by that person. Pending completion of that training, SCLARC's funding of LVN-level respite care for Claimant is not affected by this decision.

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ORDER

Claimant's appeal is granted to the following extent: SCLARC shall fund in-home respite services for Claimant by an in-home respite worker who is not a licensed health care professional, provided that the worker has successfully completed training for gastrostomy care for Claimant as required by Welfare and Institutions Code section 4686.

Nothing in this decision affects SCLARC's funding for in-home respite care for Claimant by a licensed vocational nurse pending completion of the training described above.

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.