

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2017060616

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Santa Ana, California, on August 1, 2017.

Paula Noden, Fair Hearing Manager, represented Regional Center of Orange County (RCOC).

Claimant's mother appeared on behalf of claimant, who was not present at the hearing.

The matter was submitted on August 1, 2017.

ISSUE

Should RCOC fund claimant's daycare on a monthly, rather than on a weekly basis, so that unused hours in any given week could be carried over the next week?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a four-year-old male who receives regional center services based on a diagnosis of autism. On February 3, 2017, claimant's mother signed a Notification of Resolution in OAH Case Number 2016121042. Relevant to this case, RCOC agreed to fund day care services once claimant's mother submitted a Day Care Provider Information Sheet (RCOC Form 601A). The agreement indicated that claimant's day care needs were from 2:00 p.m. to 5:30 p.m., Monday, Tuesday, Thursday, and Friday, and 1:30 to 5:30 p.m. on Wednesdays. The agreement indicated the parents' share of the cost was \$3.04 per hour and RCOC funding could not exceed \$8.75 per hour.

2. On May 11, 2017, RCOC served claimant with a Notice of Proposed action denying claimant's request to have day care hours funded on a monthly, instead of weekly, basis. The attached letter indicated that the schedule claimant's mother provided to RCOC indicated claimant required nine hours of daycare per week, but RCOC had agreed to fund a total of 18 hours per week in order to provide claimant's parents with flexibility. The letter noted that claimant has yet to use any of the day care hours and thus did not show that the current funded hours were insufficient.

3. On June 11, 2017, claimant's mother filed a fair hearing request appealing RCOC's decision to change the funding from a weekly to monthly basis. In her fair hearing request, claimant's mother stated that the daycare contract prohibits unused hours from being carried-over to the next week. Claimant's mother was not informed of this when she signed the Notice of Resolution. She requested that the daycare contract "not expire weekly in a 'use it or lose it' format." The fair hearing request did not state why the current funded hours were insufficient.

4. On June 26, 2017, an informal meeting was held between claimant's mother and RCOC staff. Following the meeting, RCOC adhered to its original determination not to change claimant's daycare funding from a weekly basis to a monthly basis. RCOC also did not change its position that unused daycare hours in one week could not carry over to the following week. This hearing ensued.

EVIDENCE PRESENTED BY RCOC

5. Keli Radford, Area Manager, Paula Noden, Fair Hearing Manager, and Karla Ochoa, Service Coordinator, testified at the hearing. The following is a summary of their testimony and evidence.

6. In general, parents are responsible for covering the typical costs of child care. However, in circumstances where the cost of child care is more than would be typical for a child without a disability, RCOC can fund these requests.

7. In December 2016, claimant filed a fair hearing request for RCOC to fund in-home speech and occupational therapy services. Claimant has private health insurance and Medi-Cal/Cal Optima as secondary insurance. These are generic resources that approved coverage of therapy services for claimant. Claimant's mother, a pharmacist, claimed difficulty in assessing these services because she and her husband, a physician, work full-time and their nanny does not drive. Insurance will not cover these services in-home except in the case of very medically fragile patients who cannot be transported to appointments. As a resolution, RCOC authorized daycare to allow claimant's parents to hire an additional day care provider to take claimant to and from his appointments while their nanny remained home with claimant's siblings. Normally, the regional center does not fund transportation services for toddlers.

8. Claimant's mother submitted the daycare form, which provided the work schedules of her and her husband and claimant's school schedule. Claimant's mother indicated she worked from 6:00 a.m. to 4:00 p.m. Monday through Friday. The form

indicated that claimant had a babysitter from 2:00 p.m. to 5:00 p.m., which is 15 hours per week. Based on this form, RCOC funded 18 hours of daycare per week, which included three extra hours a week to provide some flexibility to the family for schedule changes. Claimant's babysitter was listed as claimant's in-home daycare provider.

9. In order for RCOC to reimburse claimant for daycare, regulations required claimant's mother to become a vendored provider. Claimant's mother did not want to become vendored because she was concerned about the tax implications, despite the fact that it would not be reportable income. In response, RCOC agreed to allow its vendored respite agency, 24HR Homecare, LLC, to provide respite in lieu of daycare so that claimant's mother would not have to be vendored. However, because 24HR Homecare is a licensed provider, it receives the contract rate of \$20.71 per hour. Despite the fact that RCOC is restricted from reimbursing more than \$8.75 per hour, RCOC did not increase the parents' share of \$3.04 per hour to \$6.19 per hour, the parent share for a licensed provider.¹ Claimant's nanny was contracted with 24HR Homecare. A purchase order dated April 18, 2017, indicated that RCOC would fund 24HR Homecare for daycare services retroactive to February 13, 2017, at a total cost of \$8,387.55.

10. Claimant's mother has yet to use the daycare service. At the informal meeting, claimant's mother said she has not scheduled any appointments with occupational or speech therapy providers. Claimant's mother indicated she could not locate a provider who would complete dual billings – first to her primary insurance and

¹ RCOC uses the 2001 Regional Market Rate Ceilings for California Child Care Providers to determine parental share. Ms. Radford testified that RCOC uses the 2001 values as a benefit to the consumer, since updated calculations would result in an increase in the amount a parent would have to pay.

then any remaining co-payment or deductible to Medi-Cal/Cal Optima. Although claimant's mother was told that she could submit any outstanding bills from her primary insurance to Cal Optima, claimant's mother stated that this was RCOC's responsibility to coordinate the billing. Claimant's mother also expressed her belief that RCOC should do more to assist claimant in obtaining an appointment.

11. The process for obtaining reimbursement is straightforward. The daycare provider submits a timecard to 24HR Homecare who then directly pays the daycare provider. Should claimant need more additional hours than the 18 hours currently funded, his parents could simply contact RCOC and advise that additional hours were needed for a particular week. However, at no time has claimant's parents indicated that they needed additional daycare beyond the 18 hours currently allotted.

12. Based on the fact that claimant has never used the RCOC funded day care services, and because claimant's mother provided no justification as to why it needed to be changed to a monthly allocation, other than she wanted to carry-over hours week-to-week, RCOC denied claimant's request.

13. RCOC's Purchase of Service (POS) Guidelines regarding the purchase of child care services state, "unused hours may not be carried over from week-to-week or month to month during the course of the authorized contract period."

CLAIMANT'S EVIDENCE

14. Claimant's mother testified she was never informed when she signed the Notice of Resolution that weekly hours could not be rolled-over to the next week. She presented a host of complaints about RCOC, and said that it never clearly explained the process to her. She faulted RCOC for not updating its POS Guidelines since 2009. She believed her service coordinator was unresponsive. Although, her central complaint was that RCOC never disclosed to her that the hours could not be carried over week-to-week, claimant's mother failed to explain why this was required, other than the

theoretical possibility that her schedule could change such that she needed to use banked hours. She said she has not used the daycare hours because she does not know how to use it. She repeated that she is "stuck in limbo" and RCOC does not "react fast enough."

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 shall not purchase day care services to replace or supplant respite services. For purposes of this section, "day care" is defined as regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in

employment outside of the home or educational activities leading to employment, or both. (Welf. & Inst. Code, § 4686.5, subd. (a)(4).)

12. 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).)

13. 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.)

14. California Code of Regulations, title 17, section 54310 outline the vendor application requirements. Section 54320 outlines the requirements of regional centers to review vendor applications. Section 54326 outlines the general requirements of regional centers and vendors. Subdivision (d)(4) prohibits regional centers from referring any consumer to an applicant until the vendor application is approved or reimbursing a vendor for services provided before vendorization.

EVALUATION

15. Claimant failed to establish a factual or legal reason why RCOC should fund claimant's daycare on a monthly, rather than weekly basis. RCOC agreed to fund daycare so claimant's parents could find a daycare provider who could transport claimant to speech and occupational therapy appointments. RCOC agreed to fund daycare services at 18 hours a week retroactive to February 13, 2017, after claimant's mother submitted a schedule indicating that her babysitter cares for claimant 15 hours a week. When claimant's mother indicated she did not want to become vendored, RCOC worked to have claimant's babysitter become contracted with a RCOC respite provider instead. Pursuant to its POS Guidelines, RCOC funds daycare on a weekly basis and does not permit hours to be carried over from week-to-week or month-to-month. The POS

Guidelines are current, and despite claimant's mother's complaints that they POS Guidelines should be updated, she did not cite any legal authority requiring them to be updated or to show that RCOC violated any terms of the POS Guidelines.

Claimant has yet to go to a speech or occupational therapy appointment and has never sought reimbursement for daycare services. Although claimant's mother repeatedly insisted that RCOC never disclosed that weekly daycare hours would not be carried over, she failed to provide any meaningful explanation as to why this policy is inappropriate for claimant's situation or for her failure to inquire about whether the hours would carry over, if that was something of concern to her. Although she constantly asserted that RCOC should be "flexible," the evidence established that RCOC has gone to great lengths to accommodate her concerns. As claimant has never used the daycare services, the claim that RCOC has not been flexible borders on the absurd, especially considering that RCOC funded an additional three hours a week beyond his current daycare needs and has not increased the parents' share of the costs for using a licensed provider. Indeed, RCOC made clear that if claimant needed more daycare services in any individual week, it would accommodate and respond to any such request. Considering the entire reason for funding daycare was to allow claimant's parents to hire someone to transport him to appointments – appointments he has yet to attend – the claim that RCOC should allow hours to roll-over week-to-week is disingenuous. This claim lacks any nexus to claimant's needs and RCOC was correct in denying it.

ORDER

Claimant's appeal from Regional Center of Orange County's determination that it will not fund claimant's daycare on a monthly basis is denied.

DATED: August 11, 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.