

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MAYDEE M.,

Claimant,

OAH No. 2011120401

and

EASTERN LOS ANGELES  
REGIONAL CENTER,

Service Agency.

**DECISION**

Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Alhambra, California on January 5, 2011.

Carmen Vasquez, Early Start Program Manager, represented Eastern Los Angeles Regional Center (ELARC or service agency).

Respondent Maydee M.'s mother represented her. Spanish language interpreter services were provided.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on January 5, 2011. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

**ISSUE**

Whether the service agency should retroactively grant in-home respite in lieu of out-of-home respite to meet claimant's care and supervision needs at a time when an unforeseen death in the family required her mother's emergent leave from home.

**FACTUAL FINDINGS**

1. Claimant is a 21-year-old consumer of ELARC based on her qualifying diagnosis of severe mental retardation. Claimant has additional diagnoses of "attention deficit disorder of childhood with hyperactivity and developmental language disorder." Claimant is unable to care for herself and requires total care assistance. She resides with her

mother, who is her full-time caregiver, her father, who is employed full-time outside of the home, and her sister, who is her respite care worker.

2. Claimant's most current Individual Program Plan (IPP), dated July 9, 2011, describes claimant's "behavioral problems at home" as follows:

"Parents . . . relayed that they must lock up all items which [claimant] . . . can hurt herself with. She also has child proof locks on all doors in the house. [Claimant] . . . tends to put everything in her mouth[.] [F]amily must assure that she does not get . . . things that she can swallow and [which] may cause harm to her. [Claimant] . . . must not be allowed in the kitchen on her own, she does not know the difference between hot and cold and will not cry when she gets hurt. Family reports that on occasions [claimant] . . . will be hurt and they will not find out until later due to [claimant's] . . . inability to communicate and lack of understanding that she's been hurt. Family reports that on occasions [claimant] . . . is not toilet trained and will dig in her diapers when she is wet or has had a bowel movement[.] [F]amily must monitor her closely at all times. Family reports that [claimant] is not aggressive and does not hurt others[.] [W]hen she is upset she will tantrum by screaming and squatting on the floor. This happens when she does not get what she wants."

3. Claimant's IPP reports that claimant demonstrates "inappropriate behavior with males at home and out in the community. [Claimant] . . . is at risk because of her inappropriate behavior and grabbing of males. . . . [W]hen she sees a male she is attracted to she will attempt to touch him to try to get his attention." Additionally, "[Claimant] . . . has low tolerance for frustration and is resistive most of the time. [Claimant] . . . demonstrates anxiety and for that reason she takes medication which is being monitored by [a] psychiatrist . . . on a monthly basis."

4. ELARC funds 30 hours per month of family vendored in-home respite care for claimant. Claimant's IPP indicates that claimant "qualifies for 21 days of out of home respite."

5. On October 23, 2011, claimant's mother found out that her cousin was killed in an accident and that, in light of her cousin's death, her sick aunt required her care. From October 23 to November 1, 2011, Mother left claimant at home in the care of claimant's brother who has experience caring for claimant. Mother determined not to board claimant at a facility away from the family home because she feared others would not accord claimant the vigilant attention claimant required to control her behavior.

6. Thereafter, mother requested ELARC to fund retroactively in-home respite in lieu of out-of-home respite, and the service agency denied the request. Claimant's mother filed a timely Fair Hearing Request, and these proceedings ensued.

7. ELARC's purchase of service guidelines provides that "Out-of-home respite service means intermittent or regularly scheduled temporary care provided outside of the consumer's home by a vendored service provider. Providers in this category include adult day care centers, child care centers, residential facilities serving either adults or children, Intermediate Care Facilities/Developmentally Disabled-Habilitative and Intermediate Care facilities/Developmentally Disabled-Nursing. Out-of-home respite services are intended to assist the family in securing temporary outside support in providing appropriate care and supervision of the consumer." The purchase of service guidelines further provide that "[i]n-home respite in lieu of out-of-home respite may be used only when there is no out-of-home respite arrangement available." The purchase of service guidelines requires proof of flight arrangements or documentation from a hospital or physician prior to implementation of the in-home respite in lieu of out-of-home respite service.

8. The extraordinary circumstances requiring mother's emergency leave precluded her from obtaining the service agency's prior approval.

9. No evidence of the relative costs of out-of-home respite and in-home respite in lieu of out-of-home respite was offered at the hearing.

#### LEGAL CONCLUSIONS

1. The Lanterman Developmental Disability Act, Welfare and Institution Code, section 4500, et seq., requires regional centers to provide services and supports in accordance with the IPP for an individual with a developmental disability in a cost effective manner. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. A person seeking to establish eligibility for government benefits or services has the burden of proving by a preponderance of the evidence that he or she has met the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161[disability benefits]; *Greatorex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]; Evid. Code, § 500.)

3. It is undisputed that an unforeseen death in the family required claimant's mother to take an unanticipated leave and to make emergency arrangements for claimant's intense care and supervision needs in her absence. Claimant's mother left claimant in the family home in the care of claimant's brother who has experience caring for claimant. The continuity of care for claimant in the family home avoided exacerbating the likely stresses associated with claimant's mother's absence. Her brother who cared for her was already acquainted with her needs and routines, thus minimizing any disruption in her care. Although claimant's IPP provides for up to 21 days of out-of-home temporary support, the exigent circumstances in this case warranted in-home respite in lieu of out-of-home respite to meet claimant's intense care and supervision needs.

4. The service agency, as the party most knowledgeable about the costs associated with in-home respite in lieu of out-of-home respite, did not establish that provision of such services to claimant under the emergency circumstances set forth above was costly in contravention of the Lanterman Act and regulations promulgated thereunder.

5. Cause exists to grant retroactively claimant's request for in-home respite in lieu of out-of-home respite on the basis of Factual Findings 1 through 9, inclusive, and Legal Conclusions 1 through 4, inclusive.

#### ORDER

1. Claimant Maydee M.'s appeal is granted.

2. The Eastern Los Angeles Regional Center shall retroactively grant claimant Maydee M.'s request for 10 days of in-home respite in lieu of out-of-home respite upon its receipt of a death certificate or other documentary proof of claimant's mother's cousin's death.

DATED: January 10, 2012

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JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.