

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

I. F.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2012010623

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino California on February 21, 2012.

The Inland Regional Center (agency) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on February 21, 2012.

ISSUE

How many hours of respite should the agency fund?

FACTUAL FINDINGS

1. Claimant is a 23-year-old male who qualifies for agency services due to moderate mental retardation. He also has cerebral palsy (claimant uses a wheelchair or walker) and mild vision impairment. He resides with his mother and his capabilities and limitations are described in his current, January 5, 2012, Individual Program Plan (IPP) as follows:

“[Claimant] has full use of his hands. He walks with the assistance

of a walker but is unsteady and needs someone nearby in case he falls. According to mother [claimant] can move his electric wheelchair but because of his vision problems it is hard for him to maneuver. It was reported by mother that [claimant] has limited vision but he is not legally blind. [Claimant] can take his medication but needs assistance. Mother will give [claimant] the medication as prescribed and he can take it. [Claimant] has full control of his bowel and his bladder. He is able to transition himself from his wheelchair to the toilet independently and can finish independently. According to mother [claimant] needs assistance to bath[e]. Mother informed CSC that the preferred provider is usually the person that [sic] assists [claimant] with his bathing tasks. He needs help to transition to the bathtub as well as someone nearby to regulate the water temperature and help him wash his body. [Claimant] also needs assistance with shaving and brushing his teeth. Mother informed CSC that [claimant] can dress himself but this task is slow and sometimes [claimant] will put cloth[e]s the wrong way. During the week mother or respite provider assist [claimant] with dressing, and according to mother she allows [claimant] to dress himself on his own on the weekends. [Claimant] does not require supervision to avoid injury.” (Exh. 5)

2. Claimant had been receiving services from a Los Angeles regional center and, on December 1, 2011, he, along with his family moved to Moreno Valley which is in the agency’s catchment area. Claimant transferred to the agency catchment area with “87 hours of respite to be used in lieu of day care.” This “raised some red flags” with agency personnel because the agency does not fund respite to be used in lieu of day care. Consequently, the agency began working on claimant’s case immediately after the agency became aware of claimant’s transfer from Los Angeles. Based on a complete assessment of claimant’s needs, the agency determined that his respite hours should be reduced to 30 hours per month and that claimant should participate in an out-of-home day program. If claimant were in a day program he would be away from home, out in the community, for six hours per day, five days per week. During this time (30 hours per week) mother would have a break from the need to attend to claimant.

3. The idea of a day program was discussed with claimant’s mother and mother and claimant toured and observed a couple day programs. Claimant and his mother liked the ARC Moreno Valley day program and the agency is in the process of enrolling claimant in that program. The agency is willing to continue providing claimant with his current 87 hours per month of respite until claimant is able to participate in the ARC day program. Full enrollment of claimant in the ARC program is expected to occur on or before May 1, 2012.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4686.5 places the following

restrictions on the amount of respite services the agency may provide: “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.” An exemption to the restrictions may only be granted if claimant demonstrates that the intensity of his care and supervision needs are such that additional respite is necessary to maintain him in the family home, or there is an extraordinary event that impacts the family member’s ability to meet claimant’s care and supervision needs.

2. Claimant is currently in the process of enrolling in the ARC Moreno Valley day program. Once he begins participating in the ARC program mother will be relieved of the obligation to care for him for 30 hours per week while claimant is away from home in the ARC program. Consequently, the evidence presented during the instant hearing was insufficient to justify a continued exemption from the legislative mandate to limit in-home respite services to 90 hours per quarter (30 hours per month). However, the current 87 hour per month respite level shall remain in place until respondent is successfully enrolled in the ARC program or May 1, 2012, whichever occurs first.

ORDER

The agency’s decision to reduce claimant’s respite hours from 87 hours to 30 hours per month is upheld; however, claimant’s current respite level of 87 hours per month shall remain in place until respondent is successfully enrolled in the ARC program or May 1, 2012, whichever occurs first.

DATED: February 27, 2012.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.