

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Agency.

OAH No. 2013120635

DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino California on March 12, 2014.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant was represented by his mother.

The matter was submitted on March 12, 2014.

ISSUES

1. Is IRC required to pay for 22.64 hours of In Home Support Services (IHSS) for Claimant?

2. If IRC is required to pay for the IHSS hours, is claimant entitled to reimbursement for the period of time those services were being provided without funding?

FACTUAL FINDINGS

1. Claimant is 10 years old.

2. Claimant receives IRC services based on a diagnosis of Autism.

3. Currently, claimant receives the following services from IRC: 20 hours per month of behavior modification services and 30 hours per month of preferred provider respite. In addition to these IRC services, claimant receives 15 hours per week of Applied Behavior Analysis therapy and school programming through Hope Counseling (funded by the claimant's school district), and claimant had been receiving 283 hours per month of IHSS (services provided by the county and funded by the California Department of Social Services (CDSS)).

4. Senate Bill 67 sought an eight percent, across-the-board reduction in recipients' IHSS hours. A lawsuit challenging the cut was initiated by certain IHSS recipients. The lawsuit was settled. In settlement CDSS agreed that the legislation would be repealed in exchange for an eight percent reduction in authorized IHSS for 12 months, beginning July 1, 2013.

5. Claimant, who was not a party to the SB 67 challenge, received notice that, effective July 1, 2013, his IHSS hours were being reduced by eight percent, from 283 hours per month to approximately 260 hours per month.

6. Claimant's most recent Individual Program Plan (IPP) meeting occurred on November 6, 2013. During the meeting, claimant's mother (mother) requested that IRC pay for the reduced IHSS hours as "gap funding" or as "payer of last resort." Mother provides claimant's IHSS and receives direct payment for those services.

7. IRC denied claimant's IHSS funding request, claimant timely filed a Fair Hearing Request, and the instant hearing ensued.

8. As early as May 14, 2008, the Department of Developmental Services (DDS), as "payer of last resort," anticipated having to assume funding of the reduced IHSS hours. Proof of this fact came from the DDS website.

A May 14, 2008, posting, entitled "Regional Centers Local Assistance Estimate, May 2008 Revision of the 2008-2009 Budget," stated in pertinent part: ". . . Effective October 1, 2008, the fiscal impact to DDS is \$6.1 million (\$4.2 million General Fund) to

replace services that will be eliminated due to the proposed reduction in the IHSS program. . . . (Exh. C¹-1)

A January 8, 2010, posting stated, in pertinent parts:

[¶] . . . [¶]

4. The Governor's Budget includes service reduction proposals in Medi-Cal, IHSS, SSI/SSP and other programs that will increase regional centers purchase of services costs in 2009-10. . . .

[¶] . . . [¶]

With the funding reductions of these services from the DSS and DHCS, regional centers will become the payer of these services for DDS consumers, and will see an increase to their purchase of Services (POS) expenditures commensurate with the elimination of these services previously provided by DSS and DHCS. (Exh. C-1)

January 5, 2012, and May 14, 2013, postings parrot the language contained in the earlier postings. All of the postings reveal that since at least May 14, 2008, DDS and IRC, as one of the regional centers contracting with DDS to provide consumer services, knew about and anticipated having to fund the IHSS hours being eliminated by CDSS and DHCS.

¹ "C" refers to claimant's exhibits.

9. Nothing has changed in claimant's needs to warrant a reduction in his IHSS hours. His most current assessment recommended 283 hours of IHSS and, over the past few years, mother has been providing that level of services to claimant

LEGAL CONCLUSIONS

IRC'S OBLIGATION TO FUND 22.64 IHSS HOURS PER MONTH

1. The DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.) Pursuant to contract, IRC is one of many DDS regional centers.

2. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individualized program plan, the regional center shall conduct activities including, but not limited to all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined by the consumer's individual program plan . . .

- (2) . . . Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.
 - (3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parent, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan."
3. Welfare and Institutions Code section 4651 states in part:
- (a) It is the intent of the Legislature that regional centers shall find innovative and economical methods of achieving the objectives contained in individual program plans of persons with developmental disabilities.
 - (b) The department shall encourage and assist regional centers to use innovative programs, techniques, and staffing arrangements to carry out their responsibilities.

ANALYSIS

4. Claimant's latest assessment indicated that he still requires 283 IHSS hours per month. Nothing has changed concerning claimant's needs. IHSS hours have been cut by eight percent. In claimant's case the eight percent cut equates to a monthly reduction of 22.64 IHSS hours. No generic resource is available to provide the IHSS hours. Mother has been the paid IHSS provider and has provided 283 IHSS hours per month to claimant for several years. IRC has an obligation to provide needed services and supports to claimant. Since 2008, DDS has recognized that it will have to fund IHSS hours to the extent those services are reduced due to budgetary reasons. There is nothing that prevents IRC from paying mother for 22.64 IHSS hours so that claimant receives the required amount of IHSS hours per month. In fact, Welfare and Institutions Code section 4648, subdivision (a)(3) provides that IRC may "pursuant to vendorization

or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parent, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan." (emphasis added.)

PAYMENT FOR THE 22.64 IHSS HOURS PROVIDED BY MOTHER SINCE JULY 1, 2003

5. IRC representatives believe that California Code of Regulations, title 17, section 50612, precludes IRC from funding the cut in IHSS hours "retroactively" to July 1, 2013; the date the eight percent cut became effective. However, California Code of Regulations, title 17, section 50612 addresses "Regional Center Purchase of Service Requirements," not reimbursement for services that have already been purchased, but have been reduced for budgetary reasons unrelated to a consumer's need for the services.

6. DDS and IRC anticipated IHSS cuts since 2008. The eight percent cut was effective on July 1, 2013. During the IPP meeting, immediately following the effective date of the IHSS cuts, mother timely requested payment for the 22.64 hour reduction in IHSS hours. Consequently, IRC, as payer of last resort, shall reimburse mother for provision of the reduced hours from July 1, 2013, until CDSS resumes funding those services, or until a generic resource willing to provide those services is located.

ORDER

IRC, as payer of last resort, shall pay mother for provision of 22.64 IHSS hours per month, unless and until such services can be obtained through CDSS, DHCS, or an alternate generic resource.

IRC shall reimburse mother for the 22.64 IHSS hours per month she provided to claimant from July 1, 2013, until the date IRC begins funding those hours pursuant to this order.

DATED: March 26, 2014.

_____/s/_____

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.