

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ARTHUR G.,

Claimant,

OAH No. 2011120552

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 18, 2012.

Noriko Ikoma, Early Start Supervisor, represented the Eastern Los Regional Center (ELARC or service agency).

Claimant Arthur G.¹ was represented by his parents who are also his authorized representatives.

Testimonial and documentary evidence was received, the case was argued, and the matter was submitted for decision on January 18, 2012. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order.

ISSUE

Whether the service agency may decrease claimant's respite hours from 24 hours per month to 16 hours month.

FINDINGS OF FACT

1. Claimant is a 24-year-old male consumer of ELARC due to his qualifying diagnoses of mental retardation and seizure disorder. Claimant also has a diagnosis of myelomeningocele (spina bifida). Claimant has a neurogenic bladder and must be

¹ Initials are used to preserve confidentiality.

catheterized four to five times daily. Claimant wears diapers. Claimant feels no sensation below his waist. Accidental bowel movements are common. His caretakers are frequently required to dis-impact him manually. He is dependent on others for assistance with his self-help needs. Claimant uses quad canes to ambulate. He wears bilateral ankle braces. He resides with his mother, father, and two adult sisters.

2. In 2009, claimant was hospitalized for an extended duration to address a shunt malfunction. After his hospitalization, claimant had to re-learn skills required for feeding himself and for ambulating.

3. For a period of time not established at the hearing, the service agency funded 30 in-home respite hours each month for claimant when the family experienced stresses associated with the ill-health and death of other family members. As the family stresses abated, the service agency reduced claimant's in-home respite hours to 24 hours per month. Mother testified at hearing that she did not oppose the reduction because at the time the family's attention was focused on re-teaching claimant how to walk after his hospitalization.

4. Claimant's case worker, Martha Nuñez, testified that there has been no change in claimant's needs. The service agency's current proposal to reduce further claimant's in-home respite hours is occasioned by the service agency's adoption of a new policy implementing the July 1, 2009 "trailer bill," which, among other things, added section 4686.5 to the Lanterman Developmental Disabilities Services Act (Lanterman Act).²

5. On November 22, 2011, the service agency notified claimant of its proposed action to reduce his in-home respite hours from 24 hours per month to 16 hours per month. On behalf of claimant, his parents filed a timely Fair Hearing Request and these proceedings ensued.

6. The service agency's Purchase of Service Guideline contains a "Reference Guide for Respite Levels of Service," which enumerates multiple levels of service ranging from Level A to Level G and criteria for qualification at each level. (Exhibit 7.) Nuñez testified that based on claimant's disabilities, health condition, and skill development an application of the reference guide places claimant at Level C for in-home respite, which amounts to 12 in-home respite hours per month. According to Nuñez, claimant "almost does not qualify for 12 hours, but we were trying to accommodate the family and provide them 16 hours of respite. We are trying to help out the family." Nuñez's testimony further explained that the levels of qualification "jump from 12 hours per month to 18 hours per month, but we felt that 16 would have been accommodating."

7. Mother is claimant's primary caregiver. Mother uses in-home respite hours to take a break from the stress and anxiety of attending to claimant's demanding needs. Mother, for example, uses in-home respite hours to go out to a show or to reunion functions at her alma mater or to spend time connecting with her daughters.

² Welf. & Inst. Code, § 4500 et seq. Unless otherwise indicated all further statutory references are to the Lanterman Act.

8. Claimant's sister, Michelle, is his respite worker. Michelle has other employment and a boyfriend. Father testified that Michelle "has a life." In the event that Michelle is unavailable, there is no respite relief for Mother.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act, which mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (§ 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Regional centers are responsible for taking into account individual consumer needs and preferences, and for ensuring service cost effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

2. The services and supports to be funded for a consumer are determined through the individualized program planning process, which involves collaboration with the consumer and service agency representatives. Services and supports for persons with developmental disabilities are defined as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (§ 4512, subd. (b).) Services and supports include in-home respite services. (§ 4686.5.)

3. Section 4686.5, effective July 1, 2009, provides for the purchase of up to 90 hours of in-home respite services in a quarter (30 hours each month) when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. In-home respite is designed to achieve the following objectives set forth in section 4690.2, subdivision (a):

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision in maintaining the client at home.
- (3) Relieve family members from the constantly demanding responsibility of caring for the clients.
- (4) 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 family members.

4. When purchasing services and supports, a regional center must conform to its purchase-of-service guidelines. (4646.4, subd. (a)(1).) The Lanterman Act requires the Department of Developmental Disability (Department) to review the guidelines "to ensure compliance with statute and regulation." (§ 4434, subd. (d).) Reflecting the Department's

interpretation of statute and regulation, the guidelines are not entitled to the deference given to a regulation but are rather entitled to a degree of deference dependent upon the circumstances in which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

5. The service agency applied its Reference Guide for Respite Levels of Service to reduce claimant's in-home respite hours notwithstanding its failure to demonstrate any substantial or meaningful reduction in the demanding care and supervision required by claimant. Claimant's needs set forth above remain unchanged. The only variation that has occurred is the service agency's adoption of guidelines apportioning the 30 in-home respite hours authorized by section 4686.5, subdivision (a). Deference to the service agency's proposed action is unwarranted under these circumstances.

6. As the party seeking a modification of an existing service the service agency bears the burden of proving by a preponderance of evidence that the change is warranted. (Evid. Code, § 500.) The service agency has not met its burden of establishing by a preponderance of evidence that a reduction of claimant's in-home respite care hours from 24 hours per month to 16 hours per month is warranted in light of the fact that claimant's circumstances and demand for care remain unchanged.

7. Cause does not exist for ELARC to decrease claimant's respite care hours from 24 hours per month to 16 hours per month by reason of Factual Findings 1 through 8, inclusive, and Legal Conclusions 1 through 6, inclusive.

ORDER

1. Claimant Arthur G.'s appeal is granted.
2. Eastern Los Angeles Regional Center may not reduce claimant Arthur G.'s in-home respite care hours to 16 hours per month.

Dated: January 31, 2012

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.

