

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LUIS M.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013030791

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 Alhambra on April 18, 2013. Eastern Los Angeles Regional Center (Service Agency) was represented by Judy Castaneda, Fair Hearing Coordinator. Claimant Luis M. was represented by his mother, Isaura Gonzales, who was provided with the services of an interpreter.

The Service Agency presented Exhibits 1– 7 and the testimony of Ana Bonilla, Service Coordinator. Claimant’s mother presented reports, which were marked as Exhibits A - C, and testimonial evidence. The parties’ 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 April 18, 2013, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should receive additional hours per month of in-home respite services.

FACTUAL FINDINGS

1. Claimant Luis M. is a 32-year-old, non-conserved adult who has been diagnosed with mild mental retardation. He has also been diagnosed with schizophrenia. Based on his diagnosis of mild mental retardation and attendant developmental delays, claimant receives services from the Service Agency, including case management, day program, out-of-home respite, and 30 hours per month of in-home respite.

2. (A) Claimant has been a client of the Service Agency for a number of years. In or about 2008, claimant moved to the catchment area of the Pomona San Gabriel Regional Center where his in-home respite hours were increased to 30 hours per month. In early 2012, claimant returned to live in the Service Agency's catchment area.

(B) On May 14, 2012, the Service Agency held an Individual Program Plan meeting with claimant and his mother during which it was agreed to terminate claimant's independent living skills services due to his progress over the previous two or three years. Claimant did not have plans to move out of his parents' home. With respect to her son's respite hours, claimant's mother requested that in-home respite remain at 30 hours per month because she has found it tiring and stressful to have to constantly monitor claimant when he has anxiety attacks. The Service Agency agreed but added that claimant's need for respite services would be reviewed in six months.

3. In a Notice of Proposed Action dated February 27, 2013, the Service Agency proposed a reduction in claimant's in-home respite services from 30 hours per month to 12 hours per month. The Service Agency indicated it had reviewed claimant's abilities and activities as well as his need for in-home respite services and determined that the reduction was required by the provisions of Welfare and Institutions Code section 4686.5. Subsequently, claimant's mother filed a Request for Fair Hearing to appeal the determination of the Service Agency. Following an informal meeting, the Service Agency affirmed its determination to reduce in-home respite services. This matter ensued.

4. Claimant lives with his mother and step-father in the family home in Monterey Park. His mother works as a housekeeper and his step-father works in maintenance. His grandmother has been visiting from Guatemala. At home, claimant is independent and capable of performing many activities and tasks of daily living. He can prepare simple meals, complete laundry and housekeeping chores, and perform his self-care and hygiene tasks with less prompts. He can stay home alone for several hours without supervision. His mother has indicated that her son is compulsive about keeping their home neat and clean. Every week day, he walks and takes public transportation to get to and return from his adult day program at Choix Vocational Services (Choix). He attends Choix for six hours each week day until about 2:00 p.m. At Choix, he participates in volunteer work, enjoys reading, learns to cook and other vocational skills, and goes to the library. Claimant returns home from his day program around 3:00 p.m. On occasion, a neighbor or his mother's friend will

check in on him. On Tuesdays and Thursdays, his mother comes home early from work and has arranged for the respite worker from Maxim Health Care to come to the house and supervise claimant for three hours on these two days. On the weekends, claimant enjoys family gatherings and outings in the community. He attends church with his family.

5. In this proceeding, claimant's mother has requested that her son's in-home respite services remain at 30 hours per month because she needs the time to rest and recuperate from the stress of supervising claimant. While he can prepare some meals, the mother points out that claimant requires supervision in the kitchen. He has cut his finger with a knife and burned his hands on pots or pans. He can do housekeeping but he also tends to hide things in the house. In addition, although he is independent and mobile, claimant requires assistance whenever he has an anxiety or panic attack. He has anxiety or panic attacks every week. These episodes last approximately three hours during which time claimant may lie down and is not capable of doing anything for himself. Claimant's mother described one of these episodes where he had an anxiety attack before or while riding the bus; he could not board the bus and lay down on the ground. His mother has missed work and stayed home with claimant when he has had his anxiety or panic attacks and is unable to attend his day program.

6. (A) Claimant has received intensive psychiatric treatment for schizophrenia at the Arcadia Mental Health Full Service Partnership since 2008. On a monthly basis, he receives psychiatric consultation and medical support. On a weekly basis, he receives intensive case management. As indicated in his medical record, claimant or his mother has reported that he has anxiety attacks on an average of three times per week.

(B) For the past two and one-half years, claimant has been a patient at the Saban Free Clinic. In a letter dated April 13, 2013 (Exh. A), a family nurse practitioner at the clinic has stated that claimant's diagnoses of schizophrenia and mild retardation are controlled by a variety of psychotropic medications which are managed by his psychiatrist. The family nurse practitioner indicates that claimant is independent and high functioning but has reported having episodes of anxiety when faced with unexpected social situations or new challenges. Claimant has reported getting very anxious and needing a support person to be within reach. He calls his mother several times during the day while attending his day program for reassurance and to discuss social situations. The family nurse practitioner has opined that claimant's anxiety is probably related to his schizophrenia and mild mental retardation. New social situations are very daunting for him and he has difficulty at times in deciphering social cues.

7. According to the program director at Choix, claimant attends the Behavioral Management Day Program. Due to his unpredictable panic or anxiety attacks, he has difficulty in participating in activities that take place in crowded public places such as shopping malls, bowling alleys, and museums. Claimant's panic or anxiety attacks have significantly lessened in frequency but, when he has a panic or anxiety attack, he asks to go home and Choix informs his mother.

8. Claimant has been prescribed a number of medications by his psychiatrist. Among his medications, he takes Depakote for seizure or mood disorders, Lorazepam for anxiety, Zyprexa for schizophrenia and Divalproex for seizure disorders or psychiatric conditions.

9. Claimant's mother works as a housekeeper for a family in Santa Monica. Each morning, her husband drives her to Los Angeles from where she takes two or three buses to get to her job. She is the primary caregiver for her son. She supervises him at home and takes him to his medical appointments. She monitors and comforts him when he has an anxiety or panic attack. To rest and recuperate from working and caring for claimant every day, claimant's mother enjoys walking the family dog, going to church on the weekends, and running. She participates in running events that raise funds for charitable organizations, including an orphanage in Mexico and Hearts for Life, and is training to run a marathon. She runs during the week and completes a long training run on Sundays.

10. During the informal meeting, claimant's mother complained that her son lacks safety awareness and needs supervision while at home alone so that he does not get hurt while trying to make himself a meal. The Service Agency has told her that in-home respite services are not intended as a substitute for or to increase independent living skills and that claimant might benefit from adaptive skills training. The mother did not report any behavioral problems with her son.

11. In determining to reduce claimant's in-home respite hours and in affirming that determination following an informal meeting, the Service Agency considered claimant's needs and applied the reference guide for respite levels of service under its Purchase of Service Guidelines for In-Home Respite Services dated January 31, 2011. The Service Agency found that claimant qualifies for 12 hours of monthly in-home respite based on his medical conditions and his need for medications and to attend medical appointments. The Service Agency did not find that claimant had any behavioral, self-care, caregiver, or family stress issues to warrant a higher number of respite hours.

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

LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant, in part, claimant's request for more monthly hours of in-home respite hours, based on 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 physical and occupational therapy, recreation, behavior training, community integration services, daily living skills training, social skills training, and respite. (*Ibid.*)

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

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

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).)

3. Under its Purchase of Service Guideline for In-Home Respite Services, the Service Agency reiterates the Lanterman Act in stating that in-home respite service means intermittent or regularly scheduled temporary non-medical care and supervision provided in a consumer's home. In-Home respite services are intended to assist family members in maintain the consumer at home, provide appropriate care and supervision to ensure the consumer's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the consumer, and 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. Under its criteria for in-home respite services, the Service Agency provides that the services are considered when an individual's needs are beyond the support of family, friends, natural supports, and community resources and when the in-home respite service is identified as needed on a consumer's Individual Program Plan.

Under the Reference Guide for Respite Levels of Service, the Service Agency has established seven levels of respite service (Levels A through G) with each level having five factors for evaluating a consumer's medical, behavior, self-care, care giver condition, and family stress needs or problems.

Under Level C, a consumer may be authorized for up to 12 hours per month of respite if he meets the criteria for Level B and one or more of five factors (C-1 through C-5). Under C-1 for medical, a consumer must be medically fragile and require care on a periodic basis during the day, such as a gastrostomy tube. Under C-2 for behavior, the consumer must demonstrate ongoing challenging or atypical behaviors beyond age expectations. Under C-3 for self-care, a consumer must have chronic medical and physical needs requiring total care. Under C-4 for care giver condition, a consumer's care giver must have, in part, chronic physical, psychiatric, or medical issues which impact her ability to care for the consumer, cares for another family member who is elderly, or suffers from sleep disruption. Under C-5 for family stress, the consumer's family must have two or more consumers in the family, the consumer is at risk of being abused, or the family is receiving counseling for stress-related issues.

Under Level D, a consumer may be authorized for up to 18 hours per month of respite if she meets the criteria for Level C and one or more of five factors (D-1 through D-5). Under D-1 for medical, no criteria are identified. Under D-2 for behavior, the consumer must exhibit severe behavioral concerns and is injuring

himself and/or others or requires continuous supervision due to disruptive and destructive behaviors such as constant biting. Under D-3 for self-care, no criteria are identified. Under D-4 for care giver condition, a care giver's sleep must be significantly disrupted due to caring for the consumer. Under C-5 for family stress, the severity and combination of criteria under Level C may necessitate additional hours.

4. Discussion—The Lanterman Act makes clear that in-home respite services are designed not just to provide relief to family members from the constantly demanding responsibilities of caring for a regional center consumer but also to provide appropriate care and supervision to ensure the consumer's safety in the absence of his family and to attend to the consumer's basic self-help needs and activities of daily living which would ordinarily be performed by family members.

Here, it is also clear that claimant needs in-home respite services. He has been receiving this service from two regional centers for some time now. The issue then is how many in-home respite hours are appropriate. The Service Agency considered claimant's needs and his family situation and applied its criteria under its Reference Guide for Respite Levels of Service to determine that claimant requires 12 hours per month of in-home respite services. However, the evidence shows that more hours are necessary and appropriate for claimant's needs.

First, claimant suffers from anxiety or panic attacks. While the record does not contain evidence of an etiology for his anxiety or panic attacks, claimant does take medications for both seizures and anxiety. When he has an episode of anxiety or panic at his day program, claimant is unable to cope or participate in activities and requires the support of another person. He has these attacks on a weekly basis when he is confronted with an unfamiliar social situation or in public places. As such, claimant is not only medically fragile due to his anxiety or panic attacks but these episodes pose a danger to him when he is out in the community and his mother or family members are not present and also prevent him from participating in activities of daily living such as at his day program. Second, claimant's anxiety or panic attacks are not regular or periodic but unpredictable and long in duration. His episodes occur when he is in uncomfortable social situations. On one occasion when he was on a bus or about to board one, he had an episode and lay down on the ground. His mother has reported that the episodes can last as long as three hours and she has had to miss work to come and care for her son. The evidence thus demonstrates that claimant's medical condition of anxiety or panic attacks is a source of severe family stress that is in addition to the constant demands of caring for him.

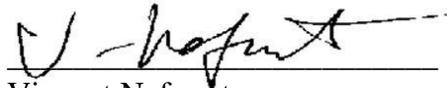
Under these circumstances, claimant's medical condition and the attendant family stress factors require an increase in in-home respite services to allow his mother to receive relief and rest from her daily duties as her son's primary family caregiver. An increase to 18 hours per month of in-home respite under Level D of the Service Agency's guideline is entirely appropriate whereas an increase to 24 hours (Level E) or 30 hours (Level F) is not inasmuch as the evidence did not show that claimant requires special care on an hourly basis (E-1) or special care and supervision on a round-the clock basis (F-1).

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Luis M. is granted, in part. The determination of the Eastern Los Angeles Regional Center to reduce claimant's hours each month of in-home respite services is modified such that claimant shall receive 18 hours of in-home respite services each month.

Dated: April 30, 2013

A handwritten signature in black ink, appearing to read "V. Nafarrete", is written over a horizontal line.

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.