

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANTS (1), (2) and (3)

Claimants,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH Numbers: 2015110324,  
2015110326  
2015110329

DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on December 17, 2015, in Crescent City, California.

Claimants were represented by their mother.

Lauren E. Gardner, Attorney at Law, represented Redwood Coast Regional Center, the service agency.

The three matters, captioned above, contain common issues of fact and law and were consolidated for hearing pursuant to Health and Welfare Code section 4712.2.

The record was left open until January 27, 2016, to permit Claimants to file supporting documents. The documents were timely received, and admitted into evidence.

The matter was submitted on January 27, 2016.

## ISSUE

Are Claimants entitled to receive funding for day care hours?

## CASE SUMMARY

Claimants are siblings, ages 16, 14, and eight, who reside with their parents in Crescent City and receive services from the Redwood Coast Regional Center (RCRC). The family includes eight children altogether, five of whom have been diagnosed with autism spectrum disorder. Claimants 1 and 2 previously received services from the North Los Angeles County Regional Center (NLACRC), until they relocated to RCRC's service area in January 2014. Claimant 3 first became a regional center consumer after this move.

Claimants are all homeschooled, and their parents are both employed outside of the home. While they were consumers of NLACRC they received personal assistant hours for the time they would have been in public school, had they not been homeschooled. When claimants applied for services from RCRC, it denied consumers' request for day care hours for time they might be in public school, on the basis that the public schools are a generic resource that must be used before other services can be provided.

Claimants filed a Fair Hearing Request requesting RCRC to provide day care services.

## FACTUAL FINDINGS

### CLAIMANTS

#### Claimant 1

1. Claimant 1 is a 16-year-old boy and a consumer of RCRC who is eligible for regional center services based on his diagnosis of Autism Spectrum Disorder and

Unspecified Intellectual Disability. He lives with his family, and is 72 inches tall and weighs 160 pounds.

2. Claimant requires reminders to complete hygiene skills, including washing his hair and his body and to finish dressing. He requires supervision when he is awake for his health and safety, as he has little or poor safety awareness, likes to start fires, enjoys speed and heights, and is described as a "daredevil." Claimant will not identify himself or ask for help if he becomes separated from his family. In addition, he will elope both at home and in the community and has a service dog that is trained to track him. Claimant's mother cooks all of his meals, does his laundry and cleans his room.

3. Claimant engages in outbursts and disruptive behaviors throughout the day, on a daily basis. These behaviors include teasing his siblings, screaming, crying, punching holes in the wall, hitting, kicking, destroying objects and throwing objects at other people. His mother advises that she is the only person who can get claimant to complete tasks, and she is the only person he will speak with when upset. He has difficulty initiating and maintaining social interactions, will not look at strangers, uses gestures to communicate his needs and wants, and is sensitive to noise and odors. Claimant also engages in self-injurious behaviors that may need first-aid, such as hitting himself with objects and picking at his skin. Claimant received behavioral services while a consumer at NLACRC. He is no longer receiving behavioral services

4. Claimant, along with his siblings, receives one to two hours per day of homeschooling. He is able to read at the third or fourth grade level, and is able to add and subtract single digits. He is currently working on learning his phone number and address. His mother, who recently received a master's degree in special education and teaches in the local public schools, provides the instruction. Claimant 1's maturity level is well below his age.

5. When claimant was a consumer at NLACRC, he received approximately 200 hours a month of personal assistance. Claimant presently receives 90 hours per quarter of respite services and hundred 179.24 hours per month of in-home support services (IHSS), of which 172.34 hours are for protective supervision.

6. The last Individual Program Plan (IPP) NLACRC prepared for Claimant 1, dated March 19, 2012, included day care hours. The IPP states: “[Claimant’s] parents will continue to receive up to nine hours per day, Monday through Friday, parent conversion daycare with a \$2.00 share of cost per hour, with a family member as provider, approved 10/24/2011.” When Claimant 1 relocated from the NLACRC to the RCRC service area, a new IPP, was developed.

7. The IPP meeting for Claimant 1 was held on March 13, 2014. When a new IPP was developed, RCRC did not include day care hours, and for this reason, Claimant’s mother did not agree to the terms of the March 2014 IPP.

8. RCRC issued a Notice of Proposed Action (NOPA) dated October 19, 2015, denying day care hours. The NOPA stated: “There are one or more generic services available to meet the need for care, protection and supervision of the client while parents are working. In addition, day care would supplant the public education available to the client.”

The NOPA cited the following legal authority as a basis for the denial: Welfare and Institutions Code sections 4646, 4645, 4659, 4686.5, 4648, subdivision (a)(8), 4512, subdivision (b), and RCRC purchase guidelines. On October 29, 2015, complaint filed a Fair Hearing Request and this hearing followed.

#### Claimant 2

9. Claimant 2 is a 14-year-old boy who is a RCRC consumer who is eligible for regional center services based on his diagnosis of Autism Spectrum Disorder. He lives with his family and is 58 inches tall and weighs 78 pounds.

10. Claimant 2 requires reminders to complete hygiene tasks, including brushing his teeth, and he requires assistance with closing buttons and putting on shoes. Claimant is allergic to penicillin, and also has food allergies. His mother reports that he does not sweat, and becomes nauseous when he is hot, as his body does not regulate temperature well. He also suffers from migraine headaches which occur when he becomes stressed, angry or anxious.

11. Claimant 2 requires supervision during the day because of poor safety awareness. He likes to start fires and does not have "stranger danger" awareness. Claimant has additional challenging behaviors, in that he engages in outbursts three to five times a day and sometimes throughout the entire day. The outbursts may include crying, sobbing, hitting, throwing items and punching objects. Claimant is also prone to run away and hide, and a service dog is then used to track him. Claimant will also engage in self-injurious behavior, such as hitting himself, hitting his head against a wall or picking at scabs.

12. Claimant 2 will not independently complete chores at home. His mother cooks all his meals, does his laundry and cleans his room.

13. Claimant 2, together with his siblings, receives up to two hours per day of homeschooling, which is tailored to his needs. Claimant can read approximately 20 words at the first grade level, he knows the alphabet, and he can write his name. He can also add and subtract single digits.

14. When Claimant 2 was a consumer of the NLARC, he received up to eight hours a day of personal assistant care. Claimant presently receives 198.55 hours per month of IHSS including 193.5 hours of protective supervision. The IHSS hours are used at night, because he gets up from bed and does not go back to sleep until 3:00 a.m. to 5:00 a.m. In addition, claimant receives 90 hours per quarter of in-home respite services.

15. Claimant 2's last IPP prepared by NLACRC, dated March 29, 2012, included day care hours. The IPP states: "[Claimant's] mother will coordinate with daycare provider the use of daycare hours. [Parent] will pay \$2.00 per hour share of cost for daycare coverage. . . . NLACRC to fund up to 8 hours/day Monday-Friday of daycare services. NLACRC to provide annual financial statement to the consumer." When Claimant 2 relocated from the NLACRC to the RCRC service area, a new IPP, was developed.

16. The IPP meeting for Claimant 2 was held on March 13, 2014. When a new IPP was developed, RCRC did not include day care hours, and for this reason, Claimant's mother did not agree to the terms of the proposed March 2014 IPP. On October 19, 2015, RCRC issued a NOPA denying the request stating "There are one or more generic services available to meet the need for care, protection and supervision of the client while parents are working. In addition, day care would supplant the public education available to the client."

17. RCRC cited the following legal authority as a basis for the NOPA: Welfare and Institutions Code sections 4646, 4645, 4659, 4686.5, 4648, subdivision (a)(8), 4512, subdivision (b), and RCRC purchase guidelines. On October 29, 2015, complaint filed a Fair Hearing Request and this hearing followed.

### Claimant 3

18. Claimant 3 is an eight-year-old girl who is a RCRC consumer who is eligible for regional center services based on her diagnosis of Autism Spectrum Disorder. She lives with her family, which includes seven other siblings. Unlike Claimant 1 and 2, Claimant 3 was never a consumer of NLACRC; the first time she applied for services was from RCRC.

19. Claimant 3 needs assistance with personal care tasks such as brushing and washing her hair and teeth, and toileting. She is not able to tie her shoes and often

wears them on the wrong feet. Her mother assesses her development as similar to a three or four year old.

20. Claimant 3 has some safety awareness, but also needs someone nearby to avoid injury or harm in most settings. She enjoys having other family members around her, but will have a "meltdown" if left alone, in which case she will cry or sob. She needs a lot of transition time and preparation. She does not generally display challenging or disruptive behaviors, unless provoked by her older brother, and then she will lash out at him by screaming and pushing. She and Claimant 1 do not get along well together.

21. Claimant receives 60 hours per quarter of respite care.

22. Claimant 3 is homeschooled with her siblings, with her mother and older sister serving as teachers. She receives two or two-and-one-half hours of instruction per day, and is able to read at the first grade level, but struggles with learning.

23. Claimant 3's initial IPP meeting was held on July 30, 2015, and the IPP was signed on September 30, 2015. Claimant 3's mother requested RCRC to include day care hours in the IPP, but it did not do so. On October 19, 2015, RCRC issued a Notice of Proposed Action (NOPA) denying the request stating "Day care for a nine year old child would be considered a family's responsibility. No evidence that the client requires extraordinary care due to her eligible condition."

24. RCRC cited the following legal authority as a basis for the NOPA: Welfare and Institutions Code sections 4646, 4646.4, and 4686.5, 4648, subdivision (a)(8), 4512, subdivision (b), and RCRC purchase guidelines. On October 29, 2015, Claimant 3 filed a Fair Hearing Request and this hearing followed.

#### CLAIMANT S' ADDITIONAL EVIDENCE

25. Respite care has been provided to claimants by their older sisters, Rachel and Mary, who are now preparing to leave the home and will not be available to do this

work. Rachel and Mary both received 18 hours on classroom and in-home behavioral training through NLACRC.

26. Claimants' mother has always home schooled them, because she believes they would learn other difficult or undesirable behaviors if placed in a class with similar special needs children. Claimants' mother believes homeschooling is claimants' preference. Homeschooling is the least restrictive environment in which claimants can learn.

27. Claimants' parents both work full-time outside of the home: claimants' mother is a special education teacher and their father works in law enforcement for an Indian tribe. The provision of day care is necessary to permit Claimants' mother to work outside of the family home.

28. A regional center is only authorized to provide respite services in instances where the care and supervision needs of a consumer are greater than those of an individual of the same age without development disabilities.<sup>1</sup> All claimants are receiving respite services.

29. Claimants' mother does not believe she had adequate input into the development of the claimants' IPPs, and notes in particular that her request for day care services is not reflected in the IPPs.

30. The evidence established that Claimants require supervision that is significantly more than routine child care, due to both their functional limitations and to protect their safety. Their parents are unable to provide such care while they are at work. Accordingly, Claimants require supervision from an appropriately trained care provider.

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<sup>1</sup> See Welfare and Institutions Code section 4686.5, subdivision (a)(1).



## RCRC'S EVIDENCE

31. Karen Satern, an RCRC supervisor, explained the differences between respite care, which RCRC is providing to all three claimants, and "day care." Day care is to provide protection and supervision to consumers living in a parent's home, while the parents are working outside of the home or engaged in educational activities designed to lead to employment.

32. Satern does not believe that any of the claimants protection and supervision needs require the person providing the service to have specialized training, or training any greater or different than the respite providers serving these claimants.

33. When making a determination to provide day care, RCRC considers the need in the same manner as if the consumer did not have a disability. RCRC also considers a family's needs and responsibilities, but Satern was not aware of any specific need or hardship in this case.

34. Most school age children use the public schools. RCRC considers the schools to be a generic resource that must be used before other resources are purchased that might meet the same need filled by the generic resource. RCRC would, however, consider the use of day care to cover hours before and after school when the consumer's parents are working.

## LEGAL CONCLUSIONS

1. The standard of proof in this case is the preponderance of evidence. A regional center seeking to terminate ongoing funding provided to a consumer has the burden of demonstrating its decision is correct. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9 [party asserting a claim or making charges generally has the burden of proof in administrative hearings].) Here, however, claimants

have the burden of proof, because RCRC has never provided them with day care services.

2. 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>2</sup> 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 life of the community.” (§ 4501.) The Act also provides the right for covered persons to “make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community the way spend their time, including education, employment, and leisure . . . and program planning and implementation.

(§4502, subd. (a)(10).)

3. Services and supports for persons with developmental disabilities means “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 habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (§ 4512, subd. (b).)

4. 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 to implement her goals and objectives. (§§ 4646, 4646.5, 4512, subd. (b).)

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<sup>2</sup> All references are to the Welfare and Institutions Code unless otherwise indicated.

Each consumer is assigned a service coordinator, who is charged with the task of implementing and monitoring each IPP. (Code 4647.)

5. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective use of public resources. (§ 4646, subd. (a).) Accordingly, regional centers are directed to utilize generic funding resources for the provision of services and supports when appropriate. (§ 4646.4, subd. (a)(2).) In this case, claimants have requested RCRC to provide day care services as part of their IPPs, and RCRC has denied this request, because it determined that the public schools are a generic resource that must first be used before day care hours can be provided to claimants at RCRC's expense. Claimants requested a fair hearing to appeal RCRC's denial of day care services.

6. The Act defines "day care" as: ". . . regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both." (§ 4686.5, subd. (a)(4).) The evidence established that claimants require "care, supervision and protection" during the hours their parents are working.

7. Generic resources are not always fungible or interchangeable. While it is reasonable for RCRC to consider whether public schools constitute a generic resource that must be used before day care hours are provided, in this case they are not. Here, claimants' mother, by providing home schooling, is taking on the public school's responsibility, and she is not requesting compensation for doing so. Claimants' parents must work to keep the family at home, which is a goal of the Act. And their choice about how claimants are educated is a right expressly acknowledged and protected by section

4502, subd.(a)(10.) In this case that choice is homeschooling, the same right children without disabilities enjoy.

8. Inasmuch as NLACRC provided day care services, it apparently reached the same conclusion. RCRC correctly states that it is not bound by the decision made by a different service agency, but in his instance, NLACRC was correct in its determination.

9. Claimants' family of eight children, five of whom are autistic, presents extraordinary needs, and claimants have severe behaviors that require care providers to have appropriate training. This decision does not reach the issue of what specific training is appropriate or how many hours per month or day care should be provided. Nor does it determine what the parents cost sharing portion, if any, should be. Those are issues to be determined between RCRC and claimants as part of the IPP process, in accordance with RCRC's purchase of services policy. (§ 4646.4.)

## ORDER

The appeals of Claimants 1, 2 and 3 are granted. Redwood Coast Regional Center shall provide day care services pursuant to Legal Conclusion 9.

DATED: February 5, 2016

\_\_\_\_\_/s/\_\_\_\_\_

KIRK E. MILLER

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.