

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

In the Matter of:

CLAIMANT

v.

FRANK D. LANTERMAN REGIONAL CENTER

Service Agency

OAH No. 2020020512

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 16, 2020.

Jessica T. Franey, Waterson Huth & Associates, Attorneys at Law, appeared for the service agency, the Frank D. Lanterman Regional Center. Claimant was represented by her mother (whose name like that of claimant is omitted to protect privacy and confidentiality). The proceedings were interpreted by Spanish interpreter Jessica Vargas.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 16, 2020.

ISSUE PRESENTED

Whether reimbursement is appropriate for mother's claim of payment for respite services to a worker not authorized to provide such services at the time of claimed payment.

FINDINGS OF FACT

1. Claimant is eligible for services and supports from the service agency under the Lanterman Developmental Disability Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act). She has been diagnosed with several conditions: (i) Attention Deficit Hyperactivity Disorder (ADHD); (ii) Mathematics Disorder; (iii) Borderline Intellectual Functioning; and (iv) Developmental Disorder of Speech or Language based on a diagnosis of Borderline Intellectual Functioning.

2. As indicated in Exhibit 1, on January 27, 2019, the service agency sent mother a notice of proposed action. It referred her to a letter the service agency sent her on January 21, 2019, in which William Crosson, Regional Manager (RM), School Age Transition Unit, explained the service agency's decision to deny mother's request for reimbursement of monies she claimed she paid a respite worker. Claimant timely appealed the decision and requested a fair hearing.

3. Claimant is 12 years old. She lives in Los Angeles with her mother, 24-year old brother, an 18-year old sister, and twin 13-year old sisters. Two of claimant's siblings receive services from the service agency. As noted in the April 23, 2019 annual review of claimant's Individual Program Plan (IPP), she is ambulatory and fully verbal, but has been diagnosed with several conditions, as noted above. Claimant is in a

Special Education sixth grade class at a local middle school, which prepared an Individual Education Plan (IEP).

Respite

4. Respite services are commonly provided by caregivers in the consumer's family or household. Service agencies recognize that at times it is difficult for caregivers to provide care needed constantly or for extended periods. Paying for care provided at regular intervals by another person gives caregivers in the home respite, a break, from care-related difficulties and stresses.

5. The service agency at times locates workers who will provide respite. Such workers are employed by a vendor, an entity that, in place of the service agency, provides services to consumers under an agreement with the service agency. The service agency is indirectly responsible for payment for respite services. The vendor employing the respite worker is directly responsible. The service agency pays the vendor that pays its worker. This vendorization of respite services is authorized by law, as discussed at more length below.

6. There is some flexibility in vendorization. When it is not the service agency but the family or primary caregiver that chooses the worker to provide respite, the service agency calls that conversion respite. The worker so chosen must nevertheless be an employee of a vendor.

7. The service agency did not at first authorize claimant's conversion respite in the April 23, 2019 Triennial IPP, Exhibit 5. Mother signed the document on September 19, 2019, when she also signed an amendment to the IPP. Under the IPP as amended, the service agency "will provide an exception for in-home conversion

respite, in lieu of extended day program after school at 66 hours/month from 09/13/19 – 08/31/20.”

8. The service agency contracts with a vendor, Premiere Health Care Services (Premiere), for respite services. Generally, the vendor, in this case Premiere, determines whether workers are qualified furnish respite services and hires workers for that purpose. The service agency leaves compensation of such workers to the vendor, as well as other logistical concerns, such as hours of work and the like.

9. At about the time she signed the IPP and its amendment in September 2019, respondent chose an acquaintance named Maria Chavez to provide respite. Premiere later hired Ms. Chavez as a respite worker. Her employment with Premiere started November 1, 2019.

Communications Between Service Agency and Mother

10. Personnel of the service agency keep detailed notes.

A. The notes are logged on a computer system. For instance, there are regular oral communications, by telephone and in person, between a consumer or consumer’s representative and the consumer’s Service Coordinator (SC). It is the custom and practice of service agency personnel to record these communications at or near the time of communication.

B. The notes are called interdisciplinary notes, I.D. notes for short. They are interdisciplinary because the service agency brings to bear the expertise of many disciplines, provided by physicians, licensed therapists, social workers, and others. Personnel from the various disciplines regularly communicate among themselves.

C. Regular communications and documenting them assist the service agency in keeping track of a consumer's care and problems that might arise, so that the service agency may act intelligently, efficiently, and in a multidisciplinary fashion, for the benefit of all involved.

D. In this case there were regular oral communications between mother and SC Dania Rodriguez. Exhibit 8 includes the I.D. notes SC Rodriguez and other service agency personnel logged. These I.D. notes provide a reliable record of communications relating to claimant from September 18, 2019 through February 28, 2020.

11. Mother inquired, and in response Premiere personnel told her on October 2, 2019, that Ms. Chavez was not certified and therefore would not be paid to provide claimant respite services. Premiere cited Ms. Chavez's lack of certification because laws and regulations mandate that respite workers have certain training. Between September 19, 2019 and the October 2, 2019 discussion, there were at least two discussions between mother and SC Rodriguez, but mother did not mention reimbursement. They discussed mother's other daughters, not claimant or claimant's services.

12. According to notes maintained by Premiere, Exhibit 7, again on October 11, 2019, Premiere advised mother that Ms. Chavez was not yet certified to provide respite services because she needed to complete CPR (cardiopulmonary resuscitation) training.

13. On November 8, 2019, mother told SC Rodriguez she had paid Ms. Chavez for respite services starting on September 13, 2019. Mother was concerned she would not be reimbursed. SC Rodriguez inquired and was informed by a Premiere

employee, Thalia, that Ms. Chavez had not been certified to provide respite until October 30, 2019.

14. On November 18, 2019, SC Rodriguez spoke with a person named Leslie, who informed her Premiere had no time cards from Ms. Chavez and therefore had not paid her for providing respite to claimant's family. SC Rodriguez also learned that Premiere paid respite workers at the rate of \$12 per hour.

15. At some point in November 2019 not specified in the record, mother requested that the service agency reimburse her out-of-pocket expense for Ms. Chavez's respite work. On November 20, 2019, SC Rodriguez discussed the request at a planning meeting. The planning team recommended that SC Rodriguez obtain proof of payment, such as time sheets, a payment schedule, or bank records showing payment.

16. When SC Rodriguez asked mother for receipts or other proof of payment, mother said she did not have any sort of proof of payment. SC Rodriguez asked mother whether she might request payment documentation from Ms. Chavez. Mother said she did not believe she could because she was no longer on good terms with Ms. Chavez. Mother was upset that the service agency had not agreed to reimburse her. SC Rodriguez explained that documentation was needed, and they also discussed the hourly rate for services Premiere paid its workers.

17. At a meeting between mother and SC Rodriguez on December 4, 2019, mother said she needed reimbursement because she could not afford paying Ms. Chavez, having borrowed money to pay her.

18. At some point in December 2019, mother met SC Rodriguez bearing blank receipts. Mother proceeded to fill in three receipts, collectively Exhibit 6. Mother

signed each receipt with Ms. Chavez's name, each was for \$940.50, and each was dated the last day of the month, for September, October, and November 2019.

19. On December 9, 2019, the planning team reviewed the receipts mother provided. They then instructed SC Rodriguez to obtain Ms. Chavez's contact information so that the details of any respite work she had provided claimant's family could be obtained from her. SC Rodriguez provided the contact information to RM Crosson on December 10, 2019.

20. Shortly afterwards, RM Crosson spoke to Ms. Chavez. She said she had provided respite services to claimant's family, but was unable to explain how much she was paid or what dates and hours she worked. She asked to be given time to discuss the matter with mother. The service agency never received any details of the work Ms. Chavez said she performed.

21. On January 10, 2020, SC Rodriguez told mother her request for reimbursement was denied. Efforts to reach a resolution met no success. Edward Perez, RM of the School-Age Unit, acting as Designee of the service agency's Executive Director, met mother for an informal meeting. As he testified, he set out their discussion in a March 13, 2020 letter, Exhibit 3.

Mother's Evidence

22. Mother agreed with the facts the service agency presented at the hearing. She maintained she paid Ms. Chavez based on the service agency's representation, the amended IPP, that conversion respite was authorized from September 13, 2019.

23. Mother testified further that she was intimidated by Ms. Chavez. She told Ms. Chavez of the authorization for conversion respite starting mid-September 2019. According to mother, Ms. Chavez then insisted that she should start work because she needed to work and have income, saying it was unfair that she should have to wait for payment. Mother testified she gave in to Ms. Chavez, but Ms. Chavez would not provide mother proof of payment, so that mother in her turn was unable to provide documentation to the service agency.

24. Mother stated, however, she was always willing to do as the service agency requested. The receipts she provided she believes constitute proper documentation of Ms. Chavez's services, which were paid at the proper rate.

PRINCIPLES OF LAW

1. The party asserting a claim or seeking a change from the status quo generally has the burden of proof in administrative proceedings. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that she is entitled to reimbursement. (See Evid. Code, §§ 115, 500.) Mother did not meet that burden in this case.

2. Section 4646, subdivision (a), of the Lanterman Act provides that the service agency must cooperate with a claimant in preparing an IPP "to ensure that the provision of services to consumers and their families be effective in meeting the goals" of the IPP. (Except as otherwise indicated, each "section" cited below is a section of the Lanterman Act.)

3. Section 4646.4, subdivision (a)(1), provides that a service agency's methods in purchasing a service such as respite must be approved by the Department of Developmental Services (DDS):

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's [IPP] . . . , the establishment of an internal process. This internal process shall ensure . . . when purchasing services and supports, . . . all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the [DDS]

4. The service agency has such an approved purchase of service policy, set out in its General Purchase of Services Policy Statement, which provides, as applicable here, that: "Services and supports may be purchased only from providers who are vendored or otherwise authorized by [DDS] to provide such services."

5. Section 4646.5, subdivision (a)(3), provides: "When developing [IPP's] for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685." Section 4685 describes characteristics of a good IPP, such as when providing "opportunities for children with developmental disabilities to live with their families."

6. Section 4648, subdivision (a)(3), is concerned with vendorization. Subdivision (a)(3)(B) provides:

A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer

if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

Section 4648, subdivision (a)(6)(D), provides:

The regional center and the consumer, or if appropriate, the consumer's parents . . . shall, pursuant to the [IPP], consider all of the following when selecting a provider of consumer services and supports:

[¶] . . . [¶]

(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's [IPP], consistent with the particular needs of the consumer and family as identified in the [IPP], shall be selected. In

determining the least costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports.

7. Section 4652.5, subsection (a)(1), is not directly applicable here, but, even more than section 4648, quoted above, expresses the legislative concern with financial accountability:

An entity that receives payments from one or more regional centers shall contract with an independent accounting firm to obtain an independent audit or independent review report of its financial statements relating to payments made by regional centers

8. Section 4686 governs in-home respite workers.

Subdivision (a) states in pertinent part that "an in-home respite worker who is not a licensed health care professional but who is trained by a licensed health care professional may perform incidental medical services for consumers of regional centers with stable conditions, after successful completion of training as provided in this section."

Subdivision (b) provides: "In order to be eligible to receive training for purposes of this section, an in-home respite worker shall submit to the trainer proof of successful completion of a first aid course and successful completion of a cardiopulmonary resuscitation course within the preceding year."

Subdivision (k) provides that, “[f]or purposes of this section, ‘in-home respite worker’ means an individual employed by an agency which is vendored by a regional center to provide in-home respite services.”

9. California Code of Regulations, title 17, section 50612, subdivisions (a) and (b), provide:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the

regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

ANALYSIS

1. The service agency's evidence, both its documentation and the testimony of its witnesses, was more credible than mother's testimony.

2. The evidence indicates that mother was astute in matters relating to claimant's care, including written materials such as the IPP and its amendment. Mother was also experienced in dealing with the service agency, having other children eligible for its services. The IPP and its amendment are not fairly interpreted to give mother authorization to act as she says she did in hiring a respite worker like Ms. Chavez. Mother could not fairly interpret the IPP as amended as a representation that the service agency had authorized her to hire a respite worker as of September 2019 without further consultation with the service agency.

3. Mother's engagement of Ms. Chavez was not based on a belief that from the start the service agency would reimburse her. Otherwise mother would not have left SC Rodriguez and the service agency so long unaware of mother's claim that she agreed Ms. Chavez should provide respite services. The initial discussion of the issue between mother and the service agency was in November 2019. That was months after the claimed September 13, 2019 start date of Ms. Chavez's services. Mother had no explanation for why she delayed advising the service agency. The fair inference is that

mother's agreement with Ms. Chavez was not based on an understanding that the service agency was responsible for reimbursement.

4. Upon learning of mother's claim she had engaged Ms. Chavez, SC Rodriguez advised mother that the service agency would investigate. Mother offered no protest. There was at this point no claim by mother that the service agency should reimburse her. Again, it appears that mother did not engage Ms. Chavez either on an interpretation of the IPP and its amendment as authorizing reimbursement or that the service agency owed reimbursement on some other basis.

5. It is not credible, as mother maintained, that she hired her because Ms. Chavez was intimidating. At the hearing, mother presented her evidence forcefully and without hesitation. There was no indication that mother is subject to intimidation in matters such as those at issue here. If mother decided to hire Ms. Chavez based on some sort of intimidation, that could be but a small part of the decision. Any intimidation that may have been involved would not justify mother's hiring Ms. Chavez as she said she did.

6. Mother was unsuccessful in proving that she actually hired or paid Ms. Chavez.

7. The receipts that mother provided the service agency were not reliable. They were not generated by Ms. Chavez, the person who mother claimed received money from her. The receipts do not have details to support them, such as dates when services were rendered, or what sums were paid on which dates, or the hours worked, or the rate at which services were paid, or other specifics.

8. There was no other proof of payment from Ms. Chavez or mother. There were, for instance, no bank records to indicate that money was disbursed from an account or that it was paid into an account.

9. SC Rodriguez told mother that the service agency must have some proof of payment. Both mother and Ms. Chavez were unable, however, to provide any details about services she is said to have performed. There was no oral account, either at the time of the service agency's investigation or at the fair hearing, to prove that services were rendered. There was no reliable oral evidence for receipts or other writings to corroborate.

10. Reimbursement such as mother seeks may be deemed a form of retroactive authorization of her activity. Such retroactive authorization is prohibited, except in emergencies, as set out in section 4648, subdivision (a)(3) and California Code of Regulations, title 17, section 50612, subdivision (b).

11. Reimbursement is inappropriate for the further reason that it would contravene the mandate that a service agency must, to the extent practicable, use vendorization in making services available. If mother engaged Ms. Chavez in mid-September 2019, she did so before Ms. Chavez could provide services under a vendor's auspices, in this case Premiere. Mother was aware of this by at least October 2, 2019, when she discussed the matter with personnel of Premiere.

12. Whether or not she worked for Premiere, Ms. Chavez could not perform respite services (absent an emergency) until after October 30, 2019, when she completed training by becoming certified to administer CPR, as mandated by section 4686.

13. Instead, Ms. Chavez was hired, according to mother, weeks before she was certified and before Premiere employed her. Reimbursement for the services of such a worker would be against the mandate for vendorization of services set out in the Welfare and Institutions Code and related regulations, as quoted above. A service agency must not act contrary to such a mandate, from the legislature and an agency. The service agency has incorporated the mandate into its General Purchase of Services Policy Statement, and it governs here.

14. There was no emergency. If mother hired Ms. Chavez because of an immediate threat to health, such an emergency might justify her claim to reimbursement under section 4648, subdivision (a)(3)(B) and California Code of Regulations, title 17, section 50612, subdivision (b)(1). There were no such emergency circumstances and no justification.

CONCLUSION OF LAW

Reimbursement is not appropriate for mother's claim of payment for respite services to Ms. Chavez.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS Y. LUCERO
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.