

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALEXIS L.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2012080991

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 3, 2012. in Bakersfield, California. Jeffrey Popkin, Associate Director, represented the Service Agency, Kern Regional Center (Service Agency or KRC). Claimant Alexis L.'s Mother (Mother) represented Alexis L. (Claimant).

ISSUE

Whether Service Agency reduce Claimant's respite hours from 24 hours to 12 hours per month

FACTUAL FINDINGS

1. Claimant is an 8 year old girl. She lives in Bakersfield, California with her Mother, father and 15 year old brother. Claimant is a regional center client based upon a diagnosis of mental retardation. She has also been diagnosed with Down Syndrome and Asthma.

2. Claimant requires constant supervision and assistance based upon the manifestations of her disabilities. Claimant has limited speech and requires assistance with daily living skills such as toileting and eating. She is ambulatory and does not have tantrums or aggressive behavior. However, Claimant has no sense of danger and

is curious about strangers. If not supervised, she will elope, run into the street or walk away. Claimant has trouble sleeping and insists on sleeping with her parents.

3. Claimant attends a special day class and receives speech and language therapy at her local public elementary school.

4. Claimant's father is a California firefighter who is sometimes away for two months at a time in fire season leaving Claimant's Mother and brother to shoulder the burden of Claimant's care. Mother works 12 hours shifts as an emergency dispatcher and is exhausted from the demands of Claimant's care. Respondent must be supervised at all times or she will engage in dangerous behavior such as eloping, putting things in her mouth, following strangers, running out into the street or inappropriate use of household items. Claimant needs help using utensils and remembering to not stuff her mouth with food. Claimant must be bathed by an adult and supervised in the bathroom at all times. Claimant requires help wiping and washing her hands when toileting. Claimant is very active and inquisitive. She does not sleep through the night and must be comforted and put back in the bed at night or taken to bed with her parents. She has Asthma which is aggravated by the pollutants in the Bakersfield area and has frequent bouts with Asthma and ear infections. Claimant requires the complete and undivided attention of a care taker at all times. When both parents are in town, Mother and Claimant's father divide their time with one parent caring for Claimant and the other attempting to spend some "quality time" with their teenage son. This schedule does not allow Claimant's parents anytime together and has had a damaging effect on their marriage and the strength of their family to care for Claimant on an ongoing basis.

5. Claimant was a consumer of Tri-Counties Regional Center where she was provided 24 hours per month of respite services under her individual program plan (IPP) until her family moved to Bakersfield and her case was transferred to KRC. Claimant's initial IPP meeting with KRC was developed on May 30, 2012. According to the IPP, KRC provides case management services and respite services to Claimant. The level of respite services is to be determined "in accordance with current KRC/POS standards."

6. On August 1, 2012, Service Coordinator Leslie Waggoner (Waggoner) completed a four page assessment of Claimant's respite needs. The service coordinator that had little experience with Claimant or her family and the assessment was done without family input. KRC determines respite needs are based upon score ranges. The assessment rates Claimant in the areas of age, adaptive skills, safety awareness, mobility, attendance at a day program or after school program, medical needs, behavioral needs and family situation, all culminating in a numerical score. The assessment required Waggoner to circle a number next to appropriate descriptions for Claimant's level of need in each of the eight categories. Claimant received a score of "7" which, according to the assessment document, entitled her to 12 hours of respite care per month. This scale did not adequately address the

particular circumstances of Claimant's family and the extended absences and long work shifts that her parents endure to provide for her.

7. On August 1, 2012, Service Agency sent Claimant a Notice of Proposed Action (NOPA) stating that the Service Agency proposed to reduce Claimant's respite hours from 24 hours per month to 12 hours per month based upon "Respite Needs Assessment per KRC guidelines and legal mandates." On August 9, 2012, Claimant appealed KRC's decision and filed a Fair Hearing Request.

LEGAL CONCLUSIONS

1. Service Agency contends that its proposed reduction of Claimant's respite hours from 24 hours per month to 12 hours per month is in accordance with the recent changes to the Lanterman Act which provide that Service Agency may not provide more than 90 hours of respite per quarter to consumers. Service Agency further contends that it cannot grant Claimant an exemption from the new restrictions because KRC assessed Respondent's needs and found 12 hours to be adequate. Claimant contends that the intensity of her needs, the exhaustion of her Mother and periodic absence of her father jeopardize her parents ability to safely care for her and warrant an exemption from the recent Lanterman Act changes.

2. The burden of proof is on the Service Agency as the party seeking to terminate the service or change the status quo. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, 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" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "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... Services and supports listed in the individual program plan may include, but are not limited to, . . . respite, . . .” (Welf. & Inst. Code, § 4512, subd. (b).)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6. Welfare and Institutions Code section 4646.4, subdivision (a), provides, in relevant part:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate.

[¶] . . . [¶]

(4) Consideration of 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 as provided in the least restrictive and most appropriate setting. In this determination,

regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

7. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

8. Welfare and Institutions Code section 4686.5, subdivision (a) provides that:

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.

9. Welfare and Institutions Code section 4686.5, subdivision (a)(3)(A), provides that an exemption may be granted from the limitation on respite services 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."

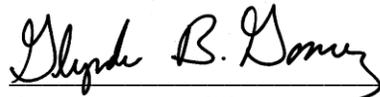
10. Based on the present circumstances, Claimant's respite hours should not be reduced. Here, Claimant's supervision and care needs are constant and her parents are exhausted from the demands of erratic stressful jobs and the non-stop care of Claimant. To maintain Claimant's ability to live at home with adequate care, it is essential that her parents be afforded some time to rest. Claimant meets the criteria for an exemption from the 90 hour per quarter limitation.

11. Cause exists to overrule the decision of the Service Agency to reduce respite care services for Claimant, based on Factual Findings 1 through 7 and Legal Conclusions 1 through 10.

ORDER

Claimant's appeal of the Service Agency's decision to reduce the hours of funded respite care services for claimant is granted. KRC shall continue to fund 24 hours of respite care per month for Claimant.

DATED: November 9, 2012



GLYNDA B. GOMEZ
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.