

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EVANN C.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2013080742

DECISION

This matter, consolidated for hearing with OAH Case number 2013080741, involving the same parties, came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on October 17, 2013, in Alhambra, California.

Margarita Duran, Supervisor, represented Service Agency.

Victoria Baca, Educational Consultant, represented Claimant Evann C.¹

Oral and documentary evidence was received at the hearing. The record was left open for Claimant to submit the latest Individualized Education Program Plan (IEP) and for Service Agency to object to the receipt of the IEP. On October 25, 2013, Claimant submitted two documents, the latest IEP, prepared after a meeting on April 29, 2013, and worksheets associated with the IEP, which documents have been marked as Exhibit B. Service Agency did not object to the receipt of Exhibit B by the November 1, 2013 deadline, and the document has been received in evidence.

The matter was submitted for decision on November 1, 2013.

ISSUE

Should Service Agency fund 268 additional hours of in-home respite in lieu of out-of-home respite for May and June 2013?

¹ Initials have been used in lieu of surnames to protect Claimant's and his family's confidentiality.

FACTUAL FINDINGS

1. Claimant is a 16-year-old Service Agency consumer with a diagnosis of autism. He resides at home with his mother and his 19-year-old brother.

2. Claimant is able to use a few simple words, but his speech is difficult to understand. He uses a communication device to communicate. He requires prompting to perform most daily living activities, and requires supervision for his own safety. He engages in certain disruptive behaviors, including frequent screaming, touching the ears of others, and repetitive pacing. He is five-feet, five-inches-tall and weighs 176 pounds, and his actions can be intimidating to those not familiar with him.

3. Claimant attends Elliott Institute (Institute), a certified nonpublic school in the Los Angeles Unified School District (District). The institute provides an integrated educational program for students with special needs from kindergarten through high school. Claimant is in the ninth grade, and receives special education services, including language and behavior services.

4. Claimant's most recent individual program plan (IPP), was prepared following a meeting on April 24, 2013. As pertinent to the services at issue, the IPP contains the following provision: "[Eastern Los Angeles Regional Center] will continue to fund for 21 days per fiscal year of out of home respite services; per policies and procedures and as regulations permit." (Exh. 1, at p. 8.)

5. Service Agency's Purchase of Service (POS) Guideline for Out-Of-Home Respite Services, adopted May 2, 2011, is one of the policies referenced in the IPP. It defines out-of-home respite service as "intermittent or regularly scheduled temporary care provided outside the consumer's home by a vendored service provider." (Exh. 12, at p.1.) The services are appropriate to support a family when a claimant's participation in family activities is not possible, such as during vacations, hospitalizations or family emergencies. The policy provides that in-home respite in lieu of out-of-home respite may be used only when there is no out-of-home respite arrangement available, and provides for a process for locating a vendored service provider. Part of the process is for the family to provide documentation in support of the request, including necessary medical releases and information for the care of claimants. The policy further provides that payment for 21 days of out-of-home respite is equivalent to a full 30-day placement.

6. In June 2012, the parties appeared before Administrative Law Judge Michael A. Scarlett with a similar dispute. The issue presented was: "Must Service Agency reimburse Claimant's parents \$888 for in-home respite services used in lieu of out-of-home respite on April 6, 7, 8 and 9, 2012, for a family vacation?" (Exh. 3, at p. 2.) Claimant's mother had declined to follow the process outlined in the out-of-home respite service POS guideline, and

argued that Claimant's behaviors were such that there was no appropriate out-of-home respite placement for him. She also feared that Claimant would be mistreated in the facility used for respite. In a Decision dated October 17, 2012, Judge Scarlett concluded that the POS Guideline was reasonable and declined to find an exception, and concluded: "Service Agency is not required to allow parents to use in-home respite in lieu of out-of-home respite for [the] purpose of taking a family vacation, without claimant following the procedure for requesting use of out-of-home respite. Consequently, Service Agency is not required to reimburse Claimant for in-home respite services provided during the family's April 6-9, 2012 vacation." (Exh. 3, at p. 11.)

7. On May 13, 2013, Claimant's mother contacted Claimant's service coordinator, Albert Barajas (Barajas) to request in-home respite in lieu of out-of-home respite due to an emergency. Her mother was ill and she needed to leave town. Barajas informed Claimant's mother that he needed to look for an out-of-home respite provider for Claimant and asked her for information to send to respite providers. Claimant's mother replied that she had to leave as soon as possible and that she would not be able to wait for a provider to be found. Later in the day, Barajas called Claimant's mother and informed her that her request for in-home respite in lieu of out-of-home respite had been denied. Claimant's mother replied that she was facing an emergency situation and that she would file an appeal later.

8. Claimant's mother was outside of the country tending to her own mother for 29 days. Claimant's grandmother was seriously ill and passed away during this time. Claimant's uncle, Pascual C., stayed with Claimant at home and provided care during the 29 days.

9. Claimant has never been left alone outside his home, and his mother is concerned for his safety. However, it was not established that his behaviors are such that an appropriate out-of-home respite placement would be unavailable.

10. Claimant's mother did not present evidence substantiating the timing and reason(s) for her trip. She did not attempt to provide the required information to Service Agency or persuasively explain that she could not have at least commenced the process. She did not present evidence regarding the timing of the trip or how such timing actually prevented her from attempting to comply with Service Agency's request for information to locate a vendored respite provider.

11. Service Agency filed its Notice of Proposed Action on July 27, 2013, and Claimant's mother filed a Fair Hearing Request on July 29, 2013.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., the Legislature accepted its 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 respite services. (Welf. & Inst. Code, § 4512, subd. (b).)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. In accordance with the IPP process, Service Agency and Claimant's family have agreed on the need for respite services, including 21 hours of out-of-home respite. In the IPP, the parties agreed that the funding would be consistent with existing policies. On October 17, 2012, Judge Scarlett concluded that the POS Guidelines set forth in factual finding 6 were reasonable and concluded that Claimant was required to comply with the policy. In this case, Claimant's mother did not present the required documentation for Service Agency to determine the availability of a suitable out-of-home respite vendor. As required by the POS policy, because it was not shown that such a vendor was unavailable, in-home respite could not be used in lieu of out-of-home respite. Claimant's mother failed to follow the POS Guideline and did not present persuasive evidence to warrant deviation from the policy or for creating an exception in this particular instance. Accordingly, Service Agency need not fund 268 additional hours of in-home respite in lieu of out-of-home respite for May and June 2013.

ORDER

Claimant's appeal is denied.

Dated: November 14, 2013

_____/s/_____
SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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