

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHRISTOPHER P.,

Claimant,

OAH No. 2012120184

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on January 29, 2013, in Napa, California.

Claimant's father, Edward P., represented claimant.

NBRC Legal Specialist Kristin N. Casey represented service agency North Bay Regional Center (NBRC).

The matter was submitted for decision on January 29, 2013.

ISSUE

May the regional center consider In Home Support Services (IHSS) for protective supervision a generic resource for providing respite services to claimant?

FACTUAL FINDINGS

1. NBRC personnel Courtney Singleton, Client Services Section Manager, Guadalupe Lopez, Case Management Supervisor, and Cecily Damiano, Case Manager,

and claimant's father testified at the hearing. The testimony of the witnesses and the documentary evidence established the facts set forth below.

2. Claimant is a 20-year-old young man who is diagnosed with William's Syndrome,<sup>1</sup> mental retardation, and Attention Deficit Hyperactivity Disorder (ADHD). Claimant lives with his parents and younger sister. Claimant's mother was previously employed outside of the home, but she left her job in order to care for claimant on a full-time basis. Claimant's father works full-time, and has even held two jobs in order to support the family. Claimant's parents do not have any relatives nearby. They have worked tirelessly to provide claimant with a safe and supportive environment.

3. Claimant faces many challenges in his life. He has two heart conditions. He has difficulty with fine and gross motor skills. Claimant requires help with all of his activities of daily living. Claimant's ability to communicate is limited, and he is prone to temper tantrums if he does not get his way, particularly when he is in public. Claimant lacks safety awareness. He takes apart objects and runs away whenever he can. Claimant has poor social boundaries, and if left on his own, he will hug and kiss strangers and try and touch their hair. For these reasons, claimant must be supervised at all times.

4. Claimant's challenging behaviors have made it difficult for his family to find caregivers who are willing and able to care for him. Claimant recently visited an out-of-home respite provider who declined to care for him due to his behavioral difficulties. Claimant's former respite provider attested to the difficulty of attending to claimant's variety of behavioral challenges.

5. Claimant's Individual Program (IPP) dated March 14, 2012, provides claimant with the maximum amount of in-home respite of 90 hours per quarter, which

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<sup>1</sup> This chromosomal condition is associated with a host of impairments in visual, spatial and cognitive abilities.

works out to 6.9 hours of respite per week.<sup>2</sup> His IPP addendums through 2012 consistently recognize the need for in-home respite.

6. In November 2012, NBRC re-assessed claimant as requiring up to 90 hours per quarter of respite. During this assessment process, however, NBRC learned that claimant had begun to receive In-Home Support Services (IHSS) for protective supervision from the Solano County Department of Social Services in the amount of 45 hours per week. Claimant's IPP Addendum dated November 14, 2012, stated that claimant's IHSS protective supervision hours "can meet his respite need."

7. In a Notice of Proposed Action dated November 20, 2012, NBRC notified claimant of its decision to discontinue funding for respite services on the grounds that the IHSS protection supervision services provided by Solano County meets claimant's need for respite. Claimant appealed, and this hearing followed.

8. Claimant's mother is his IHSS worker, and in that capacity is paid to provide him with protective supervision hours for 45 hours per week. (Claimant also receives additional IHSS hours for the provision of other services, such as hygiene care and meal preparation.) During the week, claimant attends school from about 7:30 a.m. until about 3 p.m. Claimant is supervised by his mother when he is not at school. Claimant's father describes himself as the "alternate" IHSS worker in that he helps with claimant's care when he is not working. Claimant's family believes that they need respite hours over and above the IHSS hours to provide them with a break from caring for claimant.

9. Respite care has enabled claimant's parents and sister to spend time together in the community. Claimant's father explained that it is particularly stressful for

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<sup>2</sup> The term respite, as used herein, refers to in-home respite. Claimant's IPP also provides for out-of-home respite. The provision of out-of-home respite is not at issue.

the family to take claimant out for dinner, as he is prone to gagging on his food. Claimant's father was noticeably moved when he recounted how much he enjoyed spending quality time at a dinner with his wife and their 12-year-old daughter. Without the support from respite, claimant's father is concerned that the family will be forced to look for an out-of-home placement for claimant. Claimant's father believes that NBRC's decision to discontinue funding for respite was arbitrary and not based upon claimant's needs. He also asserts that the law does not require that IHSS protective supervision always be considered a generic resource for the provision of respite.

10. The purpose of respite is to give parents a break from the constant responsibility of caring for children who receive NBRC services. NBRC's Procedure Memo 2315 sets forth NBRC's policy regarding the purchase of respite services. It requires NBRC to pursue alternative funding resources for respite. It specifically provides that individuals who receive IHSS may not receive NBRC services that duplicate IHSS services.

11. All IHSS services are not viewed as alternative funding sources for the provision of respite. IHSS funding for protective supervision, however, is viewed by NBRC as an alternative funding source for respite because it provides claimant's family with funds to hire a third party to provide direct care and supervision for claimant. The primary purpose of IHSS funding for protective supervision is to provide care and supervision for claimant; it is not to provide income to claimant's mother.

12. NBRC believes that claimant's parents can meet their need for a break from the constant care and supervision of claimant by using a small portion of protective supervision funds to hire someone to care for claimant. Given that claimant receives a total of 45 hours per week of IHSS hours for protective supervision, if claimant's parents used 6.9 hours per week of funding for protective supervision to hire a third party to care for claimant while his parents took a break, they would still have 38.1 hours per week of IHSS funding remaining for protective supervision.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.)<sup>3</sup> The 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 life of the community.” (§ 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.)

2. Respite is one type of service provided to consumers. Respite provides intermittent care and supervision to a regional center client who resides with a family member. These services are designed to “(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 client. (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.” (§ 4690.2, subd. (a).)

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<sup>3</sup> All references are to the Welfare and Institutions Code unless otherwise indicated.

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Accordingly, regional centers may not fund duplicate services that are available through another public agency. This prohibition, often referred to as “supplanting generic resources,” is contained in section 4648, subdivision (a):

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

4. With respect to IHSS services, section 4686.5, subdivision (a)(5), directs regional centers to consider IHSS funds as a generic resource for respite if certain conditions are met:

A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer’s individual program plan (IPP) or individualized family service plan.

Additionally, section 4659, subdivision (c), specifically prohibits regional centers from purchasing services that are otherwise available from IHSS.

5. In the instant case, the evidence established that IHSS funding for protective supervision provides claimant’s parents with funds to hire a third party to care and supervise him at home. This funding serves the dual purpose of providing claimant with supervision while also allowing the family time for a break from caring for claimant.

For this reason, IHSS funding for protective services meets claimant's respite needs, as set forth in his IPP. While it is true that protective supervision is not exactly the same as respite, what matters here is that the IHSS funding simultaneously meets two important needs of claimant's family. Inasmuch as the funding for protective supervision services also serves the family's need for respite, it constitutes an alternative source of funding for respite. The use of one funding source to meet dual needs of a consumer is the most efficient use of public resources and is in keeping with the express provisions of the Act. Under these circumstances, therefore, even though claimant qualifies for respite, NBRC is precluded by statute from expending its resources to pay for such services when they are available through another publicly funded agency.

6. The fact that claimant's mother chooses to act as his IHSS service provider instead of hiring a third party, does not alter this analysis. While hiring someone to care for claimant will require claimant's mother to forego some of the income she receives from IHSS for protective supervision, this loss of income does not abrogate NBRC's statutory duty to make use of IHSS funds when it can meet the respite need of the consumer. Additionally, while the evidence established that claimant requires intensive supervision, the legal issue at hand relates to the funding source for claimant's services, not the amount of respite services required. The legal principle that controls this appeal, therefore, rests on the mandate set forth in section 4686.5, subdivision (a)(5), which requires regional centers to consider IHSS funds as a generic resource for respite if certain conditions are met.

## ORDER

The appeal of Christopher P., from the determination of North Bay Regional Center to discontinue funding for respite services, is denied.

DATED: \_\_\_\_\_

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DIANE SCHNEIDER

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 ninety (90) days.