

**Appendix D: Sample Claimant's Hearing Brief**

Name  
Address  
City, CA Zip Code  
Telephone Number  
Email Address

Claimant's Authorized Representative

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OF CALIFORNIA**

<u>John Smith,</u>	)	Case No. _____
Claimant,	)	
	)	CLAIMANT'S HEARING BRIEF
v.	)	
	)	
_____	)	
REGIONAL CENTER,	)	Date: _____
Respondent.	)	Time: _____

**I. INTRODUCTION**

Claimant, John Smith (“John”), through his authorized representative, appeals the service agency’s denial of his request for 40 hours of respite services per month. John will demonstrate his need for these services under Welf. & Inst. Code section 4690.2(a)(1)-(4).

**II. STATEMENT OF FACTS**

John is 11 years old. He lives with his mother, father, younger brother, and sister. We want John to continue to live with us. His father works full time. John has autism and mild intellectual disability. John’s disability limits his functioning in the areas of teeth brushing, face washing,

hair brushing, bathing, changing his clothes, and preparing simple snacks. Compared to other boys the same age without a disability, John cannot independently do self-care tasks. He is functioning at a lower level than his same-age peers. He needs constant verbal and physical reminders and prompts. He is unable to finish many of his self-care tasks. John requires assistance with brushing his teeth. When he takes a bath, I must turn on the water and adjust the temperature, because he does not understand how to control the water temperature. During bath time, he just plays, so he requires many verbal and physical directions to wash himself. He needs his hair and body washed because he cannot do it independently.

Because of his disability and functioning deficits, a typical weekday for John is as follows. On school days, John gets up at around 6 a.m. He requires many reminders to wake up for school. I have to tell him to go to the bathroom and wash his face. I have to adjust the water temperature because he will make it too hot or too cold. I prompt him to brush his teeth. He will grab his toothbrush but squeeze on too much toothpaste and will get toothpaste all over the bathroom that must be cleaned up. Sometimes he will not put toothpaste on the brush, so after many prompts I must do it for him. He will only brush his four front teeth for a few seconds. Almost daily, even after repeated instructions, I must physically brush his teeth.

He requires help with dressing. He cannot choose clothes appropriate for the weather. He will not put on socks unless he is told to. He cannot tie his shoes, even though we have taught him. He cannot fasten buttons or zippers and requires help. While he is dressing, he needs constant prompts or he will just sit on his bed and not dress.

He is unable to prepare simple snacks or reheat any food. Due to his disabilities, he does not eat the same food as the rest of the family. I must always prepare something different for him. I have tried to teach him to reheat food in the microwave, but he will not press the buttons or enter the time correctly. He has burned food in the microwave.

Without this help, John cannot wake up, get ready for school and have breakfast. The time spent in providing the assistance and services described amounts to approximately 7.5 hours per week on school days.

I drive John and his brother and sister to and from school. John returns home around 2:30 p.m. He is very hungry when he gets home from school. I prepare a snack for him and his brother and sister. After snack, John requires help to organize and start his homework. John receives ABA therapy for 1 hour every day after school, Monday through Friday. During this time, I must be present and participate. After ABA therapy, I start cooking dinner for John and the family. During this time, I am also helping John's younger brother and sister.

John eats dinner around 7 p.m. Each day his dinner is different because he will not eat the same food as the rest of the family. His food must also be cut for him because he cannot use a knife and fork. After dinner, I clean up and wash dishes. All of this takes 3.0 hours a week.

In the evening, John likes to watch TV or play video games but he is limited to only one hour. During this time, he usually has problems getting along with his siblings. He is constantly changing channels on the TV or switching video games or will want to watch the same show over and over. He insists on routines and gets very upset when his siblings change whatever he is watching. After an hour of TV, he will wander around the house touching and grabbing things and making a mess. He does not return the items he grabs. After watching TV, it is time to get ready for bed.

I ask John to get ready for bed at 8:00 p.m. Getting ready for bed is a long process, requiring lots of my help. John does not like to take baths and it is a challenge every night. He will not get his pajamas and go into the bathroom even after many prompts. He bathes every night. I must be next to him and help him with every step. The water temperature must be adjusted for him. When bathing, he is given step-by-step instruction from washing his hair to washing his body. John cannot wash his hair because he does not like the shampoo on his hands and will try to rinse it off. When he does try to wash his hair, he only washes the top of his head. John

needs complete physical assistance at the end of every bath to make sure he has washed properly. He needs constant verbal direction to dry his body and put on his pajamas.

Around 9 p.m., John may lie in his bed, but will frequently get up and try to play a video game or go into the living room to watch TV. This will go on until I sit with him in his room until he falls asleep, usually at 10 p.m.

John receives 80 hours per month of In-Home Supportive Services hours (IHSS). This is almost 3 hours per day. The total time I spend in providing necessary care and supervision is about 8.5 hours. After deducting the IHSS hours, he requires 5.5 hours of my help per school day.

During the weekend, John continues to need help to waking up, getting ready, and eating. John's brother and sister have different activities on the weekend. His brother plays sports and his sister has dance class. John resists going to any of their activities. Often while at their events, he will try to wander away or asks over and over when we are leaving. It makes it hard to participate and watch my other children's activities. John's father works a lot and cannot take the other children to their events.

It is hard to take John to the mall or store. He does not like crowded places and will tantrum and cry. He also wanders away and gets easily distracted. We cannot eat at a restaurant as a family because he does not like the loud noises in the restaurant. He will cry, tantrum, and hide under

the table. We have not been able to visit family because John does not want to visit. He will not play with his cousins. He will whine, cry, and insist on going home. He will not eat the food cooked by other family members and will make faces or inappropriate comments. The weekends are even more difficult since he is not in school and home all day and does not like to leave the house. Each weekend, John needs 12 hours each day for his care and supervision. After deducting the 3 hours of IHSS, he requires 9 hours per weekend day.

Due to his disability, I provide 51.5 hours in a typical week to meet John's needs. This time is in addition to all the other necessary activities that John's father and I must do to maintain our family. John's father works 5 to 6 days per week and gets home from work very late. John's father is the only source of income and must rest when he is not working. I must care for John and his siblings. I must clean the house, do laundry, grocery shopping, cook for the family, and take my other children to activities.

John requires 40 hours each month of someone providing respite care to meet the needs of our family. There are 168 hours in a week. Each weekday I provide 5.5 hours of John's care and supervision. Each weekend, I provide 9 hours of care and supervision. This totals 51.5 hours per week, but I am only requesting 10 hours per week of respite care.

### **III. FACTUAL CONCLUSION**

As John's parents, we must provide for John's care and supervision. We must meet the needs and maintain our entire family.

#### **IV. APPLICABLE LAW**

The Lanterman Act is intended to empower individuals with developmental disabilities and, if appropriate, their parents to make choices in all life areas. Welfare and Institutions Code Section (WIC Sec.) 4501. Choices include opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in the community. *Id.* In the provision of services, consumers and their families, if appropriate, should participate in decisions affecting their own lives, including where and with whom they live. *Id.* The contributions made by parents to support their children with developmental disabilities are important and those relationships should be respected and fostered, to the maximum extent feasible, so consumers and their families can build circles of support within the community. *Id.*

One of the most important rights of individuals with developmental disabilities in California is the right to make choices in their own lives, including, where and with whom they live. WIC Sec. 4502(b)(10)

The right of individuals with developmental disabilities to make choices in their own lives requires regional centers to respect the choices made by the individual or if appropriate, their parents. WIC Sec. 4502.1

The Individual Program Plan (IPP) process determines the services an individual needs and the regional center will authorize. WIC Sec. 4646. The IPP must be centered on the individual and his/her family and consider their needs and preferences. WIC Sec. 4646(a). IPP teams must give the highest preference to services and supports that allow individuals with developmental disabilities to live as independently as possible in the community. WIC Sec. 4648(a)(1).

The Lanterman Act is firm about supporting the families of minor children living at home. Regional centers must give a high priority to developing and expanding services and supports designed to assist families caring for their children at home, when that is the preferred objective in the IPP, and this assistance may include respite for parents. WIC Sec. 4648(a)(1). The IPP must include a family plan that describes the supports and services to successfully maintain the child at home. WIC Sec. 4648(a)(2). The IPP team must give the highest preference to those services and supports which would allow children with developmental disabilities to live with their families. WIC Sec. 4648(a)(1). Regional centers must consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child. WIC Sec. 4685(c)(2).



Respite may be included in an IPP based on a determination of the consumer's needs and preferences, or if appropriate, the consumer's family. WIC Sec. 4512(b).

Respite services are designed to:

1. assist family members in maintaining the consumer at home;
2. provide appropriate care and supervision to ensure the consumer's safety in the absence of family members;
3. relieve family members from the constantly demanding responsibility of caring for the consumer; and
4. attend to the consumer's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines ordinarily performed by family members. WIC Sec. 4690.2(a)

## **V. ARGUMENT**

The regional center's denial of 40 hours of respite per month ignores John and his family's needs and violates the Lanterman Act.

The regional center's denial ignores John's needs and the amount of respite care he requires. The regional center's offer is inadequate because John's father and I struggle to meet our own basic personal, economic, and physical needs and the needs of other family members.

The regional center's denial violates the Lanterman Act because it does not honor John's and his family's choice that he live at home. The regional center's denial does not empower John and his family. Without

the appropriate number of respite hours, John's relationships with and ability to continue to reside with his family in his home community is at risk.

The regional center's offer does not give a high priority to services and supports designed to assist our family in caring for John at home. They have not considered every possible way to assist our family in maintaining John at home consistent with WIC Sec. 4685(c). Because of John's significant, constant care and supervision needs and what little time remains for our own needs and other responsibilities, the regional center must be ordered to provide the requested respite care services.

**VI. CONCLUSION**

For all these reasons, John requests that the regional center be ordered to provide 40 hours of respite care services per month consistent with his and his family's needs and the requirements of the Lanterman Act.

Dated: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
Authorized Representative