

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2015101043

DECISION

The hearing in the above-captioned matter was held on December 9, 2015, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings.

The Service Agency, North Los Angeles County Regional Center (NLARC or Service Agency) was represented by Stella Dorian, Risk Assessment Officer. Claimant was present, and represented by A.W., his mother (Mother).¹

Evidence was received, the case argued, and the matter submitted for decision on the hearing date.

The ALJ hereby makes his factual findings, legal conclusions, and orders, as follows:

ISSUE PRESENTED

Should the Service Agency provide personal assistance to Claimant in the mornings, Monday through Friday, to help prepare him for school?

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¹ Initials and titles are used in place of proper names to protect the Claimant's privacy.

FACTUAL FINDINGS

The Parties, Procedural History, and Jurisdiction

1. Claimant is a 13-year-old boy who lives in the Service Agency's catchment area with his parents, a younger sister, and his baby brother. He is eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.,² because he suffers from Autism Spectrum Disorder. He has also been diagnosed with Fragile X Syndrome.

2. Claimant's mother requested that the Service Agency provide funding for a personal assistant to work with Claimant for one and one-quarter hours every morning, Monday through Friday. On September 25, 2015, the Service Agency issued a Notice of Proposed Action (NOPA) denying that request. The NOPA was accompanied by a letter from Claimant's service coordinator, which expanded on the information contained in the NOPA as to why the request was denied. (Ex. 1, pp. 7-10.) Essentially, the Service Agency took the position that Claimant's needs were being met by a combination of services provided by the Service Agency, and generic resources, including In Home Supportive Services (IHSS).

3. Claimant's mother filed a Fair Hearing Request (FHR) on October 13, 2015. She stated that in order to resolve the matter she needed "A 1:1." (Ex. 1, p. 6.) At the end of the hearing she specified that she was requesting eight hours per month of assistance, whether it be denominated as respite care or personal attendance. All jurisdictional requirements having been met.

Claimant's Disability and His Needs

4. Claimant has substantial needs due to his developmental disability, as evidenced by the most recent review of his Individual Program Plan (IPP). (Ex. 2.) According to the IPP, generated in June 2015, he will toilet when prompted, but wets his bed about one time per week. He needs assistance in bathing and putting on his clothes. He needs constant supervision when he is awake, because he has no safety skills, being unable to cross a street alone and having no sense of "stranger danger." He is prone to running out of the house if he can, so his mother must watch him constantly. He attempts to elope about once per week. (Ex. 2, pp. 1-2.)

5. Claimant engages in mildly self-injurious behaviors, such as hitting himself. He also engages in socially disruptive behaviors, including tantrums, making

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

loud noises, and self-stimulation. He has aspects of hyperactivity. His behaviors inhibit family outings. (Ex. 2, p. 2.)

6. Care for Claimant is complicated by some family issues. First, he has two younger siblings. His younger sister is home-schooled. His baby brother receives “Early Start” services from the Service Agency. Second, his father suffers from a seizure disorder, so he must either use public transportation to get to and from work, or Mother must take him to and from work. Mother credibly testified that Father’s chances of having a seizure increase if he does not get enough sleep, or is otherwise stressed. This puts added pressure on her at night, to keep Claimant’s sometimes erratic sleep patterns from interfering with Father’s sleep.

Services Provided to Claimant

7. Currently, the Service Agency provides 30 hours per month of respite care for Claimant, and he is eligible for 21 days of out-of-home respite per year. Accessing the out-of-home respite is problematic, as providers are not always available. The Service Agency was providing day care, but since Mother has stopped working outside the home, it is no longer available. (Ex. 2, p. 3.) Father is employed full time by the County of Los Angeles.

8. Claimant receives special education services. It appears that the services are provided by a private firm, and it is inferred that they are paid for by his school district.³ Claimant receives behavior intervention services through Kaiser, including 18 hours per week of direct interventions, and parent training 12 hours per month.

9. Claimant receives 283 hours of services through IHSS. Mother is the IHSS worker for the bulk of those hours.

Claimant’s Schedule

10. Claimant’s, and his family’s, schedule is not readily discerned from the record. Mother has provided more than one version of the family schedule to the Service Agency. The documents provided at the hearing are not readily understood, in part because they have been, at one time or the other, marked up with various notes and references. (See ex. 4.)

11. It appears from the testimony and the documents that on weekdays, things begin moving in Claimant’s household at approximately 6:00 a.m., when Father wakes up. Mother starts on breakfast and other chores. By 6:30 Claimant

³ Exhibit A, his school schedule, is on the letterhead of the AACAA, the Academy for Advancement of Children with Autism. It shows two addresses, one in Chatsworth, and one in Lancaster.

tends to be awake, and he must be supervised. Claimant leaves for school at 8:45, driven there by Mother. He is at school until he returns home at 3:15 p.m. It appears that respite hours have been used in the morning to help manage the time from about 7:00 a.m. until Claimant leaves for school. (See ex. 4, p. 2.) Father returns home at about 5:30, and according to Mother's testimony, wants an hour to himself to "decompress" after his day at work.

12. Weekends are spent on a number of family-related activities, such as going out to breakfast or running errands. Sundays are spent going to church and Sunday school, going to the grocery store, and getting ready for the next week of work and school. (Ex. 4.)

13. In the typical week, Claimant spends approximately 30 hours per week at school, or 129 hours per month.⁴ As noted previously, the Service Agency provides 30 hours per month of respite care, and the total hours provided by IHSS amount to 283. Exhibit 7, the IHSS Notice of Action, indicates that the hours provided for Claimant come under the categories of Non-Medical Personal Services and Protective Supervision.

14. Mother states her main need as further help in the morning, when she is trying to get her entire family organized and ready for their day. There are indications from her communications to the Service Agency that some of the respite time is being utilized there, which is not a proper use of respite funding; it is designed to give parents and other family members a break from the rigors of caring for a disabled person.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Code section 4710 et seq., based on Factual Findings 1 through 3.

2. In enacting the Lanterman Act, 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. (§ 4501.)

3. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. (See §§ 4512, subd. (b); 4646, subd. (a).) Where the parties cannot agree on the

⁴ The ALJ is calculating 4.33 weeks per month, with a month equaling 30 days; such methods have long been used in the court system. It was also used to calculate IHSS hours. (Ex. 7.)

terms and conditions of the IPP, a Fair Hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

4. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken. A priority is assigned to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1), (a)(2).)

5. Section 4512, subdivision (b), of the Lanterman Act defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives:

“Services and supports for persons with developmental disabilities” means 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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option

6. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the individual consumer, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

7. Services must be cost-effective. As stated by the Legislature, “each regional center design shall reflect the maximum cost-effectiveness possible . . .” (§

4640.7, subd. (b).) The costs of service provided by vendors are to be compared during the planning process. (§4648, subd. (a)(6)(D).)

8. The regional centers are to seek out generic resources, and are to help bring those services into play. (§ 4659, subd. (a).) The regional centers may not duplicate those generic services. (§ 4648, subd. (a)(8).) Thus, for example, if private insurance will provide adequate behavioral interventions, then a regional center is not obligated to provide those services, and in fact is barred from providing those services.⁵

9. The record establishes that IHSS is providing approximately nine and one-half hours per day of services to Claimant, either for care and supervision or for assistance with non-medical personal services. (See Factual Finding 13.)⁶ Those hours can and should be used to help get Claimant ready for school in the morning, and that expenditure of time would amount to less than 20 hours per week, for a maximum of 86.6 hours per month.

10. Claimant requested a 1:1 aide in the FHR. To provide a personal assistant to do what Mother or someone else is paid by IHSS to do would amount to a duplication of regional center and generic services. Under the circumstances and applicable statutes, that cannot be allowed, and Claimant's appeal must be denied.

ORDER

Claimant's appeal is denied, and the Service Agency will not be obligated to provide personal assistance as requested.

Dated: December 30, 2015

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Joseph Montoya
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Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

⁵ Section 4648, subdivision (a)(8) states: "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

⁶ 283 hours divided by 30 days equals 9.4.

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 NINETY (90) DAYS.