

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

vs.

REDWOOD COAST REGIONAL CENTER, Service Agency.

OAH No. 2019110290

DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on January 22, 2020, in Crescent City, California.

Claimant was represented by claimant's mother and was not present at the hearing.

Kathleen Kasmire represented Redwood Coast Regional Center (RCRC), the service agency.

The record closed and the matter was submitted on January 22, 2020.

ISSUE

Is RCRC obligated to reimburse claimant for the full cost of lodging at the Courtyard Marriot Midtown Sacramento for her out-of-area medical appointments in Sacramento or is RCRC's obligation to fund lodging limited to the cost of its preferred lodging provider in that area, Kiwanis Family House?

FACTUAL FINDINGS

Introduction and Procedural History

1. Claimant is 22 years old.¹ She lives with her mother and father. Claimant is eligible for regional center services based upon mild intellectual disability and epilepsy, both associated with two underlying genetic medical conditions—Tuberous Sclerosis and Gorlin Syndrome.

2. On October 21, 2019, RCRC issued a notice of proposed action notifying claimant that it proposed to decline funding the full cost of travel reimbursement for out-of-area medical appointments because claimant was choosing not to pursue the generic resource identified and agreed to in her current individual program plan (IPP). On October 31, 2019, claimant submitted a fair hearing request. On November 15, 2019, the parties engaged in an informal meeting. On November 19, 2019, RCRC

¹ Claimant will not be referred to by name in order to protect her privacy.

issued an informal meeting decision denying claimant's request for alternate lodging. This proceeding followed.

Background

3. Claimant's medical history is complicated. When claimant was very young she regularly experienced uncontrolled seizures. However, with medications the situation improved and claimant has not had a convulsive seizure—grand mal or petit mal—in approximately two years. Claimant still suffers from milder seizures during which she stares blankly, is unresponsive, and she may drool and her eyes may deviate upward. There is no indication in the record that those seizures pose a medical danger to claimant.

4. Claimant has an elevated risk of developing skin cancer and other tumors. She has undergone multiple procedures to remove tumors.

5. Claimant has been diagnosed with abnormal weight gain and engages in covert eating behaviors, requiring her caregivers to keep the home pantry and refrigerator locked. She has high blood pressure, enlarged organs, and a growth on her liver.

6. Claimant requires assistance with bathing, dressing, oral hygiene and toileting. Claimant has a history of aggressive behaviors towards her family members and some history of self-injurious behaviors. She requires constant supervision to ensure her safety.

7. In 2019 she began attending a day program where they teach life skills and she also receives services from a life coach in her home three days per week.

Out-of-Area Medical Appointment Lodging

8. Due to Claimant's Tuberos Sclerosis, Gorlin Syndrome, and multiplicity of symptoms, she requires frequent trips to see a team of specialists at a major medical center in Sacramento, several hundred miles away from her home. She typically has multiple appointments per visit, which require staying multiple nights in Sacramento. On these trips, claimant is accompanied by her mother and usually one other adult family member to help with driving. In the past claimant has stayed overnight at Kiwanis Family House, which provides lodging to families being treated at the medical center. Claimant has also stayed at other motels in the area, but contends that they are not safe because of drug dealers, prostitutes and homeless people. For the last four years, claimant has stayed at the Courtyard Marriot hotel near the medical center. The cost of that lodging was paid by California Children's Services (CCS) until claimant reached the age of 21 years and was no longer eligible for CCS benefits. Kiwanis Family Home charges \$50 per night. The Courtyard Marriot charges from \$97 to \$209 per night. Pursuant to addenda to claimant's IPP, from November 2018 through August 2019, RCRC funded up to \$350 per night for claimant's Sacramento out-of-area medical appointment lodging.

9. Claimant contends that the Kiwanis Family House does not meet her needs and the Courtyard Marriot hotel is the only suitable option for her Sacramento out-of-area medical appointment lodging. Claimant contends that Kiwanis Family House is not suitable because: (a) it refuses to provide her lodging; (b) the rooms are too warm and the facilities inadequate to quickly cool her down, creating a risk of seizure; (c) Kiwanis Family Home makes her feel anxious, creating a risk of elopement; and (d) her family is unable to control her access to food there, creating a risk of overeating. RCRC contends that Kiwanis Family House is suitable and that RCRC is

obligated to provide services in a cost-effective manner. RCRC agrees to pay for claimant to stay at Kiwanis Family House or to reimburse claimant up to \$50 per night, if she chooses to stay elsewhere.

ALLEGED REFUSAL TO PROVIDE LODGING

10. Claimant's mother testified at hearing. She explained that during a stay at Kiwanis Family House more than eight years ago, she was asked to pay for damage caused by her niece and nephew. She testified that she refused and was then asked not to return. She claims that she asked the staff to provide a written refusal to provide lodging, but they declined. She claims that they will nevertheless no longer provide claimant with lodging. She claims that she has called Kiwanis Family House to make appointments, but later on the drive down to Sacramento they called her and cancelled, claiming there was "no room."

11. Claimant's mother did not provide any further details regarding the damage caused by her niece and nephew. She contends that she was unaware that they were at the facility at that time. An RCRC representative recently offered to call the Kiwanis Family House with her to try and resolve the issue. Claimant's mother declined. At hearing, she claimed that Kiwanis Family House would pretend to agree to provide lodging and then cancel later. Claimant's mother's testimony on this issue was not credible. Kiwanis Family House is available lodging for claimant's out-of-area medical appointments in Sacramento.

TEMPERATURE CONTROL

12. Claimant's mother testified that the rooms in Kiwanis Family Home are too warm, which could trigger a seizure in claimant. Claimant's mother also contends that Kiwanis Family Home is not suitable because it does not provide enough ice or

sufficient water pressure to cool claimant down quickly in the event that she becomes overheated. She testified that the private refrigerator in each room is too small to store enough ice for that purpose and there is not an ice machine available as there is in a motel or hotel such as the Courtyard Marriot.

13. Claimant's contention that becoming overheated could cause claimant to have a seizure or need other medical intervention was supported by letters from claimant's dentist and several physicians. However, no specific temperature was identified. John Sullivan, M.D., testified at hearing. Dr. Sullivan is a board-certified pediatrician and has been a medical consultant for RCRC since 1985. Dr. Sullivan opined that the letters contained some inaccuracies and appeared to be primarily based upon reports of claimant's mother. Dr. Sullivan concluded that, at most, claimant may require lodging with "air-conditioning capable of maintaining a reasonable comfortable room temperature" such as might be found at the hospital and offices of her medical specialists.

14. Whether claimant requires air-conditioned lodging need not be resolved here because Kiwanis Family Home provides such temperature control. Evidence presented by RCRC shows that each room in the Kiwanis Family Home has heating and cooling with a thermostat that can be set from 60 to 90 degrees Fahrenheit. Claimant's mother testified that those thermostats do not work. However, she presented no corroborating evidence and, as discussed above, declined to cooperate with RCRC's efforts to investigate her claims. Kiwanis Family Home is sufficiently temperature-controlled for claimant.

ELOPEMENT RISK

15. Claimant's mother testified that claimant is not comfortable and feels stressed at Kiwanis Family Home. Claimant's mother contends that the rooms are too small and that claimant's discomfort poses a risk that she might elope. In contrast, claimant likes the Courtyard Marriot and is more relaxed there, with no desire to elope. Evidence presented by RCRC shows that, in addition to individual rooms for each family, Kiwanis Family Home is well-kept facility that has a playground and other outdoor seating areas. There is no evidence that elopement has been raised as a concern for claimant at any other time. Further, for a variety of reasons, claimant requires constant supervision to ensure her safety in any location. The evidence shows that there is no significantly elevated risk of elopement. Kiwanis Family Home is suitable for claimant.

ACCESS TO FOOD

16. Claimant's mother testified that Kiwanis Family Home features kitchens shared by up to eight families and also routinely has snacks accessible in common areas. She contends that poses a risk that claimant will overeat. That testimony was un rebutted and that issue might pose some difficulty for claimant's caregivers. However, claimant requires constant supervision in any location and available food does not make Kiwanis Family House unsuitable lodging for claimant.

Ultimate Finding

17. Kiwanis Family House meets claimant's needs for lodging during her out-of-area medical appointments in Sacramento.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.)² (Act). The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. The 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 Act. (§ 4620, subd. (a).) The 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.)

² All statutory references are to the Welfare and Institutions Code.

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) RCRC has offered to pay for claimant to stay at Kiwanis Family House or to reimburse claimant up to \$50 per night, if she chooses to stay elsewhere. (Factual Finding 9.) That meets claimant's needs. (Factual Finding 17.) Claimant's request for RCRC to fund the cost of lodging at the Courtyard Marriott is two to four times more expensive and not required to meet claimant's needs. It is therefore not cost-effective and accordingly not authorized under the Act.

ORDER

Claimant's appeal of the Notice of Proposed Action dated October 21, 2019, pertaining to RCRC's denial of funding for the full cost of travel reimbursement for out-of-area medical appointments, is DENIED, provided that RCRC will fund lodging at Kiwanis Family Home or reimburse the equivalent cost (currently \$50 per night) to claimant if she chooses alternate lodging for out-of-area medical appointments.

DATE: February 3, 2020

MICHAEL C. STARKEY
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.