BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANTS 1-3 vs. EASTERN LOS ANGELES REGIONAL CENTER, Service Agency.	OAH No. 2015030025 OAH No. 2015030028 OAH No. 2015030030

DECISION

These consolidated matters were heard by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 8, 2015, in Alhambra, California.

Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by its Fair Hearing Coordinator, Judy Perez. Claimants, who were not present at the hearing, were represented by their Father.[1] Claimants' Mother was also present. A Vietnamese language interpreter provided services to the parents during the hearing.

Father filed three identical fair hearing requests on behalf of Claimants. All three matters were heard concurrently, evidence was jointly received for all three cases, and the parties agreed that a single decision shall be issued for all three matters.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 8, 2015.

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[1] Titles instead of names are used to protect Claimants' privacy.

ISSUES

1. Should ELARC be required to increase in-home respite hours for Claimants 1 and 3 on December 22, 2014, when Claimant 2 was in the emergency room?

2. Should ELARC be required to increase in-home respite hours for Claimants 1-3 during the period of December 19, 2014, through January 5, 2015 ("winter break")?

EVIDENCE

Documentary: Service Agency exhibits 1-8; Claimants' exhibits A-D.

Testimonial: Christina Han and Claimants' mother, father, and uncle.

FACTUAL FINDINGS

1. Claimants 1-3 are siblings and consumers of ELARC. They are eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.

2. Claimant 1, an eleven-year-old male, is the twin brother of Claimant 2. Claimant 1 has been diagnosed with Autism and Borderline Intellectual Functioning. He is ambulatory, and his vision and hearing are within normal limits. He is toilet trained, but needs assistance with wiping. He is also able to complete some personal hygiene tasks, but needs help bathing, dressing and tying his shoes. Claimant 1 is easily distracted and demonstrates problem behaviors including resistance to transitions, elopement, and tantrums. He requires close supervision while in the community in order to ensure his safety. The Service Agency funds social skills training for Claimant 1.

3. Claimant 2, an eleven-year-old female, is the twin sister of Claimant 1. She has been diagnosed with autism spectrum disorder and nocturnal enuresis (nighttime bed wetting). She is ambulatory, and her vision and hearing are within normal limits. Claimant 2 is toilet trained, but needs help with wiping. She also needs assistance with personal hygiene, bathing, dressing and tying her shoes. Claimant 2 has no safety awareness and requires constant supervision to avoid injury. The Service Agency funds social skills training for Claimant 2.

4(a). Claimant 3 is an eight-year-old boy. He has a twin sister who is not a regional center consumer. In addition to autism spectrum disorder, Claimant 3 has

been diagnosed with short-bowel syndrome, hepatosplenomegaly,[2] left hydronephrosis,[3] and cholestatic liver disease. He has several food allergies which require his mother to prepare special meals for him. He also has a history of feeding difficulties, including vomiting, spitting out solid foods and frequent bouts of diarrhea. Claimant is ambulatory and his vision and hearing are within normal limits. He is hyperactive and demonstrates problem behaviors including resistance to transitions, elopement, tantrums and self-stimulatory behaviors. He is totally dependent on others for his self-help needs and still wears diapers. The Service Agency funds social skills training as well as behavioral services to address his behavioral issues and self-help skills.

4(b). Claimant 3 provides round-the-clock challenges for his parents. He runs around frequently, which requires a caregiver to follow him since he is unsafe to be left unattended. He requires regular diaper changes, even at night, particularly when he is suffering from excessive diarrhea. Claimant 3 will sometimes wake up screaming in the middle of the night which awakens his siblings. This requires a great deal of time and effort to soothe the children and get them to return to bed.

5. Claimants 1-3 live at home with Mother, Father and their eight-year-old sister, within ELARC's catchment area. Father has a disabling back injury. Because she is caring for Claimants, Mother has delayed having surgery to remove a brain tumor. Mother and Father are both exhausted and overwhelmed from the demands of their four children, three of whom have extraordinary needs. As set out in each Claimant's Individual Program Plan (IPP), ELARC provides 30 hours of in-home respite services per month to each Claimant. This is the maximum amount under controlling statutes, absent a finding that more respite services are needed to maintain the child in the home, or to cope with an extraordinary event that has impacted the family's ability to care for the child. Claimants' uncle is the respite provider. Claimants' mother and father use the respite time to run errands, go to doctor's appointments, or relax.

6. Claimants' parents requested an increase of respite hours for December 22, 2014, and during the period of the children's winter break. ELARC issued a Notice of Proposed Action (NOPA) on February 3, 2015, denying Claimants' request. On February 11, 2015, Father filed a Fair Hearing Request (FHR) on behalf of each Claimant. All jurisdictional requirements have been met.

7(a). The stated reasons for the proposed action were:

> 1) A request for an increase of In-home respite hours due to [Claimant 2's] attendance to the emergency room on 12/22/14 is

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[2] Simultaneous enlargement of both the liver and the spleen.

[3] Swelling of the kidney when urine flow is obstructed in any of part of the urinary tract.

> denied. You've informed Regional Center that [Mother] was at home with [Uncle] taking care of [Claimant 1 and 3], while you took [Claimant 2] to the emergency room. Due to parental responsibility and the utilization of natural supports, your request is not justified and therefore denied.
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> 2) A request for increase of In-home respite hours during the period of 12/19/14-01/05/15 was denied due to parental responsibility and ability to utilize generic resources. [Claimants' parents] were informed by the school district and are well aware that the children would be home from school 12/19/14-01/05/15, thus; providing ample amount of time to explore low cost and/or free camps and other resources to assist with children during winter school break. Parents have been informed in their native language and asked to plan and prepare for school breaks year after year.

(Service Agency Exhibit 1.)

7(b). The Service Agency cited Welfare and Institutions Code, sections 4686.5, subdivision (a), 4646, subdivision (a), and 4646.4, subdivision (a), as the legal authority for its proposed action. (Service Agency Exhibit 1.)

8(a). At the fair hearing, Claimants' mother, father, and uncle testified credibly on their behalf.

8(b). Father went to the emergency room with Claimant 2 when she suffered a severe asthma attack on December 22, 2014, while Mother and Uncle stayed home to care for Claimants 1 and 3. During the winter break, Mother was extremely busy caring for the children 24 hours per day and she needs time to relax. It takes over an hour to feed Claimant 3 at each meal, and his diaper needs frequent changing. Claimants are very active and Mother and Father have to be alert at all times to keep them under control and to ensure their safety.

8(c). When Mother needs respite time, Father watches the children, and Uncle (who is their respite worker) frequently helps. Claimants' parents document less respite hours than Uncle actually provides. Father explained that, as a family member, often Uncle does not want to accept the money offered for his help and that he "only receives a token." Claimants' parents did not explain why Mother and Father, with Uncle's offered assistance, could not collectively provide each other respite time during the winter break. Nor did they explain why an increase in respite hours was needed on December 22, 2014, when Mother and Uncle stayed home with Claimants 1 and 3 while Claimant 2 was in the emergency room with Father.

9. Claimants' parents did not establish how many hours of respite care Uncle actually provided while Claimant 2 was in the emergency room and during the winter break. Father paid Uncle $285 in cash for winter break and $100 in cash for the emergency room visit. Claimants' parents did not establish how these amounts were calculated or whether these amounts included, or were in addition to, the 30 hours each per month of respite to which the children were already entitled.

10. Mother testified that she has had a tumor in her head since 2004, and will eventually need to undergo surgery. However, she has no plans to schedule surgery at this time because her children need her daily care. However, Mother's tumor and eventual need for surgery were not among Claimants' asserted reasons for the requested increase of in-home respite hours for the winter break, nor does this situation (at this time) constitute an "extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer."

11(a). At the fair hearing, the Service Agency noted that additional in-home respite hours were denied on December 22, 2014, when Mother and Uncle were at home with Claimants 1 and 3, while Father was in the emergency room with Claimant 2. The Service Agency deemed that the request for increased respite care hours on that date was unjustified because Mother and Father have parental responsibility to care for their minor children and because, on that date, they were able to utilize Mother and Uncle, as natural supports.

11(b). The Service Agency denied the request for increased respite hours during winter break because Claimants' parents have parental responsibility, as do parents of typically-developing peers, to care for their minor children and to utilize the generic resources available to them in providing care and activities for their children during the winter break. The Service Agency provided Claimants' parents with a list of generic resources for activities during the winter break. Additionally, the Service Agency noted that Uncle and other family members could provide natural support to help with Claimants' parents' needed respite. The Service Agency pointed out that 30 hours per month of in-home respite is the maximum allowed by law, and that winter break is not an "extraordinary event" which would meet the statutory exception.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimants' appeal of the Service Agency's denial of additional in-home respite hours for December 22, 2014, and for the winter break. (Factual Findings 1 through 11 (b).)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimants timely requested a

hearing on receipt of the Service Agency's denial of funding additional in-home respite hours for December 22, 2014, and for the winter break, and therefore, jurisdiction for this appeal was established.

3. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

4. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Specifically, in a case where a party is seeking funding not previously provided or approved by a regional center, that party bears the burden of proof. In this case, Claimants made a new request for the Service Agency to fund additional in-home respite hours for December 22, 2014, and during the winter break. Claimants therefore bear the burden of proof. They have failed to meet this burden.

5. Welfare and Institutions Code section 4686.5 provides:

> (a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:
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> (1) A regional center may only purchase respite hours when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.
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> (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.
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> (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.
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> [¶] . . . [¶]
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> (4) A regional center shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of

> his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both.
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> (5) A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family service plan (IFSP).
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> (b) For consumer receiving respite services on July 1, 2009, as part of their IPP or IFSP, subdivision (a) shall apply on August 1, 2009.

6(a). Pursuant to Welfare and Institutions Code section 4686.5, Claimants' respite may not exceed 90 hours per quarter of in-home respite.

6(b). Claimants are seeking additional in-home respite hours, which may be allowed if an exemption to the statutory limitation is granted. However, Claimants' parents have not established that an exemption must be granted. The evidence did not establish that "the intensity of the consumer's care and supervision needs [is] such that additional respite is necessary to maintain the consumer in the family home," or that "there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer."

7. Given the foregoing, ELARC appropriately denied funding Claimants' additional in-home respite hours for December 22, 2014, and during the winter break, and no reimbursement is required.

ORDER

1. Eastern Los Angeles Regional Center's denial of funding for Claimants' additional in-home respite hours for December 22, 2014 is upheld, and Claimants' appeal is denied.

2. Eastern Los Angeles Regional Center's denial of funding for Claimants' additional in-home respite hours during the winter break (from December 19, 2014, through January 5, 2015) is upheld, and Claimants' appeal is denied.

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3. Eastern Los Angeles Regional Center shall not be required to reimburse Claimants for any monies paid in excess of the amount for respite hours to which Claimants were already entitled.

DATED: April 21, 2015

/s/

LAURIE R. PEARLMAN
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.