

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Reimbursement of Services Provided at
Home by Claimant's Parents:

OAH Case No: 2016110187

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of
Administrative Hearings, State of California, heard this matter in Carlsbad,
California, on December 13, 2016.

Claimant's parents represented claimant, who attended the hearing.

Ronald House, Attorney, represented San Diego Regional Center (SDRC).

The record was held open to allow the parties to submit additional evidence regarding the damages claimant sought and SDRC's response to that request.¹ The matter was submitted on January 16, 2017.

ISSUE

Should SDRC reimburse claimant for the following costs his parents incurred between November 5, 2015, and April 28, 2016, when claimant was at home because of transportation issues involving his day program: (1) the daily rate SDRC funds for day programs; (2) the lost revenue claimant's parents incurred because they had to provide day program services to claimant; and (3) general damages for the "physical pain and strain" claimant's parents incurred.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On October 19, 2016, claimant requested a fair hearing and was thereafter given notice of this hearing.

¹ Claimant's letter regarding damages was marked and received as Exhibit A. SDRC's response was marked and received as Exhibit B.

EVIDENCE PRESENTED AT HEARING

2. SDRC and claimant both agreed that the day program claimant attended was the most appropriate for him. As SDRC asserted, there was never any issue regarding the day program, the issue was transportation to that day program. SDRC initially paid for transportation to that day program in an amount that exceeded the Department of Developmental Services's (DDS) maximum transportation limit. SDRC applied for a health and safety waiver to exceed that limit and DDS denied that request. Thereafter, claimant ceased going to his day program because he lacked safe and appropriate transportation. Because of the denial to fund the transportation claimant required, claimant filed a Fair Hearing Request. After a hearing on the issue, Administrative Law Judge Vallera Johnson issued a decision on August 19, 2016, granting claimant's request that SDRC fund the transportation sought² and ordering DDS to issue written authorization to SDRC to fund the transportation or, in the alternative, for DDS to provide

² It was unclear from the evidence presented in this hearing or from a reading of ALJ Johnson's decision why SDRC did not continue to fund claimant's transportation until that decision was issued.

appropriate transportation to claimant to get him safely to and from his day program.³

3. SDRC introduced the various documents pertaining to the transportation/day program issue. The documentation regarding the informal conference the parties conducted on October 31, 2016, identified the reasons why SDRC denied claimant's request to be reimbursed for (1) the day program services his parents rendered to him and (2) the income they lost between November 2015 and April 2016 while they rendered those services. Claimant's letter in response to SDRC's position set forth the reasons why claimant disagreed with SDRC's position, disputing some of the facts SDRC asserted.

4. SDRC I.D. notes⁴ documented the exhaustive efforts SDRC took trying to secure transportation or inquire as to alternative day programs for claimant. Unfortunately, SDRC was unsuccessful in those efforts.

5. SDRC North County Regional Manager Gabriella Ohmstede testified about why claimant's request for reimbursement of the day program services they provided was denied. She explained the reasons for the denial as follows: (1) there is a lengthy and thorough approval process to vendorize day programs and claimant's parents have never gone through that process; (2) claimant's

³ Official Notice is taken of ALJ Johnson's decision, OAH No. 2015110980.

⁴ These are also referred to as Title 19s.

transportation issue was a short-term issue, and individualized day programs involve setting up a business entity for long-term provision of services, and claimant's parents never set up a business entity; (3) even if they did, claimant's parents would not be allowed to provide services to claimant, they would have to hire staff to provide services and they did not hire any staff; (4) in short-term day program issue cases, SDRC typically increases the respite until the short-term issue is resolved, which SDRC did in this case ; and (5) given the intensity and length of the vendorization process, there is no guarantee claimant's parents would have been approved as vendors, and, even if they were, by the time the process would have been completed, six months at the earliest, claimant was already back at his day program.

Ms. Ohmstede went through SDRC's I.D. notes pointing out the almost daily efforts SDRC made to resolve claimant's transportation/day program issues. Those notes documented that claimant's parents wanted him to return to his day program; they were not interested in looking at other day programs; other transportation venues were pursued but were unable to transport claimant; and SDRC responded to all of claimant's inquiries, as did claimant to SDRC's requests. Those notes demonstrated that until the decision issued on August 19, 2016, ordering DDS to issue written authorization to SDRC so it could fund the transportation claimant required, SDRC and claimant's parents were exploring all possible options. As all parties agreed that claimant's day program was the most

appropriate for him, SDRC continued to keep a spot open at that program for claimant to return as soon as the transportation issue was resolved.

In response to cross examination questions regarding the respite increase, Ms. Ohmstede testified that the only change in claimant's case was the transportation/day program issue which would have triggered a review of his file to determine if there should be an increase in respite services. Ms. Ohmstede explained that SDRC has many clients who, for one reason or another, are home from their day programs for a short-term and leaving a day program is a factor that is considered when evaluating respite needs. Here, the only factor that changed was that claimant left his day program because of the transportation issue. In reviewing the file, Ms. Ohmstede noted that there was an increase in his respite services due to his leaving his program because of his transportation issue. Regarding questions on how to calculate the daily cost of the day program, Ms. Ohmstede testified that SDRC funds a maximum of 23 days at \$73.11 per day for day programs. Documentation supporting that testimony was introduced at hearing.

6. SCRC Consumer Service Coordinator Ramona Brennan testified about her work trying to resolve the transportation issue and the numerous conversations she had with the family. She acknowledged that the family was very involved and responsive to all of SDRC's inquiries and requests. She acknowledged that claimant's family informed her of a visit to a physician who diagnosed claimant with depression because claimant was home away from his

day program due to the transportation issue. Although Ms. Brennan and the family had discussions regarding things to do at home to assist claimant with his depression while he was away from his day program, at no time did she recall there being discussions about claimant's family providing him a day program at the home. Ms. Brennan testified that everyone agreed that the day program in which he was enrolled was the appropriate choice for claimant. If, at any time, Ms. Brennan had thought that claimant wanted an individualized home program or that such a program was appropriate for him, she would have discussed this with her supervisor. However, because claimant never requested an individualized home program, nor was it a program she thought was appropriate for him, she never pursued it. The I.D. notes were consistent with Ms. Brennan's testimony and supported her contentions.

7. Claimant's father testified about the care he and his wife provided to claimant when he was abruptly removed from his day program because of the transportation issue. He explained the depression his son suffered during that time. Claimant's father and claimant's mother tried to provide similar services to claimant at home to keep him engaged. Claimant's father has a consulting business and during this time he lost approximately \$3,000 to \$4,000 in business because he was providing day program services to his son instead of working. He and his wife also suffered damages in the form of physical pain and strain due to the efforts they had to put forth providing services to their son. Claimant's father explained that it was through no fault of theirs that claimant was unable to

attend the day program; it was a DDS transportation funding issue. Moreover, SDRC/DDS violated the terms of claimant's Individual Program Plan when he was abruptly removed from his day program. Claimant's father sought reimbursement for the services he and his wife provided to claimant during the time that claimant was home between November 2015 and April 2016 because of the DDS maximum limit transportation issue.

8. In response to this court's request, claimant provided a letter demonstrating how his damages were calculated. Claimant sought the following reimbursement: (1) \$73.11 per day for the 120 week days, excluding holidays, that claimant's parents provided services to him from November 8, 2015, to April 28, 2016; (2) \$4,000 in lost revenue; and (3) pain and suffering damages in the amount of \$37,302.50. (Exhibit A.)

9. SDRC objected to those calculations, asserting that (1) SDRC at all times acted in claimant's interests and sought to have DDS fund the excess transportation; (2) the Lanterman Act does not allow for the types of damages sought; and (3) even if it did, there is no basis for awarding them here against SDRC.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not an individual is eligible for services, the burden of proof is on claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

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

3. Welfare and Institutions Code section 4501 acknowledges that California has accepted responsibility for persons with developmental disabilities and that 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." One goal is "to prevent the dislocation of persons with developmental disabilities from their home communities."

4. Welfare and Institutions Code section 4512, subdivision (b), provides that services and supports are “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.” Determining which “services and supports are necessary for each consumer shall be made through the individual program plan process.”

5. Welfare and Institutions Code section 4646 provides that the Legislature intended that the [IPP] and “provision of services and supports by the regional center system is centered on the individual and the family . . . and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.” The Legislature further intended that “the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

6. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist consumers in achieving the greatest self-sufficiency possible; secure services and supports that meet the needs of the consumer, as determined by the IPP; and be fiscally responsible.

EVALUATION

7. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to receive regional center services. Although claimant's frustration with what occurred was clearly understandable, there simply is no remedy in the Lanterman Act for the damages he is seeking. Claimant's parents were not vendored as day program providers and absent that vendorization, SDRC could not fund them for any services they provided to their son.

Secondly, claimant's situation was considered temporary while the transportation issue was being worked out, as such, providing him an individualized program was not warranted. Moreover, all parties agreed that his day program was the most appropriate program for him.

Thirdly, if claimant's parents were vendored, they would not be allowed to provide the services to claimant, they would have to hire staff, and they did not do so here. Additionally, the evidence established that claimant's respite services were increased because of his day program/transportation issue. Even if that were not the reason for the respite increase, there would still be no basis to reimburse claimant for the funds he seeks.

Finally, and most importantly, claimant, who had the burden of proof in this case, cited no code section in the Lanterman Act and no case law that would support his request for reimbursement, and indeed, there is none. While

claimant's position is certainly understandable, and his request for reimbursement was not unreasonable, there is simply no provision for such reimbursement given the facts presented here.

ORDER

Claimant's appeal from San Diego Regional Center's determination that it will not reimburse him for the costs and damages incurred by his parents when claimant was home from his day program between November 2015 and April 2016 is denied. SDRC shall not fund claimant's request for reimbursement of those services.

DATED: January 27, 2017

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 ninety days.