

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

In the Matter of:

CLAIMANT

v.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

OAH No. 2021030154

DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference and telephone on April 12, 2021.

Claimant was represented by his sister.

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

The record was held open until April 13, 2021, for submission of three exhibits for claimant. The exhibits were timely received, and the matter was submitted for decision on that date.

ISSUE

Is claimant entitled to RCEB payment for personal assistant hours on four holidays in 2020: Independence Day; Labor Day; Thanksgiving Day; and Christmas Day?

FACTUAL FINDINGS

1. Claimant is 64 years old. He has been eligible for and receiving services from RCEB since June 2019, based on his diagnosis of moderate intellectual disability. Claimant also has recurrent major depressive disorder, and several physical diseases or conditions.

2. Due to his medical and behavioral needs, claimant requires someone to provide constant care, supervision, and close health monitoring, including reminders and physical assistance to take his medications. Claimant's sister Anne¹ is his caregiver. Claimant lives with her, their 90-year-old father for whom Anne also provides care, and a brother who has a psychiatric disorder. Claimant's other family members include two other sisters and another brother who live in the Bay Area. They are not able to provide support for claimant.

3. Claimant has limited independent living skills (ILS) and relies on his sister to take care of his daily living needs and personal hygiene tasks. To support claimant's needs, prior to the pandemic, RCEB funded claimant's attendance at a day program for 15 days per month, 40 hours per month for in-home respite services, and 30 hours per

¹ Subsequent references to claimant's "sister" refer to Anne.

month for ILS. Claimant also receives 283 hours monthly for In-Home Supportive Services (IHSS), not funded by RCEB.

4. On March 16, 2020, the day program closed due to shelter-in-place orders. Both ILS and in-home respite services also stopped because claimant's family was in a vulnerable group at high risk to have workers outside of their household coming into the home during the pandemic.

5. On May 20, 2020, in an addendum to claimant's Individual Program Plan (IPP), claimant's RCEB case manager requested RCEB to fund participant directed (personal assistant) services at a maximum of 100 hours per month, from March 16, 2020 to August 27, 2020, or as soon as the shelter-in-place order is lifted. Using a respite assessment tool, the prorated hours were calculated at 54 for March, 95 for May, 99 each for April, June and July, and 85 for August. Respondent's sister has been providing the personal assistant services.

6. On June 1, 2020, claimant's RCEB case manager submitted a request for an exceptional level of respite services to cover up to 100 monthly hours through August 27, 2020. The RCEB director approved the request on August 7, 2020. On September 17, 2020, the case manager submitted another request for the period from August 26, 2020 to October 31, 2020, not including any hours for Labor Day. The director approved the request on September 28, 2020. RCEB did not pay for personal assistant hours for the holidays of Independence Day and Labor Day.

7. On October 30, 2020, claimant requested to extend the personal assistant hours to December 25, 2020, and to make up for the previous unpaid holiday hours (Independence Day and Labor Day). The case manager explained that hours were not

provided for those holidays because the day program was normally closed, and the ILS worker did not work on those days.

8. Due to claimant's request for holiday hours, the RCEB case manager and supervisor met with claimant's representative (sister) by Zoom videoconference on November 9, 2020. During the meeting, the supervisor explained that since claimant lives at home with his sister and father, they are considered as the natural support on major holidays. All regional center service providers are closed or do not provide services on Thanksgiving and Christmas. The supervisor agreed to request hours for other holidays but did not mention retroactive hours for the other holidays.

9. Claimant's sister misinterpreted the supervisor to mean that claimant would receive retroactive hours for Independence Day and Labor Day in 2020. During the meeting, she was focused on 2020, and not the future. On November 10, 2020, claimant's case manager sent her an email stating that except for natural support on Thanksgiving and Christmas, an exception request would be submitted for hours on other holidays. The email attachment provided a respite assessment tool for only November and December, showing two holidays excluded.

10. On November 10, 2020, in an addendum to claimant's IPP, claimant's RCEB case manager requested RCEB to continue to fund personal assistant services hours from November 1, 2020 to December 25, 2020 (excluding hours for Thanksgiving Day and Christmas Day). On the same date, the case manager submitted a request approved on November 13, 2020, for exceptional level of services for continued funding to December 25, 2020.

11. On January 16, 2021, in an addendum to claimant's IPP, claimant's RCEB case manager requested RCEB to continue to fund personal assistant services hours

from December 26, 2020 to March 31, 2021. On the same date, the case manager submitted a request, approved on January 11, 2021, for exceptional level of services for continued funding to March 31, 2021.

12. On January 4, 2021, claimant requested hours for the holidays when his sister works. The case manager explained again to claimant's representative that the major holidays in November and December could not be included. On January 25, 2021, claimant again requested recalculation of hours for November and December. Claimant's representative did not understand why New Year's Day was included for funding for January, but not the holidays in November and December.

13. On February 2, 2021, RCEB issued a Notice of Proposed Action to deny funding for personal assistant hours on Independence Day, Labor Day, Thanksgiving Day and Christmas Dday in 2020. Claimant appealed, submitting a Fair Hearing Request for both an informal meeting and mediation. The meeting was held on March 15, 2021. The written response on March 18, 2021, stated that although there was a misunderstanding of the wording by the supervisor in November 2020, RCEB is unable to approve paid hours for the four 2020 holidays.

14. Claimant contends the decision is unfair because the lack of communication from RCEB caused a misinterpretation, and that because constant supervision and care is needed, services provided on all holidays should be compensated by RCEB.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (the Act), the State of California accepts responsibility for persons with developmental

disabilities. (Welf. & Inst. Code, § 4500 et seq.) 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. (*Id.*, §§ 4501, 4502, subd. (b)(3); *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. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government-funded services. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.)

3. 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.” (Welf. & Inst. Code, § 4501.) While regional centers have a duty to provide a wide array of services, they are also directed to provide services in a cost-effective manner. (*Id.*, § 4646, subd. (a).)

4. To provide more uniformity and consistency in the administrative practices and services of regional centers throughout the state, promote appropriateness of services, maximize efficiency of funding, address the state budget deficit, ensure consistency with Lanterman Act values, maintain the entitlement to services, and improve cost-effectiveness, the Department of Developmental Services (department), in collaboration with stakeholders, shall develop best practices for the administrative management of regional centers and for regional centers to use when purchasing services for consumers and families. (Welf. & Inst. Code, § 4620.3, subd (a).)

5. The department shall ensure that implementation of best practices that impact individual services and supports are made through the individual program planning process or an individualized family service plan pursuant to Section 95020 of the Government Code, and that consumers and families are notified of any exceptions or exemptions to the best practices and their appeal rights. (Welf. & Inst. Code, § 4620.3, subd. (d).) At the conclusion of an individual program plan meeting, an authorized representative of the regional center shall provide to the consumer, a list of the agreed-upon services and supports, and, if known, the projected start date, the frequency and duration of the services and supports, and the provider. (*Id.*, § 4646, subd. (f).) None of claimant's IPPs or addendums provide for services on the four holidays at issue.

6. Preventive services shall, inasmuch as feasible, be provided by appropriate generic agencies. (Welf. & Inst. Code, § 4644, subd. (a).) Under the RCEB Purchase of Service Policy for ILS programs (approved March 2004), all generic resources such as IHSS will be incorporated into the Individual Service Plan. The plan may be to continue to reside in the family home assuming greater responsibility and independence. The amount of time RCEB may purchase for ILS training is generally limited to 40 hours a month, the hours allotted to claimant in this matter. The claimant also is allotted 283 monthly hours from IHSS.

7. Under the RCEB Purchase of Service Policy for respite (revised October 2010), RCEB may purchase respite care services for families when included in the consumer's IPP. The maximum hours of in-home respite services purchased is 90 in a quarter. RCEB may grant an exemption "if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that

impacts the family member's ability to meet the care and supervision needs of the consumer." RCEB has granted exceptions to allow claimant additional hours in combination with ILS hours for claimant to receive up to 100 monthly hours for personal assistant services.

8. There is no doubt that claimant's sister provides an immense amount of care to claimant every day, including holidays. While there was a misinterpretation of what was said during the November 2020 meeting, this does not determine whether RCEB must fund services for holidays. As previously stated, none of claimant's IPPs or addendums provide for services on the four holidays of Independence Day, Labor Day, Thanksgiving Day and Christmas Day in 2020.

9. Despite a broad interpretation of the Lanterman Act, the law and policy in this matter do not change. Claimant has not met his burden of proving that he is entitled to RCEB payment for personal assistant hours for these four holidays.

ORDER

Claimant's appeal is denied.

DATE:

BARBARA O'HEARN
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.