

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2020080278

DECISION

Paul H. Kamoroff, Administrative Law Judge, Office of Administrative Hearings, called OAH, State of California, heard this matter on November 5, 2020, by videoconference.

Claimant's mother represented Claimant. Claimant did not attend the hearing. Fair Hearing Specialist Candace Hein represented Westside Regional Center, called WRC.

Oral and documentary evidence was received. The record was left open until November 13, 2020, for the submission of written closing briefs. The parties timely submitted closing briefs. Claimant's closing brief was marked as exhibit N, and WRC's closing brief was marked as exhibit 8. The record was closed and the matter was submitted on November 13, 2020.

ISSUE

Whether WRC may terminate funding for specialized services?

EVIDENCE

During hearing, the Administrative Law Judge received Claimant's exhibits A – K, M and N; WRC exhibits 1 - 8; and witness testimony from Claimant's mother, Claimant's advocate Carla Lehman, and WRC Program Manager Myriam Garcia.

FACTUAL FINDINGS

1. Claimant is seven years old and a consumer of WRC. Claimant is eligible for regional center services under the eligibility categories Autism Spectrum Disorder and Border-Line Intellectual functioning.

2. As a result of her disabilities, Claimant has delays in intellectual and adaptive functioning. Claimant's disabilities impact her involvement and progress in the areas of learning, self-help skills, social skills, coping when frustrated, and safety awareness. Claimant demonstrates disruptive behaviors, including screaming, dropping to the ground, emotional outbursts that last in excess of 30 minutes, eloping, and self-injurious behavior. Claimant requires comprehensive adult care for supervision and protection.

3. Claimant resides with her parents, who are her primary care-takers, and sibling in Hawthorne, California.

4. Claimant's father works full-time. Claimant's mother works part-time as a Special Education Instructional Assistant with claimant's school district. Mother works 3.75 hours per day, 8:15 AM until 12:00 PM, each weekday. At present, Mother works remotely from home because of school closures related to the COVID-19 pandemic.

5. Claimant is in the second grade at a public elementary school. Claimant attends school remotely, called distance learning, because of school closures related to the COVID-19 pandemic. She attends school from 8:15 AM until 2:30 PM, on Mondays, Tuesdays, Thursdays, and Fridays; and from 8:15 AM until 1:40 PM, on Wednesdays.

6. It is necessary for Claimant's mother to assist Claimant while she is attending class remotely, including for redirection and behavior modification. This conflicts with Claimant's mother's ability to work and forms the basis of Claimant's request for WRC to continue providing specialized services, also called at-home day care. During hearing, Claimant's mother persuasively testified that Claimant requires at-home day care while she is working.

7. In accord with this need for services, on April 16, 2020, Claimant's mother applied for specialized supervision, in addition to respite services she had been receiving from WRC.

8. On April 24, 2020, WRC approved Claimant's application for specialized services and began funding 27 hours per month of at-home day care. WRC approved the services from April 20, 2020, until July 31, 2021, with a cap of four hours of at-home day care per school day. Consequently, WRC amended Claimant's Individual Program Plan, called IPP, to include 35 hours per month of respite services and 27 hours per month of specialized supervision. An IPP is designed to provide cost

effective services to meet the individualized needs of persons with developmental disabilities who, like Claimant, are consumers of the regional center.

9. By letter on August 1, 2020, WRC informed Claimant's mother it was terminating the 27 hours per month of specialized services. WRC wrote that it had authorized the services in error. Pursuant to WRC services standards, Claimant was ineligible for specialized services because her mother was not working full-time.

10. On July 31, 2020, Claimant requested a fair hearing to appeal the termination of services.

11. By a Notice of Proposed Action and letter dated August 1, 2020, WRC notified Claimant's mother of its decision to terminate funding for the specialized services, effective August 31, 2020. WRC wrote the termination of specialized services was mandated because Claimant did not meet the eligibility requirements for day care services. WRC cited in support of its position WRC service standards, stating "Day Care may be provided to those who meet all of the following criteria... 2. The individual resides in a single parent household with parent working or attending a vocational/educational program full-time, or a two-parent household with both parents working or attending a vocational/educational program full-time." (Ex. 2, p. 11.) Additionally, WRC cited to Welfare and Institutions Code section 4646.4. subsection (4), consideration of the family's responsibility for providing similar services for a minor child without disabilities. (Ex. 2, p. 11.) Claimant did not agree to WRC's proposed action and WRC has continued funding the specialized services through the hearing.

12. The parties met telephonically on September 29, 2020, but were unable to resolve the dispute. WRC submitted Claimant's Fair Hearing Request to OAH on August 5, 2020.

13. During hearing, WRC Program Manager Myriam Garcia testified in support of WRC's decision to terminate Claimant's specialized services. Ms. Garcia testified that WRC service standards prohibit the Service Agency from providing at-home day care when a parent works, or attends an educational/vocational program, less than 30 hours per week. Because claimant's mother worked less than 30 hours per week and was not enrolled in an educational/vocational program, WRC's provision of the specialized services was an internal mistake, and WRC was required to terminate the services. In sum, Ms. Garcia believes that Claimant is ineligible to receive specialized services because her mother works part-time.

14. To support her testimony, Ms. Garcia referred to a document entitled "WRC Service Standards." (Ex. 4.) Identical to WRC's Notice of Proposed Action and letter, the document described that day care was not available to consumers unless their parents worked, or attended an educational/vocational program, full-time. (Id.)

15. Ms. Garcia's testimony did not persuasively describe that Claimant did not need the specialized services based upon her disability or the availability of alternative services. To the contrary, Ms. Garcia described that WRC would likely continue providing the specialized services if Claimant's mother began working 30 hours or more per week, or enrolled in a vocational or educational class.

16. Claimant's mother does not believe the law requires a parent to work full-time for a consumer to receive specialized services. Claimant's mother, along with Claimant's advocate Carla Lehman, testified that Claimant has serious behavior issues

that require specialized supervision. Claimant screams, kicks, and elopes while at home, including when Claimant's mother is working and unable to care for Claimant.

17. Claimant's mother relies on the day care services provided by WRC to care for Claimant. Claimant's mother is unable to care for Claimant while she is working, and she desires the continued support provided by the specialized services. Claimant's mother persuasively established that termination of the specialized services would create a gap in Claimant's service needs.

LEGAL CONCLUSIONS

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services to meet the needs of each person with developmental disabilities, regardless of age, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The Department of Developmental Services is the public agency in California responsible for carrying out the laws related to the care, custody and

treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.)

4. The “services and supports” provided to a consumer include “specialized services and supports . . . directed toward the alleviation of a developmental disability . . . or toward the achievement and maintenance of independent, productive, and normal lives” (Welf. & Inst. Code, § 4512(b).)

5. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *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 WRC funding for day care services. (Evid. Code, § 115.)

6. Regional centers shall use an internal process to ensure compliance with laws and regulations and, “when purchasing services and supports, shall ensure . . . [u]tilization of generic services and supports when appropriate” and “[u]tilization of other services and sources of funding” (Welf. & Inst. Code, § 4646.4, subd. (a).) “The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer . . . and the cost

effectiveness of each option.” (Welf. & Inst. Code, § 4512, subd. (b).) A “regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services,” including “governmental or other entities or programs required to provide or pay the cost of providing services,” and private entities. (Welf. & Inst. Code, § 4659.)

7. When purchasing services and supports, a regional center must conform to its purchase-of-service guidelines. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) Those guidelines are to have been reviewed by the Department “to ensure compliance with statute and regulation.” (Welf. & Inst. Code, § 4434, subd. (d).) Reflecting the Department’s interpretation of statute and regulation, the guidelines are not entitled to the deference given to a regulation but are rather entitled to a degree of deference dependent upon the circumstances in which the agency has exercised its expertise. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.)

8. The Service Agency in this case relied on its service standard guidelines regarding day care services to justify its decision to terminate funding for specialized services for claimant. The guidelines provide that day care may be provided only to those who meet criteria that include “[t]he individual resides in a single parent household with parent working or attending a vocational/educational program full-time, or a two-parent household with both parents working or attending a vocational/educational program full-time.” (Ex. 2, p. 11.) Additionally, WRC cited to Welfare and Institutions Code section 4646.4, subsection (4), to support its termination of services. (Ex. 2, p. 11.)

9. However, WRC’s service guidelines appear to be at variance with the language of Welfare and Institutions Code section 4646.4., subsection (4). Significantly, Welfare and Institutions Code section 4646.4, subsection (4), does not require

Claimant's parents to work full-time, or be enrolled in an educational/vocational program full-time, to be eligible for day care. (Welf. & Inst. Code, § 4646.4, subd. (4).)

10. WRC did not present evidence that Claimant's needs for services and supports have changed since the last IPP, or that the services provided are no longer cost-effective and that day care services are no longer appropriate for Claimant. Nor did WRC provide persuasive evidence that finding Claimant ineligible for services solely because her mother works part-time is supported by the Lanterman Act. Claimant's mother provided evidence that Claimant's service needs, as authorized by WRC in April 2020, must still be addressed. (Factual Findings 6 -8, 16 and 17.)

11. In sum, the evidence did not establish that WRC may terminate funding for day care services for Claimant at this time.

ORDER

Westside Regional Center shall continue funding 27 hours per month of specialized services for Claimant.

DATE:

PAUL H. KAMOROFF
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.