

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

COLIN B.,

Claimant,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency,

OAH No. 2012120325

DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Crescent City, California, on January 15, 2013.

Claimant Colin B. was not present. He was represented by his mother and conservator, Tamera L.

Attorney Nancy Ryan represented the service agency, Redwood Coast Regional Center.

The matter was submitted on January 15, 2013. Thereafter the record was reopened by the mutual agreement of the parties for the submission of additional evidence regarding claimant's income. The record was then closed and the matter submitted on January 17, 2013.

ISSUE

Is service agency Redwood Coast Regional Center obligated to pay the cost of repairs of property damage caused by claimant at the rental home where he resides?

FACTUAL FINDINGS

1. Claimant is an 18-year-old consumer served by the Redwood Coast Regional Center (RCRC). He has been diagnosed with Autism Spectrum Disorder, Intractable Epilepsy, Obsessive Compulsive Disorder, Seasonal Affective Disorder, and gastro-intestinal problems.

2. Claimant lived in several different places in the past few years. He grew up in Crescent City and lived with his family until he was 16. He then lived at Heartspring, a residential school in Kansas. He next lived at the Remi Vista Intensive Residential Program group home in Redding, California.

3. Claimant returned to Crescent City in July 2012, after he had been given a 30-day notice at Remi Vista. After reviewing living options for him, his IPP team determined there were no other options for claimant but to move back to his home community. This was also his family's preferred choice. Thus, claimant moved into his family's former house as a tenant. His family lives in another house in the community.

4. Claimant receives 24-hour support using a combination of intensive behavior services provided by Inclusive Education and Community Partnership (IECP), In-Home Support Services, and the Del Norte Unified School District.

5. Claimant is not currently in a supported living services (SLS) program, but the parties intend that IECP and RCRC finalize a contract and that claimant will then be transferred to SLS.

6. There is a lease agreement between claimant (as tenant) and his landlord. Claimant's mother, Tamera L., signed the lease agreement as the landlord. She also

signed the lease agreement on behalf of claimant as the tenant, as claimant's conservator. The lease agreement provides:

Tenant will, at Tenant's sole expense, keep and maintain the house and accessories in good and sanitary condition and repair during the term of this Lease. In particular, Tenant shall keep the fixtures in the house in good order and repair; keep the furnace clean; and keep the walks free from dirt and debris. Tenant shall, at Tenant's sole expense, make all required repairs to the plumbing, range, oven heating apparatus, electric and gas fixtures, other mechanical devices and systems, floors, ceilings and walls whenever damage to such items shall have resulted from Tenant's misuse, waste, or neglect, or that of the Tenant's family, agent, or visitor.

RCRC is not a party to the lease agreement and is not obligated to bear the cost of repairs under its terms.

7. Claimant has in the past caused property damage where he lived. He sometimes engages in aggressive behaviors (hitting, kicking, throwing objects, hitting windows, etc.) that can cause injury to himself and others, and property damage. He is prone to cause such damage in his current residence. All parties agree that it is best not to restrain claimant in such episodes, unless he presents a danger to himself or others. Thus, he is likely to cause additional property damage in the future.

8. Pursuant to their agreement to reopen the record and submit additional evidence, the parties agree that claimant's income is \$880.00 per month of SSI plus \$183.60 per quarter of State SSP Restoration.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, the Legislature assumed responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. Welfare and Institutions Code section 4512, subdivision (b), provides:

“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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation,

treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that

service or support is contained in his or her individual program plan.

Payment for repairs of property damage caused by claimant at his rental home is not a specialized service or a special adaptation of a generic service within the meaning of section 4512, subdivision (b). Instead, repairs of such damage are necessary whether or not the individual causing the damage has a developmental disability. Additionally, such repairs would not alleviate claimant's disability, teach him to avoid causing damage, or otherwise habilitate or rehabilitate him.

3. Claimant, citing Welfare and Institutions Code section 4689, asserts that RCRC should be required to provide for or compensate for property damage he may cause. Section 4689, subdivision (i), provides, in pertinent part:

- (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's program plan, 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.

Section 4689 does not support claimant's position. He is not currently in a supported living home or receiving SLS. Moreover, conditions (A), (B), and (C) have not been established.

4. Claimant cites *In the Matter of Ricardo E. and Westside Regional Center*, OAH No. 2009060393. There, the regional center was required to fund a supported living services plan for \$29,971.88 in monthly services, including a \$400 allocation for property damage caused by the consumer's "intense behaviors." There was no discussion in the decision of the specific legal rationale for the funding of property damage. The *Ricardo E.* decision is not dispositive of any issues in the present case.

5. Service agency RCRC is not required to pay the cost of property damage caused by claimant at his rental home.

ORDER

Claimant's appeal is denied.

DATED: _____

STEVEN C. OWYANG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction.