

**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. 2020030726

DECISION

Karen Reichmann, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 28, 2020, by telephone/videoconference.

Claimant was represented by her mother. Claimant was not present at the hearing.

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

The record closed, and the matter was submitted for decision on April 28, 2020.

ISSUE

Is RCEB fulfilling its obligation to provide respite services?

FACTUAL FINDINGS

1. Claimant is a 31-year-old RCEB consumer, who is receiving services based on epilepsy, cerebral palsy, and mild intellectual disability. Claimant lives at home with her mother. Claimant's mother is her conservator and her primary caregiver.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP) dated June 25, 2019.

3. RCEB has agreed to fund 120 hours per calendar quarter for a respite worker to take care of claimant in order to provide claimant's mother with some relief from the demanding responsibility of providing constant care.

4. For several years, claimant's mother has employed a trusted individual to care for claimant. Claimant's mother contacted RCEB in January of 2020 and requested reimbursement for the services of this respite worker.

5. In a letter dated February 24, 2020, RCEB notified claimant and her mother that it could not directly pay families for respite services. A Notice of Proposed Action was also sent, notifying claimant of RCEB's "Denial to reimburse parent directly for privately paid respite services." Claimant's mother submitted a Fair Hearing Request on March 12, 2020.

6. An Informal Meeting was held on March 24, 2020. On March 30, RCEB sent claimant a letter upholding its determination.

7. Claimant is authorized to receive 283 hours per month of In-Home Support Services (IHSS), which is a publicly-funded generic resource separate from RCEB. Claimant's mother has been her IHSS worker. The IHSS program compensates claimant's mother for some of the care she provides to claimant, which provides income to the household.

8. Claimant's respite worker initially provided care to claimant through a respite agency, from approximately 2012 through 2015. The worker chose to leave the agency. Since approximately 2015, claimant's mother has hired this respite worker without the involvement or funding of RCEB. Since June 2019, the respite worker has been providing services through the IHSS program. She is providing 45 hours of care to claimant each month. By doing so, the respite worker is paid \$585 per month by IHSS, and qualifies for low cost health insurance. Because claimant's mother is no longer providing these 45 hours each month, she has incurred a loss of income of \$585 per month. Claimant seeks to have RCEB reimburse her directly for this loss of income as a means of satisfying its agreement to fund respite.

9. RCEB has refused to pay claimant's mother directly, but has offered alternate suggestions for funding care given by the respite worker. RCEB has proposed that the respite worker become employed by an established respite vendor; RCEB would then pay the vendor directly for the respite hours provided. Alternatively, claimant can hire the respite worker directly and arrange for payment through the recently-enacted self-determination program. Through this program, claimant can pay the respite worker whatever wage she deems appropriate. The respite worker's wages would be paid from claimant's self-determination budget by use of a fiscal management service.

10. Claimant's mother explained why she does not view RCEB's suggestions as feasible. Her respite worker does not want to work through an agency because of negative experiences she had previously when working through one. Claimant's mother does not want the respite worker to lose the low-cost health insurance available through IHSS. If claimant were to hire the respite worker through the self-determination program, she would have to pay a substantial wage in order to cover the cost of privately-purchased health insurance. Claimant's mother views this as a poor use of claimant's self-determination budget. The respite worker is currently not available to provide more than 45 hours per month of care. Should the respite worker become available to provide more hours of care, claimant's mother is willing to hire her for any additional hours through the self-determination program, but she would not discontinue the IHSS hours because of the health insurance.

11. Claimant's mother argued that it does not make fiscal sense for RCEB to pay an agency the respite care rate of \$28 an hour instead of the \$13 per hour that she is requesting.

12. Claimant's mother is proud of her history of advocating for her daughter and others with disabilities. She believes that the self-determination program should be amended to provide greater flexibility to families facing similar quandaries.

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.) Respite care is among the services provided to regional center consumers. (§§ 4512; 4690.2.) Respite is made available to assist family members in maintaining the consumer at home; to provide appropriate care and supervision to ensure the consumer’s safety in the absence of family members; to relieve family members from the constantly demanding responsibility of caring for the consumer; and to attend to the consumer’s basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members. (§ 4690.2.) Respite services can be provided by vendored respite agencies or funded through a consumer’s self-determination program budget.

2. The self-determination program allows regional center consumers to have greater control over the supports and services needed to meet their IPP objectives. (§ 4685.8.) The consumer can use their self-determination budget to directly fund services and supports without regard to cost limitations imposed upon regional centers providing direct funding. Supports and services purchased through the self-determination program must be paid by using a fiscal management service that has been vendored by a regional center.

3. RCEB has offered to fund respite services for claimant, including services provided by the respite worker of her choice, as long as the services are arranged through either a vendored respite agency or through the self-determination program with payment made by a fiscal management service directly to the respite worker. These alternatives are reasonable and fulfill RCEB's obligations under the Lanterman Act.

4. Claimant has not established that she is entitled to have RCEB reimburse her for her mother's loss of income incurred by hiring a respite worker through the IHSS program.

ORDER

Claimant's appeal is denied.

DATE: May 7, 2020

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.