

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M.A.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2012010116

DECISION

Amy C. Yerkey, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on February 8, 2012, in Culver City, California.

Simbiat A-O., Claimant's mother, represented M.A. (Claimant).¹

Lisa Basiri represented the Westside Regional Center (WRC or Service Agency or regional center).

The parties submitted the matter for decision on February 8, 2012.

ISSUE

The question in this matter is whether WRC may reduce funding of day care services for Claimant from 48 hours per month to 27 hours per month.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-10; Claimant's exhibit A.

Testimonial: Claimant's mother.

¹ Initials have been used to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a seven-year-old male who is eligible for regional center services based on an Autism diagnosis.

2. Claimant has received daycare, or specialized supervision services, of 48 hours per month since 2009. In December 2011, WRC proposed to reduce Claimant's daycare services from 48 hours per month to 27 hours per month. The stated reasons for this decision were "based on the average childcare costs in Los Angeles County, as well as WRC Service Standards for parental responsibility pursuant to Welfare & Institutions Code section 4685 (c)(6)." WRC also cited section 4659 in support of its decision.

3. Claimant timely filed a fair hearing request.

4. Claimant's most recent Individualized Program Plan (IPP), dated October 18, 2011, noted the following: "[Claimant] is an only child who lives with his parents in Inglewood. Mrs. A. is employed full-time as a surgical technician in the evenings and on weekends. She attends school in the mornings. Mr. A. is not employed at this time, as he suffered a stroke and has ongoing health issues. The level of support that he can provide [Claimant] is limited. All extended family resides in Nigeria. The family is overwhelmed at times, particularly [Claimant]'s mother. WRC funds for respite and specialized supervision.² Of note, the specialized supervision hours have been granted as an exception based on proof of financial hardship and Mr. A.'s limited ability to care for [Claimant.]"

5. WRC calculated the current proposed hourly amount of specialized supervision based on the market rate of child care, and the amount of parent responsibility, as follows: up to four years old, parents are responsible for 72 hours per month or \$648; from age five through 12 years old, parents are responsible for 57 hours per month, or \$513. The total parent responsibility for specialized supervision is calculated at \$9.00 per hour, based on the California Department of Education's survey of average child care costs in Los Angeles County, enhanced by WRC for specialized child care. In addition, WRC typically does not provide more than four hours per day for consumers who are enrolled in a full-time school program, such as Claimant.

6. Claimant is enrolled in school full-time, thus the maximum amount of specialized supervision that WRC will provide is four hours per day. Based on approximately 21 school days per month, Claimant's monthly day care amount is 84 hours (21 days multiplied by four hours per day). When parental responsibility of 57 hours per month is subtracted from the 84 hours, the remaining amount is 27 hours per month, the amount for which WRC has offered to pay going forward.

² WRC provides Claimant with 14 hours per month of respite.

7. To determine if Claimant was eligible for an amount greater than 27 hours per month, WRC considered the financial hardship on Claimant's family. WRC reviewed Claimant's mother's 2010 tax return and found that she earns too much money to receive additional assistance. At the hearing, however, Claimant's mother indicated that her 2010 income was temporarily inflated because she had worked overtime last year. Her current income level is lower, because she works a maximum of 24 hours per week. Thus, WRC should have considered that fact in its determination. In addition, WRC's calculation is based upon a "Family Fee Schedule," which it informally adopted from the Department of Education, who uses for similar purposes. This policy is a guideline, and is not binding.

8. When questioned about why Claimant's daycare hours were maintained at 48 hours per month in past years, WRC was not able to relay the information upon which it relied to make that determination. This is because WRC's policy is to destroy any confidential information in a consumer's file for privacy purposes. Thus, it did not have Claimant's financial information from previous years available. Accordingly, WRC was not able to explain why it provided Claimant with 48 hours of daycare per month in 2009, 2010, and 2011, as compared to this year.

9. Claimant's mother testified at the hearing. She pointed out that Claimant's IPP incorrectly stated that she works full-time. Claimant's mother is employed part-time, and does not work more than 24 hours per week. She submitted recent pay stubs to verify this information. The evidence also indicated that Claimant's mother works in the evenings and on weekends.

10. Claimant's mother noted several changes in Claimant's life. He no longer resides in Inglewood with Claimant's father; Claimant and his mother have moved to Riverside County. Claimant's parents have separated, and Claimant's mother is caring for Claimant by herself. Although she is not currently enrolled in school, Claimant's mother plans to attend West Coast University in Ontario beginning in April. Claimant's mother explained the difficulties in caring for Claimant; he needs constant supervision. For example, Claimant still chews on everything that he finds on the floor. Claimant's mother recently found him eating lotion. Claimant is interested in cooking, but does not understand that the hot stove can burn him.

11. Claimant's mother explained that Claimant receives a great benefit from interacting with other children who do not have disabilities when he is at daycare. Claimant is currently enrolled in a special education program at school, and primarily interacts with other children who have special needs. Being at daycare has helped Claimant with skills such as his speech, because he is around other children who do not have difficulty speaking.

12. Claimant is not currently receiving In-Home Support Services (IHSS). Claimant's mother intends to apply for IHSS benefits for Claimant in the near future.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal of regional center's reduction of Claimant's daycare services, as set forth in factual findings 1 through 12, and legal conclusions 2 through 6.

2. Where Service Agency seeks to reduce or terminate a service, it must show that its decision is correct. Here WRC seeks to reduce daycare services, and thus it bears the burden to show that its decision is proper. WRC has not met this burden, as explained below.

3. The Lanterman Act, incorporated under Welfare and Institutions Code³ section 4500; et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

4. Section 4659 states, in pertinent part, that "regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services."

5. Section 4685, subdivision (c)(6) states that "[w]hen purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home."

6. Applying those provisions here, Claimant's appeal must be granted. WRC has not demonstrated that Claimant's needs have changed such that he is no longer eligible for 48 hours per month of daycare. On the contrary, Claimant's current circumstances require that the status quo is kept. Claimant's mother is now his only care provider, and she works in the evenings and on weekends. No other family is available to assist with Claimant's care. The evidence showed that a financial need exists. The Lanterman Act provides for the scenario which Claimant has presented: WRC may pay for daycare, in excess of the amount that a parent would pay for a child without a disability, where financial need is demonstrated and when doing so will enable the child to remain at home. There are currently no generic resources in place to defray the cost of Claimant's daycare. Should Claimant receive IHSS, WRC may re-evaluate the situation at that time.

³ All further references are to the Welfare and Institutions Code.

ORDER

Claimant's appeal is granted. Westside Regional Center may not reduce funding of daycare services for Claimant.

DATED: February 17, 2012

AMY C. YERKEY
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 90 days.