

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

JESUS Z.,

Claimant,

v.

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

OAH No. 2012070234

A Proceeding Under the  
Lanterman Developmental Disabilities  
Services Act

**DECISION**

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles on August 6, 2012. South Central Los Angeles Regional Center (Service Agency) was represented by Johanna Arias-Bahatia, Fair Hearing Coordinator. Claimant Jesus Z. was present and represented by his mother, Lourdes O., who was provided with the services of an interpreter.

At the outset of the fair hearing, claimant Jesus Z., who is a 24-year-old non-conserved adult, requested that his mother represent him. The Service Agency did not object. The Administrative Law Judge granted claimant's request. Thereupon, the Service Agency presented Exhibits 1– 8 and the testimony of Esmeralda Valdez, Service Coordinator. Claimant testified and presented the testimony of his mother. The Service Agency's exhibits were admitted into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i).

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on August 6, 2012, and finds as follows:

**ISSUE**

The issue presented for decision is whether claimant should receive two additional hours per day of in-home respite.

## FACTUAL FINDINGS

1. Claimant Jesus Z. was born on September 9, 1987. He is a 24-year-old, non-conserved adult who was diagnosed with Autistic Disorder a number of years ago. Based on his diagnosis and developmental delays and/or disabilities, claimant is eligible for and receives regional center services from the Service Agency, including case management and 30 hours per month of in-home respite. Claimant is eligible for medical benefits under the Medi-Cal program.

2. On March 30, 2012, claimant had a triennial review of his Individual Program Plan (IPP). He and his mother met with the service coordinator and discussed his services and goals with respect to his health and safety, daily life skills, behaviors, school and work, and community and social life. During the triennial review conference, claimant's mother requested two more hours of in-home respite each day to care for or supervise her son while she looks after her own health needs.

3. In a Notice of Proposed Action dated May 30, 2012, the Service Agency denied claimant's request for an increase in respite hours. Subsequently, claimant's mother filed a Request for Fair Hearing to appeal the determination of the Service Agency. This matter ensued.

4. Claimant lives with his mother and younger sister in the family home in Los Angeles. He is in good health and has lost weight since he started exercising and changed his nutritional habits. He is able to talk and converse but is usually quiet in social situations and will not approach others. Claimant is independent in terms of his mobility in the community, for he is able to take public transportation to get to his jobs. Claimant is employed as a part-time security guard with Contemporary Services, Inc., which provides security and crowd control services at sporting events and concerts. His job is part-time because the sporting events and concerts for which his employer provides security services are not held every day and he selects to work at events and venues which he can get to by public transportation. In addition, claimant works part-time as a security guard at an apartment complex. From his earnings, claimant pays \$120 per month to his mother as rent for living in the family home.

5. Presently, claimant is not attending community college. He is pursuing a career in professional wrestling, which is his passion. He takes wrestling lessons, trains, and studies wrestling. Three or four times each year, claimant competes in wrestling matches. He takes public transportation to the wrestling matches near his home and travels by car to wrestling matches that are located in other cities or states, such as San Francisco, San Jose, Reno, and Las Vegas. Typically, for his out-of-town trips, claimant rents a car with friends and drives with them to the wrestling venue. He is usually reimbursed for his traveling expenses by the promoter of the wrestling event. Claimant's mother worries about his safety and welfare whenever he wrestles or travels out-of-town. She prefers that claimant return to community college so that

he can learn and develop his cognitive, communication, socialization, and independent living skills.

6. Because his mother works full-time and his sister attends community college, claimant is often at home by himself. He is able to perform self-care tasks and activities of daily living, such as dressing, bathing, and making or cooking a meal. He can make sandwiches for himself. When prompted, he takes out the trash, washes dishes, and occasionally cleans his room. However, claimant is not careful or tidy. He has left the stove on after cooking. He fails to cover containers of food and to put perishable food items in the refrigerator. Claimant is also impulsive. He has put trash in the refrigerator and removed the batteries from the smoke detecting devices. He spends too much money or uses all of the allowable minutes on his cellular telephone. He gets upset when his mother does not give him permission to go out with friends. On occasion, claimant leaves the home without telling his mother. Yet, claimant wants to continue living with his family and his mother wants him to stay there as well.

7. Claimant's mother works full-time as a counselor. She provides support and information to parents and families whose children and other family members are part of the mental health and probation systems. She makes home visits, helps families to navigate through governmental agencies, and refers them to community resources. Claimant's mother leaves home for work around 8:00 a.m. every week day and returns home at 6:00 p.m. When she comes home, she is often tired and stressed and becomes frustrated and upset that claimant has made a mess in the house and not cleaned up after himself. Moreover, claimant's mother has been diagnosed with high blood pressure, diabetes, and high cholesterol. Her doctor has recommended that she exercise every day. For exercise, she likes to walk to a park near her home and walk around the park. Her walking routine takes about two hours for her to complete.

8. In this appeal, claimant and his mother have requested additional respite hours so that he can receive supervision and assistance with his activities of daily living while he is at home alone. Specifically, claimant's mother has requested two additional respite hours per day so that she can have time for herself and to exercise for her health needs. Currently, the family uses the 30 hours of monthly respite funded by the Service Agency by arranging for a respite worker to come to the home on Saturdays and supervise claimant for approximately seven hours on that one weekend day.

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

## LEGAL CONCLUSIONS

1. Grounds do not exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request for more monthly hours of in-home respite, based on Findings 1 – 8 above.

2. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)<sup>1</sup>

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) The determination of which services or supports are necessary for each consumer must be made through the individual program planning process and may include physical and occupational therapy, recreation, behavior training, community integration services, daily living skills training, social skills training, and respite. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

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<sup>1</sup> Further section references are to the Welfare and Institutions Code unless indicated otherwise.

Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

In-home respite services are intermittent or regularly scheduled temporary non-medical care and supervision services provided for a consumer in his or her own home and who resides with a family member. (§ 4690.2, subd. (a).) Respite care is designed to assist family members in maintaining the consumer at home, provide appropriate care and supervision to ensure the consumer's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the consumer, and attend to the consumer's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members. (§ 4690.2, subd. (a)(1 - 4).)

Effective July 1, 2009, 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. (§ 4686.5, subd. (a)(1).) A regional center shall not purchase more than 90 hours of in-home respite services in a quarter for consumer. (§ 4686.5, subd. (a)(2).) A regional center may grant an exemption to this limit of 90 hours per quarter, 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).)

3. Discussion—In the present appeal, the evidence did not show that there was an extraordinary event that has impacted the ability of claimant's family to meet his care and supervision needs. The question then is whether, under section 4686.5, subdivision (a)(3), claimant qualifies for an exemption to receive respite hours in addition to the 30 hours per month, or 90 hours per quarter, that he currently receives, because of the intensity of his care and supervision needs and because additional respite is needed so that his family can maintain him at home.

Here, the evidence did not demonstrate that claimant presents with problematic or challenging behaviors or that his family expends an inordinate amount of time and energy looking after his needs and supervising him. The evidence did not show that there is a chance or likelihood that his family cannot keep him at home due to his care and supervision needs. Rather, claimant is fairly independent at home and in the community. Because his mother works and his sister attends community college, claimant spends a lot of time alone at home where he is able to care for himself, including making his own simple meals. Outside the home, he is able to take public transportation to his jobs. He works at security jobs at an apartment building and at different sporting and musical event venues. When she comes home

after working all day, claimant's mother is stressed and often becomes displeased when she finds that her son has not cleaned up after himself at home. On occasion, claimant has left the stove on after cooking. It was not shown, however, that claimant frequently or regularly fails to turn off the stove after using the kitchen appliance or engages in destructive or dangerous behaviors at home.

As such, the fact that claimant does not maintain the family household in tidy condition while he is at home by himself does not demonstrate that he has such intense care and supervision needs that his family requires additional respite to keep him at home. Finally, that claimant's mother wants two additional respite hours each day to allow her to exercise by walking to meet her own health needs does not constitute a valid reason to grant an exemption for additional respite hours. Because the evidence did not show that the intensity of claimant's care and supervision needs are such that additional respite is necessary to maintain him in the family home, claimant does not qualify for an exemption to receive additional respite hours under section 4686.5, subdivision (a)(3). Claimant will be limited to 30 hours of respite per month. He should strive to help his mother to maintain the family home and to perform household chores so that she can get her exercise every day.

Wherefore, the Administrative Law Judge makes the following Order:

#### ORDER

The appeal of claimant Jesus Z. is denied. The determination of the South Central Los Angeles Regional Center to deny his request for additional hours each month of in-home respite is affirmed.

Dated: August 17, 2012

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Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision and both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.