

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

In the Matter of:

CLAIMANT

vs.

SAN ANDREAS REGIONAL CENTER, Service Agency.

OAH No. 2020040186

DECISION

Karen Reichmann, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 13, 2020, by telephone/videoconference.

Claimant was represented by his father. Claimant was not present at the hearing.

James Elliott represented the San Andreas Regional Center (SARC), the service agency.

The record closed and the matter was submitted for decision on May 13, 2020.

ISSUE

Should SARC reimburse claimant for the costs of airfare and lodging expended to enable a respite worker to travel with him on a family trip?

FACTUAL FINDINGS

1. Claimant is a 20-year-old SARC consumer who lives at home with his parents. Claimant requires constant supervision to ensure his safety. Oscar Ramirez is currently the SARC service coordinator assigned to manage claimant's case. Minerva Valdez is a SARC district manager and serves as Ramirez's supervisor.
2. Claimant and SARC are parties to an Individual Program Plan (IPP) dated December 4, 2017. The IPP was amended by an Addendum dated October 31, 2019, and by an Annual Review Progress Report dated March 13, 2020.
3. SARC has agreed to fund in-home and out-of-home respite services.
4. Claimant's sister is a college student in the Los Angeles area. Claimant's parents attended an important event involving their daughter in southern California from February 28 through March 1, 2020. Claimant travelled with his parents. A respite worker travelled with the family and provided respite care to claimant during the weekend at their hotel. Claimant seeks reimbursement for out of pocket costs incurred to pay for the respite worker's hotel room and airfare.
5. Originally, claimant's parents, in coordination with SARC, planned for claimant to attend a program at vendor West Camps in their home region during the weekend they travelled to southern California. About two weeks before the trip,

claimant's family learned that this option was no longer available. Claimant's family contacted Ramirez and inquired whether claimant could receive respite services over the weekend through attendance at the Monterey Bay Horsemanship Center during the daytime and through another vendor during the evenings. Ramirez determined that claimant had unused approved respite hours from January and February that could be rolled over to cover the entire weekend and agreed to make arrangements. Ultimately, parent's family did not feel comfortable with this plan after seeking information from the vendors and not getting responses they deemed adequate. A few days before the scheduled trip, they decided to take claimant with them.

6. Claimant's father engaged in email and telephone discussions with Ramirez during the days prior to the trip. They discussed options for claimant to receive respite services in southern California. Ramirez suggested that a vendor in the Los Angeles region could provide respite funded by SARC through a "courtesy vendorization." A vendor was identified that provides respite services to consumers of the Westside Regional Center and was affiliated with an existing SARC vendor. Claimant's father contacted the vendor and was informed that the vendor would be able to provide the respite hours desired.

7. Ramirez also discussed with claimant's father the possibility of having a respite worker from their area travel with the family. Ramirez advised claimant's father that SARC might not agree to fund incidental travel expenses should the family choose to travel with a respite worker.

8. On February 26, 2020, two days before the trip, claimant's father submitted receipts for travel expenses for a respite worker to travel with the family to Premier Health Care Services, a vendor used to process claims. Premier notified him that same day that it would not reimburse these out of pocket expenses. Claimant's

father replied to the vendor by email that day, stating that he “understood,” but thought there was a case for an exception to be made. Ramirez spoke with claimant’s father that day and again stated that he could not guarantee that SARC would reimburse the respite worker’s travel expenses.

9. At hearing, claimant’s father explained that the family decided to travel with a respite worker because they felt they “did not have a good commitment” from SARC regarding the Los Angeles-area vendor and “lacked concrete confirmation.” He acknowledged that he made and paid for travel arrangements without approval from SARC.

10. SARC paid the respite worker for 22 hours of respite care provided during the trip. Claimant submitted a request for reimbursement for travel expenses paid out of pocket in connection with the respite worker’s travel: \$258.47 for hotel expense and \$352.96 for airfare, totaling \$611.43.

11. Claimant’s request for reimbursement was denied. On March 13, 2020, a Notice of Proposed Action (NOPA) was sent to claimant, stating:

Respite is a service to provide to provide temporary and intermittent care for short periods of time in order to maintain the individual in the family home. Individual program plan teams must consider the assistance and responsibilities of natural supports in assisting the individual to access the community.

The NOPA also cited to Welfare and Institutions Code sections 4418.6; 4646, subdivision (a); 4648, subdivision (a)(13)(C); and 4686.5, subdivision (a)(3)(A), and to SARC’s Respite Care Policy.

12. SARC's Respite Care Policy provides that an exception can be sought to fund respite services that would ordinarily not qualify for funding. Ramirez did not believe that an exception was warranted in this case, in part because the focus of the trip was to enable claimant's parents to attend an event, rather than for claimant to attend a special event or training.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman 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.)

2. Section 4646, subdivision (a), provides that the provision of services and supports must be "effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

3. Claimant's father argued that the explanation provided by SARC on the NOPA is not consistent with its earlier offer to fund respite through the Monterey Bay Horsemanship Center. The NOPA language (quoted above in Factual Finding 11) provided the definition of respite and noted that natural supports (e.g. family members) may be considered to assist consumers in accessing the community. The NOPA also cited to Welfare and Institutions Code sections 4418.6; 4646, subdivision (a); 4648, subdivision (a)(13)(C); and 4686.5, subdivision (a)(3)(A), as well as to SARC's Respite Care Policy.

At hearing, SARC clarified that its decision was premised primarily on section 4646, subdivision (a) (cited above in Legal Conclusion 2). SARC contends that because there was an appropriate and lower cost alternative available to claimant (the Los Angeles-area respite vendor), it would not be cost-effective to reimburse travel expenses incurred without its agreement. Although the explanation on the NOPA could have been clearer, the NOPA adequately advised claimant of the basis for the denial of the requested service.

4. Claimant's father noted that the 22 respite hours provided over the weekend was only about half the number of hours that would have been provided had claimant stayed in his local area under the original plan. He believes that had claimant spent the entire weekend in respite, the costs would have been similar to the total of the 22 hours of respite provided plus the requested travel expenses. This contention was unpersuasive. This alternative was no longer desired by the family who had decided that claimant would travel with them. In addition, any authorized respite hours that were not used during the trip would presumably have been available to the family for use at a later date.

5. When claimant's parents made a last-minute decision to have him travel with them to Los Angeles, SARC offered an appropriate cost-effective method of providing respite to claimant during the family's weekend trip—use of a vendor in the Los Angeles area. Claimant's family was advised prior to the trip that travel expenses for a respite worker to travel with them might not be funded. They opted to pay out of pocket for these expenses despite not receiving an agreement from SARC for reimbursement. It was not established that traveling with a respite worker was necessary to facilitate the provision of respite care during the trip. SARC fulfilled its obligations under the IPP by funding the hours of respite the worker provided.

6. Claimant did not establish that SARC was required to fund the travel expenses of the respite worker.

ORDER

Claimant's appeal is denied.

DATE: May 26, 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.