

**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. 2021090223

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on September 30, 2021, by videoconference.

Claimant was represented by his conservator, Joseph Greenfield. Claimant did not attend the hearing.

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

The matter was submitted for decision on September 30, 2021.

ISSUE

Should claimant's conservator be compensated for care provided to claimant after claimant's day program ceased in-person operations due to the pandemic?

FACTUAL FINDINGS

1. Claimant is a 52-year-old RCEB consumer. He lives with his dedicated, long-time caregiver, Joseph Greenfield, who is also claimant's court-appointed conservator.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP) dated October 15, 2018. Pursuant to the IPP, RCEB agreed to fund claimant's participation in the CAP Hilltop day program, up to four days per week. Claimant has attended this program for many years. In early 2020, claimant was attending the program three days per week, for about five hours per day.

3. Due to the COVID-19 pandemic, CAP Hilltop suspended in-person operations in February or March 2020. RCEB continued to pay vendors such as Cap Hilltop for services that could not be provided to consumers. CAP Hilltop offered some alternative services, but these were of minimal benefit to claimant. CAP Hilltop has resumed in-person operations, but there have been obstacles preventing claimant from returning to the program. Since February 2020, claimant's conservator has been providing him care during the hours he would have been attending the CAP Hilltop program.

4. On an unknown date, claimant requested that RCEB compensate his conservator for the care and supervision he has been providing, and continues to

provide, during the hours claimant would have been attending the CAP Hilltop program.

5. Claimant's request was denied in a Notice of Proposed Action (NOPA) dated August 25, 2021. The NOPA stated:

RCEB does not provide direct payment to family members for care and supervision. RCEB recommends that respite care be used for temporary and periodic breaks for caregivers.

6. Claimant submitted a Fair Hearing Request dated September 1, 2021, requesting compensation to claimant's conservator for additional care and supervision he has been providing while claimant has been at home and unable to attend the CAP Hilltop day program. The Fair Hearing Request noted that claimant's conservator is not claimant's family member.

7. An Informal Meeting was held between claimant's conservator and RCEB staff on September 13, 2021. After the meeting, Case Management Supervisor Lindsay Meninger wrote a letter to claimant's conservator summarizing the meeting. She noted that claimant's conservator is his In Home Supportive Services (IHSS) care provider and is being compensated by the county for 283 IHSS hours per month, the maximum. She noted that RCEB is able to provide either in-home or off-site respite care to claimant, to alleviate the burden on his conservator of providing constant care and supervision. She concluded:

While RCEB does understand the challenges COVID has posed in caring for [claimant] this past year and a half, per Welfare and Institutions Code 4501 and 4512, regional

centers cannot provide direct monetary compensation to Conservators for the care and supervision of their conservatee because you are a natural support for [claimant]. IHSS can provide monetary compensation under their regulations and is in fact already compensating you for this care. We can offer you supports from others outside of the home to assist you in [claimant's] care.

8. RCEB acknowledges that claimant's inability to attend the day program since the onset of the pandemic has placed a tremendous burden on his conservator. RCEB views claimant's conservator as a natural support because they live in the same home, and asserts that it cannot make direct payment to a natural support for caregiving services.

9 Although RCEB has offered to fund respite services, none have been provided to date. Claimant's conservator is uncomfortable with individuals coming to the home to provide services and is also wary about out of home respite, noting that it can take claimant many years to adjust to changes in his routine.

10. Claimant's conservator expressed disappointment that CAP Hilltop continued to be compensated for services it could not provide, while he was not compensated for actually providing care during the times claimant would have received the services. He believes RCEB's position is unfair and unreasonable, especially given the extraordinary circumstances of the pandemic.

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.)

2. An individual’s IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.) In implementing an IPP, the regional center must first consider services and supports in the individual’s natural community, home, work, and recreational settings. (§ 4648, subd. (a)(2).) While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services that reflect the cost-effective use of public resources, including the use of natural supports. (§§ 4512, subd. (e), 4646, subd. (a).)

3. As his housemate, claimant's conservator is considered a natural support, and is expected to provide support to claimant. (§ 4512, subd. (e).)

4. Due to the pandemic, RCEB has been unable to fund a service that was agreed upon in the IPP. Although burdensome to claimant's conservator, it was not unreasonable for RCEB to expect him to provide caregiving support when out of home day program services could not be provided due to the public health crisis. RCEB remains willing to provide respite in lieu of the CAP Hilltop day program, to alleviate the burden on claimant's conservator. This is a reasonable alternative.

5. It was not established that RCEB is required to compensate claimant's conservator for additional hours of care he has been providing claimant while claimant has been unable to attend a day program.

ORDER

The appeal of claimant from RCEB's Notice of Proposed Action dated August 25, 2021, is denied.

DATE:

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.