

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

In the Matter of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency

OAH No. 2020080173

DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on September 17 and October 5, 2020, in Sacramento, California.

Robin Black, Legal Services Manager, represented the Service Agency, Alta California Regional Center (ACRC).

Claimant's parents represented claimant.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 5, 2020.

ISSUE

Is ACRC obligated to continue to fund in-home respite now that claimant has moved from the family home to his own apartment?

FINDINGS OF FACT

Background

1. Claimant is a 39-year-old man who qualifies for ACRC services based on a diagnosis of moderate intellectual disability. He is receiving services from ACRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)

2. Claimant requires 24-hour supervision. His parents are his primary caregivers. Until recently, claimant lived in the family home with his parents. He receives 270.08 hours of in-home support services (IHSS), which his father provides, and 72 hours per quarter of in-home respite. At the beginning of the pandemic, respite hours were increased to up to 120 hours per quarter. Up until the pandemic closed most programs, claimant participated in a day program with InAlliance three to four days per week. He currently attends up to two days per week.

3. In claimant's October 2019 Individual Program Plan (IPP) meeting, ACRC, claimant, and claimant's parents agreed to three objectives for the program year:

- a. Claimant will continue to reside in his family home with supportive services.
- b. Given regular medical and dental care, claimant will maintain good health.

- c. Given day program support, claimant will enhance his communication, recreation, socialization, community integration, self-advocacy and functional living skills.

4. Lori Goselin-Kelly has been a Service Coordinator at ACRC since 2008. She is assigned to claimant. As a Service Coordinator, Ms. Goselin-Kelly gets to know her assigned families, assesses to ensure the clients' needs are adequately addressed through available services, and holds an IPP meeting for each client in their birth months. She testified at hearing.

5. On June 18 and 26, 2020, Ms. Goselin-Kelly spoke with claimant's parents regarding Supported Living Services (SLS) options if he were to live in his own apartment. She noted in claimant's case file that claimant's parents stated they are gathering information and they had no immediate plans for claimant to move out.

6. SLS is a program implemented by ACRC vendors to provide clients with daily support. SLS may include, for example, assistance with activities of daily living, meals, grocery shopping, medication and money management, accessing appropriate activities, and building relationships. SLS can be provided up to 24 hours per day, depending on the client's needs and other support.

7. Ms. Goselin-Kelly was copied on an email dated June 26, 2020, between claimant's parents and his day program, InAlliance. Claimant's parents informed InAlliance that claimant was transitioning between his family home and new apartment, they did not know how long that transition would last, and claimant should be picked up at his new address. On July 10, 2020, Ms. Goselin-Kelly noted in claimant's case file that claimant was transitioning between homes. She recalled asking claimant's parents whether they wanted to pursue SLS, and they told her they were not

ready for that. Claimant has a one-year lease on the apartment. Claimant has experimented with independent living and group-living in the past, but was not successful and moved back home with his parents each time.

8. Knowing claimant was receiving in-home respite, she inquired of her supervisor whether those respite hours could continue. Her supervisor, Kenisha Hurd, determined ACRC would prepare a Notice of Proposed Action (NOPA) informing claimant in-home respite services would discontinue. The NOPA issued on July 20, 2020, explained:

Reason for action: There is no assessed need for you to continue to receive in-home respite since you have moved out of your parents' home and are now living in your own apartment. In-home respite services are designed to be provided only to regional center clients who live with family members to assist the family members in maintaining the client in the home that they share.

Moreover, ACRC has offered to explore funding services to help you reside in your own home. However, you and your parents have declined to pursue those services. Your parent's choice to provide you care and supervision while you reside in your own home when appropriate regional center funded services are available to help you do that, does not obligate ACRC to provide them respite from that work.

9. ACRC informed claimant of his appeal rights. Under Welfare and Institutions Code section 4715, a claimant is entitled to continued provision of services if he or she files a timely request for hearing, that is, within 10 days of notice that a service will be discontinued. The fair hearing request was timely filed and services remain in place pending final determination. This hearing followed.

ACRC's Evidence

10. Ms. Hurd testified at hearing. She explained ACRC's reasoning for issuing the NOPA. ACRC concluded claimant was living in his own home and therefore did not qualify for respite. While his parents have chosen to provide his care themselves, there is no requirement for them to do so. She believes if claimant's father needs a break in caregiving, he could find another IHSS worker to provide some of claimant's 270 IHSS hours. She also explained SLS is available, though it can take "a couple of months" to find and implement services.

11. ACRC submitted claimant's "Consumer I.D. Notes." The notes are all contact claimant's service coordinator had with or about him between March 14, 2000, and September 10, 2020. Ms. Hurd pointed to notes his service coordinators made over the years when claimant lived in an apartment. One note she referred to was on February 26, 2010, which explained claimant was living in an apartment with support. Another was entered on November 18, 2004. In that note, claimant's father was informed respite is not available if claimant lives independently. This note, she explained, was consistent with and evidence of ACRC's policy regarding respite care.

12. Ms. Hurd did not, however, explain the events on or after the November 18, 2004 note. On that date, claimant's father, claimant, his service coordinator, her

supervisor Sandra Sigirst, and a representative from his day program (collectively: planning team) convened for an IPP meeting. The case note explained:

It was learned that [claimant] stays some nights at his apartment and some nights at his parents' home in Davis. He does not ever stay by himself. Ms. Sigirst indicated that [claimant] cannot receive in-home respite if he lives independently, and he cannot receive [SLS] if he lives in his parent's home with no intention of moving out (completely).

The meeting concluded with all parties agreeing claimant's individual needs and program needed more thought. An additional meeting would be held.

On January 26, 2005, the planning team met again to finalize the IPP. The case note included the following:

It was explained to [claimant's father] that [claimant] is not able to receive in-home respite services if he lives independently. [Claimant's father] explained that although there is a separate apartment for [claimant's] use, that his family cares for him while he is at the apartment or while he is staying at the family home. [Service coordinator] will change [claimant's] residence status to indicate that he lives with family members. [Claimant's] in-home respite services will continue at 72 hours per quarter maximum per today's discussion.

On January 27, 2005, claimant's case manager submitted a Purchase of Services extension of in-home respite services for an additional six months.

Claimant's Evidence

13. Claimant's father testified on his behalf. He explained that prior to the pandemic, claimant went to a day program for several hours each day, went bowling, worked out at a local gym, and volunteered at the senior center. Due to the limitations the pandemic created, his day program is four hours, two days per week. He can no longer bowl, go to the gym, or volunteer. More recently, he has not been able to be outside because of the poor air quality caused by the fires. Claimant's father is his IHSS worker and he has a respite provider that provides his parents breaks.

14. Claimant's father explained claimant was on a waiting list "for a long time" for an apartment about two miles from the family home. In June of 2020, he learned a two-bedroom apartment was available. He signed a one-year lease, which his parents view as a one-year experiment. They have slowly introduced the idea of the apartment to claimant. Claimant's father described the arrangement as a "transition," and every week is different. Some weeks he spends two nights at home and five at the apartment, and some weeks the opposite. Wherever he sleeps, however, because he requires 24-hour supervision, his parents stay with him. The apartment has two bedrooms to accommodate his parents when claimant sleeps at the apartment. Occasionally, one of claimant's five siblings will stay in the apartment with claimant.

15. Claimant is encouraged to spend time at the apartment. His parents are introducing him to the nearby community. They take walks and show him available resources. His parents hope claimant will transition well to living in the apartment; they have committed to trying this for one year. They intend to work with ACRC to identify

appropriate SLS, but while claimant is in this transition period, they do not want to also change his support people and programs. They are also concerned about new services because interviewing new workers and finding new programs present risks of exposure during the pandemic. They try to minimize the amount of people in and out of their home and the apartment.

16. Claimant's parents know the long-term plan must be for claimant to live out of his parents' home because they "won't live forever," but as of now, they are both in good health and are committed to caring for claimant. Claimant's father understands there may be no "legal" reason for he and his wife to continue to care for claimant, but he is their son, and parents take care of their children. Given claimant's specialized needs, his father feels comfortable being the primary care provider.

17. Many years ago, claimant attempted to live in a group setting. The placement did not last long as claimant's behaviors are not conducive to group living. He has also lived in an apartment before. The last time his parents tried an apartment for claimant, it was successful because of the support. His father described it as an "Empowerment Program" that assigned claimant an "Independent Living Specialist." Funding for the program was eliminated, however, and claimant could not remain in the apartment without the support.

18. Claimant's parents understand that in 2021, the state is beginning a "Self Determination Program." The Self-Determination Program began as a pilot in 2018, and is expected to be available statewide in 2021, per Welfare and Institutions Code section 4685.8. Claimant's parents are excited to participate in this program and intend to take advantage of it as soon as it is available. They will also work with ACRC on SLS that would benefit claimant.

PRINCIPLES OF LAW

19. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.) In this matter, the burden is on ACRC to establish by a preponderance of the evidence that good cause supports terminating respite services.

20. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

21. Determining which services and supports the regional center provides is made "on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of

each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (Welf. & Inst. Code, § 4510.)

22. Welfare and Institutions Code section 4690.2, subdivision (a) defines “respite hours:”

... “In-home respite services” means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, for a regional center client who resides with a family member.

These services are designed to do all of the following:

Assist family members in maintaining the client at home.

Provide appropriate care and supervision to ensure the client’s safety in the absence of family members.

Relieve family members from the constantly demanding responsibility of caring for the client.

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 the family members.

[¶] . . . [¶]

23. Welfare and Institutions Code section 4646, subdivision (a), provides:

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, when 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 individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

ANALYSIS

24. There is no dispute claimant requires 24-hour care. The issue, rather, is the type of care and from whom he receives it. Claimant's parents have assumed responsibility for claimant. His father provides his IHSS care and his parents retain a respite service worker for up to 72 hours per quarter (up to 120 hours per quarter during the pandemic). Claimant participates in a day program, though the hours are greatly reduced due to the pandemic. Claimant's parents explained they and claimant wish for more independence for him. One way they have attempted to accomplish independence is to secure an apartment. It has been a slow transition, and he spends several nights per week in either the family home or the apartment.

25. Whether he is in the family home or in his apartment, his parents provide the same amount of care. They need the respite hours to enable them to continue to

care for their son. Claimant's parents plan a slow transition from their home to the apartment. They believe that changing not only his living space, but his care providers and activities will confuse and stress him, which will not aid his success.

26. ACRC argued respite is only provided to help a consumer stay in the family home. Because claimant "moved out" and has an apartment, respite is no longer appropriate. This view of claimant's situation is rigid and does not recognize the actual arrangement. Claimant has not "moved out." Sometimes he sleeps in his parents' home and sometimes he sleeps in an apartment. No matter where he sleeps, his parents are there because claimant requires 24-hour supervision.

27. Additionally, the state recognized the emergency situation the pandemic created when it added almost 50 hours of respite care for claimant. The on-going emergency situation requires more than a narrow reading of available services.

28. Welfare and Institutions Code section 4690.2 explains respite hours are "provided in the client's own home, for a regional center client who resides with a family member." There is no time during which claimant is not residing in his own home with a family member. At this time, however, claimant's home shifts between his parents' home and two miles away to an apartment, where his parents also live with him.

29. As claimant's father explained in 2005: "although there is a separate apartment for [claimant's] use, his family cares for him while he is at the apartment or while he is staying at the family home." Following that explanation, in 2005 ACRC changed claimant's "residence status to indicate that he lives with family members." His respite care continued. ACRC has not provided any legal basis on which to deny the same service in the same situation in 2020.

30. To be sure, claimant would be well-served to identify and implement appropriate SLS. Claimant's parents' concerns, however, are valid. There is a constant risk of exposure to what has proved to be a deadly virus. The more exposure, the greater the risk. While this risk is not a reason to avoid identifying SLS, it does add to the difficulty in securing services. October is claimant's birth month, in which his IPP meeting is held. The parties are encouraged to maximize claimant's success at living independently by identifying the most appropriate services for him. In the meantime, however, respite services should continue.

LEGAL CONCLUSIONS

31. ACRC did not meet its burden to establish claimant's respite hours should be discontinued.

ORDER

Claimant's appeal is GRANTED. ACRC shall continue to fund in-home respite.

DATE: October 14, 2020

HEATHER M. ROWAN
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.