

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JACOB N.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2011120892

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on February 2, 2012, in Alhambra, California.

Jacob N.¹ (Claimant) was not present; he was represented by his father, Paul R. (Father). Margarita Duran, Supervisor, represented the Eastern Los Angeles Regional Center (Service Agency).

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on February 2, 2012.

ISSUE

Should the Service Agency pay Claimant for his cost of attending camp in December 2011, using funds from authorized respite hours?

¹ The surnames of Claimant and his family have been omitted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a seven-year-old male who is a consumer of the Service Agency based on his qualifying diagnosis of autism.

2. Claimant exhibits self-injurious behaviors including pinching the skin on his chest and hitting his head. He has daily episodes of tantrums, screaming, resisting direction, kicking, and hitting himself and others. Claimant also has medical issues that sometimes exacerbate his self-injurious behaviors. Claimant requires assistance with many aspects of daily living and is not toilet-trained.

3. According to Claimant's most recent Individual Program Plan (IPP), dated February 10, 2011, Claimant was authorized to receive 16 hours of respite per month. On October 18, 2011, Claimant requested an increase in respite from 16 hours per month to 30 hours per month. The Service Agency approved the increase for three to four months starting in approximately November 2011.²

4. Claimant attended camp from December 19, 2011 through December 23, 2011. Claimant's parents paid camp fees of \$110 per day, for a total amount of \$550. On November 16, 2011, Claimant's mother requested the Service Agency to allow Claimant's respite funds to be used to pay for the December 2011 camp.

5. By a Notice of Proposed Action dated November 29, 2011, the Service Agency notified Claimant that it denied the request for payment of 30 hours of respite funds for camp fees.

6. In a Fair Hearing Request dated December 1, 2011, Claimant appealed the denial.³

7. Claimant's parents have never used the 30 hours of respite. At hearing, Father explained that Claimant is very difficult to deal with, given his extreme self-injurious behaviors, in which Claimant makes himself bleed, and his lack of being toilet-trained. This has prevented Claimant's parents from finding a suitable respite worker and taking advantage of the authorized respite hours. The camp site is at the regular school site for Claimant, and the person who runs the camp is a trained therapist. Claimant's parents feel that the camp personnel know how to deal with Claimant and further feel that Claimant is safe while in camp. Therefore, the time that Claimant is in camp provides respite relief to parents.

² Neither party provided evidence of the exact number of months the increase in hours were to be provided. However, in the Notice of Proposed Action, the Service Agency referred to three to four months.

³ In the Fair Hearing Request, parents use the word, "reimbursement;" however, the Fair Hearing Request was made based on a denial of payment.

8. The Service Agency's position is that the budgetary cuts that caused changes in the law no longer allow the Service Agency to pay for camp,⁴ and that Claimant's authorized respite hours are supposed to be provided in Claimant's home.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is primarily to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509 and 4685),⁵ and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.)

3. Section 4418.6 provides that respite care may be provided as part of a family care program for the developmentally disabled. Respite care is defined as "...temporary and intermittent care provided for short periods of time." The purpose of respite, therefore, is generally to give some relief to a parent or caregiver from the ongoing burden of caring for a demanding family member or individual. Although respite is usually provided in the home, there was no limitation placed on the respite services authorized in Claimant's IPP.

4. The 30 hours of respite have been authorized for Claimant but unused. The very purpose of respite is to provide Claimant's parents relief from the demands of Claimant's continual care. The Service Agency is correct in determining that camp is not a service that it may fund in this case under the Lanterman Act. However, the funds in question are respite funds and by permitting those respite funds to go towards allowing Claimant's parents reprieve from Claimant's care, albeit while he is in camp, the funds are being used to serve their intended purpose. The Lanterman Act provides that services and

⁴ Although not cited by the Service Agency, Welfare and Institutions Code section 4648.5 expressly suspends regional center funding for camping services absent an exemption. Whether such an exemption exists was not an issue in this case as the funding was not denied on this statutory basis. In any event, although the respite took place while Claimant was at camp, it was nevertheless respite.

⁵ All further statutory references are to the Welfare and Institutions Code.

supports provided to Claimant are to be based on his individual needs. Claimant's self-injurious behaviors and lack of being toilet-trained are preventing Claimant's parents from finding a respite worker, and thereby obtaining the relief that they need. Parents are, however, able to obtain relief from Claimant's continual care while he is in camp. Under these circumstances, it is appropriate to order the Service Agency to pay to Claimant the cost of the amount of 30 hours of respite.

ORDER

Claimant's appeal is granted. Upon Claimant's presenting proof of amounts paid for the December 2011 camp, the Service Agency shall reimburse parents in an amount equal to the cost of 30 hours of respite care, not to exceed \$550.

DATED: February 16, 2012

JANKHANA DESAI
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.