

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2015030722

DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on May 7, 2015, in Napa, California.

Jack Bengé, Attorney at Law, represented service agency North Bay Regional Center (NBRC).

Claimant was represented by his father.

The record closed and the matter was submitted on May 7, 2015.

ISSUE

Whether NBRC can terminate reimbursement for Claimant's daycare services, in the absence of Claimant's father providing proof of self-employment as required by NBRC's policy and procedures?

Whether NBRC may consider In-Home Support Service hours to be a generic funding resource for the purpose of calculating the number of daycare hours NBRC provides to Claimant?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 14-year-old boy. He is eligible for regional center services based on a diagnosis of intellectual disability and autism. Claimant has a history of unsafe behaviors, such as not understanding the dangers of a hot stove. He needs assistance with bathing and toileting, he is nonverbal, and he is easily angered. He also has trouble sleeping due to nightmares, and when he does not sleep well, he is resistant to going to school and does not want to get dressed. The totality of his behaviors require constant adult supervision.

2. Claimant's parents live separately, and each has custody 50 percent of the time.

3. Pursuant to Claimant's Individual Program Plan (IPP), he receives services from NBRC, including daycare services. Claimant's Addendum to IPP, dated February 18, 2015, identifies a need for 192 daycare hours per month, to be divided equally between Claimant's mother and father. Daycare hours are for use when a parent is either working or enrolled in an education program. (Welf. & Inst. Code § 4686.5, subd. (a)(4).)

4. Claimant is eligible to receive In-Home Service Hours (IHSS) from the Solano County Social Services Department. IHSS is to provide supervision for one who suffers from a mental impairment, in order to prevent him from sustaining injury or accident.¹ IHSS protective supervision may be provided by a third party or a parent.

¹ Included in IHSS is a category referred to as "Protective Supervision."
Respondent's IHSS hours include Protective Supervision.

NBRC'S EVIDENCE

5. A consumer's IPP and his eligibility for services are updated annually. With respect to establishing eligibility for day care hours, the parent of a consumer must submit either an Employment Verification Form, or in the case of self-employed parents, an "IRS Schedule C." In addition, individuals who directly employ caregivers are required to submit a Vendor Application & Home and Community Care Based-Services Provider Agreement. Claimant has not returned either form to NBRC.

6. Isabel Calder, NBRC's Fiscal Manager, testified that when a regional center pays for a caregiver to provide daycare services, the caregiver must be employed by a vendor approved by a regional center. Claimant's father can become an approved vendor, but during 2014, and in prior years, Claimant's father employed daycare providers directly, without becoming an approved vendor. NBRC is prohibited from and is unwilling to continue this practice in 2015.

7. By letter dated December 30, 2014, from Dominique Cyndecki, an NBRC Service Coordinator, Claimant's father was advised of certain information he was required to provide to NBRC, in order for NBRC to continue to pay for Claimant's daycare services. Cyndecki wrote:

I need to receive the Vendor Application & Home and Community Care Based-Services Provider Agreement as well as Schedule C taxes [sic] of most recent taxes if self-employed by 1/14/15 in order to extend the daycare purchase past 1/31/15. Should you fail to submit the requested document by the deadline, you will be sent a Notice of Proposed Action giving you a 30-day notice that the service will be terminated.

In the same letter, Claimant's father was advised:

The daycare purchase will be extended for 60 days effective 12/1/14 - 1/31/15 in order to provide you with additional time to submit the remaining required documents

8. NBRC did not receive the requested forms, and in a Notice of Proposed Action (NOPA), dated March 3, 2015, NBRC notified Claimant as set forth below:

Proposed action:

NBRC will terminate day care services for [Claimant] while he is at his father's home, effective 3/31/15.

Reason for action:

NBRC requires, and has asked for, current information from [Claimant's father] to substantiate the need for daycare hours. The required information includes current tax return information, which has not been provided.

9. Claimant appealed the NOPA and this hearing followed.

CLAIMANT'S EVIDENCE

10. Claimant contends that the number of daycare hours paid for by NBRC should not be reduced or terminated, because his father has provided sufficient information regarding his self-employed status to satisfy the eligibility requirement, and his need for daycare hours has not changed during the last 12 months.

11. Claimant's father testified that he owns a small company that provides janitorial services, and that he submitted to NBRC copies of IRS Form 1099, and copies

of cancelled checks that he received from his customers. The Form 1099 shows the amount of money customers paid his company for services. He also provided NBRC unsigned copies of tax returns for 2014, and a "profit and loss" summary for his business for 2014.

12. Claimant's father testified that since he submitted these documents, he now has signed tax returns available. He stated that he did not have signed tax returns earlier, because his tax preparer lives part of the year in Hawaii and did not respond to his earlier requests for information. Except for providing signed copies of his tax returns, Claimant's father does not feel he should have to provide additional information regarding his income or business, in order for Claimant to continue to receive reimbursement for daycare hours.

13. Claimant's father testified regarding his janitorial business. He stated that by working at night, he has more flexibility to be with his son as needed, and is back home from work in time to get him ready for school.

14. Claimant's father testified that the only thing that has changed in the last year with respect to Claimant's needs, are that his behaviors have become worse. Claimant was abused by a caregiver, and this has made him more difficult to handle. He has become very combative and does not want to go to school.

15. Claimant's father had serious medical challenges during the past year. He was hospitalized and had surgery, during which time he was unable to provide care to Claimant. During that time he was required to pay a caregiver full time to supervise Claimant, and this created a severe financial hardship. Claimant's father may require additional surgery.

16. Claimant's father asserted that "protective supervision" hours are not the same as "daycare" hours. He based this position on his understanding that protective supervision hours can be provided even when Claimant's father is at home. Claimant's

father testified that between his own medical condition and Claimant's difficult behaviors, a caregiver is sometimes needed to assist him in caring for Claimant.

17. On September 15, 2014, Claimant received a Notice of Action from the County of Solano, advising that he is eligible to receive 245 hours and five minutes of IHSS. The IHSS services are divided into several categories. The Notice of Action stated that of the 245 hours and five minutes of service he is entitled to receive, 168 hours are for "protective supervision." Protective supervision is defined as "observing the behavior of a non-self-directing, confused, mentally impaired or mentally ill recipient and assisting as appropriate to guard recipient against injury, hazard or accident." Claimant was also approved to receive "non-medical personal services." Claimant's father testified that the number of hours claimant is actually eligible to receive is different from the number of hours contained in the Notice of Action.

18. Claimant's father testified that he has not been promptly reimbursed by NBRC for the costs that he has incurred in securing daycare services for Claimant, and this failure has caused him further stress and financial strain. Claimant also expressed frustration that when NBRC personnel change, it creates continuity problems for him. These concerns, however, are outside of the scope of the issues to be decided and are not addressed.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.)² The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and

² All references are to the Welfare and Institutions Code unless otherwise indicated.

choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648)

2. 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.” (§ 4512, subd. (b).) While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective use of public resources. (§ 4646, subd. (A).) Accordingly, regional centers are directed to utilize generic funding resources for the provision of services and supports when appropriate. (§ 4646.4, subd. (a)(2).) IHSS hours are a generic resource. (Finding 4.)

3. Effective July 1, 2009, with respect to IHSS services, unless there is a law or regulation to the contrary, the Act specifically prohibits regional centers from purchasing services that are otherwise available from IHSS. (§ 4659, subd. (c).) NBRC is required to consider the IHSS hours Claimant receives, when it determines the number

of daycare hours it will provide.³ However, this decision does not address whether NBRC has correctly calculated the actual number of daycare hours Claimant should receive.

4. When services are purchased for a consumer that is identified in the consumer's IPP, the regional center has an obligation to confirm that the services are purchased in a manner that is consistent with its own internal processes. (§4646.6, sub. (a)(1).) Here, NBRC requires a consumer or his parent to provide an IRS Schedule "C" to confirm self-employment. Consumer's father has not provided an IRS Schedule "C" as requested by NBRC. (Finding 5.)

5. NBRC has also advised Consumer's father that he must submit a Vendor Application & Home and Community Care Based-Services Provider Agreement in order to qualify for NBRC reimbursement for the cost of daycare services. Consumer's father has not provided the requested form. (Finding 5.)

6. Claimant's father has a very challenging task in taking care of Claimant, which is made all the more difficult by his own serious health issues. It is understandable under the circumstances that it can be difficult for him to submit the required forms associated with receiving regional center services. However, this process is reasonable and necessary on an annual basis. In the event Claimant's father does not submit, within 10 days of the date of this Decision:(1) a filed copy of IRS Schedule "C," for calendar year 2014, and (2) a completed Vendor Application & Home and Community Care Based-Services Provider Agreement, then NBRC may terminate reimbursement for Claimant's daycare services in the manner set forth in the NOPA.

³ This issue was previously addressed, as between NBRC and Claimant, in Office of Administrative Hearings Case No. 2013070025, dated November 21, 2013. In that matter, the administrative law judge also found that IHSS hours are a generic resource.

ORDER

1. Claimant's appeal of North Bay Regional Center's Notice of Proposed Action is denied.
2. IHSS hours are a generic resource and may be considered by North Bay Regional Center when determining the number of daycare hours for which Claimant will be reimbursed.

DATED: May 14, 2015

_____/s/_____

KIRK E. MILER

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.