

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022080527

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 20, 2022 by videoconference.

Martha Thompson, Program Manager, represented the Westside Regional Center (WRC or Service Agency).

Claimant was represented by his parents (proper names are omitted to protect the privacy of Claimant and his family.)

A protective order was issued for all of the exhibits in this case to protect the privacy of Claimant's parents' business and tax information.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 21, 2022.

ISSUE

Is the Service Agency's termination of Claimant's specialized supervision appropriate?

EVIDENCE RELIED UPON

Testimony of Claimant's mother and father; Service Agency Exhibits 1-12.

FACTUAL FINDINGS

1. Claimant is a four-year-old boy eligible for regional center services as a person with intellectual disability.

2. The regional center has provided Claimant with 105 hours per month of specialized supervision. At Claimant's June 14, 2022 Individual Program Plan (IPP) meeting, in a letter dated July 20, 2022, and an informal meeting decision dated August 22, 2022, the Service agency declined to continue funding the 105 hours of specialized supervision. Service Agency based its decision on two factors: 1) Claimant is 4 years old and his parents would be required to provide supervision for him during working hours as they would with any child and 2) Parents' gross annual income exceeds 400 percent of poverty level making him ineligible for funding as financial hardship. Claimant timely appealed the decision and this hearing ensued.

3. The parties stipulated that Claimant needs specialized supervision which exceeds the care required of a typically developing child while his parents' work.

4. Claimant's mother is an independent film maker who sometimes works at home and often works in the field during irregular hours. Claimant's father is the sole proprietor of a small construction company. There was no evidence presented to establish that Claimant's supervision needs have changed.

5. Tax returns for Claimant's family for 2021 list net profit in the amount of \$34,425 and taxable income in the amount of \$5,034. Claimant's family's attached Schedule C Profit or Loss form provides that Claimant's father's company received \$204,587 in gross receipts or sales, and expended \$81,278 in costs of goods, \$45,929 in labor costs, \$6,136 in insurance, \$9,752 in advertising, \$225 in legal fees and \$5,320 in vehicle expenses.

6. Four hundred percent of the poverty rate for a family of three is \$92,120.

7. Claimant's family income is below 400 percent of the poverty rate for a family of three. Claimant's father's business has gross receipts, from which expenses including the cost of insurance, materials and employee wages or contracted labor must be paid before he receives income. In this case, Claimant's family income from all sources, after allowing for the above expenses is \$34,425 and therefore below 400 percent of the poverty guidelines making him eligible for consideration of a financial hardship.

8. Service Agency's Purchase of Service policy for day care services provides that day care services include after school supervision and supervision during school breaks (extension year services). It also provides that day care may be provided when the individual has severe behavior challenges and is in need of constant supervision.

The policy provides that normal parenting responsibilities will be considered in determining eligibility for day care services for a child under the age of 13, Service Agency may pay only the cost of care that exceeds the cost of normally providing day/after-school care to child without disabilities of the same age."

LEGAL CONCLUSIONS

1. The burden of proof is on the party seeking to terminate the service or change the status quo. The burden of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.) Service Agency is the party seeking to alter the status quo and is therefore the party with the burden of proof.

2. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) Welfare & Institutions Code (Code), § 4500 et seq., the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation.

3. "Services and supports" for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (Code, § 4512, subd. (b).) Services and supports may include personal care, day care, childcare, training, education, recreation, and specialized medical care. (*Ibid.*)

4. The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision-making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Code, § 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, 4848) and must be individually tailored to the consumer (Code, § 4648, subd. (a)(2)).

5. Code section 4646.4, subdivision (a) provides that regional centers shall ensure adherence to federal and state law and regulation. When purchasing services and supports, regional centers shall ensure conformance with the regional center's purchase of service policies and utilization of generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

6. Code section 4646.5, subdivision (a) provides that preparation for the IPP shall include gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, the process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole.

7. Code section 4659, subdivision (a) provides that the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services including, but not be limited to governmental or other entities or programs required to provide or pay the cost of providing services.

8. The Service Agency has not met its burden of proof to establish by a preponderance of the evidence that the discontinuance of funding of 105 hours of specialized supervision is appropriate. There have been no documented changes to Claimant's needs, the parties agree that specialized supervision is needed and Claimant's family income is below 400 percent of the poverty line when appropriate business expenses are deducted from his father's business gross receipts.

ORDER

Claimant's appeal is granted. Service Agency shall continue funding 105 hours per month for Specialized Supervision for Claimant.

DATE:

GLYNDA B. GOMEZ

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.