

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

L.F.,

Petitioner,

vs.

INLAND REGIONAL CENTER,

Respondent.

OAH No. 2015060892

**DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 14, 2015, in San Bernardino, California.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Petitioner's mother represented petitioner.

The record was closed and matter was submitted for decision on July 14, 2015.

**ISSUE**

Is petitioner eligible to receive respite care under the California Early Intervention Services Act?

**FACTUAL FINDINGS**

1. Petitioner is two years old and receives services through the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) due to developmental delays. Petitioner does not receive services under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.).

2. Petitioner's Individualized Family Service Plan (IFSP) reflects that he has developmental delays in a number of areas and has numerous special needs. He is fed through a G-Tube; he utilizes bilateral hearing aids; and he is administered oxygen through a pulse oximeter as needed. Petitioner receives Supplemental Security Income, and he receives therapy and medical services through California Children's Services. Petitioner also receives 103 hours of In Home Supportive Services (IHSS).

3. On May 20, 2015, petitioner asked IRC for respite services. Petitioner's IFSP did not include respite care as a service. On May 27, 2015, IRC notified claimant that it had denied his request. As the reason it denied his request, IRC stated that, per Government Code section 95020, subdivision (e)(3), respite care is a non-required service that IRC is prohibited from funding. On June 17, 2015, petitioner appealed IRC's decision.

4. At the hearing, petitioner's mother testified that petitioner should be eligible to receive respite care because she takes him to numerous appointments with doctors and therapists and, on a daily basis, she must administer numerous therapies including using the G-tube. She said she wanted an hour or two a week as a break. She acknowledged that petitioner receives 103 hours of IHSS services, which include protective supervision hours, and she could use a portion of these hours to pay someone to provide respite care.<sup>1</sup>

IRC argued that, regardless whether respite care is a non-required service under Government Code 92050, subdivision (e)(3), petitioner is not eligible for respite care because respite care is available to petitioner through generic resources including IHSS. IRC also argued that petitioner is not eligible for respite care because a two year old, regardless of whether he or she has developmental delays or special needs, requires constant supervision.

## LEGAL CONCLUSIONS

1. In a proceeding to determine whether an individual is eligible for services under the Early Intervention Services Act, the burden of proof is on petitioner. The standard of proof is preponderance of the evidence. (Evid. Code, § 115.) 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.)

2. Under the Early Intervention Services Act (Gov. Code §§ 95000 et seq), the California Legislature recognized the need to provide appropriate early intervention services for infants and toddlers from birth to two years of age who have disabilities or are at risk of developing disabilities.

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<sup>1</sup> Protective Supervision consists of observing recipient's behavior and intervening as appropriate in order to safeguard the recipient against injury, hazard, or accident. (MPP § 30-757.17 [Department of Social Services' Manual of Policies and Procedures].)

Each infant or toddler eligible for early intervention services must have an IFSP, which includes a statement of the specific early intervention services necessary to meet his or her unique needs. (Gov. Code § 95020, subs. (a) and (d)(5).) Each service identified on the IFSP must be designated as one of three types: (1) mandated early intervention services, as defined in 20 U.S.C. section 1432, subsection (4), and applicable regulations, that is provided or purchased through the regional center, local education agency, or other participating agency; (2) any other service which the eligible infant or toddler or his family may receive from other state programs; and (3) non-required services that may be provided to an eligible infant or toddler or his family.

Mandatory services include family training, counseling, and home visits; special instruction; speech-language pathology and audiology services, and sign language and cued language services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services, among other services. (20 U.S.C. § 1432, subd. (4)(E).) Respite care is not among the early intervention services defined as mandatory under this section or applicable regulations. (Cal. Code Regs., tit. 17, § 52108, subd. (a)(3)(A); 34 C.F.R. § 303.13.)<sup>2</sup>

Effective July 1, 2009, regional centers were prohibited from purchasing non-required early intervention services. Non-required services are services that are not defined as early intervention services or are services that do not relate to meeting the special developmental needs of an eligible infant or toddler, but which may be helpful to the family. (Gov. Code § 95020, subd. (e)(3).)

3. Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's IFSP individualized family service plan pursuant to Government Code section 95020, that generic resources are utilized. (Welf. & Inst. Code § 4646.4, subd. (a)(2).) Funds provided to implement an IFSP may not be used to satisfy the commitment for services that would have been paid for from another private or public source. (20 U.S.C. § 1440.)

#### *Evaluation and Disposition*

4. Cause does not exist to grant petitioner's request for respite services. IRC's May 27, 2015, decision to deny petitioner's request for respite care is sustained.

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<sup>2</sup> Under California Code of Regulations, title 17, section 52108, subdivision (a)(3)(A), a nonrequired service includes, but is not limited to: employment, child care, housing, medical services, well-baby care, income support, family or marital counseling unrelated to the infant or toddler's development, and substance abuse counseling. By this definition, respite care may be a non-required early intervention service.

By definition respite care is not a mandatory service under the Early Intervention Services Act.<sup>3</sup> The question then, under Government Code section 95020, subdivision (e)(3), is whether petitioner requires respite care to meet his special developmental needs. Based on the facts presented in this matter, it can't be concluded that respite care is needed to ensure that petitioner's special developmental needs are met because respite care is available to petitioner through the IHSS program.

Regional centers must ensure, as the payor of last resort, when authorizing or approving services of an IFSP pursuant to Government Code section 95020, that generic services and supports are utilized. (Welf. & Inst. Code § 4646.4, subd. (a)(2); 20 U.S.C. § 1440.) IHSS is one of these generic services. Petitioner receives 103 hours of IHSS services per month, which includes protective supervision hours. Petitioner's mother may use a portion of these hours to pay a third party to supervise petitioner so that she may have a break from the demands of caring for petitioner. Respite care is thus available to petitioner as a generic resource.

#### ORDER

Petitioner's appeal of IRC's decision to deny respite care under the California Early Intervention Services Act is denied.

DATED: July 27, 2015.

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ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> Respite care is designed to help family members maintain the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living. (Welf. & Inst. Code § 4690.2, subd. (a)(1 - 4).) Regional Centers may purchase respite services only when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities. (Welf. & Inst. Code §4686.5, subd. (a)(1).)