

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2014100972

DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on December 2, 2014, at the North Los Angeles County Regional Center in Pomona, California.

Ruth Janka, Contract Administrator, appeared and represented the North Los Angeles County Regional Center (the Service Agency).

Claimant's mother¹ appeared and represented Claimant. Claimant was also present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUES

The issue in this matter is whether the Service Agency should increase respite care from 30 hours per month to 60 hours per month.

///

¹ Claimant and his family are not identified by name in order to protect their privacy.

EVIDENCE CONSIDERED

1. Service Agency's Exhibits 1 through 7 and 10 through 12.
2. Claimant's Exhibits A through W.
3. Testimony of Claimant's mother.
4. Testimony of Song Kim, Consumer Services Coordinator.
5. Testimony of Landon Hallbrooks, Consumer Services Supervisor.

FACTUAL FINDINGS

1. Claimant is a 17-year-old young man. He is 6'1" in height and weighs 270 pounds. He is eligible for regional center services due to autism, which impacts his behavior significantly. He is ambulatory with limited verbal communication skills. (Exhibit K.)

2. On June 20, 2012 and July 9, 2012, Claimant's father met with the Consumer Service Coordinator (CSC) assigned to Claimant. Together, they developed an individual program plan (IPP). The IPP participants agreed that one of the desired outcomes of services was to give the parents a break from providing constant care and supervision to Claimant. The participants agreed that the Service Agency would fund 28 hours of parent conversion respite care. (Exhibit 2).

3. Claimant has lived at home with his parents and sister in a single-family residence. Claimant's father was employed as a special needs assistant with the Los Angeles Unified School District. The father was actively involved in Claimant's daily life and they regularly went on bike rides together. (Testimony of Claimant's mother).

4. On January 26, 2014, claimant's father died. Claimant's mother reported the father's death to the Service Agency and requested additional respite service. On March 1, 2014, respite care service was increased to 30 hours per month. (Exhibit 3).

5. On February 12, 2014, the IPP was amended to modify the desired outcome of respite care services. The participants agreed that the Service Agency would fund 30 hours of respite care and that the mother would inform the CSC of any changes regarding the family's need for respite service. (Exhibit 4).

6. Claimant managed to cope with the passing of his father for a few months. The level of respite care was sufficient to enable the mother to take a break on weekends. During the week, Claimant attended high school in a special day class from 8:25 a.m. to 3:17 p.m. After his father died, Claimant no longer took bike rides. (Testimony of Claimant's mother).

7. Beginning in April 2014, Claimant's behavior changed. He became increasingly physically aggressive towards his mother. Claimant regularly slapped and punched his mother who is smaller in height and weight than Claimant. Claimant was not aware of his own strength and posed a risk of injury to his mother. (Testimony of mother, Exhibit 5).

8. On May 7, 2014, claimant's mother contacted the Service Agency to report her difficulty with the change in Claimant's behavior. In reply, the CSC furnished the mother with instructions for in-home behavioral services and group parenting training. (Exhibit 5, Testimony of Song Kim).

9. On June 24, 2014, a revised IPP was developed by the CSC and the mother. The IPP was amended to add a new desired outcome of services. Specifically, it was agreed that Claimant's mother would like to learn to understand the basic principles of behavioral intervention so that she could deal with Claimant's inappropriate behaviors more effectively. (Exhibit 7).

10. On August 26, 2014, Claimant's mother contacted the CSC, expressing upset and anger. She reported that Claimant attacked her physically in the car while she was driving. The CSC advised the mother of her right to apply for police intervention and protection under Welfare and Institutions Code section 5150. The CSC also advised the mother of the option of placing Claimant in a foster home. Claimant's mother was dissatisfied with the CSC's response to her circumstance. (Exhibit 10, Exhibit K, Testimony of mother and Song Kim). On August 28, 2014, the mother complained to a supervisor about her dissatisfaction with the CSC's job performance. (Exhibit A). On September 18, 2014, a new CSC was assigned to Claimant. (Exhibit K).

11. On September 23, 2014, the mother spoke with the new CSC and requested an increase in respite care. The mother expressed the need to have the freedom to seek employment. They discussed day care services through the In-Home Supportive Services (IHSS) Program, which would enable the mother to work. The mother has applied for day care services through IHSS and her application was pending at the time of the hearing. (Exhibit 10, Exhibit K, testimony of mother.)

12. In support of her request for an increase in respite care, the mother expressed the need to have the freedom to run errands. On October 6, 2014, the Service Agency approved five hours of personal assistance service in response to the mother's request for an increase in respite care. (Exhibit 10, testimony of Landon Hallbrooks).

13. On October 10, 2014, the mother objected to the personal assistant care service and requested a respite care exemption. The mother requested the forms necessary to make a request for a fair hearing. (Exhibit F.)

14. On October 17, 2014, the mother filed a request for a fair hearing regarding the funding for respite care in light of the father's death. (Exhibit 1.)

15. On October 21, 2014 the IPP was amended to add funding of 15 hours per week of personal assistant services. The added service was authorized to assist the mother with Claimant's care in the morning and afternoons. (Exhibit 11, testimony of Landon Hallbrooks).

16. The mother was dissatisfied with the administration of Claimant's case. The Service Agency continued to address correspondence to Claimant's father nine months after his death. The Service Agency has not responded to the mother's requests within the time period promised to or expected by the mother. The Service Agency mailed materials by an encrypted message without furnishing the mother with the password necessary to open the files. The Service Agency was slow to act on the mother's complaint about the CSC's job performance and its promise to investigate. (Mother's testimony, Exhibits H, Q and T).

LEGAL CONCLUSIONS

1. The Service Agency should increase respite care from 30 hours per month to 45 hours per month as set forth in Factual Findings 1 through 16 and Legal Conclusions 2 through 8.

2. It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).)

3. Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting. (Welf. & Inst. Code, § 4646, subd. (d).)

4. Welfare and Institutions Code section 4686.5 states in pertinent part:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) 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.

(2) 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.

(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) 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.

5. The party seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

6. In this case, Claimant has proven by a preponderance of the evidence that the intensity of his care and supervision needs are such that additional respite is necessary to maintain Claimant in the family home. The death of Claimant's father was an extraordinary event that impacted the mother's ability to meet Claimant's care and supervision needs. The addition of two hours per month of respite care since the father's death has not been effective in meeting the stated IPP goal to give the widowed parent a break from the constant care and supervision of Claimant.

7. The Service Agency authorized personal assistant service in lieu of respite care because the mother expressed the need to have the freedom to run errands. The Service Agency advised the mother to apply for day care in lieu of respite care because the mother expressed the need to have the freedom to seek employment. Although her request for respite care was not supported by an expressed need for a break from the constant care of Claimant, the weight of the evidence tends to show that the mother needs additional respite care for reasons that qualify under the statutory exemption to the 30 hour limitation for respite care.²

8. Notwithstanding the foregoing, no evidence was presented to show that doubling the level of respite care was necessary. For these reasons, an immediate increase of 15 hours per month in respite care is reasonable with provisions for review at Claimant's next annual IPP.

² The exemption is set forth at Welfare and Institutions Code section 4686.5, subdivision (a)(3)(A). The mother's dissatisfaction with the administration of Claimant's case was not considered a reason to qualify for the exemption.

ORDER

Claimant's appeal is granted in part. The Service Agency shall fund an increase of 15 hours per month in respite services for a total of 45 hours per month.

The need for respite services shall be reviewed as part of Claimant's next annual IPP review to determine whether the amount of respite care should be increased, decreased, maintained, or terminated.

DATED: December 8, 2014


MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.