

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. 2014050333

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on July 31, 2014, in Concord, California. This case was consolidated for hearing with the appeal of claimant's sister (OAH No. 2014050334), which presents the same issue. A separate decision is being issued in each case.

Pam Thomas, Director of Consumer Services, represented Regional Center of the East Bay, the service agency.

Claimant was represented by his mother.

The record remained open to allow claimant to submit documents from claimant's sister's physician, and from claimant's mother's physician, and to allow the regional center to respond. Claimant timely submitted an August 1, 2014 letter from Dianne Collins, DO, Senior Physician; an August 6, 2014 letter from Naomi Mata, M.D.; and a letter from claimant's mother, dated August 11, 2014. These documents were marked for identification as Exhibits D, E and F, respectively. RCEB timely filed a

response from Pam Thomas, dated August 12, 2014, which was marked for identification as Exhibit 13. RCEB has no objection to Exhibits D and E, and they are admitted. RCEB objects to Exhibit F on the ground that the record was not left open for additional testimony or argument from claimant. RCEB's objection is sustained. Exhibit F is excluded. Exhibit 13 is admitted as argument.

The matter was deemed submitted on August 12, 2014.

ISSUE PRESENTED

Whether RCEB may reduce the volume of claimant's in-home respite services.

FACTUAL FINDINGS

1. Claimant is a 12-year-old boy who receives services from the Regional Center of the East Bay (RCEB) due to a diagnosis of autism. Claimant lives at home with his mother, who is a single parent, and his 15-year-old sister, who also receives services from RCEB due to autism.

2. Claimant's April 3, 2012 Individual Program Plan (IPP) states that claimant's mother will "have breaks from his specialized care through November 2012," and that RCEB will fund 90 hours per quarter of respite through November 2012. Absent extraordinary circumstances, regional centers are prohibited from purchasing more than 90 hours of respite per calendar quarter for any consumer. (Welf. & Inst. Code, § 4686.5.¹)

¹ Welfare and Institutions Code section 4686.5 is part of the Lanterman Developmental Disabilities Service Act (Welf. & Inst. Code, § 4500 et seq.) All statutory references are to the Welfare and Institutions Code.

3. RCEB provided the same volume of respite to claimant's sister – 90 hours per calendar quarter. RCEB provided respite to claimant and claimant's sister at what the regional center calls the "individual" or "single" rate, as opposed to the "shared" rate. Under the single rate, each claimant is authorized to receive 90 hours of paid supervision per quarter, independently of the other claimant. Under a shared rate, two consumers are supervised at the same time by one provider.

4. Beginning in or around November 2012, claimant's case manager, Jan Shapiro, attempted to perform a needs assessment to identify claimant's actual respite needs. The regional center's purchase of service policy for respite requires the case manager to perform a consumer/family needs assessment. In the course of that assessment, the case manager must identify all sources of relief through natural supports and generic resources, and must "fully explore" those resources to be sure that they are being utilized to the fullest extent, and that they are insufficient to meet the family's need for intermittent breaks from caring from the consumer. "Sources of relief" include time that the consumer is in the care and supervision of others, such as time that the consumer is in school; time that the consumer is receiving professional services; and time that the consumer is receiving generic resources that satisfy the need for respite.

5. Despite repeated requests, claimant's mother failed to provide RCEB with the detailed information needed to perform a thorough assessment, including such fundamental information as a calendar of claimant's daily activities.

6. October 29, 2013, claimant's mother and RCEB engaged in an annual review of claimant's IPP. Claimant's mother stated that she wanted to renew respite at the volume of 90 hours per calendar quarter, per child. The annual review states that "[d]iscussions are in progress regarding amount of respite to be authorized." Those discussions did not result in an agreement. Claimant's mother did not provide Shapiro

with the information RCEB needed to perform a needs assessment, and did not provide the information to Case Management Supervisor Shirley Obioma after she intervened. Claimant's mother maintains that she sent RCEB the requested information in an email attachment on July 23, 2014, many months after the process started, but the attachment she sent could not be opened. RCEB asked her to fax the document to the regional center, but she did not.

7. Since November 2012, RCEB has continued to fund 90 hours of respite per calendar quarter, at the individual rate, for claimant and claimant's sister.

8. Unable to obtain the necessary information from claimant's mother, Obioma undertook her own assessment of claimant's respite needs with the information that was available to her. Obioma's found that claimant is in school from 8:00 a.m. to 3:00 p.m. on weekdays, and that in October 2013 he was receiving 168 hours per month of protective supervision from In-Home Supportive Services (IHSS). IHSS protective supervision is a generic resource that meets a consumer's respite needs. Obioma found that there were very few waking hours when claimant was not receiving, or was not eligible to receive, paid supervision. Obioma also found that, between January 2013 and April 2014, claimant had not used any of his respite hours. Obioma concluded that 90 hours of respite per calendar quarter was not justified.

9. In a letter to claimant's mother dated April 17, 2014, Shapiro wrote that she was "unable to identify when and how respite services fit into the daily activities of [claimant and his sister]." After reciting the generic resources provided to claimant that satisfy respite – claimant's school hours, protective supervision hours and "school program" hours – Shapiro concluded that RCEB was "unable to meet [claimant's] request" to continue respite at the current level. Shapiro informed claimant's mother of RCEB's intent to reduce his in-home respite from 90 hours per quarter single rate to 60 hours per quarter single rate.

10. Claimant and RCEB met for an informal hearing on May 29, 2014. At that hearing, claimant's mother reiterated her need for 90 hours of respite per quarter at the individual rate for each child. She noted that both children lack safety awareness; that they have different interests; that she does not want a person of the opposite gender to work with either child; and that she could not find two different IHSS workers to supervise both children at the same time. Claimant's mother acknowledged that the only time there was not a paid person assisting her with her children was when she was asleep.

11. In a letter dated June 4, 2014, RCEB offered to provide respite to claimant and claimant's sister as follows:

- 1) 3 months at a rate of 30-hours shared and 60-hours individual (per child) in-home respite;
- 2) then 3 months at 60-hours shared and 30-hours individual (per child) in-home respite;
- 3) [then] some combination of shared and individual respite that total 90-hours per calendar quarter.

RCEB's proposal was not acceptable to claimant, and this hearing followed.

12. Claimant's mother maintains that there should be no reduction in the respite hours for claimant or his sister. She testified that her children are severely impaired and that each child has distinct needs. Claimant's mother stated that she herself is being treated for stress and migraines, and her physician has told her that if she keeps up her current pace, she will not be able to care for her children. She submitted a school schedule for claimant's school district to show that there are many days – holidays, teacher in-service days, semester breaks – when claimant is not at

school. Claimant's mother believes that the regional center's calculations of the children's supervised time are inaccurate, and that RCEB should have considered the children's "actual circumstances" instead of making assumptions about the family's need.

13. RCEB has been trying for some time to determine what the actual circumstances of claimant, claimant's sister and claimant's mother are, but has been frustrated in that attempt by a lack of cooperation from claimant's mother. Claimant has not presented evidence of his daily activities, the daily activities of his mother, or the daily activities of his sister; evidence of how those daily activities change during and after the school year; evidence of generic supports awarded to claimant and his sister that satisfy respite needs; evidence of afterschool or weekend programs that claimant and his sister attend; or evidence of how claimant and his family have been using their respite hours. This information is necessary to accurately assess claimant's respite need.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts "a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (§ 4501.) The Act provides 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 life of the community." (*Ibid.*) Regional centers are required to carry out the state's responsibility to the developmentally disabled. (*Ibid.*)

2. Although regional centers have a duty to provide a wide array of services and supports to implement the goals and objectives of the IPP, the Legislature has directed the regional centers to provide services in a cost-effective manner. (§ 4646,

subd. (a).) Regional centers may not purchase services that are available through another public agency:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all member of the general public and is receiving public funds for providing those services.

(§ 4648, subd. (a)(8); see also § 4659, subd. (c).) Regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.”

(§ 4659, subd. (a).) And regional centers must establish an “internal process” to insure that a purchase of service conforms to its own purchase of service policy; that it has used generic services and supports when appropriate; and that it has used all other potential services and sources of funding. (§4646.4.)

3. RCEB’s purchase of service policy for the purchase of respite requires the regional center to do a thorough needs assessment to identify claimant’s actual respite needs. RCEB’s attempts to do that assessment have been frustrated by claimant’s mother for over 18 months. Moreover, based upon claimant’s school day, his IHSS protective supervision award, and claimant’s infrequent use of respite hours, RCEB has good reason to conclude that 90 hours per quarter of respite at the single rate is not justified. Without detailed information on which to formulate a more precise determination of claimant’s respite needs, the schedule set forth in RCEB’s June 4, 2014 letter is a reasonable estimate.

ORDER

The appeal of claimant from the decision of the Regional Center of the East Bay to reduce his in-home respite hours is denied.

DATED: August 18, 2014

_____/s/_____

DAVID L. BENJAMIN

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 90 days.