

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

In the Matter of:

OAH No. 2012050547

STEVEN B.,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on June 25, 2012, in Pomona, California.

Daniela Martinez, Program Manager, Fair Hearings, represented the San Gabriel/Pomona Regional Center (regional center).

Claimant Steven B. did not appear but was represented at the hearing by his mother.

ISSUE

Should the regional center continue to authorize funding for claimant's brother to provide respite services?

FINDINGS

1. Claimant is an 11-year-old boy who has been diagnosed with Down syndrome and mild mental retardation.
2. Claimant was originally a client of the Eastern Los Angeles Regional Center (ELARC). He transferred to the San Gabriel/Pomona Regional Center in 2009.

3. While he was a client of ELARC, claimant received funding for respite services which were provided by his adult older brother through Volunteers of America. The San Gabriel/Pomona Regional Center (SGPRC) agreed to continue funding respite services when claimant transferred to Pomona. Pursuant to the January 2010 Individual Program Plan, the SGPRC also agreed to allow claimant's brother to continue providing the respite services.

4. On June 13, 2011, claimant's service coordinator met with claimant's parents and informed claimant's parents that, pursuant to the SGPRC purchase of service (POS) policy, claimant's brother would no longer be authorized to provide respite services in the future because he was still residing in the family home. The service coordinator issued a Progress Report dated July 13, 2011, which stated in pertinent part: "Regional Center has authorized the purchase of 30 hours per month of respite care from 4/1/11 to 3/31/14. Currently, the services are being provided by Steven's oldest sibling as an exception to the policy. Parent was notified that this has to change in the near future because the respite sibling is living at home."

5. On May 1, 2012, the regional center issued a Notice of Proposed Action to discontinue its previous authorization for respite services, which allowed the services to be provided by claimant's brother as an exception to SGPRC POS policy. The Notice of Proposed Action states in pertinent part:

Family members residing in the family home are considered natural supports to the person with the disability. SGPRC does not typically fund respite where the person being paid for providing the care of the person with the disability is a natural support to that person. SGPRC agrees that Steven continues to qualify for respite care services. Services may be provided through a worker of the parents' choice, provided that the person does not reside in the family home and can meet the hiring criteria of the respite agency.

6. Claimant appealed the Notice of Propose Action and requested a hearing.

7. Ms. Martinez testified that the SGPRC POS policy prohibits the regional center from funding respite care when the respite provider is a family member who resides in the family home. She further stated that the regional center would continue to fund the respite care provided by claimant's brother if his brother were to move out of the family home. Ms. Martinez cites the following section of the POS regarding respite care:

In determining this need, the regional center shall take into account the family's responsibilities for providing similar services to a child without disabilities. As well, the regional center shall take into account other services and/or activities that are provided that

may also provide family members with relief from the responsibility of continual care. These may include, but are not limited to, school, adult day services, work, day care, extended day/year programs, and In-Home Support Services (IHSS) hours that meet a respite need, such as protective supervision hours.

8. Claimant's mother testified that they prefer claimant's brother to continue to provide the respite care because claimant responds positively to the care provided by his brother. Claimant's mother testified that she is the main care provider for claimant and she needs the break from such a difficult responsibility because of claimant behavior problems. The family has had trouble with other respite care providers in the past. Sometimes these care providers would not show up so claimant's mother couldn't count on them to perform the service when she needed it.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (b),¹ sets forth the various services and supports which may be provided to a regional center consumer. In determining which services and supports are necessary for each consumer, consideration should be given to "the needs and preferences of the consumer or, when appropriate, the consumer's family."

2. Services are to be provided in conformity with the IPP, per Code section 4646, subdivision (d). Consumer choice is to play a part in the development of the IPP.

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., Code sections 4500.5, subdivision (d), 4501, 4502, 4502.1, 4640.7, subdivision (a), 4646, subdivisions (a) and (b), 4648, subdivisions (a)(1) and (a)(2).) A priority is assigned to maximizing the client's participation in the community. (Code sections 4646.5, subdivision (2); 4648, subdivisions (a)(1) and (a)(2).) However, services that are provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (Code sections 4512, subdivision (b), 4640.7, subdivision (b), 4651, subdivision (a), and 4659.)

4. Section 4512, subdivision (b), of the Lanterman Act states in part:

"Services and supports for person with developmental disabilities" means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability

¹ All statutory references are to the Welfare and Institutions Code unless noted otherwise.

or toward the social, personal, physical, or economic habilitation or re-habilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to . . . respite care . . .”

5. The facts in this case call for a weighing and balancing between the needs and preferences of the consumer and the responsibility of the regional center to insure that services are cost effective. First, disallowing claimant’s older brother from providing respite services would not reduce the cost to the regional center as it would pay the same amount for the respite services regardless of the care provider. Further, the language of the regional center’s POS policy as set forth in Factual Finding 7, does not specifically prohibit a family member who resides in the family home from providing respite services.

6. Cause exists to overrule the decision of the San Gabriel/Pomona Regional Center terminating the funding for respite care services provided by claimant’s brother if claimant’s brother continues to reside in the family home. This decision is based on Factual Findings 1 through 8, the testimony of all witnesses, the exhibits, and the aforementioned sections of the Welfare and Institutions Code.

ORDER

The decision of the San Gabriel/Pomona Regional Center, to terminate funding for the respite care services provided by claimant’s brother through Volunteers of America if claimant’s brother continues to reside in the family home is overruled. Claimant’s appeal is granted.

DATED: July 10, 2012

_____/s/_____
HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a 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.