

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. 2014030235

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 1, 2014, in Concord, California.

Claimant's mother represented Claimant, who was not present.

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

The record closed on April 1, 2014.

ISSUE

Whether RCEB is required to continue to fund specialized child care for Claimant.

FACTUAL FINDINGS

1. Claimant, born January 17, 2003, is currently 11 years old. He lives with his mother, father, and an older sister. Claimant receives services from RCEB pursuant to a diagnosis of autism and borderline intellectual functioning (provisional) in accordance with his Individual Program Plan (IPP).

2. One of the services that Claimant has received from RCEB is funding of specialized child care at NY Learning Center. Pursuant to the verification policies for such funding, RCEB staff requested that Claimant's parents supply verification that they are both employed outside of the home. Assistance with child care funding is only available when both parents are not available to care for the child because of employment or qualifying educational activities. The documentation provided by Claimant's parents was deemed insufficient by RCEB staff, and so it was decided that the funding would be discontinued.

3. On February 12, 2014, RCEB issued a Notice of Proposed Action stating that it "will not continue to fund for specialized child care services." The reason given is:

RCEB may not fund your request for specialized child care because policy and law state that the parents must be engaged in employment outside of the home or educational activities leading to employment or both. You reported that you and your husband use your home address as your business address.

4. Claimant's mother filed a fair hearing request on Claimant's behalf. She requested that RCEB continue to fund specialized child care. This hearing followed.

CHILD CARE SERVICES FUNDING REQUEST

5. Claimant's mother is self-employed as a housekeeper for many different clients. She travels to her clients' homes to clean them. Her business address is the family residence, but she works outside of the home. As proof of this employment, Claimant's mother provided copies of the receipts she writes for the cash or checks she receives as payment for her services. The documentation covers the months of

November and December, 2013. Next to the copy of the check, and on the receipts, Claimant's mother wrote the hours worked for which the payment was received.

6. Claimant's mother also supplied a partial copy of the couple's 2012 federal tax return. It includes two "Schedule C" forms, which are used to report the earnings and expenses of the self-employed. Claimant's mother's occupation is identified as "janitorial." Claimant's father's occupation is identified as "maintenance" on one form, and "construction" on another.

7. Claimant's mother brought to the hearing two additional documents not previously provided to RCEB. They are both bid proposals for construction work to be performed by Claimant's father, one for the installation of a new concrete patio bid at \$2,300, and one for seismic strengthening work bid at \$45,250. They are both dated November 4, 2013. Neither document indicates whether the proposal was accepted, but Claimant's mother testified that Claimant's father did the work described.

8. Claimant's mother testified that the documents that she presented represent the only proof she has of her employment. She has lost some clients when she has asked them for letters verifying that she works for them. And when she is paid in cash, she has no proof other than the receipt that she prepares. As regards the one hour to and from work recorded on her application, Claimant stated that because there is sometimes very heavy traffic, it can take that long to get to the house she is working at; in fact, she is sometimes late picking up Claimant from child care.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act: [I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled

persons of the same age and to lead more productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community

Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place:

A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP].

(Welf. & Inst. Code, § 4648, subd. (a)(3).)

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects, and this case involves one of the restrictions. Regional centers are not allowed to purchase services for consumers that are otherwise available; for example, through the public school system, or from family members. When a consumer lives at home, child care services cannot be purchased by a regional center unless "the parents are engaged in employment outside of the home or educational activities leading to employment or both." (Welf. & Inst. Code, § 4686.5, subd. (a)(4).)

It is incumbent upon regional centers to ensure that consumers qualify for the funds and services they have applied for. It is in this context that RCEB staff requested information from Claimant's family verifying that both parents are employed full-time outside the home.

5. The evidence demonstrated that the decision of RCEB staff to discontinue funding the NY Learning Center for Claimant was justified and correct. The documentation provided is inadequate to verify that both parents are employed full-time. The statement that one is self-employed on a full-time basis outside the home is not sufficient; corroboration from another person or entity is required. It is recognized that obtaining verification of employment can be more difficult for the self-employed, but it can be done.

In this case, it was proven that Claimant's mother works outside the home as a housekeeper. She showed checks written to her, and her testimony on that point was credible. But she did not have sufficient evidence to prove that she does so 40 hours per week. And even if the documentation regarding Claimant's mother was sufficient, the information submitted as regards Claimant's father's employment is wholly insufficient. Accordingly, Claimant's appeal will be denied.

ORDER

Claimant's appeal is denied.

DATED: April 7, 2014

_____/s/_____

MARY-MARGARET ANDERSON

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.