

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2015110347

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Alhambra, California on December 17, 2015.

Margarita Duran, Residential Services Supervisor, represented Eastern Los Angeles Regional Center (ELARC).

Claimant's mother represented claimant.¹

Ingrid Pan provided Mandarin interpreter services as needed during the hearing.

The matter was submitted on December 17, 2015.

ISSUE

Shall ELARC provide claimant additional personal assistance services, so that an aide can assist his mother with his supervision and care for two hours per day, plus additional hours on non-school weekdays and medical appointment days?

¹ The names of claimant and his mother are omitted to protect their privacy.

EVIDENCE RELIED UPON

Documents: ELARC Exhibits 1 through 4, 6 through 9; Claimant's Exhibits A through L.

Testimony: Margarita Duran; claimant's mother.

FACTUAL FINDINGS

1. Claimant is an intellectually disabled 10-year-old boy with cerebral palsy, who is eligible for and receives services from ELARC under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.)² Those services include, among other things, 36 hours per month of ELARC-funded personal assistance services, as specified in claimant's individual program plan (IPP). (See §§ 4512, subd. (b), 4646, subd. (a) [describing IPP].) He uses those hours to have an aide with him to help his mother, his primary caregiver, with his supervision and care.

2. On a date not established, claimant's mother asked ELARC to increase claimant's personal assistance service hours. The specifics of the request are unclear, but ELARC interpreted it as seeking 60.83 hours per month.

3. ELARC denied the request on October 22, 2015. On October 28, 2015, claimant submitted a Fair Hearing Request, seeking two hours per day of personal assistance services each morning, plus four extra hours per day on non-school weekdays (e.g., school holidays), and more hours as needed for medical appointments. At the hearing, claimant asked for a total of eight hours per day on non-school weekdays instead of a total of six. ELARC did not object to the modification. The added hours would allow an aide to be with claimant more often to help his mother with his supervision, feeding, hygiene, and other daily living activities.

4. Claimant has intellectual, physical, and adaptive deficits, and needs constant care and supervision. He was born with hydrocephalus, and has a shunt that requires continuous monitoring to drain excess cerebrospinal fluid from his brain. He has scoliosis and other orthopedic conditions, needs a walker to walk, and also uses a wheelchair, but is unable to move it himself. He has food allergies and digestive issues that require a special diet and five meals a day. He is not toilet trained, and soils his bedding or clothes at least once a week. He has impaired vision, and needs help with all daily living activities due to his intellectual and motor disabilities. He lacks safety awareness and has frequent emotional outbursts and tantrums, during which he sometimes exhibits aggressive or self-injurious behavior, such as hitting his mother or biting himself. Thus far, his limited strength has prevented serious injury.

² Undesignated statutory references are to the Welfare and Institutions Code.

5. According to claimant's mother, she needs an aide with her for two hours each morning to help with claimant's supervision and care, and for longer on non-school weekdays and medical appointment days. Claimant and his mother live alone, and she needs more assistance to avoid being overwhelmed. She would still be his primary caregiver if the request is granted, but the additional personal assistance hours would help her with that care. The current 36 hours per month covers 18 days of two-hour shifts, and she has been paying herself for more assistance on other mornings. This has been a financial strain.

6. In support of claimant's request, David Chandler, a respite worker, wrote that claimant requires two to one adult support during the day for many tasks, such as administering medication, hygiene, transportation, and effective transitions (e.g., separating him from preferred objects). Another worker, Vanessa Saldana, wrote a note describing a day in August 2015 when two to one support was necessary for various tasks around the house. One of claimant's doctors also wrote a brief letter stating two to one care was required to handle his autism³ and severe behavioral problems, which were exhausting his mother. A speech and language pathologist also recommended two to one support.

7. In response, ELARC asserts that 36 hours per month is enough, given the other services claimant receives or could receive, and the number of hours he is asleep or at school. ELARC also funds 30 hours per month of in-home respite services, and 27.5 hours per week of discrete trial training (DTT) behavioral therapy. ELARC has also offered to fund 21 days per year of out-of-home respite, but claimant's mother has refused, due in part to her safety concerns about the proposed facilities. Claimant also receives funding from other agencies for four hours per day of home health aide support, and 283 hours per month of in-home supportive services (IHSS). Claimant's mother is his IHSS worker. He is in school for about 6.25 hours per weekday when it is in session, and sleeps about eight hours per night.

8. Some of the goals in claimant's IPP are living with his family as long as possible, maintaining good health, receiving assistance for his self-help needs, and being closely supervised during his waking hours to ensure safety. (Exhibit 3.) Claimant asserts that the extra personal assistance hours will further those goals. ELARC suggests that claimant's mother relinquish some of her IHSS hours (for which she is paid) and pay an aide with the IHSS funds "to provide mother with rest and allow for the 2:1 ratio that mother request[s]." (Exhibit 1.)

9. The hearing revealed a partial agreement about personal assistance services on non-school weekdays. Margarita Duran stated that ELARC would agree to fund six hours of personal assistance services on those days.

³ Claimant's IPP does not mention autism.

LEGAL CONCLUSIONS

1. Disputes about the rights of disabled persons to receive services under the Lanterman Act are decided under the fair hearing and appeal procedures in the Act. (§ 4706, subd. (a).) Here, the dispute is whether ELARC should fund more personal assistance services hours for claimant. Claimant has the burden of proving that he should receive more funding (see *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]), and must do so by a preponderance of the evidence. (Evid. Code, § 115 [preponderance of evidence standard applies unless another law or statute provides otherwise].)

2. The determination of claimant's services and supports under the Lanterman Act "shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (§ 4512, subd. (b).) "It is the . . . intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (§ 4646, subd. (a).)

3. Claimant has met his burden of proving he is entitled to two hours per day of personal assistance services. He has significant intellectual, physical, and adaptive skills deficits that often require two to one adult support. (See Factual Finding 6.) ELARC funding for an aide to be with him and his mother for two hours per day would help address those deficits and fulfill his IPP goals, and would alleviate a financial strain on his family. Claimant's overall services and supports are not so great as to justify denying this increase in personal assistance service hours.

4. ELARC's suggestion that claimant's mother instead relinquish some of her IHSS hours and pay an aide with the IHSS funds "to provide [her] with rest and allow for [a] 2:1 [support] ratio" is unpersuasive. Doing so would not provide her with rest, as she would still be one of the two people caring for and supervising her son. In addition, claimant's IHSS hours assume the adequacy of one to one support for his care and supervision. Claimant's mother should not have to pay for needed two to one support using IHSS money she receives for one to one support.

5. For non-school weekdays, claimant requests an extra six hours so that he receives a total of eight hours per day, while ELARC proposes to provide a total of six. On this issue, claimant has not proven he should receive more than what ELARC is offering. It was not established that claimant needs two to one support for every waking moment, such that he needs both his mother and an aide for each hour he is home on non-school weekdays. ELARC's agreement to fund six hours of personal assistance services on such days is reasonable.

6. Claimant also requests an order directing ELARC to fund additional personal assistance hours as needed to provide two to one support for medical appointments. Claimant did not prove that such an order is warranted at this time. Requests for extra hours for future medical appointments are better addressed individually, or for a discrete time period (e.g., monthly or quarterly). If it appears that one or more medical appointments requires extra personal assistance hours, claimant can request the hours from his ELARC Service Coordinator, and ELARC can evaluate the justification for that request.

ORDER

Claimant's appeal is granted in part and denied in part. ELARC shall fund two hours per day of personal assistance services for claimant, except on non-school weekdays, when it shall fund six hours per day. The appeal is denied in all other respects.

DATE: December 31, 2015

/s/
THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.