

**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. 2019060370

DECISION

Karen Reichmann, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 1, 2019, in San Leandro, CA.

Claimant was represented by her sisters.

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

The record was closed and the matter was submitted for decision on July 1, 2019.

ISSUES

1. Has RCEB failed to honor the parties' mediation agreement?
2. Has RCEB failed to provide a day program?

FACTUAL FINDINGS

1. Claimant is a 25-year-old RCEB consumer with mild intellectual disability. Claimant has behavioral challenges and requires 24-hour supervision. She lives with her family. Claimant's family is dedicated to protecting her well-being and dignity.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP) dated January 22, 2019. The IPP has been amended with six separate addenda. Pursuant to an addendum dated May 13, 2019, RCEB has agreed to fund 23 days per month at an adult day program, 1:1 support while attending the program, and transportation with 1:1 support to and from the program.

3. The parties participated in a mediation on May 16, 2019. The parties reached an agreement in which RCEB agreed that claimant's case manager would contact claimant's sister by phone regularly and explore possible out-of-home respite providers.

4. Claimant was scheduled to begin a day program offered by Cole Vocational Services on June 3, 2019. Due to staffing issues, Cole was unable to accept claimant on the scheduled start date. As of the date of hearing, claimant was still not attending a day program.

5. Claimant filed a Fair Hearing Request on June 4. The Fair Hearing Request states, "Since the mediation, none of what was discussed has been accomplished. [Claimant] also did not start Cole on 6/3/19 and no one gave us a heads up." Claimant requested the following resolution, "having either state oversight of [claimant's] case or another party outside of RCEB be placed to monitor [claimant's] case.

6. Ramona Baskerville is claimant's case manager. She testified that she has honored the mediation agreement. Baskerville has been in regular phone contact with claimant's sister, other than when she was on vacation or when claimant's sister was unavailable. Baskerville has been researching out-of-home respite vendors, but has not identified an appropriate vendor at this time.

7. RCEB has worked with the family for several months to identify an appropriate day program. For safety reasons, the family has a strong preference for a site-based program such as Cole instead of a community-based program. The family also believes that a home-based program would not be appropriate. RCEB has contacted every day program vendor in the region in search of an appropriate and available placement for claimant.

8. Baskerville explained that claimant's participation in the Cole day program was initially delayed due to staffing issues, and has been further delayed due to difficulties making 1:1 transportation arrangements. Baskerville has continued to work with Cole to provide transportation and remains hopeful that an arrangement can be made to permit claimant to begin the Cole program.

9. Claimant and her family are frustrated and disappointed that claimant has not been attending a day program. The lack of a day program has been a hardship

to claimant and her family. The family also expressed concerns about poor communication from RCEB. They feel that they have been treated poorly by claimant's prior case manager and by some of the vendors providing services. The family was also frustrated by the Cole program's inconvenient last-minute request for a form to be filled out by claimant's doctor, in light of the fact that discussions had been underway for claimant to attend the program for several months.

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.) 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.” (§ 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 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 – Has RCEB failed to honor the parties’ mediation agreement?

2. As set forth in Finding 6, RCEB has honored the mediation agreement. Claimant’s case manager has maintained regular communication with claimant’s family and has been researching out-of-home respite options.

Issue 2 - Has RCEB failed to provide a day program?

3. As set forth in Findings 2 and 7, RCEB has agreed to fund a day program and transportation. RCEB has been working to identify an appropriate program and make transportation arrangements. RCEB shares the family’s frustration that claimant

is not yet participating in a day program. RCEB has not refused to fund this service and will continue to pursue arrangements in order to fulfill its obligations under the IPP addendum. It was not established that the failure to begin providing a day program is due to bad faith or ill will towards claimant or her family. Claimant has not established a basis to grant her Fair Hearing Request at this time.

ORDER

Claimant's June 4, 2019, Fair Hearing Request is denied.

DATE: July 5, 2019

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.