

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MICHAELLE T.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2012070874

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Culver City on October 18, 2012. Westside Regional Center (Service Agency) was represented by Lisa Basiri, Fair Hearing Coordinator. Claimant Michaelle T. was present and represented by her mother, Claudia A., who was provided with the services of an interpreter.

The Service Agency presented Exhibits 1– 7 and the argument of the Fair Hearing Coordinator. Claimant presented the testimony of the mother. The Service Agency’s exhibits were admitted into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i).

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on October 18, 2012, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should continue to receive 60 hours per month of specialized supervision and 20 hours per month of in-home respite.

FACTUAL FINDINGS

1. Claimant Michaelle T. is a 22-year-old, non-conserved adult who has been diagnosed with mild intellectual disability. Based on this diagnosis and attendant developmental delays and/or disabilities, claimant is eligible for and receives regional center services from the Service Agency.
2. Under her current Individual Program Plan (IPP) dated March 12, 2012, claimant is authorized to receive 60 hours per month of specialized supervision and 20 hours per month of in-home respite. The specialized supervision and respite services have been provided by the vendor Premier Healthcare Services. Claimant's older sister has been her specialized supervision and respite worker. More recently, claimant has been authorized to attend a day program at the Pathpoint Project at U.C.L.A. and to receive mobility training.
3. Claimant lives with her mother in their family home in Hawthorne. She is healthy and ambulatory. Her older sister and other relatives live relatively nearby. Her father lives in Mexico and is not involved with the family. Claimant is a friendly and outgoing young woman. She can initiate and maintain social interactions when she is in familiar settings. She is well-mannered and does not demonstrate any maladaptive or self-injurious behaviors. With prompting, claimant can perform most of her daily living and self-care tasks. Claimant can bathe herself with occasional assistance from her mother as well as groom and dress herself. She is able to cook simple meals and obtain a drink or snack for herself. At home, she washes dishes, takes the family dogs out for walks, makes beds, vacuums the floors, transfers clothes from the washer to the dryer, and folds and hangs clothes. Claimant, however, requires supervision in unfamiliar settings.
4. Claimant's mother works full-time as a bus driver and works long hours in accordance with a varied work shift schedule. Sometimes, her mother has to leave for work as early as 4:00 a.m. as well as work on weekends. She often comes home from work around 9:00 p.m. When her mother comes home late, claimant is able to stay at home by herself and without supervision for two or three hours. She enjoys watching television programs, especially soap operas, and listening to music.
5. During the past year, claimant attended high school where she received special education and independent living skills training. After school, claimant came home and stayed by herself until her mother returned from work. While home alone, she played with the family pets and watched television. Her mother frequently called claimant at home to make sure she was doing well by herself. In June 2012, claimant attained a certificate of completion from her high school.
6. During a meeting on March 12, 2012, to review claimant's IPP, claimant's mother revealed to the service coordinator that she was not using the specialized supervision or respite hours for her daughter. Her mother stated that

claimant's older sister, who is claimant's specialized supervision and respite worker, does not have the time to provide the services. The sister is married, works full-time as a receptionist in a medical office, and attends college classes at night. Claimant told the service coordinator that she is comfortable staying at home alone and, if she gets bored or needs anything, she walks to a relative's home nearby.

7. (A) On May 24, 2012, the Service Agency issued a Notice of Proposed Action, proposing to terminate claimant's specialized supervision and respite services. The Service Agency stated that the reason for the action was that, on several occasions, claimant and her mother informed the service coordinator that claimant stayed home by herself after school while her mother was at work and that claimant's sister, who was her specialized supervision and respite worker, could not provide the services due to a full-time job and school.

(B) In a letter dated May 31, 2012, the service coordinator explained that the Service Agency was proposing to terminate the specialized supervision and respite services based on information and communications that the services were not being provided to claimant.

(C) On or about June 19, 2012, a Fair Hearing Request was filed on behalf of claimant, challenging the termination of the specialized supervision and respite services and requesting a hearing. This matter ensued.

8. On June 19, 2012, claimant's mother called the service coordinator and told her that, during the week, her daughter is alone at home until she comes home from work. The mother further advised that, when she has to work on the weekends, claimant spends the weekends with her older sister. The service coordinator memorialized the conversation in the Service Agency's inter-disciplinary notes.

9. On August 13, 2012, the Service Agency held an informal meeting with claimant and her family to discuss her Fair Hearing Request. Based on information provided at the informal meeting and a review of claimant's case file, the Service Agency upheld its decision to terminate specialized supervision and respite services. The Service Agency noted that the information showed claimant is able to be unsupervised for periods of time and that claimant's sister, who was her specialized supervision and respite worker, was actually providing independent living skills training. The Service Agency added that specialized supervision and respite services are to be provided when a consumer cannot be left unsupervised due to health and safety reasons.

10. On or about September 4, 2012, claimant began receiving mobility training from Peer Mentor Lifestyle and started attending the day program at Pathpoint Project on the UCLA campus. Every weekday, at around 6:00 a.m., claimant takes a public bus from a bus station in the vicinity of her home to UCLA while she is accompanied by her mobility trainer. For those mornings when her

mother has to leave the house early to go to work, claimant's sister will watch and help claimant and/or take her to the bus station. Claimant participates in the day program from about 8:30 a.m. until about 3:00 p.m. She then takes a public bus home with her mobility trainer. At the end of each day, claimant gets off the bus and walks home with her mobility trainer and lets herself into her house. She usually arrives home around 5:30 p.m. For the next two or three hours, claimant will be alone at home until her mother returns from work in the evening or until her sister comes to the house. She keeps herself busy by doing chores or watching television.

11. On the weekends, claimant spends time with her older sister. They will go out together to shop and to participate in recreational activities. The older sister also takes claimant to her weekend medical appointments at Kaiser Permanente in Lomita and to her dental appointments. Claimant is often supervised by her older sister on Saturdays and Sundays when her mother has to work.

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request that both her specialized supervision and respite services continue, based on Factual Findings 1 – 11 above.

2. 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. (Welf. & Inst. Code, § 4502.)¹

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) The determination of which services or supports are necessary for each consumer must be made through the individual program planning process and may include, but are not limited to, day care, special living arrangements, physical and occupational therapy, recreation, behavior training, community integration services, daily living skills training, social skills training, respite, supported living arrangements, and travel training. (*Ibid.*)

¹ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

The Legislature has further declared 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. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 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.

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. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

In-home respite services means intermittent or regularly scheduled temporary non-medical care and supervision provided for a consumer who resides with a family member and provided in the consumer's own home. (§ 4690.2, subd. (a).) Respite care is designed to assist family members in maintaining the consumer at home, to provide appropriate care and supervision to ensure the consumer's safety in the absence of family members, to relieve family members from the constantly demanding responsibility of caring for the consumer, and to attend to the consumer'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 family members. (§ 4690.2, subd. (a)(1 - 4).)

Effective July 1, 2009, 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. (§ 4686.5, subd. (a)(1).) A regional center shall not purchase more than 90 hours of in-home respite services in a quarter for consumer. (§ 4686.5, subd. (a)(2).) A regional center may grant an exemption to this limit of 90 hours per quarter, 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. (§ 4686.5, subd. (a)(3).)

Finally, section 4646.5, subdivision (b), provides that, for all active cases, individual program plans shall be reviewed and modified by the planning team, as necessary, in response to the consumer's achievement or changing needs, and no less often than once every three years.

3. Discussion—Under her IPP, claimant has been authorized to receive 60 hours per month of specialized supervision and 20 hours per month of in-home respite from the Service Agency. The Service Agency has proposed to terminate these services. Her older sister has been the specialized supervision and respite worker who cares and supervises claimant when her mother is working. However, claimant's mother has admitted that she has not been using all of the specialized supervision and respite hours because the older sister has a full-time job and attends school. During the week, claimant now attends a day program and, after the day program, is able to care for herself at home for two or three hours until her mother comes home from work, her older sister comes to the house, or claimant visits relatives who live nearby.

Based on claimant's participation in the day program and her ability to be alone at home for two or three hours during the week, the evidence demonstrated that claimant and her mother do not need 60 hours per month of specialized supervision. On the other hand, it was not established that claimant or her family does not need or do not use any of the in-home respite hours authorized for her. The evidence suggested, in fact, that claimant and her mother still need the 20 hours per month of in-home respite. Claimant is independent but only to a degree. She requires some assistance or prompting with her self-help and daily living tasks and requires supervision in unfamiliar settings. While she can stay alone in the familiar surroundings of her home for two or three hours, the evidence did not necessarily show that claimant is independent or self-sufficient such that she does not need any care and supervision for the long periods of time that her mother is out of the house and working at her job. When her mother goes to work early, claimant needs care and supervision in the mornings to get ready to go to her day program and to get to the bus station. When her mother works on the weekends, claimant needs care and supervision to attend her medical appointments and to be out and about in the community. Claimant's older sister continues to provide these services.

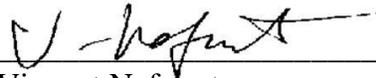
Accordingly, under the circumstances, the continued provision of in-home respite is appropriate and necessary so that claimant can continue to live at home, her mother can receive relief from the responsibility of caring for her, and claimant can receive assistance for her self-help and daily living tasks when her mother is working.

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

1. The appeal of claimant Michaelle T. is granted, in part, and denied, in part.
2. The determination of the Westside Regional Center to terminate the provision of specialized supervision in the amount of 60 hours per month is affirmed. However, claimant shall continue to receive in-home respite in the amount of 20 hours per month.

Dated: October 30, 2012



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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