

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

In the Matter of:

CLAIMANT,

v.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

OAH No. 2022080405

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 23, 2023, by videoconference.

Claimant's mother represented claimant.

Fair Hearing and Mediation Specialist Mary Dugan represented the Regional Center of the East Bay.

The matter was submitted for decision on February 23, 2023.

ISSUE

Must the Regional Center of the East Bay (RCEB) carry over funding from one quarter to the next for in-home respite hours that claimant's Individual Program Plan (IPP) authorized between March 2020 and January 2023, but that claimant did not use?

FACTUAL FINDINGS

1. Claimant is 11 years old. He is an RCEB consumer because of substantially disabling autism spectrum disorder. Claimant lives at home with his mother.

2. Although claimant can attend to most of his personal needs in an age-appropriate manner, he requires constant adult supervision for his own safety and emotional well-being. His mother is very active in and dedicated to his care.

3. Since mid-2020, claimant's IPP has authorized RCEB to fund up to 120 hours per calendar quarter of in-home respite service (approximately 9.25 hours per week). This service's purpose is to relieve claimant's mother from the unusual burdens of claimant's care. (See Welf. & Inst. Code, § 4690.2, subd. (a).)

4. In early 2022, claimant asked RCEB to increase this calendar quarter limit on in-home respite funding. RCEB declined to do so, on the ground that 120 hours per calendar quarter was an adequate respite allocation in light of other opportunities that also were available to claimant's mother to have someone else supervise claimant.

5. Claimant appealed the decision summarized in Finding 4. After a hearing, an Administrative Law Judge from the Office of Administrative Hearings affirmed RCEB's decision.

6. Between March 1, 2020, and January 31, 2023, claimant used only a fraction of the in-home respite hours authorized in claimant's IPP's.

a. In the first calendar quarter of 2020, claimant used 69 respite hours, of 90 available.

b. In the second calendar quarter of 2020, claimant used 79 respite hours, of 95 available.

c. In the third and fourth calendar quarters of 2020, claimant used 7 respite hours, of 240 available.

d. In 2021, claimant used 54.5 respite hours, of at least 480 available.

e. Hourly figures were not in evidence for 2022 or for January 2023, but claimant's mother testified credibly that claimant used at most only a few weeks' worth of in-home respite hours during this period.

7. Claimant has asked RCEB to authorize compensatory in-home respite hours, because he did not use all hours that were available between March 2020 and January 2023. In light of the matters stated in Finding 6, a reasonable but conservative estimate is that during this period RCEB had authorized more than 1,000 hours of in-home respite that claimant did not use.

8. At the time of the hearing described in Finding 5, claimant's mother was home-schooling him. At the time of this hearing, claimant was attending school outside his home. The evidence established no other change in circumstances potentially affecting claimant's need for supervision, or his mother's need for respite from the demands of his care.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) entitles claimant to an administrative fair hearing to review RCEB's service decisions. (*Id.*, § 4710 et seq.) Claimant seeks an order

directing RCEB to carry over in-home respite hours that claimant's IPP had authorized between March 2020 and January 2023 to subsequent quarters, until claimant has exhausted them. Claimant bears the burden of proof on this request.

2. Claimant characterizes claimant's IPP as a contract between RCEB and claimant that promises claimant 120 in-home respite hours per quarter. He argues that any hours that RCEB has promised but has not delivered represent RCEB's breach of this contract, for which claimant deserves appropriate compensation.

3. Claimant's understanding is incorrect. To the extent that claimant's IPP resembles a contract, it promises only that RCEB will pay for up to 120 in-home respite hours per quarter, if claimant's mother procures them from an RCEB-approved respite vendor. If claimant's mother procures fewer than 120 in-home respite hours per calendar quarter, however, the Lanterman Act does not require RCEB to carry over hours from one quarter to the next.

4. Claimant contends further that RCEB has discretion to carry over in-home respite hours from one quarter to the next, and that RCEB should do so because his mother's failure to procure as many in-home respite hours as claimant's IPP had authorized between March 2020 and January 2023 was due more to RCEB's fault than to her own. The allegation that RCEB staff members neglected their responsibilities during this period is beyond the scope of this proceeding. Moreover, and regardless of anyone's past fault, the matters stated in Findings 6 and 8 do not show that claimant currently is able to use all in-home respite hours authorized by claimant's IPP, or that claimant and his mother have unusual respite needs that might justify an increase in claimant's quarterly respite hours. Even if RCEB has discretion to carry over in-home respite hours from one quarter to the next, it has no obligation to claimant to do so.

ORDER

Claimant's appeal from RCEB's decision declining to carry over funding from one quarter to the next for in-home respite hours that claimant's IPP authorized between March 2020 and January 2023, but that claimant did not use, is denied.

DATE:

JULIET E. COX

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.