

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2015030573

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on August 27, 2015, in Campbell, California.

Claimant was represented by his father.

James Elliot, Director's Designee for Fair Hearings, represented San Andreas Regional Center (SARC).

The matter was submitted for decision on August 27, 2015.

ISSUE

Whether San Andreas Regional Center should be required to continue funding respite at the current volume of 150 hours per month or may the volume of respite be reduced to 24 hours per month.

FACTUAL FINDINGS

1. Claimant is a 26-year-old consumer of SARC services. He has a diagnosis of cerebral palsy, developmental delay and seizure disorder. Claimant is able to perform certain personal care activities, such as toileting and feeding himself, but requires assistance with

other activities of daily living, such as grooming and household chores. Claimant is semi-ambulatory and requires assistance when out in the community. He has no safety awareness and requires ongoing supervision to ensure his safety.

2. Claimant lives with his father. His mother is deceased. Claimant's father is required to travel extensively for his job. Prior to October 1, 2014, claimant received up to 230 hours of respite per month. Claimant used most of those respite hours. Effective October 1, 2014, claimant's respite was reduced to 150 hours per month. Also in approximately October 2014, claimant's father accepted a position that requires less travel. Claimant has been using 60 to 70 hours per month of respite for the last few months.

3. Commencing in or about March 2013, SARC advised claimant's father that he needed to apply for Medi-Cal and In Home Support Services (IHSS) for claimant. IHSS is a generic resource that SARC must consider as being available to claimant when it considers the level of support it will provide to claimant. (Welf. & Inst. Code, §§ 4648, 4659.) IHSS funding is provided to cover in home personal care services, including assistance with ambulation, bathing, oral hygiene and grooming, dressing, and feeding. (See Welf. & Inst. Code, §14132.95.) It also can be used for protective supervision to give family members a break from caring for a consumer. (Welf. & Inst. Code, § 12300.)

4. SARC had multiple discussions with claimant's father about the need to apply for IHSS for claimant, and SARC has repeatedly offered to assist him in applying for those services. In October 2014, claimant's father met with then SARC Executive Director Javier Zaldivar. Zaldivar explained to him that State law had changed and respite was limited to 30 hours per month or 90 hours per quarter. He also explained that SARC is the payor of last resort, which means SARC must look at all generic programs, including Medi-Cal and IHSS, before funding services. It is only after generic programs have been accessed that SARC is able to determine what regional services are necessary and available to meet a consumer's needs.

At the meeting SARC agreed to continue to fund 150 respite hours per month for claimant through October 31, 2014. Claimant's father agreed to apply for IHSS for claimant by October 31, 2014, and to provide verification of the application to SARC. It was also agreed that if claimant's father did not apply for IHSS by October 31, 2015, then claimant's respite would be reduced to 24 hours per month. Claimant's father was subsequently granted an extension through March 31, 2015, to apply for IHSS. To date, no verification of the filing of an IHSS application for claimant has been provided to SARC.

5. Under SARC's respite care policy, the respite needs of each family are individually assessed by the planning team to determine the actual number of respite hours needed. The guideline for in-home respite use is from 12-14 hours per month, but the executive director (or his designee) has discretion to authorize exceptions to this policy if warranted. SARC asserts that it cannot accurately assess claimant's respite needs until it knows the IHSS hours he will receive. Since claimant's father has repeatedly failed to apply for IHSS, SARC proposes to reduce claimant's respite to 24 hours per month, as agreed at

the October 2014 meeting. SARC states, however, that it is willing to provide additional respite hours after claimant receives IHSS hours if there is a demonstrated need for such hours.

6. Claimant's father admits he agreed to apply for IHSS and Medi-Cal and states he has started the IHSS application process several times. He acknowledges, however, that he has never completed the process. Claimant's father has been hesitant to apply for IHSS for a number of reasons. He is concerned that if he applies for and receives IHSS, claimant will not receive any respite hours from SARC. He is also concerned that if he receives IHSS, he will be required to hire and manage the caregivers for his son. He does not feel he will be able to do this due to the frequency of his employment related travel. Claimant's father's main concern is that he will not be able to continue to use claimant's current care provider, Quality Respite. Quality Respite coordinates the caregivers when Claimant's father travels for work, and it sends caregivers with whom claimant is familiar. Claimant does not tolerate change or new people well. He pounds his head and bites himself when he is angry or upset. Claimant's father is concerned that claimant will engage in this self-destructive behavior if he has to adjust to new and ever changing IHSS caregivers. Claimant is most comfortable when he is at home and is cared for by caregivers with whom he is familiar. Claimant's father seeks to maintain the current volume of respite of 150 hours per month so he can continue to use the services of Quality Respite, and he indicates he may need additional respite hours if the travel requirements for his job increase.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500, et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

Regional centers are authorized to provide a wide range of services (including respite) to facilitate implementation of the IPP, but provision of those services to consumers and their families must "reflect the cost-effective use of public resources." (Welf. & Inst. Code, § 4646, subd. (a).) Regional centers are specifically directed not to fund duplicate services that

are available through another publicly funded agency. (§ 4648, subd. (a)(8).)¹ Regional centers thus have discretion in determining which services they should purchase to best accomplish all or any part of a consumer's IPP. (Welf. & Inst. Code, § 4648, subd. (b).) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (Welf. & Inst. Code, §§ 4646, 4648, 4624, 4630, subd. (b) & 4651; and see *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

2. In-home respite is one type of service that may be provided to a consumer and paid for by the state.² (*Clement v. Amundson* (1998) 60 Cal.App.4th 1094, 1103.) Respite services are purchased based upon the individual needs of the consumer and his or her family. (Cal. Code Regs., tit. 17, § 54302, subd. (31); Welf. & Inst. Code, § 4512, subd. (b).)

¹ Welfare and Institutions Code, section 4648, subdivision (a)(8) states,

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 public funds for providing those services.

² Welfare and Institutions Code section 4690.2, subdivision (a), defines in-home respite as follows:

“In-home respite services” means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These 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 to ensure 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 the family members.

3. The Legislature has recently made significant changes regarding the provision of services under the Lanterman Act through the Budget Act of 2009. With respect to the provision of respite services, Welfare and Institutions Code section 4686.5 was added to provide in relevant part:

(a) Retroactive to 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.

4. Welfare and Institutions Code section 4648.5 thus requires SARC to limit the purchase of in-home respite services for claimant to 90 hours per quarter, unless SARC determines that claimant meets the criteria for, and grants, claimant an exemption. SARC is further constrained in the provision of respite by Welfare and Institutions Code, sections 4646 and 4648, which restrict it from funding services if there is another funding source (in this case IHSS) that is receiving public funds to provide the services (here respite services).

5. A review of the evidence establishes that SARC considered the relevant circumstances in determining an appropriate level of respite for claimant, and that its determination was reasonable and consistent with applicable legal requirements, as well as the needs of claimant and his father. No evidence was presented at hearing which would support a determination that the regional center erred in making those determinations. Claimant, through his father, was given numerous opportunities to apply for IHSS, but failed to do so and thus failed to demonstrate that he qualifies for an exception to the SARC respite policy. It is therefore concluded that SARC may reduce the provision of respite services to claimant from 150 hours per month to 24 hours per month.

ORDER

Claimant's request that San Andreas Regional Center be required to maintain his volume of respite at 150 hours per month is denied. The San Andreas Regional Center may reduce the provision of respite services to claimant from 150 hours per month to 24 hours per month.

DATED: September 11, 2015

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Cheryl R. Tompkin
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CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction