

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

In the Matter of the Request for Services:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2022050813

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on June 13, 2022, due to the ongoing COVID-19 pandemic.

Claimant is represented by his mother. No one appeared on claimant's behalf at the hearing despite proper service of the notice of hearing.

Keri Neal, Fair Hearing Representative, represented the service agency, Inland Regional Center (IRC).

Upon proof that satisfactory service had been effectuated on claimant, IRC's request to proceed with a prove-up hearing was granted. Documentary evidence and testimony were received. The record was closed, and the matter was submitted for decision on June 13, 2022.

ISSUES

Should IRC grant claimant's request to retroactively fund an increase in respite services from 28 to 48 hours per month for February and March 2020?

SUMMARY

The evidence did not establish that IRC should fund claimant's request to retroactively fund an increase in respite services for the months of February or March 2020. Claimant's appeal/fair hearing request is dismissed. IRC's decision is upheld.

FACTUAL FINDINGS

Jurisdiction

1. Claimant and his representative received actual notice of the date, time and information to appear by telephone or videoconference with instructions; however, claimant's representative did not appear at the hearing. On June 13, 2022, the record was opened. IRC requested to proceed on the merits despite claimant's failure to appear. Notice having been properly served, IRC's request was granted under Welfare and Institutions Code section 4712, subdivision (a), which requires a hearing to be held within 50 days of the date a claimant's fair hearing request is filed, unless good cause is found to continue the matter. Here, no good cause to continue the hearing was presented.

Background

2. Claimant is an 18-year-old male. He qualifies for regional center services based on diagnoses of autism and intellectual disability. Claimant lives at home with his mother and grandmother. Claimant is supported in the home through Medi-Cal, Supplemental Security Income (SSI) and In Home Supportive Services (IHHS). IRC funds preferred provider respite services and claimant currently receives additional temporary COVID respite services.

3. Pursuant to an October 29, 2019, addendum to claimant's Individual Program Plan (IPP), IRC funded an increase from 28 hours per month to 48 hours per month of preferred provider respite services for those months when claimant was on school break. The increases did not include the months of February or March 2020; those months remained at 28 hours. The IPP addendum was signed by claimant's mother and she did not disagree with the respite services outlined in the addendum.

February and March 2020 Respite Services

4. Claimant now seeks retroactive reimbursement of 40 hours, total, for respite services allegedly provided in February and March 2020. He asserts he was entitled to receive 48 hours of respite services in each of those months, not 28 hours, and wants to be reimbursed an additional 20 hours for each month. Claimant states in his Fair Hearing Request (FHR) that his "provider was not paid for 2 months she provided care for" claimant.

5. February 2020 and March 2020 timecards from the respite care provider demonstrated that 24 hours of respite services were provided each month. A Department of Developmental Services "POS Expenditure Detail Report" showed that in 2020 IRC paid the vendor for those 24 hours, for a total of 48 hours paid, even

though 28 hours per month were authorized. Neither the respite care provider nor the vendor disputed IRC's payments.

6. No evidence was offered at hearing demonstrating that 28 hours of respite services were provided in February or March 2020, let alone 48 hours of respite services. No evidence supported claimant's assertion set forth in the FHR. The evidence showed that only 24 hours each month were billed by the provider and then paid by IRC.

7. No evidence demonstrated that any of the exceptions to the prohibition against retroactive reimbursements applied.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." ((Welf. and Inst. Code, § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden of Proof

2. In a proceeding to determine whether a claimant is eligible for services, the burden of proof is on the claimant to establish he or she meets the eligibility criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Applicable Statutes

3. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

4. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

[¶] . . . [¶]

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

Applicable Regulation

6. California Code of Regulations, title 17, section 50612, sets forth how services may be purchased. The regulation identifies those circumstances when a retroactive authorization for services may be allowed.

Evaluation

7. Claimant had the burden of proof that he is entitled to the retroactive reimbursement he seeks. By failing to appear, or offering good cause for his failure to appear, claimant failed to establish his request should be granted. Moreover, the evidence did not support his assertions. Only 24 hours of preferred provider respite services were provided in February 2020 and again in March 2020; even though 28 hours were authorized. No evidence showed that 48 hours had been provided. Even if the evidence had shown that 48 hours were provided, none of the exceptions authorizing retroactive services were established. Finally, the burden is on claimant to diligently prosecute his appeal/fair hearing request and by not appearing he is deemed to have abandoned it.

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ORDER

Claimant's appeal/fair hearing request is dismissed. IRC's denial of claimant's request to retroactively fund respite services for February 2020 and March 2020 is upheld.

DATE: June 17, 2022

MARY AGNES MATYSZEWSKI

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.