

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2014060282

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Fresno, California, on July 17, 2014.

Claimant was represented by his mother, who serves as his conservator.

Shelley Celaya, Client Appeals Specialist, represented the service agency, Central Valley Regional Center (CVRC).

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

May the regional center modify claimant's existing services by denying the continued funding for out-of-state placement and relocating claimant to a placement in California?

FACTUAL FINDINGS

1. Claimant is a 25-year-old man who qualifies for regional center services under the eligibility category of intellectual disability. He suffers from Prader-Willi

Syndrome (PWS). Claimant lives at Hanson House in Wisconsin. Hanson House is specially equipped to work with individuals with PWS. In May 2006, San Andreas Regional Center was unable to locate an appropriate residential facility that could meet claimant's unique needs in California and obtained permission from the Department of Developmental Services (DDS) to fund an out of state placement. Claimant has resided there since.

2. CVRC issued a Notice of Proposed Action (NOPA) informing claimant that it would deny continued funding for out-of-state placement and relocate claimant to an identified in-state placement.

3. On May 30, 2014, claimant's mother filed a Fair Hearing Request, appealing CVRC's denial of continued funding for out-of-state placement and relocation of claimant to an in-state placement.

CLAIMANT'S UNIQUE NEEDS

4. Claimant suffers from PWS. PWS is caused by an abnormality on the 15th chromosome which affects the functioning in the hypothalamus. The hypothalamus helps people manage emotions, appetite and other body functions. Claimant has an insatiable appetite. He feels hungry all the time because his brain is unable to send a signal that he is full. Claimant is also impaired in his ability to regulate his emotions. This leads to bouts of rage that cause harm to himself and other people. He also has an intellectual disability as part of PWS, impairing his problem-solving abilities.

5. Claimant's Individual Program Plan (IPP) documents his unique needs. Under the Daily Living Needs section it describes them:

Due to the nature of Prader Willi Syndrome, [claimant] is prone to experience obsession and anxiety related to food, therefore all food at Hanson House is locked to help decrease the anxiety and obsession on food for everyone living in the home.

For these reasons [claimant] is never involved in food preparation and meal times are highly structured with all residents following a diet as determined by the Registered Dietician. [Claimant] is able to feed himself using utensils without spillage however he does require prompts to slow down when eating. [Claimant] requires prompting to adhere to his daily schedule and completion of chores and daily living skills tasks. He will complete his bathing with verbal prompts. He needs reminders to brush his teeth and can complete the task independently but sometimes will refuse. [Claimant] will select his own clothing and dress independently. He toilets independently as well...is able to wash dishes and make his bed, take out the garbage and vacuum with guidance and prompting. In the home [claimant] works with his 1:1 staff consistently because if he becomes obsessed with food or upset for another reason it can take from 2 to 6 staff to contain him physically for safety.

6. Claimant's IPP summarizes why an out-of-state placement was obtained for him:

[Claimant] currently lives at Hanson House in Wisconsin.... Prader Willi Homes of Oconomowoc LLC operates this Community-Based Residential Facility. The home has a maximum capacity of 14 residents and serves the developmentally disabled. This home is especially equipped to work with individuals with Prader-Willi Syndrome. San Andreas

Regional Center had been unable to locate an appropriate residential facility that could meet [claimant's] unique needs in California so SARC sought and obtained permission from the Department of Developmental Services to fund an out of state placement per the request of [claimant's] Mother and Conservator. [Claimant] moved to residential placement with Prader Willi Homes of Oconomowoc under these terms on 5/23/06 and has resided there since. [Claimant] requires 1:1 support in order to keep [claimant], peers and staff safe due to the intensity of [his] aggression.

7. Under the section of the IPP entitled Behavioral Health, claimant's needs are described as follows:

[Claimant] is noted to have made significant growth and progress behaviorally over the years due to consistent programming and 1:1 support staff being in place and at the ready to diffuse situations prior to escalation. Consistent with Prader-Willi Syndrome, [claimant] has an insatiable appetite for food and very poor impulse control. [Claimant] is noted to engage in teasing, horseplay and socially inappropriate comments with peers. Staff attempting to intervene in such situations may be met with aggression from [claimant]. When upset, [he] can tantrum including yelling, screaming, swearing, threatening, stomping feet. When aggressive, behaviors can include hitting, kicking, grabbing, pinching, pulling hair, slapping or biting. Staff utilize physical containment when it is

necessary to insure [claimant's] safety or the safety of others. [Claimant] can commit property damage such as destroying his bedroom door when upset. He has been infrequently reported to inappropriately undress in the back yard at home.

8. Under the section of the IPP entitled Medical Status, claimant's needs are summarized as:

[Claimant] enjoys good health overall but does take medication for constipation and acne on an ongoing basis. He is also taking psychotropic medications to help manage concerns of thought disorder, mood stability, impulse stability, agitation and depression.

9. Claimant's Individual Service Plan (ISP), developed by the staff at his current residential placement, describes some of the needs of people with PWS and its efforts to address them in the section of the ISP entitled Physical Health Management:

Prader-Willi Homes of Oconomowoc (PWHO) seeks to teach and enhance functional skills to support an individual diagnosed with Prader-Willi syndrome in the least restrictive environment possible. Prader-Willi syndrome (PWS) is a lifelong and potentially life-threatening condition, which is characterized by an insatiable appetite, low muscle tone, and incomplete sexual development. This genetic condition also affects growth, metabolism, cognitive functioning and behavior.

Due to the food seeking behaviors inherent of the syndrome, Supervision and Environmental Controls (locked refrigerator, freezer, food cupboards and monitoring money, community integration and telephone use) are necessary to ensure an individual's health, safety, and well-being. Unstructured access to food can lead to extreme anxiety, excessive weight gain and obesity related health concerns; and due to the lack of a gag reflex and having a high pain tolerance, serious gastrointestinal complications that can result in loss of life.

10. Prior to moving to the specialized home in Wisconsin, despite efforts of those who cared for him, claimant's eating was not well-controlled. When he moved to Wisconsin he weighed 289 pounds. Through a very structured program, where all food is locked up and claimant is closely supervised with 1:1 support, claimant has been able to maintain a healthy weight of approximately 180 pounds. Claimant is six feet tall.

11. Prior to moving to the specialized home in Wisconsin, claimant's behaviors were severe. Perhaps the most severe incident occurred shortly after claimant was moved from a group home for children to a similar group home, run by the same company, for adults. Three days after the change in his living situation, claimant violently attacked two staff members, causing serious injuries to them. A complaint was filed in Superior Court against claimant, his parents, and the group home, which, in relevant part, alleges:

On the above date [claimant] became aggressive and began to attack the plaintiffs. The plaintiffs attempted to retreat from his violent gestures and threats. As part of the attack he chased the plaintiffs onto the street and pummeled them causing a broken leg, other broken bones and a severely damaged eye

that may lead [to] loss of sight or even to partial blindness. The attack caused plaintiffs to be brutalized wherein they ultimately suffered injuries to their bodies, and sustained multiple abrasions and contusions and otherwise causing them severe pain and permanent injury.

After the incident described above, San Andreas Regional Center was unable to find an appropriate placement in California and was considering placing claimant at a Developmental Center. Hanson House was identified as an appropriate placement and claimant moved to Wisconsin as a less restrictive alternative to placement in a Developmental Center.

12. Claimant's ISP describes his needs and ability to participate in community outings as follows:

Since [claimant] has one-to-one support during community outings he is able to receive verbal cues as needed to remain safe. [He] is generally responsive to cues from staff during community activities but has demonstrated unsafe behaviors in the past when he becomes upset (usually when something doesn't go the way [he] wants it to).

[Claimant] seems to enjoy going on Community Activities. In fact, if it is a preferred activity and [he] is unable to go for some reason, he has become quite upset. With one-to-one staff support [claimant] is able to attend most Community Activities offered at Hanson House.

13. Claimant's mother is concerned about changing his placement at this time. She would be willing to agree to change his placement if an appropriate safe and suitable placement were identified. She asserts the placement would need staff trained in coping with violent behavioral challenges, and supporting people with the unique dietary needs associated with people who have PWS.

CVRC'S PROPOSED CHANGE IN RESIDENTIAL PLACEMENT

14. Todd Chase serves as Assistant Director of Case Management Services for CVRC. He testified at hearing and explained the limitations on regional centers' ability to fund out-of-state placements for consumers. He explained that under the Welfare and Institutions Code, CVRC cannot fund out of state placements if there is an appropriate placement available within California. (Welf. & Inst. Code, § 4519.)

15. Mary Shapiro is claimant's case manager. Her current position with CVRC is Resource Developer. She used to serve as a case manager and had many consumers on her caseload. When she was promoted to Resource Developer she continued to be case manager for one consumer, claimant. She and claimant's mother have a good relationship and they work well together on claimant's behalf.

Ms. Shapiro explained that she has worked diligently to identify a placement for claimant in the CVRC catchment area and anywhere else in California. As required by law, CVRC has applied for, and received permission from DDS to continue funding claimant's out-of-state placement for an additional six months, three times. The last time CVRC requested permission from DDS, they were hopeful that an in-state placement would be available soon.

Not only has Ms. Shapiro done an exhaustive search within the CVRC catchment area for an appropriate residential placement for claimant, she has also looked statewide for a placement. Ms. Shapiro has also enlisted the support of the DDS "statewide

specialized resource service” to attempt to identify options to serve claimant within California.

One placement is available now. It is a home that offers services to people on a specialized diet, but it was not clear from the evidence presented at hearing that the staff at that home would be able to serve claimant’s need to have food locked up at all times or his aggressive behavior. Thus, it was not clear the proposed placement could meet claimant’s unique needs.

Ms. Shapiro also identified homes that are being developed in the Inland Regional Center, the Alta California Regional Center and the Far Northern Regional Center catchment areas that may be appropriate for claimant. These homes that are in development may be suited to claimant’s unique needs. However, none of those homes are available to claimant at this time. Consequently, CVRC must continue to fund claimant’s out-of-state placement until an appropriate alternative home in California is available to address his needs.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for providing services and supports for persons with developmental disabilities and an obligation to help them, which it must discharge. (Welf. & Inst. Code, § 4501.)

The Lanterman Act requires regional centers to ensure that the individual program plan and provision of services and supports by the regional center is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family. (Welf. & Inst. Code, § 4646, subd. (a).) It is the responsibility of the regional center to secure needed services and supports for people with developmental disabilities. (Welf. & Inst. Code, § 4648, subd. (a)).

2. The Lanterman Act substantially limits CVRC’s ability to fund out-of-state placements:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the client's individual program plan developed pursuant to Sections 4646 to 4648, inclusive. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource serve in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension

shall not exceed six months. (Welf. & Inst. Code, § 4519 subd. (a)).

3. However, evidence provided at hearing did not prove that claimant can be appropriately served at this time at in a California residential facility.

ORDER

Claimant's appeal from CVRCs denial of funding for out of state placement is GRANTED. CVRC shall continue the current placement until an appropriate in-state placement is ready to take claimant.

DATED: July 22, 2014

ELAINE H. TALLEY

Administrative Law Judge

Office of Administrative Hearings

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NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)