

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2015080833

PROPOSED DECISION

This matter came on regularly for hearing on September 28, 2015, in Van Nuys, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Claimant was represented by her mother and authorized representative.¹

North Los Angeles County Regional Center (Service Agency) was represented by Stella Dorian, Fair Hearing Representative.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

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¹ Titles are used in lieu of the names of Claimant and members of her family in order to protect their privacy.

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SEALING OF EXHIBITS

The 38 exhibits collectively offered by the parties are rife with personally identifiable information including but not limited to names, social security numbers, federal tax information, and the like. Neither party redacted that information before offering it into evidence, but both parties denied waiving the confidentiality of the exhibits. A protective order will issue and the exhibits will be sealed. The parties are admonished to redact all personally identifiable information from their exhibits in the future.

ISSUE

The parties agreed that the sole issue in this case is whether the Service Agency should waive Claimant's parental day care share of costs.

EVIDENCE RELIED UPON

Service Agency's Exhibits SA-1 through SA-12.

Claimant's Exhibits C-1 through C-26.

Testimony of Nita Gatlin.

Testimony of Landon Hallbrooks.

Testimony of Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 17-year-old female consumer who receives Service Agency supports and services by virtue of a diagnosis of Autism Spectrum Disorder. She resides with her mother and twin sister.

2. On January 27, 2014, Claimant, Claimant's mother, and Consumer Service

Coordinator, Nita Gatlin, participated in an annual review of Claimant's Individual Program Plan (IPP). During that meeting, Claimant's mother informed Ms. Gatlin that Claimant no longer participated in a mainstream after school day care program as set forth in the IPP. However, Claimant still required supervision while her mother worked full-time. Ms. Gatlin explained that day care services would then have to take place in the family home. (Exhibits 3 and 5.)

3. On May 27, 2014, Ms. Gatlin informed Claimant's mother that she would have to assess a parental share of costs for Claimant's in-home day care support, and that the cost would be either \$1, \$2, or \$3 per hour depending on the family's gross income. (Exhibit 7.) That information was partially incorrect. Because Claimant's mother was self-employed, she was permitted to deduct her business expenses rather than report her full gross income. (Cal. Code Regs., tit. 17, § 50251.)

4. Based on the documents Claimant's mother provided, the Service Agency determined that her monthly income slightly exceeded \$2,700 for a family of three. According to Service Agency's family fee schedule,² that income and family size would require Claimant's mother to pay \$2 per hour for in-home day care. Claimant's mother explained that the \$2 hourly rate would pose a hardship on her because of her expenses and the varying income she received from her self-employment. The Service Agency requested additional documentation, reassessed, and then lowered the parental day care

² There are two methods of determining the parental day care share of costs. The Family Cost Participation Program (FCPP) is based on a sliding scale for families whose income is above 400 percent of the federal poverty level. The other method is through the use of the Family Fee Schedule. Consumers who have MediCal benefits are exempt from FCPP. Claimant is covered by MediCal. Therefore, the amount of the parental day care share of costs is determined by the Family Fee Schedule.

share of costs to \$1 per hour.

5. In determining the parental day care share of costs for Claimant, the Service Agency used her mother's 2014 federal tax return and her list of monthly expenses. The gross annual income of \$28,266 equaled a monthly gross income of \$2,355 which was added to the \$700 per month she received in Supplemental Security Income (SSI) from the Social Security Administration for both Claimant and her sister. This yielded a monthly gross total of \$3,055. The Service Agency then subtracted the family's monthly expenses which totaled \$2,700.85, showing a difference of \$354.15. Based on those figures, the Service Agency decided that Claimant's mother was financially able to pay her parental day care share of costs. (Exhibit SA-2.) However, the Service Agency acknowledged: "You also have other expenses such as property tax, homeowners insurance, earthquake insurance, car insurance, and orthodontic care for [Claimant], which you pay for, using your annual tax refund." Nonetheless, because Claimant's mother paid those bills annually, the Service Agency did not factor those expenses into the family's monthly financial liabilities. The Service Agency also used Claimant's mother's gross income without subtracting her business expenses as mandated by California Code of Regulations, title 17, section 50251. (Exhibit 2, page 4.)

6. At the hearing, Landon Hallbrooks, the Service Agency's Consumer Services Supervisor, admitted that the family's monthly expenses would have been far higher had the Service Agency considered the large bills Claimant's mother paid annually. However, he further testified that the Service Agency considered only "monthly bills." Mr. Hallbrooks did not offer a reason for drawing a distinction between the two kinds of bills.

7. Claimant's mother is the single parent of two girls. She does not receive child support. With her varying income from self-employment, she frequently has difficulties paying her bills and often must do so using credit cards.

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LEGAL CONCLUSIONS

1. The Service Agency must waive Claimant's parental day care share of costs.
2. Welfare and Institutions Code section 4685, subdivision (c) states in pertinent part:

In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

- (1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to . . . day care . . .
- (2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. . . . [¶] . . . [¶]
- (6) When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only 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.

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3. California Code of Regulations, title 17, section 50251 states:

Gross annual income is the income of the parents as reported on their latest California State or Federal Income Tax return and includes any money or benefit acquired, earned, or received as payment for labor or services, support, or return on investments. Income from the operation of a business or from self-employment is the net income after deducting business expenses. Depreciation, amortization, and depletion shall not be allowed as business expense deductions. The regional center executive director may determine appropriate documentation necessary for family cost participation consistent with [Welfare and Institutions Code] Section 4783(g)(2).

4. The Service Agency failed in two ways to properly calculate Claimant's parental day care share of costs. First, it used the gross annual income as referenced on the 2014 tax return without deducting business expenses as required by California Code of Regulations, title 17, section 50251. Secondly, it arbitrarily excluded some of the family's largest expenses solely because Claimant's mother paid them annually instead of monthly. Mr. Hallbrooks admitted that, had those expenses been included and amortized over the

course of a year, the family's monthly expenses would have been far higher than the figure the Service Agency used to determine the parental day care share of costs.

5. It could be argued that, if the expenses paid annually were factored into the equation to increase the family's monthly expenses, so too would the extra income derived from the income tax refund. However, that would not be correct because an income tax refund does not meet the definition of "income" set forth in California Code of Regulations, title 17, section 50251.

6. As a single parent of two children, with variable income from self-employment, Claimant's mother faces constant uncertain financial stability which frequently results in her having to pay some of her bills with credit cards and other, larger, bills with her income tax refund. Claimant requires supervision that her mother cannot always provide and still be able to pay the bills through her self-employment. Although it is true that, under most circumstances, the Service Agency must fund only the disability related portion of day care costs (Welf. & Inst. Code, § 4685, subd. (c)), i.e., that which exceeds the cost of day care for a child without a developmental disability, "[t]he 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." (*Ibid.*) This is such a case.

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7. In closing argument, the Service Agency argued that, for the Service Agency to be required to waive the parental day care share of costs, Claimant must not only show financial need, she must also show Claimant would be placed out of her home if her mother is assessed a share of the day care costs. That is not the law. Welfare and Institutions Code section 4685, subdivision (c)(4) states in pertinent part: "A family shall not

be required to start a placement process or to commit to placing a child in order to receive requested services.”

ORDER

1. Claimant’s appeal of the Service Agency’s determination that it should not waive the parental day care share of costs is granted.

2. The Service Agency shall waive Claimant’s parental day care share of costs forthwith.

Dated: October 2, 2015

H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. All parties are bound by this decision. Any party may appeal this decision to a court of competent jurisdiction within 90 days.