

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

Case No. 2014050383

**DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 23, 2014 in San Bernardino, California.

Claimant's aunt, K.W., appeared on claimant's behalf as his authorized representative.

Leigh Anne Pierce, Consumer Services Representative, represented the Inland Regional Center (IRC).

Evidence was received, argument was heard, and the case was submitted for decision on June 23, 2014.

**ISSUE**

Is claimant entitled to receive 20 additional respite hours monthly, rather than the current 30 monthly respite hours, pursuant to an exemption under Welfare and Institutions Code section 4686.5, subdivision (a)(3)(A)?

**FACTUAL FINDINGS**

1. Claimant is a 25-year-old conserved adult who is a consumer of services provided by the Service Agency pursuant to the Lanterman Developmental Disabilities

Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq. Claimant is eligible for services based on his diagnosis of mild retardation.

2. The Service Agency issued a Notice of Proposed Action on or about April 7, 2014, that denied claimant's request for an additional 20 hours of respite care per month. Claimant's authorized representative filed a Fair Hearing Request, on May 3, 2014.

3. Claimant lives with his aunt, K.W. K.W. and her daughter, claimant's cousin, J.W., are his co-conservators. K.W. is also claimant's Supplemental Security Income (SSI) payee. Claimant receives the board and care rate of \$1,130 monthly through SSI. Because he receives the SSI out-of-home board and care rate, claimant does not qualify for In Home Supportive Services; the SSI board and care rate includes payment for claimant's care and supervision.

4. According to claimant's Individual Program Plan (IPP), claimant is diagnosed with mild mental retardation, epilepsy, lack of expected normal psychological development, obstructive sleep apnea, chronic respiratory disease, asthma, attention deficit disorder, and mild vision impairment. Claimant has behavioral challenges but is able to function independently. He helps his aunt and enjoys spending time with his family and friends. He goes out in the community with his friends and likes to shop at local stores. He has a broad vocabulary and is able to communicate his wants and needs appropriately. K.W. gives him money, and he walks or rides the bus to familiar areas.

Despite his independence, claimant requires daily reminders to practice good hygiene skills. About once a week, when he is frustrated or upset, he has temper tantrums at home. When he is somewhere unfamiliar without someone he knows, he is unsure of himself and this can cause his safety awareness skills to decrease.

5. To assess claimant's practical independence, his personal/social skills, integration level, well-being level, and his challenging behaviors, IRC prepared a Client Development Evaluation Report (CDER) using a rating scale between 1 and 5 with 1 indicating that the consumer requires the most assistance and 5 indicating that the consumer requires the least assistance. According to the August 28, 2013 CDER, claimant was rated as 5 in practical independence; 3.83 in personal/social skills; 4 in challenging behaviors; 4.00 in integration level; and 5 in well-being level. These scores are consistent with the information contained in claimant's IPP.

6. The Service Agency provides 30 hours of preferred provider respite care per month to assist claimant's family members in caring for him at home. This is the maximum amount permitted pursuant to Welfare and Institutions Code section 4686.5 unless additional hours are needed to maintain the claimant in the home or to cope with an extraordinary event that has impacted the family's ability to care for him.

7. According to claimant's fair hearing request, K.W. seeks the increase in hours in order to care for her mother and so that claimant "may stay safe." During the hearing

K.W. added that she seeks the increase in hours because of her increasing health problems. K.W. argued that her health problems constitute an extraordinary event pursuant to Welfare and Institutions Code section 4686.5.

8. Specifically, K.W., who is 61 years old, has had dangerously high blood pressure twice in the last six months that required her to go to the emergency room for treatment. K.W. is under the care of a doctor for this condition, and she takes medications to control her blood pressure. Her blood pressure fluctuates but now appears to be stable. She was hospitalized for colitis, inflammation of the colon, from May 29 to May 31, 2014. K.W. also has cellulitis and edema. She required urgent care treatment in June 2013 for these problems. K.W. is waiting for test results concerning a mass that doctors recently found on her kidney.

9. K.W. works as her mother's caregiver and receives 260 hours monthly in IHSS hours. Her mother is elderly and has a number of medical issues. She requires assistance with ambulation, housekeeping, bathing, and self-care. She lives several blocks from K.W. Her mother's condition is stable; her needs have not changed over the last six months. No evidence was presented that, due to K.W.'s health problems, K.W. is unable to care for her mother.

10. K.W. stated that claimant has deficits in practical and social skills. Claimant prefers wearing pull over shirts because he cannot manipulate the buttons on clothes; he wears slip on shoes because he can't tie his shoes. Claimant is impulsive and is not safety conscious, which is a concern to K.W. He needs reminders to groom himself on a daily basis. In February of this year, claimant left Vocational Improvement Program (VIP), a program designed to help him develop job skills that was funded by IRC. Claimant attended this program daily during the work day. K.W. believes he did not continue because of his lack of social skills and his failure to interact appropriately with the program's supervisor. However, a report from VIP indicated that claimant decided to leave the program.

11. Claimant wants to study art. Recently, he took an art class at a local community college. K.W. arranged for a male cousin to accompany him to the class.

12. J.W. testified that claimant does everything with K.W. J.W. said that she can watch claimant, although she was concerned that he plays rough with her two children. J.W. provides respite care for claimant as a paid caregiver through In-Roads Creative.

Regarding K.W.'s medical condition, J.W. noted that K.W. has had more medical and therapy appointments than in the past. K.W. is required to do fitness activities. K.W. is finding medications to stabilize her current ailments.

13. Kevin Haynes, IRC Program Manager, testified at the hearing. He did not participate in IRC's decision. Mr. Haynes, however, reviewed relevant materials and agreed with the decision to deny the requested respite hours. Based on the CDER, Mr. Haynes felt that claimant is fully independent, well integrated into his life, but has minor behavioral

challenges. Mr. Haynes explained that respite is designed to provide a temporary rest or break to allow family members of a consumer to recoup and recover so that they may continue to provide care to their family member. He emphasized that respite is not day care.

14. Christine Mory also testified at the hearing. Ms. Mory is claimant's consumer services coordinator. Ms. Mory reiterated claimant's need for assistance to ensure his safety in the community and to maintain his hygiene.

## LEGAL CONCLUSIONS

### *The Burden and Standard of Proof*

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that he is entitled to receive an additional 20 hours in respite care.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### *The Lanterman Act*

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into a mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Act acknowledges the "complexities" of providing services and supports to people with developmental disabilities and of "ensur[ing] that no gaps occur in . . . [the] provision of services and supports." (Welf. & Inst. Code, § 4501. To that end, section 4501 states:

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life . . . .

6. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“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, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services . . . [and] supported living arrangements . . . .

7. In order to be authorized, a service or support must be included in the consumer’s individual program plan (IPP.) (Welf. & Inst. Code, § 4512, subd. (b).)

8. In implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Natural supports include family relationships and friendships developed in the community that enhance the quality and security of life for people. (Welf. & Inst. Code, § 4512, subd. (e).)

9. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process should take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Services and supports are intended to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

10. Services provided must be cost effective (Welf. & Inst. Code, § 4512, subd. (b), *supra.*), and regional centers are required to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

11. “In-home respite services” are defined in the Lanterman Act as “intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client’s own home, for a regional center client who resides with a family member.” (Welf. & Inst. Code,

§ 4690.2, subd. (a).) Welfare and Institutions Code section 4690.2 , subdivision (a), states that respite services are designed to “do all of the following:”

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision in maintaining the client at home.
- (3) Relieve family members from the constantly demanding responsibility of caring for the clients.
- (4) Attend to the client’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.

12. In 2009, limits were imposed on the regional centers’ ability to purchase respite care for the families of consumers. Specifically, Welfare and Institutions Code section 4686.5 provides that a regional center shall not purchase more than 90 hours of in-home respite care for each quarter of one year. (Welf. & Inst. Code, §4686.5, subd. (a)(2).) However, a regional center may grant an exemption, and provide more of such services, where it is demonstrated either that more than 90 hours per quarter of respite care is required in order to maintain the consumer in the family home, or where it has been established that there has been an extraordinary event that impacts the family’s ability to meet the care and supervision needs of the consumer. (Welf. & Inst. Code, §4686.5, subd. (a)(3)(A).)

### *Evaluation*

Claimant did not establish that he requires more than 90 hours per quarter of respite care so that he may remain in the family home, or that an extraordinary event exists that impacts his family’s ability to meet his care and supervision needs. While K.W. has medical concerns that require her attention, the evidence of record does not show that her medical concerns prevent her from meeting claimant’s needs. Her blood pressure is currently under control, and she is taking medications for colitis and edema. K.W. has continued to work as her mother’s IHSS caregiver, and no evidence was presented that her mother’s condition has changed. Further, respite hours are not available as a substitute for the natural supports that are available to claimant. Claimant’s cousin, J.W., is available to help K.W., as is another cousin, who recently accompanied claimant to the community college for his art class. It is also noted that claimant receives an additional sum of money through SSI that may be used to pay for claimant’s care and supervision. Accordingly, for these reasons, pursuant to Welfare and Institutions Code section 4686.5, subdivision (a)(2), claimant is not eligible to receive an additional 20 hours of respite care per month.

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ORDER

Claimant's appeal is denied.

Date: July 7, 2014

A handwritten signature in black ink, appearing to read 'A. M. Levy', is written over a horizontal line.

ABRAHAM M. LEVY  
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.**