

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ZACHARY S.,

Claimant,

and

EASTERN LOS ANGELES  
REGIONAL CENTER,

Respondent.

OAH Case No. 2011120924

**DECISION**

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 2, 2012, in Whittier, California.

Matthew M. Pope, Attorney at Law, represented Claimant Zachary S.<sup>1</sup>

Jesse Valdez (Valdez), Manager, Federal Programs/Residential Services, represented Eastern Los Angeles Regional Center (Regional Center or Service Agency).

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

**ISSUE**

Should Regional Center continue to fund in-home respite in lieu of out-of-home respite?

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<sup>1</sup> Initials have been used instead of family surnames in order to protect Claimant's privacy.

## FACTUAL FINDINGS

1. Claimant is a 16-year-old Service Agency consumer with a qualifying diagnosis of autism. He resides with his parents. His father suffers from cardiac problems, and has not been able to tend to Claimant's needs. His older sister just left for college, which has caused significant stress and anxiety for Claimant.

2. Claimant speaks in one or two word sentences, and can use hand signals. His major method of communication is through a typing board, in which he is able to type simple sentences. He has recently acquired an iPad, and is learning to use it to communicate. He requires assistance with most daily living activities, such as bathing, toileting, dressing, and personal hygiene. He spits out his food about 17 times per day. He runs away from care givers an average of eight times per day. He requires one-to-one personal assistance 24 hours per day. Claimant has never spent a night away from his mother.

3. Claimant has been attending a non-public special education placement, Pyramid Autism Center, since March 2011.

4. a. In July 2008, due to Claimant's aggressive behaviors, his prior school district retained the services of a licensed clinical psychologist, Rodric B. Rhodes, Ph.D. (Rhodes), to provide treatment to Claimant. His current school district, Whittier Unified School District, continued to fund the services after Claimant moved to high school. Dr. Rhodes regularly meets with Claimant once per week, and attends other meetings pertaining to Claimant's needs as necessary. Dr. Rhodes testified at the hearing about Claimant's significant and challenging behaviors.

b. Claimant's case is one of the most challenging cases involving behavior issues ever seen by Dr. Rhodes. Claimant engages in aggressive behavior, including pulling hair, grabbing and hitting others and causing property damage. He is very active, and tends to run away from caregivers and others. However, what is most difficult and challenging is that Claimant's misbehaviors can occur without warning and at times without apparent trigger. Claimant could be seated still one moment, and running away from caregivers the next.

c. Dr. Rhodes has implemented a behavior plan at school and consults with Claimant's mother as behavior issues arise at home or in the community, particularly new or more intense ones. Some of the components of the behavior plans include techniques to deescalate the behavior and to make changes in the situation or environment.

5. In Dr. Rhodes opinion, spending time in a residential facility would present particular problems for Claimant, leading to increased stress, anxiety, and resulting behaviors. Claimant is used to being around family and caregivers with whom he has developed a relationship. As an example of Claimant's inability to deal with, and respond to sudden

changes, Dr. Rhodes noted that when Claimant was moved from a public high school to his current placement he threw chairs out of the new school's office windows in protest. Based on his advice, the school district uses overlapping aides during transitions to new aides so that Claimant can become familiar with the new person while the existing supports remain in place to bridge trust issues. In Dr. Rhodes opinion, if any out-of-home respite is to take place consistent with Claimant's needs, would-be providers must gain Claimant's trust and learn about his unique needs by spending time with him at home and at school before being left in charge of providing care to him.

6. Claimant's mother quit her full-time job to provide care to Claimant and to closely oversee all aspects of his life. She is careful to screen anyone who will provide care to ensure they know about Claimant's needs, and then allows for a transition so that Claimant spends time with any new respite provider alongside an existing provider.

7. Claimant's latest individual program plan (IPP), prepared following a meeting on May 16, 2011, contains a desired outcome for Claimant to continue to reside in the least restrictive environment, his home. In support of this goal, Service Agency agreed to fund in-home respite. Each month he receives 30 hours of in-home respite, 69 hours of day care, 32 hours of parent coordinated personal assistance, and 12.5 hours of in-home adaptive skills training. He also receives 273 hours each month of State-funded in-home supportive services.

8. Claimant has also been receiving in-home respite in lieu of out-of-home respite. The respite is provided by individuals familiar with Claimant, typically those who interact with him in other facets of his life, such as school, or who already provide other services.

9. Effective May 2, 2011, Service Agency changed its Out-of-Home Respite Services Purchase of Services Guidelines (POS Guidelines). The new POS Guidelines contain the following limitation: "In[-]home respite in lieu of out[-]of[-]home respite may be used only when there is no out[-]of[-]home respite arrangement available." (Exhibit 5, at p. 2.)

10. In November 2011, consistent with her prior custom and practice, Claimant's mother submitted a request for approval of in-home respite in lieu of out-of-home respite. Her service coordinator denied the request, informing Claimant's mother that the new policy required Claimant's placement in a community care facility for receipt of out-of-home respite. Claimant's mother objected to placing Claimant in a residential facility for respite and there was no further discussion of available facilities.

11. On December 6, 2011, Service Agency issued a Notice of Proposed Action, denying the request for in-home respite in lieu of out-of-home respite. It stated that Service Agency policy had changed following changes in state law. The notice also stated that respite had been offered in a state licensed facility, which was refused, and that extraordinary circumstances did not exist to warrant in-home respite in lieu of out-of-home respite in

Claimant's case. Service Agency cited Welfare and Institution Code<sup>2</sup> sections 4646.5, subdivision (a)(1), 4646, subdivision (a), and 4640.7, subdivision (b), in authority in support of the new policy. Claimant's mother filed a Fair hearing Request on December 11, 2011.

## LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), 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.) Appropriate services and supports include respite services. (Welf. & Inst. Code, § 4512, subd. (b).)

2. 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 IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. The Lanterman Act requires regional centers to take into account consumers' individual needs in making determinations about the appropriateness of particular services. (See: *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Moreover, reliance on a fixed policy that does not take into account the consumer's individualized needs is inconsistent with the requirements of the statute. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233 (*Williams*).) In *Williams*, for instance, the court rejected a regional center's denial of services, which denial was based on a purchase of services policy to deny in-home day care services to all minors with working parents, and held that the agency had to make an individualized decision based on the consumers' specific needs.

4. In accordance with the IPP process, Service Agency and Claimant's family have agreed on the need for respite services. In-home respite in lieu of out-of-home services has been previously provided. No evidence was presented to establish that Claimant's needs have changed or that in-home respite in lieu of out-of-home respite is no longer appropriate. On the contrary, the hearing record amply supports the need for the respite services.

5. The three sections relied upon by Service Agency, sections 4646.5, subdivision (a)(1), 4646, subdivision (a), and 4640.7, subdivision (b), correctly point out that it has the responsibility to ensure cost-effective delivery of services. However, none of these provisions expressly prohibits in-home respite in lieu of out-of-home respite. Nor is out-of-home placement necessarily a cost-effective option given Claimant's needs.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

6. Service Agency has funded in-home respite in lieu of out-of-home respite and continues to fund the service in some circumstances. As set forth in factual finding number 9, the new POS Guidelines permit the service “only when there is no out[-]of[-]home respite arrangement available.” Claimant presents with many behavioral challenges and, significantly, is adversely affected by new situations and people. Dr. Rhodes made a compelling case for the need to control as many environmental factors as possible to manage, and perhaps prevent, some of the likely outbursts. Continuing to provide services in a familiar environment with familiar providers is a cost-effective way to meet Claimant’s considerable needs. In these circumstances, an exception from the purchase of services policy is warranted. In any event, while Service Agency does have a process to find a residential facility to provide the service, no specific facility was discussed and it was not established that a facility that would be able to meet Claimant’s needs would actually be available.

7. Continued funding of in-home respite in lieu of out-of-home respite is therefore appropriate and necessary to meet Claimant’s needs, by reason of factual finding numbers 1 through 11 and legal conclusion numbers 1 through 6.

#### ORDER

Claimant's appeal is granted, and Service Agency shall continue to fund in home respite in lieu of out of home respite in accordance with this Decision.

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.