

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No: 2015071007

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 26, 2015, in Alhambra, California. Judy Perez, represented the Service Agency, Eastern Los Angeles Regional Center (Service Agency or ELARC). Claimant was represented by Advocate Brian Allen. The record was left open until September 2, 2015, for the submission of closing briefs. Claimant's Closing Brief was marked as exhibit C. ELARC's response was marked as exhibit 6.

ISSUE

Whether ELARC must increase Claimant's respite services from 24 hours per month to 30 hours per month.

FACTUAL FINDINGS

1. Claimant is a 15-year-old boy. He lives with his mother, 20-year-old brother and his 12-year-old brother. He is eligible for regional center services based upon his diagnosis of Autism.

2. Claimant receives special education services from his local school district and plays baseball on a school team. Claimant has difficulty participating in class because of his lack of expressive language skills and he becomes confused with multiple step directions. He struggles with academics, but has been able to pass his classes with special education support and modifications.

3. Claimant's mother works full-time leaving for work around 6:45 a.m. and returning at approximately 4:45 p.m. Respondent's brother is a college student with an irregular schedule. He provides as much support and care to Claimant as possible both as a paid respite worker and as a generic resource for his brother. Claimant trusts his brother and prefers his company to outsiders.

4. Claimant needs 24 hours a day supervision. Although he is capable of purchasing items, he does not know whether he has received correct change. He is also very uncomfortable with strangers and will not talk with them. Claimant has behaviors typically associated with Autism including perseverance, limited verbal communication, strict adherence to routines, and a tendency to "shut down" emotionally.

5. Claimant and his family have been in crisis over the last year. Claimant's parents are in the midst of a divorce. Claimant witnessed various episodes of violence against his mother at the hands of his father prior to the issuance of a restraining order and the removal of his father from the residence. A restraining order has been in place for nearly a year preventing Claimant's father from visiting or otherwise contacting Claimant, his mother and his siblings. Claimant has had a difficult time processing the things he witnessed and the separation from his father with whom he had been very close. Claimant often becomes emotional or "shuts down" with his mother because of his difficulty processing his emotions about his parents, the events he has witnessed, the absence of his father, and his uncertainty about the future. Claimant's mother tries to reassure him regularly, but receives the brunt of his anger, confusion and sadness. The restraining order will expire next month, but may be extended by court order.

6. In the past, Claimant was not successful in out-of-home respite. Claimant was unable to tolerate unfamiliar caregivers. As a result, Claimant became disoriented, upset, and "shut down" emotionally.

7. Claimant's mother has been under tremendous stress as she attempts to work full-time, care for her three sons, and cope with a serious health issues. She uses the respite hours to do grocery shopping, medical appointments, go to the gym and rest. Claimant's family remains in crisis at this time and will for some time to come. Claimant's mother hopes that their family life will stabilize over time as the divorce and related proceedings become final.

8. Claimant's brother provides many hours of support to Claimant throughout the day and night for which he does not receive any form of compensation.

9. Claimant currently receives 24 hours per month of respite services funded by ELARC. At his most recent IPP meeting on July 7, 2015, Agareina Hernandez, an ELARC contractor, acted as the service coordinator in place of Claimant's long time service coordinator who was on extended leave at the time. At the IPP meeting, Ms. Hernandez notified Claimant's mother that, based upon ELARC's purchase of service policy, she

assessed Claimant's respite needs as 8 to 10 hours per month and that she would recommend a reduction from 24 hours per month to 10 hours per month commencing December 31, 2015. Ms. Hernandez has limited knowledge of Claimant's needs and family situation. After Ms. Hernandez's recommendation, Claimant's mother requested that the respite hours be increased to 30 hours per month based upon the family's current situation.

10. On July 13, 2015, ELARC issued a Notice of Proposed Action (NOPA) denying Claimant's request to increase respite hours from 24 hours per month to 30 hours per month. Claimant timely filed a request for fair hearing and this hearing ensued.

11. ELARC'S purchase of service guidelines (POS) provide the following with respect to In-Home Respite hours:

The in-home respite services are 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.

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.

12. ELARC's POS guidelines set forth factors to be considered at various increments of hourly in-home respite care. For up to 24 hours of in-home respite, Claimant must demonstrate either that he meets the qualifications for Level E of the POS guidelines as being either medically fragile or that he meets the criteria for family stress factors. In addition to meeting the Level E considerations, Claimant must also demonstrate that he meets the criteria of levels A, B, C, and D. Service Agency has asserted that Claimant meets the requirements for 8-10 hours of respite which places him at level C of the POS guidelines thereby satisfying the criteria of levels A, B, and C. Claimant also meets the Criteria of level D which requires that Claimant either have severe behavioral concerns or require continuous supervision, the consumer's care interferes with the caregiver's sleep or the existence of family stress factors. Claimant's need for continuous supervision and his family stress level due to his care, his mother's health condition, the breakdown of his family unit, and Claimant's ongoing mental health issues meet the criteria of level D.

13. The POS guidelines provide that up to 30 hours per month of in-home respite may be provided when the requirements for Levels A, B, C, D, E and F have been met. The criteria of Level F requires that either the consumer has a chronic or acute medical condition which requires around the clock special care and supervision for a life-threatening condition or that the consumer has chronic intense maladaptive behaviors which require 24 hour supervision, or that the primary care giver has life threatening chronic medical condition which severely interferes with ability to care for the consumer or that the family has severe stress factors resulting from a combination of these factors. The aggregation of Claimant's family stressors meets the threshold set by the POS guidelines for provision of up to 30 hours per month of in-home respite.

LEGAL CONCLUSIONS

1. Service Agency contends that in accordance with the Lanterman Act which provides that it may not provide more than 90 hours of respite per quarter or 30 hours per month of respite to consumers. Claimant contends that the intensity of his needs, his parent's health, and the totality of his family circumstances justify an increase in respite hours from 24 hours per month to 30 hours per month. For the reasons set forth below, Claimant's appeal is granted.

2. The burden of proof is on the 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.)

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389)

4. To comply with the Lanterman Act, a regional center must provide services and supports that enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "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... Services and supports listed in the individual program plan may include, but are not limited to, . . . respite, . . .” (Welf. & Inst. Code, § 4512, subd. (b).)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

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.

6. Welfare and Institutions Code section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) 4 section 4434.

(2) Utilization of generic services and supports when appropriate.

[(1)] . . . [(1)]

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

7. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

8. Welfare and Institutions Code section 4686.5, subdivision (a), provides that:

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.

9. Welfare and Institutions Code section 4686.5, subdivision (a)(3)(A), provides that an exemption may be granted from the limitation on respite services 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."

10. Based upon the testimony of Claimant's mother and Ms. Hernandez, and a review of the POS guidelines and Claimant's IPP, Claimant's circumstances warrant an increase from 24 hours per month of in-home respite to the maximum of 30 hours per month of in-home respite allowable absent exception. Claimant has intensive needs and behaviors which have been intensified by his witnessing violence against one parent by another parent, his parent has health issues, and his family is in the midst of a crisis. Claimant attempted, but was unable to use the out-of-home respite provided in his IPP.

11. Cause exists to reverse the decision of the Service Agency to deny Claimant an increase in respite hours from 24 per month to 30 per month.

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ORDER

Claimant's appeal of the Service Agency's decision to deny an increase in respite from 24 hours per month to 30 hours per month of in-home respite is granted. The Service Agency shall increase Claimant's in-home respite hours to 30 hours per month through September 15, 2016.

DATED: September 4, 2015

/s/
GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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