

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. 2018020535

DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on March 5, 2018, in San Leandro, California.

Claimant was present and represented by her mother.¹

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay, the service agency.

The record was closed and matter was submitted for decision on March 5, 2018.

ISSUE

1. Has Regional Center of the East Bay failed to implement claimant's Individual Program Plan by not assisting claimant in securing respite services, behavioral services, after school programs and camp programs?

¹ The names of claimant and her mother are not disclosed in order to protect claimant's privacy.

2. Should Regional Center of the East Bay better oversee the independent living skills services provided to claimant by Community Enrichment Services?

FACTUAL FINDINGS

INTRODUCTION

1. Claimant is 19 years old. She is a regional center consumer due her diagnosis of Smith-Magenis syndrome, which is a neurodevelopmental disorder that disturbs her sleep; causes behavioral issues; and affects her cognitive ability, speech and language skills, and facial features. Claimant also suffers from grand mal seizures, triggered by her anxiety.

Claimant was a consumer of the Regional Center of the East Bay (RCEB) before leaving to reside with her father in New York. Claimant returned to California to live with her mother and reactivated her relationship with RCEB in April 2017. Satima Flaherty was assigned to be claimant's case manager. It was apparent at hearing that Flaherty and claimant have developed a caring relationship.

2. Claimant lacks impulse control and becomes verbally and physically aggressive, destroys property, and engages in self-injurious behavior, including biting, hitting, head banging, and skin picking. Claimant requires one-on-one behavioral support.

3. Since returning to California, claimant's mother has requested an appropriate placement from the Oakland Unified School District; however, the placements that have been offered have not met claimant's needs. Flaherty has attended claimant's Individualized Educational Program (IEP) meetings to advocate for claimant with claimant's mother.

Claimant attended a program at Skyline High School. She was taken involuntarily from the school several times, once in handcuffs, and deemed a danger to herself or others pursuant to Welfare and Institutions Code section 5150.

Claimant also tried the young adult transition program at Cole School, another public school. While at Cole School, claimant frequently engaged in self-injurious behavior and was physically aggressive toward staff. Twice an ambulance was called to take claimant away.

The school placements have not included one-on-one behavioral support, occupational therapy, or physical therapy. Recently, claimant, her mother, and Flaherty attended another IEP meeting. The teacher wanted to assess claimant's reading. The teacher was not capable of managing claimant's behavior and claimant became agitated, which resulted in her being restrained, sedated, and handcuffed. These events have been very traumatizing for claimant and her mother.

4. Because an appropriate school placement has not been identified or offered, claimant is with her mother, who serves as her In-Home Support Services provider, all day, every day. Claimant's mother and RCEB agree that it is important for claimant to be in school and to have activities in which to participate. It is also important for claimant's mother to have a break from providing care.

CLAIMANT'S INDIVIDUAL PROGRAM PLAN

5. Claimant's Individual Program Plan (IPP) is dated May 26, 2017. Claimant's goals and objectives include: 1) to live in a safe environment; 2) to receive behavioral support that best fits her needs; 3) to participate in recreational programs; 4) to improve her hygiene; 5) to remain in optimal health; and 6) for claimant's mother to have a break from claimant's demanding care.

Respite Services

6. Claimant's mother has requested, and RCEB has agreed to fund, up to 120 hours per quarter of respite services. Manos Home Care was identified by Flaherty as a respite service provider that is an RCEB vendor. Claimant's mother initially suggested an individual to provide respite services with Manos Home Care serving as the employer of record. This arrangement did not work out.

When claimant's mother was later contacted by a Manos Home Care representative about the search for another caregiver, she expressed that claimant speaks Spanish and would enjoy someone who speaks Spanish. The Manos Home Care representative misinterpreted this statement as a demand that the respite worker be fluent in Spanish. Manos Home Care has been unsuccessful in identifying a Spanish-speaking respite worker to provide services to claimant. As a result, claimant has not been able to take advantage of RCEB's agreement to fund respite. Flaherty only learned a week before hearing the reason Manos Home Care had been unable to identify a respite worker.

7. Flaherty recently recommended 24-Hour Homecare; however, when claimant's mother spoke with a representative from that provider, she was advised that it does not provide respite services for individuals who have seizures. At hearing, Flaherty recommended another respite provider.

Behavioral Services

8. Claimant has repeatedly requested behavioral services. Public schools are required to provide needed behavioral services; but because claimant is not currently attending school, those services are not being received. Behavioral services may also be needed for issues in the home; however, pursuant to Welfare and Institutions Code section 4659, RCEB may not pay for behavioral services that are available through

private insurance or Medi-Cal. Claimant is covered by Medi-Cal, which funds behavioral services if claimant obtains a referral from her physician.

RCEB agrees that claimant's behavior needs are very serious and she needs to receive behavioral services as soon as possible. Flaherty recalls advising claimant's mother that she needed to seek funding from her private insurance or Medi-Cal. Claimant's mother does not recall Flaherty telling her this until the week before the hearing. She is currently in the process of seeking funding for these services.

9. Flaherty had also recommended that claimant's mother avail herself of the Crisis Response Project, which supports families experiencing behavioral crises. During a crisis, a family member contacts the Crisis Response Project team; if available, an individual is sent to the location to try to diffuse the situation. If no one is available to travel to the location, telephone support is offered to deescalate the crisis.

Claimant's mother used the program from May through July, 2017. It was helpful in the beginning, but later the crisis support workers were ineffective in calming claimant's outbursts over the phone and they were unable to arrive at the scene fast enough to help.

10. Recently, Flaherty learned that there is an opening in an 18-month wraparound program through the Fred Finch Youth Center, which would provide behavioral support for claimant and training for claimant's mother. Flaherty has recommended the program to claimant's mother and is following up on this opportunity.

Camps

11. Claimant's mother has requested that RCEB fund claimant's attendance at camp programs. RCEB may fund camp programs from approved vendors as a form of out-of-home respite services (except for the registration fees and transportation costs).

Flaherty recommended that claimant attend Camp Krem or Camp Harmon, which

are located in the Santa Cruz area, approximately two hours from claimant's residence. RCEB is willing to fund one-on-one support for claimant at the camp. However, claimant's mother is unwilling to send claimant to a camp that far from her home because she is concerned that claimant may become agitated and her mother will be unable to be present quickly to help calm claimant.

12. At hearing, Flaherty suggested that claimant's mother consider other camp programs, through Via Services and A Better Chance. She has provided this information to claimant's mother.

After School Programs

13. RCEB has agreed to fund an after school program for claimant. Flaherty referred claimant to the Ala Costa program. Claimant's mother accompanied claimant on a visit to Ala Costa to see if it would be a good fit for her. During the tour, claimant became very upset because the other attendees were significantly lower functioning. Claimant became very agitated and they have not returned.

Clinical Team Meeting and Independent Living Skills Services

14. RCEB convened a Clinical Team meeting in September 2017 because claimant's mother was upset that claimant was not receiving needed services. The meeting was attended by a psychiatrist, a registered nurse, a director, Flaherty and other specialists.

The team recommended independent living skills (ILS) training and checking to see if there was space in a wraparound program. The team also felt that it was very important for claimant to be in school, which provides structure and an array of services.

15. After the Clinical Team meeting, an addendum to claimant's IPP was signed; it added ILS training as a needed service. RCEB funded an assessment by Community Enrichment Services (CES) and 10 hours per week of ILS training. In

December 2017, CES completed an assessment which outlined numerous goals. RCEB and claimant were to receive quarterly reports on claimant's progress. RCEB is available to respond to problems with the program raised by claimant's mother when notified.

16. CES assigned an ILS worker to work with claimant. The ILS worker has established a relationship with claimant and claimant likes her. However, claimant's mother is not happy with CES for several reasons. CES asked her to approve time spent meeting with claimant and her mother on days when they were out of state. Also, the ILS worker has not worked with claimant on the goals described in the assessment. In addition, the ILS worker suggests outings that cost money, such as going to Chuck-E-Cheese, which claimant's mother cannot afford. At times the ILS worker buys sugary treats for claimant, which is inconsistent with her diet restrictions.

Finally, the ILS worker uses some of her hours to complete paperwork instead of providing services to claimant. When the ILS worker stated that she was leaving three hours ahead of schedule last week, claimant became upset and engaged in property destruction, self-injurious and aggressive behaviors; the police had to be called to the home and claimant was taken to the hospital.

17. Claimant's mother had hoped the arrangement would work because claimant likes the ILS worker and does not like transitions; however, at this point, claimant's mother is requesting a recommendation for a different ILS provider. Flaherty was unaware that claimant was unhappy with CES's services.

18. RCEB has other ILS vendors to recommend and is willing to fund ILS services through a different vendor.

COMMUNICATION ISSUES AND FUTURE SUPPORT

19. Flaherty is responsible for many consumers and has devoted more time to claimant's case than to her others. Claimant's mother is justifiably overwhelmed by caring for claimant and trying to secure needed services through the school district and

RCEB. Claimant is in desperate need of services which have been approved for funding by RCEB, but have not, for one reason or another, been successfully put in place. In light of the miscommunication that has occurred, Flaherty is willing to send her recommendations for services to claimant's mother in email messages.

20. RCEB will fund services through a different ILS vendor.

21. RCEB will continue to advocate for claimant at IEP meetings with the Oakland Unified School District.

22. RCEB will assist claimant in procuring behavioral services once claimant's mother obtains a referral from her physician and seeks coverage from Medi-Cal.

23. RCEB will assist claimant in attempting to secure attendance at the Fred Finch wraparound program.

24. RCEB will fund in-home and out-of-home (camp) respite services and Flaherty will provide claimant's mother with a list of RCEB respite vendors.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman 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 carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman 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. In-home and out-of-home respite, behavioral services, independent living skills services, after school programs and advocacy at IEP meetings are the types of services regional centers provide to consumers. (Welf. & Inst. Code, § 4512.) RCEB has developed an IPP with claimant that provides for these services, and RCEB has agreed to fund these services.

Claimant and her mother are in desperate need of behavioral and other support services. Claimant's case manager has provided many options to claimant's mother, however, most have not resulted in services being rendered. Part of the problem appears to be the miscommunications between claimant's mother and Flaherty. Another issue is that claimant's behavioral issues are not being addressed, making it more difficult for her to receive services. The fact that the Oakland Unified School District has not met claimant's needs has created more obstacles.

RCEB has agreed to continue working with claimant's mother to secure needed services and to make recommendations in writing via email messages to ensure there are fewer miscommunications. The issue of RCEB's oversight of ILS training by CES is moot because claimant has decided not to continue with this vendor.

ORDER

1. RCEB shall continue to advocate for an appropriate placement for claimant through the Oakland Unified School District.

2. Within 10 days of this decision, RCEB shall provide contact information to claimant's mother via email message for alternative ILS providers that are RCEB vendors.

3. Within 10 days of this decision, RCEB shall provide contact information to claimant's mother via email message for out-of-home respite vendors (camps) for claimant to consider.

4. Within 10 days of this decision, RCEB shall assist claimant in attempting to secure in-home respite through one of its vendors.

5. Within 10 days of this decision, RCEB shall assist claimant in attempting to secure attendance in the Fred Finch wraparound program.

6. Within 10 days of this decision, RCEB shall provide contact information to claimant's mother via email message regarding available after school programs.

7. Within 10 days of this decision, RCEB shall provide to claimant's mother via email message a list of behavioral program vendors, and provide guidance if necessary on obtaining funding through Medi-Cal.

8. RCEB shall schedule an IPP meeting with claimant and her mother within 60 days of this decision to ascertain the status of the services outlined in the IPP.

DATED: March 13, 2018

_____/S/_____

JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.