

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER

DDS No. CS0022034

OAH No. 2024110336

DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 21, 2025.

Claimant's mother appeared on claimant's behalf with the assistance of a certified Spanish interpreter.

Hilberto Echeverria, Jr., Fair Hearings 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 January 21, 2025.

ISSUE

Is IRC required to increase claimant's respite care from 80 hours per month to 130 hours per month, and increase claimant's personal assistance from 30 hours per month to 120 hours per month?

FACTUAL FINDINGS

Background

1. The following factual findings are derived from documentary evidence and the testimony of Ana Carrera, IRC consumer services coordinator; Yvonne Navarro-Seguro, IRC Program Administrator; and claimant's mother.

2. Claimant is a 10-year-old girl who qualifies for regional center services based on a diagnosis of Autism Spectrum Disorder (autism).

3. Claimant lives in the family home with her mother, father, 13-year-old brother, and 17-year-old brother. She receives 265 hours of In-home Supportive Services (IHSS) per month. Claimant's mother is the provider of 199 hours for protective supervision at night. Another individual is the provider of the other 66 hours. The IHSS program provides employment funds for claimant's mother to be home during these hours and to care for claimant's needs.

4. Claimant received 130 hours each month of respite, from June 2024, through August 2024, during the summer months, when claimant was not attending school. In September 2024, claimant's respite hours were reduced from 130 hours to 60 hours each month. IRC authorized claimant to receive 80 hours each month of

respite, effective October 1, 2024. The respite hours are provided by a worker through United Cerebral Palsy.

5. Claimant receives 25 hours each month of personal assistance, effective May 1, 2024, through March 30, 2025. IRC authorized claimant to receive 30 hours each month of respite, effective October 1, 2024. The personal assistance hours are provided by a worker through 24-Hour Home Care.

6. Claimant receives Applied Behavioral Analysis (ABA) services through Data Driven Educators due to her aggression when becoming overwhelmed or having lack of communication. This service is home-based on Tuesdays from 2:30 p.m. to 4:30 p.m.; Wednesdays from 12:10 p.m. to 2:00 p.m. and 5:30 p.m. to 7:30 p.m.; and Fridays from 2:30 p.m. to 4:30 p.m.

7. Claimant attends public school and has an Individualized Education Program (IEP) in place. She receives 35 hours each month of educational advocacy services for support of her IEP process at school.

Claimant's Request for Increased Respite Hours and Personal Assistance Hours

8. Claimant is seeking an increase in respite hours from 80 to 130 per month and an increase in personal assistance hours from 30 to 120 per month because her current hours are not sufficient to care for her safely at home. On September 20, 2024, IRC issued a Notice of Action denying claimant's request.

9. IRC denied claimant's request for 130 hours each month of respite and 120 hours each month of personal assistance after reviewing claimant's level of care, the natural supports of her family, the services in place, and daily routines such as

going to school and activities. IRC believes that the services and supports in place are sufficient to maintain claimant in the family home and provide a periodic break from her care and supervision. Claimant timely appealed IRC's decision.

10. Claimant's mother testified that claimant has autism, a seizure disorder, asthma, allergies, immune disorder for which she received immunotherapy injections, hypermobility spectrum disorder (HSD), and a rheumatoid disorder. Claimant attends school from 7:45 a.m. to 2:30 p.m. Sometimes claimant is late to school because of problems with her diabetes and sugar levels and medical appointments. Claimant is not able to eat the breakfast at school because it is not a diabetic meal. Sometimes claimant must be taken out of school early because of "accidents," not feeling well, medical issues, and appointments. Claimant's mother brings claimant's lunch to school each day because claimant cannot eat the school lunch.

11. Claimant now has different appointments with medical specialists for her various medical conditions. Claimant has different symptoms like swelling and sleep problems for which she takes Gabapentin, and problems with her muscles and bones. One of the reasons she is requesting additional respite and personal assistance hours is because of increased medical needs and appointments. Her specialist appointments are farther away and not close to her home. For instance, claimant has a sleep study appointment but it is in San Bernardino. Claimant's mother needs more time to arrange for claimant's appointments, prepare claimant for the "long trips" to these appointments, and bring claimant to and from these appointments.

12. Claimant's IHSS hours are for her protective supervision during the nighttime. Claimant is having problems with sleeping. She does not sleep well and she wakes up two to three times each week at about 3:00 a.m. and does not go back to sleep because she thinks it is time to get ready for the day. Claimant will go to the

living room or kitchen and her mother must go with her to supervise her and give her food in the middle of the night. Claimant's mother cannot wake up claimant's father because he gets up early to go to work and he financially supports their family.

13. Claimant also now has virtual psychologist appointments on Thursdays from 11:00 a.m. to 11:30 a.m. and on Fridays from 3:30 p.m. to 4:00 p.m. The appointments are virtual and cannot be done at claimant's school. Claimant's mother takes claimant out of school and returns her to school for the Thursday appointments. The psychologist offered claimant these appointment days/times and indicated there were no other appointments available. Claimant's mother sets up the virtual appointment, stays with claimant during the appointment, and brings claimant back to school after the Thursday appointments.

14. Claimant's mother has her own medical issues and medical appointments, and she needs to protect her own health. Her other children – a 13-year-old son and 17-year-old son – are lacking attention. She and her husband are not able to provide enough time for them and they sometimes must leave her sons' sport events early because of the issues with claimant. Her 17-year-old son is "not at the age to be in charge of caring" for claimant.

15. Claimant's mother stated the current respite and personal assistance hours are simply not enough.

IRC's Position

16. IRC recognizes that claimant and her family need support, but the evidence and testimony from Ms. Navarro-Segura and Ms. Carrera show that the current services in place along with natural supports, activities and routines are enough to keep claimant in the home and provide her family with a periodic break.

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 granted in part. Claimant has the burden of proving that an increase in respite hours from the current 80 hours per month to 130 hours per month and an increase in personal assistance hours from the current 30 hours per month to 120 hours per month is warranted. IRC authorized the 30 hours of personal assistance, effective October 1, 2024, until March 30, 2025. IRC authorized claimant to receive 80 hours of respite, effective October 1, 2024.

3. The evidence does not establish that claimant requires 130 hours of respite care per month and 120 hours of personal assistance care per month. The evidence does establish, however, that 120 hours per month of respite hours and 60 hours per month of personal assistance is warranted, effective upon the date of this decision and beyond March 30, 2025. These conclusions are reached for these reasons:

4. Respite is defined as "*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.*)

5. Claimant's mother provides protective supervision most nights for claimant as her IHSS provider for 199 hours each month. To determine generally how much time each week claimant's mother spends providing protective supervision each night, a calculation is done of nine hours each night for five nights each week, and this comes to 194 hours each month. Claimant has trouble sleeping and she wakes up at 3:00 a.m., two to three nights each week, and does not go back to sleep. Claimant will go to the living room and kitchen because she thinks it is time to get ready for the day and her mother wakes up and stays with claimant. Claimant's mother is not sleeping very much.

6. Claimant's mother gets claimant ready for school in the morning. Claimant is often late to school because of medical issues in the morning and needing a diabetic breakfast because she cannot eat the breakfast at school. Claimant's mother drops claimant at school and returns to school to bring claimant a diabetic lunch. Claimant is sometimes dismissed early from school because of behavioral issues and incidents at school, and claimant's mother will have to get her.

7. Claimant now has 30-minute psychologist appointments twice each week that are during school hours because there were no other available appointments. Claimant's mother gets claimant at school, brings her home, sets up the virtual appointment, stays with claimant during the appointment, and returns claimant to school after the appointment.

8. In addition, claimant has more recently been referred to several specialists for her seizure disorder, asthma, allergies, immunotherapy requiring injections, HSD, and rheumatology. These appointments are farther away from her home. Claimant's mother schedules the appointments, prepares claimant for the "long trips," and brings claimant to and from the appointments.

9. Claimant's mother testified she is having her own health issues and she has own medical appointments. She is not taking care of herself. She needs more time to care for herself so she can care for claimant and her other children. Her husband works Monday through Friday, 7:00 a.m. until 7:00 p.m., and a half day on Saturdays.

10. Claimant's brothers are ages 13 and 17. When claimant's mother was asked on cross-examination if her 17-year-old son, who is in high school, helps to care for claimant, she poignantly and correctly answered that he is not of age or in the position to care for claimant. She also testified that her family sometimes has to leave her sons' sporting events early because of claimant's behaviors.

11. For all the reasons above, claimant has met her burden and has demonstrated that her respite hours and personal assistance hours need to be increased.

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ORDER

1. Claimant's appeal to increase her current 80 hours per month of respite to 130 hours per month and to increase her current 30 hours per month of personal assistance to 120 hours per month, is granted, in part, as follows: Claimant shall receive 120 hours per month of respite and 60 hours per month of personal assistance, effective upon the date of this decision and beyond March 30, 2025.

DATE: February 3, 2025

JAMI A. TEAGLE-BURGOS
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.