

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

and

KERN REGIONAL CENTER,

Respondent.

OAH Case No. 2016051021

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on August 8, 2016, in Bakersfield, California.

Alexandria L. Forester represented Claimant.¹

Mark Meyer, Program Special Manager/Fair Hearing Officer, represented Kern Regional Center (Regional Center or Service Agency).

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision on August 8, 2016.

¹ References to Claimant's name have been deleted to protect Claimant's privacy. For the same reason, her former foster mother and current care provider is referred to by the initials B.R.

ISSUE

Should Regional Center continue to fund respite services for Claimant?

FACTUAL FINDINGS

1. Claimant is a 23-year-old Regional Center consumer.
2. Claimant was placed in B.R.'s foster care on August 13, 2008, along with her younger sister, also a Service Agency consumer. B.R. became Claimant's legal guardian in November 2010. Claimant ceased being B.R.'s foster child in September 2011, after turning 18 years of age.
3. Claimant and her sister, who stopped being a foster child in January 2015, have continued to reside with B.R. and her husband after attaining the age of majority. Claimant has no other family who can provide for her needs. It is undisputed that B.R. is responsible for providing care and supervision for Claimant for 24 hours per day, seven days per week, or that she in fact provides the care and supervision. B.R. attends to Claimant's daily needs, including providing meals and transporting Claimant to doctors' appointments.
4. Claimant receives \$1,145 per month in Supplemental Security Income (SSI). B.R. receives the payments on behalf of Claimant as her representative payee. The funds are to be used for Claimant's benefit, not to pay for Claimant's care and supervision. The funds are to be used to pay for Claimant's food, shelter, clothing, medical care and personal comfort items. (31 C.F.R. § 416.640.) B.R. testified without contradiction that she uses the funds to provide for Claimant's needs, including her food, clothing, and entertainment. As of June 2016, after discussions with the Department of Social Services, and to avoid allegations of engaging in unlicensed caregiving, B.R. and Claimant entered

into a rental agreement. Although a portion of Claimant's SSI can be used toward payment of rent, the resources are exhausted meeting other Claimant's needs.

5. B.R. does not receive any money from the Social Security Administration, Service Agency, or any other agency or entity to provide care or supervision to Claimant.

6. B.R. is no longer providing foster care to any child, and does not operate a foster family home or any other community care facility.

7. Claimant has been receiving respite services since 2008. She currently receives 55 hours per month, some of which is provided outside the home. Some of the respite is provided around the Christmas holidays, when B.R. visits her daughter, son-in-law, and grandson in Las Vegas, Nevada. Claimant used to go on the year-end out-of-town trips, until B.R.'s daughter expressed concern about Claimant's behavior around her toddler.

8. On May 12, 2016, Service Agency sent B.R. a Notice of Proposed Action, which informed Claimant that respite care services were not permitted under Welfare and Institutions Code² section 4690.2, subdivision (a), because respite services were only intended to assist family members. Service Agency maintains that B.R. is not Claimant's "family member" and Claimant cannot receive respite services to relieve B.R. from providing care and supervision to her.

9. On May 17, 2016, B.R., as Claimant's authorized representative, filed a Fair Hearing Request.

² All further statutory references are to the Welfare and Institutions Code.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

2. The Lanterman Act provision relied upon by Service Agency, section 4690.2, subdivision (a), provides:

“(a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. “In-home respite services” means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

“(1) Assist family members in maintaining the client at home.

“(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

“(3) Relieve family members from the constantly demanding responsibility of caring for the client.

“(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.”

3. Section 4690.2 defines in-home respite services in the broader context of program design and rate-setting, but does not define “family member.” Section 4686.5, a more recent statute also governing respite services, contains a definition that can be applied in this case. The statute states, in pertinent part:

“(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

“(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

“(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

“(3) (A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

“(B) For purposes of this section, ‘family member’ means an individual who:

“(i) Has a consumer residing with him or her.

“(ii) Is responsible for the 24-hour care and supervision of the consumer.

“(iii) Is not a licensed or certified residential care facility or foster family home receiving funds from any public agency or regional center for the care and supervision provided. Notwithstanding this provision, a relative who receives foster care funds shall not be precluded from receiving respite.”

4. B.R. meets the definition contained in section 4686.5, subdivision (a)(3)(B), and is Claimant’s family member. Thus, Claimant resides with B.R. B.R. is responsible for the 24-hour care and supervision of Claimant. B.R. is not receiving funds from any public agency or regional center for the care and supervision provided. While in the past B.R. received foster care funds for the care of Claimant, she has not received such funds since September 2011.

5. Accordingly, Service Agency may not deny Claimant respite care services on the basis that B.R. and Claimant are not family members, by reason of factual finding numbers 1 through 7 and legal conclusion numbers 1 through 4.

ORDER

Claimant's appeal is granted, and Service Agency shall continue to fund respite services in accordance with Claimant’s individual program plan.

Dated: August 12, 2016

Samuel D. Reyes

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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