

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CORBIN T.,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH No. 2015080179

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in San Andreas, California, on November 16, 2015.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director of Case Management.

Claimant was represented by his parents.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on November 16, 2015.

ISSUES

1. Is VMRC required to fund thirty hours per month (ninety hours per quarter) of in-home respite care for claimant, pursuant to Welfare and Institutions Code sections 4690.2 and 4686.5?¹

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

FACTUAL FINDINGS

1. Claimant is a thirteen-year-old young man eligible for VMRC services based on a diagnosis of autism and a seizure disorder that is currently controlled with medication. He is non-verbal and displays emotional outbursts with some aggression when he is unable to effectively express his wants and needs. He exhibits disruptive social behaviors and needs to be supervised to ensure his safety. Claimant wanders around his environment and has a tendency to place “anything and everything” in his mouth.

Claimant lives in the family home with his parents and two siblings. He requires supervision and training to monitor personal care and enhance life/survival skills. In-Home Supportive Services (IHSS) are in place due to claimant’s behaviors and autism. Claimant is eligible for special education services and supports but is currently being home schooled by his mother. Claimant’s parents stated that home schooling was necessitated due to their belief that the public education agency has failed to provide claimant with a safe educational environment.

2. Claimant’s VMRC Individual Program Plan (IPP) dated May 26, 2015, provides for respite services so “his family will have a break from [claimant’s] exceptional care and supervision needs.” The IPP notes as follows:

Due to the demands of [claimant’s] behaviors and care, respite will benefit and maintain [claimant] in the least restrictive environment. Respite tool assesses the family need at 18 hours of in-home respite per month. Mom requested that she have the same amount as last year (90 hrs. per quarter.) SC (Service Coordinator) informed mom that a POS (Purchase of Service) exception will be submitted for review, as is required for this request.

3. On July 21, 2015, VMRC issued a Notice of Proposed Action (NOPA) denying claimant’s “request for respite services beyond assessed respite service needs.” The reason for the action stated:

An assessment of the consumer’s respite service needs was completed pursuant to WIC 4646.5. The Family Respite Service Needs assessment device was reasonably relied upon by the planning team, and the respite service need is 18 hours monthly in reliance on the assessment tool. The respite needs assessment tool did not indicate an exceptional respite service need to support the family’s request.

4. Claimant’s mother filed a Fair Hearing Request on his behalf, dated July 30, 2015, stating that claimant’s “respite needs exceed allowance.” She sought “continuance of the 30 hours/mo. of respite we have always received up until now.”

5. Emily Orth is claimant's VMRC Service Coordinator. She testified regarding the agency's procedures for providing respite services based on a consumer's assessed need and acknowledged the need for claimant's family to receive a break from their caregiving responsibilities. The Family Respite Needs Assessment is the tool used by VMRC to assess need. This tool is designed to objectively evaluate the claimant considering age, mobility, day program attendance, medical needs, behavioral needs, utilization of natural and other supports, and the overall family situation. Claimant's needs were assessed at eighteen hours of in-home respite per month (54 hours per quarter). Claimant's family prefers to receive the respite service hours on a quarterly rather than monthly basis, and VMRC is in agreement.

Ms. Orth testified that she obtained the information for the respite needs assessment during claimant's May 26, 2015 IPP meeting. At hearing she went step by step through the assessment tool and explained precisely how she calculated claimant's need and how the tool determines the "individual consumer respite score" which provides for a set number of service hours.

6. Claimant's parents disagreed with the assessment of need and corresponding calculation of service hours. They opined that claimant's needs have not changed significantly and that he should continue to receive ninety hours of respite services per quarter. They specifically disagreed with the use of the Family Respite Needs Assessment tool and opined that the tool is not capable of grasping the extent of claimant's needs. Claimant's mother, who participated in the IPP meeting, specifically believed that she should have been allowed to read through the assessment tool and respond individually to each component, rather than having Ms. Orth complete the assessment with the information she obtained.

7. Claimant's parents gave extensive testimony regarding their son's needs and introduced new information that his service coordinator had not previously been made aware of. They also went step by step through the assessment tool and gave their opinions on the scoring. Based on the new information provided, Ms. Orth adjusted her calculations and the point total allowed for an increase in monthly respite hours to 24 per month (72 hours per quarter.)

8. The primary remaining area of disagreement is the category of "Motor Ability (Ability to walk, sit, need for wheelchair(s), walker, assistance or total care for transferring or positioning, as it impacts the level of supervision or care needs at home and in the community)." Claimant is ambulatory but his parents testified that he is "constantly moving" and demonstrates "hyperactivity." Therefore, they believe he should receive more credit towards respite hour in this category.

Ms. Orth explained that this category addresses needs of individuals using durable medical equipment in various forms for mobility, to the extreme of not being mobile and requiring total care and repositioning every two hours. Claimant was appropriately identified as "independent with *no equipment* at home and in the community w/minimal care needs." Ms. Orth explained that his "constant moving" was addressed in the "Behavioral Needs" category where he was appropriately identified as having "behavioral excesses unresponsive to redirection; requires intervention and *close supervision*." (Italics in original.)

9. Cindy Mix is the VMRC Director of Case Management. She testified to the VMRC service standards for the provision of respite services and emphasized the agency's intent to provide fairness and consistency in the purchase of services for all VMRC consumers. With that goal in mind, the agency recently began using the Family Respite Needs Assessment to assess respite needs for any consumer where a purchase of respite services is being considered.

Ms. Mix testified that any service requests that do not meet the standard requirements, such as requesting services beyond an assessed need, may be brought to the VMRC Exception Committee for consideration. The committee consists of VMRC Program Managers and the Director of Case Management. Exceptions may be approved on a case-by-case basis, and are typically approved for a period of three months at one time. The standard used by the Exception Committee allows the regional center to "grant an exemption for the respite limits 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."

Ms. Mix opined that claimant's prior respite exception, which allowed for ninety hours of services per quarter, was not properly granted. The need was not appropriately evaluated and the time granted for the exception was excessive. In addition, the POS exemption was not reviewed on a regular basis, as it should have been. The use of the Family Respite Needs Assessment tool provides fairness and consistency in the provision of service hours to all consumers. When the Exception Committee considered claimant's request for a purchase of service exemption, the committee determined that he did not meet the requirements for an increase beyond assessed need.

10. Ms. Mix agreed that based on the new evidence provided at hearing, claimant is eligible for 24 hours per month (72 hours per quarter). She explained that, with the original proposed reduction from 30 to 18 hours of respite services per month, VMRC had offered "a slow titration of hours (4 hours/year reduction) until the assessed level was reached." VMRC still agrees to a slow titration of hours and proposed a two-hour per year reduction until the assessed number of hours is reached. She also stated that VMRC remains in agreement with the family's request to receive respite service hours awarded quarterly rather than monthly.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional centers' responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual

who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. In-home respite is a service that regional centers may purchase for consumers. Section 4690.2, subdivision (a), provides:

“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. Section 4686.5, subdivision (a)(1)-(3), provides:

(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 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. Claimant's care and supervision needs were determined through use of the Family Respite Needs Assessment tool, which VMRC has adopted for use with all consumers. At hearing, claimant's needs were further discussed, new information was shared, and the respite hours were adjusted accordingly. The evidence presented demonstrated that the amended award of respite service hours meets claimant's current respite services need. VMRC shall offer a slow titration of hours from 90 to 72 per quarter as set forth at hearing.

ORDER

The appeal of claimant Corbin T. is denied.

DATED: December 1, 2015

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days