

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2017010388

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DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 13, 2017, in Concord, California.

Claimant was represented by her mother.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay (RCEB), the service agency.

The matter was submitted for decision on March 13, 2017.

ISSUE

Did RCEB err in determining that claimant is no longer eligible for the Medicaid Waiver Program?

FACTUAL FINDINGS

1. Claimant is a seven-year-old girl who lives with her parents and older brother, who is also a regional center client. Claimant receives RCEB services based on a diagnosis of pervasive developmental disorder – not otherwise specified. Claimant

currently attends first grade. She is fully integrated and receives speech therapy and socialization services through the school district. Claimant receives applied behavioral analytic (ABA) services funded by RCEB through vendor Analytical Behavior Consultants.

2. The Medicaid Waiver Program is a federal program that allows states to waive income limits for qualifying individuals with developmental disabilities. Claimant has been receiving health insurance at no cost through MediCal because she has been enrolled in the Medicaid Waiver Program. Without the program, claimant would not be able to enroll in MediCal because her family's income is too high. Eligibility for the Medicaid Waiver Program is determined by regional centers following state and federal law. Not all individuals who are eligible for regional center services are eligible for the program. The goal of the program is to enable individuals who might otherwise be placed in institutions to remain in the care of their families. To be eligible, a developmentally disabled individual must have two or more non-cognitive qualifying deficits in specific areas. The individual is assessed relative to individuals of the same age. Claimant was previously deemed eligible because the regional center had identified two deficits, namely that she had tantrums and that she was not yet toilet trained.

3. Lisa Kindblad is a Medicaid Waiver Specialist for RCEB who testified at the hearing. She performs annual reassessments of clients who receive Medicaid waivers. Kindblad performs a thorough assessment of each case. If a client is terminated from the program, this does not affect her right to regional center services. Termination from the program can increase the regional center's obligations towards the client because the client may no longer be receiving services that the regional center must then fund. Termination from the program can also deprive the regional center of federal funding for a particular client's services. The Department of Developmental Services and the federal government both perform regular audits of RCEB's Medicaid Waiver assessments to ensure that they are done in accordance with the law. So although RCEB is highly

motivated to find a client eligible, it will not make an assessment that is not consistent with state and federal law.

Each reassessment is performed one month before the client's birthday. Kindblad reassessed claimant for Medicaid waiver eligibility in December 2016. She reviewed claimant's RCEB file, and saw that claimant is now toilet trained. This was reflected in claimant's 2016 Individual Program Plan (IPP), which was entered into by the parties on February 4, 2016. The IPP notes that the prior IPP objective for claimant to "learn to use the bathroom independently, by 1/15" had been met and that claimant "is fully toilet trained and there are no issues or concerns."

Because she was no longer having toilet training issues, Kindblad concluded that claimant only had one qualifying condition, tantrums. The continuing issue with tantrums was confirmed by the ABA report. Kindblad could not identify a second condition in her review of the file. She consulted with claimant's case manager and with her mother and did not receive information that established a qualifying deficit. Accordingly, she concluded that claimant is no longer eligible for a Medicaid waiver.

4. On December 20, 2016, RCEB sent claimant's family a letter notifying them that claimant's eligibility for the Medicaid waiver had been terminated, retroactive to November 30, 2016. RCEB also sent a Notice of Proposed Action that same date, describing the action as "termination from the Medicaid Waiver Program" and the reason as "Not eligible for the Medicaid Waiver Program." Claimant submitted a Fair Hearing Request.

5. An informal meeting was held with claimant's mother and case management supervisor Mariana Varela on January 20, 2017. Claimant's mother described claimant's behaviors and limitations, and brought documentation to the meeting, including a January 2017 report from the ABA provider and a report card. On January 27, Varela sent claimant's mother a letter stating that she consulted with

Kindblad and agreed that claimant "has made progress with her deficits and that her current deficits no longer make her eligible for the Medi-Caid Waiver Program."

6. Rebeca Sordo is claimant's case manager and testified at the hearing. Sordo recently visited claimant's school to follow-up on claimant's mother's contention that claimant has regressed significantly. Sordo observed claimant in the classroom and spoke with her teacher. The teacher reported that claimant is performing well academically. Claimant follows instructions, but she is shy and will not speak louder than a whisper when other children are around. The teacher informed Sordo that she has not observed any regression in the areas of self-care. She reported that there are no issues involving claimant's toileting.

7. Claimant's mother testified that claimant's behavior has regressed significantly since the time of the February 2016 IPP and the ABA report that RCEB relied on in determining that claimant is no longer eligible for the waiver program. She is frustrated that RCEB is relying on outdated information. She explained that such regression is typical of children with autism type conditions. She stated that claimant generally has three toilet accidents each day. Claimant does not use the bathroom at school because she is too shy. When she is picked up after being at school for close to seven hours, she has accidents on the way home and once they arrive at the home. However, claimant's family has not raised the issue of claimant's failure to use the bathroom at school with her teacher or with the school district. She further testified that claimant has regressed in her expression, eating, and dressing, and that she resists going to school. The testimony of claimant's mother was not persuasive in establishing that claimant is significantly deficient in toileting as compared to a typical seven-year-old.

8. Claimant's mother explained that loss of the Medicaid waiver will present a substantial hardship to the family. She is not sure how she will be able to find health

insurance for claimant. Claimant will no longer receive In-Home Support Services, which the family relies on.

## LEGAL CONCLUSIONS

1. The Social Security Act sets forth the Medicaid Waiver Program. (42 U.S.C. § 1396n.) States participating in the program are directed to develop criteria for establishing eligibility. (42 U.S.C. § 1396a.) In California, a consumer must have substantial limitations in adaptive functioning which would require the level of care provided in an Intermediate Care Facility. The Department of Developmental Services provides guidance to regional centers for assessing client eligibility for the Medicaid Waiver Program.

2. RCEB did not err in determining that claimant is no longer eligible for the Medicaid Waiver Program. RCEB is required to adhere to the eligibility requirements and has no discretion. The evidence established that claimant was reported to be toilet trained in the 2016 IPP. Claimant's teacher reported that there is no issue regarding toilet training during the school day. Claimant's mother's testimony regarding claimant's functioning was not persuasive. RCEB performed a rigorous and thorough assessment of claimant's adaptive functioning and was unable to find her eligible for a Medicaid waiver. Claimant's family can ask for another assessment should her condition change.

## ORDER

The appeal of claimant from RCEB's Notice of Proposed Action dated December 20, 2016, is denied.

DATED: March 17, 2017

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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.