

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2019050593

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 26, 2019, in Whittier, California.

Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Claimant's mother, with claimant's authorization, represented claimant, who was not present.¹ Claimant's mother utilized the services of a certified interpreter, Pamela Shepard Garcia.

ISSUE

Must the Service Agency, under the Lanterman Developmental Disabilities Services Act (Lanterman Act), fund for Day Care-Family Member services for seven hours per day, six days per week?

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1 through 9.

Testimony. Elva Rama; Jacob Romero; claimant's mother.

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¹ Claimant's and family members' names are omitted in order to protect their privacy.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 24-year-old non-conserved woman, is an eligible consumer of ELARC based on her diagnosis of seizure disorder.

2. Claimant resides at home with her mother, two grandparents, and her child, who is a consumer in ELARC's Early Start program, which provides services and supports to children under the age of three who are at risk for developmental delays.

3. On March 19, 2019, claimant's mother requested that the service agency provide day care services for claimant to supervise her seven hours per day, seven days per week, as it had done until December 31, 2018, when it was terminated by mutual agreement because claimant's medical records did not support continuing the service.

4. By a notice of proposed action dated April 17, 2019, the Service Agency declined to provide the service, writing that (a) it has been provided no documentation that claimant has frequent seizures, or showing how seizure activity may be affecting claimant's life; (b) claimant's mother informed the regional center in December 2017 that claimant decided to stop taking anti-convulsion medication during her pregnancy from July 2017 through April 2018 with no side effects or increase in seizures; (c) an electroencephalogram on July 26, 2018 revealed an absence of "epileptiform activity," though this did not rule out seizure disorder; (d) during claimant's annual Individual Program Plan (IPP) meeting in December 2018, it was verified that claimant's maternal grandparents live in the home with claimant, and that her maternal grandmother and maternal aunt are home all day with claimant; (e) claimant's child's Individualized

Family Services Plan, developed in connection with the Early Start program, does not mention any risks or concerns in claimant's caring for her child; (f) ELARC offered claimant alternative services, such as independent living skills (ILS), community integration, adaptive skills training, a personal assistant, parenting classes, and other services, all of which claimant refused because she is only interested in keeping her maternal aunt providing funded day care services to her; and (g) claimant has not asked for protective supervision services from the In-Home Supportive Services (IHSS) office. (Ex. 1.) The Service Agency cited Welfare and Institutions Code sections 4512, subdivision (b), 4646, subdivision (a), 4646.5, subdivision (a), 4868, subdivision (a), and 4520, subdivision (d), as authority for its denial.

5. On May 22, 2019, claimant signed a Fair Hearing Request. This hearing ensued.

Services Requested and Offered

6. Elva Rama has been claimant's service coordinator since June 11, 2018. She met with claimant at an IPP meeting six months later, on December 12, 2018. She found, and the IPP reflects, that claimant is ambulatory, verbal, able to perform all self-care tasks, able to care for her baby, and a good communicator of her needs and wants. Ms. Rama testified that claimant is capable of being a little more independent.

7. Claimant receives \$931 monthly in Supplemental Security Income and 50 hours monthly of IHSS, of which claimant's mother is the provider. Claimant has Medi-Cal insurance coverage. Her family and the baby's father help and support her, and the baby receives services funded by ELARC.

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8. Until December 2018, claimant received funding from ELARC for 200 hours per month of day care, intended to ensure claimant's safety when her mother was working during the week and on Saturdays, because the family said claimant was having seizures. Ms. Rama asked the family for documentation of the continuing need for the service to submit to a neurologist to perform a clinical review. The neurologist consulting with ELARC, Dr. Figueroa, had told Ms. Rama there was not enough information to warrant the day care service. Dr. Daniel Ree, a neurologist treating claimant, submitted some information but failed to identify specifically what supervision is needed, what the supervisor must do in the event claimant has a seizure, and why claimant's grandparents, who live in the home, cannot provide supervision in the event of a seizure. In a letter dated January 30, 2019, Dr. Ree wrote that supervision for claimant should be provided by IHSS. (Ex. 6.) Claimant wrote a letter (ex. 3), requesting reinstatement of the day care service because, she stated, she is still having seizures and is concerned for her safety and that of her baby. Ms. Rama submitted this letter to Dr. Figueroa, whose questions the letter did not answer.

9. A IHSS notification sent to claimant lists the services IHSS provides and identifies how many hours of each service is provided to claimant. Services such as assisting with personal non-medical services weekly, accompanying claimant to medical appointments, and helping with bathing, each have a number of hours associated with them. The service labelled "supervision for protection weekly" shows no hours. (Ex. 5.) Claimant's mother testified she has not asked IHSS to add hours of protective supervision in the home; she believes they only provide services for such tasks as food preparation and cleaning. That opinion, however, seems to be contradicted by the form listing supervision for protection as one of the services available.

10. In the absence of further information from Dr. Ree for Dr. Figueroa to evaluate, Ms. Rama offered funding at the IPP for the services of a personal assistant in the home and the community, community integration programs, and ILS programs. She encouraged claimant to take advantage of these, but claimant refused. Mr. Romero testified that the Service Agency would like to fund ILS services for claimant, so she can acquire skills while remaining safe, and so data about her abilities can be gathered to help in designing appropriate services for her. He also testified that day care is not an appropriate service for a woman of claimant's age. Ms. Rama expressed concern for claimant's safety and about the lack of assessments of claimant delineating her strengths and needs.

11. Claimant's mother testified that she believes the day care service is necessary to address claimant's condition, and that she has repeatedly provided the Service Agency with additional information from Dr. Ree. She just wants to be able to pay her sister, claimant's aunt, to be at the home while she is working, seven hours per day, Monday through Saturday.

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LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)² An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of her request for funding for day care services seven hours per day, six days per week. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

2. Because claimant seeks benefits or services, she bears the burden of proof. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove her case by a preponderance of the evidence. (Evid. Code, § 115.)

The Lanterman Act

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

² Further statutory references are to the Welfare and Institutions Code.

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the means selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or "generic resource." Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if a service specified in a client's IPP is not provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

Services for Claimant

6. The Lanterman Act defines "services and supports" to include day care services, protective services, community integration services, community support, and others. (§ 4512, subd. (b).)

7. Claimant did not establish that ELARC must fund seven hours of daily day care for her, six days per week. The continuing need for such services is unclear at best, and will remain so at least until Dr. Figueroa's questions are answered and medical and other records are provided so that claimant's service needs can be better assessed. Claimant has failed to explain why the alternative services offered by the regional center, such as community integration programs, adaptive skills training, a personal assistant in the home and the community, parenting classes, and ILS programs are not better suited to meet her needs, which the evidence tends to support. Nor has claimant established that she cannot obtain protective services from IHSS to ensure claimant's safety in the event of a seizure.

ORDER

Claimant's appeal is denied.

DATE:

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.