

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH Case No. 2015080807

DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on October 5, 2015, in Stockton, California.

Claimant's mother¹ represented claimant.

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

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on October 5, 2015.

ISSUES

Should VMRC fund respite services in excess of 24 hours per month for claimant?

FACTUAL FINDINGS

1. Claimant is a 17-year-old male who has been diagnosed with Trisomy 16, a chromosomal abnormality. He is developmentally disabled and qualifies for services from VMRC under the Lanterman Act, including respite care. He currently resides with his parents

¹ Names are not being used for claimant or his mother to protect claimants' privacy.

and three siblings. He requires constant supervision to enhance his life skills. He does not independently monitor his own grooming, hygiene, bathing and dressing needs due to his disability. He is not toilet trained and is incontinent of bladder and bowel. Claimant exhibits disruptive social behaviors and will act out when he is frustrated or upset. He becomes fixated on what he wants, and when that fixation is interrupted, or taken away, he will tantrum, become aggressive or drop to the ground. When he has an emotional outburst, he requires intervention to calm down safely. He exhibits self-injurious behavior, running, non-compliance, and property destruction. Claimant does not have any safety awareness. He requires constant supervision.

2. Claimant attends school Monday through Friday from 8:15 a.m. until 2:40 p.m. Claimant qualifies for and receives 283 hours per month of In Home Supportive Services (IHSS). Claimant's mother is the provider of his care and provides all IHSS.

3. Under claimant's February 11, 2015 Individual Program Plan (IPP) he was to receive 18 hours per month of respite services. Per authorization by VMRC's Purchase-of-Service (POS) Exceptions Committee, he was provided an additional 12 hours per month of respite services, for a total of 30 hours of respite services per month. The POS exception for the additional hours was set to expire on May 31, 2015.

4. An IPP meeting was held on July 22, 2015. The meeting included a discussion of claimant's family respite care needs. Claimant's mother participated in the meeting. VMRC has adopted service standards for respite services that recognized "the commitment of family members in maintaining their adult family member in their home" and "[t]o ensure family stability additional supports and services, such as respite, may be necessary." VMRC had by July 2015 adopted a new assessment tool to determine the need, type, and amount of respite care services to be provided families. This new respite assessment tool was applied to claimant at the time of the July 22, 2015 IPP meeting.

5. Claimant was assessed as requiring "[t]otal care in some aspect of activities of daily living." His medical needs were assessed as "[m]oderate mental or physical health problems." His behavioral needs were scored at the highest level with "[b]ehavioral excesses more often than weekly; require intervention and constant supervision." His disruptive social behaviors and self-injurious behaviors were taken into consideration, as were his age and physical size. VMRC determined, based upon claimant's numerical score on this respite assessment, that the family required 24 hours per month of in-home respite care. This was an increase over the previous assessed need of 18 hours per month reflected in claimant's February 11, 2015 IPP. An IPP Addendum was prepared on September 30, 2015, increasing claimant's respite hours from 18 to 24 hours per month.

6. At the time of the July 22, 2015 IPP meeting, claimant's mother was advised that the *total* family respite hours would be decreased from 30 to 24 hours per month. Claimant's mother objected, seeking continued family respite at the 30-hour per month level. In addition, she seeks an additional 21 days of out-of-home respite per year.

Discussion

7. VMRC has been providing a total of 30 hours of monthly family respite services to claimant's family for some time. The additional hours above the 18-hour IPP base level, and now the 24-hour IPP base level, were added by VMRC pursuant to its POS exception process. The initial exception in this case was authorized in December 2011. It apparently continued in place without further VMRC review. Normally, POS exceptions are reviewed quarterly. By June 1, 2015, the current POS exception for 12 hours of respite above the 18-hour base level was set to expire. However, VMRC earlier conceded that claimant's family was not afforded notice of the discontinuance until July 22, 2015, and therefore agreed to continue paying the 30-hour total through July 2015.

At the time of hearing, VMRC further agreed to pay the 30-hour total family respite through the date of issuance of this Decision.

8. Claimant's base level monthly family respite services have been increased. Application of the new respite needs assessment tool supported this increase, and VMRC prepared an IPP addendum on September 30, 2015, to confirm the increase to 24 hours per month. At hearing, claimant's mother suggested that claimant should have been scored higher under the special circumstances portion of the assessment tool. This would have resulted in the addition of three more points. Even allowing for these additional points, his total score would still have resulted in an assessed respite services need of 24 hours per month.

9. That claimant has benefited over time from additional hours through the POS exception process does not by itself support continuation of total family respite services at the 30-hour per month level. It was an oversight by VMRC that allowed this level of respite services to continue without quarterly review. The POS exception having now expired, and an assessment of claimant's respite needs having been conducted on July 22, 2015, it was reasonable for VMRC to determine that the additional six hours per month were no longer necessary. VMRC's POS Exception Committee considered claimant's request for the additional six hours and rejected it. Claimant was advised that she had available IHSS hours that could also be used for respite purposes. At hearing, VMRC noted that POS exceptions are intended to address situations where the consumer's caregiver has intense or catastrophic needs warranting temporary assistance. POS exceptions were not intended to be a permanent solution. In this case, the POS Exception Committee determined that claimant's assessed monthly need was 24 hours, and that there were no exceptional service needs or catastrophic circumstances in need of remediation. The POS Exception Committee, looking ahead, will consider any new request on claimant's behalf for a POS exception as his circumstances and needs change.

10. Regarding the request for 21 days of out-of-home respite, claimant's mother mistakenly interpreted the new respite assessment summary score sheet as recommending this level of out-of-home respite for those with claimant's total score. In fact, those with claimant's total score (25 points) would have an assessed need of 24 hours per month of in-home respite, *or* 21 days per year of out-of-home respite services. The 21 days of out-of-home respite are not

in addition to the in-home respite hours. Families are allowed to combine the two, but at a considerably lower level for both types of respite services. Thus, one with claimant's assessed need would qualify for 12 hours per month of in-home respite, and 11 days per year of out-of-home respite. This was explained at hearing to claimant's mother.

11. Claimant's mother noted that claimant has consistently been receiving 30 hours of respite services and that VMRC had not provided adequate notice to her that it was being reduced. As noted in Finding 7, VMRC will not be reducing respite hours below 30 hours per month prior to the issuance of this decision. VMRC has explained the basis for determining that monthly respite should be at the 24-hour level. Claimant has not identified any exceptional service needs or catastrophic circumstances that warrant an increase above the assessed 24-hour monthly level at this time. For these reasons, claimant's appeal for continued respite services at the 30-hour per month level should be denied.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. The Lanterman Act gives regional centers, such as VMRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. The Lanterman Act imposes a cap on the amount of respite services purchased by regional centers. Thus, section 4686.5 provides, in part:

(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) 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. *Burden of Proof:* A service agency seeking to change a service contained in a consumer's IPP typically has the burden of demonstrating that its proposed decision is correct.

5. In this matter, VMRC has determined that respite services above 24 hours per month are no longer authorized and that claimant did not otherwise qualify for a POS exemption. VMRC has met its burden. It has relied upon a recent assessment of claimant's respite needs, and actually increased his base level monthly IPP respite hours from 18 to 24 hours. Claimant has not identified any exceptional service needs or catastrophic circumstances that warrant an increase above the assessed 24-hour monthly level at this time.

6. VMRC has further explained how the assessment tool does not allow for the purchase of 21 days of out-of-home respite in addition to claimant's in-home respite hours. (Finding 10.)

ORDER

1. The appeal of claimant is denied with regard to in-home respite services in excess of 24 hours per month.

2. The appeal of claimant is denied with regard to out-of-home respite services in the amount of 21 days per year.

DATED: October 9, 2015

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)