

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

In the Matter of:

TANNER S.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2012060069

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on July 24, 2012, in Culver City, California.

Tanner S.¹ (Claimant) was not present at the hearing. He was represented by his mother, Jennifer B. (Mother), at the hearing.

Fair Hearing Coordinator Lisa Basiri represented the Westside Regional Center (Service Agency).

Oral and documentary evidence was received at the hearing. The record was closed and the matter submitted on July 24, 2012.

ISSUE

Should the Service Agency be required to fund 28 hours of in-home respite per month for Claimant?

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

FACTUAL FINDINGS

1. Claimant is a 15-year-old male 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 autism.
2. In March 2012, Claimant requested 28 hours of in-home respite per month. In a letter dated May 3, 2012, the Service Agency denied the full 28 hours, but granted Claimant 14 hours of in-home respite per month. Claimant has been receiving 14 hours of in-home respite per month since April 1, 2012.
3. Claimant timely appealed the Service Agency's denial.
4. Claimant's last Individual Program Plan (IPP) was completed in November 2009. At the time of the 2009 IPP, Claimant's mother and father, who are divorced, shared joint custody of Claimant, and Claimant split his time living with both parents. The Service Agency's decision to deny the 28 hours of in-home respite was based in part on Claimant's parents having joint custody. In its denial letter, the Service Agency wrote, "Each parent has respite, or periodic break from child care when [Claimant] is in the other parent's care."
5. At hearing, Mother explained that Claimant's living situation has changed, and Claimant currently spends 85 to 90 percent of his time living with Mother, his step-father, twin siblings, and one step-sister. The twin siblings also live with Mother 85 to 90 percent of the time. Mother takes care of all four children.
6. Claimant's behavioral issues have become increasingly challenging in his teen years. Claimant takes medication for his behavioral issues. Mother explained that Claimant displays severe behavioral issues on a daily basis, often hitting members of the family, or objects in the household. Mother also explained that Claimant constantly uses profane language. Mother also has a difficult time when disciplining her other children, as Claimant exhibits aggression during that time. Claimant also has difficulty at times dealing with his brother, who is only one year apart in age from him. Claimant's entering into puberty also has created further behavioral challenges for Claimant and has made it more difficult for Mother to manage Claimant.
7. Claimant's psychiatrist, Derek Ott, M.D., wrote a letter dated July 17, 2012, on Claimant's behalf. Dr. Ott wrote in part, "Given the current difficulties, which [Claimant] is experiencing primarily at his mother's residence, I support mother's request for an increase of respite hours."

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

8. The Service Agency also based its denial of the 28 hours of in-home respite on its assessment of Claimant's diagnosis, behavioral challenges, and developmental level. In March 2012, in order to evaluate the family's request for additional respite services, the Service Agency utilized a "Family Respite Needs Assessment Guideline" form to systematically analyze Claimant's needs. The assessment tool provides for points to be awarded for certain specific needs. The document contains a formula to award respite hours based on the point total, where the higher the point total, the higher the number of respite hours. However, while the Service Agency had utilized the form in making its decision, it had not completed the form or provided any numerical values for Claimant. No expert or other testimony was presented at the hearing to explain the formula contained in the form or its applicability to Claimant.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's request for the 14 additional hours of in-home respite per month, as set forth in Factual Findings 1 through 8, and Legal Conclusions 2 through 6.

2. In enacting the Lanterman Act, the Legislature accepted 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. (§ 4501.)

3. The Lanterman Act also provides that "[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (§ 4512, subd. (b).)

4. Section 4418.6 provides that respite care may be provided as part of a family care program for the developmentally disabled. Respite care is defined as "...temporary and intermittent care provided for short periods of time." The purpose of respite, therefore, is generally to give some relief to a parent or caregiver from the ongoing burden of caring for a demanding family member or individual.

5. Section 4686.5 provides in 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.

6. Applying those provisions here, Claimant's appeal is granted. Claimant's request falls within the statutorily permissible amount. The Service Agency based its denial of the full 28 hours, in part, on out-dated information regarding Claimant's living arrangement. Claimant's living situation has changed from 2009. He is now spending a great majority of his time living with his mother. Claimant's behavioral challenges support the granting of 28 hours per month of in-home respite.

ORDER

Claimant's appeal is granted. The Service Agency shall fund 28 hours of in-home respite per month for Claimant Tanner S.

DATED: August 2, 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.