

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

OAH NO. 2012050975

CHRISTIAN F.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings (OAH), State of California, heard this matter in Whittier, California, on July 17, 2012.

Judy Castaneda, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (ELARC or Service Agency).

Christian F.¹ (Claimant) was not present at the hearing. She was represented by her mother, Elsa F. (Mother). Claimant's step-father, Gerardo S. (Step-father) was also present.

Oral and documentary evidence was received and argument heard. The record was originally closed and the matter submitted on July 17, 2012. On July 23, 2012, Mother emailed OAH and ELARC additional documentation that she wished to submit into evidence. A telephonic status conference was held on July 25, 2012. By agreement of the parties, the record was reopened to allow Claimant to submit additional evidence and argument by July 31, 2012, and to thereafter allow ELARC to submit additional evidence, objections to Claimant's evidence, and argument by August 8, 2012. Claimant timely submitted a set of documents, collectively marked and admitted as Exhibit LLL. The Service Agency timely submitted a two-page letter dated August 8, 2012, marked and admitted as Exhibit 8. The record was closed and the matter submitted for decision on August 9, 2012.

¹ The surnames of Claimant and her family have been omitted to protect their privacy.

ISSUE

Should the decision of the Service Agency to deny funding for in-home respite services in lieu of out of home respite be upheld?

FACTUAL FINDINGS

1. Claimant is a 20-year-old female who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.² Claimant is eligible for regional center services due to a diagnosis of mild mental retardation. Claimant also suffers from anxiety disorder.

2. Claimant lives with Mother, Step-father, and her twin brothers, who are also regional center consumers. According to Claimant's most recent Individual Program Plan (IPP) dated March 26, 2012, Claimant exhibits some inappropriate behaviors. She can be verbally and physically aggressive. She needs assistance and prompting to complete self-help skills. She can feed herself, but needs to be supervised because she can overfill her mouth and may choke. She has a difficult time engaging her peers and sustaining an interaction. She will cry and get very emotional or exhibit high anxiety when she is unable to process information that she is given. She is not safety trained when she is at home and in the community.

3. Claimant receives 29 hours of in-home respite per month funded by the Service Agency.

4. For approximately the past four to five years, ELARC allowed Claimant to use in-home respite in lieu of out of home respite when the family vacationed, attended conferences, and during holiday breaks. However, following passage of section 4686.5, subdivision (a) (which limited funding of in-home respite to 90 hours per quarter and funding of out of home respite to 21 days per year), ELARC revised its purchase of service policy on out of home respite. The new respite funding policy became effective in May of 2011. The new policy only permits ELARC to fund in-home respite in lieu of out of home respite in very limited circumstances.

5. On April 23, 2012, the Service Agency sent Claimant a Notice of Proposed Action (NOPA), stating that it "will no longer fund 21 days of in-home respite in lieu of out of home respite per fiscal year as set forth in your Individual Program Plan without abiding to its Out of Home Respite Purchase of Services Policy & Procedure."

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

6. The stated reason for the proposed action was:

The Legislature has enacted changes to the Lanterman Act to ensure that the regional centers and DDS comply with cost savings measures. Both the In-home Respite and Out of Home Respite Services Policies were revised to ensure compliance with these changes. These policies were accessible to the community via the ELARC Website, the Family Advisory Committee, the Vendor Advisory Committee the Family Resource Center and they were posted in the ELARC Reception Area. The ELARC Board of Directors and the CA Department of Developmental Services have approved both policies. Upon review of the case, there are no extraordinary circumstances to waive the legislation and policy.

7. The Service Agency cited, among other statutes, sections 4686.5, subdivision (a), 4646, subdivision (a), and 4646, subdivision (d) as the legal authority for its proposed action.

8. On May 13, 2012, Mother submitted a Fair Hearing Request, seeking the continued funding of in-home respite in lieu of out of home respite. Claimant seeks through this appeal to be able to obtain, as a result of her circumstances, in-home respite in lieu of out of home respite without having to follow the approval process set forth in ELARC's Purchase of Service Guidelines (POS Guidelines).

9. In July 2012, Claimant received four days of in-home respite in lieu of out of home respite. Claimant's family utilized the days for a family vacation at a hotel in Anaheim. These four days were requested on April 20, 2012, three days before the Service Agency sent Claimant the NOPA. Claimant's parents had requested in-home respite to be provided in lieu of out-of home respite for August 10 through 15, 2012. This request was also granted. In the past, Claimant's respite workers included her grandparents, family members, friends, and acquaintances.

10. The Service Agency's POS Guidelines for out of home respite state that, "In home respite in lieu of out of home respite may be used only when there is no out of home respite arrangement available."

11. The POS Guidelines contain a sequence of events that must occur before the Service Agency will consider in-home respite in lieu of out of home respite. This sequence starts with a request for out of home respite for a specified time, a determination whether a vendored facility is able to address Claimant's needs, and whether the facility has vacancies during the period of time requested. Arrangements may be made for the consumer and caregiver to visit the facility. According to the Service Agency, this process allows the consumer or parent to express concerns about a facility and for the Service Agency to address those concerns. A consumer or parent is under no obligation to accept an out of

home respite facility if they do not want to use it. If the Service Agency determines that it does not have an appropriate facility available during the time period requested, then the POS Guidelines permit funding for in-home respite in lieu of out of home respite.

12. The POS Guidelines, therefore, allow for in-home respite to be used in lieu of out of home respite; however, only when no out of home respite arrangement is available. ELARC's position is that parents should follow the steps in ELARC's policy each time they make a request to use any of the 21 days of out of home respite as in-home respite.

13. In July 2009, Claimant was the victim of an indecent exposure, wherein a male exposed himself to her at her school. In November of 2009, Claimant was evaluated by Rodric Rhodes, Ph.D., and he diagnosed her with generalized anxiety disorder. Shortly after Claimant was diagnosed, she suffered a psychotic episode in December 2009. This episode caused her to become non-responsive. She was not talking, eating, or drinking. She had to relearn basic tasks such as eating and drinking. According to Mother, Claimant spoke of dying, leaving home, and being a vampire. Claimant is currently on medication to manage her anxiety disorder.

14. At hearing, Mother insisted that continued funding of 21 days per year of in-home respite in lieu of out-of-home respite, in addition to the 29 hours per month of in-home respite, is necessary. Mother and Step-father do not feel that Claimant's needs will be met in an out of home facility. Mother feels that an out of home placement is not an appropriate option because Claimant needs consistency in her life due to her anxiety disorder. Mother fears that Claimant would suffer anxiety as a result of temporarily transitioning to an out of home respite facility. Mother also explained that the temporary placement of Claimant in an out of home respite facility could adversely affect Claimant's mental health. Mother further explained that Claimant needs a one-to-one aide, and such an aide will not be provided in out of home placements.

15. Claimant receives individual counseling for one hour per week from Antonio Rojas (Rojas), program manager at Progressive Resources. Rojas also sees Claimant's parents every other week. At hearing, Rojas explained that Claimant needs consistency and support to address her anxiety, and that unexpected changes may negatively affect Claimant. In a letter dated July 2, 2012, Rojas wrote, "It has since been identified that [Claimant's] anxiety is typically triggered by changes in her environment and routine, exposure to unfamiliar people and activities, and separation from family."

16. Sara Rodriguez (Rodriguez), program administrator for the vendor providing Claimant's 52 hours per month of coordinated life services, also testified at hearing. Rodriguez has worked with Claimant since 2008, and primarily helps regulate Claimant, preparing her for things such as routine dental appointments. Rodriguez opined that, in an out of home respite facility, Claimant would see things that may trigger her anxiety. She also testified that it would take a great amount of time preparing Claimant for a temporary stay in an out of home respite facility.

17. Claimant is under the care of Sandhya R. Gudapati, M.D., for Schizoaffective disorder. Dr. Gudapati wrote a letter dated June 26, 2012, on Claimant's behalf. She wrote, "It is not advisable that client be placed in residential placement due to risk of acute psychotic break under severe stress and minimal change in her daily routine. Any time clients are out of their routine, change in structure with daily care evidence indicates destabilization of client's psychotic symptoms at times requiring hospitalization."

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

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. (§ 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. (§§ 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*)).

4. The 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. None of the statutory sections relied upon by the Service Agency to discontinue funding for in-home respite in lieu of out of home respite expressly prohibit 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.

6. Service Agency has funded in-home respite in lieu of out-of-home respite and continues to fund the service in some circumstances. Claimant's needs are unique. Claimant presents with mental health issues, and the evidence established that consistency is critical for Claimant. 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 Service Agency's purchase of services policy is warranted.

7. Cause exists to grant Claimant's appeal. 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 Findings 1 through 17, and Legal Conclusions 1 through 6.

ORDER

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

DATED: August 23, 2012

JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision: both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.