

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

and

NORTH LOS ANGELES COUNTY

REGIONAL CENTER,

Respondent.

OAH Case No. 2013110079

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on June 2, 2014, in Lancaster, California.

Claimants' father,¹ represented Claimant.

Ruth Janka, Contract Administrator, represented North Los Angeles County Regional Center (Regional Center or Service Agency).

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

ISSUE

Should Regional Center fund day care services for Claimant?²

¹ References to Claimant's and his father's names have been deleted to protect Claimant's privacy.

² At the hearing, Service Agency agreed to fund respite services for Claimant, thus resolving one of the issues on which Claimant sought fair hearing.

FACTUAL FINDINGS

1. Claimant is a 27-year-old unconserved man with a qualifying diagnosis of cerebral palsy. Spasticity affects the left side of his body. Claimant has intermittent back spasms that impair his ability to function. He resides with his father, brother, sister, brother-in-law, and two nephews, aged five and 12. Claimant has a six-year-old son who lives with an aunt.

2. Claimant is able to perform daily living activities, but requires some assistance with dressing due to his arm spasticity. He has a drivers' license, but his father requires an adult in the vehicle for Claimant to drive. Claimant is able to access the community on his own by walking or by using public transportation. Claimant's father notes that Claimant does not make good financial decisions and manages Claimant's money for Claimant's protection.

3. Claimant suffered a sex-related conviction and is on parole until 2016. He meets with his parole officer, Stephanie Smith, on a regular basis. As a condition of parole, Claimant must be home between the hours of 10:00 p.m. and 6:00 a.m., and wears an ankle tracking device for monitoring. Typically twice per week, Claimant avails himself of the literacy lab services in the parole office, which he refers to as the "parole school."

4. In October 2007, Service Agency agreed to fund day care services for Claimant, based on his father's concerns for Claimant's health and safety. Services were provided during the hours of 12:00 a.m. to 8:00 a.m., while Claimant's father worked. Despite concerns regarding the continuing need for the services, Service Agency agreed to continued funding following annual reviews in 2008 and 2009. Claimant was incarcerated between 2010 and July 2013, and did not require the services.

5. During an Individual Program Plan (IPP) meeting on August 15, 2013, Regional Center Service Coordinator Caren Williams (Williams) assessed the need for continued day care services. The services were then being provided by Claimant's brother. However, the brother was not providing much supervision, as he typically slept while Claimant also slept or played video games. Williams concluded that Claimant no longer needed these services due to his self-sufficiency and family supports.

6. Fred Plessner, P.T. (Plessner), conducted a physical therapy assessment of Claimant on March 4, 2014. Based on answers provided by Claimant, Plessner concluded that Claimant can access the community on his own and perform most daily living tasks unassisted. On physical examination, Plessner confirmed that Claimant needed assistance putting on and taking off shirts. Claimant was able to perform functional tasks as directed by Plessner, such as moving on and off several items of furniture, sitting on the toilet, and getting into and out of a bath tub. In Plessner's opinion, Claimant does not require an aide for his safety or to perform any daily living activity. Plessner did recommend certain devices, such as grab bars, a toilet seat, and a cane, that would increase Claimant's independence and ability to care for himself.

7. Claimant's father is concerned that if left unsupervised during the night, Claimant might engage in inappropriate behavior, such as leaving the house, meeting with the wrong people, and using drugs. Claimant's father is also concerned that if Claimant suffers a spasm during the night, he might not be able to go to the restroom by himself.

8. On September 23, 2013, Service Agency informed Claimant and his father that Service Agency would not fund day care services. On October 24, 2013, Claimant filed a fair hearing request, which was received October 28, 2013.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. The statute states, in part: " 'Services and supports for persons with developmental disabilities' means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. 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, when 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. . . ." The services that a regional center may fund include day care services.

3. With respect to specific services, section 4648, subdivision (a)(2), provides, in part: "In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following: [¶] "(a) Securing needed services and supports. [¶]. . . [¶] (2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family."

4. Continued funding of day care services is not a cost-effective service or support to alleviate Claimant's developmental disability, to assist in his social, personal, physical, or economic habilitation or rehabilitation, or to help him achieve or maintain an independent, productive, and normal life. As established by Plessner's expert opinion, which is corroborated by all other pertinent testimony and evidence submitted at the hearing, Claimant does not require a day care provider or aide to ensure his safety or to perform daily living activities. With the exception of the possibility of a spasm, the

concerns of Claimant's father have more to do with the choices Claimant may make, not with Claimant's ability to implement the choices he makes or to perform other tasks. Moreover, services are being sought for a period of time period in which Claimant is at home and has the support of other family members, should he need or opt for assistance.

5. Accordingly, by reason of factual finding numbers 1 through 7 and legal conclusion numbers 1 through 4, Service Agency is not required to fund day care services for Claimant.

ORDER

Claimant's appeal is denied and Service Agency need not fund day services.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.