

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016110784

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Pomona, California, on January 26, 2017.

G. Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SG/PRC).

Claimant's father and mother appeared on behalf of claimant, who was not present at the hearing.

The matter was submitted for decision on January 26, 2017.

ISSUE

May claimant's mother become vendored to provide Independent Living Services to claimant?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 22-year-old conserved male who is eligible for regional center services based on a diagnosis of autism. Claimant works 25 hours per week as part of a supported employment program initially funded by the Department of Rehabilitation, but now funded by SG/PRC. SG/PRC approved claimant for 20 hours per month of Independent Living Skills (ILS) services. ILS programs provide services to adults with developmental disabilities that offer functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or may provide the support necessary to maintain those skills. Claimant also receives 21 hours a month of parental choice respite and 73 hours per month of In Home Support Services for which his mother is the assigned worker. Claimant also receives Social Security Income and health benefits from Med-Cal.

2. Claimant began intake for ILS services through a SG/PRC vendor, Adult Community Independence, Inc. (ACI) in June 2016. However, claimant's parents have not been happy with the workers provided by ACI, and requested that SG/PRC vendor claimant's mother to provide ILS services for claimant.

3. On November 7, 2016, SG/PRC served claimant with a notice of proposed action denying claimant's request to have his mother vendored to provide ILS services to claimant. As its basis for denying claimant's request, SG/PRC noted that it does not typically engage in employer-employee relationships with parents who request services

for a child, but instead use vendors who meet the “vendorization”¹ process required under the California Code of Regulations. Additionally, under the Lanterman Act, SG/PRC is required to establish an internal process in purchasing services and supports that adheres to federal and state laws and regulations.

4. On November 14, 2016, claimant’s father filed a fair hearing request appealing SG/PRC’s decision to deny claimant’s mother’s request to become vendored to provide ILS services for claimant. This hearing ensued.

TESTIMONY OF AARON CHRISTIAN

5. Aaron Christian is SG/PRC’s associate director of community services and has worked for SG/PRC for the past seven years. In that position, he oversees three units, including the vendorization unit. He was formerly SG/PRC’s manager of adult services and is familiar with ILS services. Prior to working at SG/PRC, Mr. Christian worked for an ILS provider.

6. Vendorization is the process by which SG/PRC authorizes service providers. Mr. Christian became involved in this case when he was asked to review whether a parent could become vendored to provide services for a consumer. SG/PRC had in the past vendored family members to provide services for their relatives. However, several years ago, SG/PRC was informed that parent-vendored services were no longer Medicaid-waiver reimbursable under federal regulations promulgated by the Centers for

¹ “Vendorization” is the process used to verify that an applicant meets all of the requirements and standards pursuant to the regulations prior to providing services to consumers. (Cal. Code Regs., tit. 17, § 54302, subd. (a)(78).)

Medicare & Medicaid Services² (CMS). As a result, the California Department of Developmental Services (DDS) advised regional centers to discontinue parent-vendored services. Mr. Christian noted that when SG/PRC had parent-vendored service providers, the parent was never the direct service provider. Mr. Christian said there are a number of issues that arise with using parent-vendored services, including quality control and monitoring how funds are administered.

7. Mr. Christian said that the regulations outline how a program is to be vendored. Most categories require a letter of intent, a vendor application, and a program design or service plan. ILS programs fall within the category of adult day programs. Under the regulations, there are certain personnel requirements for vendorization. However, Mr. Christian noted he is not aware of any statutes or regulations that specifically permit or prohibit a parent from becoming a vendor.

TESTIMONY OF CLAIMANT'S MOTHER

8. Claimant's mother, a licensed pharmacist, has been extensively involved in the care and education of her son throughout his life. Now that claimant is an adult, she and her husband looked at various options for their son to live independently, including group homes, which they determined to be too restrictive. They believe that a supportive living situation would yield the best outcome. In helping to prepare claimant for moving out of their home, claimant's parents sought ILS services from SG/PRC. After the services were approved, SG/PRC provided claimant's mother with a list of recommended service providers, including ACI. Claimant's parents contracted with ACI. However, claimant's parents did not believe that the workers ACI sent were a good

² CMS is the federal agency which administers Medicare, Medicaid, and the State Children's Health Insurance Program.

match for claimant. Claimant's mother also noted that because of claimant's work schedule, it was best that claimant received ILS services at different intervals during the day. For example, assistance in making lunch would be accomplished in the morning. Arranging transportation to and from work had to occur at other points during the day. Claimant's mother found that providers would be reluctant to send out a worker to provide services for a short interval of time. While ACI attempted to locate another worker, claimant's mother took on many of the duties to provide claimant with ILS assistance. For example, she has worked extensively with him on how to use Uber to obtain transportation to and from work. Claimant's mother noted that this work is very extensive and goes beyond the natural supports a parent would be expected to provide. Claimant's parents did attempt to contact two other vendors as an alternative to ACI, but they were not satisfied that the vendors could provide the services claimant required.

9. Claimant's mother believes she has the training and experience to provide ILS services. If vendored, she ultimately would like to hire staff in order to provide claimant with support and phase out her involvement.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

THE LANTERMAN ACT

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. 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, 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.)

5. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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. The determination of which services and

supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

6. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

9. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in

achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

10. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(Ibid.)

11. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

12. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

13. California Code of Regulations, title 17, section 54310 outline the vendor application requirements. Section 54320 outlines the requirements of regional centers to review vendor applications. Section 54326 outlines the general requirements of regional centers and vendors. Subdivision (d)(4) prohibits regional centers from referring any consumer to an applicant until the vendor application is approved or reimbursing a vendor for services provided before vendorization.

14. The standards for all community based day programs are contained in Regulation section 56710 et seq. ILS programs are a subset of adult day programs. (Cal. Code Regs., tit. 17, § 56742.) Additional standards for adult day programs are contained in Section 56740 et. seq. Section 56753 outlines the requirements for personnel operating an adult day program.

EVALUATION

15. Claimant requests that SG/PRC permit his mother to become vendored so that she can provide him ILS services. Claimant did not establish by a preponderance of the evidence that his mother may be authorized to provide vendored services.

Regional centers may only purchase services and supports consistent with applicable law. It is true that no statute or regulation specifically permits or prohibits a parent to become a direct vendor. Under the Lanterman Act, however, SG/PRC must “adhere to federal and state laws and regulations” and must purchase services and supports only pursuant to the purchase of service policies. (Welf. & Inst. Code, § 4646.4, subd. (a).) Mr. Christian testified that DDS advised regional centers to discontinue parent-vendored services, noting the myriad of issues that arise with using parent-vendored services (i.e. quality control, monitoring how funds are administered, and inability for the state to obtain reimbursement from Medicaid). Thus, SG/PRC may not vendorize claimant’s mother as it would violate the applicable purchase of service policy of SG/PRC.

It is clear that claimant’s parents are extremely devoted and only want what is best for their son. However, absent a statute or regulation specifically allowing a parent to become a vendor, or statute or regulation overriding Welfare and Institutions Code section 4646.4, which requires regional centers to specifically follow purchase of service policies, claimant’s mother cannot become vendored to provide services under the Lanterman Act. Nothing in this decision prevents claimant’s mother from applying for vendorization through SG/PRC. However, should she become vendored, pursuant to SG/PRC policy, she could not provide services to her son.

ORDER

Claimant’s appeal is dismissed.

DATED: February 6, 2017

ADAM L. BERG

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 ninety days.