

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M.A. and M.A.,

Claimants,

OAH No. 2012100313

OAH No. 2012100314

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

INTRODUCTION

1. The hearing in these consolidated matters was conducted by Administrative Law Judge David B. Rosenman (ALJ) of the Office of Administrative Hearings (OAH) in Culver City on January 22, 2013. Claimants M.A. and M.A. are twins and both have the same initials, but are of different genders. Therefore, one will be referred to as male Claimant and the other as female Claimant. Claimants were present by their mother, A.T., and were represented by Matthew Pope, Attorney-at-Law. (Initials are used to protect the confidentiality of Claimants and their mother.) Westside Regional Center (WRC or Service Agency) was represented by Lisa Basiri, Fair Hearing Coordinator. At the conclusion of the hearing the record was closed and the matter was submitted for decision. As noted in more detail below the record was subsequently reopened on January 25, 2012, and the parties submitted further materials, received February 6, 2012, at which time the matter was again submitted for decision.

Official Notice of Documents

2. During the hearing, an Order of Dismissal in a prior fair hearing procedure related to Claimants (OAH case number 2011040154) was received in evidence as Exhibit 7. The parties submitted testimony concerning other aspects of this prior matter, which was relevant to Claimants' contention that an earlier reduction in respite hours was improper and to WRC's contention that there has been no change in circumstances justifying Claimants' requests to increase the number of respite hours. Respite hours are the issue in the present matter (see paragraph 15), and the history of respite levels has some relevance. The evidence relating to this prior matter was incomplete and did not explain the pertinent circumstances. As the ALJ was able to access OAH records relating to this prior matter, which records filled some of the gaps in the evidence, he notified the parties of his intent to take official notice of certain documents and information from that matter. (In fair hearings, ALJs will be evaluated on their ability, among other things, to "fairly develop the record"[Welf. & Inst. Code §4712, subd. (n)].) On January 25, 2012, the ALJ issued an Order Vacating Submission of the Case and

Reopening the Record; Notice of Intent to Take Official Notice; Notice of Opportunity to Refute Officially Noticed Matters (Order Vacating Submission), which is marked for identification as Exhibit 14. Among other things, the Order Vacating Submission included notice of the ALJ's intent to take official notice of the following information from OAH case number 2011040154, copies of which were attached:

1. Notice of Proposed Action dated 3/4/2011.
2. Letter dated March 4, 2011, from Cynthia Harris to A.T.
3. Fair Hearing Request dated March 31, 2011.
4. Notice of Hearing and Proof of Service dated April 6, 2011.
5. Continuance Order and Notice of New Hearing Date and Proof of Service dated April 21, 2011.
6. Case note of phone call from A.T. to Carol Barron, OAH staff. Although the printout of the note is not dated, official notice was also taken that the note was made July 20, 2011.

3. The Order Vacating Submission also stated that the submission of the case was vacated and the record was reopened for purposes of notifying the parties of the ALJ's intent to take official notice of the matters listed in paragraph 2 above and to permit the parties to respond.

4. On February 6, 2013, the parties submitted the following responses: Claimants' Notice Refuting Officially Noticed Matters, etc., marked for identification and received in evidence as Exhibit E-Z¹; and WRC's Notice to Refute Officially Noticed Matter, marked for identification and received in evidence as Exhibit 15.

5. Having considered the positions of the parties in Exhibits E-Z and 15, discussed in more detail below, the Order Vacating Submission and its attachments, Exhibit 14, are received in evidence.

6. Fair hearings are governed by Welfare and Institutions Code section 4710 et seq.² Section 4712 relates to the procedures for fair hearings. Under subdivision (i), fair hearings are not conducted according to the technical rules of evidence, any relevant documents can be submitted, and documents do not need to be authenticated. There is no statutory provision for official notice. Based on the inclusion in evidence of documents and testimony related to the prior administrative matter, the ALJ determined that the additional evidence in the OAH file was available and should be added to the record. The ALJ issued the Order Vacating Submission, citing as authority Government Code section 11515, which allows the parties in an

¹ Claimants had separate sets of potential exhibits, each lettered, starting with A. To avoid confusion, the exhibits for male Claimant were re-lettered by adding the letter Z; i.e., male Claimant's exhibits are now A-Z, B-Z, C-Z, D-Z and E-Z.

² Statutory references are to the Welfare and Institutions Code unless noted. The Lanterman Developmental Disabilities Services Act, found at section 4500 et seq., is referred to as the Lanterman Act.

administrative hearing an opportunity to refute the officially noticed matters. Even though this code section does not technically apply to fair hearings, the ALJ determined that the record would be more complete and accurate if it included the officially noticed matters and the procedure used would assure due process to the parties.³

7a. Claimants take numerous positions in their Notice Refuting Officially Noticed Matters, only some of which are discussed below. If not discussed specifically below, such positions are rejected as not supported by the law or the facts.

7b. Claimants write that they presume that the Order Vacating Submission means that the entire evidentiary record in the present matters is void, that the matters must start over, and that there must be a new hearing. (Exhibit E-Z, pp. 1-2.) This presumption is rejected as unsupported by law and by fact. Claimants cite Code of Civil Procedure section 1288, which does not apply, as the language of that code section relates to a petition to confirm an arbitration award (in this matter there is no arbitration award and no petition to confirm it). Factually, the Order Vacating Submission is clear on its face; it only vacates the submission of the matter for a decision to be rendered and reopens the record for the limited purpose of adding the officially noticed information and allowing the parties to respond or refute. There is no basis on which to presume any other effect.

7c. Claimants contend that there is some question remaining about whether they actually received notice of the change/advancement of hearing date in the prior matter, OAH case number 2011040154. The Order of Dismissal in the prior matter (Exhibit 7) contains the express statement: “Notice of hearing was properly served on claimant and his mother, [A.T.], in accordance with Welfare and Institutions Code section 4711.” There was no evidence of any effort by Claimants to appeal that decision, as allowed under section 4712.5, subdivision (a). Therefore, the finding that notice of the hearing in the prior matter was properly served is final.

7d. Further support for the conclusion that notice of the hearing in the prior matter was properly served is found in the proof of service of the notice of that hearing, which contains the same address as in the Fair Hearing Request. (Compare Exhibits 7 and 14.) The Order of Dismissal was sent to the same address, and A.T. obviously received it, as she called OAH two days after the Order of Dismissal was served.

7e. Claimants include “minor refutations” in Exhibit 15 which, among other things, only serve to further muddle the record and require at least a modest effort to “unmuddle” the record. First, it must be noted that rather than engage in presumptions about what occurred in the prior matter, Claimants counsel could have asked their mother, A.T., or sought to review OAH documents, to set the record straight. Claimant is correct that the prior matter noted above, OAH case number 2011040154, referred to female Claimant, and that there was a companion case related to male Claimant (OAH case number 2011040151). The exhibits offered by the parties during the present matter only included the Order of Dismissal as to female Claimant’s prior matter (OAH case number 2011040154). Therefore, the ALJ limited

³ In civil proceedings, Evidence Code section 455 provides that the judge shall afford the parties a reasonable opportunity to respond to a request for judicial notice.

his intent to take official notice to that one prior matter. However, there was an identical Order of Dismissal issued in the companion case for male Claimant's matter (OAH case number 2011040151). No effort is made to take any additional official notice by adding further documents to the record because of undue consumption of time. Claimants were aware of the documents that WRC intended to use at the hearing as of November 2012 (see paragraph 8 and Exhibit 13) and could have included any documents they thought were relevant for the hearing on January 22, 2013. By his Order Vacating Submission, the ALJ was attempting to flesh out the one document offered into evidence by WRC relating to OAH case number 2011040154, i.e., the Order of Dismissal (Exhibit 7).

7f. Claimants note that the proof of service of the order advancing the hearing date in the prior matter (OAH case number 2011040154) is not signed and therefore contend it does not establish that Claimant was served. Again, as noted in paragraphs 7c and 7d above, no appeal was taken of the Order of Dismissal and the present action is not the proper place to raise these objections. Further, as a practical matter, the signed proof of service was sent in the mail. OAH's records contain an electronic copy of the document, in the form before it was signed, and not an actual copy of the signed proof of service. Much ado about nothing.

7g. Claimants are correct that, despite all of the above the officially noticed matters also include the note that Claimants' mother called OAH to complain that she did not get the notice of the changed/advanced hearing date. However, their contention that Claimants' mother "depended on OAH to act in a just manner" is not supported by law. Once a decision is made by OAH (here, the issuance of the two Orders of Dismissal), the Welfare and Institutions Code permits a party to make an appeal. (§4712.5.) There is no evidence of an appeal. Claimants offer no authority for OAH to assume jurisdiction to take any action after the two prior matters were dismissed.

7h. Claimants suggest a number of alternatives, including: combining the two prior matters that were dismissed (OAH case numbers 2011040151 and 2011040154) with the two present matters and rescheduling a hearing; reinstating more respite hours; and changing the party with the burden of proof from Claimants to WRC. All suggested options are rejected, as they would deny due process to WRC, and would not treat WRC "in a just manner." WRC was present and ready for the hearing in the two prior matters. Dismissal orders were issued and not appealed. The dismissals are final. OAH has no authority to reopen matters that have become final by virtue of issuance of final orders. Nor does it make sense to do anything in the present matters other than what was already covered on the record at the hearing on January 22, 2013, and in the subsequent events as set forth in paragraphs 1 – 5. Due process has been provided. The identified issues are ripe for determination.

Exclusion of Evidence/Time Waiver

8. A prior hearing date for these matters (November 13, 2012) had been continued. The Continuance Order (Exhibit 13) stated that WRC had already served its exhibits and Claimants had not served their exhibits (exhibits are to be exchanged at least five days before the hearing under section 4712, subdivision (d)). Claimants were ordered to serve any exhibits

at least 15 days before the new hearing date. The Continuance Order also stated that Claimants waived the time prescribed by law for holding the hearing and for the ALJ to issue a decision.

9. Claimants served their exhibits less than 15 days before the hearing. WRC's objections to some of the documents were sustained, as is more specifically explained on the record.

ISSUES

10. The present Fair Hearing Requests for male Claimant (OAH case number 2012100313) and female Claimant (OAH case number 2012100314) are dated September 19, 2012, and are substantially identical; each requests 120 hours of respite, 84 hours of specialized supervision, 21 hours of outside respite, 95 hours of LVN respite and 215 hours of CNA respite. (Exhibits 2, A and A-Z.)

11. Prior to the submission of these Fair Hearing Requests, Claimants had received a Decision in prior matters denying their requests for increased hours of respite care. More specifically, a consolidated hearing was held on May 29, 2012, in OAH case numbers 2011100960 and 2011100964 where the issue was whether WRC should fund 180 hours per month of respite care for female Claimant and 120 hours per month of respite care for male Claimant. On July 18, 2012, ALJ Chris Ruiz issued a Decision denying these requests (Exhibit 6).

12. On August 31, 2012, Cynthia Harris, WRC service coordinator for Claimants, sent a letter to A.T. relating to the following service requests: (a) specialized supervision hours were increased from 62 to 84 hours per month for both Claimants, effective September 1, 2012; (b) extended school year hours were approved and WRC would fund up to 267 hours for the period from 7/1/12 to 8/31/12 for both Claimants; and (c) the requests for 120 hours of respite for each Claimant was denied, based on the outcome of the prior Decision (from July 18, 2012; see paragraph 11). The letter indicated that Claimants had a right to appeal these decisions.

13. A.T. testified that she was told by someone at WRC to request hours for 24 hour per day services for each Claimant, including services by an LVN and a CNA, and some periods when two workers were needed. However, Ms. Harris testified she did not give such advice to A.T. and did not receive any request for such services until the Fair Hearing Requests were submitted.

14. Under the Lanterman Act, a fair hearing can be requested if a consumer is dissatisfied with any decision or action of a regional center which is not in the consumer's best interest. (§4710, subd. (a).) Here, Ms. Harris' letter (see paragraph 11) grants an increase in specialized supervision to 84 hours per month, the same amount requested in the Fair Hearing Requests. Therefore, there is no controversy as to the number of hours of specialized supervision and it is not an issue in these matters. The only other action or decision taken by WRC that relates to the various services listed in the Fair Hearing Requests is the denial of 120 hours of respite services for each Claimant. As WRC was not aware of the requests for outside respite, LVN respite and CNA respite, and had made no decision or taken no action on those

requests, there is no jurisdiction to have a fair hearing on these other services listed in the Fair Hearing Requests.

15. Therefore, it is ordered that the issue for determination is: are Claimants each entitled to receive 120 hours per month of respite funded by WRC?

FACTUAL FINDINGS

16. Claimants were born in December 1994 and are 19 years old. Both Claimants have been diagnosed with autism and are consumers of services from WRC. A psychiatric evaluation of female Claimant by Dr. Lenore Iverson dated January 25, 2012 (Exhibit F) indicates “rule out mild mental retardation,” which is usually an indication that the clinician suspects that a condition may be present but does not have enough information to make a formal diagnosis. For purposes of this decision, the specific basis, or bases, for her eligibility is not critical.

17. Claimants receive WRC services including, but not limited to, respite, specialized supervision, and extended school year. Claimants also receive In Home Support Services (IHSS) from Los Angeles County, which provides funds for someone to attend to Claimants’ needs. Male Claimant receives 272 hours per month of IHSS, and female Claimant received 42 hours per month of IHSS.

18. Historically, as of at least 2009, each Claimant was receiving 120 hours per month of respite, and other services. WRC proposed to reduce those levels to 30 hours per month for each, and A.T. filed a Fair Hearing Request on March 10, 2009. A hearing occurred in October 2009 and a Decision was issued in December 2009. (Exhibit 8; OAH case numbers 2009030860 and 2009030856.) One issue contained therein was WRC’s contention that Claimants had not utilized an available generic resource, IHSS, as required under section 4648, subdivision (a)(8), and that regional centers must pursue all possible sources of funding under section 4659. Another issue was the limit of 90 hours of respite per quarter under the then newly enacted section 4686.5 (effective July 1, 2009; discussed in more detail in paragraphs 23 and 24, and Legal Conclusion 8). Among other things, the ALJ decided: WRC could not reduce the number of respite hours; A.T. should attempt to secure IHSS services within 30 days as directed by WRC; and failure by A.T. to follow WRC’s directions regarding IHSS may result in the future loss of services.

19. As noted above (paragraph 2, etc.), there was a subsequent fair hearing process for Claimants that resulted in the dismissal orders. The matters that were officially noticed indicate that female Claimant requested 120 hours per month of respite to continue. WRC denied that request on March 4, 2011 and would continue the reduction in respite for female Claimant from 120 hours per month, at a rate of 10 hours per month, to the level of 30 hours per month. Claimants submitted fair hearing requests to appeal the reductions, dated March 31, 2011. The hearings, originally set for November 2011, were advanced to July 14, 2011 and, when A.T. did not appear, the matters were dismissed. (Exhibits 7 and 14.) (Although there was a companion matter for male Claimant, no further official notice is taken of the basis of his matter, for the reasons set forth in paragraph 7e.)

20. Later service levels for WRC services were established in each Claimant's Individual Program Plan (IPP). Male Claimant's IPP dated January 27, 2012 (Exhibit 10) states that he needs supervision at all times. Under the IPP he will receive 60 hours per month of respite.

21. Female Claimant's IPP dated January 27, 2012 (Exhibit 9) states that she needs assistance with some activities of daily living and "requires someone nearby to prevent harm in familiar and unfamiliar settings." She can be resistive and combative and needs supervision at all times. Under the IPP she will receive 70 hours per month of respite through January 2012.

22. Female Claimants' respite services were in the process of being reduced. The filing of the prior hearing requests halted that process. The hearing in which A.T. did not appear was based on an appeal of those reductions. Based on the dismissal orders, WRC continued to reduce respite hours, to 50 per month for September 2012 and to 40 per month for October 2012 (Exhibit 9). At a time not established specifically by the evidence her respite hours were reduced to 30 hours per month, which is the present level. WRC is attempting to schedule the next annual IPPs for Claimants.

23. WRC established that the reduction in female Claimant's respite hours to 30 hours per month was due to a reduction in her need for respite as well as the effect of section 4686.5, discussed in more detail below, which required regional centers to purchase no more than 30 hours per month of respite services for consumers unless the circumstances justified an exemption. According to WRC, based on an observation of female Claimant at her school on January 28, 2011, she does not exhibit behaviors that would justify an exemption. WRC also contends that A.T. has not presented information that shows any change in circumstances that would justify reversing WRC's reduction of respite in steps to a level that complies with section 4686.5. WRC agrees that male Claimant presents behaviors that justify an exemption from the limits of that statute.

24. The exemption allowed by the statute applies 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.

25. Combining the services funded by WRC and IHSS, male Claimant has assistance available approximately 13 hours per day, and female Claimant approximately five hours per day. In addition, Claimants are in school approximately seven hours per day.

26. Based on the observations of female Claimant, WRC personnel concluded that while she has some deficits, she can express herself and does not require additional intensive supervision. On the other hand, A.T. describes female Claimant as having symptoms of schizophrenia and as being self-injurious, requiring increased levels of assistance.

27. A.T. testified to several challenges faced by Claimants and by those who assist in their care. She also challenged some of the testimony of Ms. Harris. For example, Ms. Harris testified that when she first met Claimants for an IPP two years ago, male Claimant greeted her

verbally and sat quietly for more than one hour during the meeting. A.T. testified that male Claimant is nonverbal and that, for his entire life he has been overactive and has not sat quietly for more than 10 or 15 minutes. A.T. noted that the Assistant Administrator at his school wrote in July 2011 that male Claimant is easily distracted in class by normal stimuli, becomes aggressive without provocation, and requires close proximity of staff to reduce incidents of aggression and noncompliance. (Exhibit C-Z.) Similarly, also in July 2011, the school's Clinical Director wrote that male Claimant demonstrates extreme impulsivity, may escalate aggressively when scared, angry or frustrated, and sometimes needs a team to de-escalate him. A.T. referenced a recent incident when male Claimant had been running in a local park and has "hyped up." He "took it out on the house," presumably a reference to running inside and/or bumping into things and/or causing property damage. A.T. wanted him to shower to calm down, but he would not take off his shoes and growled, indicating to her that he might escalate to aggressive behavior. She mentioned that, in the past, he has beaten people.

28. A.T. testified to some of the effects of female Claimant's disabilities. She is verbal and more compliant than male Claimant. However, she reacts to voices of people she believes are present in her room, sometimes shouting at them or barricading her door and then trying to leave through the window.

29. Female Claimant's school counselor, Marilyn Hagoes, a licensed Marriage and Family Therapist, wrote on December 20, 2012, that she had been female Claimant's counselor for six months; that female Claimant's behavior had regressed and she became more irritated and frustrated by routine interactions; she was misunderstanding others' social cues; and was struggling with her school work and discouraged about seeking help. (Exhibit H.)

30. A.T. testified that her sleep is interrupted by Claimants' behaviors. Neither male nor female Claimant usually sleeps through the night. After sleeping a few hours, male Claimant may awake and have bursts of activity before returning to sleep for a few hours. Female Claimant awakes during the night complaining of the people she is hearing in her room, or noises they are making, and is combative when redirected to go back to sleep. A.T. and/or those assisting with Claimants must often intercede to keep them safe and inside the home.

31. A.T. is concerned that, if additional services are not provided, it may become necessary to institutionalize Claimants.

32. In a direct conflict of evidence, A.T. contends that she has informed Ms. Harris about these changes and challenging behaviors, while Ms. Harris testified that her recent communications with A.T. have been more about staffing for services, the days when there is no school and extended school years services are requested to fill the gaps, and that there has been little information conveyed about any change in circumstances about Claimants' behaviors.

33. Lorraine Williams is Claimants' aunt, and also is paid with WRC funds and IHSS funds to provide care for female Claimant. Omar (last name unknown) is paid to provide care for male Claimant. Ms. Williams testified that she works on a variable schedule, both as to days and times as well as total number of hours. She described female Claimant as not

compliant in that she will “debate” about a requested task for a few minutes or a few hours, but will usually eventually perform the task. Ms. Williams has not seen female Claimant hit anyone but she can get loud and yell and scream. Ms. Williams believes female Claimant needs help 24 hours per day.

34. Dr. Lenore Iverson is female Claimant’s psychiatrist. In her psychiatric evaluation dated January 25, 2012 (Exhibit F), she noted diagnoses of Autistic Disorder with symptoms of Attention Deficit Hyperactivity Disorder (ADHD), Psychotic Disorder Not Otherwise Specified with a rule out of Schizophrenia Chronic Paranoid Type, and rule out mild mental retardation. Numerous behaviors and symptoms are listed. The plan was to address the psychosis with medication and, when stabilized, consider medication for the ADHD symptoms. Dr. Iverson notes in her letter dated September 5, 2012 (Exhibit C), that female Claimant does not take her medications regularly, her symptoms are not stabilized, and she does not tolerate changes in her medications.

LEGAL CONCLUSIONS AND DISCUSSION

1. The Lanterman Act governs this case. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency’s decision. Claimants properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 10 and 12.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency’s decision is incorrect. In this case, Claimants had the burden of establishing the need for additional respite hours.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, “regardless of age or degree of disability, and at each stage of life” to integrate “into the mainstream life of the community” and to “approximate the pattern of everyday living available to people without disabilities of the same age.” Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual’s developmental potential and are “directed toward the achievement of the most independent, productive and normal lives possible.” The regional centers will work with consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4502.)

4. Section 4646 states in pertinent part:

“(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. . . . 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, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

“(b) The individualized program plan is developed through a process of individualized needs determination”

Subdivision (d) provides that an IPP shall be prepared jointly by the planning team. Decisions concerning the consumers goals, objectives, and services and supports that will be included in the consumers individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or where appropriate the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

5. Section 4646.5 defines the content of the planning process for the IPP. It must include gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities and a preparation of a statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person’s goals and addressing his or her needs.

6. Section 4648 describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer.

7. Services provided must be cost effective (§ 4512, subdivision (b)), and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4646, subd. (a), 4651, subd. (a), 4659, and 4697.)

8. Section 4686.5 states, in pertinent 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. (*Emphasis added.*)

“(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.”

9. While the “new law” reduces the number of respite hours WRC can fund, it also provides an exemption. In this case, WRC has previously determined the exemption applied to male Claimant because it was already funding more than 90 hours per quarter, prior to the IHSS hours being funded, and funded 60 hours per month after IHSS funds were obtained.

10. The Lanterman Act provides a framework within which the consumer, the consumer's family, and the regional center are to work together to gather and share relevant information, analyze strengths and needs, identify potential services, and reach conclusions in the IPP process to support and provide services to the consumer. The goal is reachable if everyone contributes. Here, the evidence is not clear that this process has been honored. For example, A.T. presents a scenario of having shared much information with Ms. Harris relating to behaviors that appear to justify a re-examination of the levels of respite for Claimants. On the other hand, Ms. Harris stated that communications with A.T. did not include that depth of information and Ms. Harris did not believe that there were recent behaviors, or changes in behaviors, that would affect respite levels. Some of the documents presented by Claimants were created after the Fair Hearing Requests were submitted (e.g., letters from female Claimant's school program, Exhibits H, I, and J), and it is not clear that others were submitted to WRC for review and consideration (e.g., Dr. Iversen's letter dated 9/5/12, Exhibit B). The ALJ is aware that service coordinators usually prepare computer notes (sometimes called Interdisciplinary Notes or Consumer Transaction Notes) documenting discussions or receipt of documents relating to a consumer. Only one such note was submitted in evidence, relating to Ms. Harris' school observation of Claimants. No notes were submitted of the relevant conversations between A.T. and Ms. Harris. It cannot be determined which version of events is more likely.

11. A further problem complicating this matter is that some behaviors addressed in the evidence are of a long duration and others are more recent, and some evidence did not include a time reference at all for some of the behaviors. Among other things, the IPP process should address changes in behaviors, determine whether further assessments and/or observations are needed, as well as examine services and levels to see if they meet Claimants' current needs.

12. Therefore, WRC cannot rely solely on whether there has been a change in circumstances, particularly when it is aware that Claimants' prior challenges to reductions in their respite were dismissed for failure to appear and not due to a substantive review of Claimants' services and needs.

13. The fair hearing process should not be used as a substitute for the IPP process but, rather, to review that process to see if the decisions reached were appropriate under the circumstances. Claimants have not carried their burden of demonstrating that WRC did not review available information or make appropriate decisions. Although the issue is not presented for the ALJ to determine, it is strongly recommended that the parties use the

upcoming IPPs to comprehensively gather and exchange information so that appropriate services and levels can be established. With access to all relevant information, there is increased potential to implement sufficient, meaningful services.

ORDER

1. Male Claimants' request for additional funding for respite hours is denied.
2. Female Claimants' request for additional funding for respite hours is denied.

DATED: February 15, 2013.



DAVID B. ROSENMAN
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 of receipt of the decision.