

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2015080354

DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on August 26, 2015, in Eureka, California.

Claimant was represented by his conservator Kelli Schwartz, Office of the Humboldt County Public Guardian.

Kim Nash, Director of Clinical and Community Services, represented service agency Redwood Coast Regional Center.

The matter was submitted for decision on August 26, 2015.

ISSUE

Is Redwood Coast Regional Center required to pay the outstanding balance after Claimant's erroneous placement at a non-vendorized residential facility?

FACTUAL FINDINGS

1. Claimant is a 38-year-old consumer of Redwood Coast Regional Center (RCRC).

2. In 2015, Claimant experienced a psychotic episode and was placed in a locked facility. He was determined to be gravely disabled as a result of a mental disorder. On April 29, 2015, the Office of the Humboldt County Public Guardian was appointed as conservator of the person and estate of Claimant.

3. A memorandum of understanding exists between RCRC and the Humboldt County Department of Health and Human Services Mental Health to coordinate an interagency response for mutually served clients of both systems. Pursuant to the memorandum of understanding, RCRC was responsible for funding a placement for Claimant upon his release from the locked facility. There were discussions about Crestwood Behavioral Health – Carmicheal (CBH Carmichael) which has an adult residential facility that provides recovery and support services to up to 28 adults in a community-based residential program. CBH Carmichael is also licensed by Department of Social Services (DSS) Community Care Licensing.

4. On July 16, 2015, RCRC issued a Notice of Proposed Action declining to reimburse the cost of Claimant's placement at CBH Carmichael, as prohibited by law. An appeal was filed. Claimant's conservator contended that prior to Claimant's placement at CBH Carmichael there were multiple conversations with RCRC staff and she was told that his placement would be funded. After his placement, the conservator was notified that there had been a mistake and that "per regulations no payment could be made from RCRC funds."¹

¹The fair hearing request also alleged that RCRC "did not act in good faith." At hearing, Claimant dropped this allegation.

5. CBH Carmicheal is not in RCRC's catchment area and it is not a vendor of RCRC. The facility is located in Alta California Regional Center's (ACRC) catchment area. On April 15, 2015, RCRC agreed to fund CBH Carmichael because RCRC staff believed that the program was vendorized by ACRC and that it could obtain a courtesy vendorization. RCRC staff were also aware that other Crestwood Behavioral Health facilities throughout the state had been vendorized by regional centers prior to 2009.

6. RCRC staff soon discovered that an error had been made because CBH Carmichael could not be vendorized. Mary Block, RCRC Director of Client Services, received confirmation from the Director of ACRC that CBH Carmichael was not a vendor of ACRC.

7. RCRC staff attempted to honor the agreement to fund Claimant's placement at CBH Carmichael. On May 4, 2015, Block contacted Brian Winfield, Assistant Deputy Director of the Community Services Division of the Department of Developmental Services to inquire whether RCRC could fund Claimant's placement under an emergency situation. Winfield responded that RCRC was prohibited from creating a new vendorization for a DSS licensed 24-hour residential care facility with 16 or more beds. CBH Carmichael fit that description, therefore, RCRC was prohibited from establishing a new vendored-relationship and there were no exceptions in this instance.

8. On May 5, 2015, before the placement was made, Block informed Claimant's conservator that an error had been made. In an email, Block wrote the following:

It is so unfortunate that we can't vendor this option. . . .

Again, I apologize for the error on our part of stating we could fund any Crestwood. It was in the team's best intentions I know and unfortunately changes in the law during the financial crisis road blocked us. I have done a

shout out to my counterparts at the Alta RC in dire hope that the information Kim Nash research was in error and the place is currently vendored with some regional center in the State.

9. RCRC investigated other facilities as a possible placement for Claimant. Eventually, Claimant was placed in a facility that was vendorized by RCRC.

10. Claimant's conservator requested reimbursement of the costs of Claimant's 19-day stay at CBH Carmichael from June 1, 2015 to June 19, 2015, in the amount of \$1,890.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.² The Lanterman Act mandates 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." (§ 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).)

2. A regional center may, pursuant to vendorization, purchase services or supports for a consumer from any agency that the regional center and the consumer's conservator determines will best accomplish all or any part of that consumer's program plan. (§ 4648, subd. (a)(3).) "Effective July 1, 2009, notwithstanding any other law or regulation, a regional center shall not newly vendor a State Department of Social

² All references are to the Welfare and Institutions Code.

Services licensed 24-hour residential care facility with a licensed capacity of 16 or more beds. ..." (§ 4648, subd. (a)(3)(E).)

3. Claimant acknowledges that RCRC made an honest mistake. However, Claimant contends that reimbursement is appropriate because his conservator relied upon RCRC staff regarding his placement at CBH Carmicheal and incurred the resulting costs. This is essentially an argument for equitable estoppel.

The requirements for application of the doctrine of equitable estoppel are: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (Citations.) (*Fontana Paving, Inc. v. Hedley Brothers, Inc.* (1995) 38 Cal.App.4th 146, 156-157; *Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 348.)

The elements of equitable estoppel are not met in this case. It was made clear to Claimant's conservator prior to his placement at CBH Carmicheal that RCRC could not vendorize or fund this facility. It appears that his conservator moved forward with the placement with this knowledge.

4. In conclusion, it is determined that RCRC was in compliance with the Lanterman Act and that it did not engage in any wrongful conduct. RCRC made a simple mistake and timely engaged in reasonable efforts to rectify its mistake and eventually found a suitable placement for Claimant. The evidence did not establish that Claimant is entitled to reimbursement. Therefore, Claimant's request for reimbursement must be denied.

ORDER

Claimant's appeal is denied.

DATED: September 9, 2015

_____/S/_____

REGINA BROWN

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.