

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2016121058

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter, in Eureka, California, on February 16, 2017.

Claimant was represented by his father. Claimant did not attend the hearing.

Lauren Gardner, Attorney at Law, represented the Redwood Coast Regional Center (RCRC), the service agency.

The matter was submitted for decision on February 16, 2017.

ISSUE

May RCRC decrease funding for respite from 30 hours per month to 25 hours per month, based on its conclusion that 25 hours is sufficient to meet his claimant's needs?

FACTUAL FINDINGS

1. Claimant is a 15-year-old boy who lives with his family. Claimant receives RCRC services based on his diagnoses of cerebral palsy and mild intellectual disability. Claimant suffers from occasional seizures and takes a prescription medication several

times daily. Claimant is also severely hearing impaired and engages in some challenging behaviors.

2. Claimant's 2013 Individual Program Plan (IPP) provided that RCRC would fund up to 30 hours of in-home respite per month, "to be monitored and reviewed annually." After a review in 2014, RCRC has continued to fund 30 hours of respite each month. The 2013 IPP expired in 2016. RCRC continues to provide the services agreed upon in the 2013 IPP pending the implementation of an updated IPP. In 2012, RCRC agreed to temporarily fund an increase in respite, from 30 hours per month to 48 hours per month. This was in order to facilitate claimant's father's attendance in sign language classes to help him communicate with claimant.

3. Claimant's service coordinator, Savannah Gouvea, had two telephone discussions with claimant's father in October and November, 2016, in order to prepare a new IPP. As part of these discussions, Gouvea sent claimant's father a blank "Family Respite Needs Assessment Summary Sheet" and reviewed the form with him over the phone.

The Summary Sheet is a two-page form that service coordinators fill out to ascertain a consumer's respite need. Points are allocated in seven areas¹ based on guidance from a three-page RCRC "Family Respite Needs Assessment Guideline." The number of points determines how many respite hours RCRC deems each individual consumer needs. The service coordinator then subtracts from this number any generic resources that are available to the consumer that could serve the function of respite in order to determine the maximum number of hours that RCRC will fund.

¹ The seven areas are: age of individual, adaptive skills, mobility, day program attendance, medical needs, behavioral needs, and family situation.

Gouvea filled out the Summary Sheet after discussing claimant's current abilities and needs with his father. Gouvea did not subtract any hours for generic resources because she has no knowledge of any generic resources being provided to the family.

4. The Guideline includes the following instruction relevant to allocating points for "mobility":

- 0 Individual is mobile
- 1 Individual is mobile but may need help or adaptive equipment (e.g. walks with a walker independently, walks with crutches/braces, uses a wheelchair independently, is able to transfer independently, able to get on and off toilet and/or in and out of bed, etc.).²

The Guideline includes the following instruction relevant to allocating points for "medical needs":

- 0 Individual has no health problems – routine care only (e.g. vitamins, allergy, shots, etc.).
- 1 Individual has minimal health problems requiring little intervention (e.g. regular medication schedule, nebulizer treatment on an occasional basis, seizure disorder requiring little to no caregiver support.)
- 5 Individual has frequent illnesses or a condition requiring out of area medical appointments 2 or more times per month or general oversight and monitoring on a daily basis, (e.g. apnea monitor used as a precautionary measure, inability of individual to communicate health needs, frequent turning, etc.).

² The Guideline provides further instruction for allocating 3, 4, and 5 points for individuals with more severe mobility limitations.

10 Individual requires almost constant attention to medical conditions or procedures (e.g. seizure disorder requiring continual monitoring or immediate caregiver involvement, apnea episodes several times per day, multiple medication management, occasional suctioning at times other than respite hours etc.).

(emphasis in original.)

Gouvea allocated claimant "0" points in the area of "mobility." Gouvea allocated claimant "3" points in the area of "medical needs" and wrote this explanation on the Summary Sheet:

(per parent's request RCRC does not have access to medical records – info from parent's report.) [Claimant] has a shunt in his head, dad calls UCSF approx. 1x1mo. [Claimant] has seizures regularly & takes daily medications which require blood work.

5. Gouvea calculated a total score of 22, which yielded an assessed need of no more than 25 hours of respite per month. The previous Summary Sheet prepared by Gouvea in 2014 allocated 25 points to claimant. On the 2014 Summary Sheet, Gouvea allocated "5" points for medical needs and an additional point for behavioral needs, for a total of 25 points, the minimum needed to qualify for 30 hours of respite per month. She reduced the score for behavioral needs on the latest Summary Sheet because claimant is no longer receiving behavioral services and so it appeared to her that his behavioral needs had decreased.

6. Gouvea prepared a proposed IPP based on her conversations with claimant's father and other information available to her. The proposed IPP includes the following information, again based on the report of claimant's father, "walking – walks

alone at least 20 feet, but is unsteady. . . falls and/or trips approximately once per week and may result in bruises” and “Verbal Communication – uses words, but speech is not easily understood by others. . . not able to clearly communicate his pain or other health care needs.”

Gouvea sent claimant’s father a packet of materials on December 16, 2016, which included the Summary Sheet she had filled out for claimant’s respite calculation, the proposed IPP, information on applying for In Home Support Services (IHSS), and three release of information forms (one for the respite vendor, one for IHSS, and one for medical records.) Gouvea also included a Notice of Proposed Action dated November 17, 2016, with an effective date of February 1, 2017. The Notice of Proposed Action stated:

Proposed action: RCRC declines to fund 30 hours per month of respites as requested by parent. Parent declined to provide RCRC with medical records to support requested increase. Based on the current respite needs assessment completed on 11-03-2016 with Service Coordinator and parent via phone call, RCRC will fund up to 25 hours per month of in-home respite care.

Reason(s) for this action: Parent has declined to provide RCRC with current medical records to support his request for increased respite.

The Notice of Proposed Action identified Welfare and Institutions Code section 4686.5 as the authority for the proposed action.

Gouvea included a Fair Hearing Request form and claimant requested a fair hearing.

7. Gouvea testified that she assigned claimant a "3" for medical needs because she did not feel that the Guideline description for "1" or "5" adequately described claimant's needs. She based her decision on the evidence available to her, primarily the verbal report by claimant's father. Considering this evidence, she concluded that a score of "3" most accurately reflected claimant's medical needs. Gouvea has not had the opportunity to meet claimant and does not have access to claimant's recent medical records, in accordance with the family's wishes.

Similarly, Gouvea based her assessment of "0" points for mobility on the information available to her, primarily the verbal report of claimant's father. He explained to Gouvea that claimant is able to walk independently, although he occasionally trips or stumbles. In her view, this was not sufficient to justify a score more than "0."

8. Sue Ayer, RCRC client manager, is Gouvea's supervisor and is familiar with claimant's history with RCRC. Ayer explained that service coordinators have latitude to use a number in between the numbers specifically defined on the Guideline to best assess an individual consumer when filling out the Summary Sheet.

9. The testimony of Gouvea and Ayer was credible and persuasive.

10. In connection with the hearing, claimant's father provided documentation that was not previously made available to RCRC. This included a document from California Children's Services which established that claimant has been diagnosed with

spastic hemiplegia and hemiparesis.³ Also included was a note from claimant's primary care provider stating, "in the office I have found that [claimant] has difficulty being able to describe or explain any discomfort or illness he is having. He will have one word such as 'hurt' or 'sick' but be unable to further explain the illness or pain. His father notes this at home as well." Finally, evidence was presented which establishes that claimant is in an adaptive physical education class at school.

Gouvea reviewed these documents at the hearing and explained that the documents, without further evidence, did not change her opinion regarding the number of points to be awarded to claimant for mobility or medical needs consistent with RCRC's Guideline.

11. Claimant's father also presented evidence which established that there has been a prior dispute between claimant and RCRC over the redaction of certain private information from documents in claimant's file. That course of events appears to have diminished claimant's father's trust and confidence in RCRC and in its ability to maintain claimant's confidentiality.

12. Claimant's father chose not to testify at the hearing, but raised several contentions. He argued that RCRC improperly allocated "3" points for medical needs because the Guideline does not provide for a score of "3." He argued that claimant's condition justifies a score of "5" for medical needs and "1" for mobility, which would result in a total score of 25, the threshold for qualifying for 30 hours of respite per month. He also argued that he is not required by law to provide medical records to RCRC or to apply for IHSS services.

³ Spastic hemiplegia and hemiparesis are common in individuals with cerebral palsy. Hemiparesis refers to weakness in one side of the body. Spastic hemiplegia is a mobility impairment on one side of the body and can be minor or severe.

13. RCRC contended at hearing that claimant's apparent failure to seek IHSS protective supervision would also be cause to reduce or deny respite. Evidence was presented that RCRC has requested that claimant's father contact IHSS, as it requests all families. RCRC views protective supervision provided by IHSS as a generic resource that can substitute for respite and reduces the amount of respite awarded if a consumer has protective supervision available. The Notice of Proposed Action and the evidence at hearing established that claimant's respite hours were reduced due to the recalculation of his need and the lack of medical records establishing greater need, and not due to the availability of a generic resource or the failure of his father to apply for this resource. Therefore, whether claimant is obligated to apply for IHSS is not addressed in this decision.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.⁴) 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.) Regional centers have the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after

⁴ All statutory references are to the Welfare and Institutions Code.

gathering information and analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

2. RCRC appropriately calculated claimant's need for respite according to its own Guideline and the information made available to it. Claimant's service coordinator reached her determination based on the information provided to her regarding claimant's needs and abilities. Although the Guideline does not specifically direct that a score between the scores that are specifically defined can be allocated, Ayers persuasively explained that such latitude is given. Gouvea's explanation for why she concluded that claimant warranted "0" points for mobility and "3" points for medical needs was persuasive. Additional documentation provided in the hearing process did not alter her opinion. Gouvea's calculation was reasonable in light of the evidence available to her regarding claimant's mobility and medical needs.

3. Accordingly, RCRC has met its burden of establishing that it lawfully determined that funding 25 hours of respite care per month is sufficient to meet claimant's respite needs.

ORDER

The appeal of claimant from RCRC's Notice of Proposed Action dated November 17, 2016, is denied.

DATED: February 28, 2017

_____/S/_____

KAREN REICHMANN

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.