

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. 2017090497

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 4, 2017, in Concord, California.

Claimant's mother, who is claimant's co-conservator, advocated at the hearing on claimant's behalf. Claimant was present. Claimant's elder sister, who is claimant's other co-conservator, also was present.

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

The matter was submitted on December 4, 2017.

ISSUES

May RCEB pay for respite services provided by an adult who shares a household with claimant and claimant's mother?

FACTUAL FINDINGS

1. Claimant is an unmarried adult. Because she is eligible for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code § 4500 et seq.), she has received a variety of services through RCEB for many years.

2. Claimant is conserved. Claimant's mother and elder sister are claimant's co-conservators.

3. Claimant lives with her mother. Claimant's younger sister, who also is an adult, lives with claimant and their mother. Claimant, her younger sister, and their mother have shared their home at all times material to this decision.

4. Claimant is ambulatory, although she tires easily. She is attentive to others but her expressive and receptive communication skills are similar to those of an infant younger than one year. She requires constant supervision for her own safety.

5. Claimant's younger sister attended college in Southern California for some time, but returned to Northern California and resumed living with her mother and claimant. She currently is a student at a community college, and also has worked part-time in service jobs during the last several years.

6. In their home, claimant's mother is claimant's primary caregiver. Claimant's mother receives compensation through the In-Home Supportive Services program for some of the care she provides to claimant. Claimant's younger sister is not a regular caregiver for claimant.

7. For several years before mid-2012, claimant attended a day program outside her home. She stopped attending this program in mid-2012, and spent her days primarily at home. Between mid-2015 and mid-2016, claimant attended a different out-of-home day program, but she stopped attending this program as well.

8. For many years, claimant also has received 90 hours per quarter of respite care services. Several care providers, including Susan Watts and Sylvia Villa, provided

this care through the Bay Respite agency. Watts, in particular, has provided care to claimant for about 17 years.

9. In addition to Watts, Villa, and possibly other individuals, Bay Respite employed claimant's younger sister as a respite care provider. Claimant's younger sister has provided respite services for claimant through Bay Respite since 2008, all while living with claimant and their mother. The evidence did not establish exactly how many hours per quarter of respite service claimant's younger sister has provided over the years Bay Respite has employed her in this capacity.

10. Since August 2017, claimant has received day care services in her home four weekdays per week, provided through the Futures Explored agency. Futures Explored hired Watts and Villa, along with at least one other provider, to provide this day care for claimant. None of claimant's day care providers through Futures Explored is available for additional weekly caregiving hours as a respite service provider.

11. Claimant loves her younger sister and cooperates well with her. Claimant mistrusts strangers, however, and is physically defensive with people she does not know.

12. In mid-2017, RCEB notified claimant's mother that RCEB would not continue providing funding to compensate claimant's younger sister for performing respite services. RCEB's written notice to claimant's mother explaining this decision stated that "[r]espice must be provided by a person living outside of the home." Claimant's mother made a timely request for a hearing on this issue.

LEGAL CONCLUSIONS

1. The Lanterman Act permits RCEB to provide funding for "respite for parents," (Welf. & Inst. Code, § 4685 subd. (c)(1)), to "[r]elieve family members from the constantly demanding responsibility of caring for the client" (*id.*, § 4690.2, subd. (a)(3)).

2. RCEB must provide all services in a cost-effective manner, and must identify and pursue all possible funding sources for services meeting claimant's needs.

(Welf. & Inst. Code, §§ 4646, subd. (a), 4659, subd. (a)(1).) In addition, before purchasing services for a consumer, RCEB must consider a “family’s responsibility for providing similar services and supports for a minor child without disabilities” (*id.*, § 4646.4, subd. (a)(4)), and available “natural supports” such as family relationships (*id.*, § 4512, subd. (e)).

3. The evidence in this matter, particularly as stated in Finding 6, did not establish that claimant’s younger sister is responsible for claimant’s regular care. The evidence also did not establish that claimant’s younger sister is a “natural support” to provide protective supervision for claimant in their mother’s absence. Instead, the matters stated in Finding 4 established that claimant’s supervision needs are unusual; and the matters stated in Findings 5 and 6 establish that despite living in the same household as claimant and their mother, claimant’s younger sister is not regularly or customarily available to supervise claimant.

4. Overall, the evidence in this matter established that respite care for claimant serves claimant’s mother, not claimant’s younger sister. Despite living in the same household as claimant, claimant’s younger sister is an appropriate respite care provider for claimant.

ORDER

The appeal from RCEB’s decision barring claimant’s younger sister from serving as a respite care provider is granted. RCEB shall continue funding respite services for claimant in accordance with claimant’s Individual Program Plan, including services provided by claimant’s younger sister.

DATED: December 8, 2017

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.