

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2016030502

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on May 5, 2016, in San Leandro, California.

Mary Dugan, Fair Hearing and Mediation Specialist, represented service agency Regional Center of the East Bay (RCEB).

Claimant's father and mother represented him at the hearing. Claimant was not present.

The matter was submitted on May 5, 2016.

ISSUE

Must RCEB fund an aide to assist claimant in treating his severe epilepsy with cannabidiol (CBD)?

FACTUAL FINDINGS

1. Claimant is 24 years old. He has Dravet syndrome, a severe form of childhood-onset epilepsy. He has seizures more often than once a week despite using

several seizure medications. His cognitive ability is low, and he is medically fragile. He received a gastrostomy tube in 2012 and receives some although not all of his nutrition and medication through this tube rather than by mouth. Claimant's parents are his conservators, and make medical decisions for him.

2. Since December 2011, claimant has lived at Cheney Home, which is licensed as an intermediate care facility providing nursing care for persons with developmental disabilities. Cheney Home provides appropriate services for claimant's needs, and claimant does not want to move.

3. CBD is one of many biologically active chemical compounds in the marijuana plant. Unlike marijuana's best-known component, tetrahydrocannabinol (THC), CBD is minimally psychoactive, if at all. Nevertheless, because CBD comes from marijuana plants, and has not received United States Food and Drug Administration approval for any medical uses, the United States Drug Enforcement Administration classifies CBD as a Schedule I substance under the federal Controlled Substances Act (21 U.S.C. § 801 et seq.).

4. CBD is the subject of ongoing clinical research into its efficacy for treating Dravet syndrome. Claimant's treating neurologist, Dr. Susannah Cornes, M.D., has recommended CBD for claimant. Dr. Cornes practices at the University of California San Francisco medical center, where a CBD clinical trial is in progress. Claimant is not eligible for this CBD trial because its study subjects must be younger than 18 years old.

5. Staff members at Cheney Home administer all of claimant's medications. Because CBD is a federal Schedule I substance, Cheney Home staff members will not administer CBD to claimant and will not permit claimant to consume CBD on the Cheney Home premises.

6. Many Cheney Home residents go out on weekdays for educational or social activities, but claimant's ill health presently does not permit him to do so. Instead,

an aide works one-on-one with claimant for six hours each weekday (30 hours per week).

7. Claimant's Individual Program Plan (IPP) calls for RCEB to assist claimant in receiving CBD treatment. If the treatment were successful, reducing claimant's seizure activity and permitting him to regain some physical strength and cognitive function, claimant would try to resume attendance at a social day program outside of Cheney Home.

8. Claimant has asked RCEB to increase funding for his one-on-one aide to cover 10 hours every day (70 hours per week). With this additional assistance, claimant could leave Cheney Home each day to receive CBD treatment at another location, such as at his parents' home.¹ Neither claimant nor RCEB have identified any other practical way for claimant to receive CBD treatment.

9. Claimant initially characterized his request as one for "in-home respite service" that would allow an aide to accompany claimant on daily visits to his parents' home. RCEB denied this request on the ground that in-home respite service is not available to persons who do not live in a family home. Claimant appealed RCEB's denial, explaining that the aide service he has requested "is necessary for [claimant's] well being," and that he seeks that service regardless of how RCEB may characterize it for administrative purposes.

10. Claimant's parents and RCEB held an informal conference regarding claimant's request for additional aide services. Following that conference, RCEB informed claimant by letter that claimant "cannot receive cannabis treatment" while

¹ Claimant's parents confirmed at the hearing that claimant does not ask RCEB to fund his purchase of CBD, or to fund daily round-trip transportation between Cheney Home and another location.

living at Cheney Home, “regardless of how, and by whom, the treatment is administered.”

11. The evidence did not show that claimant cannot receive CBD treatment while he lives at Cheney Home, if CBD is administered to him elsewhere by persons who do not work for Cheney Home. In particular, the evidence did not establish that claimant’s consumption of CBD outside Cheney Home would require Cheney Home to discharge him, or even that claimant’s consumption of CBD outside Cheney Home would constitute a lawful reason for discharge. The evidence also did not establish that Cheney Home would attempt to discharge claimant for this reason.

12. At the formal administrative hearing on this matter, the parties’ representatives agreed that the issue for decision is not whether “in-home respite service” is available to claimant, but whether RCEB must facilitate claimant’s access to CBD treatment by funding 70 hours per week of one-on-one aide service.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (the Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.) Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including RCEB. (*Id.*, § 4620.)

2. RCEB must assist claimant in “[s]ecuring needed services and supports” (Welf. & Inst. Code, § 4648, subd. (a)), which include “specialized medical and dental care” (*id.*, § 4512, subd. (b)). By reason of the matters set forth in Findings 4 through 8, RCEB must fund sufficient aide service for claimant to begin receiving CBD outside of Cheney Home.

3. As set forth in Finding 11, RCEB’s concern that Cheney Home may attempt to discharge claimant if claimant regularly receives CBD elsewhere is premature. For this

reason, this concern does not excuse RCEB's duty to assist claimant in receiving the medical treatment his neurologist has recommended. If claimant elects to pursue CBD treatment in his parents' home, or elsewhere outside of Cheney Home, RCEB must fund the 70 hours per week of one-on-one aide service necessary for claimant's CBD treatment plan.

ORDER

Claimant's appeal from RCEB's refusal to increase his one-on-one aide service to 70 hours per week is granted. If claimant elects to begin receiving CBD outside of Cheney Home, RCEB shall support this treatment plan by funding one-on-one aide service to claimant for 70 hours per week.

DATED: May 16, 2016

_____/S/_____

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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