

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2015121044

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on February 16, 2016, in Concord.

Claimant was represented by her mother.

Mary Dugan, Fair Hearing and Mediation Specialist, represent Regional Center of the East Bay, the service agency.

The matter was submitted on February 16, 2016.

ISSUE

Whether the regional center may cease funding day care for claimant.

FACTUAL FINDINGS

1. Claimant is a 21-year-old woman who receives services from the Regional Center of the East Bay (RCEB) due to her diagnosis of autism. Claimant lives with her mother in Concord and visits her father in Stockton on weekends. Claimant is a high

school graduate, and she has been attending Diablo Valley College (DVC). Claimant's mother works outside the home.

2. An annual review of claimant's Individual Program Plan (IPP), dated July 22, 2015, states that claimant travels on Amtrak to visit her father, that she is attending DVC full-time, year-round, and that she takes the bus to and from DVC. The document also states that RCEB has been funding day care for claimant while her mother is working, because claimant thinks she is more capable than she is and needs daily supervision: she does not understand the risk of danger from strangers, she has poor community awareness, and she is unsafe using the stove and the oven. The annual review recites that RCEB will continue to fund day care through August 20, 2016.

At the time of the annual review, claimant and claimant's mother declined independent living services. They have been talking to the regional center for some time, however, about the ultimate transition from day care to independent living services. Claimant's goals for the future, and her mother's goals, suggest that at some point claimant would benefit from such services. Claimant's mother hopes to move to Oregon, but claimant is not interested in moving there. Claimant, on the other hand, expressed interest in attending a four-year college in the Los Angeles area.

3. Claimant's planning team met on December 8, 2015. In a letter to claimant dated December 23, 2015, Colleen Schaffner, claimant's case manager, recited the results of the meeting. Schaffner wrote that the team met to consider claimant's request that RCEB continue funding day care. (Given RCEB's previous commitment to fund day care through August 20, 2016, it is not clear why claimant was required to file a request for continued funding.) The letter went on to state that the team concluded that day care services should be discontinued and supplanted by independent living services:

After assessing the need it was determined that [claimant] no longer fits the criteria for day care services. [Claimant], age

21, is able to spend a reasonable amount of time alone. She travels independently to visit her father in Stockton on Amtrak. [Claimant] continues to take classes at Diablo Valley College having received her high school diploma. [Claimant] has expressed interest in living independently in the near future. Based on [claimant's] progress, it appears that Independent Living Services (ILS) training would be a better fit to support her in reaching her goal to live independently rather than day care services. She will be able to learn skills such as menu planning, shopping, cooking, and mobility training, and money management. ILS also assists with finding appropriate housing resources.

4. RCEB issued a Notice of Proposed Action consistent with Schaffner's letter, and claimant filed a timely appeal.

5. Claimant's mother testified persuasively that claimant cannot safely be left alone. When she gets an idea that something is "not right," she "freezes." That happened on a trip to Stockton; now, claimant cannot take public transportation independently because of her anxiety. Claimant is only taking two classes at DVC, which means that, without day care, she would be home for three days during the week by herself. Claimant's safety awareness is poor: she cannot be trusted to turn off the burners on the stove, or to lock the front door. She is not attentive to what is going on around her and cannot talk on the telephone if she needs help. Claimant is under psychological care for depression.

6. Case Management Supervisor Bonnie Whitcomb testified that it would be best to "fade out" claimant's day care services, and gradually transition her to independent living services.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts “a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.”¹ The Lanterman Act provides 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 required to carry out the state’s responsibility to the developmentally disabled. (§ 4501.)

2. The services and supports to be provided by the regional center are set forth in the consumer’s IPP. (§ 4646.5, subd. (a)(4).) Regional centers are obligated to review all IPP’s on a regular basis to determine whether planned services have been provided, whether objectives have been fulfilled, and whether the consumer and the consumer’s family are satisfied with the implementation of the IPP. (§ 4646.5, subd. (a)(6).) An IPP can be modified by the planning team following the same process used to develop an IPP, “in response to the [consumer’s] achievement or changing needs.” (§ 4646.5, subd. (b).)

3. The evidence fails to establish that, at this time, claimant’s achievements or changing needs are such that day care services can be terminated. It may be that claimant would benefit from independent living services, and that the phased introduction of such services would, over time, support a reduction in day care services. That, however, is not what is proposed under the Notice of Proposed Action. Under the NOPA, funding for day care would cease. At this time, claimant cannot safely be left alone, and therefore day care services may not be terminated.

¹ All statutory citations are to the Welfare and Institutions Code.

ORDER

The appeal of claimant, from the regional center's determination to cease funding of day care services, is granted.

DATED: March 1, 2016

DAVID L. BENJAMIN

Administrative Law Judge

Office of Administrative Hearings