

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PETITIONER,

vs.

GOLDEN GATE REGIONAL CENTER,

Respondent.

OAH No. 2014110158

(Early Intervention Services Act
Gov. Code, § 95000 et seq.)

DECISION

Administrative Law Judge Regina J. Brown, State of California, Office of Administrative Hearings, heard this matter on November 25, 2014, in San Mateo, California.

Petitioner was present at the hearing and represented by her parents.

Lisa Rosene, Chief, Regional Center Services, represented service agency Golden Gate Regional Center.

The record closed and the matter was submitted on November 25, 2014.

ISSUE

Whether respite is a required service that must be included in Petitioner's Individualized Family Service Plan and provided to Petitioner's parents.

FACTUAL FINDINGS

1. Petitioner is a 16-month-old child who lives with her parents. She also lives with her 3.5-year-old brother who, according to their parents, has been diagnosed with autism.

2. Petitioner qualifies for services under the California Early Intervention Services Act, Government Code section 95000 et seq., (also known as Early Start), through Golden Gate Regional Center (GGRC) because she has an established risk associated with epilepsy.

3. On September 26, 2014, Petitioner's parents met with GGRC's Early Start Interdisciplinary Assessment Team, including the staff physician and social worker, to develop Petitioner's Individualized Family Services Plan (IFSP). The family concerns, priorities, and resources section of the IFSP states the following:

[Father] discussed his concern for [wife's] emotional health as she experiences significant stress caring for the special needs of both of their children. . . . GGRC Supervising Social Worker joined the meeting to clarify respite as a non-required Early Start service, per Assembly Bill 9, for the Early State participant. Specifically, respite can be utilized so that [mother] can participate in parent training, counseling, and/or a support group that address [Petitioner's] development. Parents were informed that a respite plan may be developed with [Petitioner's] GGRC Early Start Continuing Social Worker which may include exploring non-GGRC funded resources."

The required early intervention services in the IFSP include: (1) case management provided by GGRC at least two times a year, and (2) specialized instruction provided by Associated Behavioral Consultants, for one 50-minute session per week in the family's home or natural environment. One of the nonrequired services listed in the IFSP was a referral to the Family Resource Center.

4. On November 5, 2014, petitioner's father submitted a Due Process Mediation and Hearing Request requesting that "respite services be part of [their] daughter's IFSP and that these services begin immediately . . . and that respite be considered as [a] required service for [their] daughter's treatment." This hearing followed.

5. Shawneece Stevenson, GGRC Early Start Manager, testified at the hearing about the laws regarding Early Start which are the basis of GGRC's policies and procedures. In particular, she testified about a letter opinion from the United States Department of Education, written in 2003, which explained whether the provision of respite services was a required early intervention service under federal law. The letter stated, in relevant part, that respite is "not intended to mean 'reprieve' or 'rest' but rather a child care-type service provided to enable parent(s) to participate or receive other early intervention services in order to meet the outcomes on the child's IFSP." The letter opinion elaborated:

In order for a parent to develop the capacity to assist his/her child in meeting his/her developmental needs, the parent may need respite or other type of care for the child while the parent

participates in appropriate early intervention activities. Families may need in home or other care arrangements for their child in order for the family to participate in the early intervention services that include a defined family component, i.e., family training or counseling service, psychological services, or social work. A family may need to participate in sign language classes in order to assist the child in developing communication skills or meet with a psychologist to design appropriate behavioral management strategies to use when the child engages in inappropriate behaviors. Although the provision of respite or other care arrangements may be necessary for some families to participate in appropriate early intervention activities, respite is not intended to serve as a child care or 'babysitting' assistance in ordinary circumstances.

6. According to Stevenson, respite is a nonrequired service under the Early Start program. However, GGRC has determined that respite can be funded under an IFSP to provide daycare-like services to allow families the ability to attend other early intervention services that do not require the child to be present. GGRC does not have a formalized parent training program and refers parents to the Family Resource Center which is no cost to the family and GGRC funds respite care so that parents can attend unlimited parent support groups. There are also generic services or community services available to the parents that are provided by different organizations that include free babysitting. For example, the Epilepsy Foundation has support groups and parent training. Also, local churches provide respite days on a quarterly basis. GGRC uses a creative approach to the issue of respite to meet the needs that complement the required services to help the family to support the child's needs. However, GGRC cannot provide respite services to allow parents to do whatever they want to do, like read a book.

7. Gloria Jarquin, Early Start Assessment Social Worker, testified at the hearing. She conducted Petitioner's assessment for eligibility, determined her needs with the Interdisciplinary Assessment team, and wrote the IFSP. Jarquin explained to the parents that the IFSP could be changed to add respite services if the parents attend support groups, and any changes to the IFSP would be the responsibility of the assigned social worker. Jarquin included specialized instruction as a required service in the IFSP because of the possibility that petitioner's condition may develop into autism and this would allow the family to meet with an early intervention behavior consultant. Jarquin also explained that the early intervention behavior consultant could provide services in any natural environment where one would find a typically developing child. This would give her parents a break from caring for Petitioner. For example, Petitioner's mother could exercise at the YMCA while Petitioner received services from the early intervention behavior consultant at the YMCA. According to Jarquin, there are "ways to provide relief for parents other than respite as defined as a break for the parent."

Claimant's evidence

8. Petitioner's mother testified at hearing. She states that Petitioner experienced her first seizure at 5.5 months old, and her most recent seizure occurred the day before the due process hearing. She has had more than 40 seizures during that time period. Petitioner is currently on medications and must be constantly monitored because there is no warning when she is about to have a seizure. Petitioner has only occasionally been out of her mother's care. For example, when her son attended a cooperative daycare, their mother was required to contribute volunteer hours and would leave Petitioner with a neighbor. She also had a friend that she would pay to watch the children occasionally for the parents to have a Friday night off. They do not have the funds to pay for a full-time babysitter. Also, Petitioner's mother had started going to the YMCA to exercise about six months ago and took Petitioner to the YMCA's nursery. However, Petitioner had a seizure at the nursery in July, so they stopped going to the YMCA.

9. According to Petitioner's mother, their son also must be constantly monitored because he will run out of the door when it is opened. Three days prior to the due process hearing, he started preschool and attends in the mornings from 9:00 a.m. to 1:00 p.m.

10. Petitioner's father works full-time and usually returns home around 6:00 p.m. Petitioner's mother is a stay-at-home mother. However, she is stressed and finds it overwhelming because both of her children require constant supervision because of their conditions. If she was provided respite, she would "spend time by [herself]," read a book, or have coffee at the local coffeehouse. She also testified that if she could attend a parent support group, she believes that it would provide relief from caring for Petitioner. Petitioner's parents do not believe that they need the services of an early intervention behavior consultant unless Petitioner exhibits autistic-like symptoms. Her parents hope that Petitioner will outgrow the seizures.

11. GGRC's policy of considering respite as a nonrequired service is consistent with the laws governing Early Start. GGRC will provide respite services to the parents of Early Start clients when respite allows the parents to participate in other early intervention required services.

LEGAL CONCLUSIONS

1. The Individuals with Disabilities Education Act established a program in which states were provided federal funds to develop and implement a statewide multidisciplinary system to provide early intervention services for infants and toddlers with disabilities and those who would be at risk of having substantial developmental delay if they did not receive early intervention services. (20 U.S.C. § 1431-1445.) In California, the early intervention program was established pursuant to the California Early Intervention Services

Act, Government Code sections 95000-95029, and its implementing regulations, California Code of Regulations, title 17, sections 52000-52175. This federally funded program is known in California as “Early Start.”

2. Each eligible infant or toddler must have an assessment conducted by qualified personnel to identify the child’s unique strengths and needs, the services appropriate to meet those needs, the resources, priorities and concerns of the family, and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of their infant or toddler. (Gov. Code, § 95001, subd. (a)(6).) Regional Centers are responsible for ensuring that the requirements of the California Early Intervention Services Act are met. To the maximum extent possible, early intervention services are to be provided in the most natural environment and include the use of natural supports and existing community resources. (Gov. Code, § 95001, subd. (a)(6).)

3. Early intervention services are those that are “designed to meet the unique developmental needs of the child and the needs of the family relating to enhancing the child’s development.” (34 Code of Federal Regulations (C.F.R.) § 303.12.) They include services for assistive technology devices, audiology, family training, counseling and home visits, health services, medical services, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, service coordination, social work services, special instruction, speech language, transportation and vision. (34 C.F.R. § 303.12.)¹ A “Note” appearing with this provision of the Code of Federal Regulations explains that “the list of services and qualified personnel are not exhaustive . . . early intervention services may include such services as the provision of respite and other family support services.” (34 C.F.R. § 303.12(e).)

4. In response to the state budget crisis in 2009, Government Code section 95020 was amended, pursuant to Assembly Bill No. 9, to prohibit regional centers from purchasing nonrequired services, as defined, with the exception of durable medical equipment. Regional Centers may refer a family to a nonrequired service that may be available to an eligible infant or toddler or his or her family. “Nonrequired services are those services that are not defined as early intervention services or do not relate to meeting the special developmental needs of an eligible infant or toddler related to the disability, but may be helpful to the family.” (Gov. Code, § 95020, subd. (e)(3).)

5. Petitioner contends that respite services are necessary because of the uniqueness of their situation, and they have a need for respite more than anything else in the IFSP. However, the evidence established that Petitioner’s parents require respite primarily as a break from caring from Petitioner without it being linked to any other related early intervention services. The examples of how petitioner’s mother would use respite are clearly not within the federal government or California Early Start’s expected use of respite as either

¹ This definition is also set forth in section 1432, subdivision (4), of title 20 of the United States Code, and title 17 of the California Code of Regulations section 52000, subdivision (12).

a required or nonrequired service. The fact that Claimant's parents choose not to utilize the services of the early start behavior intervention is their right, even if this service could have the same effect as giving the mother a break from caring from Petitioner. Thus, the type of respite sought by Petitioner's parent is not the type of available nonrequired service that could be included in Petitioner's IFSP. Furthermore, respite is not a required service that should be included in the Petitioner's IFSP.

6. The order below is without prejudice to parents requesting and receiving specific and discrete respite funding so as to allow the parents to participate in or receive other early intervention services in order to meet the outcome of Petitioner's IFSP.

ORDER

The appeal of Petitioner is denied.

DATED: December 2, 2014

_____/S/_____
REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings