

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CALVIN R.,

Claimant,

vs.

REDWOOD COAST REGIONAL
CENTER,

Service Agency.

OAH No. 2012031081

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Eureka, California, on May 10, 2012.

Kathleen Kasmire, Director's Designee, represented Redwood Coast Regional Center (RCRC), the service agency.

Claimant Calvin R. was represented by his mother.

The record was closed and the matter was submitted on May 10, 2012.

ISSUE PRESENTED

May the regional center may stop funding in-home respite?

FACTUAL FINDINGS

1. Claimant is a 15-year-old boy who is eligible for regional center services due to epilepsy and severe cognitive impairment. Claimant's developmental age is

approximately 18 months. He requires constant supervision. He is non-verbal; he has no safety awareness; he is impulsive in his actions and fascinated by things that are potentially dangerous; he is a constant bolting risk; and he puts non-food items in his mouth.

2. Claimant lives at home with his mother, father, and two sisters. Claimant's father is disabled and cannot care for claimant. Claimant's mother is his primary caregiver.

3. Claimant attends school five days per week, for about seven hours per day.

4. Claimant's Individual Program Plan (IPP), dated January 30, 2012, states that RCRC will provide 30 hours of in-home respite to claimant. The regional center arrived at this figure by performing a "family respite needs assessment," based upon information provided to claimant's caseworker by claimant's mother. Claimant's 20-year-old sister is his respite care provider.

5. In March 2012, RCRC received a copy of claimant's In-Home Supportive Services (IHSS) award. In addition to other services, IHSS awarded claimant 203.9 hours per month of protective supervision. The purpose of protective supervision is to supervise the behavior of a person and safeguard him against accident or hazard. Claimant's mother is his IHSS worker.

6. On March 8, 2012, RCRC prepared an addendum to claimant's IPP. At that time, the regional center advised claimant that it considered IHSS protective services to be a "generic resource" for respite care, that is, a service available through another public agency (in this case, Humboldt County) that meets claimant's respite need. In the addendum, RCRC proposed to eliminate the in-home respite hours it is providing to claimant.

7. Claimant did not agree to the proposed IPP addendum. Claimant's mother believes that the RCRC-funded respite hours are essential to providing her with the relief

she needs from the demanding responsibilities of caring for claimant. Claimant's mother understands that she could use IHSS funding to pay someone else to watch claimant; she has not done that because IHSS pays only \$8 an hour, and claimant's mother is reluctant to entrust claimant's care to anyone who would work for that amount.

8. On March 12, 2012, RCRC issued a Notice of Proposed Action stating its intent to eliminate claimant's in-home respite hours. Claimant filed a timely request for hearing.

LEGAL CONCLUSIONS

1. Under the Lanterman Act,¹ the State of California accepts "a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (§ 4501.) The Act provides 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 life of the community." (§ 4501.) Regional centers are required to carry out the state's responsibility to the developmentally disabled. (§ 4501.) The regional centers must develop and implement an IPP for each consumer who is eligible to receive services, setting forth the consumer's goal and objectives, and the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.)

2. Although regional centers have a duty to provide a wide array of services and supports to implement the goals and objectives of the IPP, the state Legislature has directed the regional centers to provide services in a cost-effective manner. (§ 4646,

¹ Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. All statutory references are to the Welfare and Institutions Code.

subd. (a).) Regional centers may not purchase services that are available through another public agency:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all member of the general public and is receiving public funds for providing those services.

(§ 4648, subd. (a)(8).) Regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.” (§ 4659, subd. (a).) Regional centers must establish an “internal process” to insure that, when they are purchasing services and supports, they are using generic services and supports when appropriate. (§ 4646.4, subd. (a)(2).) And, since July 1, 2009, regional centers have been prohibited from purchasing any service that would otherwise be available through other public agencies, including IHSS. (§ 4659, subd. (c).)

3. In-home respite is a type of service provided to regional center consumers. Section 4690.2, subdivision (a), defines in-home respite as

intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, for a regional center client who resides with a family member.

These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client’s safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the claimant.

(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

4. When it purchases services, RCRC must ensure that it is utilizing generic services and supports where appropriate. (Legal Conclusion 2.) IHSS is funding protective supervision for claimant, which provides claimant's family with funds to hire a third party to provide direct care and supervision for claimant. This funding serves the dual purpose of providing supervision for claimant, and providing relief to claimant's mother from the constantly demanding responsibility of caring for claimant. Because protective supervision serves claimant's respite need, it constitutes a generic source of funding for respite. Under these circumstances, RCRC may not use its funds to pay for respite services for claimant.

The fact that claimant's mother has chosen to act as claimant's IHSS service provider does not change this analysis. Claimant's mother may choose to provide claimant's protective supervision services. But, since claimant receives a volume of protective supervision hours from IHSS which greatly exceeds his entitlement to in-home respite, RCRC is precluded by law from providing respite services at the same time. It is recognized that claimant's mother feels that the IHSS hourly rate is not high enough to attract quality care providers. On this record, however, the evidence does not establish that IHSS protective services hours are insufficient to meet claimant's in-home respite needs.

ORDER

The appeal of claimant Calvin R. from the decision of the Redwood Coast Regional Center to stop funding in-home respite is denied.

DATED: _____

DAVID L. BENJAMIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.