

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J.P.

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2013041126

DECISION

This matter was heard by Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 15, 2013, in Whittier.

Claimant J.P. was not present; he was represented by his mother.¹

Veronica Valenzuela, Supervisor, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 15, 2013.

ISSUE

Whether the Service Agency may terminate funding for day care services provided to claimant by Premier Healthcare.

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

EVIDENCE CONSIDERED

Testimony: Veronica Valenzuela; Maria Rendon; claimant's mother.

Documents: Service Agency exhibits 1-6.

FACTUAL FINDINGS

1. Claimant is a 12-year-old male who is a consumer of ELARC based on his qualifying diagnosis of autism.

2. Claimant lives with his mother and grandparents in Whittier. Claimant attends Hillview Middle School, through the Los Nietos District, four days per week from 8:00 a.m. to 2:50 p.m., and one day per week from 8:30 a.m. to 1:30 p.m. He is mainstreamed for all subjects and receives special education services for social studies and homeroom. Claimant requires assistance with self-help skills. He has little understanding of safety issues and requires constant supervision to ensure his safety.

3. In accordance with claimant's most recent Individual Program Plan (IPP) dated March 19, 2013, the Service Agency provides respite for 16 hours per month through Maxim Healthcare, and funding for 97 hours per month of day care through Premier Healthcare; claimant's grandmother is the day care provider for claimant, before and after school. The Service Agency has funded day care services for claimant since 2005. The IPP notes that a notice of proposed action will be sent to claimant's mother because claimant is not eligible for day care funding "based on income." (Ex. 3.) The IPP states that "[n]ew income guidelines have been provided to mother for day care services. Mother does not meet financial hardship under guidelines. . . . Mother does have a share of cost. Monday, Wednesday, Thursday and Friday is 4 hours per day and Tuesday is 5 hours since it is early dismissal day. Mother prefers for grandmother to continue caring for him before and after school." (*Id.*) Claimant's mother pays four dollars per hour for the day care services; the Service Agency pays the balance, \$3.85 per

hour. At the IPP meeting, the Service Agency discussed generic day care programs in the community and the possibility of funding an aide if needed in a day care setting; claimant's mother chose to continue with in-home day care.

4. By a Notice of Proposed Action and letter dated March 18, 2013, ELARC notified claimant's mother of its decision to terminate funding for day care services provided by Premier Healthcare effective April 19, 2013. ELARC wrote that the denial was mandated because "[y]ou do not meet financial hardship." (Ex. 1.) ELARC cited in support of its position Welfare and Institutions Code² sections 4512, subdivision (b), 4685, subdivision (c)(6), 4646, subdivision (a), 4646.4, subdivision (a), 4648, subdivision (a)(8), and 4659, subdivision (a)(1), and California Code of Regulations, title 17, section 543269, subdivision (d).

5. On March 29, 2013, claimant's mother submitted to ELARC a Fair Hearing Request on claimant's behalf, appealing the termination of funding.

6. Veronica Valenzuela, a supervisor at the Service Agency, and Maria Rendon, claimant's service coordinator, testified that since 2011 the Service Agency's Purchase of Service Guidelines for day care funding have required that all generic resources for day care be exhausted and that the family meet certain criteria to establish financial need or hardship in order to be eligible, and that claimant's mother has not furnished information establishing financial need.

7. Claimant's mother does not believe the law requires means-testing for the day care services provided to claimant. She testified that claimant has behavioral issues, though they are not severe. She testified that claimant is very comfortable with his

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

grandmother as the day care provider and that it benefits him. Claimant's grandmother knows how to control claimant's tantrums and understands his language.

DISCUSSION

JURISDICTION AND BURDEN OF PROOF

1. The 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 mother requested a fair hearing to appeal the Service Agency's termination of funding for claimant to receive day care services. Jurisdiction in this case was thus established. (Factual Findings 4 & 5.)

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, claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to Service Agency funding for day care services. (Evid. Code, § 115.)

FUNDING FOR DAY CARE SERVICES

3. Regional centers, when developing a consumer's IPP, shall use an internal process to ensure compliance with laws and regulations and, "when purchasing services and supports, shall ensure . . . [u]tilization of generic services and supports when appropriate" and "[u]tilization of other services and sources of funding" (§ 4646.4, subd. (a).) "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 . . . and the cost effectiveness of each option." (§ 4512, subd. (b).) A "regional center shall identify and pursue all possible sources of funding for consumers receiving regional

center services,” including “governmental or other entities or programs required to provide or pay the cost of providing services,” and private entities. (§ 4659.)

4. When purchasing day care vouchers for parents caring for children at home, “the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.” (§ 4685, subd. (c)(6).)

5. When purchasing services and supports, a regional center must conform to its purchase-of-service guidelines. (§ 4646.4, subd. (a)(1).) Those guidelines are to have been reviewed by the Department “to ensure compliance with statute and regulation.” (§ 4434, subd. (d).) Reflecting the Department’s interpretation of statute and regulation, the guidelines are not entitled to the deference given to a regulation but are rather entitled to a degree of deference dependent upon the circumstances in which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) The Service Agency in this case relied on its service standards and in particular on its POS Guideline regarding day care services to justify its decision to terminate funding for day care for claimant. The guidelines provide that the Service Agency “will not fund day care services for children under age 13,” but may consider doing so “if the IPP planning team has exhaust [sic] all generic resources identified in the Alternative Funding Resources Section of this policy and if it is determined that the family meets a financial need or hardship,” citing section 4685, subdivision (c)(6). Financial need is to be determined by using the Federal Poverty Guideline (FPG), with the family to provide income verification documentation. (Ex. 4.) The POS Guideline also provides that, regardless of the minor consumer’s age, ELARC will fund an aide “so that the child can participate in the day care setting within his/her community.” (*Id.*)

6. The POS Guideline language appears at points to be at variance with the language of section 4685, subdivision (c)(6). For example, and most relevant to this matter, section 4685, subdivision (c)(6), does not require a demonstration of financial need unless the consumer's family requests the Service Agency to pay more than the amount that exceeds the cost of providing day care services to a child without disabilities. That is not the case here. (Factual Finding 3.)

7. Applying its guidelines, the Service Agency concluded that, without proof that claimant's mother satisfies specified financial need criteria, it is not required to continue to fund day care services for claimant. The Service Agency did not present evidence that claimant's needs for services and supports have changed since the last IPP, or that the services provided are no longer cost-effective and that generic day care services, with or without an aide, are appropriate for claimant, or that claimant's grandmother should not continue to be compensated for serving as claimant's day care provider. Nor did the Service Agency provide evidence that means testing for these services is supported by the Lanterman Act. Claimant's mother provided evidence that claimant's needs as identified in the most recent IPP must still be addressed and that they are being addressed by allowing claimant to stay at home with his grandmother after school, as he prefers. (Factual Findings 2, 3, 7.)

8. In sum, the evidence did not establish that the Service Agency may terminate funding for day care services for claimant at this time.

LEGAL CONCLUSION

Cause was not established for the Service Agency to terminate funding for day care services for claimant. (Factual Findings 1-7, and Discussion.)

ORDER

Claimant J.P.'s appeal is granted.

DATE: May 29, 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.