

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

HANNAH G.,

Claimant,

and

HARBOR REGIONAL CENTER,

Service Agency

OAH No. 2012030107

DECISION

This matter was heard by David B. Rosenman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH), on April 17, 2012, in Torrance, and telephonically on April 19, 2012, in Los Angeles, California. Hannah G. (claimant) was represented by her mother, Sandra G., and by Thomas E. Beltran, attorney at law. (Initials are used for purposes of confidentiality.) Harbor Regional Center (Service Agency) was represented by Gigi Thompson, Manager of Rights Assurance. Evidence was received, argument was made, and the matter was submitted for decision on April 19, 2012.

MOTION TO DISMISS / ISSUES

On March 1, 2012, Service Agency filed a Motion to Dismiss (Motion; Exhibit 10) contending that the four issues stated in the Fair Hearing Request should be dismissed. Claimant's Opposition to Motion to Dismiss (Exhibit 12) was filed April 5, 2012. The ruling on the Motion is set forth in more detail on the record of April 17, 2012, but is summarized below.

Issue 1: The Motion was denied as to this issue. The parties agreed this issue is: Should the Service Agency provide caregiver services to claimant when she is in her mother's custody based on 24 hours per day minus school hours and IHSS hours? (IHSS is a reference to In-Home Supportive Services.)

Issue 2: The ALJ accepts claimant's contention that this issue is abated by a pending writ in Los Angeles Superior Court relating to the prior administrative Decision in OAH Case No. 2010060464. Therefore, this Decision will not address the issue of whether Vivian Mendez should receive reimbursement for unpaid vacation pay.

Issue 3: The Motion as to this issue was granted in part and denied in part. This issue requested reimbursement for pay to Vivian Mendez for 33.5 hours of work in 2010-2011. Based on an offer of proof, the request covered workdays in August, September, November and/or December 2010, and in March 2011. The Motion to dismiss was granted in part because pay for workdays in the months of August, October and November 2010 were determined by the Decision in OAH Case No. 2010110781 (Exhibit C4). Claimant then agreed that she would not assert a claim for workdays in the month of September 2010. The parties agreed the remaining issue is: Should the Service Agency pay for, or fund for, 3.25 hours worked by Vivian Mendez on March 31, 2011?

Issue 4: The ALJ accepts claimant's contention that this issue is abated by the pending writ in Los Angeles Superior Court relating to the prior administrative Decision in OAH Case No. 2010060464. Therefore, this Decision will not address the issue of whether Vivian Mendez should receive an hourly rate of \$16.74.

FACTUAL FINDINGS¹

1. Claimant is a 15-year-old girl born in September 1996 who has been diagnosed with Canavan's Disease, a rare, degenerative disorder which is caused by an inability to produce a brain enzyme and results in developmental and neurological delays as well as physical problems. Claimant is blind, able to make only limited movements (roll, crawl, lift her head), only able to walk with a walker and assistance, unable to sit up without help, and cannot feed or care for herself. While claimant is unable to talk, she can communicate in some manner understandable to those who have experience with her, in the nature of verbalizations and physical indications for such things as pleasure, agreement, pain, discomfort, or anxiety. As such, claimant requires many hours of care from a parent and/or caregiver for all of her daily living and self-care needs.

2. Due to her disabilities and developmental delays, claimant has been a client or consumer of the Service Agency for a number of years and currently receives services under her Individual Family Service Plan (IFSP; Exhibit C8) and a prior Decision (OAH Case no. 2009091685; Exhibit C3) including 3,614 hours per year, or approximately 301 hours per month, of homemaker / caregiver services through Cambrian Homecare (Cambrian). Claimant's mother has located and trained the caregivers, who are then employed by Cambrian to perform various homemaker services and supports for claimant at home and in the

¹ Several Factual Findings are taken from, or modeled after, earlier Decisions addressing prior Fair Hearing Requests on behalf of Claimant, some of which were marked for identification. At the hearing the ALJ expressed some concern about not having the full evidentiary records underlying these Decisions. (See, for example, *Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95 and *Bledsoe v. Biggs Unified Sch. Dist.* (2008) 170 Cal.App.4th 127, 141.) Nevertheless, the parties agreed that the ALJ could refer to and incorporate factual findings in prior Decisions without the necessity of them providing the underlying evidentiary record or making a new evidentiary record.

community as well as assist her mother in caring for claimant. In addition, claimant receives approximately 272 hours per month in IHSS from Los Angeles County. For her educational needs, claimant attends school in the Palos Verdes Unified School District (school district), where she receives special education services and supports, including the services of a one-to-one aide.

3(A). With the homemaker service hours funded by the Service Agency, IHSS hours, and one-to-one school aide hours, claimant's mother has organized and arranged for her daughter to receive individual care at home and at school. For more than ten years now, claimant's mother has retained one full-time caregiver, Vivian Mendez, to be claimant's primary caregiver.

3(B). Mendez is an employee of Cambrian and works for approximately 40 hours per week providing care to claimant in her home. She provides care and supervision for claimant in the mornings before school and in the afternoons and evenings after school. She feeds claimant her meals, helps her to sleep, and performs other personal tasks for her. She is familiar with claimant's health care requirements and her physical and occupational therapy needs and assists therapists who come to the house to provide services and to work with claimant. During the week, Mendez accompanies claimant to school where she also works as her one-to-one aide for approximately 22 hours per week. The school district pays Mendez to be claimant's aide while in school. According to claimant's mother, Mendez keeps her daughter healthy and happy. Mendez does not have any specialized training, certificates, or licenses to provide care, therapy, or medical assistance to claimant. However, she was trained by claimant's mother on how to care for her daughter and how to implement the in-home exercise program for claimant that was designed by her mother.

4. For the other hours during the week when Mendez is not working, claimant's mother has arranged a schedule of two other caregivers (Ligia and Nancy) who are likewise employed by Cambrian to come to her home in different shifts to help care for her daughter. These other caregivers have provided care to claimant for several years. However, Claimant's mother stated at the hearing that Nancy recently gave her two weeks notice that she would terminate employment. During the night, while claimant is asleep and requires a lower level of care, Nancy and Ligia monitor her, reposition her, help her to remain calm and are available for assistance if she wakes. The night shift (11 hours) is paid by IHSS funds at a rate lower than that paid for homemaker services.

5. Claimant's mother and father have divorced. At present, claimant is with her mother and sleeps in her home from Sunday through Thursday and with her father (from 4:30 p.m. Friday to 8 a.m. Sunday) and sleeps in his home Friday and Saturday. The Service Agency has "split" the authorizations for service hours to reflect the amount of time spent in each household. There was some evidence that monthly IHSS hours were also to be split between mother (202 hours) and father (70 hours). (See, for example, Exhibit 15, p. 83.) However, there was more convincing evidence that claimant's father does not use IHSS hours, claimant's mother uses all of the IHSS hours, and Nancy and Ligia bill IHSS for 11 hours each

night from Sunday through Thursday. (Exhibits 5, C9, and C15, pp. 77-79, and testimony of claimant's mother.)

6. Most caregivers employed by Cambrian are considered to be temporary employees, who work less than 40 hours per week, have intermittent or varied work schedules, and do not receive any job benefits such as paid vacation, holiday, or sick leave or health insurance. The salaries of those Cambrian employees who provide services and supports authorized by the Service Agency to consumers are generally set by billing or vendor rates established by service codes or negotiated with the Service Agency and range from approximately \$8 to \$13 per hour.

Prior Fair Hearing Decisions

7(A). Over the past ten years, claimant's need for extensive hours of care and her daily schedule of care and exercise have been well-chronicled in prior decisions of the Office of Administrative Hearings. Claimant's mother has had her daughter perform a daily in-home exercise and movement therapy program that her mother found or designed after taking her daughter to Poland several years ago for treatment of her condition. Claimant has been able to grow and thrive in a manner unexpected for someone with Canavan's Disease, which her mother has attributed to the in-home exercise program.

7(B). For example, the Decision in OAH Case No. L-2006020675 described, in part, the daily activities and exercises which claimant's mother had organized for her daughter and the duties which she had required the caregivers to help her with and to follow in the home. This schedule is of little relevance now, as claimant's routine has changed, such as her attendance at school and recent medical issues due to a condition that has caused a displaced or dislocated hip and increases the chances of future hip displacements or dislocations. Nevertheless, claimant requires extensive care and supervision for her daily activities and exercises, eating regimen, and constant monitoring for possible repositioning. In this and other prior Decisions, claimant's mother demonstrated that the in-home exercise and care program that she had organized for her daughter was beneficial for claimant's continued growth and livelihood but is arduous, intense, and time-consuming for both claimant's mother and the caregivers that she has trained to help implement it on a daily basis.

7(C). Other prior Decisions have sometimes granted, and sometimes denied, claimant's mother's requests for different services for her daughter as well as for higher salary and additional benefits for some of her caregivers, including paid vacation and maternity leave, which benefits caregivers employed by Cambrian normally do not receive. When granted, the requests were often based on the difficulty experienced by claimant's mother in finding, training and retaining qualified caregivers due to the arduous nature of the work and the low pay scale. Some creativity was needed to set up a system that offered a pay rate and employee benefits that were unique and different from other consumers' services. In some instances requested services were denied due to a lack of evidence to support the request or a determination that the fair hearing process under the Lanterman Act was not a proper means to

resolve disputes concerning the employment agreements between the Service Agency and its vendored caregivers.

7(D). More recently, on July 29, 2010, in OAH Case No. 2009091685 (Exhibit C3; ALJ Sawyer), the caregiver service for claimant was formally changed from respite to homemaker service due to amendments to the Lanterman Act and because the funding had been under the service code for homemaker service for some time already. This service code allows for a rate that is negotiated between the Service Agency and Cambrian based on market conditions and is higher than the regulatory rate for respite. The description of homemaker services was appropriate and ALJ Sawyer decided there was no reason to change the service description to personal assistant, as requested by the Service Agency. Service Agency also wanted to reduce the number of service hours due to the effect of school district services and IHSS funding. Of significance, ALJ Sawyer found that claimant required “total care, 24 hours per day, seven days per week.” (Exhibit C3, Factual Finding 14.) The then-present level of funding by the Service Agency was for 372 hours per month (4,464 per year).² In the time since that level was implemented, IHSS hours had increased to 283 hours per month (3,394.5 hours per year) and the school district hours went from zero to 4.25 hours per day (850 hours per year). Also, claimant’s mother was increasing her work schedule. Based on the hours of daily services and claimant’s schedule (regular school days, summer school days, weekends and other days out of school), ALJ Sawyer found that, when school was in session claimant’s family received funding for more than 24 hours of services, and when there was no school, there was funding for all but 2.5 hours of services per day. (Exhibit C3, Factual Finding 29.) There were gaps in services throughout some days. “Based on the totality of the record,” ALJ Sawyer found that it was warranted to reduce funding “equal to leaving 2.50 hours per day uncovered by an additional caregiver.” (Exhibit C3, Factual Finding 35.) This would occur by reducing funding for school days by 4.28 hours per day, because in part there “are essentially 2.5 hours uncovered during non-school days” and there was no evidence “indicating that a gap of that length has created problems for Claimant’s care.” (Exhibit C3, Factual Finding 37; footnote omitted.) Total funding was reduced from 4,464 to 3,614 hours per year, based on increased generic funding and “also considering the fact that Claimant’s mother is able to care for her daughter a few hours each evening without caregiver assistance.” (Exhibit C3, Discussion, p. 11.)

7(E). In August 2010, the Service Agency began implementing the Decision in OAH Case No. 2009091685 for the provision of 3,614 annual hours of homemaker services and authorized Cambrian to provide an average of 301 hours per month of homemaker service to claimant. Service hours were annualized to recognize that, due to different monthly schedules of school days as well as times when hours needed to be adjusted because claimant was ill or hospitalized there was some fluidity to the amount of hours needed per month. In some months, more hours were needed, and in other months less.

7(F). Later, claimant’s mother claimed that extra homemaker hours were needed to hire caregivers to provide additional assistance since she became physically unable to lift or

² The hearing took place March 17-18, 2010.

care for claimant because of a knee injury. On June 20, 2011, in the Decision in OAH Case No. 2010110781 (Exhibit C4; ALJ Nafarrete), claimant's request for more homemaker service hours was denied. Claimant did not present any documentary proof of a reduction of IHSS hours, a reduction in the mother's work schedule, or her inability to care for claimant due to a disability or injury. Even though claimant stayed home five days due to school furloughs, the evidence showed that claimant did not use all of the 301 hours per month of homemaker services. Claimant had a balance of 76.75 hours of unused homemaker hours and the Service Agency had also set aside 27 hours for claimant's emergency use. Claimant's father was using 9.5 hours per week of homemaker service hours for the weekend visits by his daughter.

7(G). The issue of further salary and benefits adjustments was considered in OAH Case No. 2010060464, which was heard in September 2011 and decided in December 2011. As this Decision is the subject of the pending writ described in the Issues section above, it will not be relied upon herein (other than as set forth in the Issues section).

Additional Findings Related to Current Issues; Issue 3, Pay for 3.25 hours for March 31, 2010

8. In a letter dated February 6, 2012 (Exhibit C15, pp. 82-84), Service Agency notified claimant's mother and father that it would not fund for care for claimant for a period of 2.5 hours per day based upon the determination by ALJ Sawyer that this period of care can be met by them. Claimant's mother filed a Fair Hearing Request dated February 26, 2012 (Exhibit C1), and these proceedings ensued.

9. With respect to Issue 3, the request for funding for 3.25 hours worked by Vivien Mendez on March 31, 2011, the evidence is largely comprised of documents. (See Exhibit C10, pp. 44, 46, 47 and 52, and Exhibit C15, p. 80.) There was no testimony to interpret these documents, as claimant's mother was unfamiliar with them. However, in total, there is sufficient evidence to establish that, for the month of March 2011, there were 282 hours authorized, 282 hours paid, and 16.75 hours that were billed beyond this amount and were unauthorized. Further, it was established that, for March 31, 2011, Vivien Mendez submitted a time ticket to Cambrian for 4.75 hours, and Cambrian determined that 3.25 of these hours were "over authorization." (Exhibit C10, pp. 46, 47 and 52.)

10. The Service Agency authorizes homemaker hours each month, before the month begins, based on its computation of what services are needed for the days of that month. The number of authorized hours differs from one month to the next, based in part on the number of school days and the number of days claimant is in her father's care, and included in this computation is ALJ Sawyer's determination that claimant's parents should care for her for 2.5 hours per day without caretaker assistance paid by Service Agency. As shown in charts prepared by the counselor (Exhibit C10, p. 44 and Exhibit C15, p. 80), for the 12-month period following ALJ Sawyer's order to provide 3,614 hours of homemaker services (August 2010 through July 2011), Service Agency authorized 3,609 hours, with an emergency reserve, clearly a reasonable attempt to comply with that part of the Decision. In these same twelve months, Service Agency paid for a total of 3,067 hours of services (including one month, August 2010, when there were 3.25 more hours paid than were authorized). Therefore, 542 hours that had

been authorized by Service Agency were either not used or not billed for, due to billings for less than the authorized hours for seven of those months. The billings for the other five months were over the authorized amount, in the total of 90.75 hours. Service Agency has not permitted a “rollover” of unused hours to other months when more hours are billed than authorized. There was a savings to the Service Agency for these 542 hours authorized but not billed, and no corresponding debit for the 90.75 hours of “over authorization” that was not paid.³

11. For the month of March 2011 Service Agency estimated that 282 hours were needed. Although it would be easy to conclude that the extra, unauthorized 3.25 hours billed by Ms. Mendez for March 31 should be paid from the bank of unused hours, there was insufficient evidence to support that outcome. For example, there was no convincing evidence of how Service Agency determined the need for 282 hours of homemaker services for the month of March 2011.

12. Although Ms. Thompson created the schedule for March 2011 found in Exhibit 13 depicting how various hours could be allocated (such as school hours, IHSS hours and homemaker hours between the two households), she admitted that there were some inaccuracies. For example, although she computed that 11.86 hours of IHSS funding were available for each night that claimant slept at her mother’s house, she put 11.6 hours in the calendar square for each of those nights. There was also evidence that claimant’s father used 9.5 hours of Cambrian homemaker services for each weekend that claimant resided with him, yet the calendar squares and color coding in Ms. Thompson’s schedule incorrectly indicate he also used 7.5 hours on Fridays and 8 hours on Sundays. The Friday and Sunday hours were actually used while claimant was in her mother’s care. More significantly, Ms. Thompson testified that her calendar of service hours (including school, IHSS and Cambrian) for each day in that month was theoretical, based on her understanding of how the different funding sources operated for that month. There was insufficient evidence to explain how the total amount of 282 hours for the month of March 2011 was actually determined.

13. The picture is further complicated by testimony from claimant’s mother that, although more than 11 hours per night of IHSS funding is available, the overnight shift bills 11 hours only, as the IHSS pay rate is lower than the Cambrian pay rate and the caretakers prefer to start the next shift, at the higher pay rate, as soon as possible. While this is understandable—who wouldn’t want to get paid more—it leaves on the table, so to speak, portions of an hour on each of those nights that are authorized under IHSS and for which the Service Agency should not have to pay at all, as a generic source for the funding is available and the funding has been authorized. If claimant’s mother wants to make up the difference herself, she is free to do so, but cannot create an obligation for the Service Agency to pay for services to start sooner than necessary each day under these facts.

14. It is also not clear how the extra hours for March 31 were accrued. What was done and when? A further complication is evidence that, for the entire month of March 2011,

³ As noted in the discussion of Issue 3, above, some of these “over authorization” hours were the subject of a request for payment in a prior hearing.

there were 16.75 hours on caretaker timesheets beyond the amount authorized by the Service Agency. The 3.25 hours for Ms. Mendez on March 31 is the last component part of this overage. There was insufficient explanation on this record of why the extra hours of services were needed. Under some possible scenarios, such as school days missed because claimant was ill or had medical appointments to attend, it is possible that the Service Agency might bear some responsibility, had it been notified of the circumstances and requested to provide extra services. Under other possible scenarios, such as unjustified absences from school or unexplained requests by claimant's mother to have caretakers work beyond the hours authorized, it is possible that no reimbursement for the extra hours would be warranted. Although there are some consumer transaction notes covering this period (Exhibit C16, pp. 83 and 84), there are also missing pages that may cover the month, and there is no way, without additional evidence, to explain any or all of the overage or unauthorized hours for that month.

15. In the absence of sufficient evidence to determine: how the Service Agency determined that 282 hours was the appropriate amount for March 2011; why there was an overage of hours billed beyond the authorized hours; and whether the Service Agency was requested to increase the authorized hours for any circumstances in that month, it cannot be determined that the Service Agency should fund for the 3.25 hours extra hours claimed by Ms. Mendez for March 31, 2011.

Additional Findings Related to Current Issues; Issue 1, Total Caregiver Services Per Day

16. As noted in Factual Finding 5, the request of claimant's mother for more hours of service per day was denied in the Service Agency's letter dated February 6, 2012 (Exhibit C15, pp. 82-84), on the basis that it would not fund care for claimant for a period of 2.5 hours per day because ALJ Sawyer concluded that this period of care can be met by the parents. The letter cites other factors considered by the Service Agency, summarized as follows. Claimant's father utilizes a caregiver for 9.5 hours per weekend, reducing the total amount of hours required to meet claimant's needs. Caregiver hours were to be separated for the two households based on the time claimant was with each parent. Similarly, monthly IHSS hours were to be divided between households (202 hours for mother, 70 hours for father). A portion of claimant's support needs were met by the school district. Also, the counselor considered the limitations relating to the mother's knee injury but concluded that the homemaker hours "can be strategically implemented so that [claimant's] care does not require lifting during the 2.5 hours each day that an additional caregiver is not available." A graph was prepared for the months of March through October, 2012, including school days with educational services of 4.28 hours per day and homemaker services of 8 hours per day, and non-school days (weekends, holidays and school breaks) when the Service Agency would fund 12 hours per day of homemaker services.

17. At the hearing, the Service Agency's contention that it should not fund more homemaker services was supported by the testimony of Claudia DeMarco, Associate Director of the Service Agency. Ms. DeMarco testified that, in the view of the Service Agency, the Lanterman Act does not permit a regional center to fund for 24-hour per day care, because the Act only mentions 24-hour per day care in the form of a "placement" of the consumer in a

facility, not the family home, that will be responsible for meeting the consumer's residential care needs. Ms. DeMarco gave many examples, both by reference to the Lanterman Act as well as other publicly funded sources for services, where services have a daily cap of less than 24 hours per day.

18. Ms. DeMarco's analysis is not supported by the facts and will not be applied in this matter, for two main reasons. First, the circumstances of claimant's care have changed, based largely on medical conditions of claimant and her mother. Second, the Service Agency is not being asked to provide 24-hour per day care. In fact, the Service Agency provides or proposes funding for less than 50 per cent of claimant's hours of care on school days, and 50 per cent on non-school days.

19. There was sufficient evidence of a change in claimant's medical condition, and resulting care needs, based upon her hip dislocation / displacement. This is not a single, distinct injury but, rather, a condition that may recur. Some of the movements or positions that claimant customarily makes increase the likelihood of injury. Therefore, a higher level of care is necessary to maintain her safety. Also, claimant's mother has torn cartilage in her knee which, although considered by ALJ Nafarrete, is presently of a different status. Earlier, claimant was attempting to strengthen her knee in the hopes that surgery would not be necessary, or to assist in recovering from possible surgery. Since that time, the condition of her knee has become more static. In August 2011 and again in April 2012, claimant's mother's orthopedist provided her with a certificate of disability for work, limiting her lifting to 25 pounds (claimant weighs more than 40 pounds) and limiting her movements to not include twisting, bending, stooping, kneeling or climbing. The most recent certificate of disability adds that this is an indefinite restriction, for at least one year. (Exhibit C7, pp. 24 and 25.) Claimant's mother testified about the added difficulty she now has in lifting claimant, due to both her knee pain and limitations as well as claimant's hip condition. More care must be given to claimant's position when being lifted so as to maintain the integrity of her hip alignment. Claimant's mother finds it extremely difficult, and at times impossible, to lift claimant herself. Also, one of the caregivers, Ligia, cannot lift claimant properly and claimant's mother is required to assist to maintain proper hip alignment for claimant. There is sufficient evidence supporting the changed circumstances upon which to consider the request by claimant's mother for services to fill the additional 2.5 hours per day previously determined by ALJ Sawyer as being the sole responsibility of the parents.

20. The 24-hour per day care scenario described in Ms. DeMarco's testimony as a reason to deny extra service hours is not supported by the evidence. First, the present request for additional hours of service is limited to the time that claimant is in her mother's care. Claimant is in her father's care from 4:30 p.m. Friday through 8 a.m. Sunday, 41.5 hours out of 168 hours in the week, or slightly below 25 per cent of the time. Her father uses proportionally fewer homemaker service hours during his custody of claimant than does her mother. In fact, while in father's custody for 41.5 hours per week, the Service Agency funds only 9.5 hours of homemaker services. Clearly, for the time claimant is with her father, there is nothing close to the scenario underlying Ms. DeMarco's concern about 24-hour per day care funded by the Service Agency.

21. For the days that claimant is in her mother's care, particularly when school is in session, IHSS funds 11 hours of services on school nights and the school district funds 4.28 hours of services. Therefore, when claimant returns to her mother Sunday at 8 a.m., the Service Agency offers to provide 12 hours of homemaker services and IHSS will provide 11 hours, leaving an uncovered period of one hour. Monday through Thursday, 15.28 hours of generic services are provided (11 hours of IHSS and 4.28 hours of school services), leaving 8.72 hours per day, for which the Service Agency offers to provide eight hours. (Again, this is far removed from Ms. DeMarco's testimony based on 24-hour per day care funded by the Service Agency.)

22. There are sufficient circumstances to support an order that the Service Agency provide additional funding. This would be one extra hour for each Sunday and 0.72 hours for each Monday through Thursday that claimant is in her mother's care. This amounts to 3.88 hours per week of homemaker services added to the Service Agency's proposal on February 6, 2012. As noted above, medical conditions of claimant and her mother have changed. There was little support for the counselor's belief that schedule implementation could be done in such a way to avoid the need for claimant's mother to lift her during a period without homemaker support.

LEGAL CONCLUSIONS AND DISCUSSION

Based on the foregoing findings of fact, the Administrative Law Judge makes the following legal conclusions:

1. Grounds exist under the Lanterman Act to grant claimant's request that the Service Agency provide funding for additional hours of homemaker services while claimant is in her mother's care, based on Factual Findings 1- 22 above.
2. Grounds do not exist under the Lanterman Act to grant claimant's request for the Service Agency to pay for, or fund for, 3.25 hours worked by Vivian Mendez on March 31, 2011, based on Factual Findings 1- 22 above.
3. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Section 4502.) The Legislature has further declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Section 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (sections

4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (section 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

4. Services provided under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties can not agree on the terms and conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See Section 4710.5, subd. (a).)

5. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., sections 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) This is a primary reason why an IPP must be undertaken. In building the IPP, a priority is assigned to maximizing the client's participation in the community. (Section 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).) And, in the case of children, a priority is assigned to providing services that will help keep the child in the home. (Section 4685.)

6. Services provided must be cost effective (section 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., sections 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

7. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in "achieving the greatest amount of self-sufficiency possible" In the planning process, the planning team is to give the highest preference to services and supports that will enable a minor to live with his or her family. Planning is to have a general goal of allowing all consumers to interact with persons without disabilities in positive and meaningful ways. (Section 4648, subd. (a)(1).)

8. The Lanterman Act is by its nature a remedial act. As such, its provisions are to be liberally construed in order to affect its purposes, for the protection of the persons within the purview of the act. (*Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 480.) As stated by the Court of Appeal, "Remedial statutes such as [the one] under consideration, are to be liberally construed. [Citation.] They are not construed within narrow limits of the letter of the law, but rather are to be given liberal effect to promote the general object sought to be

accomplished. [Citation.]” (*California Grape etc. League v. Industrial Welfare Com.* (1969) 268 Cal.App.2d 692, 698.)

9. Section 4685, subdivision (a), states a legislative finding that the cost of keeping children with developmental disabilities at home is the same as or cheaper than placement. “The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child’s individual program plan.” Even the recent Trailer Bill amendments, designed to cut costs, nevertheless adhere to the notion of supporting home residence over placement, by carving out exceptions to the suspension or reduction of certain services when those services are necessary to enable the consumer to remain in the home. (See, for example, sections 4648.5, subdivision (c), and 4686.5, subdivision (a)(3)(A).)

10. Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. In addition, regional centers must consider the family’s responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer’s service and support needs. Regional centers are required to take into account the consumer’s need for extraordinary care, services, and supports and supervision.

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11. As noted in more detail in the Factual Findings, there was insufficient evidence to determine the basis of claimant's request for payment for the 3.25 unauthorized hours worked by Vivian Mendez on March 31, 2011. The burden was on claimant to establish the factual basis for the request, and claimant did not meet that burden. On the issue of funding for homemaker services for hours while claimant is in her mother's care that are not covered by IHSS or the school district, there is sufficient evidence of a change in circumstances to support an order in claimant's favor.

ORDER

Wherefore, the Administrative Law Judge makes the following Orders:

1. The appeal of claimant Hannah G. from the decision of Harbor Regional Center to not provide funding for further homemaker services is granted. Harbor Regional Center shall provide funding for homemaker services to claimant in the amount of 13 hours for each Sunday and 8.72 hours for each Monday through Thursday that claimant is in her mother's care.

2. The request of claimant Hannah G. that the Harbor Regional Center pay for, or fund for, 3.25 hours worked by Vivian Mendez on March 31, 2011, is denied.

Dated: April 27, 2012

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.