

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

G.P.,

Claimant

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Nos. 2013080960

DECISION

This matter was heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 5, 2013, in Alhambra, California.

Judy Casteñada, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

G.P. (Claimant or GP) was represented by her father (Father). Claimant's mother (Mother) was also present and assisted by a certified Spanish language interpreter.

Evidence was received, the record was closed, and the matter was submitted for decision on November 5, 2013.

ISSUE

Must the Service Agency provide in-home (IH) respite in lieu of providing the same amount of out-of-home (OOH) respite?

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FACTUAL FINDINGS

1. GP is a thirty-five year-old woman eligible for regional center services based upon her diagnosis of profound mental retardation. Claimant is non-verbal, obese, and suffers from high blood pressure. GP does not have control of her bowels and uses diapers. She has frequent accidents and requires assistance and supervision for all essential daily living activities including eating and drinking. Claimant has no sense of danger and will wander away if not constantly supervised. She sometimes requires a wheelchair for outings because she has difficulty walking and fatigues very easily.

2. Claimant lives with her mother and father in a comfortable home in Whittier, California. Her father works and her mother cares for Claimant as a full time caregiver. Claimant does not attend a day program as her family has not found a day program that they feel comfortable with entrusting Claimant's care. Claimant receives In Home Support Services (IHSS) for supervision. Mother is her IHSS worker and will not consider allowing else to serve this function. Claimant receives 90 hours per quarter of IH respite. Claimant's sister is her IH respite worker. Claimant's sister is also employed full-time.

3. 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, OOH respite is appropriate when occasional family and/or consumer needs are more than the support of friends, natural and community supports can provide. Additionally, OOH 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.

4. In years past, Claimant's parents had requested, and received, IH respite in lieu of OOH respite. Beginning in 2012, ELARC required that consumers making such a request allow ELARC to explore whether or not a facility was available to provide appropriate OOH respite before allowing consumers to convert OOH respite to IH Respite. The process is that ELARC obtains the dates of the proposed OOH respite from Claimant's family, sends packets of information to the facilities that ELARC staff has determined may be appropriate, Claimant's caregivers visit the facilities and approve the proposed placement before OOH respite issued. If ELARC is unable to locate an appropriate placement, a temporary exemption is considered by ELARC. In 2012, Claimant was granted an exemption without having to go through the above described process. ELARC now requires all consumers to go through the described process before an exemption request will be considered.

5. Claimant's parents do not want to consider OOH respite and will not use such a placement if it is located. They are understandably concerned that Claimant is too vulnerable and has intensive needs which put her at risk in an out of home placement. These concerns are not without a rational basis in experience and fact. Mother is tired from the constant demands of Claimant's care and would like to have Claimant's sister provide additional IH respite by

using IH respite in lieu of OOH respite. There are no other generic resources or natural supports available to Claimant.

LEGAL CONCLUSIONS

1. The Lanterman Development Disabilities Services Act (Lanterman Act)¹ 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 individual program plans (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.)

¹ Welfare and Institutions Code section 4500 et. seq.

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 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. IH 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. OOH 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).)

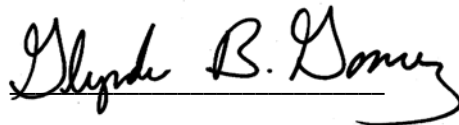
7. Here, Claimant has substantial needs and her family is understandably concerned about placing her in a facility for OOH respite. Nevertheless, the ELARC purchase of service policy and applicable law differentiate between OOH respite and IH respite and place different caps on the usage of each. In this case, Claimant will never use OOH respite and what she

really desires is a permanent increase in her IH respite hours. Under the facts of this case, Claimant has not met her burden to prove that an exception is warranted allowing her to convert OOH respite into IH respite. Although not an issue for this hearing, Claimant may want to explore the possibility of an increase in her IH respite hours with ELARC as this appears to be what she truly seeks.

ORDER

Claimant's appeal is denied.

DATED: November 8, 2013

A handwritten signature in black ink that reads "Glynda B. Gomez". The signature is written in a cursive style and is positioned above a horizontal line.

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.