

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016120809

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on February 21, 2017, in Pomona, California. Claimant was represented by her mother and authorized representative.¹ San Gabriel Pomona Regional Center (Service Agency or SGPRC) was represented by its Fair Hearings Program Manager, G. Daniela Santana.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on February 21, 2017.

¹ Names are omitted throughout this Decision to protect the parties' privacy.

ISSUE

Should the Service Agency be allowed to terminate funding for 87 hours per month of daycare for Claimant?

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EVIDENCE

Documentary: Service Agency exhibits 1-8.

Testimonial: Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 10-year-old female client of SGPRC who lives with her mother. She qualifies for regional center services under a diagnosis of Mild Intellectual Disability.

2. Claimant attends an elementary school program six hours per day, five days per week.

3. Claimant's mother was previously employed as a provider of In-Home Supportive Services (IHSS).

4. The Service Agency has been funding 87 hours of day care for Claimant, provided by a respite care agency. This service was provided because Claimant's mother was employed outside the home, and the service was funded pursuant to the Service Agency's Purchase of Service Policy and the Family Cost Participation Program. (See Factual Finding 13(b) and Legal Conclusions 3 and 4.)

5. Prior to August 3, 2016, Claimant's mother became unemployed when she experienced a health problem. She informed the Service Agency of her illness and subsequent job loss at Claimant's August 3, 2016 Individualized Program Plan (IPP) meeting.

6. On September 20, 2016, the Service Agency unsuccessfully attempted to contact Claimant's mother by telephone to ask if she was looking for employment. In order to re-authorize Claimant's day care services, the Service Agency had to confirm that Claimant's mother was employed.

7. On September 27, 2016, Claimant's Service Coordinator spoke to Claimant's mother and informed her that the Service Agency would terminate funding for day care services on September 30, 2016, due to her unemployed status. Claimant's mother informed the Service Coordinator that she had been ill but was continuing to look for employment. She reported that she had no family support and that she needed assistance caring for Claimant while seeking employment and after she found a job. Later that day, the Service Coordinator informed Claimant's mother that the Service Agency had agreed to extend the day care funding authorization until November 15, 2016, to give Claimant's mother time to look for and secure a job.

8. On October 12, 2016, the Service Agency conducted an Exceptional Service Review and decided that Claimant's day care funding would be terminated after Claimant's mother was served with a 30-day notice, but that Claimant's respite hours would be increased from 12 hours per month to 30 hours per month. Claimant's mother was informed of the Service Agency's decision on October 13, 2016.

9. On November 29, 2016, Claimant's mother spoke to Claimant's Service Coordinator and informed her that she was caring for Claimant's ill grandmother. The Service Coordinator informed Claimant's mother that the Service Agency had approved funding for 30 hours per month of respite and 87 hours per month of day care until December 31, 2016.

10(a). On November 30, 2017, the Service Agency sent Claimant's mother a Notice of Proposed Action (NOPA) informing her that it would be terminating funding of Claimant's 87 hours of daycare services. The NOPA stated, in pertinent part:

Please be advised that per SGPRC's Purchase of Services Policy, parents and care providers are expected to provide for the care and supervision needs to minor children. Furthermore, Regional Center only funds daycare/childcare while parents are at work or vocational training. In single-parent families, the parent must be employed or in vocational training to qualify for the service. You have communicated that you are not currently working nor are enrolled in school/vocational training. . . . Since you are not employed or enrolled in an educational program, SGPRC believes that the care and supervision provided by you (biological mother) is appropriate and [Claimant's] needs can be met through natural supports. . . .

(Exhibit 1.)

10(b). As authority for its action, the Service Agency cited Welfare and Institutions Code sections 4648.5, 4646.4, and 4783, and the SGPRC Purchase of Service Policy.

11. Claimant's mother filed a fair hearing request on December 14, 2016. She requested continued funding of day care in order "to care for [Claimant] while I work and care for my mother." (Exhibit 2.)

12(a). At the fair hearing, Claimant's mother testified credibly on Claimant's behalf. She noted that, in September of 2016, she was obliged to care for her ill mother, and she sought to become her mother's IHSS provider, hoping that this employment arrangement would allow her to care for Claimant as well. However, in December of 2016, her request to provide IHSS services for her mother was denied.

12(b). Claimant's mother continues to look for full-time employment outside the home. In the interim, she is currently obtaining minimal income from Internet sales of second-hand products she obtains from yard sales and thrift stores. When the Service Agency pointed out that she could engage in her home-based employment while Claimant attended school (six hours per day, five days per week), Claimant's mother insisted it is not possible for her to conduct her Internet business during those hours. She noted that second-hand stores display their products in the afternoon, and yard sales are held on Saturdays, when Claimant is with her.

13(a). At the fair hearing, the Service Agency reiterated the reasons cited in its NOPA for termination of funding Claimant's day care services. The Service Agency cited its Purchase of Service Policy, noting that SGPRC may only fund day care while parents are working or engaging in vocational training.

13(b). The SGPRC Purchase of Service Policy for Day Care services, approved by the Department of Developmental Services, states in pertinent part:

DAY CARE

The purpose of the regional center support for day care is to cover the extra cost of specialized care due to the exceptional needs of a child with a developmental disability when day care is not

available through usual resources in the community at prevailing community costs. It is not intended to cover all costs associated with providing care and supervision for a child with a developmental disability (under age 18) who is unable to care for himself or herself.

Parents are expected to pay the typical cost of day care for a child without disabilities until the child reaches age 13. Regional center will fund the incremental difference between typical cost and actual cost incurred for children with developmental disabilities up to age 13. . . .

Day care is one of the three specific regional center services that by law require an assessment or cost participation by the parents under the Family Cost Participation Program (FCPP). FCPP will apply to families who meet the following criteria:

1. The child is 0 through 17 years of age; and
2. The child lives in the parents' home; and
3. The child is not eligible for Medi-Cal.

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Regional center only funds day care while parents are at work or vocational training. In two parent families,

both parents must be employed and/or in vocational training to qualify for the service. In single-parent families, the parent must be employed or in vocational training to qualify for the service.

(Exhibit 8.)

13(c). Although Claimant's mother is receiving minimal income through her Internet sales, the Service Agency does not consider this to be employment. Claimant's mother has not provided the Service Agency with any work schedule, documentation of work hours, or other evidence that she is engaging in part-time or full-time employment. Since Claimant's mother has provided no proof of employment, the Service Agency cannot continue funding Claimant's day care services. However, the Service Agency pointed out that, if Claimant's mother does obtain employment, it would reinstate funding for day care services.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's termination of funding for 87 hours of daycare for Claimant is denied. (Factual Findings 1 through 13; Legal Conclusions 2 through 5.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.) In proposing to terminate Claimant's daycare funding, the Service Agency bears the burden of proving by a preponderance of the evidence that the termination is warranted because the services are no longer necessary. The Service Agency has met its burden in that the bases for the previously-approved funding no longer exist.

3. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, 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 . . . , 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. [¶]

(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 centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

4. Welfare and Institutions Code section 4783 (Family Cost Participation Program) provides in pertinent part:

(a)(1) The Family Cost Participation Program is hereby created in the State Department of Developmental Services for the purpose of assessing a cost participation to parents, as defined in Section 50215 of Title 17 of the California Code of Regulations, who have a child to whom all of the following applies:

(A) The child has a developmental disability or is eligible for services under the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code).

(B) The child is zero years of age through 17 years of age.

(C) The child lives in the parents' home.

(D) The child receives services and supports purchased through the regional center.

(E) The child is not eligible for Medi-Cal.

(2) Notwithstanding any other provision of law, a parent described in subdivision (a) shall participate in the Family Cost Participation Program established pursuant to this section. [¶]

(b)(1) The department shall develop and establish a Family Cost Participation Schedule that shall be used by regional centers to assess the parents' cost

participation. The schedule shall consist of a sliding scale for families with an annual gross income not less than 400 percent of the federal poverty guideline, and be adjusted for the level of annual gross income and the number of persons living in the family home. [¶]

(c) Family cost participation assessments shall only be applied to respite, day care, and camping services that are included in the child's individual program plan or individualized family service plan for children zero through two years of age.

[¶] . . . [¶]

(g) Family cost participation assessments or reassessments shall be conducted as follows:

(1)(A) A regional center shall assess the cost participation for all parents of current consumers who meet the criteria specified in this section. A regional center shall use the most recent individual program plan [¶]

(C) Reassessments for cost participation shall be conducted as part of the individual program plan . . . review. . .

(D) The parents are responsible for notifying the regional center when a change in family income

occurs that would result in a change in the assessed amount of cost participation.

(2) Parents shall self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income. [¶]

(4) Parents who have not provided copies of income documentation pursuant to paragraph (2) shall be assessed the maximum cost participation based on the highest income level adjusted for family size until such time as the appropriate income documentation is provided. . . .

(5) The executive director of the regional center may grant a cost participation adjustment for parents who incur an unavoidable and uninsured catastrophic loss with direct economic impact on the family or who substantiate, with receipts, significant unreimbursed medical costs associated with care for a child who is a regional center consumer. A redetermination of the cost participation adjustment shall be made at least annually.

5. In this case, pursuant to Welfare and Institutions Code section 4646.4 and SGPRC's Purchase of Service Policy for Day Care services, the Service

Agency may fund day care only while Claimant's mother is at employed or in vocational training. From August 3, 2016 through December 31, 2016, the Service Agency provided Claimant's mother with extensions of daycare funding in order to provide her ample opportunity to seek and obtain outside employment. However, Claimant's mother remains unemployed outside the home, and she has provided insufficient documentation of her at-home work schedule or other evidence that she is engaging in part-time or full-time employment. Since Claimant's mother has provided insufficient proof of employment, the Service Agency's denial of funding Claimant's day care services is warranted at this time.

ORDER

The Service Agency's proposed termination of funding 87 hours of daycare for Claimant is upheld.

DATED: February 24, 2017

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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