

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2019090527

DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 17, 2019, at Inland Regional Center in San Bernardino, California.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant. Claimant's mother utilized a language interpreter to interpret the hearing from English to Spanish and Spanish to English.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on December 17, 2019.

ISSUE

Should IRC permanently fund an increase in respite hours from 18 hours per month to 35 hours per month for claimant?

Jurisdictional Matters

1. Claimant is a seven-year-old consumer of services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq. Claimant is eligible for services based on her diagnosis of mild intellectual disability. Claimant is currently in the second grade of elementary school and lives at home with her parents and one twin sibling. Claimant's mother is a stay-at-home parent and her father works full time.

2. From May 1, 2019, through August 31, 2019, IRC increased respite for claimant from 18 hours per month to 35 hours per month because claimant was on summer break from school. Claimant's respite hours reverted back to 18 hours per month beginning on September 1, 2019.

3. On July 24, 2019, claimant requested a permanent increase in respite hours from 18 hours per month to 35 hours per month in a telephone conversation with claimant's consumer service coordinator, Daisy Ventura, based upon claimant recently having a seizure and going to the hospital. IRC served claimant with a notice of proposed action on August 6, 2019, denying the request to permanently authorize 35 respite hours per month on the basis that claimant "will return to school in August and school is a form of respite as it provides parents with temporary and intermediate relief in caring for their child." Additionally, IRC wrote that all generic resources must be exhausted before IRC can consider a permanent authorization. Claimant indicated

she did not want to pursue In-Home Supportive Services (IHSS) and is currently appealing a denial of Social Security, both of which are generic resources. IRC is required to ensure that all potential sources of funding are exhausted before providing services.

4. Claimant timely submitted a fair hearing request objecting to IRC's decision, and this appeal followed.

5. On September 23, 2019, IRC held an informal meeting with claimant's mother regarding the fair hearing request. IRC sent a letter to claimant's mother on September 25, 2019, summarizing the informal meeting. In the letter IRC stated it stands by its decision to deny the request to permanently fund the 35 hours per month of respite because IRC is required to consider all generic resources, as well as the parent's responsibility to provide care. Claimant's mother told IRC that she did not want to pursue IHSS funding because it is extremely difficult to obtain. Also, because claimant is returning to school, claimant's parents will have a natural break from claimant while she is in school. IRC also encouraged claimant's mother to seek behavioral treatment for claimant through claimant's medical insurance.

IRC's Evidence

6. IRC presented documentary evidence and the testimony of two witnesses at the hearing, specifically Daisy Ventura and Millee Martin-Walton. Daisy Ventura has been employed at IRC as a Consumer Service Coordinator for seven years and has a Bachelor's degree in Psychology and is currently working towards obtaining her Master's degree in Psychology. Her duties include assisting clients with obtaining services, including generic, community, and school services. Ms. Ventura was claimant's Consumer Services Coordinator from October 2018 until shortly after the

September 23, 2019, informal meeting in this matter. Ms. Millee Martin-Walton has been employed at IRC as a Program Manager for the past 21 years. She has a Bachelor's degree in Social Welfare and a Master's degree in Social Work. Ms. Martin-Walton is responsible for oversight of Consumer Services Coordinators and review of cases for service requests. Ms. Martin-Walton met with Ms. Ventura regarding claimant's request for additional respite hours and reviewed all documents related to claimant. The following factual findings are made based on the testimony of Ms. Martin-Walton and Ms. Ventura, as well as the documentary evidence received.

7. Ms. Ventura participated in the development of claimant's Individual Program Plan (IPP) on May 16, 2019. The IPP document provides:

Per mother, family does not receive Supplemental Security Income (SSI) or In-Home Supportive Services (IHSS). Mother informed CSC that she is currently appeal [*sic*] SSI due to being denied based on family's assets. CSC provided mother with information on both programs. Parent understands that she may contact her daughter's CSC anytime during the year for assistance to apply to these programs.

The IPP further provides:

[Claimant] is currently attending Sierra Lakes Elementary School . . . [and] is in a general education class. . . .
{Claimant} will be receiving 1800 minutes a year of language and speech therapy. [Claimant's mother]

requested for CSC to not go to [Claimant's] school for observations or IEP meetings. . . .

8. According to the summary of the informal meeting that occurred on September 23, 2019, claimant's mother was not open to applying for IHSS services because they were difficult to obtain. Ms. Ventura also testified that she spoke with claimant's mother on multiple occasions regarding IHSS, and while claimant's mother was initially open to obtaining IHSS services, she later informed Ms. Ventura she was not interested in applying for IHSS services. To date, claimant has not applied for IHSS services and is not receiving SSI benefits.

9. In her initial request for an increase in respite hours in May 2019, claimant's mother informed Ms. Ventura that claimant is hyperactive, wanders and has outbursts, which are behavioral issues. These behavioral issues were not the basis of the temporary increase in respite hours from 18 hours to 35 hours from May 1, 2019 to August 31, 2019, but rather the summer break from school was the reason the hours were temporarily increased. Respite hours are not provided to address behavioral issues. Rather, respite is provided to provide support to the family to safely maintain the consumer in the home and "give them a break" from care. Behavioral challenges are properly addressed by behavioral modification services. While claimant has some behavioral issues, she is not self-injurious and her school reported no behavioral concerns.

10. Claimant's IPP dated May 16, 2019, document provides that claimant's health is currently stable with no hospitalizations over the past year. The document also provides that claimant has competent fine and gross motor skills, is able to eat independently with supervision. Claimant is generally independent, but requires some

assistance brushing her teeth, and washing her hair. Claimant dresses herself independently, but her mother chooses her outfits.

11. On July 24, 2019, claimant's mother had a telephone conversation with Ms. Ventura wherein she requested a permanent increase in respite hours from 18 hours per week to 35 hours per week based upon the fact that claimant had a seizure and was taken to the hospital and because claimant's mother obtained a letter from a neurologist stating that claimant requires 24-hour supervision. Ms. Ventura made notes regarding the telephone call on July 24, 2019. In her notes Ms. Ventura wrote that she requested a copy of the neurologist letter and asked claimant's mother if she had applied for IHSS. Ms. Ventura wrote that claimant's mother responded "No because it will effect [*sic*] her respite." Ms. Ventura explained the nature of IHSS services to claimant's mother and how these services can benefit claimant, such as possibly qualifying for protective supervision hours. Claimant's mother informed Ms. Ventura she would look into IHSS.

12. Claimant's mother provided a two-page letter from Kian Ti Tiu Yu, M.D., pediatric neurologist, dated July 16, 2019, wherein Dr. Yu wrote that claimant was evaluated for seizure disorder and that claimant was prescribed medication, which she is currently taking. The letter stated that with medication claimant's "seizures are currently under control." The letter further provided "Mother is requesting for [claimant] to have a 1:1 chaperon to accompany her at all times during school hours."

13. Ms. Ventura noted that a 1:1 chaperone during school hours would be provided by the school district and not by IRC. Ms. Ventura could help claimant work with the school to obtain such a chaperone. However, claimant's mother refuses to allow any IRC Consumer Services Coordinator to attend any school meetings or IEP meetings at the school for claimant.

14. Ms. Martin-Walton explained that she reviewed claimant's file with Ms. Ventura regarding claimant's request for an increase in respite hours. When considering whether to authorize such a request, IRC looks to the factors of the family situation, child's needs, generic resources, and natural supports of the family. Respite hours are provided to give the parents a temporary break from caring for the child. Consideration was given to increase the respite hours from May 1, 2019, to August 31, 2019, to 35 hours per month because claimant was not in school during that time. According to Ms. Martin-Walton, at the time of the temporary increase in respite hours IRC was aware that claimant's mother was interested in applying for IHSS services, and possibly appealing the denial of SSI benefits, and the additional respite hours would allow claimant's mother the additional time necessary to apply for IHSS services and appeal SSI benefits. The IHSS services could be used to pay for additional respite for claimant, as well as assistance with personal care and protective supervision. Medi-Cal insurance can also pay for behavioral modification services to assist claimant's behavioral issues. IHSS services, SSI benefits and Medi-Cal funding are all generic resources that must be exhausted before IRC is allowed to fund services.

15. Ms. Martin-Wallace further explained that her review of the letter from Dr. Yu showed that claimant's seizures were under control with medication. Also, claimant's mother has not applied for IHSS services and has not appealed the denial of SSI benefits. As a result, claimant has not yet exhausted the generic resources available to her so that IRC funding for additional respite would be appropriate.

Claimant's Evidence

16. Claimant's mother testified at the hearing. Claimant's mother is a stay-at-home mother with two children, specifically twin seven-year old daughters. She stated that it is a challenge to care for twin daughters generally, but particularly difficult when

one daughter has special needs. Claimant's mother feels she is entitled to more respite, even more than 35 hours per month because that amount is not sufficient to her. Claimant requires 24-hour supervision and as a result it makes it difficult to do any activities with her other daughter.

17. Claimant's mother believes that her decision to pursue IHSS services or SSI benefits or any other benefit is not relevant to whether IRC provides respite services. She believes her decision to apply for IHSS services or not to apply for IHSS services is exclusively hers, and IRC should not base their decision on whether or not to provide additional respite hours on whether she has done so.

18. Claimant's mother believes that because her daughter needs 24-hour supervision, she should have additional respite hours and IRC should provide those hours.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to receive permanent authorization for 35 hours in respite care per month.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of

witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. . . .”

6. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements,

7. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

8. In order to be authorized, a service or support must be included in the consumer’s individual program plan (IPP). (Welf. & Inst. Code, § 4512, subd. (b).) In

implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

9. “Natural Supports” is defined in the Lanterman Act as “personal associations and relationships typically developed in the family and community that enhance or maintain the quality and security of life for people.” (Welf. & Inst. Code, § 4512, subd. (e).)

10. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).) The regional center is also required to consider generic resources and the family’s responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.)

12. “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).) Welfare and Institutions Code

section 4690.2, subdivision (a), states 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 the 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.

13. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS. If the family is eligible for IHSS services, but has chosen not to pursue it, IRC cannot fund the requested services. Welfare and Institutions Code section 4659, subdivision (c), states as follows:

Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children’s Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this

coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

Evaluation

14. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for permanent authorization for 35 hours per month of respite care, and claimant did not meet that burden. The evidence established that claimant is generally independent with the need for assistance for some self-care needs, and some assistance with behavioral issues, which are not respite care services. However, those services, such as behavioral modification services, are more appropriately provided through the generic resource such as Medi-Cal and IHSS, which can also provide additional respite services. Claimant has not applied for IHSS services and has not appealed the denial of services from SSI. Accordingly, pursuant to Welfare and Institutions Code section 4649, subdivision (c), IRC is forbidden by law from purchasing those services which would otherwise be available from the IHSS program. Contrary to claimant's mother's assertions, IRC is required by law to consider whether those generic resources have been exhausted before IRC can fund services.

Claimant's mother has challenges caring for twin daughters, particularly with one child having special needs. Claimant's mother's frustrations are legitimate and understandable. However, applicable laws dictate under what circumstances IRC may fund services, including respite care. IRC is also required to periodically reassess claimant's requirements for services pursuant to her IPP and any "permanent"

authorization for services would not be appropriate because all services provided must be provided pursuant to claimant's IPP. Claimant has failed to apply for generic resources such as IHSS that would cover the cost of the respite hours requested. Accordingly, claimant's request for permanent authorization for 35 hours per month of respite care must be denied.

ORDER

Claimant's appeal is denied.

DATE: January 2, 2020

DEBRA D. NYE-PERKINS
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.