

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Michael O.,

Claimant,

v.

San Diego Regional Center,

Service Agency.

OAH No. 2012010625

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Marcos on March 7, 2012.

The San Diego Regional Center (SDRC) was represented by Ronald House, Attorney at Law.

Michael O. (Michael or claimant) was represented by his mother, Alma C.

Oral and documentary evidence was received and the matter was submitted on March 7, 2012.

ISSUES

1. May SDRC cease funding claimant's current day program vendored by his mother?
2. Should Michael's respite services be reduced from 30 hours per month to 20 hours per month?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On January 5, 2011, claimant filed a Fair Hearing Request refuting SDRC's determination that her respite services should be reduced.
2. On March 22, 2011, the record was opened, jurisdictional documents were presented, documentary evidence was received, sworn testimony and closing arguments were given, the record was closed, and the matter was submitted.

EVIDENCE INTRODUCED AT HEARING

Day Program Issue

3. Gabriella Albaisa, SDRC Program Manager, testified that in 2003 claimant's mother became vendored to provide an individual day program for him. The reason SDRC authorized this program was because at the time (2003) it was difficult to find a program suitable for him. Albaisa testified that the day program was authorized pursuant to a Program Design created by claimant's mother and approved by SDRC. Contained within that Program Design was a section entitled "Reporting Procedures" and another entitled "Program Records." Those sections indicated what documents claimant was required to maintain and produce. Albaisa testified that despite repeated requests over the years from SDRC, claimant failed to provide the required documents. The few documents claimant did produce were insufficient and did not satisfy SDRC's obligation to ensure that services it funds are actually provided. Because of those repeated failures to provide the necessary documents, SDRC was seeking to cease funding the day program vendored by claimant's mother. Albaisa acknowledged that SDRC was not challenging whether or not the day program was effective nor was it asserting that claimant was not entitled to attend a day program. Instead, because of the lack of required and requested documentation, SDRC is seeking to no longer fund this day program vendored by claimant's mother. Albaisa

provided a list of local day programs, now in existence, which are willing to assess claimant for service, but admitted that until an assessment is performed, it is unknown whether or not claimant can attend any of those programs.

4. The "Reporting Procedures" section of the Program Design provided:

"Individualized service plan data is recorded daily by staff with use of a daily log, which includes progress notes directly relating to the consumer. Annual and semiannual reports are written and then submitted to the Regional Center. Information on these reviews includes an evaluation of consumer performances, accomplishments, and may also identify problem areas that may hinder the consumer's progress. With these areas defined, a plan is then formulated to overcome these barriers. A statement is made regarding the program's ability to meet the consumer's needs and his placement in the program.

"Special incident reports will be submitted when an unusual incident occurs which threatens or jeopardizes the physical/emotional health or safety of the consumer. All information as it pertains to the consumer is kept at the individual program site."

The "Program Records" section of the Program Design provided:

"The following are permanent records are maintained [sic]: Program design, employee time sheets, employee payroll, consumer attendance, documentation of training, costs

statement records, written approval from regional center, a written organization structure.”

Those two sections clearly and unambiguously notified claimant and his mother, the vendor, of what documents were required to be maintained and produced to SDRC.

5. Numerous letters and e-mails were submitted documenting SDRC’s repeated attempts to obtain the required documentation, claimant’s mother’s request for additional time to produce the requested documents and thereafter her failure to do so. Although some documents were produced, they were largely unresponsive to SDRC’s requests and /or inadequate to meet claimant’s obligations.

6. Leticia Alda, an SDRC auditor, testified about her attempts to obtain necessary documents in order to audit this day program. She introduced the letters and e-mails regarding those attempts, testifying that although she received some documents, the documents received were insufficient and non-responsive. It is important to note that some of the documents requested were not clearly outlined in the Program Design, for example an employee contract, so SDRC’s assertion that those documents were not produced fail. However, many of the documents sought were clearly identified in the Program Design, were required to be produced, and claimant provided absolutely no reason for the repeated and ongoing failure to produce those requested documents.

7. Claimant’s mother testified about the success of this program for claimant, her concerns that other programs do not meet his needs, and asserted that if someone would just sit down with her and explain to her all the necessary documents required, she would be happy to comply. Unfortunately, in light of the fact that SDRC spent several years trying to obtain the required documents, and absolutely no justification was offered as to why claimant failed to produce those requested documents, her assertion did not ring true.

Respite Issue

8. Gabriella Albaisa, SDRC Program Manager, testified that following the October 2011 Individualized Program Plan (IPP) meeting, SDRC obtained information regarding claimant's current status. Thereafter, a respite review was conducted and based upon the scores received during that review, it was recommended that respite be reduced from 30 to 20 hours per month. Albaisa testified that claimant has not used any of his respite hours since August 2010 further demonstrating a lack of need for them.

9. Claimant's mother testified that although she would love to use her respite hours, she is limited as to the respite providers who can care for her son. In August 2010 her respite worker's certifications expired, leaving her with no one to perform respite. She requested that SDRC provide her with a list of qualified respite workers and or assist her in obtaining a qualified respite worker.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) SDRC had the burden of establishing that a reduction in respite was warranted and that it should no longer fund claimant's current day program, where his mother is the vendor.

THE LANTERMAN ACT AND REGIONAL CENTERS

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (the Lanterman Act) which is found at Welfare and Institutions Code section 4500 *et seq.*

3. The Lanterman Act provides a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The State Department of Developmental Services (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.)

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

6. A regional center must develop and implement an "individual program plan" (IPP) for each consumer which specifies the consumer's needs for services and supports. These services and supports must appear in statements of goals and also specific time-limited objectives in the IPP. Goals and objectives "shall be stated in terms that allow measurement of progress or monitoring of service delivery." (Welf. & Inst. Code, § 4646.5, sub. (a)(2).)

7. The IPP must be reviewed, reevaluated and modified no less than once every three years by a planning team composed of regional center staff, the consumer, and

(where appropriate) the consumer's parents, to ascertain whether the planned services have been provided and the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code, § 4646.5, sub. (b).)

8. Welfare and Institutions Code section 4646, subdivision (d) provides:

"Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting."

9. 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 . . . which the regional center . . .

determines will best accomplish all or any part of that consumer's program plan."

...

(8) "Regional Center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

10. Welfare and Institutions Code section 4659, subdivision (c), prohibits SDRC from purchasing services available from generic resources.

11. Welfare and Institutions Code section 4686.5, subdivision (l) provides that respite services are intermittent or regularly scheduled temporary care and/or supervision of a child with a developmental disability whose needs exceed those of an individual of the same chronological age without a developmental disability.

APPELLATE AUTHORITY

12. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to "assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

CAUSE EXISTS TO DENY THE REQUEST THAT SDRC CONTINUE TO FUND
CLAIMANT'S DAY PROGRAM

13. With privilege comes responsibility. In 2003 SDRC authorized claimant's request that SDRC fund an individual day program for him with his mother as the vendor. However, in exchange for that funding, claimant agreed to provide certain documentation. A preponderance of the evidence established that despite SDRC's repeated and numerous attempts to obtain the required documentation, claimant failed to produce it. Absolutely no evidence was introduced justifying that failure. SDRC is a public agency and is held accountable to the Legislature for its use of public funds. At a minimum, it must provide documentation for its provision of services. A vendor, such as claimant, who fails to provide the necessary documentation, jeopardizes not only the funding of its own services, but of the services provided for all SDRC clients. SDRC properly determined that it should cease funding claimant's current day program vendored by his mother because of claimant's failure to produce the requested documents and maintain the necessary records.

CAUSE EXISTS TO DENY THE REQUEST FOR RESPITE HOURS TO REMAIN AT 30
HOURS PER MONTH

14. A preponderance of the evidence established that SDRC may reduce claimant's respite hours from 30 to 20 hours. While typically respite is not reduced unless there is a change in circumstances, in this case because of the lack of information that SDRC had regarding claimant for a number of years, respite remained at 30 hours per month. However, after the October 2011 IPP meeting when information regarding claimant's current status was finally obtained, a respite evaluation was conducted. Based upon that evaluation, SDRC properly determined that respite should be reduced to 20 hours per month. Claimant introduced no evidence to refute any of the information that SDRC relied upon when performing its respite evaluation.

ORDERS

Claimant's appeal from the San Diego Regional Center's determination that it will no longer fund claimant's current day program vendored by his mother is denied. SDRC may cease funding that program. This Order does not affect SDRC's funding of claimant's attendance at another day program offered by another vendor.

Claimant's appeal from the San Diego Regional Center's determination that his respite services should not be reduced from 30 to 20 hours per month is denied. SDRC may reduce claimant's respite services to 20 hours per month.

DATED: March 12, 2012

/s/

MARY AGNES MATYSZEWSKI

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.