

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. 2018050526

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on July 19, 2018, in San Leandro, California.

Claimant was represented by authorized representative Mei Ling. Claimant was present at the hearing.

Aaron Abramowitz, Attorney at Law, Enright & Ocheltree, LLP, represented the Regional Center of the East Bay (RCEB), the service agency.

The record closed and the matter was submitted for decision on July 19, 2018.

ISSUES

1. Whether RCEB has refused to release client records to claimant.
2. Whether RCEB must remove certain caseworkers from claimant's case.
3. Whether RCEB must restore ILS and HATCH (socialization/day program) services to claimant.
4. Whether RCEB has violated HIPAA.
5. Whether RCEB must return claimant's social security funds.

FACTUAL FINDINGS

BACKGROUND

1. Claimant is an unconserved 65-year-old individual who lives independently. Claimant is a RCEB consumer based on intellectual disability. Prior to September 2017, claimant was conserved. Her mother and the Good Shepherd Fund were co-conservators. Claimant's mother continues to be actively involved in claimant's life.

2. Claimant is receiving services pursuant to an individual program plan (IPP) dated May 22, 2017. Pursuant to the IPP, RCEB agrees to fund 40 hours per month of ILS (independent living services) through vendor Positive Adult Transitions (PAT) and six hours per day, Monday through Thursday, of socialization services from vendor HATCH, in lieu of a day program. These services are continued in the IPP addendum dated May 4, 2018. Claimant's IPP goals are to learn how to cook and to lose weight.

3. Claimant, through her authorized representative, filed two fair hearing requests, dated May 5 and May 11, 2018. The two requests are largely duplicative. In the requests, claimant alleges that RCEB has refused requests for client files, refuses to change claimant's caseworkers, took her social security funds and did not implement her IPP goals. In the May 5, 2018, fair hearing request, claimant requests an order directing: 1) receipt of all specified RCEB, ILS & HATCH client records; 2) restoration and resumption of ILS and HATCH hours; 3) removal of Melanie Gonzales, Ronke Sodipo, and Renita Chew from claimant's case; 4) RCEB to cease violating HIPAA; and 5) return of Social Security funds. The May 11 fair hearing request does not request that RCEB restore and resume ILS and HATCH and instead requests that claimant's ILS provider be changed to Bethesda Lutheran Communities.

RECORDS

4. Over the past several months, RCEB received multiple requests for the production of client records. RCEB acknowledges that it did not immediately respond to these requests. RCEB explained that some requests were made by claimant's mother and her representative at a time when there was no authorization by claimant for them to act on her behalf. Another request bore a signature that did not appear authentic. RCEB had doubts that the requests were valid and wanted to confirm claimant's desires. As of the date of the hearing, RCEB has turned over all documents in its possession that are responsive to claimant's request for records. RCEB remains willing to provide access to claimant's files, provided that it is satisfied that any request reflects claimant's desires or is made by someone legitimately authorized by claimant to make the request. RCEB explained to claimant's representative that arrangements can be made for claimant to inspect her client files onsite, with the assistance of RCEB personnel.

RCEB STAFF

5. Claimant requests that RCEB remove Renita Chew, Melanie Gonzales, and Ronke Sodipo from working on her case. Claimant's mother testified that she does not want these individuals involved in claimant's case because she believes they are not trustworthy and honest. Claimant and her mother are also upset that RCEB staff recently made an unannounced visit to claimant's home, because they do not want them to meet with claimant without her mother being present. RCEB has agreed to immediately remove and replace Renita Chew, claimant's case manager. Melanie Gonzales is the Supervisor of Adult Services and Ronke Sodipo is the Director of Client Services. RCEB asserted that it is not required by law to remove them from claimant's case.

ILS AND SOCIALIZATION

6. Claimant is not currently receiving any services from PAT or HATCH.

Claimant became dissatisfied with the ILS services provided by PAT and asked them to stop coming several months ago. Since that time, claimant has been receiving support through IHSS, which is funded by Alameda County. Claimant has been doing well and likes her IHSS caregivers, whom she met through her church. She believes that they are more effective than the PAT caregivers at helping her with her IPP goals. More recently, HATCH terminated services for claimant, because it felt harassed by claimant's mother and claimant's representative.

Claimant would like to have the ILS and socialization services which were provided by PAT and HATCH reinstated. Both vendors are not interested in reinstating services. Claimant has identified Bethesda Lutheran Communities as a vendor who can replace PAT. RCEB is amenable to purchasing ILS services from Bethesda Lutheran Communities. RCEB is also willing to seek an alternative vendor to replace HATCH for the provision of socialization services. RCEB is willing to work with claimant to identify individual caregivers who might be eligible to be hired by the replacement ILS and socialization vendors.

SOCIAL SECURITY FUNDS

7. Until recently, RCEB was the payee for claimant's social security benefits. In 2012, claimant's social security benefits increased due to the death of her father. Over the next few months, the balance in claimant's RCEB trust account increased. The former co-conservator, Good Shepherd Fund, became concerned that claimant could lose certain means-based public benefits because of the high balance. RCEB arranged to transfer \$5,000 to a special needs trust established on her behalf by the Good Shepherd Fund. Claimant was taken to a notary public to sign a document establishing the trust.

The transfer took place on March 1, 2013. An additional \$500 was transferred to the account on March 3, 2014.

Claimant contends that she and her mother were not made aware of the excess funds in 2013. She contends that she should have been given the option of spending the funds and that claimant's mother should have been notified before the funds were transferred to the Good Shepherd Fund. Claimant stated that she is upset that RCEB "gave away" her money.

Claimant's mother testified that she was not notified of the transfer of funds in 2013. She expressed displeasure with RCEB for taking claimant to a notary and transferring the funds. RCEB explained that its practice is to notify family members and conservators before this type of transaction. RCEB believes that claimant's mother was notified, but does not have documentation to confirm that notice was made. RCEB noted that the co-conservators (claimant's mother and the Good Shepherd Fund) were allowed to act unilaterally. RCEB denied misappropriating funds that belong to claimant and asserted that claimant can request funds from the Good Shepherd Fund at any time.

Claimant also contended that other funds have "disappeared" and insinuated that RCEB and/or the PAT and HATCH caregivers acted improperly. No evidence was presented to corroborate this contention.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.¹) The Lanterman Act mandates that an "array of

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

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.” (§ 4501.) Regional centers have the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after gathering information and analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

ISSUE 1 – RECORDS

2. Claimant alleges that RCEB has refused to provide requested information. RCEB acknowledged that it did not respond to some initial requests due to its concerns about the authenticity of the requests and whether the requests reflected claimant’s desires. As of the date of the hearing, RCEB provided all requested records within its possession. In light of the fact that all records have now been provided, claimant’s appeal as to Issue 1 is denied as moot. To the extent that claimant requests the production of records from PAT and HATCH, the appeal is denied because these vendors are not parties to this matter.

ISSUE 2 – RCEB STAFF

3. Claimant requests that Melanie Gonzales, Ronke Sodipo, and Renita Chew be removed from working on her case. Welfare and Institutions Code section 4647 provides that no one shall continue serving as a service coordinator unless there is agreement by the consumer. RCEB has agreed to remove Renita Chew as case

manager/service coordinator and will be assigning a replacement soon. There is no provision entitling claimant to remove Ronke Sodipo, the Director of Client Services or Melanie Gonzales, the Supervisor of Adult Services, from performing any tasks on claimant's case. Accordingly, the appeal as to Issue 2 is denied.

ISSUE 3 – ILS AND SOCIALIZATION

4. RCEB acknowledges that it is not currently providing ILS and socialization/day program services as agreed to in the IPP. Neither service was terminated at the direction of RCEB. The specific vendors identified in the IPP are no longer available to provide these services. RCEB has agreed to pursue alternate vendors, including Bethesda Lutheran Communities, and is prepared to resume funding these services. In light of the fact that RCEB has agreed to resume funding for ILS and socialization, as soon as appropriate vendors are located, the appeal as to Issue 3 is denied.

ISSUE 4 – HIPAA

5. Claimant alleged that RCEB has violated her privacy rights under HIPAA. No evidence was presented to support this contention. Accordingly, the appeal as to Issue 4 is denied.

ISSUE 5 – SOCIAL SECURITY FUNDS

6. Claimant requests that RCEB return "all social security funds." The evidence established that certain social security funds were transferred to a trust managed by the Good Shepherd Fund. These funds are held in a special needs trust and claimant can request the funds from the trustee at any time. RCEB does not have the authority to direct the Good Shepherd Fund to disburse these funds to claimant. No evidence supported claimant's contention that RCEB is responsible for the disappearance of other

funds. RCEB is no longer claimant's payee for social security and is not holding any funds at this time. Accordingly, claimant's appeal as to Issue 5 is denied.

ORDER

Claimant's appeal is denied.

DATED: July 26, 2018

_____/s/____

KAREN REICHMANN

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.