

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LUIS F.,

Claimant,

and

EASTERN LOS ANGELES
REGIONAL CENTER,

Respondent.

OAH Case No. 2012010509

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 8, 2012, in Alhambra, California.

Maria Hernandez, Claimant's mother, represented Luis F.¹, with the assistance of an interpreter.

Lilia Ortega, Supervisor, 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

Whether Regional Center may reduce in-home respite services by 20 hours per month.

FACTUAL FINDINGS

¹ Initials have been used instead of the family surname in order to protect Claimant's privacy.

1. Claimant is a 19-year-old Service Agency consumer with a qualifying diagnosis of autism. He resides with his mother, his maternal grandmother, and his 17-year-old brother, who is also a Service Agency consumer.

2. Claimant is ambulatory and is reported in good health. No evidence was presented at the hearing to indicate that he is medically fragile or that he requires special medical care. He is verbal, but has been described as being very shy.

3. Claimant started attending Pasadena City College (PCC) on August 29, 2011. He is taking a physical education class, which meets twice each week.

4. Claimant's most recent individual program plan (IPP), agreed to be the parties, was prepared following a meeting on December 7, 2010. The parties are still engaged in the process of updating the IPP, and held a meeting on December 8, 2011. At the time of the 2011 IPP meeting, Service Agency was funding 30 hours of in-home respite services each month. One of the issues in contention in the current IPP is the number of hours of respite services. During the December 8, 2011, meeting, Service Agency Service Coordinator Gladis Oropeza (Oropeza) informed Claimant's mother that Service Agency had changed its purchase of services (POS) policy and that new levels of respite would be determined pursuant to its provisions. Service Agency uses a worksheet to evaluate a consumer's need for respite under the new POS policy, and Oropeza sought to obtain information from Claimant's mother with which to complete the form. Claimant's mother asked for time to review the document, and the IPP meeting concluded shortly thereafter. Claimant's mother did not provide any additional information on the worksheet, and Service Agency made its own determination, based on its review of file documents, that only 10 hours per month of respite services were warranted to meet Claimant's needs.

5. The POS policy in question, entitled "Purchase of Service Guideline," became effective on January 31, 2011. It creates seven levels of service, based on a consumer's medical, behavioral, and self-care needs, on the condition of the caregiver, and on family stress factors. Thus, for example, to receive the lowest level of respite (Level A), or four hours per month, one or more of the following must be present: the consumer has special medical needs; he/she has difficult-to-manage behaviors; he/she requires supervision or assistance with self-care; the caregiver identifies stress related to the consumer's disability; and natural supports do not meet the full respite needs or the family is unable to find routine care due to the consumer's disability or behaviors. For level F, which permits up to 30 hours of respite each month, the medical conditions must be chronic, the misbehaviors must be chronic and require 24-hour supervision, the primary caregiver must have a life-threatening chronic medical condition that severely interferes with the ability to care for the consumer, or the severity and combination of family stress factors necessitate additional hours.

6. As set forth in the 2010 IPP with respect to self care, "Mother informed that Luis

continues to lack independent living skills and continues to require constant verbal and physical prompts to tend to tasks. He also displays non-hygienic behaviors. According to mother, it takes him approximately 45 minutes to brush his teeth. He becomes easily distracted so mother must constantly redirect him. Although Luis is able to feed independently, he tends to eat fast and overfill his mouth. His mother has to prompt him to eat slower and advises him on the risks associated with eating this way. Mother informs that he sweats profusely. When bathing, he stays in the shower up to an hour at a time, but does not rinse properly. Mother must prompt him to rinse well. While in the shower, he is known to open his eyes wide, hum and clap his hands very loudly. He requires reminders to complete dressing and toileting tasks. According to mother, Luis requires nearby supervision at all times to keep him from potentially harmful situations. He is known for smelling his shoes. He puts his fingers in his nose and smears the mucus on the carpet. He belches in public and passes gas on his brother. Mother constantly prompts him not to display these behaviors. . . .” (Exhibit 5, at p. 4.)

7. The 2010 IPP contains the following with respect to behavior: “Luis has displayed difficult behaviors for the bulk of his life. Difficult behaviors include temper tantrums, physical and verbal aggression and non-compliance. Temper tantrums are described as complaining and crashing into walls when he does not like what he is being told. It appears that this behavior is usually for the function of escape and avoidance. Physical and verbal aggression is described as Luis hitting his brother very hard with a closed or open fist. He also squeezes his brother’s hand very hard. He also has started to make statements like, ‘I don’t know and I don’t care!, ... doesn’t matter..., and Stupid!’ [H]e has also made a habit of insulting strangers in the street or instigating others to engage him in a fist fight. Non-compliance is described as ignoring directives to engage in undesired activities, such as when his mother tells him to wash his hands. According to mother, other inappropriate behaviors include smearing food on face and clothes, [*sic*] passes gas and belches in all settings, has no safety awareness and runs when he hears an oncoming bus, hums and claps hands as if to self-stimulate, etc. . . .” (Exhibit 5, at p. 11.)

8. Claimant’s mother testified, without contradiction, that self-care needs and behavior challenges remain. Thus, with respect to self care, he needs reminders to brush his teeth, wash his hands, and finish his showers. He needs assistance to brush his hair and to choose clean clothes. Claimant needs to be persuaded to take his medication. In addition, he runs around the house; he hits himself and the walls; he impulsively hits his brother; he does not recognize danger in the streets, and, for instance, in two separate instances in the recent past he was almost hit by cars; and, he smells his feces and touches the water inside toilets. Claimant’s mother credibly testified that, as a result, she has to supervise Claimant all his waking hours. She is also mindful during his sleeping hours, as he gets up during the night to eat and watch television.

9. In2Vision provides community integration training services to Claimant, at the

rate of 36 hours per month. The latest report indicates that the agency is supporting Claimant in his efforts to attend college. The agency assisted Claimant in enrolling at PCC, and continues to support him by helping him become familiar with the school, by encouraging him to join clubs and activities, and by helping him make new friends at school. In2Vision also has goals in mobility training, self-advocacy, safety skills and emergency preparedness, and money skills. Of note, in its November 30, 2011 report, In2Vision stated that Claimant is taking public transportation to attend school, but continues to have problems remembering where to get off and where to take a transfer bus, and does not look for oncoming traffic when crossing streets or walking through a parking lot.

10. On December 15, 2011, Service Agency issued a Notice of Proposed Action reducing the respite services from 30 hours per month to 10 hours per month. Claimant's mother filed a Fair Hearing Request on December 21, 2011.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code² 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.)

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. Appropriate services and supports include respite services. (Welf. & Inst. Code, § 4512, subd. (b).) In-home respite services have been defined as “[i]ntermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, for a regional center client who resides with a family member. These services are designed to do all of the following: [¶] (1) Assist family members in maintaining the client at home. [¶] (2) Provide appropriate care and supervision to ensure the client’s safety in the absence of family members. [¶] (3) Relieve family members from the constantly demanding responsibility of caring for the client. [¶] (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 the family members. . . .” (Welf. & Inst. Code, § 4690.2, subd. (a).)

² All further references are to the Welfare and Institutions Code.

4. In 2009, the Legislature enacted section 4686.5, which provides, in pertinent part:

“(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

“(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

“(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter for a consumer.

“(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer’s care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member’s ability to meet the care and supervision needs of the consumer. . . .”

5. 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 (ARC).) 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.

6. In accordance with the IPP process, in 2010 Service Agency and Claimant’s mother agreed that 30 hours per month of respite services were appropriate to meet Claimant’s needs. This level of services is consistent with the requirements of sections 4686.5 and 4690.2. The evidence presented at the hearing establishes that Claimant continues to require assistance to perform daily tasks, that he continues to present challenging behaviors, and that he requires sustained and vigilant supervision. His mother is his primary care provider, and has the additional stressor of providing care and supervision to another teen-age Service Agency consumer. In these circumstances, respite of 30 hours per month, which averages to one hour per day, continues to be appropriate.

7. Service Agency seeks to apply its POS guidelines to reduce respite services by 20 hours per month. However, *ARC* and *Williams* require focus on a consumer's individual needs and preclude reliance on a fixed rule to deny funding an otherwise appropriate service. As set forth in factual finding numbers 1 through 10 and legal conclusion numbers 1 through 6, Claimant's specific needs warrant an exception from Service Agency's POS policy.

8. By reason of the foregoing, continued funding of 30 hours of in-home respite services per month is warranted to meet Claimant's needs, by reason of factual finding numbers 1 through 10 and legal conclusion numbers 1 through 6.

ORDER

Claimant's appeal is granted, and Service Agency shall continue to fund 30 hours per month of in-home respite services 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.