

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RAYMOND D.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2012050966

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California, at the Westside Regional Center (Service Agency or Regional Center), in Culver City, California, on June 19, 2012.

Lisa Basiri, Fair Hearing Manager, represented the Service Agency.

Claimant was represented by his mother, Marcette F. (Mother).¹ Claimant was also present.

Oral and documentary evidence was received and argument made. The record was closed and the matter was submitted for decision on June 19, 2012.

ISSUE

Shall the Service Agency be ordered to fund an additional 11 hours of specialized supervision (SS) for Claimant?

¹ Initials and family titles are used to protect the family's privacy.

FACTUAL FINDINGS

1. Claimant is a 9 year-old boy who is a consumer of the Service Agency by way of his diagnoses of autism and mental retardation.

2. A Notice of Proposed Action was sent to Claimant on May 3, 2012. Claimant's Fair Hearing Request is dated May 12, 2012, and is timely.

3. The Service Agency presently funds 50 hours per month of SS, 21 hours per month of respite, and 200 hours of Extended School Year (ESY) to be used between June 19 and September 4, 2012. Claimant also receives 189 hours of In Home Supportive Services (IHSS) funded by Los Angeles County. Claimant resides with his mother and three siblings, one of whom is 18 years of age (Jerrell) and another (Marra) who also receives IHSS hours.

4. Mother is Claimant's primary care giver in general and in terms of IHSS and SS hours. IHSS hours are paid at a rate of \$9 per hour. SS hours are paid at a rate of \$10.83 per hour.

5. Mother also utilizes Joy Schackalford as a caregiver when Mother needs to leave her home. Mother pays Ms. Schackalford approximately an extra \$4 per hour out of her own funds, in addition to the SS or IHSS hourly rate.

6. Mother and Claimant presented themselves as very personable. Mother's testimony was very candid and honest. In sum, Mother's annual income has decreased and Jerrell recently moved back into Mother's home.

7. While Mother's desire to pay Ms. Schackalford more than the designated rate is admirable, Mother did not establish that Claimant's needs require that the Service Agency fund an additional 11 hours of SS. This is especially true because Mother noted that she does not always use all of the funded ESY hours. Mother did not alternatively establish that she is unable to find care for Claimant at the designated SS rate. As such,

it was not established that Claimant's present needs require the Service Agency to fund an additional 11 hours of SS.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Act ("Lanterman Act") governs this case. Welfare and Institutions Code sections 4500, et seq. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. A service agency seeking to reduce or discontinue a service previously approved has the burden to demonstrate its proposed decision is correct. Similarly, a Claimant requesting a new service also has the burden. California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, 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." As no other statute or law specifically applies to the Lanterman Act, the standard of proof in this case is preponderance of the evidence based on Evidence Code section 115. In this case, since the Claimant is seeking additional SS hours, he bears the burden of proving such by a preponderance of the evidence. Claimant did not meet his burden of proof as set forth in Factual Findings 1-7.

ORDER

Claimant Raymond D.'s appeal of the Westside Regional Center's proposed decision denying funding for an additional eleven hours of Specialized Supervision is denied.

DATED: June __, 2012.

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.