

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2017020504

DECISION

Administrative Law Judge Michael A. Scarlett, State of California, Office of Administrative Hearings, heard this matter on March 16, 2017, in Santa Rosa, California.

G. Jack Bengé, Attorney at Law, represented the North Bay Regional Center (NBRC or Service Agency).

Claimant's mother (mother) represented claimant.

The matter was submitted on for decision on March 16, 2017.

ISSUE

Did NBRC err in denying claimant respite services because it considered In-Home Support Services (IHSS) for protective supervision a generic resource for providing respite to claimant?

FACTUAL FINDINGS

1. Claimant is an eight-year-old boy who receives regional center services based on a diagnosis of autism. He lives with his mother in Santa Rosa and there is no extended family living in the area. Mother reports that claimant's father is no longer involved in claimant's life and that she is living with, and raising claimant alone. Mother is employed by NBRC.

2. Claimant requires assistance with all of his activities of daily living, i.e., dressing and hygiene. Claimant needs constant supervision and mother reports that he has severe aggressive behaviors. He is 5'1" tall and weighs 179 pounds and was frequently attacking mother by pulling her hair and scratching and biting. Claimant is taking medication to address his aggressive behaviors and mother reports that the medication has been helpful.

3. Claimant is currently enrolled in a special day class at Lattice Educational Services, a nonpublic school with a 1:3 teacher student ratio. He requires a 1:1 aide in school to deal with his maladaptive behaviors and mother believes the Lattice program has been very effective in addressing claimant's aggressive behaviors. Claimant is not currently receiving any support services from NBRC.

4. Claimant's mother requested Service Agency to fund 42 hours per quarter of respite services effective March 1, 2017 through March 31, 2018, so that mother could better manage claimant's challenging behaviors while mother addresses personal health concerns by participating in a Kaiser Permanente supervised medical program one evening per week for one year. Mother described the Kaiser program as a "medical management program" that addressed stress and health factor risks that mother was susceptible to that could negatively impact mother's health. The program required mother to attend a class three and one-half hours, one evening per-week, 14 hours per month; hence mother's request for 42 hours per quarter of respite. Mother suffers from

hypertension and has been advised by medical professionals that she is at risk of developing cancer. Mother has been very sick over the last few months and she is concerned that if she does not take measures to improve her health, medical issues may jeopardize her ability to care for claimant in the future.

5. Claimant receives IHSS through the Department of Social Services. Claimant's mother is the sole provider for the IHSS services that are funded for claimant. Effective April 1, 2016, claimant's IHSS award included 45.02 hours per week, or 195 hours per month, for protective supervision services.

6. In an Addendum Individual Program Plan (IPP) dated January 19, 2017, Service Agency estimated that claimant qualified for 84 hours of respite per quarter, which is equivalent to 28 hours per month. Claimant's Addendum IPP stated that claimant's IHSS protective supervision hours were considered a generic resource for Service Agency-funded respite, and that the amount of IHSS protective supervision awarded exceeded the amount of respite the family (claimant and mother) qualified for. Consequently, Service Agency determined that claimant was not entitled to respite services and denied claimant's mother request for respite.

7. On January 19, 2017, NBRC issued a Notice of Proposed Action denying claimant's request for 42 hours per quarter of respite effective March 17, 2017, through March 31, 2018, stating pursuant to the Lanterman Act, as the payer of last resort, NBRC cannot fund services when a generic resource is available that can meet the identified need of the consumer. NBRC indicated that claimant's 195 hours of IHSS Protective Supervision was a generic resource that met claimant's need for respite hours and that the Service Agency's funding of additional respite services would not be a cost effective use of public funds. This appeal ensued.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.) The Act mandates 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.” (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. Respite is one type of service provided to consumers. Respite provides intermittent care and supervision to a regional center client who resides with a family member. These services are designed to “(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.” (Welf. & Inst. Code, § 4690.2, subd. (a).)

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (Welf. & Inst. Code, § 4646, subd. (a).) Accordingly, regional centers may not fund duplicate services that are available through

another public agency. This prohibition, often referred to as “supplanting generic resources,” is contained in section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Towards this end, regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.” (Welf. & Inst. Code § 4659, subd. (a).) Additionally, section 4659, subdivision (c), specifically prohibits regional centers from purchasing services that are otherwise available from IHSS.

4. Finally, section 4646.4, subdivision (a)(2), also provides that regional centers must utilize generic resources and supports when appropriate. Section 4686.5, subdivision (a)(5), directs regional centers to consider IHSS funds as a generic resource for respite if certain conditions are met:

A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer’s individual program plan (IPP) or individualized family service plan.

5. Here, claimant’s mother seeks funding for respite services to allow her to attend a Kaiser Permanente medical management program to allow mother to address personal medical health issues mother deems imperative. Mother’s stated purpose for the respite services is a legitimate use of respite services. Respite is intended to provide care and supervision to claimant when mother’s not available and to relieve mother

from the constant demanding responsibility of caring for the claimant. Time-off from caring for claimant for mother to attend the Kaiser class falls squarely within the respite services criteria.

6. However, Service Agency correctly determined that IHSS Protective Supervision services were a generic resource that adequately met mother's respite needs by providing 45 hours per week, or 195 hours per month of protective supervision. NBRC is required by law to consider generic resources prior to using Service Agency funds to provide a service for claimant. (Welf. & Inst. Code, § 4648, subd. (a)(8).) Section 4686.5, subdivision (a)(5), provides that a regional center may consider IHSS services a generic resource when the IHSS services meet the respite need for a consumer that is identified in the IPP. Claimant's Addendum IPP dated January 19, 2017, specified that claimant qualified for 84 hours of respite per quarter, or 28 hours of respite per month. Claimant's IHSS protective supervision award of 195 hours per month clearly met the respite needs identified in claimant's IPP.

7. Mother voluntarily made the choice to become claimant's IHSS protective supervision provider. Consequently, mother receives the IHSS income for providing the protective supervision. To the extent mother needs respite hours to allow her to attend the Kaiser medical management program for the benefit of her personal health goals, mother may use 3.5 hours per week of the 45.02 hours per week she is currently receiving from IHSS to pay someone to care for claimant while she attends the Kaiser class. Although IHSS protective supervision is not exactly the same as respite services, it is not unreasonable to require mother to use a small percentage of the IHSS protective supervision services to meet her respite needs. IHSS protective supervision is a generic resource that must be utilized prior to the Service Agency expending funds for claimant's respite needs.

ORDER

Claimant's appeal from the determination of North Bay Regional Center to deny funding for respite services is denied.

DATED: March 29, 2017

MICHAEL A. SCARLETT

Administrative Law Judge

Office of Administrative Hearings