

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

L. C.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2012070561

DECISION

Administrative Law Judge David B. Rosenman, Office of Administrative Hearings, State of California, heard this matter in Culver City, California, on October 2, 2012. Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (Service Agency or Regional Center). Claimant L.C. was represented by a parent. (Initials and titles are used to protect confidentiality.)

During the hearing, and as explained in more detail on the record, a protective order was issued to seal documents and to obscure confidential information such as social security numbers. A tax return has been removed from Exhibit 3 (pages 3 and 4) and is sealed. The matter was submitted for decision on October 2, 2012.

ISSUE PRESENTED

Should the Service Agency pay for 33 hours of respite for Claimant, for the period June 17 to September 6, 2012, in addition to the 267 hours it agreed to pay?

FACTUAL FINDINGS

1. Claimant is a ten year-old consumer of the Service Agency who is eligible for services due to a diagnosis of autism.
2. Based on the diagnosis of autism, Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section

4500 et. seq., referred to as the Lanterman Act).¹ Claimant also receives special education services from her school district. In prior years, Claimant has attended camp during the summer when she is out of school. Grants from a generic resource were received for 2010 and 2011 to assist with the camp cost, however due in part to increased requests for grants Claimant did not receive a grant for the summer of 2012 and did not attend camp. Claimant requested funding for 200 hours of services to cover this period called ESY (extended school year), which was granted by the Service Agency. When the grant for summer camp in 2012 was denied, Claimant requested another 100 hours of services. The Service Agency reviewed the request and determined to grant 67 hours of additional services, based on its conclusion that, under the law for day care services, it should bear only the cost that exceeds the cost of providing day care services to a child without disabilities. The Service Agency determined that Claimant's mother should bear responsibility for 33% of the extra 100 hours requested.

3. On June 14, 2012, the Service Agency sent a Notice of Proposed Action (Exhibit 2) indicating that it would fund 67 additional hours of ESY in addition to the 200 hours previously granted. Claimant filed a timely request for fair hearing requesting 33 hours of additional respite (Exhibit 2). Claimant's mother signed a waiver of time regarding the hearing and decision in this matter (Exhibit 11).

4. The Service Agency has written guidelines concerning day care services for the ESY period, referred to as a Service Standard. Two versions of the relevant Service Standard were included in the evidence, Exhibits 10 and 12, and Ms. Basiri could not state which version was used in making determinations in this matter. Although the other documents and testimony in the case often refer to the services requested as specialized supervision, which is the broader category under which day care services are often found, and respite, it is clear that the proper question in this matter is whether Claimant is entitled to additional day care services for the ESY period. Both versions of the Service Standard state that the Service Agency should bear only the cost that exceeds the cost of providing day care services to a child without disabilities, and that it may pay in excess of this amount when the family can demonstrate a financial need.

5. In reaching its decision to grant an additional 67 hours of services, but not the 100 hours requested, the Service Agency considered Claimant's mother's financial situation by reviewing her federal tax return for 2011. Claimant's mother works part-time as a waitress and as a photographer and has a modest income.

6. Claimant's mother established that there are other financial obligations related to Claimant that would not be evident by reviewing her tax return and should have been considered by the Service Agency to determine financial need for purposes of deciding if additional hours should have been granted. For example, Claimant has a service dog which has required her mother to find an apartment that accepts pets, at a higher than usual monthly

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

rent. Due to her disability and medical conditions, Claimant consults with several physicians for which her mother pays out of pocket costs in addition to coverage under Medi-Cal. There are substantial expenses for prescribed medications with costs beyond insurance coverage. Claimant has specific dietary and allergy restrictions, for which her mother pays higher prices than for the usual child of similar age. Claimant's mother also pays for therapies beyond the services provided by the school district or Service Agency to address Claimant's needs.

7. During the ESY period, Claimant's mother worked 36 shifts as a waitress. She customarily works three shifts per week and must travel to get to work. She was unable to find day care providers for the vendored rate of \$9 per hour. (Although Claimant's mother testified that the actual vendored rate was below \$9 per hour, the Service Agency's charts concerning ESY funding use the \$9 figure (Exhibit 3, p. 5). For purposes of this Decision it is not necessary to use any figure other than \$9.) This past summer, during the time period covered by her request for funding, Claimant's mother paid \$15 per hour for day care, requiring her to payout of pocket costs beyond the vendored hourly rate. When Service Agency funds were exhausted, she paid the entire amount out of pocket. She credibly testified that this added out of pocket expense was over \$2,300. Considering the cost, as compared to what she earned in salary and tips, Claimant's mother was operating at a deficit when she worked over the summer. However, she likes her job and could not stop or significantly reduce her work shifts for fear of losing the job.

8. The Service Agency considered some aspects of Claimant's mother's financial need, by referring to the tax return, and granted an exception to its usual funding policy and Service Standards when it agreed to fund 67 of the 100 extra hours requested. At the hearing, Claimant's mother proved that there were numerous substantial additional expenses incurred related to Claimant's disabilities and medical conditions that were not considered by the Service Agency. This additional evidence supports the conclusion that Claimant was entitled to funding for an additional 33 hours of ESY services for the period June 17 to September 6, 2012.

LEGAL CONCLUSIONS AND DISCUSSION

Jurisdiction and Burden of Proof

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Section 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's proposed denial of funding for a greater number of hours of services. Jurisdiction in this case was thus established. (Factual Findings 1-3.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain additional funding for a service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or

making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Claimant bears the burden of proof regarding her request for an increase in service hours. (Factual Findings 1-4.)

Specialized Supervision, Day Care Services and Hours

3. Under the Lanterman Act, the State of California accepts 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.” (§ 4501.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

4. Day care and child care are some of the specific services available to consumers listed in section 4512, subdivision (b).

5. The statement of parental responsibility for some day care costs in the Service Standards is based on section 4685, subdivision (c)(6), which states: “When 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. Under section 4434, the Department of Developmental Services (DDS) is charged with collecting and reviewing service policies from the various regional centers “to ensure compliance with statute and regulation,” and DDS “shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of [the Lanterman Act] or any regulation adopted thereunder.” Under section 4646.4, subdivision (a), when developing a plan for consumer services, regional centers are to use “an internal process” to ensure that there is conformance with its purchase of service policies, as approved by DDS. The Service Standards on day care services comply with section 4685, subdivision (c)(6).

7. As set forth in Factual Findings 1 through 8, Claimant meets the requirements for an exception to the usual limitations on day care services. The Service Agency recognized and permitted an exception, and granted 67 of the 100 additional hours requested by Claimant’s mother. However, the other 33 hours requested were not provided, and Claimant’s mother was required to pay out of pocket for ESY services. The evidence established that Claimant’s care and supervision needs are significant and that there was a financial need, beyond what was considered by the Service Agency, that justifies granting the additional 33 hours of services that were requested.

ORDER

Claimant's appeal of the Service Agency's decision to deny 33 of the 100 hours of additional ESY services for the period June 17 to September 6, 2012, is granted. The Service Agency shall reimburse Claimant's mother for those 33 hours of ESY services at the rate of \$9 per hour.

DATED: October 17, 2012



DAVID B. ROSENMAN
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.