

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

R.T.,

Claimant,

v.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2011120407

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on January 10, 2012, in Alhambra, California.

R.T. (Claimant) was represented by his mother.¹ Claimant was not present.

Elizabeth Ornelas represented the Eastern Los Angeles Regional Center (Service Agency).

Sonia I. Hernández provided language interpreter services.

The parties submitted the matter for decision on January 10, 2012.

STATEMENT OF THE CASE

The question in this case is whether the Service Agency can reduce the funding of Claimant's respite care from 16 to 12 hours per month.

Claimant's mother contended at hearing that Claimant's needs are such that the Service Agency should fund 30 hours per month of respite care.

¹ Initials are used to refer to Claimant and family title is used to refer to his representative to preserve Claimant's privacy.

FACTUAL FINDINGS

1. The Service Agency issued a Notice of Proposed Action to Claimant on November 30, 2011. The Notice of Proposed Action proposed to reduce Claimant's respite care funding from 16 to 8 hours per month, citing to Welfare and Institutions Code sections 4686.5 and 4646. Claimant requested a fair hearing timely.

2. At hearing, the Service Agency asserted that its position had changed to reducing Claimant's respite care funding to 12 hours per month after discussions between the parties at an informal meeting, pursuant to Welfare and Institutions Code section 4710.7.

3. Claimant is an eight-year-old boy with autism and expressive language disorder. According to his current individual program plan (IPP), dated October 17, 2011, Claimant is in good general health, lives with his parents, has difficulties communicating, and prefers to play alone. He is toilet trained, but sometimes requires help cleaning himself. He requires some assistance and reminders to complete his other personal care needs, like hand washing and brushing his teeth. He is able to remove his clothing, but he needs help dressing. He is able to feed himself using appropriate utensils. He is a picky eater. He is aware of simple dangers, but still needs to be watched. At times, Claimant does not listen or follow routines at home. He can become aggressive, have tantrums, get frustrated, and fight with others.

4. The Service Agency funds several services for Claimant, including behavior management services, DIR/Floortime, and family support/communication services. Claimant receives special education services that include speech and language therapy; those are funded by his school district. He attends school Monday through Friday.

5. Claimant's mother presented Claimant's activity and therapy calendar for 2011. It contained a full schedule of appointments on most every weekday and weekend day, spanning the afternoons and evenings. Claimant's mother attends numerous conferences and trainings related to autism. Claimant has a sister without disabilities, and Claimant's mother acts as her school "room mom" and is active in the school PTA, to ensure she spends some time attending to her daughter's needs and to be involved in her life.

6. Claimant's mother described a typical day with Claimant. She described needing to assist him to dress and be groomed, ensure he eats, and that his food is prepared in small portions. While her descriptions showed that Claimant requires greater care than an eight-year-old boy without disabilities, her descriptions did not describe any significant behaviors or care needs that warranted any increase in respite care. Claimant's mother established that she provides complete care for Claimant and that his care is taxing on her; however, the totality of the evidence regarding Claimant and his disability-related needs did not establish that a decrease to

12 hours per month of respite funding would harm Claimant or provide inadequate respite relief for Claimant's mother.

7. Claimant's mother presented the testimony of two peer friends who described Claimant's mother as a very involved mother who is in dire need of rest and help, due to her constant care of Claimant. Their testimonies did not establish that a decrease to 12 hours per month of respite funding would harm Claimant or provide inadequate respite relief for Claimant's mother.

LEGAL CONCLUSIONS

1. The Service Agency bore the burden of proof. (Evid. Code, § 500.) The standard of proof is by a preponderance of the evidence. (Evid. Code, § 115.)

2. Welfare and Institutions Code section 4686.5 is inapplicable to this matter. That statute provides that the Service Agency may only purchase respite services when a consumer's needs exceed those of age peers without disabilities, and it limits in-home respite to 90 hours per quarter. The respite hours at issue in this matter do not exceed the statutory limit and the parties do not dispute that Claimant requires respite funding. Therefore, analysis of Welfare and Institutions Code section 4686.5 is unnecessary.

3. Welfare and Institutions Code section 4646, subdivision (a), provides in part that it is the Legislature's intention to ensure that the provision of services and supports by the Service Agency reflect the cost-effective use of public resources. In accordance with this provision, Claimant's respite care funding must be cost-effective.

4. The Service Agency established that funding Claimant's respite care 12 hours per month would adequately meet his needs. The evidence did not establish that Claimant requires more than 12 hours per month of respite care funding. The evidence did not establish that a decrease to 12 hours per month of respite funding would harm Claimant or provide inadequate respite relief for Claimant's mother. It therefore must be concluded that greater than 12 hours per month of respite care funding would not be a cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).)

5. Cause exists to deny Claimant's appeal, as set forth in Factual Findings 1-7, and Legal Conclusions 1-4.

ORDER

Claimant's appeal is denied in OAH case number 2011120407. The Service Agency may decrease Claimant's respite care funding to 12 hours per month.

January 19, 2012

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings