

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017040856

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on August 21, 2017.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Skip Allen Feild, Attorney at Law, represented claimant, who was present at the proceedings.

The matter was submitted on August 21, 2017.

ISSUE

Should IRC increase claimant's Community Activity Support Services (CASS) from 78 to 96 hours per month?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 25-year-old male who receives regional center services based on a diagnosis of Cerebral Palsy. Claimant receives 78 hours per month of CASS provided by Pathways, Inc. (Pathways). CASS is an alternative to day programs that assist consumers with interaction in the community. At an Individual Program Plan (IPP) meeting held on with IRC on March 9, 2017, claimant's mother requested that IRC increase CASS from 78 to 96 hours per month to assist claimant with attending a college prep program.

2. On March 30, 2017, IRC served claimant with a Notice of Proposed action denying claimant's request to increase claimant's CASS funding to 96 hours per month. The attached letter indicated that there was insufficient information to justify an increase in hours because it was not clear what level of support, if any, was needed to access the educational program, and it was also not clear what level of support the college program could provide as natural supports. IRC believed that existing CASS hours could be used to provide support without increasing hours.

3. On April 7, 2017, claimant's attorney filed a fair hearing request appealing IRC's decision not to fund additional hours. The fair hearing request stated the request for "more hours to help claimant with his schooling with BYU Idaho in order to receive a B.A." The fair hearing request did not state why the current funded hours were insufficient. This hearing ensued.

EVIDENCE PRESENTED BY IRC

4. Claimant lives with his parents and two siblings. In addition to CASS, he receives 30 hours per month of parent-vouchered respite and 44 hours per month of In-Home Supportive Services. Jade Ellis, is claimant's consumer services coordinator with

IRC. Ms. Ellis met with claimant and claimant's mother in March to prepare an IPP. Claimant's mother requested the increase in CASS hours because claimant was attending a program offered through Brigham Young University in Idaho.¹ The additional hours would help claimant with tasks such as retrieving books from the shelf at the library and typing papers for school. Ms. Ellis presented the request to her program manager, Mandy Alsehinoloye, who presented the request to Bob McGuire, the owner of Pathways, claimant's CASS provider. Mr. McGuire informed IRC that an increase in the number of hours was not required, and claimant's existing schedule could be modified to provide the types of supports requested by claimant.

5. Mr. McGuire testified that Pathways was developed as an alternative to day programs for instances where a day program might not be appropriate for a consumer. The Pathways program was initially started for individuals who wanted to start their own business or attend college. Mr. McGuire met with claimant and his representatives to determine what services claimant would need in the future associated with his college prep program. Mr. McGuire understood that the program was an online course. However, neither claimant nor claimant's representatives presented Mr. McGuire with a class schedule, and the information he received about what exactly the program entailed was vague. Mr. McGuire reviewed how claimant used Pathways over the past year and determined that claimant had a sufficient number of hours to meet his needs, and he could not justify increasing the hours. Mr. McGuire believes that the hours currently used by claimant could be utilized in a more efficient manner. For example,

¹ The nature of this program was unclear. According to the IPP, the program is a combination of online courses and local gatherings. Claimant did not submit any additional information regarding the program to IRC or at the hearing.

there was time spent returning to claimant's house for lunch; that time could be used more effectively if claimant were to bring his lunch. Also, the service provider usually had to wait at claimant's house for approximately an hour before claimant was ready to depart. Mr. McGuire testified that he is happy to work with claimant to develop a more efficient schedule if claimant provides a schedule and more details about what he would like to accomplish.

6. Joshua Haught is claimant's provider at Pathways. He has worked with claimant for almost a year. He works with claimant three days a week for five hours per day. He assists claimant by moving and carrying objects. Claimant decides what activities in the community he wants to do. Since he has started taking claimant to the library, he has assisted claimant by retrieving books. Before he and claimant started going to the library, they would normally go to breakfast and then some sort of leisure activity such as going to the mall. Mr. Haught believes that increasing claimant's hours will allow claimant to focus on his academics while preserving their ability to continue to go out into the community. Mr. Haught has never been told by his superiors that the activities he was doing with claimant were inappropriate.

CLAIMANT'S EVIDENCE

7. Claimant's attorney presented no evidence on behalf of claimant at the hearing, despite being informed that claimant had the burden of proof.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

THE LANTERMAN ACT

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384.) The Lanterman Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an

individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

6. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and

state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

9. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

10. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(Ibid.)

11. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

12. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

EVALUATION

13. The burden was on claimant to show by a preponderance of the evidence that IRC should increase the number of CASS hours he currently receives from 78 to 96. Claimant failed to meet his burden. No evidence was presented to explain what needs claimant requires that are not being met under his current plan. No evidence was presented about claimant's academic program at BYU Idaho, or how CASS could be used to support his academic endeavors. Indeed, Mr. McGuire testified that the hours

claimant currently receives could be utilized in a more efficient manner to allow claimant to access whatever educational services he is seeking. Although Mr. Haught testified that he thought the hours should be increased to allow for both educational and social interactions in the community, there was no explanation as to why the current hours were inadequate. The evidence presented by IRC and Pathways indicated they are more than willing to work with claimant to develop a schedule to help accommodate whatever needs he claims to have. However, on this record, IRC cannot be expected to increase the number of CASS hours without any justifiable reason to do so. If IRC complied with claimant's request, it would be not be a cost-effective use of public resources or fiscally responsible.

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ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund additional Community Activity Support Services is denied.

DATED: August 30, 2017

ADAM L. BERG
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 ninety days.