

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OVANTAY T.,

Claimant,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2016100011

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Merced, California, on November 16, 2016.

The Service Agency, Central Valley Regional Center (CVRC), was represented by Shelley Celaya, Program Manager of Legal Services.

Claimant was represented by his mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on November 16, 2016.

ISSUE

Is CVRC required to fund 216 Personal Attendant (PA) service hours per month for claimant?

FACTUAL FINDINGS

1. Claimant is a fifteen-year-old boy who is eligible for CVRC services based on a diagnosis of intellectual disability. He receives services and supports pursuant to the

Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. On September 8, 2016, CVRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "CVRC is denying your request for Personal Attendant hours for times [claimant] is in school and/or [claimant's mother] is not involved in her own college classes, substance abuse class, Celebrate Recovery group, or work internship."

The NOPA advised claimant that the reason for this action was as follows:

CVRC has agreed to fund PA hours when [claimant's mother] is engaged in above listed activities. Central Valley Regional Center is denying the request for additional hours, as supervision during these times is believed to be a normal parental responsibility for a minor.

3. Claimant filed a Fair Hearing Request, received by CVRC on September 22, 2016, appealing that decision. The request stated as follows:

I have already tried resolving this matter in the chain of command and nothing has been resolved. My son is disabled and is need of his respite/Personal Attendant hours. I would like for the Appeals and Complaints Department in Sacramento to resolve this issue by restoring his [PA] hours back to 216 hours a month.

4. Claimant attends school within the Merced City School District. His mother

¹ Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

attends classes at Merced City College, attends a substance abuse class, and Celebrate Recovery group. She also participates in a work internship with Merced County Human Services Agency.

5. Todd Chase is an Assistant Director of Case Management for CVRC. He testified that from approximately April 2014 through May 2016 claimant received funding for 489 hours of Personal Attendant care. The caregiver during this time was his uncle. Claimant's mother terminated his uncle's employment and hired another caregiver in his place. In the course of vendorizing the new caregiver, it was discovered that a major error had occurred. Claimant had been authorized for 48 hours per month of PA services but there was a typographical error and the number was inputted as 489 hours. His Individualized Program Plan, with the typographical error, made it clear that the PA hours were intended to be used while his mother was taking college classes:

Personal Attendant Services: Currently mother is receiving 489 monthly units of Personal Attendant service to accommodate for mother furthering her education and taking a full load at Merced College. CPC has class schedule and will be on WebEx. CVRC to fully fund for Personal Attendant so that mother can keep going to Community College.

Claimant's uncle was paid approximately \$4900, rather than \$490, per month during the term of his employment.

6. Mr. Chase described the CVRC process for requesting vendorization of an individual to provide Personal Attendant services. A Request for Vendorization dated February 24, 2014, was submitted to CVRC Community Resources for approval of claimant's uncle as his PA. The estimated monthly cost requested was "\$485 @ 48 hr per

month @ \$10.42 an hr.”² The hourly rate was later adjusted to \$10.09 per hour.

7. By letter dated March 3, 2014, CVRC Vendor Coordinator Vera Chabiel informed claimant’s uncle, in relevant part, as follows:

A purchase order is in process for services requested for Personal Assistant³ Care services for [claimant] at the rate of \$10.09 per hour for 48 hours per month, with an estimated monthly max cost of \$485.00. Effective March 1, through June 30, 2014.

In order for Central Valley Regional Center to reimburse for this service, we need to have you fill out the enclosed vendor application packet and mail back to my attention in the provided return envelope.

A vendor number will be assigned to you and a turn-around-invoice will follow, for you to fill out with dates and times for day care services rendered. It is required an “Attendance Sheet” accompany your turn-around notice.

8. Claimant’s uncle submitted a Vendor Application, dated March 19, 2014, which included the following:

PERSONAL ASSISTANCE at the rate of \$10.09 per hr. not to

² Fluctuations were due to changes in minimum wage rates.

³ The terms “Personal Attendant” and Personal Assistant” have been used interchangeably.

exceed \$485 per month.

9. A Vendor Status Notification dated March 25, 2014, included in claimant's CVRC records noted that the vendor had been added.

10. By letter dated March 31, 2014, Ms. Chabiel informed claimant's uncle of his vendor number and payment information and reiterated that it is for "[claimant] to receive Personal Assistant services at the rate of \$10.09 per hour, with an estimated monthly max cost of \$485.00."

11. Mr. Chase explained that CVRC is supportive of claimant's mother furthering her education and participating in substance abuse classes, Celebrate Recovery, and her internship. The agency agreed to fund PA service hours during those times to care for claimant in his mother's absence. PA hours may not be used when claimant is in school.

12. CVRC obtained class schedules for claimant and his mother, as well as his mother's hours for the agreed upon activities.

13. An IPP Addendum dated September 20, 2016, to the August 25, 2016 IPP proposed:

Personal Attendant Services: [Claimant] will receive personal attendant hours for his care while his mother to [sic] attends Merced City College, work internship with HSA, and Celebrating [sic] Recovery substance abuse classes. She will receive 216 hours only for the month of August 2016. POS will end on August 31, 2016. Hours are based on the verification of her class schedule, work internship schedule, and celebrating Recovery schedule. CPC is to be given a copy of these schedules at the beginning of each semester. Personal Attendant hours are to be used only when [claimant] is not in school

14. CVRC agreed to continue funding for claimant's PA hours to provide coverage when his mother is unavailable as outlined above. These hours will fluctuate based on his mother's changing hours due to college course load⁴ and internship hours. CVRC will also consider the need for additional support hours when claimant is not in school and his mother is unavailable. In addition, CVRC offered to provide support and assistance to the family if they chose to appeal a denial of In Home Supportive Services (IHSS), which could provide the family with additional support with protective supervision.
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15. Based on a review of schedules for claimant and his mother, it was determined that the following hours reflect the PA hours CVRC has⁵ or shall fund for claimant:

September	80.25
October	78.25
November	95.75
December	111.25

Claimant is currently authorized for up to 144 hours per month.

16. Claimant's mother did not disagree with the calculation of hours. She did testify that claimant has also been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and is bipolar with aggression. She explained that he can be difficult and has a lot of needs. She testified that the personal attendant "works very hard" and that claimant might need additional hours of PA support.

⁴ Claimant's mother is currently taking a reduced course load of two courses at Merced College.

⁵ Payments have been made through October.

17. Claimant's mother agreed to provide CVRC with current schedules and CVRC agreed to fund PA service hours based on those fluctuating schedules.

LEGAL CONCLUSIONS

1. Section 4646.4, subdivision (a) of the Lanterman Act provides:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (D) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional center shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

2. It was clear that a sizeable mistake was made in the original provision of claimant's PA hours. When the mistake was recognized, CVRC appropriately determined claimant's documented need for those services. Those needs will fluctuate and the parties shall work together to determine the actual hours required each month. Based on the evidence provided, the current authorization of up to 144 hours is appropriate.

ORDER

The appeal of claimant Ovantay T. is denied. CVRC is not required to fund more than 144 hours of PA services for claimant at this time.

DATED: December 1, 2016

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)