

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2015080403

DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 24, 2015, in Culver City, California.

Westside Regional Center (WRC or Service Agency) was represented by Lisa Basiri, Fair Hearing Specialist. Claimant was present at the hearing and was represented by her parents.¹

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on August 24, 2015.

ISSUE

Should WRC be required to increase in-home respite hours for Claimant from 28 hours per month to 56 hours per month?

EVIDENCE

Documentary: Service Agency's exhibits 1-7 and Claimant's exhibit A.

Testimonial: Lisa Basiri and Claimant's mother and father.

¹ Titles are used instead of names in order to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is nearly five-months-old. She has been diagnosed with Down Syndrome and sleep apnea. Claimant has decreased muscle tone and a moderate ventricular septal defect (VSD). She has a bicuspid aortic valve, rather than three leaflets. This cardiac issue causes rapid breathing and sweating, longer feedings, and poor weight gain. She will soon undergo open-heart surgery to correct this defect. She does not take any prescribed medications or require the use of any specialized medical equipment. Claimant lives at home with her parents.

2. Claimant is a consumer of WRC. She is eligible for services pursuant to the California Early Intervention Services Act (Early Start), Government Code section 95000, et seq., and the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq.

3. An Early Start Individualized Family Service Plan (IFSP) was developed for Claimant on June 9, 2015. Respite services, which are not defined as an Early Start service under Government Code section 95020, subdivision (e)(3), were not mentioned in Claimant's IFSP. However, since Claimant has also been found eligible for services under the Lanterman Act, WRC may provide respite care to her under that provision.

4a. Father requested 81 hours per month of in-home respite care. On June 18, 2015, the request was reviewed by WRC's Purchase of Service Committee (Committee). The Committee granted 28 hours of in-home respite care per month to Claimant as an exception, due to Claimant's care needs resulting from her VSD and sleep apnea.

4b. On June 22, 2015, WRC issued a Notice of Proposed Action (NOPA) denying Claimant's request for 81 hours per month of respite care. However, WRC approved 28 hours per month of respite care for Claimant.

4c. On August 4, 2015, Father filed a Fair Hearing Request (FHR) on behalf of Claimant, seeking an increase of respite hours from 28 hours per month to 56 hours per month. This hearing ensued. All jurisdictional requirements have been met.

5. Mother works full-time and Father is currently at home. He provides care for Claimant; does laundry, cooks, and washes dishes; meets with apartment maintenance workers; coordinates appointments for Claimant's occupational therapy, physical therapy, and doctors; and deals with insurance issues. At the same time, Father is also attempting to run a new home-based business to help with the family's finances. Claimant's parents asserted that Claimant needs additional quality care to enable Father to handle all of these tasks. Claimant's parents have no family members in California.

6. WRC's stated reasons for the proposed action are that a regional center may purchase respite services under the Lanterman Act only when the care and supervision of a client exceed that of an individual of the same chronological age without developmental

disabilities. Respite is a supplement to the family's responsibility for care. It is not intended to provide for all supervised care needs of the family, nor is it a replacement for daycare. Moreover, under the Lanterman Act, a regional center cannot purchase more than 30 hours per month of in-home respite care.

7. WRC determined that Claimant's needs do not exceed that of an infant of the same chronological age who is not developmentally disabled. However, the Service Agency granted an exception in order to provide Claimant with 28 hours per month of respite care because Claimant's ventricular septal defect requires almost constant attention and can cause apnea episodes several times per day. (Service Agency Exhibit 3.)

8. Thirty hours per month of in-home respite is the maximum allowed by statute, absent an exception. WRC denied the request for 56 hours of respite per month because Claimant's parents have parental responsibility, as do parents of typically-developing peers, to care for an infant and to utilize the generic resources available to them in providing care for her. Her parents did not establish that additional respite, beyond 28 hours per month, is necessary to maintain Claimant in the family home due to the intensity of Claimant's care and supervision needs, or that an "extraordinary event" impacts their ability to meet Claimant's care and supervision needs.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal of the Service Agency's denial of additional in-home respite hours. (Factual Findings 1 through 8.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing on receipt of the Service Agency's denial of funding additional in-home respite hours, and therefore, jurisdiction for this appeal was established.

3. 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.)

4. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Specifically, in a case where a party is seeking funding not previously provided or approved by a regional center, that party bears the burden of proof. In this case, Claimant made a new request for the Service Agency to fund 56 hours of in-home respite. Claimant therefore bears the burden of proof. She failed to meet this burden.

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Respite Services and Hours

5. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. 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. and Instit. Code, § 4501.) These services and supports are provided by the state’s regional centers. (Welf. and Instit. Code, §4620, subd. (a).)

6. Respite is one of the specific services available to consumers listed in Welfare and Institutions Code section 4512, subdivision (b). In Welfare and Institutions Code section 4690.2, subdivision (a), “In-home respite services” are defined as “or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, . . .” 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.

An almost identical definition of in-home respite services is found in California Code of Regulations, title 17, section 54302, subdivision (a)(38).

The statutory and regulatory definitions of in-home respite services clearly indicate that the primary goal of respite is to provide care to a consumer that is ordinarily provided by the consumer’s family, thereby relieving the family from that duty so that the family may absent themselves and be free to do other things.

7. In the Budget Act of 2009, the Legislature responded to the state’s difficult economic situation by making significant changes in services under the Lanterman Act. With respect to respite services, Welfare and Institutions Code section 4686.5, subdivision (a), was added, retroactive to July 1, 2009, to provide, in relevant part:

- (2) A regional center shall not purchase . . . 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 [paragraph] (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.

8. Welfare and Institutions Code section 4686.5 thus requires the Service Agency to limit the purchase of in-home respite services to 90 hours per quarter, or 30 hours per month, unless the Service Agency determines that claimant meets the criteria for, and grants claimant, an exemption.

9. Claimant's parents did not provide sufficient evidence that she was entitled to 56 respite hours per month. They did not prove any exceptional circumstances that would justify an exception beyond the 28 hours of respite per month that has already been granted by WRC.

10. Welfare and Institutions Code section 4686.5 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 hours 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 . . . 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) A regional center shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both.

11. Claimant is seeking 56 hours of in-home respite, which may be allowed if the regional center grants an exemption to the statutory limitation. However, Claimant has not established that an exemption must be granted. The evidence did not establish that “the intensity of the consumer’s care and supervision needs [is] such that additional respite is necessary to maintain the consumer in the family home,” or that “there is an extraordinary event that impacts the family member’s ability to meet the care and supervision needs of the consumer.”

12. Given the foregoing, WRC appropriately denied Claimant’s request for additional in-home respite hours.

ORDER

Westside Regional Center’s denial of funding for Claimant’s additional in-home respite hours is upheld, and Claimant’s appeal is denied.

DATED: September 3, 2015

LAURIE R. PEARLMAN
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.