BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of:<br><br>CHRISTIANNE C.,<br><br>Claimant,<br><br>vs.<br><br>NORTH BAY REGIONAL CENTER,<br><br>Service Agency. | OAH No. N 2006080303 |

**DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Napa, California, on September 20, 2006.

Claimant Christianne C. was represented by her sister and conservator, Corinna C.-L. (Corinna).

Nancy W. Ryan, Attorney at Law, represented North Bay Regional Center.

The matter was submitted on September 20, 2006.

ISSUES

The parties tendered the following issues for decision:

1. Are there NBRC-vendored day programs that meet Claimant's needs?

2. If Corinna would prefer to administer Claimant's day program under a "Flexible Supports Program," what is the appropriate level of support for that program?

3. Is it appropriate for Claimant to use Home Helpers, an NBRC-vendored provider of personal assistance services, under a Flexible Supports Program?

## FACTUAL FINDINGS

1. Claimant is a 31-year-old client of NBRC. She has been diagnosed with profound mental retardation, cerebral palsy and seizure disorder. Claimant has approximately four seizures every day. She is non-ambulatory and uses a wheelchair. Claimant lives with her parents in Fairfield. Her mother is her In-Home Supportive Living worker. Claimant depends on others for all of her activities of daily living, including bathing, toileting, feeding, and for monitoring for seizures.

2. For the past five years, and perhaps longer, Claimant has attended community day programs. Between 2001 and 2005, Claimant attended several different programs, but Corinna removed her from all of them after various incidents occurred. At one program, Corinna discovered that Claimant's diaper had not been changed all day. At another program, a client pushed over Claimant's wheelchair. In Fall 2005, Claimant was attending a community day program run by Solano Diversified Services (SDS). Corinna noticed that Claimant had diarrhea, and that she would not eat for new caregivers. Corinna concluded that Claimant's difficulties were due to stress caused by staff turnover at SDS. Corinna terminated Claimant's participation in the SDS program on September 30, 2005. Claimant has not participated in a community day program since September 2005.

3. In late 2005 or early 2006, Corinna met Thomas D. Daniels; their children play soccer together. Daniels is the manager of a business called "Home Helpers" in Vacaville. According to its literature, Home Helpers provides non-medical, in-home companion care to seniors, "new moms," persons convalescing from illness or injury, and persons facing "life-long challenges." Corinna found Daniels to be "nice, supportive, and dedicated." She met with him in February 2006 to discuss a plan to care for Claimant.

4. On March 7, 2006, Claimant's Client Program Coordinator, Regina Rivas, met with Corinna, Claimant, and Claimant's mother at Claimant's home. The parties approved an Individual Program Plan (IPP) for Claimant that is dated March 7, 2006.

The IPP establishes, as Claimant's long-range goal for "work/school," that "Claimant would like to attend a day program some time in the future." The objective associated with this goal, under the heading "How Things Are Now," notes Corinna's dissatisfaction with SDS, and Corinna's interest in "attending another program, Home Helpers. This program is in the process of becoming vendored by NBRC." Under "How Would You Like [Things] to Be," the IPP states, "Claimant will attend a day program in the community." Under "Kinds of Support Needed," the IPP states, "NBRC to fund a community day program. . . . [Corinna] will assist Claimant with finding an appropriate day program." The IPP states that the parties would know their plan had worked when Claimant attends "a community day program."

A "community-based day program" is a program which provides services to individuals on an hourly or daily basis in the community.[1]

[1] Cal. Code Regs., tit. 17, § 54302, subd. (a)(16).

5. At the IPP meeting, Corinna gave Rivas a written proposal for Claimant's "day program" and other matters. The program called for Claimant's day program to be provided at home, 10 a.m. to 4 p.m., Monday through Friday, by a caregiver from Home Helpers. The structure of the day program would be developed by Corinna, who is a licensed occupational therapist, and implemented by the Home Helpers caregiver. Among other things, the program called for Claimant to take regular community outings with her caregiver.

6. Over the next several months, Rivas and Corinna communicated with each other frequently, primarily through e-mail, concerning day programs that might be suitable for Claimant, transportation options, and other issues. Rivas appears to have been under the impression that Home Helpers would be vendorized as a day program. Her notes for March 7, 2006, for example, state that "Corinna would like [Claimant] to attend a day program that is in the process of being vendorized." Rivas continued to investigate transportation options, such as paratransit, that would take Claimant to the day program. Corinna participated in the discussion of community day programs and associated transportation issues, but she continued to pursue her proposal to have Home Helpers provide services to Claimant. On March 22, 2006, for example, Corinna e-mailed Rivas and stated, "Home Helpers was vendored on 3/22/06, service code 062. What's the next step to get services from Home Helpers for [Claimant]?" And on April 26, 2006, Corinna e-mailed Rivas and asked, "Is 5/1 still the start date for services? Tom Daniels from Home Helpers and I need to set up a date for [Claimant's] new day program provider to come over and meet her."

7. On April 26, 2006, NBRC's fiscal monitor informed Rivas that Home Helpers had been vendored as a personal assistance service, not as a community day program. Rivas informed Corinna that her request to use Home Helpers to provide services to Claimant required review by a Program Assessment and Review Team (PART), which was scheduled to meet on May 10, 2006.

8. At about this time, Daniels called Rivas. Daniels told Rivas that the Home Helpers program would allow Claimant to be in the community two to three days per week, at best. The main focus of the program would be "home activities."

9. On May 10, 2006, PART denied Corinna's plan to have Home Helpers provide a day program to Claimant. It appears that a Notice of Proposed Action was sent to Corinna reflecting this decision, and that Corinna requested a fair hearing, as a hearing was set for July 13, 2006.

10. On May 15, 2006, the parties entered into an IPP Addendum to formally terminate Claimant's day program and transportation with SDS. The Addendum did not amend the goals or objectives of Claimant's IPP.

11. The parties appeared for hearing on July 13, 2006, but chose to use that time instead for an IPP meeting.

At that meeting, NBRC raised the possibility of a "Flexible Supports Program" for Claimant. Under a Flexible Supports Program, NBRC would determine the cost of Claimant's approved services and supports if they were purchased through NBRC vendors, and then pay that amount each month to Corinna. Corinna would then be responsible for providing the services and supports to Claimant, a task that would involve (among other things) designing Claimant's program, hiring and training caregivers, administering payroll, and submitting invoices to NBRC. In essence, Corinna would become the "vendor" of Claimant's day program, with the flexibility to use providers other than the vendored community day programs identified by NBRC. NBRC informed Corinna that a Flexible Supports Program must be cost-effective.

The parties agreed that they would continue to investigate NBRC-vendored day programs and, at the same time, NBRC would calculate the cost of Claimant's day program and transportation for possible inclusion in a Flexible Supports Program.

12. The parties entered into a second IPP Addendum on July 19, 2006. The Addendum primarily addresses their progress, during the prior week, on the issues raised in their IPP meeting. NBRC informed Corinna that it had determined the cost of a six-hour community day program to be $63.54 per day, and that this would be the "cost-effective" amount for the day program component of a Flexible Supports Program. NBRC told Corinna that she could not use Home Helpers in a Flexible Supports Program, because the daily cost of a caregiver from Home Helpers for six hours per day would be $132 per day, more than twice the cost-effective amount calculated by NBRC. NBRC also told Corinna that she could not use Home Helpers because it was an NBRC vendor and, by policy, NBRC prohibits the use of one of its vendors in a Flexible Supports Program. Corinna did not agree with NBRC's cost-effective amount or with its determination that she could not use Home Helpers.

The second IPP Addendum did not amend the goals or objectives of Claimant's IPP.

After the second IPP Addendum, NBRC continued to analyze the issue of the cost-effective amount of Claimant's services, and Corinna prepared a Flexible Supports Program.

13. Corinna submitted her Flexible Supports Program to NBRC on July 25, 2006. Like the program she proposed in March 2006, her Flexible Supports Program called for Home Helpers to come to Claimant's home and provide services six hours per day, Monday through Friday, at $132 per day. The proposal contemplated that Claimant's caregiver would take her on frequent trips into the community, but it remained a home-based program.

14. NBRC sent a Notice of Proposed Action to Corinna on July 28, 2006, denying her proposal for a Flexible Supports Program. The NOPA states, "There are appropriate NBRC vendored day programs that would meet client's needs." Corinna requested a fair hearing.

15. NBRC continued to investigate vendored community day programs for Claimant, and informed Corinna that it had found four programs that met Claimant's needs. NBRC agreed to provide, in addition, two hours of 1:1 assistance for Claimant for eating and diapering. NBRC determined that paratransit was available to transport Claimant to the day program, and informed Corinna that NBRC would pay for the cost of that service, or include the cost in a Flexible Supports Program.

Using the average cost of the four programs it found suitable for Claimant, and including the cost of 1:1 assistance, NBRC recalculated the cost-effective amount of a Flexible Supports Program to be $92.76 per day, plus the cost of paratransit.

16. Corinna contends that none of the community day programs identified by NBRC will meet Claimant's needs. Corinna found the sensory room at one of the programs unsatisfactory. She has misgivings about two other programs, because they are affiliated with the day program that did not change Claimant's diaper. Corinna believes that Claimant's attendance at past day programs has been poor because she is susceptible to catching colds at the community programs. And Corinna has concerns about the paratransit option proposed by NBRC. She feels that NBRC's plan has not been developed with Claimant's safety in mind, because it does not address the possibility that the paratransit van might break down, or that the van might not be available during times of intensive use, or that Claimant may have seizures during the time that she is being transported from home to her program.

Corinna's concerns, however, are more fundamental than her objections to particular day programs and paratransit. As she stated in her closing argument, Corinna believes that *no* community day program can meet Claimant's individual needs. Corinna believes that Claimant's needs are best satisfied by a home-based program and, specifically, a home-based program with caregivers from Home Helpers. Corinna notes that, because of her education and professional experience, she is fully qualified to develop a home-based program for Claimant. Because she works full-time, however, she does not have the time to perform many of the tasks demanded by a Flexible Supports Program, such as recruiting caregivers and administering a payroll. One of the advantages of Home Helpers is that the organization would perform those tasks. Corinna states that Home Helpers insures that their caregivers and clients are a good match, and that Daniels really cares about his clients.

## LEGAL CONCLUSIONS

1. This proceeding is governed by the Lanterman Developmental Disabilities Services Act.[2] The Act is a comprehensive statutory scheme intended to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of

[2] Welf. & Inst. Code, § 4500 et seq.

life."[3] The purposes of the Act are two-fold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community."[4] Regional centers are responsible for providing services to eligible persons with developmental disabilities.[5] Regional centers are required to take into account the needs and preferences of the client and the family in providing services to a client, but the services must also be effective in meeting the goals stated in the client's IPP, and they must reflect the cost-effective use of public resources.[6]

The rights of a developmentally disabled person, and the obligations of the state toward that person under the Act, are governed by the IPP procedure.[7] The procedure begins with an individualized needs assessment conducted by an interdisciplinary team, in which the client or the client's representative is expected to actively participate.[8] The needs assessment leads to the development of the client's IPP, which is jointly prepared by an interdisciplinary team that includes the client and the client's representative.[9] The Act contemplates that decisions concerning the goals, objectives, and services and supports that will be included in a client's IPP will be made by agreement between regional center, the client, and the client's family or representative.[10] Among other things, the IPP must set forth the client's goals, objectives, and services and supports.[11] The services provided by the regional center must be directed toward achieving the goals and objectives of the IPP. [12] Individual program plans must be reviewed and modified by the interdisciplinary team, in response to the client's achievements or changing needs, at least every three years.[13] The

---

[3] Welf. & Inst. Code, § 4501.

[4] *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.

[5] Welf. & Inst. Code, § 4620.

[6] Welf. & Inst. Code, § 4646, subd. (a).

[7] *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.

[8] Welf. & Inst. Code, § 4646, subd. (b).

[9] Welf. & Inst. Code, §§ 4646, subd. (d), 4512, subd. (j).

[10] Welf. & Inst. Code, §§ 4646, 4646.5.

[11] Welf. & Inst. Code, § 4646.

[12] Welf. & Inst. Code, §§ 4646, subd. (a), 4646.5, subd. (a)(4).

[13] Welf. & Inst. Code, § 4646.5, subd. (b).

client or the client's representative, however, may request an IPP review at any time, and the regional center is obligated to respond with a timely review.[14]

2. While the parties have presented three issues for resolution, the real issue is Corinna's contention that community day programs do not meet Claimant's individual needs. That contention, which reflects Corinna's sincerely-held belief, is the fundamental basis for her objections to the various day programs identified by NBRC, and it is also the basis of her proposal for a Flexible Supports Program that would provide a home-based program to Claimant through Home Helpers.

But that issue – whether community day programs meet Claimant's individual needs – cannot be decided in this proceeding. Under Claimant's IPP, the goal is to place her in a community day program, not a home-based program. Even if Corinna could prove that none of the community day programs proposed by NBRC is satisfactory, it does not follow that Claimant would be entitled to a home-based program, because that service is not consistent with Claimant's IPP. Nor does it follow that Claimant would be entitled to a home-based program provided by Home Helpers: without goals and objectives defining a home-based program and identifying Claimant's needs, the cost-effectiveness of the Home Helpers program cannot be determined. Approving a home-based program for Claimant under the current IPP would circumvent the interdisciplinary team's authority and responsibility to establish the proper goals, objectives, and services and supports for Claimant. If Corinna wants Claimant placed in a home-based program, she must ask for a review of Claimant's IPP. If she is dissatisfied with the decision of the interdisciplinary team, Corinna may file a request for a fair hearing to review the team's decision.

3. Under the IPP currently in effect, Claimant may participate in any of the vendored community day programs identified by NBRC. If Corinna chooses not to place Claimant in a vendored community day program, Corinna may administer a Flexible Supports Program for Claimant. In light of the matters set forth in Legal Conclusion 2, the cost-effective amount of the Flexible Supports Program must be based on a community day program, not a home-based program. The cost-effective amount of a Flexible Supports Program for Claimant, therefore, is $92.76 per day, plus the cost of paratransit. Corinna may not use Home Helpers to provide service to Claimant under a Flexible Supports Program, not because Home Helpers is vendored with NBRC, but because Home Helpers is not a community day program as called for by Claimant's IPP.

It is clear that Corinna wants what is best for her sister, and it is understandable that, working full-time, she is not in a position to fully administer a Flexible Supports Program. But the goals and objectives of Claimant's IPP govern the services that NBRC can provide, and those goals and objectives cannot be changed without the full review required by the Act.

---

[14] Welf. & Inst. Code, § 4646.5, subd. (b).

## ORDER

The appeal of claimant Christianne C. is denied.

DATED: _____

_____
DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

## NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.