

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2014030222

DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on April 10, 2014, in Concord, California.

Mary Dugan, Fair Hearing Specialist, represented Regional Center of the East Bay, the service agency.

Claimant was represented by his mother and was not present. Claimant's mother was assisted by Spanish interpreter Charles J. Légier, a registered interpreter.

This matter was consolidated for hearing with OAH Case No. 2014030226, which involves the same issue, but pertains to services provided to claimant's brother, who is also a consumer of RCEB. A separate decision was rendered in that matter.

The matter was submitted for decision on April 10, 2014.

ISSUE PRESENTED

Is RCEB required to reimburse claimant for day care expenses incurred from June 1, 2013, to December 2013?

FACTUAL FINDINGS

1. Claimant is a 14-year-old consumer of Regional Center of the East Bay (RCEB) services. Claimant has been diagnosed with Marinesco-Sjogren Syndrome,¹ cerebellar ataxia and cataracts. Claimant's 22-year-old brother has been diagnosed with Marinesco-Sjogren Syndrome and mild mental retardation. Claimant and his brother live with their mother who works evenings as a janitor. Claimant and his brother require constant supervision, and require assistance with most personal hygiene tasks. Claimant is in a special education program and has a one-on-one aide at school.

2. Claimant's 2013 Individual Program Plan (IPP) provides that claimant will receive day care services funded by RCEB while his mother works. The IPP provides for 60 hours per month of day care at the single rate, and 150 hours per month for day care at the dual rate (shared with his brother).

3. Since 1998, claimant's family has been vendorized to provide day care services.² On May 27, 1998, RCEB sent a letter to claimant's father approving his vendorization. The letter stated that detailed instructions were attached. (The attached instructions were not provided at hearing.)

4. On November 18, 2002, RCEB sent a letter approving claimant's mother for vendorization; the letter advised that instructions were attached. Although the

¹ Marinesco-Sjogren Syndrome is a very rare genetic disorder characterized by ataxia (balance and coordination problems), juvenile cataracts, generally some degree of cognitive delay, and very small stature.

² Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(3), a regional center may, pursuant to vendorization, purchase services for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, determines will best accomplish all or any part of the IPP.

attached instructions were not provided at hearing, the current RCEB vendor instructions state that proof of payment to day care workers must be maintained for five years; the proof of payment is described as cancelled checks, signed cash receipts or bank statements.

5. The May 27, 1998, and November 18, 2002 letters are in English. Claimant's mother is Spanish-speaking and does not read or speak English. Although instructions are available in Spanish, there is no evidence that claimant's mother received the instructions in Spanish.

6. Over the intervening years, claimant's mother has hired individuals to provide day care for her sons while she worked. She has sent in the monthly day care timesheets identifying the dates and hours that the day care provider worked. On occasion, RCEB asked a question, which claimant's mother answered to RCEB's satisfaction.

7. In June 2013, RCEB stopped reimbursing claimant's mother for day care services. Initially, claimant's mother thought it was just a delay or mix up. Later, she learned that the RCEB accounting division was requesting proof of employment because it questioned why a housekeeper would be working from 4:00 p.m. to 11:00 p.m. as noted on the timesheets. Claimant's mother explained that she worked as a janitor in commercial buildings and provided proof of her employment and hours; the issue was resolved to RCEB's satisfaction on December 2, 2013.

8. Between June 1, 2013, and November 30, 2013, claimant's mother continued to require day care services, but because RCEB had stopped payments, she was unable to pay her day care worker fully for the hours worked. The total amount of day care expenses claimant's mother incurred between June 1, 2013, and November 30, 2013, is \$12,891.55. Claimant's mother paid her day care provider \$7,060 of this amount out of her own wages; her provider is still waiting to be paid in full. Claimant's mother

testified credibly that she paid the day care worker with checks totaling \$1530,³ and that the the remaining payments were made in cash. Claimant's mother did not know that RCEB required her to keep signed receipts for all cash payments.

9. On December 2, 2013, claimant's mother and the RCEB fair hearing specialist, Mary Dugan, signed a Notice of Resolution in which RCEB agreed to reimburse claimant's mother for day care services from June 1, 2013, through November 30, 2013. The reimbursement amount totaled \$12,891.55.

10. After RCEB and claimant's mother signed the Notice of Resolution, the RCEB accounting division requested copies of checks, or receipts for cash payments, as proof of payment to claimant's day care provider. Claimant's mother provided RCEB with a notarized declaration from the day care provider attesting to having provided the day care services. RCEB refused to reimburse claimant's mother pursuant to the Notice of Resolution because claimant's mother had not maintained signed receipts for cash payments made to the day care worker.

11. Claimant's mother is no longer the vendor for claimant's day care services. A vendorized agency has hired claimant's day care provider and all payments now go through the agency, which maintains all of the required documentation.

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 mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream

³ At hearing, claimant's mother provided copies of cancelled checks made out to her day care provider between June 1, 2013, and November 30, 2013, totaling \$1530.

life of the community.” (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700 – 4716.)

2. Welfare and Institutions Code section 4512, subdivision (b), defines that the services and supports provided to persons with developmental disabilities to include day care. Day care services are defined in Welfare and Institutions Code section 4686.5, subdivision (a)(4), as “regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home....”

3. In this matter, RCEB and claimant agree that claimant and his brother qualify for day care services. The issue presented is whether RCEB should reimburse claimant for those services between June 1, 2013, and November 30, 2013, because claimant’s mother at times paid the day care worker in cash, but did not maintained signed receipts for all cash payments. The regulations require that documentation be maintained for review by the regional center to confirm that the services were provided. (Cal. Code Regs., tit. 17, §§ 50603 – 50606, 54326, 54355.) Although claimant did not keep the type of records that RCEB generally requires, claimant established through testimony, the day care worker’s notarized declaration, and documentation, that the services were provided. (Factual Findings 8 through 10.)

Claimant’s mother works full-time and cares for two developmentally disabled sons. She has attempted to meet the requirements of the regional center. RCEB does not dispute that the services were provided as reported. The Lanterman Act, and the regulations promulgated thereunder, provide guidelines for reimbursement for services rendered in order to safeguard public resources and to confirm that the services being

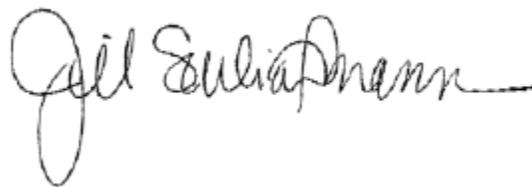
paid for are being provided. That the services were necessary, and were provided, is not in doubt in this matter. (Factual Findings 2, 8 through 10.)

Claimant's day care services are now being provided through an agency vendor in order to ensure that all records are maintained as required by the regional center. (Factual Finding 11.) RCEB will be ordered to reimburse claimant's mother for day care services provided to claimant and his brother between June 1, 2013, and November 30, 2013, as agreed in the Notice of Resolution.

ORDER

Claimant's appeal is granted. This order is made concurrently with the order in Office of Administrative Hearings Case No. 2014030226. The total amount to be paid to claimant's mother by Regional Center of the East Bay is \$12,891.55, which will satisfy the order in both appeals.

DATED: April 16, 2014



JILL SCHLICHTMANN

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.