

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2019011148

DECISION

Heather M. Rowan, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), heard this matter on April 2, 2019, in Sacramento, California.

Robin Black, Legal Services Manager, represented the Service Agency, Alta California Regional Center (ACRC).

Claimant's parents represented claimant, who was present.

On April 2, 2019, oral and documentary evidence was received. The record was held open until April 16, 2019, to allow the parties to submit closing briefs. ACRC's closing brief was marked as Exhibit 10 and claimant's closing brief was marked as Exhibit C. The exhibits were accepted as argument. The record was closed and the matter submitted for decision on April 16, 2019.

ISSUE

Is ACRC required to fund Via Services Camp (Via West) as out-of-home respite for claimant?

FACTUAL FINDINGS

1. Claimant is a 26-year-old man eligible for regional center services based upon his diagnosis of Severe Intellectual Disability with substantial disabilities in communication, learning, self-care, mobility, self-direction, capacity for independent living, and economic self-sufficiency. He resides with his family in the family home in Elk Grove, California. Claimant's father works outside the home, and is claimant's sole provider of In Home Supportive Services (IHSS), for which claimant qualifies for 283 hours per month. Claimant's mother is retired. Claimant receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.).¹

2. Claimant's parents requested that ACRC fund his attendance at Via West located in Cupertino, California, as claimant's out-of-home respite. ACRC determined that Via West is vendorized as a "camping service," which is a suspended service the regional center is prohibited from funding unless claimant qualifies for an exemption.

3. Regional centers are governed by the provisions of the Lanterman Act. Section 4648.5, subdivision (a), which was enacted in 2009, suspends regional centers' authority to purchase the following services: (1) camping services and associated travel expenses; (2) social recreation activities, except for those activities vendorized as community-based day programs; (3) educational services for children three to 17, inclusive, years of age; and (4) nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

Regional centers retain authority to purchase the services enumerated in section 4648.5, subdivision (a), only where a consumer falls within the exemption set forth in

¹ Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

section 4648.5, subdivision (c), which provides:

An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

4. ACRC determined claimant did not qualify for an exemption. ACRC found that Title 17 regulations require that out-of-home respite services must be provided by qualified and appropriately licensed entities. Specifically, the entity must be approved to provide out-of-home respite and be licensed adult day care centers, residential facilities, or intermediate care facilities. Via West is not licensed by the Department of Social Services (DSS) or by the Department of Health Services (DHS) to provide out-of-home care to persons with developmental disabilities. Although Via West is a vendor for other regional centers, ACRC stated that it would be able to purchase the services as a user of another regional center's vendor, but only if ACRC had no resources to meet the client's needs. ACRC determined this was not the case.

5. On December 21, 2018, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "ACRC is denying your request that ACRC fund Via Services Camp to provide out-of-home respite" for claimant.

6. Claimant filed a Fair Hearing Request dated January 22, 2019, appealing that decision. The reason for the request stated:

[ACRC] has been unable to find an appropriate “out of home” respite provider that was available when we needed one.

Claimant requested:

For [ACRC] to “courtesy vendor” with Via West, a licensed provider for “out of home” respite to provide respite at a time [convenient] for the caregivers.

ACRC’S EVIDENCE

7. Matthew Bollinger was claimant’s interim Service Coordinator during the time claimant requested that ACRC designate Via West as claimant’s out-of-home respite provider. He has been a Service Coordinator with ACRC for 15 months. As a Service Coordinator, he manages about 80 adult clients by helping the clients and their families find appropriate services.

8. In October 2018, Mr. Bollinger received claimant’s parents’ request to fund Via West as claimant’s out-of-home respite provider on December 7 through 9, 2018. Via West is outside ACRC’s “catchment area,” meaning it falls geographically within another regional center’s service area. Mr. Bollinger contacted Via West to obtain information regarding their services. He learned that Via West’s vendor code is 850, which is a camping service. Because camping services are no longer funded pursuant to section 4648.5, Mr. Bollinger looked for an alternate out-of-home respite option for claimant. In October 2018, he identified one care home, Sunshine Healthcare, that stated it had availability in October 2018, but it could not guarantee claimant’s parent’s requested dates in December 2018 would be available. Sunshine Healthcare does not allow respite care services to be reserved in advance. Mr. Bollinger informed claimant’s mother of the availability, and discontinued his search for respite care.

9. Claimant’s mother informed Mr. Bollinger that the family wanted to be able

to plan ahead for out-of-home respite care, which would make Sunshine Healthcare impossible to use. She again requested courtesy vendorization of Via West. Mr. Bollinger consulted with his client services manager, and referred the matter to "Best Practices," an ACRC committee that reviews such requests and makes determinations.

10. Best Practices found that Via West's service code was for "camping services," which ACRC is not permitted to fund unless an exemption applies. Best Practices found no basis for an exemption under section 4648.5, subdivision (c). There was no finding that camping services was a primary or critical means for ameliorating the effects of claimant's disability, so the focus was on whether Via West was necessary to enable claimant to remain in his home and whether no alternative service was available for out of home respite. Best Practices found that alternative services were available because Mr. Bollinger had identified Sunshine Healthcare as out of home respite for claimant. Claimant had not exhausted all other resources. Additionally, Via West is outside ACRC's catchment area, and the catchment area had not been exhausted.

11. Mr. Bollinger believes there are other out-of-home respite options that would meet claimant's needs, such as family home agencies and intermediate care facilities. Mr. Bollinger stated once those options are exhausted a camping service can be funded.²

12. Tricia Cummings has worked at ACRC for 25 years, and has been a Client Services Manager for 18 of those years. She is the manager over 12 service coordinators,

² ACRC's evidence is not consistent on this point. Other evidence suggests that DDS does not allow a regional center to fund camping services as respite unless the exception applies. Thus, if no out-of-home respite were available in ACRC's catchment area, ACRC would then conduct a state-wide search for out-of-home respite providers that are explicitly vendored as such.

and provides them with supervision and support. She supervises Mr. Bollinger and is familiar with claimant's case.

13. Ms. Cummings explained ACRC's procedure for finding out-of-home respite care for families. Once a family requests and has been approved for out-of-home respite, the Service Coordinator searches for providers who are able to meet the consumer's level of need. The Service Coordinator then contacts the facility liaisons for this narrowed set of respite providers. Some may appear to be able to take on a consumer, but may be full, have inadequate staffing, or be unable to address all of a consumer's needs. If no facility is available in the catchment area, the Service Coordinator begins looking for similar facilities outside the catchment area. If an out-of-home respite facility is not available in the catchment area, the next step is to perform a state-wide search. Even so, ACRC is not permitted to fund camping services unless an exception applies. Ms. Cummings added that each time a family requests out-of-home respite care, a new search is implemented, and all options must be exhausted for each new search.

14. In claimant's case, only one facility was able to provide out-of-home respite. Sunshine Healthcare had a bed open in October 2018, when Mr. Bollinger inquired. Sunshine Healthcare could not, however, guarantee a bed would be available for claimant in December 2018, as his parents requested, or any time in the future. ACRC did not consider that Sunshine Healthcare could not guarantee availability for claimant's parents' specific dates meant no facility was available. Because ACRC deemed Sunshine Healthcare a viable option, no further search was conducted.

15. Ms. Cummings anticipates that more respite care homes will become available soon because "there is a push from the state," to provide more periodic breaks for caretakers. Current respite care homes will have more beds available specifically for respite care, and it is possible that caretakers will be able to schedule their respite times so

that they can plan a vacation. Ms. Cummings could not identify when this shift in availability will occur.

16. In Ms. Cummings's experience, since 2009 when camping services were no longer funded, ACRC has not found that an exemption applied for any consumer. Consequently, ACRC has not funded camping services since 2009. She is aware that other regional centers have vendored Via West, and is also aware that ACRC could "courtesy vendor" Via West based on the other regional centers' vendor codes. Even if ACRC implemented the courtesy vendorization, claimant would still have to meet the exemption in section 4648.5, subdivision (c), which he did not. Additionally, an "out of home" care facility must be licensed by DSS or DHS. ACRC has determined that, because Via West does not have such licensing, and its only vendor code is camping services, it is not an appropriate out-of-home respite care provider.

CLAIMANT'S EVIDENCE

17. Claimant's mother testified regarding her efforts to secure out-of-home respite care. Claimant's parents are his primary caretakers. He attends a day program, which suits him well, but is otherwise completely dependent on his parents. Claimant's mother described his needs as being "non-stop." Claimant's father works full-time for the California Bureau of Automotive Repair, and his supervisors require that he give adequate notice prior to scheduling time off.

18. Claimant's parents have been using out-of-home respite care since claimant was seven years old. For several years, claimant was cared for by a woman in her home who was capable of addressing all of claimant's needs. After five years of providing respite care, the woman retired, and claimant's parents have been trying to find an appropriate fit ever since.

19. Claimant's parents have tried several options for out-of-home respite. They have encountered lack of supervision, lack of appropriate meals, injuries left untreated, and

lack of care for claimant's hygiene. During this process of trial and error, claimant's mother found Via West, which was able to address all of claimant's needs while also providing a camp-atmosphere. Via West has trained staff, a resident nurse, appropriate meals and hygiene care, and provided reports of claimant's activities and demeanor. Via West can provide for claimant's physical, medical, educational, and social well-being. At the time claimant's mother identified Via West, ACRC was still permitted to fund camping services.

20. Via West provides multi-day summer sessions, and weekend sessions in the off-seasons. Claimant's parents can reserve a space in advance, pay a deposit, and be assured they can plan their own time off while claimant is at camp. The last time claimant went to Via West was December 7 through 9, 2018. Claimant's parents paid for the camp themselves, which is cost-prohibitive on an on-going basis.

21. Claimant's mother has visited each care home that ACRC has identified as being available and appropriate for claimant. Many either could not address all of claimant's needs or did not have openings. At least one location made claimant so uncomfortable that he stood by the door during the visit waiting to leave. Claimant's mother did not specifically remember Sunshine Healthcare, but because it could not guarantee space would be available on dates she requested, she made other arrangements for those days. She and her husband would like to be able to plan for respite days in advance so they can take a vacation, which would include advance reservations.

22. Claimant's mother believes ACRC should fund camping services because the exception applies, and they can easily sign Via West as a vendor through courtesy vendorization. She argued that claimant meets the first prong of the exception because if claimant's parents do not get occasional respite, he will not be able to stay in his home. After claimant graduated from school, he was not in a day program for two years. Instead, his mother was caring for him 100 percent of the time. During this time, in 2016, claimant's mother had a heart attack. Her doctor told her it was imperative that she reduce her stress

level. Unless she is able to take occasional breaks through out-of-home respite care, she does not believe claimant will be able to stay in his home.

23. Claimant meets the second prong of the exception because in claimant's mother's view of the out-of-home respite situation, there is "no alternative service available," other than Via West. Several care homes have been deficient, and even dangerous for claimant. Many cannot meet his needs. And a care home that is able to take claimant at the time of the request, but cannot guarantee dates in the future, does not allow claimant's parents to plan for a break. Because of this, it is not an "available" service. Via West not only acts as out-of-home respite care, and has the resources and skill to care for claimant, it will take reservations for future dates. Claimant's mother also asserted that each time she requests out-of-home respite care from ACRC, a new search begins, and she has to start the process of exhausting all available remedies again, and she is on a continuous loop.

24. Via West's vendor code is as a camping service only; it is not vendored as out-of-home respite. In 2013, claimant's service coordinator identified another camp, Camp Krem, as a potential option for claimant. Camp Krem has various residential programs throughout the year and is vendored to allow "respite funds" to be used for camp services. There is no indication in claimant's ACRC records that claimant used this camp as respite, either in 2013 or any other time. At hearing, claimant produced a letter from San Andreas Regional Center (SARC) to Alex Krem confirming vendorization to provide out-of-home respite care to SARC's consumers. Unlike Via West, however, Camp Krem's service code is "camping services," but it also has a "sub-code" of out-of-home respite for 1:1 and 3:1 staffing.

DISCUSSION

25. Claimant's parents work tirelessly to meet his many needs. They have worked with ACRC for many years, and have benefitted from the Service Coordinators' and others'

work. It was abundantly clear at hearing that claimant's parents will continue to advocate for him so he can benefit from the most appropriate services, and remain in the family home. Prior to 2009, they identified Via West as an option that met claimant's needs, offered them several days off during which they did not have to worry whether claimant was safe, and allowed them to schedule ahead of time. Through no fault of claimant's parents or Via West, ACRC was prohibited from funding Via West for claimant after August 2009.

26. To fund Via West for out-of-home respite care, ACRC must find that an exemption applies. As noted above, no claim was made that Via West "is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability," so that exception is not at issue. Claimant established that if his parents do not obtain out-of-home respite, it is more likely than not that they will no longer be able to care for him at home. Whether Via West is the necessary service to keep claimant in his home was not established. But if no alternative service is available, Via West might be that necessary service. ACRC argued that claimant did not exhaust all other services because one care home had a bed available in October. Claimant's parents argue that if the care home does not have room at the dates they request respite, it is not an "available service."

27. While it is reasonable that claimant's parents should be able to plan ahead for their respite needs, the answer to what "available service" means is moot in this case. Claimant's parents want their son to go to Via West, as they have identified it as the best fit for him and his many needs. But assuming there were no out-of-home respite available in ACRC's catchment area, Via West is not the next choice. ACRC is bound to identify an out-of-home respite care provider that is vendored as such.

28. That other regional centers have clients who meet the exception in section 4648.5, subdivision (c), and have been approved to use Via West, does not make ACRC's

finding that the exception does not apply less valid. Via West is not licensed as an out-of-home respite care provider. Based on the limited evidence regarding Camp Krem, it does seem there is a camp available that has an out-of-home respite vendor code. Whether claimant's parents pursued that option is unclear.³ Claimant did not establish, however, that an exemption to the prohibition on funding camping services applies to him, and his appeal must therefore be denied.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... to support their integration into the mainstream life of the community ... and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§ 4646.5 & 4648.)

2. Section 4648.5 of the Lanterman Act provides:

³In claimant's closing brief, his mother referred to Via West and Camp Krem as "excellent facilities that are appropriate and more than meet the level of care necessary for [claimant]." No evidence was presented that claimant's parents requested and ACRC denied services from Camp Krem. ACRC's closing brief acknowledged Camp Krem, but did not indicate whether it would be approved for claimant if no services were available within the catchment area, given the apparent vendor "sub-code" of out-of-home respite.

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

[¶] ... [¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

3. The evidence demonstrated that camping services fall within the prohibition of section 4648.5. ACRC determined that it is prohibited from funding these services for claimant as they are identified as suspended services and section 4648.5 expressly

prohibits regional centers from purchasing camping services unless an exemption is warranted. ACRC determined that claimant did not qualify for an exemption.

4. Claimant bears the burden of establishing that he qualifies for an exemption under section 4648.5, subdivision (c).⁴ Claimant has not met that burden.

5. Claimant's appeal is limited to requesting that ACRC fund Via West as out-of-home respite. The evidence established that out-of-home respite is a necessary service for claimant, but not that Via West must be the provider. If no out-of-home respite is available in ACRC's catchment area, a statewide search follows.

Even though these services may benefit claimant, ACRC is prohibited from funding a suspended service unless claimant qualifies for an exemption. The evidence does not support a finding that ACRC fund camping services for claimant.

ORDER

Claimant's appeal is denied. ACRC is not required to fund Via West as out-of-home respite for claimant.

DATED: April 22, 2019

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings

⁴ California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)