

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DANIELLE E.,

Claimant,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH CASE No. 2011120139

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on January 3, 2011, in Alhambra, California.

Caralyn E., Claimant's mother, represented Danielle E.¹, Claimant.

Noriko Ikoma, Early Start Supervisor, represented Eastern Los Angeles Regional Center (Regional Center or Service Agency).

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Service Agency may reduce Claimant's personal assistance service hours from 100 per month to 10 per month.

¹ Initials have been used instead of family surnames to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a 22-year-old Service Agency consumer, with diagnoses of autism and moderate mental retardation. She resides at home with her mother, her two brothers, one of whom is a Service Agency consumer, and her step father and his son.

2. Claimant has limited speech, and uses two to three word phrases to communicate. She is in stable health, but is overweight. She attends a gym, with the help of a personal assistant. She does not initiate interaction with others, and is unable to maintain friendships. Claimant engages in challenging behaviors, such as hitting her brothers, hitting property, and engaging in tantrums.

3. Claimant requires assistance in completing most daily living tasks. She can eat using two utensils, but requires assistance cutting her food. She has to be reminded to eat. She is toilet-trained, but needs to be reminded to have a bowel movement and to wipe after a bowel movement. She needs reminders to use and change menstrual period pads. She can dress with assistance. Claimant cannot self-administer her medications.

4. Claimant presently attends high school and receives special education services. Due to her age, she is expected to exit school in one or two months. Service Agency and Claimant's mother anticipate finding a day program for her.

5. At the last individual program planning (IPP) meeting, held on January 26, 2011, Service Agency agreed to fund 24 hours of adaptive skills training. At the time, Service Agency was funding a personal assistant for Claimant for 24 hours per week. Claimant was also receiving 55.1 hours per month of In-Home Supportive Services (IHSS) services, and the Service Coordinator was concerned that the personal assistant was performing tasks that IHSS staff should be performing. Service Agency agreed to continue funding the personal assistant at the same level, and funded an advocate to support Claimant in seeking more IHSS hours. Claimant also received 30 hours of in-home respite.

6. California Pediatric & Family Services, Inc (CPF) provides adaptive skills training in the areas of nutrition and meal preparation, communication, household chores, and hygiene and grooming skills. In its latest progress report, dated October 28, 2011, CPF notes that Claimant does very well in gaining most of the skills during sessions, but needs constant redirection and prompting to stay on task. CDF was concerned about Claimant's ability to perform the tasks outside the sessions, and provided her mother with instructions for help.

7. People's Care provides the personal assistant services to Claimant. The personal assistant works with Claimant at home and in the community, providing general assistance and reinforcing adaptive skills goals. At home, the assistant helps Claimant with adaptive skills training goals, such as those in hygiene, housekeeping, laundry, and food preparation. The assistant also helps Claimant with her with daily living tasks, including eating, bathing,

dressing, and toileting. The personal assistant accompanies Claimant in many community outings, and helps her with mobility, safety, and self-sufficiency skills, some of which are also adaptive skills goals. The assistant helps Claimant in the gym, and also engages her in other physical activity, like walking. The personal assistant also helps by redirecting Claimant's misbehaviors as needed.

8. On or about September 22, 2011, Claimant's IHSS hours were increased to 277 per month. The program provides assistance with household chores, such as cleaning, doing the laundry, preparing meals, and shopping for food. The program also provides personal care services, including assistance with bathing, grooming, dressing, eating, bowel care, and taking medications.

9. On November 3, 2011, Service Agency issued a Notice of Proposed Action to reduce the personal assistance service hours from 100 hours per month to 10 hours per month, which reduction was deemed appropriate in light of the increase of 222 hours of IHSS. Claimant's mother filed a Fair hearing Request on November 15, 2011.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its 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.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be 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 plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option. ..." (*Id.*)

3. Section 4648, subdivision (a)(8), provides that "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all

members of the general public and is receiving public funds for providing those services.” IHSS is a generic agency that receives funds to provide personal assistance to eligible individuals.

4. In this case, Claimant’s family and Service Agency, through the IPP process, agreed to continue funding the personal assistant during the IHSS appeal process. The appeal was successful, resulting in an increase of 222 hours. The IHSS hours are intended to be used to provide personal assistance to Claimant in her household and daily living tasks, just as the personal assistant hours. It was not established at the hearing that Claimant’s needs have changed to such extent that she warrants twice as much personal assistance as in January 2011. On the contrary, as set forth in factual finding numbers 6, 7, and 8, there is duplication in the services provided by the personal assistant, the adaptive skills training, and the IHSS services. Accordingly, it is appropriate to reduce the personal assistance services from 100 hours per month to 10 hours per month. Such reduction is consistent with Claimant’s needs and with the mandate of section 4648, subdivision (a)(8), of the Lanterman Act that regional center funds not be used to supplant the funds of a generic agency, such as IHSS.

5. Accordingly, by reason of factual finding numbers 1 through 9 and legal conclusion numbers 1 through 4, Service Agency may reduce the personal assistance services from 100 hours per month to 10 hours per month.

ORDER

Claimant's appeal is denied and Service Agency may reduce the personal assistance services from 100 hours per month to 10 hours per month.

Dated: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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