

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. 2017020890

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on March 30, 2017, in San Leandro, California.

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

Claimant's mother advocated for him at the hearing. Claimant was not present.

The matter was submitted on March 30, 2017.

ISSUE

Is claimant presently eligible for the Medicaid Home- and Community-Based Services (HCBS) Waiver program?

FACTUAL FINDINGS

1. Claimant is an unmarried adult. Because he is eligible for services under the Lanterman Developmental Disabilities Services Act, he has received a variety of services through RCEB for many years.

2. The Medicaid HCBS Waiver program allows the State of California, acting through nonprofit regional centers including RCEB, to pay for certain services to eligible developmentally disabled persons using federal Medicaid funds. Service funding through the HCBS Waiver program is available only to a person who would require care in a licensed Intermediate Care Facility for the Developmentally Disabled (ICF/DD) if he or she did not receive services funded by the HCBS Waiver program. The program's overall intent is to use Medicaid funds to help eligible program participants live independently or in community-based supportive living environments, residential choices which for many HCBS Waiver participants are more satisfying and less expensive than institutional residence.

3. Until January 31, 2017, RCEB included claimant among the RCEB consumers receiving Medicaid funding for HCBS services. The evidence did not establish when or why RCEB determined initially that claimant was eligible for the HCBS Waiver program.

4. RCEB conducts an annual review of each HCBS Waiver program participant's continuing eligibility. One purpose of this annual review is to confirm that the program participant's requirements for care and assistance continue to be so substantial that he or she would need to live in an ICF/DD if not for the services RCEB funds through the HCBS Waiver program.

5. RCEB employs five people whose sole responsibility is to conduct eligibility reviews for the HCBS Waiver program. For annual eligibility recertifications, these employees look chiefly at the documentation in the RCEB consumer's case file. If the consumer's file does not include documentation sufficient to confirm the consumer's continuing eligibility, the eligibility reviewer discusses the consumer's needs and services with the consumer's case manager.

6. Medicaid Waiver Eligibility Specialist Cristie Raynor reviewed claimant's case file in early 2017, and concluded that it did not document requirements for care and assistance that are substantial enough to qualify him for the HCBS Waiver program. Raynor confirmed this conclusion with claimant's case manager, Brooke Guerrero. For this reason, RCEB deemed claimant no longer to be eligible for the HCBS program. Claimant appealed.

7. Currently, claimant has no special medical needs. He attends courses at a community college and has held a part-time job at a retail business for about 10 years. He can perform all of his own personal care, such as bathing and dressing, although he sometimes needs reminders to do so carefully. He uses public transportation and has an active social life, mostly with other residents of the supportive living community where he lives. He is fluently bilingual. He relies on staff members at his supportive living community and on his parents to assist him with daily activities such as cooking, housekeeping, and money management.

8. Claimant's mother described a variety of claimant's cognitive, emotional, and motor difficulties. This evidence did not establish that claimant experiences moderate or severe impairment, as compared to an average or typical middle-aged man, in walking, eating, toileting, bladder or bowel control, personal care, safety awareness, disruptiveness, aggression, self-injurious behavior, destructiveness, running or wandering away from appropriate supervision, or emotional outbursts. The evidence established that the services RCEB provides to claimant are necessary for his and his family's well-being, but it did not show that claimant would need to live in an ICF/DD if he were not receiving those services.

LEGAL CONCLUSIONS

1. The federal Social Security Act describes the HCBS Waiver program. (42 U.S.C. § 1396n.) States participating in the program must develop eligibility criteria,

which the federal Centers for Medicare & Medicaid Services must approve. In California, a person is eligible for the HCBS Waiver program only if the person has substantial limitations in adaptive functioning that require the level of care provided in an ICF/DD.

2. An ICF/DD offers care for persons who have moderate to severe limitations in two or more basic adaptive and community functioning skills. (Cal. Code Regs., tit. 22, § 51343, subd. (l)(5).) As described in Finding 8, claimant does not meet these criteria.

3. Because claimant presently does not meet the criteria for residence in an ICF/DD, RCEB cannot draw on federal funds under the Medicaid HCBS Waiver program to pay for services RCEB provides to respondent.

ORDER

Claimant's appeal from RCEB's decision deeming him ineligible for the Medicaid HCBS Waiver program is denied.

DATED: April 11, 2017

_____/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.