BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CHRISTOPHER P., Claimant, and SAN DIEGO REGIONAL CENTER, Service Agency.	OAH No. 2011090948

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California, on November 22, 2011.

Gale B., claimant's mother, represented claimant, who was present for the fair hearing.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Oral and documentary evidence was received and the matter was submitted on November 22, 2011.

ISSUE

Shall the service agency be allowed to reduce claimant's respite hours from 110 hours per month to 90 hours per quarter?

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 22, 2011, SDRC notified claimant that his respite hours would be reduced, claimant timely filed a request for fair hearing and this appeal ensued.

Services Currently Provided

2. Claimant receives 110 hours per month of respite services funded by SDRC. Claimant also receives 219 hours per month of In Home Support Services (IHSS) which are not funded by SDRC. The IHSS hours were reduced from 224.7 hours per month to their current level this past year and include 45.02 hours per week of "protective supervision."

Evidence Introduced at Hearing

3. Sarah Franco, claimant's SDRC service coordinator, testified that claimant, a 31-year-old deaf male, has a history of AWOL and destructive behavior. He has been arrested and spent time in Patton State Psychiatric Hospital. Claimant's hours were set at 110 hours per month to allow claimant to transition back into the community when he was released from Patton with the understanding that they would be reassessed when claimant entered a day program. Claimant participates in a day program five days a week, five hours a day, funded by SDRC. Reports from that program indicate that claimant's behaviors have improved greatly. Franco testified that the purpose of respite is to provide temporary relief to caregivers and that based upon the day program's progress reports, 90 hours of respite per quarter are now sufficient to meet claimant's needs.

4. Maria Pedroza, SDRC Program Manager, testified about the Family Respite Needs Assessment worksheet used by regional centers statewide to evaluate respite needs. Based upon the scores received by claimant during that assessment, 90 hours per quarter, as mandated by recent legislation, are sufficient. Pedroza testified that claimant does not qualify for a respite exemption.

5. Claimant's mother testified about her needs and the exhausting efforts caring for claimant. She also has a mentally ill adult son at home who requires care, as well. She has no natural supports and testified that she needs every single respite hour she currently receives in order to get sufficient rest.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) SDRC had the burden of establishing that a reduction in respite was warranted.

The Lanterman Act and Regional Centers

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (the Lanterman Act) which is found at Welfare and Institutions Code section 4500 *et seq*.

3. The Lanterman Act provides a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The State Department of Developmental Services (the 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.) In order to comply with its statutory mandate, the 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.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. In 2009 Assembly Bill 9 amended the Welfare and Institutions Code and added Section 4686.5 which prohibited regional centers from funding more than 90 hours per quarter of respite services unless an exemption existed.

Cause Exists to Deny the Request for Respite Hours to Remain at 110 Hours Per Month

7. A preponderance of the evidence established that the IHSS services were not generic and that the provisions of Welfare and institutions Code section 4659, subdivision (c), did not apply because claimant had pursued IHSS coverage. The IHSS protective supervision is neither duplicative nor generic to any service funded by SDRC.

A preponderance of the evidence did establish that claimant attends 25 hours per week of a day program, sleeps a few hours per night, has a brother with whom he goes on outings in the community, and receives IHSS protective supervision hours, all of which provide sufficient respite to claimant's family. Respite was set at its current level before claimant entered the day program which focuses on reducing his behaviors. According to the reports from that program, it has been successful. Thus, the original reason the respite hours were set at 110 per month no longer exists. Moreover, while a reduction will leave claimant with unfunded hours each day, nothing in the Lanterman Act requires a regional center to fund services for a consumer 24 hours a day. A preponderance of the evidence established

that SDRC's analysis of claimant's respite needs in light of his improved behavior as reported by the day program, as well as the family's responsibility to care for claimant, was appropriate and reasonable.[1] SDRC properly did not take the needs of claimant's adult mentally ill brother into consideration as that individual is not developmentally disabled.

Claimant did not establish that an exemption exists to continue funding respite hours above 90 hours per quarter. Accordingly, SDRC shall reduce claimant's respite hours to 90 hours per quarter.

ORDER

Claimant's request that his respite hours remain at 110 hours per month is denied. The San Diego Regional Center shall reduce funding of those hours to 90 hours per quarter.

DATED: December 6, 2011

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MARY AGNES MATYSZEWSKI
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 ninety days.

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[1] Claimant's mother asserted that she had previously agreed to a reduction of her hours to 110 hours per month when claimant returned from Patton, but that argument was insufficient to establish that her respite hours should not be reduced at this juncture.