

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

M.A.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014041244

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In the Matter of:

M.A.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2014041245

**DECISION**

The above matters were jointly heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 23, 2014, and September 24, 2014, in Culver City. Pursuant to Government Code section 11507.3, the Administrative Law Judge, upon her own motion, hereby orders the matters consolidated for all purposes.

Matthew Pope, Attorney at Law, represented claimant M.A. (Female) in OAH case number 2014041244, and claimant M.A. (Male) in OAH case number 2014041245.<sup>1</sup> Claimants' mother, A.T. (Mother), was present.

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<sup>1</sup> Claimants and their mother and family relatives are identified by first name, title or initials to protect their privacy.

Julie A. Ocheltree, Attorney at Law, represented Westside Regional Center (Service Agency or WRC). Also present was Lisa Basiri, Fair Hearing Coordinator.

The documentary and testimonial evidence described below was received, and argument was heard. The record was closed and the matter submitted for decision on September 24, 2014.

## ISSUES

Pursuant to the Notice of Ruling and Order Regarding Issues for Hearing dated July 24, 2014, the issues presented for decision in this case are set forth below. (Exh. 29.) As discussed in Factual Finding 4, below, the first three issues involving Mother's requests for retroactive reimbursement for services have been dismissed pursuant to the granting, in part, of the Service Agency's motion to dismiss.

1. Claimants contend they were entitled to receive 21 days of out-of-home respite, pursuant to Welfare and Institutions Code section 4686.5, subdivision (a)(2), for the years 2009 through 2012. Should the Service Agency be required to reimburse claimants' parent for 21 days of out-of-home respite for the years 2009 through 2012, which claimants' parent contends she paid for herself?

2. Claimants contend they were entitled to receive extended year services<sup>2</sup> for breaks when school was not in session for the years 2007 through 2012, but the Service Agency did not provide such services. Should the Service Agency be required to reimburse claimants' parent for extended year services for the years 2007 through 2012, which claimants' parent contends she paid for herself?

3. Claimants contend they were entitled to receive 84 hours per month of specialized supervision in the years 2007 through 2012, but the Service Agency only funded for 62 hours per month of that service. Should the Service Agency be required to reimburse claimants' parent for 22 hours per month of specialized supervision for the years 2007 through 2012, which claimants' parent contends she paid for herself?

4. Claimant Female is currently receiving 30 hours per month of respite. Should the Service Agency be required to fund an additional 90 hours per month of respite, so that Female's total respite hours is 120 hours per month?

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<sup>2</sup> The acronym "ESY" was used during the hearing and in the documentary evidence. Under special education law, the acronym ESY is generally used to refer to "extended school year" services, which are services provided during the summer vacation period between school years. (See, Cal. Code Regs., tit. 5, § 3043.) However, under WRC's Service Standards, supervision services provided during school breaks are referred to as "extended year services." (E.g., Exh. 20, p. 154.) This Decision will use the term "extended year services."

5. Claimant Male is currently receiving 60 hours per month of respite. Should the Service Agency be required to fund an additional 60 hours per month of respite, so that Male's total respite hours is 120 hours per month?

#### EVIDENCE RELIED UPON

Documentary: Service Agency exhibits 1-34. Claimants used the same exhibits.

Testimonial: Anna Carrillo, Maxim Healthcare Services; Claimants' mother, A.T.; and Cynthia Harris, WRC service coordinator.

#### FACTUAL FINDINGS

##### *Parties and Jurisdiction*

1. The claimants in this case are Female and her twin brother Male. Both claimants are 19 years old and eligible regional center consumers. Female was previously determined eligible for regional center services based on a diagnosis of autism. Based on a psychological evaluation performed by the Service Agency within the past two years, Female was given a diagnosis of mild intellectual disability. Male is eligible for regional center services based on his diagnosis of autism.

2. By letter dated March 25, 2014, the Service Agency notified Mother that it was denying her requests for additional respite hours for each of the claimants, and for retroactive reimbursement for specialized supervision, extended year services, and respite services for the years 2007 through 2012. (Exhs. 2, 8.)

3. On April 18, 2014, Mother filed fair hearing requests, one on behalf of each claimant, to appeal the Service Agency's decision. In the request for Female, Mother indicated that the requested services were "needed to ameliorate the effects of claimant's disabilities and to insure that she remains safely in her home." The request referenced a notice of proposed action and the Service Agency's letter dated March 25, 2014. Mother filed a similar fair hearing request for Male. (Exhs. 3, 9.)

##### *Motion to Dismiss*

4. During the interim period between the first day of hearing on July 23, 2014, and the second day of hearing on September 24, 2014, the Service Agency filed a motion to dismiss each of the issues presented for decision in this case. The ALJ granted the motion to dismiss as to Issues 1, 2, and 3, which relate to Mother's claim for retroactive reimbursement for claimants' respite and supervision services, but denied the motion to dismiss as to claimants' request for additional respite. (Exh. 33.) The ALJ's order granting in part, and

denying in part, the Service Agency's motion to dismiss is hereby incorporated by this reference. Claimants' appeal of Issues 1, 2, and 3 shall be denied.

5. The only two issues left for determination relate to claimants' request for an additional 90 hours per month of respite for Female, and an additional 60 hours per month of respite for Male.

#### *Claimant Female's Background*

6. Claimants Female and Male live at home with Mother in a three-bedroom house (main house). There is also another house behind the main house (back house) where some of claimants' caregivers live and stay, as discussed in Finding 21 below.

7. Pursuant to an individual program plan (IPP) dated February 13, 2014, the Service Agency provides funding for 84 hours per month of specialized supervision and 30 hours per month of respite for Female. In addition, the Service Agency provides funding for extended year services for Female during school breaks, consisting of 33 hours for Thanksgiving, 33 hours for the Christmas break, and 267 hours for the summer break. Female also receives 56 hours per month of In-Home Supportive Services (IHSS) from a county program.

8. The February 13, 2014 IPP includes the following desired outcomes (goals) for Female: (1) she will continue to live at home with her mother, (2) she will "continue to attend a free and appropriate classroom with services that support her ongoing development and success and to find an appropriate adult or school program that can support her as she transitions to adulthood," (3) she will "begin to initiate more interaction with her peers and participate in interactive play," and (4) she will "continue to experience good health."

9. The February 13, 2014 IPP states that Female is ambulatory. She is able to speak in complete sentences and hold a conversation, although her language is not clearly understood by those unfamiliar with her. Female is able to answer questions appropriately and express her thoughts and feelings. Female continues to have behavioral challenges. She can be resistive and combative. She will have a tantrum when she is upset or things do not go her way. Mother reported that the tantrums can happen daily, but she does not let them go on. Mother reported that Female has been verbally aggressive towards her, by yelling, screaming and talking back. According to Mother, Female spends most of her time in her bedroom talking to her make-believe friends. Female often gets very loud in her room and says that her "friends" tell her to do things, like climb out of her bedroom window, which Female has done on two occasions. Female needs to be supervised at all times to prevent injury. According to Mother, Female hallucinates and has horrible mood swings and tends to think that everyone is talking about her.

10. (A) Female currently attends a nonpublic school and receives special education services and supports from the school district. Pursuant to her individualized education program (IEP) dated May 1, 2014, the school district provides Female with

counseling for 60 minutes per week, speech and language for 60 minutes per week, and transportation to and from school. She also has an AA (adult assistance) for 1,200 minutes per week during instructional time.

(B) The May 1, 2014 IEP states that Female displays an eagerness to attend her counseling sessions, shows a willingness to problem solve, and is open to receiving feedback. She continues to exhibit positive behavior in the school setting and frequently earns maximum points for following all standards of behavior. Female sometimes appears to become overwhelmed by academic tasks and frustrated by her own limitations. She frequently shares her dislike of school yet maintains a generally positive attitude and acceptance of her role as a student. Female's behavior in school is described as respectful, helpful, trustworthy and honest. She demonstrates those qualities by her work in her school job. Female appears to put forth her best effort in the classroom. Female will ask for assistance from the teacher, but she still has difficulty limiting her frustration. She has matured socially, as she will voice her opinion and verbally defend herself, but she is still easily intimidated by her peers. She also must learn the difference between voicing her opinion to staff versus verbal defiance. The IEP states that Female requires a small, structured therapeutic learning environment/campus that provides an immediate response to distractions and social and academic frustration.

(C) Female is in the transition program at her school.<sup>3</sup> The goals stated in her individual transition plan include that Female is interested in enrolling in college and pursuing a career in healthcare, and that she plans on having a job and living independently. To support those goals, the individual transition plan includes activities that Female will visit disabled student programs at colleges or vocational schools that interest her, and she will "job shadow in the community in a job of potential interest and write a summary of the experience." (Exh. 27.)

#### *Claimant Male's Background*

11. Pursuant to an IPP dated February 13, 2014, the Service Agency provides funding for 84 hours per month of specialized supervision and 60 hours per month of respite for Male. In addition, the Service Agency provides funding for extended year services for Male during school breaks, consisting of 33 hours for Thanksgiving, 33 hours for the Christmas break, and 267 hours for the summer break. Male also receives 267 hours per

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<sup>3</sup> Under special education law, "transition services" generally are services focused on improving the academic and functional achievement of the individual to facilitate the movement of the pupil from school to post-school activities, including post-secondary education, vocational education, integrated employment, independent living, or community participation. (Ed. Code, § 56345.1.)

month of IHSS from a county program. Some of the IHSS hours for Male are designated for protective supervision.<sup>4</sup>

12. The February 13, 2014 IPP includes the following desired outcomes (goals) for Male: (1) he will continue to live at home with his mother, (2) he will "continue to attend an appropriate program and receive the appropriate [designated instructional services] and supports," (3) he will "begin to initiate interaction and communicate with his peers and participate in interactive play," (4) he will "decrease his inappropriate behaviors and increase his safety awareness," and (5) he will continue to experience good health.

13. (A) The February 13, 2014 IPP states that Male is ambulatory. He is nonverbal and unable to have a conversation with others. He is able to understand questions about feelings or thoughts and can understand simple directives, such as "put your toys away." He requires assistance with his personal care skills. Male is not aware of his surroundings and has no safety awareness. He requires supervision at all times to prevent injury to himself and to others.

(B) Male has behavioral challenges. He does not initiate interaction with his peers. He often parallel plays during playtime at school or when in the presence of other children. Mother reported that he displays many unacceptable social behaviors that disrupt or prevent social interactions. He is fearful of dogs, so Mother limits his time in the community where dogs are likely to be present, such as at the park. Male is physically aggressive on a weekly basis. He will attack Mother and his sister for no apparent reason. He will hit, kick, and bite if he does not get his way. Mother reported that Male's aggression is getting worse as he gets older and bigger. He will kick anything in his way and is aggressive with others. Mother reported that Male will begin to tantrum for no reason at all. He has caused major property damage on several occasions. He has kicked out the windows in Mother's mini-van and pulled out electrical wires in the van. He has punched walls in the house. He has broken windows during his temper tantrums. Mother reported that the tantrums come without warning, and Male tantrums two to three times per week. During a tantrum, Male is physically aggressive to others and causes damage to property. Male requires constant supervision because he will leave the house if the doors are not locked and wander around the neighborhood, or he will jump over the fence in the backyard.

14. (A) Male currently attends a nonpublic school and receives special education services and supports from the school district. Male attends the same school as his sister but part of his program is on the locked-down section of the campus. His IEP is dated May 1, 2014. Male's designated instructional services include an AA (adult assistance), speech services, counseling, transportation, and some occupational therapy. Male requires an AA

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<sup>4</sup> IHSS are services to assist the recipient in establishing and maintaining an independent living arrangement, and include domestic services, personal care services and protective supervision. (Welf. & Inst. Code, § 12300, subd. (a).) "Protective supervision" are services to monitor the active behavior of non-self-directing individuals in order to prevent harm from daily hazards. (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 616.)

because of safety and behavioral reasons. He requires close supervision at all times. He is highly impulsive, combative, resistive, and he likes to run. He is a limited verbal communicator. He communicates using grunts, verbalizations, single words, two-word phrases, and gestures.

(B) The May 1, 2014 IEP for Male states that he continues to make progress in his classroom behavior. His tantrum behavior has decreased. He is more compliant to staff directions and is able to follow simple directions, such as remaining seated, lining up, and waiting his turn. He stays focused for longer periods of time and can complete tasks in a timely manner. He responds to friendly gestures of staff and peers with verbal and nonverbal responses. Male relies on the use of gestures and body language to make his needs and wants known to staff. He can become frustrated with a task or when prompted to return his attention. His social interactions are limited to select peers and staff. He benefits from close supervision, which helps him improve compliance, safety, communication, and social skills.

(C) The May 1, 2014 IEP states that Male participates in the Preparing Adolescents for Young Adulthood (PAYA) curriculum, where he participates in lessons related to, among other things, personal care, health, social skills, safety, education, job seeking skills, job maintenance skills, and home and food management. Male is able to sort, fold and hang clothes with minimal prompting. With moderate prompting, Male is able to use a shopping list to shop for items in a grocery store. He has shown the ability to put away materials, such as books and pencils when finished with them, pushing his chair when transitioning to a different work area, throwing trash in the garbage can, and cleaning up after lunch. Male continues to be easily frustrated by tasks that are not of his choosing. During those times, he requires constant prompting and redirection, and he withdraws and may tantrum at times.

*Prior OAH Decisions*

15. Mother has sought an increase in respite and specialized supervision in numerous fair hearing requests over the years. Official notice was taken of eight prior Decisions that were presented at this hearing. (Exhs. 16-21, 23, and 24.) The administrative law judge considered the prior Decisions to see how other administrative law judges addressed similar issues pertaining to the requested services and claimants' developmental disabilities, and to promote consistency in the resolution of the disputes between the parties. The following prior Decisions are incorporated herein by reference:

<u>Date of Decision</u>	<u>Case Numbers</u>	<u>ALJ Presiding</u>
January 18, 2002	L2001080050, L2001080051	Thornton-Harris

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August 5, 2003	L200208-0043 & -0045, L200208-0106 & -0108, L200211-0599 & -0600	Rosenman
September 23, 2004	L2004020525 through L2004020532	Montoya
August 11, 2005	L2005020625, L2005020626	Eisman
July 24, 2007	L2007010862, L2007070265	Myers
December 2009	2009030860, 2009030856	Ruiz
July 18, 2012	2011100960, 2011100964	Ruiz
February 15, 2013	2012100313, 2012100314	Rosenman

16. A common theme appears in these prior Decisions. Since claimants were at least three and one-half years old, they have exhibited communication skill deficits and impulsive, aggressive, destructive and dangerous behavior. Mother would repeatedly request additional hours for respite and specialized supervision. The Service Agency, however, considered behavioral intervention as a more reasonable and appropriate way to meet claimants' long-term, individualized needs.

17. The prior Decisions show that Mother has opposed behavior intervention as a service to address claimants' long-term needs. Mother's preference has been to request additional respite and specialized supervision hours to address her children's individualized needs. Even as the Service Agency attempted to implement behavior intervention services in 2002 and 2003 for claimants, Mother was resistive and uncooperative, and expressed her belief that behavior intervention is "ineffective" and can be "abusive" to children. (Exh. 16, p. 100; Exh. 17, p. 115.) By 2005, when behavior services were starting to be implemented for claimants, Mother continued "to express reservations about a behavior modification program. She is concerned that such programs can be abusive, as when the child is deprived of something he or she likes, in order to curb a behavior. She also pointed out that in some cases there were attempts to use certain foods as rewards, which caused problems in managing the diets of the children." (Exh. 18, p. 126.)

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### *Current Request for Additional Respite*

18. Mother requests that the Service Agency provide 90 additional hours of respite for Female, so that her total respite hours are 120 hours per month. Similarly, Mother requests that the Service Agency provide 60 additional hours of respite for Male, so that his total respite hours are 120 hours per month.

19. Mother testified that she is currently "in-between" jobs. Mother's testimony regarding her current employment status was unclear. Mother testified she currently sells "Younique" brand skin care products and make-up. She set up her own website and does this work on her own. In addition, Mother testified she is working on obtaining a license from the California Department of Social Services, Community Care Licensing Division, to work as an administrator for licensed adult residential facilities (ARF) and residential child care facilities (which Mother referred as RFCE). Mother's testimony was unclear. She initially testified that she was working on completing the license requirements for ARF, and then would complete the requirements for an RFCE license. But she later testified that she already held an administrator's license for ARF and she was working on completing the requirements for an RFCE license. Mother also testified that she was "going to school for administrator for developmentally disabled" so that she could work in whatever facility her children are placed "just in case I have to institutionalize my kids."

20. Claimants currently attend school during the weekdays. Female's school hours are from 8:30 a.m. to 2:40 p.m. Male's school hours from 8:30 a.m. to 2:50 p.m. (Exh. 27, p. 243; Exh. 28, p. 272.) Claimants are usually home from school by 3:30 p.m. They are at home earlier if school is in session for only a half-day.

21. Claimants' care and supervision is provided by at least four individuals besides Mother. First, there is Lorraine W. (Lorraine), who is Mother's sister and claimants' aunt. Lorraine is Female's caregiver for the IHSS hours from the county program, and for the respite and specialized supervision funded by the Service Agency through Maxim Healthcare. Lorraine lives in Highland. Mother testified that once or twice a month, Lorraine will take Female to spend the weekend at her house in Highland. Or, Lorraine will spend the weekend with Female at Mother's house. Second, there is Sheila Gibbs (Sheila), who is a family friend who has lived in the back house for 10 years. Sheila is the caregiver for Male's IHSS hours from the county program. Sheila's son, Mark Gibbs, will assist Sheila in caring for Male when he visits Sheila in the back house. When Mark Gibbs is present, Sheila is able to take care of both Male and Female. Third, there is Omar Deckard (Omar), who is another caregiver for Male. Omar provides the respite and specialized supervision for Male funded by the Service Agency through Maxim Healthcare. He stays overnight when necessary. Fourth, there is Richard S. (Richard), who is Mother's nephew. Richard has been providing care for Male for 10 years. Richard stays in the main house or the back house, depending on where Male happens to be present. In general, Richard sleeps on the couch in the main house to prevent Male from leaving the house in the middle of the night. In addition to these four individuals, Mother has other nieces that she calls when she needs assistance with claimants or who offer to help Mother with claimants. Mother pays

claimants' caregivers additional amounts from her own monies. Mother testified that she pays the caregivers, on average, an extra \$200 per week. She presented no documentation (such as cancelled checks or bank statements) to corroborate this claim.

22. Mother contends that Male's respite hours should be increased to 120 hours per month because of the increase in the intensity of his care due to his behaviors. According to Mother, Male started having hallucinations six months ago. When he looks at a pattern, the pattern will appear to be a monster to Male, which causes him to run and scream for no apparent reason. Mother also recounted an incident from February 2014, where she took an item out of Male's backpack that he was unaware was in the backpack. When Male saw the item come out of his backpack, Male screamed and ran into the wall. Mother testified she could not figure out what was wrong with him. During another incident on March 5, 2014, Male bit Mother on her arm. Male wanted to go outside, but he wanted to go out through a window. Mother and others at the house restrained Male from going out the window. Male began pacing back and forth, his eyes became big and glassy, his face had a blank expression, and he was breathing hard and panting. He then started swinging, punching, and kicking. As Mother and the others tried to hold him, Male bit his Mother's arm. Although he had bitten Mother on previous occasions, Mother testified this time was different because the bite was "extremely hard," Male would not let go, and Mother's arm went limp. Male's attempts to leave the house in the middle of the night have increased in intensity. Before, he would only try to leave through one door of the house. Richard, who would be sleeping on the couch, would get up and try to redirect Male by reasoning with him, giving him grapes or salt-free chips, and telling him he can't leave. Lately, Male is more aggressive in his attempts to leave the house in the middle of the night. He now tries to leave through the front door, then the back door, and then windows, and then repeats the process.

23. Mother took Male to several psychiatrists, who told her that Male suffered from "seizure-like tantrums." Male was prescribed Risperidone. Since Male refuses to swallow any type of pill or capsule, the Risperidone is a liquid that is administered orally to Male with a syringe in his mouth. Mother testified that Male has to be held down when given the Risperidone because he won't swallow and he thinks the syringe has a needle. Mother also testified that Male's strength has changed tremendously. For example, when his doctor ordered blood tests in the past, it would take four to five people (men or women) to hold him down. Recently, when doctors had to draw blood from Male, it took eight men to hold him down. The female staff were sent away, as they were unable to hold Male at all. Mother contends that it requires two people to control Male when he starts having a tantrum.

24. Mother contends that Female's respite hours should be increased to 120 hours per month because of her behavioral issues. According to Mother, Female began expressing a desire to go to college last year, after she graduated from high school. Mother described Female's behavior as "horrible," "terrible," and a "nightmare," because Female thought she was supposed to leave high school and go to college, and that did not happen. Female is continuing to attend the transition program at the same nonpublic school. This has made Female more and more depressed. She is pulling out her hair. According to Mother, Female is threatening to cut her head off; previously she said she wanted to cut her head open, take

out her brain, and fix it. Female accuses Mother of treating her like a baby because she thinks she should be in college but is still at the same school and living at home. Female says that she should be able to walk out of the house by herself, go to the store by herself, and get a car and drive to college. Because she can't do any of those things, Female has started to hit Mother and slam doors in the house more often. Female also barricades herself in her bedroom, she has started piling up things against the bedroom door, and she says that there are some people trying to get her and take her away. Mother testified this behavior started in September 2013. In addition, Female is talking to herself out loud more often and she doesn't seem to care who's listening to her.

25. When Male and Female return home from school, they are generally kept inside the house by Mother and their caregivers. Male goes out in the community, such as to a store, every couple of months. According to Mother, Male has almost been hit by a car on at least 10 occasions when he has been out in the community. When she recently took Male to a Food-4-Less store, Male almost got hit by a car in the parking lot. Inside the store, Male was running up and down the aisles. Mother testified she can't take Male to the park because he is "petrified" of dogs, so she will take him to a place without dogs, such as a walk center. Mother testified that Male is either inside the house or in the backyard. For additional recreation, Mother will take Male to her friend's house which has an eight foot fence because the friend's son is also autistic, or to her other friend's house in a gated community. According to Mother, Male must be accompanied by two adults, who can run, when he goes out in the community.

26. When Female is at home and acting out, her caregiver Lorraine will not allow her to come out of her bedroom. According to Mother, once Female gets out of her room, she tries to break out of the front door of the house and says she wants to drive and do whatever. When Female is in her bedroom, she is destroying the room. So, until she picks up everything and cleans up, she will not be allowed to come out of her room. There are no locks on Female's bedroom door. When Female acts up, she has to be held and physically restrained.

27. Cynthia Harris is claimants' service coordinator. Harris has discussed with Mother the possibility of having claimants attend an afterschool program specifically designed to provide supports and supervision for persons with behavioral issues. Mother has expressed to Harris that she is not interested in an afterschool program for claimants. Mother does not believe that an afterschool program will have sufficient supervision to keep her children safe.

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## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>5</sup> An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimants requested a fair hearing to appeal the Service Agency's decisions regarding their service requests and jurisdiction for this case was thus established. (Factual Findings 1-3.)

2. A regional center is required to provide services and supports for eligible consumers in accordance with the Lanterman Act. It is required to secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The services and supports to be provided to a consumer are determined in the process of formulating the IPP, on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP team participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

3. The Lanterman Act defines the services and supports to be provided to eligible consumers as "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." (§ 4512, subd. (b).)

4. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in such cases requires proof by a preponderance of the evidence, because no other law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.) In this case, claimants have the burden of proving by a preponderance of the evidence that they are entitled to the additional respite services they are requesting from the Service Agency.

5. In-home respite services are "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member," which are designed to, among other things, "relieve family members from the constantly demanding responsibility of caring for the client." (§ 4690.2, subd. (a).)

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<sup>5</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

6. In 2009, the Legislature enacted section 4686.5, which provides that a regional center shall not purchase more than 90 hours of in-home respite services in a quarter. (§ 4686.5, subd. (a)(2).) A regional center may grant an exemption to the 90-hour limit only 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. (§ 4686.5, subd. (a)(3).)

#### *Request for Additional Respite*

7. The Service Agency shall not be required to fund an additional 90 hours per month of respite for Female. Section 4686.5 limits the purchase of in-home respite to 90 hours per quarter (or 30 hours per month). The Service Agency is currently providing Female with 30 hours per month of respite, which is the maximum allowed under section 4686.5. The exemption provided under section 4686.5, subdivision (a)(3), does not apply in Female's case. It was not established that the additional respite hours requested are needed in order for Female to remain living in the family home with Mother. (Factual Findings 6-10, 15-17, 18-27; Legal Conclusions 9-10.)

8. The Service Agency shall not be required to fund an additional 60 hours per month of respite for Male. The Service Agency has determined that Male qualifies for an exemption under section 4686.5, as it is providing him with 60 hours per month of respite, which is above the statutory limit. It was not established that the additional respite hours requested are needed in order for Male to remain living in the family home with Mother. (Factual Findings 11-14, 15-17, 18-27; Legal Conclusions 9-10.)

9. Mother has requested the Service Agency to increase the respite hours to 120 hours per month for each claimant because of the increase in their behavioral challenges. Respite is not the appropriate service for addressing claimants' behavioral issues, which include aggression (physical and verbal), tantrums, and other non-compliant behavior. The purpose of respite is to provide Mother with a break from the constantly demanding responsibility of caring for claimants. There are natural breaks for Mother in the family's current situation. During weekdays, Mother receives a natural break from caring for claimants when they are in school for approximately five to six hours. Mother also receives a break from caring for claimants when claimants' regular caregivers (Lorraine, Sheila, Omar, and Richard) are working. In addition, at least once or twice per month, Lorraine takes Female to stay at her house in Highland over the weekend, which provides Mother with a break from caring for at least one of her children.

10. Male and Female have serious behavioral challenges. In the prior OAH Decisions, at least three administrative law judges, who are experienced in handling fair hearings under the Lanterman Act, have suggested to Mother that her two children (who are now adults) require behavior intervention services to address their long-term, individualized needs. (E.g., Exhs. 16, 17, and 18, and the summary of additional decisions contained therein.) The Service Agency has long contended that behavior intervention services are

needed to address claimants' needs. Mother has resisted efforts to implement behavior services for claimants. Although not part of the Order below, Mother should seriously consider working with the Service Agency, through the collaborative IPP process, in implementing behavior intervention services at home and/or allowing claimants to attend an afterschool program designed for supporting and supervising persons with behavioral issues. As shown by claimants' respective IEPs, their behaviors are better managed and controlled in the structured setting of a school classroom, and claimants can participate in activities with others. Similar types of structure can and should be attempted in the home setting and with claimants' caregivers.

#### *Request for Retroactive Reimbursement*

11. As established by Factual Finding 4, the three issues regarding Mother's claim for retroactive reimbursement for claimants' respite, extended year services, and specialized supervision services, were dismissed pursuant to the order granting, in part, the Service Agency's motion to dismiss. Claimants' appeal as to those issues shall be denied.

12. The order granting, in part, the Service Agency's motion to dismiss provides, in pertinent part, as follows:

The Lanterman Act does not specifically authorize retroactive reimbursement of services costs to families in the fair hearing context. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties and the process necessarily requires prior consideration and approval of any service or support provided to an individual client. Nevertheless, the absence of statutory authority is not necessarily dispositive of the issue of reimbursement because general principles of equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) Any award of reimbursement must be carefully considered to avoid the circumvention of the IPP process, because the IPP process is one of the cornerstones of the Lanterman Act. Thus, it may not be enough that a service was requested; if a regional center has not had adequate opportunity to engage in the IPP process, and to evaluate the request, it would most likely be improper to order reimbursement.

In this case, equitable considerations do not require the Service Agency to reimburse claimants' parents for out-of-home respite, specialized supervision, and [extended year] services,

for periods dating back to 2007 and 2009, and up to 2012. Claimants' parent contends she is entitled to reimbursement because the Service Agency did not provide the level of services she now, in retrospect, contends claimants were entitled to receive. There is no provision in the Lanterman Act that allows a consumer to make a such a retroactive claim for services or reimbursement. The IPP process contemplates that all services provided by a regional center to consumers are agreed to and authorized prior to the regional center's purchase of services. That agreement is evidenced by the IPP, which must be signed by the consumer and regional center before it is implemented and services purchased.

A regional center provides services to eligible consumers on a prospective basis. If there is a disagreement between the consumer and regional center regarding an IPP, the fair hearing process will resolve the disagreement. Any disagreements raised by a consumer must be brought contemporaneous to the operative IPP at the time of the disagreement. (E.g., § 4710.5, subd. (a) [fair hearing request must be filed within 30 days of notification of decision or act complained of].) Here, claimants' [*sic*] are raising disagreements about their services five to seven years after-the-fact. There are prior OAH decisions related to claimants' specialized supervision, respite, and [extended year] services for the periods 2007 or 2009 to 2012. Claimants should have raised any issues about the services for those periods in connection with the administrative hearings for those OAH decisions. As those OAH decisions are now final, claimants are bound by the findings and orders in those decisions relating to their respite, specialized supervision, and [extended year] services for the periods 2007/2009 to 2012.

(Exh. 33.)

#### ORDER

1. Claimants' request for an additional 90 hours per month of respite for claimant Female is denied.
2. Claimants' request for an additional 60 hours per month of respite for claimant Male is denied.
3. Claimants' request for retroactive reimbursement for 21 days of out-of-home respite for the years 2009 through 2012 is denied.

4. Claimants' request for retroactive reimbursement for extended year services for breaks when school was not in session for the years 2007 through 2012 is denied.

5. Claimants' request for retroactive reimbursement for 22 hours per month of specialized supervision for the years 2007 through 2012 is denied.

DATED: October 8, 2014

\_\_\_\_\_/s/\_\_\_\_\_  
ERLINDA G. SHRENGER  
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.