

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Nos. 2013080935
2013080936

DECISION

This matter was heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 30, 2013 in Alhambra, California.

Carmen Vasquez, Early Start Program Manager, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

Claimant DH (Claimant or DH) was represented by his father (Father). Claimant's mother (Mother) was also present and assisted by a certified Vietnamese language interpreter.

At the request of the parties, these matters were consolidated with OAH Case Numbers 2013080932, 2013080934, 201203080937 and 2013080938 for hearing purposes only.¹ Evidence was received, the record was closed, and the matters were submitted for decision on September 30, 2013.

¹ A separate decision will be issued for each consumer.

ISSUES

1. Must ELARC reimburse Claimant's "out-of-home respite" care in Oklahoma while the family was on vacation in Oklahoma.
2. Must ELARC reimburse Claimant for the cost of in-home respite for eight hours per day Monday through Friday and 16 hours per day on Saturday and Sunday during the period of May 31, 2013 to August 31, 2013 while Claimant and his siblings were on summer break from school.

FACTUAL FINDINGS

1. DH is a nine-year-old boy eligible for regional center services based upon his diagnosis of Pervasive Development Disorder Not Otherwise Specified (PDD-NOS). DH is very active and sometimes aggressive. DH was initially eligible for special education as mildly mentally retarded, but was recently exited from special education based upon his performance on cognitive tests, and was, therefore, not eligible for Extended School Year (ESY) during the summer of 2013. Claimant has three siblings, two of whom, KH and JH, are also consumers of ELARC.
2. Claimant's sibling, KH, is a seven-year-old boy eligible for regional center services based upon his diagnosis of Autism. KH has short-bowel syndrome, food allergies, swallowing problems and behavioral problems. KH has severe behavior issues including tantrums, elopement and aggression. He needs assistance with toileting and requires constant supervision. KH attends a special day class (SDC) at a public school. He was eligible for ESY for four weeks during the summer of 2013, but Parents did not enroll him in ESY because they wanted to concentrate on teaching him to swallow and eat appropriately.
3. Claimant's sibling JH is a nine-year-old year old girl and DH's twin. JH is eligible for regional center services based upon her diagnosis of Autism. JH

receives special education services from the public school district based upon a specific learning disability. She attends an SDC class for most of the school day and spends some time in a general education class. JH also has severe asthma requiring multiple medications and has sleep disturbances. JH's individualized education program (IEP) does not provide her with ESY.

4. Claimant lives in a two bedroom apartment with his parents and three siblings, KH, JH and LH. LH is KH's twin sister. Mother is a full-time care giver for the children. Mother is exhausted and overwhelmed from the demands of the four children, three of whom have extraordinary needs. She has been undergoing tests to determine the causes of her headaches and a lump/tumor that has been growing on her head. Father suffered a work related back injury and is unable to work or care for the children by himself because he cannot bend at more than a 90 degree angle and cannot pick up the children or physically restrain them. Father is the parent-vendor for Claimant's in-home respite which is provided by Claimant's uncle.

5. Claimant DH's Individual Program Plan (IPP) dated September 24, 2012, provides for up to 21 days per year of out-of-home respite and 30 hours per month of in-home respite care. KH and JH also have IPPs which provide for up to 21 days per year of out-of-home respite and 30 hours per month of in-home respite care

6. On June 11, 2013, Father contacted Service Coordinator Mark Jia and requested that in-home respite hours be increased during Claimant's summer break to 8 hours per day Mondays through Fridays and 16 hours per day on Saturdays and Sundays. ELARC requested a copy of the Claimant's IEP. After review of the IEP provided by Father and by the school district, on July 25, 2013, the service coordinator informed Father that ELARC would fund an additional 25 hours for DH during the summer break and an additional 15 hours for both JH and KH during he

summer break. Father explained that he needed at least eight hours per day of in-home respite and what was offered was not sufficient. On July 25, 2013, ELARC issued a Notice of Proposed Action (NOPA) denying Claimant's request. Father asserted that he paid the respite worker \$350 extra during the summer break to obtain the needed respite services.

7. ELARC's purchase of service policy provides that "Out-of-home respite service" means "intermittent or regularly scheduled temporary care provided outside the consumer's home by a vendored service provider." Providers in this category include adult day care centers, child care centers, residential facilities, and intermediate care facilities. According to the purchase of service policy, out-of-home respite is appropriate when occasional family and/or consumer needs are more than the support of friends, natural and community supports can provide. Additionally, out-of-home respite may be used as a support option should family members have planned activities which preclude the participation of the consumer such as vacations, hospitalizations, or family emergencies.

8. On July 12, 2013, Father contacted service coordinator Mark Jia and requested reimbursement for "out of home respite" for care provided in the home of a relative in Oklahoma by Claimant's usual respite worker while the family was in Oklahoma for the period of July 4, 2013 to July 6, 2013. Father asserts that he paid part of the travel and accommodation expenses for the respite worker and \$250 in wages for the period. Although Father had previously contacted Jia to ask about whether or not the children including DH, could be left in "out of home respite" while the family was on vacation in another state, he never requested prior approval for the above described arrangement. Father was aware that he needed to request prior approval for out-of-home respite and that such care is provided in a licensed facility. On July 25, 2013, ELARC denied the request for reimbursement and issued a

NOPA.

LEGAL CONCLUSIONS

1. The Lanterman Development Disabilities Services Act (Lanterman Act)² sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.

2. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) Appropriate services and supports include in-home and out-of-home respite services. (Welf. & Inst. Code, § 4512, subd. (b).) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account a consumer's needs and preferences, and for ensuring that services are cost-effective. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. The Lanterman Act gives regional centers, such as ELARC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) It is the intent of the Legislature to

² Welfare and Institutions Code section 4500 et. seq.

ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, §4646.)

4. Effective, July 1, 2009, 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. (Welf. & Inst. Code, § 4686.5, subd. (a)(1).) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter for a consumer. (Welf. & Inst. Code, § 4686.5, subd. (a)(2).) A regional center may grant an exemption from these requirements, if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. (Welf. & Inst. Code, § 4686.5, subd. (a)(3).)

5. In-Home respite services are defined in the Lanterman Act as intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client's own home, for a regional center client who resides with a family member. (Welf & Inst. Code, §4690.2, subd. (a).) Subdivision (a) of section

4690.2 goes on to state that respite services are designed to “do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision in maintaining the client at home.
- (3) Relieve family members from the constantly demanding responsibility of caring for the clients.
- (4) Attend to client’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 family members.”

6. Out of home respite is defined in the pertinent regulations as intermittent or regularly scheduled temporary care to individuals in a licensed facility and which: 1) are designed to relieve families of the constant responsibility of caring for a member of that family who is a consumer; 2) meet planned or emergency needs; 3) are used to allow parents or the individual the opportunity for vacations and other necessities or activities of family life; and 4) are provided to individuals away from their residence. (Cal. Code Regs., tit. 17, § 54342, subd. (a)(58)(E).)

7. Here, Mother is exhausted and experiencing health problems and Father has physical limitations on the assistance that he can provide with the care of his children due to his own disability. Under the best of circumstances, the care of four children, three of whom are developmentally disabled is difficult. Because of the lack of school program for DH and JH during the summer and KH’s feeding issues, Parents found themselves with an additional eight hours per day of time to care for Claimant and his siblings. Without some additional relief, Mother would likely not have been able to continue caring for Claimant in the home and Father is

not able to safely care for Claimant and his siblings alone without her. Therefore, such respite was necessary to maintain Claimant in the family home. Accordingly, Claimant qualifies for a limited time exemption to the 90 hour cap on in-home respite. Parents obtained additional services for the care of Claimant, KH and JH at a cost of \$350, which the ALJ deems reasonable.

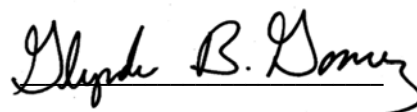
8. The care arrangement that Father made for Claimant and his siblings in the unlicensed home of a relative does not qualify as out-of-home respite under applicable law or the ELARC purchase of service policy as it was provided in an unlicensed out of state home and not in a licensed facility. Accordingly, Claimant's appeal of that issue must be denied.

ORDER

1. ELARC must reimburse Parents \$116.66 for Claimant's proportional share of the \$350 they spent for the extra hours of respite that were purchased by Parents for Claimant for the period of May 31, 2013 to September 15, 2013. The reimbursement shall be made within 30 days of receiving signed receipts for such services from Claimants' parents with the date, time, location and provider of the respite services set forth.

2. Claimant's appeals are denied in all other aspects.

DATED: October 7, 2013



GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)