

**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. 2022080112

DECISION

Sarah Sandford-Smith, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 8, 2022, by videoconference and telephone.

Claimant was represented by her mother. Claimant was not present at the hearing.

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

The record closed and the matter was submitted for decision on September 8, 2022.

ISSUE

Is claimant entitled to RCEB funding for short-term housing, at a cost of approximately \$1,500 to \$2,000 per month, for three months?

FACTUAL FINDINGS

1. Claimant is an adult who lives at home with her mother in Alameda County. She is a regional center consumer based on the diagnoses of Cerebral Palsy/Spastic Diplegia, developmental delay, and epilepsy/seizure disorder.

2. Claimant and RCEB are parties to an Individual Program Plan (IPP) dated May 11, 2021, which was amended by an addendum dated March 28, 2022. Meng-Wan Chou is claimant's case manager and has been for approximately four years. The IPP notes that claimant had a history of depressive disorder beginning in 2007, and has had increasing medical issues, including obesity, asthma, pollen allergy, nausea, heartburn, constipation, bloating, and irregular periods. Claimant is currently taking medication to treat her depression. The IPP further indicates that claimant does not have behavioral issues and possesses good safety awareness concepts.

Neither claimant's IPP nor the addendum address the issue of rent payment assistance.

3. Claimant's mother is her sole caregiver and In-Home Supportive Services (IHSS) provider. RCEB funds in-home respite services via Manos Home Care, for 120 hours per calendar quarter, to give claimant's mother breaks from providing constant care for claimant. RCEB also funds independent living services (ILS) support for

claimant for 40 hours per month, via Adult Enrichment Services, to support claimant to continue living at home.

4. Claimant's family home needs air conditioning and repairs to its roof, flooring, water pipes, and doors. Claimant's mother stated that during the renovation process, it will not be safe for claimant to live in the house because the dust and detritus from the construction will negatively affect her asthma.

5. Claimant's mother contacted Chou, to request that RCEB fund short-term housing for claimant, for a period of three months, while the family home is under construction. Claimant's mother informed RCEB that claimant could not live in a community care facility during the three months that the family home is under construction because those homes have shared toilet and kitchen facilities, and she is concerned that claimant would be exposed to the COVID-19 virus. Claimant's mother estimated the cost for a short-term studio apartment would be approximately \$1,500 per month.¹ Claimant's mother indicated that, as claimant's care provider, she would live with claimant in the studio apartment.

6. On July 22, 2022, RCEB sent a Notice of Proposed Action notifying claimant that RCEB denied funding rental assistance for short-term housing for three months. Claimant's mother submitted a Fair Hearing Request on July 28, 2022.

7. Chou and her supervisor, Miuwan Young, testified at the hearing. They agreed that the Lanterman Act precludes RCEB from funding rent payments for

¹ At hearing, the parties amended claimant's requested amount to a monthly sum of up to \$2,000, for a period of three months.

claimant. Young explained that if claimant wanted to live in her own apartment, the regional center could provide resources such as supported living services (SLS), but that claimant would have to pay her rent using her own personal income. Chou stated that in addition to SLS resources, the regional center could also offer claimant short-term housing through one of its community care facilities. Chou could look for an individual room for claimant in a house, though claimant would have shared restroom and kitchen facilities.

Young noted that rare circumstances exist when regional centers can fund temporary rent payments for clients. Young stated that if an individual has severe mental health issues or very challenging behavior, loses their social security income and has no other income or family support, or no board and care home is willing to accept the individual, then it is possible to ask the executive director for an exception. Young explained that claimant does not fit into any of the potential exceptions because the rent that claimant is asking for is not related to her developmental disability.

8. The only income claimant receives is her social security income. The only income claimant's mother receives is her compensation as claimant's IHSS caregiver. Claimant can spend approximately \$300 of her social security income for rent, although that sum would not allow claimant to rent a studio apartment anywhere in the Bay Area. Claimant's mother explained that she must borrow money to make the repairs to her home and cannot afford to pay rent for a studio apartment for claimant. Claimant's mother is claimant's only family support. Claimant's father and brother do not provide financial or other assistance to claimant.

9. Claimant's mother provided two letters from Nudrat Pirzada, M.D., which are identical in content but differ in dates. In the letters, Dr. Pirzada noted that

claimant has diplegic cerebral palsy and asthma, and all the health consequences stemming from both diseases. Dr. Pirzada explained that claimant needs assistance to move around and engage in daily tasks such as dressing and bathing. Dr. Pirzada stated that claimant needs a caregiver for most hours of the day for all activities, including for exercise. Nothing in Dr. Pirzada's letters indicated that living in a community care facility would endanger claimant's health and safety.

LEGAL CONCLUSIONS

1. Claimant has the burden of proving, by a preponderance of the evidence, her eligibility for government funded services. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; *Greatoroex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 54; Evid. Code § 500.)

2. 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.²) 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

² All statutory references are to the Welfare and Institutions Code.

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.)

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Regional centers must identify and pursue all possible sources of funding when determining whether to fund a requested service. (§§ 4659, subd. (a)(1) & 4646.4.)

4. Further restrictions specifically govern rent assistance by regional centers. Section 4689, subdivision (h), provides, “[r]ent, mortgage, and lease payments of a supportive living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.”

5. Section 4689, subdivision (i), sets forth the exceptions to the general rule that a regional center is prohibited from paying rent, mortgage or lease payments of a consumer. Section 4689, subdivision (i), in pertinent part provides:

(i) 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:

(1) 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, 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.

(C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

6. None of the requirements of Section 4689, subdivision (i), are met for RCEB to fund claimant's rent while her family home undergoes construction repairs. The evidence did not establish that paying claimant's rent would meet claimant's needs as documented in her IPP or the addendum, or that claimant's medical condition would present a health or safety risk without such payments. There was no evidence that RCEB's executive director has verified in writing any facts supporting such findings.

7. Cause exists to deny claimant's appeal, as set forth in Factual Findings 2, 7 and 9, and Legal Conclusions 4 through 6. Claimant is not entitled to RCEB funding for short-term housing, at a cost of approximately \$1,500 to \$2,000 per month, for three months.

ORDER

Claimant's appeal of the Regional Center of the East Bay's denial of rental assistance is denied.

DATE:

SARAH SANDFORD-SMITH
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.