

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STEVEN M.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012101023

OAH No. 2012120074

DECISION

These matters were heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 6, 2012 in Alhambra, California.

Jesse Valdez, Supervisor, represented Eastern Los Angeles Regional Center (ELARC), the service agency.

Claimant Steven M. (Claimant) through his Mother (Mother) who is also his conservator was represented by Matthew Pope, Attorney at Law.

Evidence was received, the record was closed, and the matters were submitted for decision on December 6, 2012.

The record was reopened on January 18, 2013, to allow the parties to prepare a written summary of evidence because of a malfunction of the hearing recording equipment. A telephonic status conference was held on January 18, 2013, at which time the parties stipulated that the summaries of evidence, along with all exhibits admitted into evidence, shall serve as the record of the hearing in this matter. The Post-Hearing Order Re Stipulated Record, dated February 26, 2013, and the Summaries of Evidence attach thereto, are collectively marked and admitted as Exhibit AA.

The record was closed and the matter was submitted on February 26, 2013.

ISSUES

1. Whether ELARC may reduce Claimant's in-home respite from 40 hours per month to 8 hours per month.
2. Whether ELARC must increase Claimant's in-home respite from 40 hours per month to 50 hours per month.

FACTUAL FINDINGS

1. Claimant is a thirty-two year old man that has been made eligible for regional center services based upon his diagnosis of Seizure Disorder and Mental Retardation. Claimant's Mother is his conservator.
2. Claimant lives with Mother. His younger brother Darrien, who is married, lives nearby. His cousin Tonette, a single mother of five small children, also lives in the vicinity. Darrien and his wife, and Tonette, provide as much assistance as possible to Claimant. Claimant's Mother works full-time and has had recent medical problems which required surgery from which she was still recovering at the time of the administrative hearing.
3. Claimant's Individual Program Plan (IPP) dated November 9, 2011 provides for up to 21 days per year of out-of-home respite, 12 hours per day of day care, 40 hours of per month of In-Home respite in lieu of licensed vocational nursing respite.¹ Respite care is provided by Claimant's brother Darrien and cousin Tonette.
4. Claimant has severe seizures averaging 10-25 grand mal seizures, per day but, sometimes as often as 100 times a day, which are only partially controlled by a complicated medicine regimen. Claimant has seizures during the night and becomes confused and afraid. He does not sleep through h the night and has tantrums when he becomes confused or overwhelmed. Claimant has also been diagnosed with Tuberous Sclerosis.² As a child, he had brain surgery to

¹ Claimant was not able to find LVN respite care due to the intensity and complexity of his needs so ELARC provided this form of In-Home respite as an alternative.

² Tuberous Sclerosis is a rare genetic disease that causes benign tumors to grow in the brain and on other vital organs such as the kidneys, heart, eyes, lungs,

reduce the lesions and tumors, to no avail. Additionally, Claimant has numerous food allergies and requires a special diet. Claimant's physicians indicate in their reports that he has the mental capacity of a six year old and has, because of the excellent care provided to him, exceeded his expected life span.

5. Claimant does not attend a day program, but would like to do so at some point in the future. Claimant last attended a day program approximately two years ago. While in the day program, Claimant fell, broke his leg, and suffered a life threatening pulmonary embolism. His recovery has taken an extended period of time. During that time, his brother Darrien has served as his parent vendored day care provider because there was no day care provider available to meet Claimant's complex medical needs. Darrien has developed a routine for Claimant which includes community integration, outings, exercise and a health management program. By all accounts, Claimant has been well-served by Darrien's care.

6. Darrien also provides as-needed respite care at night and some evenings when his Mother is sometimes exhausted. Darrien bathes Claimant and makes sure that he eats healthy meals on weekdays. Claimant is five feet, two inches and weighs nearly 200 pounds. Claimant's Mother is a small woman and has great difficulty bathing him. Claimant is incontinent at night and requires his garments and bed to be changed during the night. Mother wakes each night to perform these duties for him and then wakes again to go to work early each morning.

7. Claimant's cousin Tonette provides respite care for him on the weekends as-needed, and relief to Claimant's Mother so she can take a nap during the weekend, or take care of an occasional errand.

8. Darrien and Tonette provide hundreds of hours of unpaid respite care to Claimant each year in an effort to assist Claimant's Mother in her efforts to maintain Claimant at home, while working full-time,³ as the primary source of support for herself and Claimant.⁴

9. The ELARC purchase of service (POS) guidelines provide that "In-home respite services" means "intermittent or regularly scheduled temporary non-

and skin as well as the central nervous system. The disease can be treated, but there is no known cure.

3 Mother had been laid off from her job, but has been recently brought back to work one day per week. She also works a second job to supplement the income she has lost due to lay off and reduced work schedule. Her position is tenuous and she cannot risk missing work for fear of losing her job permanently.

4 Claimant receives supplemental security income (SSI) benefits of \$830 per month and 272.9 hours of In-Home Support Services per month.

medical care and supervision provided in the Individual's home. The individual must reside with a family member to be eligible for respite services. It also provides that the In-home respite services are intended to: (1) assist family members in maintaining the consumer at home, (2) provide appropriate care and supervision to ensure the individual's safety, (3) relieve family members from the constantly demanding responsibility of caring for the individual and (4) attend to the individual's basic self-help needs and other activities of daily living.

10. The ELARC POS guidelines and Welfare and Institutions Code section 4686.5 provide that a regional center shall not purchase more than 90 hours of In-Home respite services in a quarter per consumer. An exemption may be granted if the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the individual 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 individual.

11. The ELARC POS Guidelines contain criteria for the determination of what level of In-home respite is assigned to a particular consumer. Factors such as the consumer's chronic or acute medical condition, chronic intense maladaptive behaviors which require 24 hour supervision, self-care needs, care giver condition and family stress factors are evaluated for respite at the level of 30 hours per month. Consumers must qualify for an exemption to receive more than 30 hours per month of In-home respite.

12. Claimant has acute life threatening medical needs and displays maladaptive behaviors such as tantrums and elopement which require 24 hours a day supervision. Additionally, he requires assistance with self-care such as toileting, and bathing. Claimant has a complex medication regimen and is a large man with the mental capacity of a small child. His Mother and extended family have worked very hard to care for him and provide for him financially despite his significant needs. His Mother is tired, getting older and experiencing her own serious health problems. A reduction in Claimant's In-Home respite hours below the current level of 40 hours per month will jeopardize the already strained support system that Claimant has in place and will impair his Mother's ability to maintain him in his family home.

13. Claimant did not establish by a preponderance of the evidence that Claimant requires 50 hours per month of In-Home respite per month in order to maintain Claimant in the home or that extraordinary events require more than the current level of 40 hours per month of In-Home respite.

LEGAL CONCLUSIONS

1. The Lanterman Development Disabilities Services Act⁵ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Associaton 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.

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. (Welf. & Inst. Code § 4501.) Appropriate services and supports include in-home and out-of-home respite services. (Welf. & Inst. Code § 4512, subd. (b).) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account a consumer's needs and preferences, and for ensuring that services are cost-effective. (Welf. & Inst. Code §§ 4646, 4646.5, 4647, and 4648.)

3. 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. (Welf. & Inst. Code § 4686.5, subd. (a)(1)) 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. (Welf. & Inst. Code § 4686.5, subd. (a)(2).) A regional center may grant an exemption from these requirements, 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. (Welf. & Inst. Code § 4686.5, subd. (a)(3).)

Disposition

4. Here, Claimant's Mother is exhausted from the care of Claimant and Claimant's support network is stretched to its limit. His needs are intense and his Mother is suffering from her own medical ailments. At this time, a reduction of In-Home respite hours to a level below 40 hours per month is not supported by the ELARC POS policy and jeopardizes his Mother's ability to care for him in the family home and is not appropriate. Claimant has requested an increase of In-Home respite hours to 50 hours per month. The combination of day care, extended day care, IHSS

⁵ Welfare and Institutions Code section 4500, et. seq.

and 40 hours per month of In-Home respite hours has met Claimant's needs and an increase is not necessary. (Factual Findings 1- 13 and Legal Conclusions 1-3).

ORDER

1. Claimant's appeal of the Eastern Los Angeles Regional Center's proposed reduction in In-home respite hours is granted. The Eastern Los Angeles Regional Center may not reduce Claimant's In-home respite to a level below 40 hours per month.

2. Claimant's appeal of the Eastern Los Angeles Regional Center's denial of an increase in In-home respite hours from 40 hours per month to 50 hours per month is denied.

DATED: February 26, 2013


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)