

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Case No. 2014050764

CLAIMANT,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

The hearing in the above-captioned matter was held on June 24, 2014, at Alhambra, California, before Glynda B. Gomez, Administrative law Judge (ALJ), Office of Administrative Hearings (OAH). Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Belinda Salinas, Contractor. Claimant was represented by his mother (Mother).¹ (Titles are used to protect Claimant's privacy?)

Evidence was received, argument was heard, and the case was submitted for decision on June 24, 2014.

ISSUE PRESENTED

Whether the Service Agency should increase Claimant's In-home respite from 20 hours per month to 40 hours per month?

FACTUAL FINDINGS

1. Claimant is a 24 year-old male who is a consumer of services provided by the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act

¹ Titles are used instead of names to protect privacy.

(Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.² Claimant is eligible for services based on his diagnosis of Autism and Mental Retardation. Claimant is also diagnosed with Attention Deficit Hyperactivity Disorder (ADHD).

2. Claimant lives with his mother in a 350 square foot, one bedroom apartment. His father is deceased and he has no siblings. Previously, he attended El Arca, a community day program. He stopped attending the day program because he was bored with the program and he had transportation concerns. Claimant spends his days at home with his mother, watching television, going on outings in the community, attending church bible study, and visiting with family. Claimant receives 273 hours of In Home Supportive Services (IHSS). His mother is his IHSS worker. Until recently, Claimant received adaptive skills training. Mother discontinued the adaptive skills training when Claimant became upset and frustrated and began hitting himself in the head. Claimant also became aggressive with the therapist when frustrated by math problems.

3. Claimant requires 24 hour per day supervision. He has aggressive behaviors, emotional outbursts and severe echolalia. Claimant does not understand the concept of danger and wanders away if not constantly supervised. He has limited understanding of money and has wandered out of stores without paying for items. He also requires assistance with bathing, shaving and in self-care tasks.

4. Pursuant to the Individual Program Plan (IPP) developed between Claimant and the Service Agency on April 15, 2014, Claimant receives 20 hours per month of In-Home Respite Services.

5. ELARC's Purchase of Service (POS) policy for In-Home Respite Services dated January 31, 2011 provides:

The In-home respite is intended to:

Assist family members in maintaining the consumer at home.

Provide appropriate care and supervision to ensure the individual's safety in the absence of family members. (Absence is defined not by physical presence but by relief of direct care and supervision of the individual.)

Relieve family members from the constantly demanding responsibility of caring for the individual.

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

Attend to the individual'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.

6. The POS policy also provides for criteria to be used in determining the number of hours of In-Home Respite to be assigned to a consumer. Relevant here are Level D (up to 18 hours per month of respite), Level E (up to 24 hours per month of respite), Level F (up to 30 hours per month of respite) and Level G (Over 30 hours per month).

7. To meet Level E, Claimant must demonstrate that he has either a medical condition which requires special care on an hourly basis or severe family stress factors in addition to meeting the criteria set forth in Level D. For the purposes of this case, it is assumed that ELARC has already determined that the criteria in Level D have been met because Claimant's current award of In-Home respite hours is already in excess of the 18 hours per month provided by Level D.

8. To meet Level F, Claimant must either have a chronic or acute medical condition which requires around-the-clock special care and supervision for a life-threatening condition, chronic intense maladaptive behaviors which require 24-hour supervision (e.g. wandering away, mental health issues), a chronic or life threatening medical condition which interferes with the care-giver's ability to care for the consumer, or severe family stress factors in addition to the Level E Criteria.

9. To meet Level G, Claimant must meet Level F eligibility and establish that he meets the statutory exemption requirements of section 4686.5, subdivision (a)(3), which are set forth below in Legal Conclusion 10. According to the POS policy, such hours are only awarded on a temporary basis and are reviewed and reauthorized on a quarterly basis.

LEGAL CONCLUSIONS

1. The initial burden of proof is on Claimant as the party seeking to change the status quo. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

2. Services are to be provided to regional center clients in conformity with the IPP, per sections 4646, subdivision (d), and 4512, subdivision (b). Consumer choice is to play a part in constructing the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

3. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) and (b), 4648, subds. (a)(1) and (a)(2).

4. Section 4512, subdivision (b), states, in part:

'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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . respite, . . .

5. Services provided must be cost-effective (§ 4512, subd. (b), *supra*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

6. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The regional center is also to utilize the service coordination model, in which each consumer shall have a designated service coordinator "who is responsible for providing or ensuring that needed services and supports are available to the consumer." (§ 4640.7, subd. (b).)

7. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

8. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (§ 4648, subd. (a)(1).)

9. “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.” (§ 4690.2, subd. (a).) Subdivision (a) of section 4690.2 goes on to state 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’s safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (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.

10. Effective July 1, 2009, limits were imposed on a regional center’s ability to purchase respite care for the families of consumers. Specifically, section 4686.5 was added to the Lanterman Act. It provides that a regional center shall not purchase more than 90 hours of in-home respite in a quarter of one year. (§ 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 a consumer. (§ 4686.5, subd. (a).)

11. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

12. Here, Claimant has established by a preponderance of the evidence that his needs are intense and he requires 24 hour supervision. Claimant’s father is deceased and he has no siblings. Claimant’s mother is his primary caregiver and his only immediate family resource. Under these circumstances, Claimant meets the criteria set forth in ELARC’s POS

for In-Home Respite services at Level F of up to 30 hours per month. However, Claimant has not established that he meets the criteria for an exemption to the 90 hours per quarter limitation because of extraordinary circumstances.

13. An increase in respite In-Home hours to 30 hours per month based upon the above factors complies with ELARC's POS policy and provides appropriate relief to Claimant's primary caregiver, thus enabling him to remain in his home. Accordingly, ELARC shall fund 30 hours of In-Home respite per month for Claimant.

ORDER

The Eastern Los Angeles Regional Center shall fund 30 hours per month In-Home respite for Claimant for twelve months from the effective date of this decision.

June 30, 2014

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings