

**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 Case No. CS0028799

OAH No. 2024040737

DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in person on November 17, 2025, at South Central Los Angeles Regional Center (Service Agency or SCLARC).

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

Tami Summerville, Fair Hearing Manager, represented SCLARC.

Testimonial and documentary evidence was received. The record was closed and the matter was submitted for decision on November 17, 2025.

ISSUE

Should SCLARC be required to fund respite care to be provided to Claimant by a caregiver who is not a licensed vocational nurse (LVN)?

EVIDENCE RELIED UPON

Documents: SCLARC exhibits 1 through 4.

Testimony: Hugo Rodriguez, SCLARC Team Leader Early Childhood Unit (ECU); Kimberly Molina SCLARC ECU Program Manager; and Claimant's mother.

FACTUAL FINDINGS

Procedural History and Background

1. Claimant is a six-year-old SCLARC consumer with a qualifying diagnosis of Cerebral Palsy. Claimant is a Cadaveric whole graft liver transplant recipient, and he is also diagnosed with Ornithine Transcarboxylase deficiency, Hypospadias repair, Oral Aversion, Seizure Disorder, Hypotonia, global developmental delay, eczema that presents following a seizure-like episode, and he is Gastronomy tube (G-tube) dependent.

2. During Claimant's annual February 20, 2025 Individual Program Plan (IPP) meeting, Claimant's mother requested that regional center fund respite care. Because

of Claimant's medical needs, Claimant's mother's request for a non-LVN respite provider was referred for a nursing assessment.

3. On an unspecified date, Claimant's then Service Coordinator, Hugo Rodriguez, referred the case to SCLARC's clinical department for a nursing assessment as Claimant met SCLARC's policy criteria for LVN respite care services. There was a five-month delay between the time Claimant's mother's request for SCLARC funded respite care and the scheduling of the nursing assessment.

4. Claimant's mother believed the delay to be unreasonable and attributed it to SCLARC's ongoing pattern of denying and/or failing to follow-up on service requests for Claimant due to discrimination by SCLARC against the family. SCLARC acknowledged and apologized for the delay, attributing the delay to the time it took to gather complete medical records from Claimant's approximately five to six medical care specialists; a requirement before Claimant's nursing assessment could be done by a nurse.

5. On June 3, 2025, the nursing assessment, fully described below, recommended LVN respite care due to Claimant's medical conditions, despite Claimant's mother's preference for regular respite without LVN support. (Claimant's mother disputed the date of the nursing assessment, asserting that SCLARC had intentionally misdated the assessment which Claimant's mother testified had taken place the prior year, in 2024. Claimant's mother's claim of intentional misdating was not established by the evidence presented. (Exhibits 1-3.))

6. By "Letter of Good Faith," dated July 29, 2025, SCLARC notified Mother that Claimant was not eligible for in-home respite services by a non-LVN provider based on SCLARC's funding guidelines. Specifically, the letter stated that "Due to

[Claimant's] medical condition, he requires an LVN to provide care services to him." (Exhibit 1, p. A16.) An August 14, 2025, Notice of Proposed Action, letter containing the same bases for denying the request as in the July 29, 2025, Letter of Good Faith was also sent by SCLARC. (*Id.*, p. A21.)

7. On July 30, 2025, Mother filed an appeal on behalf of Claimant, requesting a fair hearing. The reason for the appeal was stated as "Disagree with service provider." (Exhibit 1, p. A12.)

8. The fair hearing was scheduled for Monday, November 17, 2025. At approximately 4:30 p.m. on November 14, 2025, the Friday before the hearing, SCLARC filed a motion to continue the fair hearing with the Office of Administrative Hearings (OAH). The basis for the motion was that a SCLARC witness was unavailable for hearing. SCLARC's motion was opposed by Mother who had already set up childcare for Claimant so that she could attend the fair hearing. Mother did not waive Claimant's right to have a fair hearing within 50 days of the time SCLARC received Claimant's fair hearing request. (Welfare & Institution Code, section 4712, subdivision (a)). As of November 14, 2025, Mother testified she believed that SCLARC's motion to continue had been granted based on SCLARC's communications with her on Friday. However, SCLARC's motion to continue the hearing date was denied by OAH on November 16, 2025. Mother was notified by an administrative law judge by phone on November 16, 2025 that SCLARC's motion had been denied and the fair hearing went forward as originally scheduled.

///

///

///

SCLARC

POSITION STATEMENT AND HEARING EVIDENCE

9. SCLARC's Position Statement further explained the justification for Claimant requiring skilled nursing care at the LVN level. (Exhibit 1.) According to the Position Statement, a lower level of care is not appropriate and is a threat to Claimant's health and safety. An In-Home Respite worker who is not a licensed health care professional (i.e., for example, not an LVN), *may* perform incidental medical services for regional center consumers with stable conditions, such as Claimant. However, such a non-licensed health care professional must be trained by a licensed health care professional subject to the requirements of Welfare and Institutions Code section 4686. (Legal Conclusion 8.) SCLARC has no vendors currently who can provide the required training to an In-Home Respite worker who is not a licensed health care professional. Consequently, for SCLARC to satisfy the relevant rules and regulations, it can only authorize a licensed LVN to perform In-Home Respite care to Claimant based on his medical needs. (Testimony of Kimberly Molina.)

SCLARC NURSING ASSESSMENT

10. Nasreen Asaria, a licensed nurse (RN) and SCLARC's RN Consultant, performed Claimant's nursing assessment on June 23, 2025. (Exhibit 3.) The basis for SCLARC's referral for a nursing assessment of Claimant's case was to determine if Claimant met the criteria of receiving regular respite or LVN respite hours.

11. Ms. Asaria's nursing assessment included a review of SCLARC's records and a face to face meeting with Claimant and his mother to conduct the assessment. Ms. Asaria analyzed the following information in making her nursing assessment:

- Claimant's diagnoses of S/P Cadavic whole graft liver transplant on June 16, 2020; Ornithine transcarbamylase (OTC) deficiency; Hypospadias S/P repair October 2021; Oral aversion; Gastroparesis; Global Developmental delay; Hypereosinophilia; Seizure disorder; G-tube dependence; Hypotonia.
- Claimant's prenatal/birth history; immunization; school history; day program history; medical history (including surgeries/injuries/hospitalization); laboratory; diagnostic findings; allergies; physicians, consultants, dentists; allergies; medications (Levetiracetam, 100 mg/ml, give 8 mls via g-tube twice a day for seizure control; Clonazepam, 1 mg, give 1 tab via g-tube three times a day for seizure control; Glycopyrrolate, 1 mg/5ml, give 5.5 mls via g-tube to reduce salivation; Sodium citrate 500 mg per 5 mls, give 8 mls twice a day to prevent high acid levels; Prograf Granules, 1 mg/unit, give 5 mg per day via g-tube to prevent organ rejection; Fludrocortisone, 0.1 mg tablet, take one half of the tablet (crushed) 0.05 mg total via g-tube once a day; Valtoco, 10 mg nasal spray one time only if seizure last greater than five minutes or clusters of seizures within five minutes;
- Claimant's diet (dependent on g-tube including pureed blenderized food and Kate Farms formula if needed or if consumer is traveling with parents or being outdoors. Claimant gets 360 cc bolus food three times a day and space of 120 to 130 cc mid day. Claimant tolerates homemade food well.)
- Equipment: wheelchair, gait trainer, bath chair, g-tube and supplies, AFO and diapers.
- Physical assessment of Claimant (well-nourished boy who was awake, alert, and smiling; babbling and did not respond to verbal commands);

- Claimant's height, weight, hair, scalp, skin, eyes, ears, nose, mouth, throat, neck, chest, abdomen, and back; Claimant's extremities; genitourinary (Claimant is not potty trained and wears diapers; dependent on mother for diaper change);
- Claimant's Central Nervous System (CNS), which included a history of seizures or seizure like episodes secondary to hyperammonemia secondary to his diagnosis of OTC. Claimant was off seizure control medication from 2021 to 2022 due to no spasms or seizures. Parents noted seizure like episodes in 2024 including stiffening of consumer's limbs and left side gaze lasting 45 seconds or more. He is now back on seizure control medication. Mother reported Claimant was hospitalized several weeks prior to assessment for EEG and he suffered a seizure during the procedure consisting of stiffness and twitching of his face lasting 30 seconds. Claimant is on seizure control medication and is on rescue medication Valtoco nasal spray for seizure lasting more than five minutes.
- Claimant's mobility, toilet, and care requirements; dependent on mother for all physical needs; not potty trained and wears diapers, dependent on mother for diaper changes and hygiene needs; immobile and is wheelchair dependent;
- Claimant sleeps through the night based on mother's report;
- Claimant's communication, socialization, activity and behavior as being mostly non-verbal; smiles at mother and makes eye contact; mostly staying home with mother and goes out for physician's appointments only; and no negative behavior based on mother's report.

(Exhibit 3, pp. A41-A45.)

12. Based on her review of Claimant's medical conditions and his day-to-day needs, Ms. Asaria concluded that Claimant's medical needs required professional nursing care for his safety and met the criteria of receiving LVN respite. Ms. Asaria recommended SCLARC grant Claimant LVN respite per its guidelines to assist mother with Claimant's care and supervision. Ms. Asaria also recommended that once LVN hours were initiated, a home health agency could then apply for Early Periodic Screening and Diagnostic Testing (EPSDT) for further assistance with LVN hours. (EPSDT is a generic service funded through Medi-Cal that allows for consumers who are under the age of 21, like Claimant, to received additional service, such as nursing supports in the home.)

SCLARC'S POLICY AND REGULATIONS

13. Kimberly Molina, SCLARC's ECU Program Manager, testified at fair hearing regarding the basis of SCLARC's position that Claimant requires LVN level respite care. Ms. Molina facilitated the request for a nursing assessment of Claimant after mother's request for respite because of Claimant's medical diagnoses, including the presence of a G-tube for feeding and medication administration. SCLARC's policy, as guided by relevant regulations, require any consumer who has an G-tube to have a minimum of LVN level respite care. According to Ms. Molina, the purpose of the requirement of LVN respite care in cases involving individuals, like Claimant, with a myriad of medical diagnoses and needs, is to provide the consumer with the care that only a skilled LVN can provide.

14. Claimant's mother's testified that her chosen non-LVN respite worker had undergone training at UCLA regarding how to care for Claimant's medical conditions.

Claimant's mother was also willing to waive any liability by SCLARC for a non-LVN respite caregiver of Claimant's family's choosing. However, mother's offer did not change SCLARC's position that under its policies and regulations Claimant still requires LVN level respite care. Ms. Molina explained there were risks to Claimant's health and safety associated with allowing a non-licensed individual to perform the type of tasks required for Claimant, including feeding and medication administration through a G-tube. Ms. Molina explained that SCLARC did not provide exceptions in cases like Claimant's and allow non-licensed laypeople to provide respite care because SCLARC is required to ensure consumers health and safety by following Health and Safety Code sections 1725, 1726, and 1727, Welfare and Institutions Code section 4686, and nursing scope and practice guidelines. (See Legal Conclusions 8-10.)

15. Ms. Molina testified SCLARC also has no vendor who has an approved Department of Developmental Services (DDS) curriculum for Claimant's intended caregiver to complete required training and thereby potentially meet the exception of having a non-licensed person perform Claimant's necessary incidental medical services. (Welf. & Inst. Code, § 4686.)

16. SCLARC has no concerns with the care Claimant's family and circle of support have provided to Claimant. SCLARC does not dispute mother's assertions that she understands the needs of Claimant best. SCLARC's only concern is that it follows applicable regulations and policies to ensure Claimant's health and safety, and those regulations and policies require LVN-level respite care for Claimant. SCLARC is ready to fund respite care by an LVN if Claimant's mother is willing to accept respite care at the LVN level for Claimant.

///

17. One of the benefits to Claimant's mother accessing LVN-respite care for Claimant is that Claimant could potentially be eligible to receive EPSDT through Medi-Cal to provide Claimant with additional nursing supports in the home.

CLAIMANT'S POSITION

18. It is undisputed that Claimant's caregiver of choice is not an LVN or is otherwise licensed as a health professional. Mother testified that, nonetheless, she believes Claimant's non-LVN caregiver of choice is qualified to provide respite care to Claimant. Mother testified she should be able to choose a respite worker without SCLARC requiring the respite worker be an LVN. Mother made the point that she is not an LVN and provides care to Claimant daily.

19. Mother testified she is dissatisfied with SCLARC's services to Claimant and family. She believes she has been subjected to racial discrimination and that SCLARC's staff, such as Hugo Rodriguez, Claimant's prior service coordinator, ignored and/or delayed working on her requests for respite care and other services, such as her request for an adaptive stroller for Claimant at the February 2025 IPP meeting. Mother testified that, unlike SCLARC, when she is contacted by SCLARC staff to fill out paperwork on behalf of Claimant, she complies promptly. Mother believes that the only way Claimant gets a response from SCLARC is when she elevates her requests on behalf of Claimant to complaints against SCLARC. Mother is extremely disappointed with SCLARC's services to Claimant to date.

Ultimate Findings

20. There has clearly been miscommunication between SCLARC and Claimant's mother to date. SCLARC's Fair Hearing Manager, Tami Summerville, apologized during the hearing for any issues to date and offered to meet with

Claimant's mother after the hearing to discuss services and supports for Claimant going forward to avoid any future delays or miscommunications.

21. The facts of this case establish Claimant's medical diagnoses and needs require an LVN-level respite for his care when the respite care is being funded by SCLARC. Mother can choose whomever she wants to care for Claimant. However, once mother requested funding for respite from SCLARC then SCLARC is obligated under the law to only fund services that are safe and appropriate for Claimant. Further, there is valid concern to Claimant's health and safety if a layperson, even one trained by UCLA, like Claimant's respite provider of choice, administers Claimant's nutrition and medicine through Claimant's G-tube. Under the circumstances, while requiring the responsibility of respite care to be satisfied by an LVN is clearly contrary to the desires of Claimant's family, it is necessary to ensure Claimant's health and safety.

22. SCLARC is bound to follow relevant legal guidelines in determining whether it can fund Claimant's requested respite services by a non-LVN. As more fully set forth below, under the Lanterman Disabilities Services Act (Lanterman Act), only certain incidental medical services can be performed by an in-home respite worker who is not a licensed health professional. Claimant's feeding and medication administration needs are not among those allowed services. The Lanterman Act provides an exception for non-health professional respite workers to provide non-incidental medical services if the workers are appropriately trained. However, currently, there is no SCLARC vendor who can train Claimant's intended layperson caregiver to satisfy the exception. As a result, SCLARC correctly determined it cannot fund Claimant's respite care provided by a non-LVN caregiver and any SCLARC-funded respite for Claimant must currently be provided by an LVN.

///

23. Notwithstanding the denial of Claimant's appeal in this matter, if, at a future date, SCLARC can identify a vendor who can provide the required training to Claimant's intended layperson caregiver under Welfare and Institutions Code section 4686, mother's request for Claimant's layperson caregiver to be Claimant's respite provider shall be reconsidered by SCLARC through the Individual Program Plan (IPP) process.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) (All further section references are to Welfare and Institutions Code unless otherwise noted.)

2. Claimant has the burden of proving he is entitled to respite services to be provided by a non-LVN respite layperson and not, as SCLARC has authorized, by an LVN-respite provider. (Evid. Code, §§ 115, 500.) The standard of proof in this case requires proof by a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute requires otherwise. "Preponderance of the evidence" means evidence which is of greater weight or more convincing than evidence which is offered in opposition to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

3. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant timely requested a hearing following SCLARC's denial of Claimant's request that a non-LVN respite worker, specifically, an LVN, provide mother with SCLARC funded respite hours.

4. A regional center is required to secure services and supports that meet the individual needs and preferences of consumers through the collaborative IPP process. (§§ 4501 and 4646, subds. (a), (b), (d).)

LVN In-Home Respite Care Provider Requirement

5. SCLARC's policy provides that nursing respite services are provided to those caregivers of consumers who require a nursing level of respite due to their medical conditions. SCLARC will utilize nursing personnel through a nursing or home health agency service. A Registered Nurse, LVN or Certified Home Health Assistant (CHHA) will provide the requested respite care, depending on the requirements of the consumer's medical condition and state licensing regulations. According to SCLARC policy, as relevant to Claimant, conditions which require at least an LVN level of care for respite services include but are not limited to: gastrostomy [G-tube], G-tube feedings, prescribed medication required during respite hours, medication to control seizures, and medically fragile profile.

6. A regional center must "ensure that a nursing assessment of the consumer, performed by a registered nurse, is conducted to determine whether an in-home respite worker, [LVN], or registered nurse may perform the services. (§ 4686, subd. (g)(1).)

7. Based on SCLARC policy, the results of Ms. Asaria's nursing assessment conducted pursuant to section 4686, subdivision (g)(1), and the evidence presented at hearing, SCLARC properly denied funding respite services by a non-licensed LVN. (Factual Findings 1-22; Legal Conclusions 1-6.)

///

No Current Exception to Requirement of LVN In-Home Respite Care Provider

8. Section 4686 provides:

a) Notwithstanding any other provision of law or regulation to the contrary, an in-home respite worker who is not a licensed health care professional but who is trained by a licensed health care professional may perform incidental medical services for consumers of regional centers with stable conditions, after successful completion of training as provided in this section. Incidental medical services provided by trained in-home respite workers 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. [¶. . . ¶]

(b) In order to be eligible to receive training for purposes of this section, an in-home respite worker shall submit to the trainer proof of successful completion of a first aid course

and successful completion of a cardiopulmonary resuscitation course within the preceding year.

(c) The training in incidental medical services required under this section shall be provided by physicians or registered nurses. Training in gastrostomy services shall be provided by a physician or registered nurse, or through a gastroenterology or surgical center in an acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, which meets California Children Services' Program standards for centers for children with congenital gastrointestinal disorders, or comparable standards for adults, or by a physician or registered nurse who has been certified to provide training by the center.

(d) The in-home respite agency providing the training shall develop a training protocol which shall be submitted for approval to the State Department of Developmental Services. The department shall approve those protocols that specifically address both of the following:

(1) A description of the incidental medical services to be provided by trained in-home respite workers.

(2) A description of the protocols by which the training will be provided. Protocols shall include a demonstration of the following skills by the trainee:

///

(A) Care of the gastrostomy, colostomy, ileostomy, or urinary catheter site.

(B) Performance of gastrostomy tube feeding, changing bags and cleaning stoma of colostomy or ileostomy sites, and emptying and changing urinary catheter bags.

(C) Identification of, and appropriate response to, problems and complications associated with gastrostomy care and feeding, colostomy and ileostomy care, and care of urinary catheter sites.

(D) Continuing education requirements.

(e) Training by the gastroenterology or surgical center, or the certified physician or registered nurse, shall be done in accordance with the approved training protocol. Training of in-home respite workers shall be specific to the individual needs of the regional center consumer receiving the incidental medical service and shall be in accordance with orders from the consumer's treating physician or surgeon.

(f) The treating physician or surgeon shall give assurances to the regional center that the patient's condition is stable prior to the regional center's purchasing incidental medical services for the consumer through an appropriately trained respite worker.

///

(g) Prior to the purchase of incidental medical services through a trained respite worker, the regional center shall do all of the following:

(1) Ensure that a nursing assessment of the consumer, performed by a registered nurse, is conducted to determine whether an in-home respite worker, licensed vocational nurse, or registered nurse may perform the services.

(2) Ensure that a nursing assessment of the home has been conducted to determine whether incidental medical services can appropriately be provided in that setting.

(h) The agency providing in-home respite services shall do all of the following:

(1) Ensure adequate training of the in-home respite worker.

(2) Ensure that telephone backup and emergency consultation by a registered nurse or physician is available.

(3) Develop a plan for care specific to the incidental medical services provided to be carried out by the respite worker.

(4) Ensure that the in-home respite worker and the incidental medical services provided by the respite worker are adequately supervised by a registered nurse.

(i) Notwithstanding any other provision of law or regulation to the contrary, the hourly rate for an in-home respite

agency shall be increased to provide a fifty cent (\$.50) per hour wage increase and an eight-cent (\$.08) per hour benefit increase for the hours the in-home respite agency is providing incidental medical services.

(j) To expand the availability of trained in-home respite agency staff, a regional center may reimburse the in-home respite agency up to two hundred dollars (\$200) semiannually, for the provision of training pursuant to subdivision (c).

(k) For purposes of this section, "in-home respite worker" means an individual employed by an agency which is vendored by a regional center to provide in-home respite services. These agencies include, but are not limited to, in-home respite services agencies, home health agencies, or other agencies providing these services.

9. Health and Safety Code sections 1725, 1726, and 1727, establish DDS licensure requirements and guidelines for home health agencies when workers provide "skilled nursing services" to patients in the home. Section 1727 defines "skilled nursing services" as "services provided by a licensed nurse or licensed vocational nurse."

10. An In-Home Respite worker who is not a licensed health care professional but who is trained by a licensed health care professional may perform incidental medical services for consumers of regional centers with stable conditions. However, for this exception to be applied in this matter, the non-licensed In-Home Respite worker must satisfy the requirements of section 4686. There are currently no

DDS approved SCLARC vendors, pursuant to the requirements of Health and Safety Code sections 1725, 1726, and 1727, who can provide the required training pursuant to section 4686 to Claimant's choice of non-LVN respite worker so that she can provide the required skilled nursing services for Claimant as his In-Home Respite worker. Accordingly, Claimant's choice of non-LVN respite worker cannot currently satisfy the requirement for the exception to be applicable. Claimant, therefore, requires a nursing level of care to be provided by an LVN In-Home Respite worker for his health and safety. (Factual Findings 1-23; Legal Conclusions 1-4, 8-9.)

ORDER

Claimant's appeal of SCLARC's determination that Claimant's In-Home Respite Care provider must be a licensed vocational nurse is denied.

DATE:

IRINA TENTSER

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 the 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.