Cheat Sheet for Non-Lawyers

In Home Supportive Services (IHSS) & Exhaustion of Generic Resources

For use by people with intellectual and developmental disabilities and their supporters to respond to regional center service denials

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Disclaimer: This document is general information, not legal advice. It is based in part on examples seen in a small set of California Office of Administrative Hearings (OAH) decisions. This guide is based on the law and the administrative hearing decisions interpreting the law at the time we write them. We try to update our materials; however, laws are regularly changing. If you want up-to-date information about the law, please visit Disability Rights California at www.disabilityrightsca.org or another legal source.

Sections

1. Introduction

Regional center service disputes often involve a few common rules, and those rules can overlap. A service denial may involve questions about IPP goals and disability-related need; whether another system is supported to provide the service first; cost-effectiveness; parental responsibility; or other limits on regional center funding. This guide does not try to cover every kind of service dispute. Instead, it focuses on service denials on the basis that someone receives or should receive a service from a different program called In Home Supportive Services (IHSS) and explains how that issue tends to come up across different kinds of services.

For a denial of a new service or support, the person appealing has to prove that the requested service is needed and should be funded. For a reduction, change, or termination of an existing service, the regional center is the one trying to change the current services, so the regional center usually has to prove that the service should be reduced, changed, or stopped.

2. Summary of Topic

In-Home Supportive Services, or IHSS, is a California program that provides in-home help with daily activities for eligible people who are aged, blind, or disabled. Because IHSS is a generic resource, regional centers often require people to apply for and use IHSS before the regional center will fund overlapping services such as personal assistance, supervision, or some forms of in-home support. But having IHSS does not mean a regional center should automatically deny a request for services. The key question is whether IHSS actually covers the specific need. A regional center should not rely on IHSS to deny a service if the person is not eligible for IHSS, IHSS does not cover the task, the authorized IHSS hours are not enough, or the requested regional center service is different from what IHSS provides.

3. What does the law say about this topic

Two Lanterman Act rules often come up when a regional center says IHSS should pay first:

Welfare and Institutions Code section 4648(a)(8) says regional center funds may not be used to replace the budget of a public agency that already has a legal responsibility to serve the general public.	*Welfare and Institutions Code section 4659* says regional centers must identify and pursue other possible sources of funding and generally may not purchase a service that would otherwise be available from IHSS or another listed program when the person meets the criteria but chooses not to pursue that service.

Together, these rules make the regional center the payer of last resort for services that are actually available from another source. But the rule is not absolute. If IHSS is unavailable, inadequate, delayed, or does not cover the person's specific need, the regional center may still be responsible for funding the service.

4. Common reasons for regional center denials in these cases

Failure to exhaust IHSS

Requested services duplicate IHSS

Lack of evidence proving requested services are necessary

5. What kind of facts and evidence help people win their cases?

1) First, evidence showing what IHSS covers and what it does not cover helps claimants win. Claimants strengthen their cases by identifying the tasks IHSS performs and distinguishing them from the services they are requesting. For example, a claimant might present evidence to show that their current IHSS caregivers lack the specialized training required to handle their specific needs.

Case Spotlight	
Showing that IHSS does not address a claimant's needs can lead to approval *(VMRC, OAH Nos. 2024040962 and 2024040963).*	Claimants requested additional hours of personal assistance (PA) services. The regional center denied the request, arguing that PA services duplicated IHSS and Waiver Personal Care Services (WPCS). Claimants won by using testimony from their service coordinator to prove that IHSS workers could not provide the level of care needed to address behavioral issues like anger and physical aggression.

2) Second, evidence showing that IHSS hours are insufficient helps claimants win. Claimants strengthen their cases by showing that the number and/or distribution of hours do not provide enough help to meet their needs. For example, a claimant might bring a schedule to highlight hours where their caregiver is unavailable.

3) Third, coordinated testimony from insightful witnesses helps claimants win. Claimants strengthen their cases by providing testimony that explains what IHSS providers do, identifies specific gaps in IHSS coverage, and connects those gaps to the need for the requested services. Key witnesses may include IHSS caregivers, family members who live with a claimant, service providers, and medical professionals.

Case Spotlight

Detailed documentation and testimony can show that existing IHSS hours are insufficient *(ACRC, OAH No. 2022120075).*

Claimant requested an additional 30 hours per month of respite, arguing that the 40 monthly hours she was already receiving did not provide adequate break time. Claimant's mother and an independent facilitator testified about claimant's needs, the limited amount of rest available to claimant's caregivers, and the lack of natural supports. Claimant also presented a letter from her physician recommending an increase in hours. In denying the appeal, the hearing officer noted that her case would have been much stronger if she had offered persuasive evidence of a temporary increase in needs, or an extraordinary event that would have qualified her for an exception to the maximum hours ordinarily allowed under the regional center's policy.

6. What kinds of facts, evidence, or lack of facts and evidence cause people to lose their cases?

Claimants may lose because of a lack of evidence proving that they exhausted IHSS. Common mistakes include failure to provide IHSS approval/denial documentation and failure to provide documentation of authorized IHSS hours.

Claimants may also lose their case for two related reasons:

(1) They fail to explain why IHSS is inadequate	(2) They fail to explain why the requested service is necessary in light of their IHSS hours

For example, a claimant requesting additional PA hours may lose by failing to explain what IHSS currently provides and what needs remain unmet. If a claimant cannot identify gaps such as insufficient hours or a lack of coverage during certain times (nights, primary caregiver break-times), the regional center can argue that IHSS already addresses the claimant's needs.

Case Spotlight	
Failure to identify gaps in IHSS coverage can lead to denial *(IRC, OAH No. 2024010385).*	Claimant requested additional respite hours so a primary caregiver could have more break time. The regional center denied claimant's request, arguing that 199 hours of IHSS already provided enough coverage and break time. The claimant lost by failing to identify specific gaps in care. The ALJ concluded that existing hours could be rearranged to meet the caregiver's needs.

7. Pulling it all together: Common denials & how to respond

Use this chart to match a common denial with a short response and the evidence that may help.

Example of a service you might request the regional center to fund	Example of why a regional center may say no to your request	Example of an argument you could make in response to the regional center's denial explaining why you need the service and the laws that support your request	Example of facts, witnesses, or records you could use to support your argument about why you are eligible for services
Personal assistance services	IHSS already covers the same day-to-day assistance as PA services.	PA services are not duplicative because IHSS fails to address claimant's specific behavioral issues.	Testimony from family members and caregivers; medical documents.
Increase in respite hours	The family does not need more respite hours because their IHSS already provides enough help.	Respite hours are necessary because current IHSS hours do not meet their needs.	Testimony from caregivers, evidence showing changed circumstances and risks; documentation showing IHSS is insufficient.
Increase in respite hours	Claimant already has significant natural supports from family members.	Claimant requires a level of care or supervision that family members are unable to safely provide.	Testimony from relatives and caregivers, work schedules, and documentation describing caregiver limitations.
Service reimbursement	Services were not authorized or approved.	Claimant needs reimbursement because they have exhausted IHSS and other generic resources.	Documentation proving IHSS was exhausted (for example, an IHSS denial letter); caregiver work schedules.

Appendix 1

List of OAH Decisions Reviewed and Analyzed about IHSS

1. *2022120075:* Is there jurisdiction to consider Claimant's request for 30 additional hours per month of in-home respite and is the regional center required to provide funding? The ALJ held that Claimant was not entitled to additional hours because there were no temporary or exceptional circumstances justifying the provision of more than the maximum hours of in-home respite service.

2. *2025040507:* Is the regional center required to reimburse Claimant's parents for daycare costs? The ALJ held that the regional center is not required to reimburse the costs because (1) the parents did not obtain approval for the day-care services, and (2) generic resources were not exhausted.

3. *2023010636:* Must the regional center provide Claimant funding for an attorney to assist in pursuing an increase in IHSS? The ALJ denied Claimant's appeal because Claimant did not exhaust generic resources and ordered the regional center to provide a service coordinator for assistance.

4. *2024010385:* Is Claimant entitled to an increase in respite hours from 60 to 150 per month? The ALJ held that claimant was not entitled to an increase in respite hours. Additional hours were unnecessary because claimant's caretaker had adequate break time.

5. *2024050907:* Is the regional center required to fund an 83-hour per month increase in respite? The ALJ held that the 83-hour increase was unjustified, but extended Claimant's previously temporary increase in hours because his problem behaviors had not decreased.

6. *2023020678:* Can the regional center inactivate Claimant's case and discontinue his services because he failed to complete an Individual Program Plan meeting? The ALJ held that the regional center could not discontinue Claimant's services due to notice and process rights violations, and that it must finalize an IPP within 60 days.

7. *2024100391:* Should the regional center terminate Claimant's supports and services? The ALJ held that, since Claimant had never officially applied for IHSS, the regional center had no obligation to provide it.

8. *2023050724:* Should Claimant receive Personal Assistant services for 135 hours per month, and should claimant's PA hours be reduced? The ALJ (1) denied Claimant's request for additional PA hours and (2) prevented the regional center from reducing Claimant's pre-existing hours because there was no rational basis to do so.

9. *2024040962 and 2024040963:* Did the regional center properly deny Claimants' request to include funding for personal assistance services in Claimants' Self-Determination Program budget? The ALJ approved Claimants' request for funding because Claimants' preexisting services were insufficient to address their behavioral needs.

10. *2022080846:* Shall the service agency increase funding for Claimant's respite from 42 to 60 hours per month? The ALJ denied the request because Claimant already had access to IHSS and PA.

Appendix 2: Glossary of Common Terms

Term	Definition
ALJ (Administrative Law Judge)	Executive judges for hearings of administrative disputes
Generic Resources	Any agency that has legal responsibility to serve all members of the general public and is receiving public funds for providing those services. IHSS, Medi-Cal, and California Children's Services are examples of generic resources.
IHSS (In-Home Supportive Services):	Program that provides in-home assistance to aged, blind, and disabled individuals as an alternative to out-of-home care.
IPP (Individual Program Plan):	A written agreement between a person and a regional center that identifies goals, services, and supports.
Natural Supports:	Personal associations and relationships developed in the family and community that enhance quality of life.
Personal Assistance Services (PA):	Services that help people with disabilities complete daily tasks.
Self Determination Program (SDP)	An initiative put in place in the State of California that creates more flexibility for social recreation activities by giving claimants a set amount of funding and allowing them to switch out activities as needed.
Service Coordinator:	Main contact at the regional center who helps make the IPP and find necessary services. Sometimes called a case manager or social worker.
WPCS (Waiver Personal Care Services):	Personal care hours funded through a Medicaid Home and Community-Based Services waiver for people who need more help than IHSS alone provides. Like IHSS, it can be treated as a generic resource.

Appendix 3:

List of resources that can help me prepare for IPP meetings and disagreements with regional centers

1. Rights Under the Lanterman Act: This Manual is published by Disability Rights California. It has one purpose: to help you understand some of your rights as a person with developmental disabilities in California. The Manual focuses on your rights to supports and services under the Lanterman Act — your rights with the regional center and service providers. It will not answer every question you may have, but it is a place to start.

2. Search Tools to find hearing decisions about regional center cases
    a. Stanford Intellectual and Developmental Disabilities Law and Policy Project Smart Search Tool
    b. Office of Administrative Hearings Website

3. Regional Center Services and IPP Toolkit: This Toolkit is published by Disability Rights California and explains how you can prepare for your IPP meetings with your regional center.

4. Regional Center Hearings and Appeals Toolkit: This Toolkit is published by Disability Rights California and has additional information about how you can prepare for hearings when you disagree with a decision your regional center has made about your services.