

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2018050546

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on June 14, 2018, in San Jose, California.

Claimant appeared at the hearing through his conservator, who is his mother. Claimant was not present in person.

James F. Elliott represented service agency San Andreas Regional Center (SARC).

The matter was submitted on June 14, 2018.

ISSUE

Must SARC reimburse claimant for the cost of his rental housing between March 25 and April 20, 2018?

FACTUAL FINDINGS

1. Claimant was born in 1993. He has been a SARC consumer for many years, because of intellectual disability and autism spectrum disorder. Claimant is conserved and his mother is his conservator.

2. Through adolescence and young adulthood, claimant lived with his mother and his twin brother. In April 2017, claimant, his mother, and the professional staff serving claimant decided that claimant should live independently from his mother and his twin. They had several reasons for this decision, one of which was that claimant and his brother get along poorly and have fought physically in their home to the point that their mother has called police to intervene between them.

3. Claimant's SARC service coordinator, Ayana Best, agreed with claimant's mother that claimant would be most likely to succeed in a residential care home offering strong supervision and behavioral support (a "Level 4-I" home). Best and claimant's mother cooperated to identify possible homes for claimant, and eventually selected KB Care Home in San Jose. Claimant moved into KB Care Home in August 2017.

4. Claimant was not happy at KB Care Home. He expressed his unhappiness through a variety of antisocial behavior patterns, including urinating regularly in a closet, tearing his and others' clothing, stealing from other KB Care Home residents, and hitting staff members.

5. Claimant also complained to his mother and others that staff members at KB Care Home physically abused other residents. The Santa Clara County Adult Protective Services agency investigated one of these complaints and found no evidence to support it. Claimant's mother believes claimant's reports of his observations, however.

6. During early 2018, Best and claimant's mother explored possibilities for changing claimant's daytime activities to improve his mood and behavior. Claimant began to tell his mother that he no longer wanted to live at KB Care Home, and by mid-March 2018 Best also had begun to investigate whether another Level 4-I home in the area might have a vacancy that would suit claimant.

7. Best could not simply sign claimant up to live in a different care home. She needed to find one that had a vacancy for a man, and that would be willing to accept claimant after reviewing SARC's and KB Care Home's records about his behavior and his care needs. For the sake of claimant's continuing relationships with his family, his friends, and his health and social service providers, Best also needed to find a suitable vacancy within a reasonable distance of claimant's mother's home. Best testified credibly that despite initiating a search, she did not immediately find any vacancy meeting all of these criteria.

8. On Saturday, March 24, 2018, claimant visited his mother. When the time came for claimant's mother to take him home, claimant stated that he did not want to go back to KB Care Home. She drove him there anyway, but when they arrived claimant called 911 and asked the dispatcher to send police officers to the home because he was suicidal.

9. An emergency team responded to claimant's call and took him to Santa Clara Valley Medical Center for psychiatric observation. He stayed overnight. Santa Clara Valley Medical Center released claimant on Sunday afternoon, March 25.

10. Claimant's mother did not believe that she could return him to KB Care Home, but she also did not believe she could bring claimant to stay with her and claimant's twin because of the risk that her sons would fight. She arranged for

claimant to go to Shire House in San Jose, a group residence for young adults with autism spectrum disorder.

11. Claimant's mother did not expect Shire House to be a suitable long-term residence for claimant because he "requires much more care and supervision than other Shire House clients." Nevertheless, Shire House's executive director agreed that claimant could stay at Shire House temporarily, beginning on March 25, 2018.

12. Shire House is not a SARC vendor.

13. Claimant's mother did not call SARC for emergency assistance over the weekend of March 24 and 25. Rather, Best learned on Monday, March 26, 2018, that claimant had left KB Care Home on Saturday evening for psychiatric evaluation, and that his mother then had arranged for him to spend Sunday night at Shire House rather than returning him to KB Care Home.

14. Best confirmed on March 26 that KB Care Home's director was willing to continue housing claimant while Best and claimant's mother searched for a new residence for claimant. Best and other SARC staff members explained to claimant's mother on March 26 and again on March 27 that SARC would not pay the cost of claimant's housing at Shire House, because Shire House is not a SARC vendor and because a suitable SARC vendor, KB Care Home, remained available to house claimant.

15. Claimant's mother disagreed, and disagrees, that KB Care Home was a suitable residence for claimant after March 24, 2018. She declined to consider allowing claimant to return there under any circumstances, or allowing claimant to join her and claimant's twin in their home. Claimant remained at Shire House for the next several weeks, at his mother's expense.

16. Claimant's mother's belief that claimant could not return to KB Care Home is sincere, and comes from her knowledge of her son's strengths and weaknesses and her concern for his well-being. The evidence did not establish, however, that claimant could not have continued to live at KB Care Home, perhaps with adjustments to his daily routine or his behavioral support, until his mother and Best found a new residence that would be a better fit for him.

17. Initially, Best had looked for vacancies only at Level 4-I homes. Upon request by claimant's mother, supported by the director of claimant's day program, Best decided as well to consider Level 3 homes, which generally serve clients needing less support and supervision than clients at Level 4-I homes.

18. On April 20, 2018, claimant moved into Elliott Home, a Level 3 residential care home in Campbell. Claimant's mother is happy with this placement so far, and believes that it serves claimant well.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) governs SARC's provision of services to claimant.

2. The Lanterman Act calls for SARC to consider claimant's and his conservator's preferences in procuring housing services for claimant. (Welf. & Inst. Code, § 4648, subd. (a)(6)(E); Cal. Code Regs., tit. 17, § 56016, subds. (a), (b).) At the same time, the Lanterman Act also calls for SARC to consider other factors, including the housing provider's "ability to deliver quality services or supports" for claimant. (Welf. & Inst. Code, § 4648, subd. (a)(6)(A).)

3. SARC generally may obtain services for claimant only from organizations that SARC has approved as vendors. (Welf. & Inst. Code, § 4648, subd. (a)(3)(B).) A vendor must meet regulatory standards that ensure the vendor's ability

to provide high-quality service in a financially responsible manner. (Cal. Code Regs., tit. 17, §§ 54310, 54311, 54314, 54320.) The matters stated in Findings 10 through 12 establish that SARC had not approved Shire House as a vendor before claimant began staying there.

4. SARC may approve an agency as an “emergency” vendor only if “the health or safety of a consumer is in jeopardy and no current vendor is available to provide the needed service.” (Cal. Code Regs., tit. 17, § 54324, subd. (a).) The matters stated in Finding 14 establish that KB Care Home remained available between March 25 and April 20, 2018, to provide housing service to claimant. The matters stated in Findings 4, 5, 8, 9, 15, and 16 do not establish that claimant’s health or safety would have been in jeopardy between these dates if he had remained a KB Care Home resident.

5. Claimant has not established that SARC erred by declining to pay for claimant’s housing at Shire House.

ORDER

Claimant’s appeal from SARC’s refusal to reimburse him for his rental housing costs between March 25 and April 20, 2018, is denied.

DATED: June 21, 2018

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.