

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

G.C.,

Claimant,

OAH No. 2013010083

vs.

SOUTH CENTRAL LOS ANGELES

REGIONAL CENTER,

Service Agency.

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 25, 2013, in Los Angeles.

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

G.C. (claimant) was present; she was represented by her father, R.C.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 25, 2012.

ISSUE

Whether the Service Agency may decrease claimant's respite and socialization

¹ Initials and family titles are used to protect the privacy of claimant and her family.

training hours provided by Premier Healthcare Services from 64 hours per month, plus three hours per day Monday through Friday during school breaks, to 16 hours of respite per month, plus eight hours of respite per day Monday through Friday during school breaks.

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-15.

Testimony. Teresa Rodriguez; Sonia Barksdale; R.C.

FACTUAL FINDINGS

1. Claimant is a 13-year-old girl who is a consumer of SCLARC based on her qualifying diagnoses of autism and moderate intellectual disability.

2. Claimant lives at home with her father, her brother, and her father's ex-girlfriend. Claimant is affectionate with her family members but does not like to play with other children. She goes on family community outings once per week. She is non-verbal, and communicates through gestures and squirming; she requires assistance with daily living tasks as well as constant supervision. She attends Alondra Middle School through the Paramount Unified School District, where she receives occupational and speech and language services.

3. Prior to 2011, claimant was a consumer of Westside Regional Center, which paid for 14 hours per month of in-home respite, 64 hours per month of specialized supervision/day care (socialization), and 25 hours per week of specialized supervision/day care (socialization) during school breaks, all through Premier Healthcare Services (Premier).

4. At claimant's most recent Annual Consumer Contact on December 10, 2012, in which claimant, her father, and Teresa "Maria" Rodriguez, claimant's service coordinator, participated, claimant's father requested additional specialized service hours during claimant's winter break. Prior to the Annual Consumer Contact, Rodriguez had informed

R.C. that the Service Agency would provide claimant with 16 hours per month of in-home respite and additional respite of eight hours per day, five days per week, during winter, spring, and summer breaks. Rodriguez reiterated that offer at the Annual Consumer Contact. R.C. refused to accept the offer, as he wished to keep the in-home respite and socialization hours he had been receiving from Westside Regional Center. Rodriguez referred R.C. to Welfare and Institutions Code section 4686.5² and told him he could appeal the Service Agency's decision.

5. By a Notice of Proposed Action (NOPA) letter dated December 17, 2012, SCLARC again notified claimant's father of its proposed action to terminate claimant's socialization hours through Premier, to increase her respite hours from 14 to 16 hours per month, and to provide additional respite of eight hours per day, five days per week, during winter, spring, and summer breaks. The Service Agency wrote that, after conferring with Premier, it had determined that the 64 monthly hours of socialization and the three hours per day of socialization during school breaks was, in fact, respite, not socialization. The Service Agency wrote that there is a statutory limit of 90 hours per quarter of in-home respite, citing section 4686.5, and that claimant does not qualify for an exception to that limit. The Service Agency wrote that Premier's coordinator for services for Service Agency consumers, Bernardo Martinez, informed the Service Agency that Premier had characterized the 64 monthly hours plus the school break hours as "socialization" in order to avoid the restrictions on respite funding found in section 4686.5.

6. In its NOPA letter, the Service Agency also wrote that it has Purchase of Services (POS) guidelines for socialization services, requiring highly structured programs with training and education requirements for service providers, a ratio of providers to

² All further statutory references are to the California Welfare and Institutions Code unless otherwise stated.

consumers (1:3 or 1:4) that will enable the consumers to play with others, and quarterly reports detailing deficits and goals. Premier, wrote the Service Agency, does not assess the consumer's social skills; its providers are not required to have any training beyond first aid and CPR, and there are no goals set or reports generated.

7. Finally, the Service Agency wrote in its NOPA letter that, because respite is intended to provide a consumer's family members with a break from caring for the consumer, neither R.C. nor his wife (as the Service Agency mischaracterized R.C.'s ex-girlfriend) may be the respite service provider.³ The Service Agency recited the statutory definition of "family member" with respect to respite services, which states in part that a "family member" is an individual who has a consumer residing with him or her and is responsible for the 24-hour care and supervision of the consumer.

8. In a Consumer Transaction note dated December 17, 2012, Rodriguez wrote that Premier identified M.B., who is R.C.'s ex-girlfriend, as the service provider for all of the respite and socialization services funded through Premier.

9. On December 28, 2012, claimant's father submitted to SCLARC a Fair Hearing Request on claimant's behalf, appealing the proposed modification of funding.

10. Rodriguez testified that she has offered R.C. funding for various socialization programs, including My Place Pediatric Therapy Network, that satisfy the Service Agency's POS requirements, but that R.C. refused the offer. By letter dated January 3, 2013, the Service Agency offered to have an informal meeting with R.C.; he declined. By letter dated January 16, 2013, the Service Agency offered to fund another socialization program, Milestones, plus transportation. As of the date of hearing, R.C. had not accepted this offer.

11. Sonia Barksdale, a SCLARC program manager and Rodriguez's supervisor,

³ Claimant's Individual Program Plan (IPP), prepared by Westside Regional Center and dated October 17, 2008, identified M.B. as R.C.'s girlfriend.

testified that the Service Agency determined that 16 hours of respite per month is appropriate for claimant, based on a formula the Service Agency applies and in light of documentation received from Westside Regional Center comprising a psychological assessment dated June 12, 2009, claimant's October 17, 2008, IPP, and a client developmental evaluation report. The Service Agency's formula accounts for the consumer's behaviors, medical status, and self-care abilities, among other things. She testified that there is not usually a reassessment of respite hours needed until the consumer reaches her majority or unless there is a major life change. Barksdale testified that claimant does not fall within any exception to the statutory limit on respite hours.

12. R.C. moved to Paramount in December 2010; prior to that he lived in Downey and claimant was a consumer of Westside Regional Center. R.C. testified that his daughter requires constant supervision to prevent her from harming herself, because unsupervised she would hit herself against walls, run without awareness of danger, and pinch or bite herself. He has noticed no change in her behaviors since 2009. R.C. works full-time; M.B. works in the morning, and cares for claimant when claimant returns home in the afternoon after school and on weekends. R.C. testified that he used to have a relationship with M.B., but no longer does; they continue to live in the same house for reasons of convenience. He testified that M.B. has known and cared for claimant since claimant was four years old, and does not understand why she cannot continue to be paid for the services she provides. He testified that he did not learn of the Service Agency's offer to place claimant in the Milestones socialization program until two weeks before the hearing, and he has never been informed as to whether he has to pay for that program.

DISCUSSION

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

Claimant's father requested a fair hearing to appeal the Service Agency's proposed elimination of funding for what had been characterized as "socialization services" through Premier and its offer of 16 hours of respite per month, plus eight hours of respite per day Monday through Friday during school breaks. Jurisdiction in this case was thus established. (Factual Findings 3-9.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that its decision to eliminate funding for socialization services through Premier and to fund 16 hours of respite per month, plus eight hours of respite per day Monday through Friday during school breaks, is correct. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers such as the Service Agency play a critical role in the coordination and delivery of services and supports. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. Section 4512, subdivision (b), defines the role of the IPP process as follows:

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 where 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

5. Services and supports for a particular consumer may include respite. (§ 4512, subd. (b).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) The Legislature intends that the IPP and the services and supports provided by the regional center promote community integration, independent productive lives, and stable and healthy environments for consumers. (§4646, subd. (a).)

6. The Service Agency seeks to eliminate funding for claimant's socialization services provided through Premier and increase respite from 14 to 16 hours per month on the grounds that the "socialization services" are, in fact, respite services, that claimant is not entitled to more than 16 hours of respite per month plus eight hours of respite per day, five days per week, during school breaks, and that M.B. is not qualified to provide respite, as she was doing under the Premier program, under section 4648.5, subdivision (a).

7. Westside Regional Center funded claimant's "socialization" program through Premier; that program was, in fact, a respite program, not a socialization program. A preponderance of the evidence supports the conclusion that the Service Agency has properly reconsidered the services available to claimant, has appropriately decided to discontinue funding socialization services for claimant through Premier, for reasons set forth in Factual Findings 3 through 12, and has appropriately offered to fund 16 hours per month of in-home respite and eight hours per day, five days per week, of respite during school breaks. Moreover, the Service Agency has offered to fund an appropriate socialization program for claimant, one that will be provided by qualified and trained individuals who will set goals for claimant, enhance claimant's social skills through interaction with other individuals, and provide written reports to the Service Agency.

LEGAL CONCLUSION

Cause was established under section 4648.5 for the Service Agency to modify its funding for claimant's services to 16 hours of respite per month, plus eight hours of respite per day Monday through Friday during school breaks. (Factual Findings 1-12, and Discussion.)

ORDER

Claimant G.C.'s appeal is denied.

DATE: February 15, 2013

A handwritten signature in black ink, appearing to read "Howard W. Cohen", is written over a horizontal line.

HOWARD W. COHEN

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 90 days.