

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

In the Matter of:

CLAIMANT

v.

NORTH BAY REGIONAL CENTER, Service Agency.

OAH No. 2021080776

DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference on January 13, 2022.

Claimant was represented by his mother.

Jake Stebner, Attorney at Law, represented North Bay Regional Center (NBRC), service agency.

The matter was submitted for decision on January 13, 2022.

ISSUE

Is claimant entitled to NBRC funding for claimant's college dormitory expenses?

FACTUAL FINDINGS

1. Claimant is 20 years old and has been eligible for services from NBRC since childhood based on his diagnosis of autism. He is verbal and ambulatory. Claimant graduated from high school in June 2020, and subsequently attended a school district program to learn how to find a job.

2. Claimant lives with his mother in Vallejo. Claimant's March 30, 2021, Individual Program Plan (IPP) identified claimant's needs as maintaining optimal health and increasing his safety awareness skills. The IPP described claimant as needing prompts and reminders with his activities of daily living. Claimant's condition does not present a risk to his or another's health and safety.

3. In June 2021, claimant was accepted to attend the University of California, Davis (UCD), Redwood SEED (Supported Education to Elevate Diversity) scholar program. He is one of 12 students accepted into this new and innovative four-year living and learning lab program, located on campus. The Department of Rehabilitation funded claimant's tuition, books and computer, but not the housing costs of \$15,000 per year to live on campus. The SEED program is not vendored or under contract with any regional centers to provide services to students.

4. Claimant requests NBRC to fund his dorm housing costs. Claimant's IPP was updated on September 22, 2021, adding as a goal claimant's need to live in the least restrictive environment. At the IPP meeting, claimant's NBRC service coordinator explained that regional centers are not able to fund dormitory costs.

Proposed Action and Appeal

5. On July 22, 2021, NBRC issued a Notice of Proposed Action to deny claimant's request for funding his college dorm expenses. Claimant appealed by submitting a Fair Hearing Request.

Claimant's Contentions

6. Claimant vehemently contends that NBRC could make an exception to fund claimant's dormitory costs for several reasons: the SEED program provides a unique opportunity for claimant who worked very hard to get into the program; NBRC can afford to pay for the costs; NBRC has not supported claimant in the past, and should support him now based on his autism diagnosis.

7. Claimant's mother testified at hearing that she is not able to apply for grants or loans to cover the dormitory costs at this time. She believed that claimant's home remained with her even when he lived in a dormitory. Claimant's witness, the co-director of the SEED program, testified in support of claimant's request. The SEED program does not cover the housing costs for students in the program. The witness contended that an exception should be created for regional centers to cover the dormitory costs.

NBRC Contentions

8. NBRC contends that it is constrained by current law, which allows housing costs only under an exception when a consumer's condition presents a health and safety risk to himself or another person. NBRC cannot use its regional center funding for housing costs that do not meet this exception.

9. NBRC sympathizes with claimant. NBRC does not doubt the value and personal enrichment of the SEED program for claimant. NBRC has tried to support claimant's needs, despite his having declined independent living services, respite, and day care. NBRC is able to provide funding for services associated with supporting claimant to live in his own home, particularly those that would help claimant accomplish daily tasks.

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; Evidence Code, §§ 115, 500.)

3. One of the intentions of the Act is to ensure that the provision of services to consumers and their families to be effective in meeting the goals stated in the IPP, "reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (Welf. & Inst. Code, § 4646, subd (a).) Services and supports

"means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life." (*Id.*)

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 the Act's values, maintain the entitlement to services, and improve cost-effectiveness, the Department of Developmental Services, in collaboration with stakeholders, develops 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).) Purchase of services best practices include exceptions to ensure the health and safety of the consumer or to avoid out-of-home placement or institutionalization. (*Id.*, subd. (f).) Claimant does not claim to be in an out-of-home placement when living in the college dormitory. (Finding 7.)

5. Regional centers, at the time of modification of a consumer's individual program plan, the establishment of an internal process which shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: (1) conformance with the regional center's purchase of service policies; (2) utilization of generic services and supports when appropriate; (3) utilization of other services and sources of funding; and (4) consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as

provided in the least restrictive and most appropriate setting. (Welf. & Inst. Code, § 4646.4, subd. (a).)

6. A regional center may, by vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's IPP. Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. 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. (Welf. & Inst. Code, § 4648, subd. (a)(3).) The SEED program is not vendored or contracted to provide services. (Finding 3.)

7. A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region. If suitable care cannot be found within the region, services may be obtained outside of the region. (Welf. & Inst. Code, § 4652, subd. (a)(3).) The Act provides that "A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:

If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

(A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is

required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

- (B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer."

(*Id.*, § 4689, subd (i)(1).) Claimant does not have a demonstrated medical, behavioral, or psychiatric condition that presents a health and safety risk to himself or others.

(Finding 2.) He does not meet the conditions for a regional center to make rent, mortgage, or lease payments.

8. Despite a broad interpretation of the Act, the law in this matter does not allow NBRC to fund claimant's dormitory housing costs for the SEED program. Claimant is commended for his achievements to get into the program and work toward independence. Claimant's mother is commended for her passionate advocacy on behalf of claimant. However, claimant has not met his burden of proving that he is entitled to NBRC payment for dormitory housing.

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.