

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

In the Matter of:

Christine N.,

Claimant,

vs.

Inland Regional Center,

Service Agency.

OAH No. L 2005010628

DECISION

On May 4, July 26 and August 19, 2005, in San Bernardino, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deborah K. Crudup, Program Manager, represented Inland Regional Center, the service agency.

Heidi P., claimant's foster mother, represented her.

The matter was submitted on August 19, 2005.

ISSUE

What alternative rate model (ARM) service level should Inland Regional Center assign to Christine N. based on her service needs?

FACTUAL FINDINGS

1. Christine N. (claimant) is a three and one-half year-old female who is a client of the Inland Regional Center (service agency), with a diagnosis of dyskinetic cerebral palsy, profound mental retardation and epilepsy. She has clinical seizures every two to five minutes while awake. Many of these events are brief myoclonic jerks of the right upper extremity. According to her neurologist, Claimant has one generalized tonic-clonic seizure per week which lasts 15 to 30 seconds each, despite the fact that she takes four anticonvulsants at a therapeutic level. Claimant's mother

reports that she has observed one to two “hard” seizures per day lasting approximately 45 seconds.

2. Claimant was born full-term with prenatal drug exposure. In April 2002, at three months of age, she suffered non-accidental trauma, resulting in Shaken Baby Syndrome, leaving her with permanent residual brain damage. She is deaf, blind, has speech deficit and chronic subdural hemorrhage.

3. In March 2005 claimant began Isabel Barnet Elementary School Preschool Program; she attends three hours/day, four days/week. She receives physical therapy twice a week, vision therapy once a month and deaf and hard of hearing services once a month.

4. In October 2003, after medical evaluation, upon discharge from Loma Linda Children’s Medical Hospital, claimant and her siblings were placed with HUGS Foster Family Agency (FFA), who placed the children in the medically fragile foster family home of Heidi Pyle and David Pyle (foster parents). Claimant lives with her foster parents, three foster sisters and two biological siblings.

5. On October 31, 2003, Heidi Pyle and David Pyle executed the Admission Agreement with the FFA. Among other things, the FFA agreed to pay “Monthly Rate: \$1,530.00, Rate Level: 4F”; the foster parents agreed to provide basic services that include, but are not limited to:

- lodging,
- three nutritional meals daily and between meal snacks,
- a special diet if requested by a doctor,
- personal laundry,
- cleaning of child’s room,
- fresh linen weekly or more often if needed,
- comfortable suitable bed,
- assisting with bathing and personal care if appropriate,
- dispensing and assisting with medications as prescribed in accordance with physician’s instructions unless prohibited by law or regulation,
- assisting with obtaining medical care when needed,
- temporary bedside care during the child’s illness,
- transportation to medical, dental, social, recreational, educational and other appointments,
- purchasing clothing, as needed,
- personal and individual needs, as identified in the child’s needs and services plan,
- maintaining required records, and
- 24-hour care and supervision

6. Claimant's foster parents have adopted her biological brother and sister and intend to adopt Claimant as well. Her adoption will be processed through San Bernardino County Department of Children's Services (DCS).

7. At the time that claimant, her brother and sister were placed in the Pyle foster family home, neither the FFA nor her foster parents were aware of the extent of claimant's disabilities. The FFA understood that she would be developmentally delayed and have uncontrolled seizures due to being shaken. Since placement, along with others, the FFA has learned of claimant's disabilities.

8. No evidence was offered to establish the basis for the determination of the amount of the monthly payment to the foster parents or the "Rate Level: 4F" listed on the Admission Agreement. There is no evidence that the service agency made or was involved in making this determination.

9. The service agency described the services that claimant receives from generic resources, services provided by the service agency, services for which she is eligible and services that the service agency anticipates that she will be eligible to receive once adopted. Claimant established her special care needs, those that exceed a "typically functioning child" of similar age, without her disabilities and the difficulties encountered accessing the services.

10. There is no dispute that claimant has disabilities and developmental delays.

Claimant requires complete care for her activities of daily living (ADL) needs.¹ She is unable to feed, toilet, provide for hygiene needs and has no safety awareness. Claimant has significant difficulty with feeding and continues to be bottle fed, with a bottle held by her caregiver. She has difficulty swallowing and tolerating various food textures other than liquids. Claimant is incontinent and will always be in diapers as potty training will be ineffective. Given her mental, visual and hearing deficits, it is highly unlikely that there will be significant change in her ability to provide for her self-care needs.

Claimant has limited cognitive and communication skills. She is not able to verbalize or communicate her emotions to a degree that most would comprehend (i.e., sign language, body language or identifiable speech). Although she does not purposely illustrate negative behaviors, some of her sensory stimulating and reactive activities are socially unacceptable, such as screaming and hitting her face.

From a gross motor standpoint, claimant did not walk until two years of age, is unable to ambulate unassisted; after two or three steps, she falls; when she walks, it is

¹ Individual Program Plan, Conference date February 8, 2005 (Exhibits 13 and J), Individual Program Plan Addendum, Conference date May 31, 2005 (Exhibit 26)

aimless. Claimant's gait is quite broad-based and very clumsy. She is unable to run, climb a stair, throw a ball overhand or skip.

11. California Code of Regulations, Title 22, section 35333 provides, in pertinent part:

“The Adoption Assistance Program (AAP) provides benefits to facilitate the adoption of children who otherwise would not likely be adopted. The AAP benefit is a negotiated amount based upon the needs of the child and the circumstances of the adoptive family. The responsible public agency shall negotiate the amount of the AAP benefit and make the final determination of the amount according to the requirements of this section...

(b) The responsible public agency shall assess the child's needs...

(c) The responsible public agency shall determine the maximum AAP benefit for which the child is eligible....

(C) If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services....”

12. In this case, when DCS determined that claimant was a consumer of the service agency, presumably the agency requested the service agency to assess her level of care as though she was to be placed in a foster family home in the community.

13. “On August 18, 2004, a determination of the ARM rate was made by the service agency's Compliance Review Team, which provides referrals to residential facilities and determines the appropriate level of service. The team is required to be knowledgeable about each service level design and facilities that they monitor. The result was a Level-II rate. The information was forwarded to Christine's funding agency, which is San Bernardino County DCFS, on October 25, 2004.”²

14. On January 20, 2005, claimant requested a Fair Hearing. By letter, dated January 26, 2005, the service agency notified claimant of her right to an informal hearing regarding the issue. In letters, dated February 25 and March 21,

² Letter from service agency, dated February 25, 2005, regarding informal meeting follow-up (Exhibit 5).

2005 summarizing subsequent informal meetings held on February 8 and March 21, 2005, the service agency affirmed the decision regarding its assessment of claimant.

15. In its assessment of claimant, among other things, the service agency considered the appropriate statutes and regulations, her special care needs, its ARM Rate Description (Exhibit 22), the amount that the foster family agreed to accept from the FFA to provide basic services for claimant, the services that she receives to provide for claimant's special care needs from the service agency and other generic resources (such as the Medi-Cal, California Children's Services and the school district) and the services that she is or may be entitled to receive for this purpose.

It is the service agency's position that claimant's deficits in self-help skills, coordination, mobility and behavior are not severe, due to her age. A "typically functioning" child of similar age, without claimant's disabilities, has deficits in and requires assistance with ADL. For example, such a child requires assistance with brushing teeth, washing hair, bathing and dressing to assure that the activities have been accomplished completely and thoroughly; such a child would require complete supervision. Claimant is able to walk and is not completely confined to a wheelchair. She does not have overtly negative or aggressive behavior, such as a fire starter, property destruction. The service agency is optimistic that claimant's abilities will improve and acknowledges that as she gets older expectations will be different. She will be re-evaluated in two years. If her abilities remain constant, since it is expected that she should have improved skills at that time, it is likely that the opinion of the service agency will be different.

The service agency provided no opinion regarding whether claimant has "significant deficits in self-help skills" but appears to acknowledge that she has "some limitations in physical coordination and mobility".

LEGAL CONCLUSIONS

1. The public agency responsible for determining eligibility, the maximum amount of the AAP benefit and payment of the AAP benefit is DCS.³ California Code of Regulations, Title 22, section 35333 sets forth the criteria that DCS is required to utilize in making this assessment. Since claimant is a client of the service agency, the service agency is the agency required to determine her service level.

The "service level" determination for a child who is a client of the regional center is based on the services required, if the client were to be placed in a residential care facility licensed by the State of California, Department of Social Services, Community Care Licensing Division, and vendored by a regional center to serve the developmentally disabled. The "service level" refers to the rate of reimbursement

³ Cal. Code Regs., tit. 22, §§ 35325 and 35333.

given to a residential home under the Alternative Residential Model (ARM) rate schedule established by the Department of Developmental Services, identified in California Code of Regulations, Title 17, sections 56001 through 56013.

2. “‘Service Level’ means one of a series of 4 levels which has been approved for each facility by a regional center. Service levels 2, 3 and 4 have a specified set of requirements that a facility must meet which addresses the direct supervision and special services for consumers within that facility.”⁴ “‘Program Design’ is defined as the description of consumer services offered by a facility, the functional characteristics of the consumers the facility will serve, and the resources available to meet individual service needs consistent with the facility’s service level.”⁵

California Code of Regulations, Title 17, section 56013 describes the consumers’ “functional characteristics”.

“(c) ... the program design for each facility applying for the service level 3 approval shall include:

(1) A description of services designed to enhance the capabilities of consumers including those with:

- (A) Significant deficits in self-help skills; and/or
- (B) Some limitations in physical coordination and mobility; and/or
- (C) Disruptive or self-injurious behavior.

(d) the program design for each facility applying for service level 4 approval shall include:

(1) A description of services designed to enhance the capabilities of consumers including those with:

- (A) Severe deficits in self-help skills; and/or
- (B) Severe impairment in physical coordination and mobility; and/or
- (C) Severe disruptive or self-injurious behavior.”⁶

3. According to the service agency, when making a determination regarding the appropriate residential placement for a consumer, the service agency bases its decision upon the regulatory requirements, their knowledge of the service

⁴ Cal. Code Regs., tit. 17, § 56002, subd. (a)(44).

⁵ Cal. Code Regs. tit. 17, § 56002, subd. (a)(30).

⁶ Cal. Code Regs. title 17, § 56013, subd. (c) and (d).

design for each vendored residence and the experience regarding how each level of service is able to meet the specific needs of the consumer, including services available to assist in meeting the needs of the individual while the consumer remains in placement in the vendored residence.

In making its determination regarding the appropriate “level of service” for claimant, the service agency utilized criteria set forth in ARM Service Level Descriptions. Regarding ARM service levels 2, 3 and 4, this document states, in pertinent part:

“Arm Level 2 services are those services designed to meet the needs of consumers who have some deficits in behavior, self-help and/or mobility skills. These deficits may require interventions ranging from indirect verbal through physical prompt and hand over hand assistance.

In other words, the direct supervision and special services in a Level 2 home may provide hand over hand self feeding skills for one consumer, directing another consumer on appropriate bite size using modeling and verbal instruction, while guiding two others on table etiquette. In hygiene, self care, and mobility, the assistance with some consumers may be hand over hand, while other consumers in that Level 2 home may require motivational incentives and benefit from information and instruction on the social and health implications of proper hygiene and dental care...

... Consumers served by ARM Level 3 services have significant deficits in behavior, self-help /or mobility. They require programming support to increase their capabilities while decreasing the impact on their deficits on their enjoyment of diverse life experiences...

Consumers who require ARM Level 3 services will exhibit significant deficits in behavior, self-help and/or mobility. It is the degree of the behavior (the frequency, the intensity, and the duration) that determines the ARM service level required to provide the consumer the appropriate environment for them to learn skills to enhance their capabilities. Their deficits may require intervention and assistance ranging from indirect verbal prompts through physical prompt and hand over hand assistance...

... Consumers who require ARM Level 4 will exhibit deficits in behavior, self-help and/or mobility. It is the degree (the frequency, the intensity, and the duration) that determines the ARM level 4 service that is required to provide the appropriate environment for them to learn skills to enhance their capabilities...”

4. In making its assessment, the service agency did not consider claimant’s functional characteristics in a manner consistent with California Code of Regulations, Title 17, section 56013, subdivisions (c) and (d) and/or the ARM Service

Level Descriptions. Irrespective of services provided by the service agency or any other generic resource, claimant has no ability whatsoever to provide for her self-care skills, with or without any type of prompting; there is no evidence that, when she matures that her ability will improve. In comparison to a typically functioning child of similar age, without her disabilities, given the evidence in this case:

- claimant did not establish that she has disruptive or self-injurious behavior;
- claimant established that she has some limitations in physical coordination and mobility; and
- Claimant established that she has severe deficits in self-help skills.

Given the facts set forth in Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 and Legal Conclusions, 1, 2 and 3, the service agency failed to properly assess claimant. A level 4 service level is the appropriate ARM service level for claimant.

ORDER

Based on her service needs, the Inland Regional Center shall assign Alternative Residential Model service level 4 to Christine N.

NOTICE

This is a final administrative decision. All parties are bound by this Decision. Any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days.

DATED: September 15, 2005

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings