

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2014100168

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead (ALJ), State of California, Office of Administrative Hearings (OAH), in Merced, California, on October 30, 2014.

The Service Agency, Central Valley Regional Center (CVRC), was represented by Shelley Celaya, Client Appeals Specialist.

Claimant was represented by her mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on October 30, 2014.

ISSUES

1. Is CVRC required to fund any or all of claimant's day care costs?

FACTUAL FINDINGS

1. Claimant is a five-year-old girl who is eligible for ACRC services based on a diagnosis of Autism. Her current Individual Program Plan (IPP), dated October 14, 2014, states that she "displays a number of challenging behaviors. She will display temper

tantrums when she has to transition between activities as well as when told no or if she wants to do something she is not allowed to do. She will kick, scream, yell, cry, and scratch herself. She will bite herself, push people, and displays obsessive compulsive and hyperactive behaviors.”

Claimant lives in the family home with her parents and older brother who is also a CVRC consumer. Claimant receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)<sup>1</sup>

2. On September 23, 2014, CVRC issued a Notice of Proposed Action (NOPA) to claimant advising that CVRC was denying a “request for funding for day care.” The NOPA advised claimant that the reason for this action was as follows:

All parents are responsible for providing day care for a five-year-old child. Day care is a typical childhood cost.

17 CCR 54326 (d) (1) (d)<sup>2</sup> Regional Centers shall not: Use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child’s service needs, the family’s responsibility for providing similar services to a minor child without disabilities. In such instances, the regional center must provide for exceptions, based on family need or hardship. Welfare and

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

<sup>2</sup> Correct citation is 54326 (d) (1).

Institutions Code Section 4685 (c) (6) (6).<sup>3</sup> When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may only pay the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

3. Claimant filed a Fair Hearing Request, dated September 26, 2014, appealing that decision. The requested contained the following:

[Claimant] requires daycare that is specialized [i]n order for her to remain safe and in the family home. We have requested a waiver or exemption to the co-pay or share of costs due to financial hardship and based on our individual family's circumstances.

4. Claimant sought CVRC funding for 30 hours per week of day care costs at \$10 per hour.

5. Claimant's IPP includes the following among her Long Range Goals:

[Claimant's] family would like for her to have improved interactions with her brother so that they may be able to appropriately interact and play with one another.

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<sup>3</sup> Correct citation is 4685 (c) (6).

[Claimant's] family would like for her to be provided appropriate supervision and be safe while mother and/or father is away from home for work and during times dad is unable to care for or supervise [claimant] due to his disability.

6. Marjorie Burleigh is claimant's CVRC Counselor/Service Coordinator. She testified that claimant's brother receives funding for day care costs from CVRC and the regional center questioned why the two siblings could not receive day care from the same provider. Claimant's mother specifically requested that her son and daughter have separate day care providers. Ms. Burleigh sought more information about the family's specific needs.

7. Claimant's mother provided additional information to CVRC staff at the hearing. She explained that her two children cannot be supervised at the same time by one day care provider because of "excessive behavioral issues—they don't get along." She works flexible work hours that vary each week. Their father is not currently able to supervise the children when their mother is out of the home because he is on disability, reportedly as the result of a motorcycle accident. This affects his ability to care for his children.

Claimant's mother contends that, even though all five-year-olds require care and supervision, claimant's behaviors and tendency to elope, require a higher level of care than that required by a non-disabled five-year-old.

8. Claimant's mother established that the cost for providing day care services for claimant is \$10 per hour. The same provider charges \$3 per hour for the same service for a non-disabled child.

9. Todd Chase is the CVRC Assistant Director of Case Management. After all the evidence was shared at hearing, the parties agreed that claimant's day care costs exceed the cost of providing services to a child without a disability. There was no disagreement

with the costs presented by claimant's mother so the difference in costs is \$7 per hour. Mr. Chase then agreed that the regional center would pay \$7 per hour for 30 hours per week towards claimant's day care costs. The regional center did not believe that the financial information provided demonstrated a hardship that qualified for an exception allowing CVRC to fund the remaining \$3 per hour.

10. The financial information provided did not establish family hardship sufficient to allow funding the \$3 per hour portion of claimant's day care cost. There was also no evidence that requiring the family co-payment of \$3 per hour would not allow claimant to remain in the family home.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a), provides:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system 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 family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Section 4512(b) provides, in pertinent 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, 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, where appropriate, the consumer’s family, and shall include consideration of a range of services 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

4. Section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

5. Section 4685, subdivision (c)(6) provides:

- (6) When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may only pay the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of that amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

6. Title 17, California Code of Regulations, section 54326, subsection (d)(1)

states:

(d) Regional centers shall not:

- (1) Use purchase of services funds to purchase services for a minor child without first taking into account, when identifying the minor child's service needs, the family's responsibility for providing similar services to a minor child without disabilities.

In such instances, the regional center must provide for exceptions, based on family need or hardship.

7. *Burden of Proof.* Claimant bears the burden<sup>4</sup> of establishing that the cost of her day care service exceeds the cost of providing day care services to a child without disabilities. Claimant met that burden and CVRC agreed at hearing to pay the additional cost of \$7 per hour. The regional center may pay in excess of that amount only when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home. Claimant has not met that burden. There was no convincing evidence

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<sup>4</sup> California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."



of financial hardship requiring an exception to family responsibility at this time. There was no evidence presented that lack of CVRC funding for the family responsibility of \$3 per hour threatens claimant's ability to remain in her home.

CVRC correctly determined that it is prohibited from funding the day care costs attributed to family responsibility. The above matters having been considered, claimant does not currently qualify for an exception.

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## ORDER

The appeal of claimant for CVRC funding of the family day care responsibility of \$3 per hour is denied. CVRC is responsible for funding \$7 per hour towards claimant's daycare costs.

DATED: November 10, 2014

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SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## 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).)**