

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CINDY U.,

Claimant,

OAH No. 2012050056

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 11, 2012, at the Westside Regional Center in Culver City, California.

J.C., claimant's mother, represented claimant.¹

Lisa Basiri, Fair Hearing Coordinator, represented the Westside Regional Center (service agency or WRC).

Testimonial and documentary evidence was received, the case argued, and the matter submitted for decision on June 11, 2012. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

¹Initials are used to preserve confidentiality.

ISSUE

Whether claimant's specialized supervision service hours should be reduced.

FACTUAL FINDINGS

1. Claimant is an 11-year-old consumer of WRC due to her qualifying diagnosis of Autism. Claimant resides with her mother and sibling. Claimant is enrolled in a third grade special education classroom in the Hawthorne School District.²

2. Claimant's most recent Individual Program Plan (IPP), which is dated March 5, 2012, indicates that claimant presents with maladaptive behaviors. She runs away from her mother when they are out in the public; consequently, public outings are limited. Claimant spontaneously jumps, claps, and yells to such an extent that the family was required to move out and find a different apartment. The neighbors complained constantly about claimant's behavior. Claimant is destructive at home. She tears apart books and papers. She ties clothes together. She disorganizes the closets. Claimant is aggressive toward her sibling, whom she kicks, hits, bites, and punches.

² Claimant's most recent Individual Education Planning (IEP) meeting occurred in November 2011. The resulting IEP was not produced at the hearing.

3. WRC previously approved funding for 28 hours per month of respite services, 112 hours³ per month of specialized supervision services, which consists of day care,⁴ and 10 hours per week of behavior intervention services for claimant.⁵

4. On April 16, 2012, WRC notified claimant's mother of its proposed action to decrease claimant's specialized supervision service hours to 54 hours per month. On April 30, 2012, WRC received a Fair Hearing Request on claimant's behalf.

5. At a May 8, 2012 informal meeting, claimant's mother provided her financial information to WRC. Claimant's mother's adjusted gross income for the tax

³ Each month twenty of those hours are used for administrative-related matters.

⁴ The service agency's Service Standard for day care services (Exhibit 8.) defines "day care services" as follows:

. . . after school supervision and supervision during school breaks (extended year services). Day care services are provided to school-aged children with a developmental disability while family care givers are at work or attending a vocational/educational program leading to future work, and have no other means to provide care and supervision. This service is designed to provide basic care and supervision only. It is provided to those whose health and/or safety would be in jeopardy without such care because of the nature of their disability or at risk status.

⁵ Los Angeles County funds 55 hours per month of In-Home Support Services for claimant. It was neither known nor established at the hearing whether any of these hours are available for protective supervision in light of the information set forth in Factual Finding 6 that was previously unknown to the service agency.

year ending December 31, 2011 was \$11,937. WRC determined that mother should bear the financial responsibility for 17 hours per month of claimant's specialized supervision services and that, rather than fund 54 hours as proposed, it would fund 92 hours per month of claimant's special supervision services.

6. Claimant's mother objects to any reduction in the number of specialized supervision service hours the service agency funds for claimant. Her credible testimony establishes that claimant's behavior was far more severe, volatile, and self-injurious than previously known to the WRC at the time of its proposed action and the informal meeting. Claimant stays awake nightly until three or four o'clock in the morning in an agitated state. She makes noises and disturbs the neighbors throughout the night. Claimant requires supervision during these periods of wakefulness, otherwise she will engage in dangerous conduct such as turning on the stove or mixing together harmful household substances. Without sufficient sleep, throughout the day at school claimant is so disruptive that the school resorts to calling mother to take her home. Mother in turn is unable to pursue permanent full-time employment. Mother lost her previous job because of her frequent absences to pick claimant up from school. Mother currently works on-call in an attempt simultaneously to meet her family's financial responsibilities and care for claimant. The unpredictable nature of mother's current working hours requires her to have comprehensive supervision services in place for claimant.

7. At the hearing, WRC acknowledged that based on the behaviors set forth above, claimant requires more supervision than that of a typical child, and that such supervision is inclusive of, but goes beyond, day care.

LEGAL CONCLUSION

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.) The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code, § 4501.) Regional centers play a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.) Regional centers are responsible for developing and implementing individual program plans for consumers, for taking into account individual consumer needs and preferences, and for ensuring that services and supports effectively meet the consumer’s goals in a cost effective manner. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. Services and supports for persons with developmental disabilities are defined as “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 rehabilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports include day care. (*Id.*)

3. The services and supports to be funded for a consumer is determined through the individual program plan process, which involves collaboration with the consumer and service agency representatives. (Welf. & Inst. Code, § 4512, subd. (b).) “The determination of which services and supports are necessary 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." (*Id.*)

4. Generally, when purchasing services and supports, regional centers are required to ensure all the following:

- (1) Conformance with the regional center's purchase of service policies
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision and the need for timely access to this care.

(Welf. & Inst. Code, § 4646.4, subd. (a)).

5. The service agency, as the party seeking a modification of an existing service or support, bears the burden of proving by a preponderance of evidence that a change is warranted. (Evid. Code § 500.)⁶ WRC has not met its burden.

⁶ Evidence Code section 500 provides that "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

6. The evidence establishes that claimant is a threat to herself and others without supervision. The full extent of claimant's maladaptive behaviors was unknown to WRC when it first proposed reducing her specialized supervision hours. Consequently, when WRC made its reduction determination WRC could not accurately and completely account for claimant's need for extraordinary supervision. WRC now recognizes that claimant presents with behaviors requiring extraordinary supervision services. Therefore, cause exists pursuant to Factual Findings 1 through 7, inclusive, and Legal Conclusions 1 through 5, inclusive, for WRC to continue to fund 112 hours per month of specialized supervision services for claimant until such time as changed circumstances or a new IPP warrants otherwise.

ORDER

1. Claimant Cindy U.'s appeal is granted.
2. Westside Regional Center shall continue funding claimant Cindy U.'s specialized supervision services at a rate of 112 hours per month until such time as changed circumstances or a new IPP warrants otherwise.

Dated: June 29, 2012

JENNIFR M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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