

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

COLIN L.

Claimant,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2013010493

DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on February 19, 2013, in San Leandro, California.

Claimant's father, Donny L. represented claimant.

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

The matter was submitted on February 19, 2013.

ISSUE

May the regional center provide parent-vendor respite to claimant when that program is no longer available at RCEB?

FACTUAL FINDINGS

1. Case Manager Joy MacIntyre, and Case Manager Supervisors, Elvia Osoroi-Rodriguez, and Bernadette Lufrano testified at the hearing on behalf of RCEB. Claimant's father testified at the hearing on behalf of claimant. The testimony of the witnesses and the documentary evidence established the facts set forth below.

2. Claimant is a nine-year old boy who is diagnosed with autism. He is mostly non-verbal, but can mimic words when asked and answer questions when prompted. As described in the Annual Review of his Individual Program Plan (IPP), claimant's needs for care and supervision are intensive: He lacks safety awareness. He endangers himself by rubbing his mouth raw on carpet and hand clapping when he does not get what he wants. Claimant lives with his parents, maternal grandmother and older brother. Claimant's mother works full-time outside of the home. Claimant's father has been unemployed for the last six months, but will be working full-time as of February 25, 2013. Claimant's parents do not have any other relatives nearby. The parents have worked tirelessly to provide claimant with a safe and supportive environment.

3. Claimant currently attends James Elementary School in Fremont in an autism class. He takes the school bus to and from school, and he likes the bus. Occupational Therapy (OT) services are being utilized at school to try to lower the sensory concerns that have been noted.

4. RCEB has authorized 30 hours per month of in-home respite care with Manos Home Care beginning December 1, 2012 and terminating September 30, 2013.

4. Claimant's challenging behaviors have made it difficult for his family to find caregivers who are willing and able to care for him. Claimant's last respite provider left in November 2012, and there have been no respite services for the last 12 weeks. Claimant has worked with several agencies that RCEB has referred him to, but none have been able to meet Claimant's needs. In addition to claimant's challenging behaviors, he

also needs caregivers for short time periods. This fact has contributed to the difficulty in finding an appropriate respite worker.

5. Claimant's September 6, 2012, Addendum to his January 20, 2010, IPP provides claimant with the maximum amount of in-home respite of 90 hours per quarter, which works out to 30 hours per month or 6.9 hours of respite per week. Claimant's IPP addendums consistently recognize the need for in-home respite.

6. Claimant wants to hire a family member or neighbor to provide respite care, however, this person does not want to go through the hiring process with an agency. Therefore claimant would like RCEB to reimburse claimant directly for the costs associated with respite care based upon a voucher system. (This voucher system is also known as parent-vendored respite.)

7. On January 10, 2013, RCEB sent claimant a Notice of Proposed Action, stating that it is unable to change the purchase of respite services from an agency vendor respite to parent-vendored respite. The Notice of Proposed Action also informed claimant that RCEB is unable to reimburse claimant for respite service that he secures on his own. Due to changes in state and federal regulations, parent-vendored respite was terminated by the state in November 2011. RCEB converted to an Employer of Record service on October 1, 2011, and for these reasons, RCEB is unable to provide respite care via parent-vendored respite.

8. Claimant is extremely concerned that the Employer of Record service agencies will not be able to provide the respite services that he needs. There are few Employer of Record service vendors in claimant's community near Milpitas, where claimant resides. He has had difficulty finding appropriate respite workers.

9. RCEB has suggested that a solution to claimant's difficulty in hiring competent people from the Employer of Record service vendors is that his personal

choices for respite caregivers apply to the agencies, complete the paperwork, and become "vendorized" or "employees" of the Employers of Record service vendors.

10. Claimant is a devoted and loving parent who is under extreme stress and cannot find the best respite caregivers for his son so that his needs for respite care can be met. RCEB is working very hard to meet claimant's respite care needs and understands the dire situation in this family, however, they are limited in their resources with the agencies or Employers of Record service vendors in claimant's community. RCEB is determined to continue to work hard to find the appropriate respite caregivers for claimant.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500, et seq.) The Lanterman Act (Act) provides that an "array of services and supports should be established . . . to meet the needs and choices of each person with development disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) The Act is one of entitlement, meaning that consumers have a right to needed services at the state's expense. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384; *Williams v. Macomber* (1990) 226 Cal.App.3d 225.) As the California Supreme Court stated in *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, at page 388:

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 (§§ 4501, 4509, 4685), and to enable them to

approximate the pattern of every day living of nondisabled persons of the same age and to lead more independent and productive lives in the community (§§ 4501, 4750-4751).

2. The Department of Developmental Services (DDS) is the state agency charged with implementing the Act. Pursuant to the Act, DDS provides services to consumers through a network of regional centers. (§§ 4620, 4621.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmental disabled under the Act. (§ 4620, subd. (a).) The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.) As the Act repeatedly makes clear, in order to achieve the goals and objectives set forth in a consumer's IPP, regional centers "shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan . . ." (§ 4648, subd. (a)(1); see also §§ 4646.5, 4647.) Indeed, it is the responsibility of the regional center, through its service coordinator, to provide or ensure that needed services are available to the consumer. (§ 4640.7.)

In the instant case it is not possible for RCEB to fund respite services through parent-vendored respite. Under the current Employer of Record service claimant is free to choose a respite worker on his own, who may then become an employee of an Employer of Record that is authorized by RCEB to provide respite care. Although claimant has not been able to find respite workers who meet his specifications he is encouraged to continue to do so. RCEB is also encouraged to continue to assist claimant in his search.

ORDER

The appeal of Colin L. is denied.

DATED: _____

ADRIENNE J. MILLER

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.