

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JULIEN B.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2013040595

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on May 24, 2013.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, Legal Services Manager.

Claimant, who was present at the hearing, was represented by his mother.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

1 Is ACRC required to fund ninety hours of in-home respite care per quarter and fourteen days of out-of-home respite services per fiscal year for claimant, pursuant to

Welfare and Institutions Code section 4686.5?¹ If so, is ACRC required to fund the in-home respite services at an hourly rate higher than currently authorized?

FACTUAL FINDINGS

1. Claimant is a nineteen-year-old young man eligible for ACRC services based on a diagnosis of autism. He has also been diagnosed with bipolar disorder, attention deficit hyperactivity disorder (ADHD), and migraines.

Claimant lives in the family home and requires constant care and supervision. He requires assistance in all areas of self care and direction, needs very little sleep, and has a history of elopement. He is eligible for SSI and has been receiving protective supervision hours.

2. Claimant received services from Redwood Coast Regional Center (RCRC) prior to changing his residence, approximately a year and a half ago, to Yolo County which is within ACRC's catchment area. His ACRC Individual Program Plan (IPP) dated January 17, 2012, stated, "Due to his need for continuous care, his mom needs a well deserved break from care providing. [Claimant] is eligible for the maximum allowance for in home respite care which is 90 hours per quarter as well as the maximum of out of home respite care which is 14 days per year."

The IPP also noted that claimant was "currently receiving the maximum number of protective supervision hours with [sic] is approximately 280 hours per month". Claimant's supervision needs are being met through In-Home Supportive Services (IHSS) funded by Yolo County. Claimant's mother is his IHSS worker.

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

3. Claimant's current IPP, dated January 30, 2013, continues to document his eligibility for ninety hours of in-home respite care per quarter, as well as fourteen days per year of out-of-home respite care per fiscal year. The IPP provides that "ACRC will fund Employer of Record (EOR) in home respite care at a rate of 90 hrs per quarter through Maxim home care agency. He will have his protective supervision needs meet [sic] through IHSS; funded by Yolo County. He will have up to 14 days of out of home respite care funded by ACRC through 1/14."

The IPP states that "[claimant's] family was not satisfied with the quality of the providers that Pacific Home Care had sent out for [claimant's] care and Pacific Home Care has also declined from providing services to the family. Employer of record respite will give the family the opportunity to recruit and maintain providers of their choice."

4. Claimant's mother filed a Fair Hearing Request on his behalf, dated March 27, 2013, which states, in relevant part:

[Claimant] needs respite care that can be billed at a level to attract and retain workers with sufficient training and experience to care for a higher needs individual. At the current level of reimbursement we are only able to get employees who are nineteen to twenty years of age, and possess extremely limited experience (e.g. "my cousin has an autistic infant that I used to baby sit for once in a while.") For the last fourteen months we have spent the bulk of our respite hours training the respite worker, who then chooses an 'easier' client, or is able to take the free training that we have provided and parlay that into a better paying position elsewhere. This constant turnover is frustrating and exhausting. We have investigated

Employer-of-record services, and this too provides no relief, and no real options for quality care.

5. The Fair Hearing Request was not filed in response to an ACRC Notice of Proposed Action (NOPA). A NOPA is required when the regional center proposes to reduce, terminate, or change services set forth in a consumer's IPP, determines that a consumer is no longer eligible for agency services, or denies the initiation of a service or support requested for inclusion in the IPP. ACRC was not taking any of these stated actions.

6. Claimant's mother testified that she has had a difficult time maintaining qualified in-home respite workers to assist claimant. She stated that the workers are employed at minimum wage and tend to be young and inexperienced. There is constant turnover, and she is frustrated and tired of the stress and strain of training workers who then leave for "easier clients."

She also contends that the intensity of claimant's care needs necessitates paying a higher wage to maintain in-home respite workers. She contends that RCRC had a higher rate, "behavior respite", which could be paid to workers when a consumer had more intensive needs. She is requesting that ACRC pay an increased "behavior respite" rate to attract and retain workers.

7. In addition, claimant's mother testified that there has been difficulty obtaining out-of-home respite placements. She acknowledged receiving one referral for placement which she failed to pursue in a timely manner but contends that since that time, nothing has been offered or they "have received an out-of-service phone number, a wrong number, etc." She stated that she is overwhelmed and needs help so claimant can continue living with the "family he desires, loves and enjoys."

8. Michael Huckins is the Vice President of Operations for Pacific Homecare Services (Pacific Homecare), an in-home respite agency. In February, 2012, Pacific

Homecare received a referral from ACRC to provide for claimant's in-home respite care needs. The agency supplied five different respite care providers from that time through January, 2013.

9. In his position as Vice President of Operations, Mr. Huckins is responsible for communicating with the respite providers and addressing any issues that may arise. He testified that workers expressed concern with the condition of claimant's home, which he described as "the families home, and the provider's workplace." They also described difficult interactions with claimant's mother where she "overacted" to situations and was "curt." She was said to have "yelled at" workers, "hung up the phone during conversations" and "failed to return phone calls." He explained that a number of workers chose not to work with this family.

10. Pacific Homecare became aware that a referral had been made to Adult Protective Services (APS) based on an alleged "lack of care" of claimant. The subsequent investigation proved inconclusive, however Mr. Huckins informed claimant's mother, in December 2012, that he was requesting a home visit at the family residence. When he failed to receive a response to this request, he informed the family of the following by email dated January 25, 2013:

In December, I requested to do a visit at your family's residence. No one from your family has responded to this request. We have had a report of the unclean nature of the residence that poses a hazard to not only our staff but to the consumer. We will not be able to recruit additional providers for your family until this is corrected and we are allowed to visit the residence to make sure that it is an acceptable environment for all concerned. At this point, we will be placing

your services on "Hold." Please let us know when you would like to schedule our visit to the family home.

Mr. Huckins testified that he never received a response to this request. Pacific Homecare discontinued provision of respite services.

11. Mr. Huckins testified that he did not receive any complaints from claimant's respite care workers that claimant's behaviors were too difficult to handle. All the complaints he received were regarding "reactions of the parent and condition of the home, not behavioral needs that could not be met."

12. Christine Goodwin-Archer is an ACRC Supervising Counselor. She testified regarding the agency's procedures for providing respite services based on a consumer's assessed need. Claimant's needs have been assessed at ninety hour of in-home respite per quarter and 14 days per fiscal year of out-of-home respite. ACRC has authorized these services and they remain available. ACRC acknowledged the need for claimant's mother to receive a break from her care giving responsibilities.

13. When Pacific Homecare ceased providing claimant's in-home respite providers, ACRC authorized Maxim Home Care (Maxim) to provide this service. Maxim is an employer of record, allowing the family to choose and hire the respite provider of their choice with Maxim assuming the administrative role.

14. Ms. Goodwin-Archer testified that obtaining out-of-home respite placement is more difficult. Availability is more limited and opportunities must be acted on quickly or the placement may become unavailable. She stated that ACRC has sought and identified placements but out-of-home respite has never occurred. She contends that placement has either been rejected by the family or filled prior to the family following up on the lead. Ms. Goodwin-Archer is continuing to seek appropriate out-of-home respite placement options for claimant and contends that, with the parent and ACRC working together, placement can be obtained.

15. Ms. Goodwin-Archer testified that ACRC has determined that claimant's respite needs can be met with his currently authorized services. ACRC does not have a "behavior respite" rate and there was no evidence that claimant's behaviors require a higher level of care than can be met with this service. There was no evidence of respite workers being unable to perform this service due to claimant's behaviors. Concerns have only involved the condition of the home, and interactions with claimant's mother.

16. Mechelle Johnson is an ACRC Supervising Counselor. Ms Goodwin-Archer is one of the Service Coordinators that she supervises. Ms. Johnson testified that she was not aware of any respite workers who were unwilling to serve claimant based on his needs. She also noted that the regional center does not have authority to fund this service at a higher rate than authorized.

She testified that claimant remains eligible for in-home respite and agrees that the difficulty accessing that service in the past has been due to the condition of the home and respite workers reported treatment by claimant's mother. She also identified communication as a barrier and explained that when claimant's mother "doesn't like something, she cuts off the conversation." She opined that better communication would also aid in obtaining an out-of-home respite placement.

Ms. Johnson testified that claimant remains eligible for respite services as set forth in his current IPP. ACRC continues to recognize the need for claimant's mother to receive a break from her care giving responsibilities. ACRC has not denied funding or proposed to reduce, terminate, or change this service. She recommended increased communication and IPP team members working together to obtain providers. She also suggested that claimant's mother might consider hiring an IHSS worker other than herself to provide some additional relief.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional centers' responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. In-home and out-of-home respite is a service that regional centers may purchase for consumers. Section 4690.2, subdivision (a), provides:

"In home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

3. Section 4686.5, subdivision (a)(1)-(3), provides:
- (a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:
- (1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.
- (2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.
- (3) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

[¶] . . . [¶]

4. Claimant's care and supervision needs were determined by his IPP team and respite hours were awarded accordingly. There was no evidence presented that this need has changed or that the intensity of claimant's care and supervision needs require additional in-home supports.

Claimant remains eligible for respite services and there was no evidence that ACRC denied funding or proposed to reduce, terminate, or change this service. There was no evidence presented that the currently authorized vendor, Maxim, could not provide in-home respite workers to meet claimant's needs or that the IPP team could not work together to obtain an out-of-home provider.

5. Claimant bears the burden of establishing that ACRC has failed to provide the required service. Claimant has not met that burden. The service remains available and evidence presented was not persuasive that claimant's care and supervision needs can not be met

ORDER

The appeal of claimant Julien B. is denied.

DATED: June 5, 2013

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)