

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CECI C.,

Claimant,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2012020631

DECISION

Administrative Law Judge Dianna L. Albin, State of California, Office of Administrative Hearings, heard this matter in Ukiah, California, on March 20, 2012.

Nancy Ryan, Attorney, represented Redwood Coast Regional Center.

Deanna C., represented her daughter claimant Ceci C., who was also present at the hearings.

The record was closed and the matter was submitted for decision on March 20, 2012.

ISSUE PRESENTED

Is Redwood Coast Regional Center required to fund an additional 42 hours per quarter of voucher respite services?

FACTUAL FINDINGS

1. Ceci C. (claimant) is a 21 year old consumer of Redwood Coast Regional Center (RCRC). She lives at home with her mother, sisters and brother.

2. Claimant has Fraser's Syndrome. Fraser's Syndrome is an inherited autosomal recessive genetic trait. She is mentally retarded and nonverbal. She has a history of seizures for which she takes medication. Claimant's seizures are triggered by her numerous allergies.

She has a mild and unsteady wide-based-gait. Claimant has an in-dwelling catheter. Claimant is on a complete liquid diet and has recently begun to refuse to consume her lunch meal. Claimant is dependent with all self-care tasks and is unable to prepare food. She lacks safety awareness, and requires constant supervision. Claimant's care giving is complicated by her numerous environmental allergies that cause her to suffer seizures.

3. Claimant's mother is her primary caregiver. Claimant has a happy disposition and her mother has been able to provide claimant with a comfortable, chemical free and stable home environment. Claimant has a home based educational program due to her extreme environmental allergies. This program is administered through Multiplicity Therapeutic Services (MTS). Pursuant to the August 2010 Individualized Education Program, Ukiah Unified School District has contracted with MTS to provide an educational/behavioral aide five-hours-per-day for claimant's home educational program. RCRC agreed to fund five-hours-per-day of "respite plus" for school breaks through October 31, 2013, except for the "standard Christmas, Thanksgiving, and fourth of July. Claimant's last day of school is December 31, 2012.

4. Respite, behavioral services and "respite plus"¹ are identified as supports in claimant's December 16, 2011, Home Environment/Family Support objective of her Individual Program Plan. Because of the severity of claimant's needs, RCRC granted an exemption as authorized by Welfare and Institutions Code section 4686.5, and authorized voucher respite at the rate of 48 hours per quarter, "respite plus" services related to on-going behavioral services, at the rate of 46 hours per month and "respite plus" services related to her educational objective, at the rate of five hours per day during school breaks and holidays. Claimant also receives 94 hours of per month of intensive behavior services.

5. Effective January 26, 2012, claimant is receiving In-Home Support Services (IHSS) through the Department of Social Services. Claimant's mother provides all the IHSS services that are funded for claimant. Claimant's IHSS award, according to claimant's mother, provides for 272.9 hours per month that includes Protective Supervision of 127.72 hours and care needs of 145.18 hours per month.² The evidence did not establish the date claimant began receiving IHSS.

6. Pursuant to a Notice of Proposed Action dated January 13, 2012, RCRC notified claimant that RCRC declined to fund an additional 42 hours per quarter of voucher respite services. This appeal followed.

¹ "Respite Plus" is a service provided by RCRC that is an additional support for a program such as intensive behavioral therapy or school breaks, which claimant's mother is not required to be present.

² Documentation as to the total number of hours allotted by IHSS for protective services or care needs has not been provided to the service agency.

7. Jennifer Huddle is a service coordinator at RCRC and has worked with claimant since 2009. In December 2011, claimant's Service Coordinator, Jennifer Huddle, completed the worksheet with claimant's mother. The form instructs that IHSS protective supervision hours are to be considered a generic resource. Based on the worksheet formula, the amount of authorized in-home respite is 46 hours per month of "respite plus" provided by MTS, in addition to the 94 hours of intensive behavioral services provided by MTS. Additionally, five hours per day of "respite plus" is funded while claimant is in school. Claimant's mother noted on the worksheet that claimant was receiving 127.72 hours per month of IHSS protective supervision.

8. Robert Eickmeier, RCRC services manager and Huddle's supervisor, reviewed and approved claimant's Individual Program Plan and the purchases. RCRC considers IHSS Protective Supervision to be a generic resource for respite, because the parent has the option to hire someone to provide the Protective Supervision which would provide a break in care for the parent. RCRC does not consider IHSS Protective Supervision to be respite, but rather IHSS Protective Supervision could be used to meet a respite need. RCRC did not seek to reduce claimant's respite hours, but opted to continue funding 48 hours of voucher respite per quarter. Eickmeier stated that at the time the determination was made to continue purchasing claimant's 48 hours of voucher respite per quarter, she had not qualified for IHSS benefits. If a consumer receives 127.72 hours per month of IHSS protective supervision, based on claimant's respite assessment, as a general rule, RCRC would not have continued to fund 48 hours of voucher respite per quarter.

9. Claimant seeks an additional 42 hours per quarter of voucher respite services. Based on claimant's extreme sensitivity to environmental allergens, claimant's mother is unable to find assistance for claimant. Claimant's mother is exhausted and needs time to take care of herself. Claimant's needs are so "intense" that claimant requires her attention "24 hours a day, seven days a week." Claimant's mother uses the IHSS hours to "keep claimant alive" because claimant does not sleep at night and often experiences seizures.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), the State of California has accepted responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled

under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The Individual Program Plan states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (Welf. & Inst. Code, § 4646, subd. (a).) In addition, regional centers may not fund services that are available through another public agency. This prohibition, contained in Welfare and Institutions Code section 4648, subdivision (a)(8), provides:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Toward this end, regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.” (Welf. & Inst. Code, § 4659, subd. (a).) In addition, Welfare and Institutions Code section 4646.4 requires regional centers when purchasing services and supports to ensure, among other things, the following:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

3. Respite is one type of service provided to consumers. It is defined under Welfare and Institutions Code section 4690.2, subdivision (a), as follows:

“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.

4. As set forth above, RCRC is required by law to consider generic resources and to follow its Purchase of Service policies when providing services and supports. (Welf. & Inst. Code, § 4646.4.) It is determined that RCRC has properly followed its Purchase of Service policies and the Lanterman Act in concluding not to fund an additional 42 hours per quarter of voucher respite services for claimant in light of her receipt of IHSS Protective Supervision.

IHSS Protective Supervision provides funding to provide direct care and supervision for claimant. This funding can be utilized to hire a third party to perform these services. The funding thus serves the dual purpose of providing claimant with supervision while also providing her mother a break from caring for her. Inasmuch as the funding of IHSS Protective Supervision also serves claimant's mother's need for respite, it constitutes an alternative and generic source of funding for respite. The fact that claimant's mother chooses to provide IHSS Protective Supervision instead of hiring a third party to do so does not alter this analysis. Claimant's mother is entitled to provide all of the funded IHSS Protective Supervision for claimant. But if she needs a break from caring for claimant, she must utilize IHSS protective supervision as a resource for this rather than respite funded by RCRC. There is no dispute that claimant's mother has provided remarkable care for her daughter, and deserves the time to take care of herself in order to rejuvenate her spirit. However, RCRC is not required to fund the additional hours of respite, when IHSS hours are available.

5. Consideration has been given to the limitation on the use of IHSS as a generic resource for respite set forth in Welfare and Institutions Code section 4686.5, subdivision (5). This section provides:

A regional center shall only consider in-home supportive services a generic resource when the approved amount of in-home supportive services meets the respite need as identified in the consumer's [Individual Program Plan]

Claimant receives 127.72 hours per month of IHSS Protective Supervision. The most recent identified respite need for claimant at this time is being met by RCRC.

ORDER

The appeal of Ceci C. seeking additional funding of 42 hours per quarter of voucher respite services is denied.

DATED: _____

DIANNA L. ALBINI
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.