

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2021110117 and 2021110118

DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard these matters, which were heard as a single proceeding, by videoconference and telephone on December 15, 2021.

Claimant's father (Father) represented Claimant as his authorized representative. Claimant and his family members are identified by titles or initials to protect their privacy.

Catherine Peterson, Contract Officer, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Testimony and documentary evidence was received. The record closed and the matter was submitted for decision on December 15, 2021.

SCOPE OF PROCEEDING AND ISSUE

This matter was presented to the Office of Administrative Hearings as two separate proceedings and assigned two hearing numbers. As both controversies involved the same proposed action, namely, whether Service Agency shall be required to fund respite care and daycare provided by Claimant's stepmother, they have been decided in a single decision.

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 1-11; Claimant's exhibits A- E.

Testimonial: Jocelyn Elias, NLACRC Service Coordinator; Gerald Calderone, NLACRC Consumer Services Supervisor; Gabriela Eshrati, Consumer Services Director; and Father.

FACTUAL FINDINGS

Background

1. Claimant is a 15-year-old boy diagnosed with unspecified intellectual disability. Due to his diagnosis, Claimant is eligible for regional center services and is a consumer at NLACRC.

2. The parties agree that Claimant's family is entitled to Service Agency-funded respite care of 40 hours per month and daycare of 172 hours per month. At a triannual individual program plan (IPP) meeting held in July 2021, NLACRC personnel discovered that Father had married Claimant's longtime care provider, RJ, several years before.

3. By a Notice of Proposed Action (NOPA) dated October 1, 2021, Service Agency notified Father that NLACRC cannot continue funding respite and daycare hours if the caretaker continues to be RJ. The NOPA and an accompanying letter provided Service Agency's explanation, namely that, per applicable law, respite and daycare providers cannot be consumers' parents. Respite and day care are to provide supervision for consumers when parents cannot. Service Agency also maintained that parents may be eligible to receive payment for caring for their disabled children through the In-Home Supportive Services (IHSS) program administered by the California Department of Social Services and that Father should continue to pursue this resource instead of Service Agency-funded payments to RJ if Father wants her to continue to be Claimant's primary caretaker.

4. On October 22, 2021, Father filed a fair hearing request, on Claimant's behalf, challenging Service Agency's decisions. Under the section of the fair hearing request entitled "Reason(s) for requesting a fair hearing," Father wrote:

[Claimant] requires constant supervision and care. He cannot communicate at all is very much dependent on routine and familiarity. [RJ] has been [Claimant's] primary care provider for about 11 years now – far longer than we've been married. She is definitely the best person for the

job and has made career sacrifices herself to remain his care provider.

Under a section of the fair hearing request entitled "Describe what is needed to resolve your complaint," Father wrote:

Retain [RJ] as the care provider being that she is the best person to care for [Claimant] and [it] is in [Claimant's] best interest for health and safety reasons – especially during COVID.

(Exh. 1, p. A16.)

Claimant's Background

5. Claimant lives at home with Father, RJ, and an older brother, also a regional center consumer. Claimant's mother has no custodial rights to Claimant or his brother and has no contact with them. Father maintained Claimant's mother is incarcerated in another state.

6. RJ has been working as Claimant's respite care worker since Claimant was three years old. RJ's services were secured through an agency that employs RJ, Right Choice. Approximately six years ago, Father married RJ. RJ continued to work as Claimant's respite care provider after the marriage.

7. Claimant suffers from spastic quadriplegia and is nonverbal. He requires assistance with all activities of daily living and self-help. Claimant lacks safety awareness and must be supervised at all times. He has behavioral difficulties, frequently engaging in tantrums and other aggressive behavior.

8. Claimant is eligible for special education services from his school district. Before the COVID pandemic, Claimant attended school in person. He was assisted during the school day by a one-to-one aide. For a period in 2020, Claimant's school was closed due to the COVID pandemic. Citing his weak health, Father has chosen not to return Claimant to school now that it has reopened. Attempts to resume Claimant's schooling through remote means have met with limited success.

Father's Contentions

9. At the hearing, Father stated he never hid the fact that he and RJ had married. He also stated that, if RJ could not continue to provide respite and daycare for Claimant, she would continue to work for Right Choice but would have to find another assignment, taking her outside the home. Moreover, another care provider would have to be brought in. Thus, the chances of introducing pathogens into the household would likely rise, which, particularly in the time of COVID, unnecessarily put Claimant and his brother at risk.

10. As Claimant's longtime care provider, Father does not believe it is possible to find a better candidate to care for Claimant during the hours RJ is currently providing respite and daycare. Claimant is very sensitive to changes in his routine and RJ has "fine-tuned" these routines to tailor them to Claimant's unique needs.

11. Asked whether RJ had adopted Claimant, Father stated she had not.

Service Agency's Contention

12. NLACRC Consumer Services Director Gabriela Eshrati testified at the hearing, stating that applicable laws require that parents seeking to be paid for their services caring for disabled children must first exhaust generic resources such as the

IHSS program. Ms. Eshrati conceded, however, that IHSS payments are not available to parents working full-time. RJ would have to leave her position with Right Choice or take a part-time assignment to qualify for IHSS payments. Ms. Eshrati also stated she was aware that Father had applied for IHSS and had been awarded a fraction of the respite and daycare hours approved by NLACRC for the family.

LEGAL CONCLUSIONS

Legal Principles

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.)

2. The Lanterman Act establishes that the state is responsible for providing services and supports for developmentally disabled individuals and their families. (§ 4501.)

3. The Department of Developmental Services (DDS) is authorized to execute the laws regarding caring for developmentally disabled individuals, including the Lanterman Act. (§ 4416.) DDS contracts with service agencies such as NLACRC which are in turn, "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime' and with determining 'the manner in which those services are to be rendered.'"

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 389 [quoting § 4620].)

4. Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (See Evid. Code, § 500.) Because NLACRC seeks to change – i.e., stop – services it has been funding, it bears the burden of proof. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

5. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination shall be made based on the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

6. When purchasing services and supports for a consumer, a regional center shall ensure, among other things, "[c]onformance with the regional center's purchase of service policies, as approved by the [Department of Developmental Services] pursuant to subdivision (d) of Section 4434," and "[u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(1) and (2).)

7. Regional center funds "shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).) Pursuant to section 4659, regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, including Medi-Cal. (§ 4659, subd. (a)(1).)

8. Respite is a service that may be included in a consumer's IPP. (§ 4512, subd. (b).) In-home respite services are "intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member." (§ 4690.2, subd. (a).) Respite services are designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living which would ordinarily be performed by the family members. (§ 4690.2, subd. (a); Cal. Code Regs., tit. 17, § 54302, subd. (a)(38).)

Analysis

9. NLACRC's position is based solely on its assumption and contention that RJ, as Father's wife, is a 'parent' and therefore, under applicable law, cannot be his respite and daycare provider. NLACRC has not provided any legal argument or evidence that, as Father's wife, RJ is a 'parent' as that term is used in the Welfare and Institutions Code. Indeed, the facts presented militate against such a finding: RJ is a long-term employee of Right Choice, a vendorized agency employing care providers; her role as Claimant's care provider preceded her marriage to Father by years; nothing in the record indicates that RJ has provided fewer hours or less quality service since marrying Father; Father has testified that the type of care RJ provides to claimant is her vocation and, if she cannot be paid to care for Claimant in this way, she will do so for another family. Legally, nothing in the record established that the wife of a parent also, by dint of that marriage, becomes a parent. In this case, Claimant has a mother. Even without custodial rights, she remains his mother. RJ has not adopted Claimant.

10. Based on the foregoing, Claimant's appeal shall be granted.

ORDER

Claimant's appeal is granted. Service Agency shall continue to fund the respite and daycare hours established by Claimant's current IPP even if RJ continues to be his provider.

DATE:

DEENA R. GHALY

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.