

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DEBRA Z.,

Claimant,

vs.

REDWOOD COAST REGIONAL
CENTER,

Service Agency.

OAH No. 2012080959

DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on October 16, 2012, in Eureka, California.

Client's Rights Advocate Lynne Page, Attorney at Law, Disability Rights California, represented Claimant Debra Z., who was present at the hearing.

Attorney Nancy Ryan represented Redwood Coast Regional Center.

The record was closed and the matter was submitted for decision on October 16, 2012.

ISSUE

May Redwood Coast Regional Center decrease the number of hours of Supported Living Services provided to claimant in accordance with the terms of the July 25, 2012 addendum to her Individual Program Plan?

FACTUAL FINDINGS

Background to the Appeal

1. Claimant Debra Z. is an adult consumer of Redwood Coast Regional Center (RCRC) based on a diagnosis of cerebral palsy with chronic spasticity. She lives in her own apartment, with services and supports provided to her through various governmental entities, including In-Home Supportive Services (IHSS) and RCRC. Claimant has limited mobility and has an assistance dog.

2. Eric Grigsby, M.D., has been claimant's treating physician at the Napa Pain Institute since April 2001. In a letter dated June 4, 2012, Dr. Grigsby summarizes claimant's medical conditions as follows:

[Claimant] suffers from cerebral palsy resulting [in] chronic spasticity, depression, seizure disorder, and degenerative joint disease, which is sequelae to her spasticity. The spasticity has also caused contracture of the joints requiring multiple surgeries and left some of her joints with limited range of motion. This is one of the pain generators for her chronic severe pain.

[Claimant] is at increased risk of injury from falling due to her joint pain, decreased range of motion, stiff muscles, intermittent swelling and seizure disorder. To treat these chronic conditions she is prescribed potent medications both intraspinally and orally for the spasticity and pain.

3. Gail L. McGlothlen, MS, APRN-BC, CNS, sees claimant monthly for pain management treatment at the Napa Pain institute. Claimant has an adjustable implanted drug pump which contains Fentanyl for pain and Baclofen for spasticity. Because of her conditions, claimant has an increased risk of injury from falling. She is also at risk of getting pressure sores (which she currently has on her buttocks) and for that reason, she should not sit in a chair or lay in bed in one position for more than two hours at a time.

4. Margaret A. Schlatter, M.D., treats claimant for "multiple neurological problems." In a letter dated May 7, 2012, Dr. Schlatter reports that she was evaluating claimant for "a new type of severe vertigo."

5. Claimant has been receiving the maximum hours of in IHSS services. As of the time of claimant's February 3, 2010 IPP, claimant was receiving 272 hours of services through IHSS. In addition to these IHSS services, claimant was receiving 500 hours of Supported Living Services (SLS). Together these hours amounted to more than 24 hours per day. Thus as a result of the combination of these services, claimant had staff 24 hours per day provided for by a combination of IHSS and SLS services. Senior Service Coordinator/Team Leader Rob Enge, M.S.W., has been claimant's service coordinator for

seven years. Enge explained that claimant was awarded the maximum SLS services in order to provide a buffer and to ensure that she had sufficient number of hours for trips to the Napa Pain Institute twice a month. The plan was always to fade her hours over time as appropriate.

6. Because of the amount of SLS hours awarded to claimant, RCRC arranged for an independent assessment of claimant's supportive living needs. The assessment was conducted in February 2012 by Independent Assessor Jennifer Pittam. Pittam has extensive experience in conducting assessments of individuals with developmental disabilities generally, and assessing their supported living needs specifically. She has conducted 74 supported living assessments for a wide number of regional centers through the state. In making her assessment, Pittam met with claimant at her home several times, spoke with her over the telephone several times, spoke with service coordinator Enge, spoke with the SLS vendor, and reviewed claimant's regional center records. Pittam's ultimate recommendation for the appropriate level of SLS services was 90 to 120 hours of SLS in addition to the nine hours per day of IHSS services she was receiving. Pittam believed this amount would service [claimant's] needs even on a "high month" requiring multiple trips to Napa.

In making her recommendation, Pittam reached the following conclusions:

[Claimant] is very resistive to the idea of being without staff at all. However, she will send them out to run errands for her of up to two hours and doesn't have a problem with this. These two positions are inherently contradictory. There is no reason why she can be left alone every shopping day, but not on other days. [Claimant] has the skills needed to be able to [be at] home alone for considerable periods of time, and this would be even more feasible but for some of the choices she has made in terms of furniture

[Claimant] has 9 hours per days (approx.) of IHSS services for housekeeping, laundry, shopping, assistance with transferring and mobility, cooking, etc. [Claimant] chooses to use these hours in higher amounts than allocated in many areas (e.g., shopping, housekeeping, laundry) and therefore "needs" her SLS agency to make up the difference in other areas. While SLS agencies are regularly in the position of having to fulfill "unmet needs" above and beyond what IHSS will fund, there is not sufficient evidence that this is the case for [claimant]. If she were to actually be using IHSS in the amounts allocated, which would still provide her with a reasonably (but not immaculately) clean house, etc., and she would likely have all the support she needs in the other areas.

[Claimant] is entitled to schedule her IHSS hours as she see fits. Several people mentioned that having most of the hours being in the afternoon and evening would probably be helpful, as this is usually when she is in the most pain, has had the most pain medication, etc.

[Claimant] has the necessary skills to spend overnight hours by herself, and the people I talked to all seemed to feel that this was reasonable once she had gotten into bed. [Claimant] can get herself out of bed, into her wheelchair, and out of the house on her own, she can recognize emergency situations and can call 911 or other resources as needed.

Pittam recommended the scheduling of an IPP planning meeting to discuss to decide how to implement changes to claimant's schedule.

7. Following Pittam's assessment, an IPP meeting was held on July 10, 2012. The then SLS provider, Bungalow Supported Living Services, had given claimant a 30-day termination notice, and a new SLS provider, Chance 4 Change, had taken over the provision of SLS services. Claimant continued to receive the maximum number of hours of IHSS services, which were also provided by Chance 4 Change. The team determined to reduce the provision of SLS services, but on a gradual reduction over a 6-month period. Because claimant opposed a reduction of any services, a Notice of Proposed Action was issued.

8. Claimant filed a request for fair hearing, and was granted aid paid pending her appeal. At the hearing on claimant's appeal on July 25, 2012, the parties came to an agreement regarding the reduction of SLS services, and they agreed to record their agreement as an IPP addendum. The IPP addendum of that same date provided for SLS services to be reduced in the following manner:

In September 2012, [claimant's] SLS hours will be reduced by two hours per day, so that she had a total of 60 hours in September without paid assistance. She may schedule those hours with Chance for Change, her SLS agency, in a manner that works for her and her provider.

In October and November 2012, [claimant's] SLS hours will be reduced by a total of 4 hours per day, so that she has a total of 124 hours in October without paid assistance, and 120 hours in November without paid assistance.

In December 2012 and January 2013, [claimant's] SLS hours will be reduced by a total of 6 hours per day, so that she has a total of 186 hours in December without paid assistance, and 186 hours in January without paid assistance.

In February 2013, [claimant's] SLS hours will be reduced by a total of 8 hours per day, so that she has a total of 144 hours in without paid assistance in February. It is expected that this reduction by 8 hours per day will be ongoing, and the number of hours without paid assistance will depend of the number of days in each month thereafter.

In terms of the specific hours of SLS funded per month, it will depend on a number of factors. Assuming [claimant] receives IHSS hours at the current rate of 272 hours per month, RCRC [will] look at the following: total number of hours in the month, hours of IHSS; hours in day program, and hours without paid assistance. The remainder shall be the number of hours of SLS funded by RCRC.

The parties are committed to making this plan work, and so agree to meet regularly to review [claimant's] progress, share information, address concerns and resolve problems. These meetings are not intended to re-open the issue of hour reduction, since the parties have already agreed to the figures in this addendum. . . .

The parties understand that [claimant] plans to begin attending [Trajectory Art Program] in August. The parties agree that time spent in this program does not count toward the hours without paid assistance.

The parties agree that [claimant] should have flexibility in planning her schedule to the extent reasonable and possible, and so she may “bank” hours without paid assistance early in the month to allow her greater flexibility toward the end of the month. The parties agree that it is up to [claimant] and her service provider to schedule the unpaid hours in such a way as to allow [claimant] to maintain herself in her home.

[Claimant] agrees to use a “Life Alert” pendant . . . so that she may summon assistance if she should have an emergency when staff is not present. RCRC will fund this service.

The Appeal

9. Sometime after the July 25, 2012 IPP addendum was implemented, claimant informally requested RCRC to rescind it and to restore her SLS hours to 500 per month. On August 17, 2012, RCRC issued a Notice of Proposed Action which notified claimant that it declined to rescind the July 25, 2012 IPP addendum. Claimant filed a Fair Hearing Request

on August 29, 2012, stating that she did not want her SLS hours decreased as provided for in the IPP addendum. This administrative hearing followed.

10. Claimant began the Trajectory Art Program in August 2012. This art program, which is funded by RCRC, is six hours a day, five days a week. Claimant enjoys this program immensely, as art is one of the most important parts of her life. She enjoys being creative and being with other artists. She has been surprised to see what she has been able to accomplish artistically over her adult life.

Claimant wants to attend this program as often as she is able. She finds that getting out of her home “helps some.” And, she is a “fighter” who does not want to give into her pain. Some days she does not feel well enough to stay the full six hours, and she leaves early. On the days in which her pain level is a “10,” she does not attend at all.

Claimant attends the art program without SLS assistance.

11. RCRC has provided claimant with a Lifeline medical alert pendant. By activating the pendant, claimant has the ability to call for help in an emergency.

12. Claimant has agreed to pursue the “Are you OK?” emergency response program in her community. Through this program, emergency responders will be able to access a key to her home in the event she cannot let them in.

13. RCRC Nurse Sarah Haymes Holmes has been with RCRC for 12 years. She is certified as a developmental disability nurse. Holmes has known claimant since 2001 and is very familiar with claimant’s medical conditions. Holmes has attended many medical appointments with claimant, had worked with her care staff on medical matters, had made many visits to claimant’s home, and she speaks with claimant about twice a week. She is familiar with all of claimant’s medical conditions, and with the need for claimant to have position changes every two hours. Notwithstanding all of claimant’s medical conditions, in Holmes’s opinion, claimant can safely be left alone up to two hours at a time, and she can safely be left alone on multiple occasions each day.

14. Claimant testified that she is doing her best with her life circumstances. Her pain is uncertain. It can “kick in” quickly and unpredictably. On bad days, she feels she needs assistance with transfers. On other days, she is able to do transfers on her own. She is able to get onto her bed by herself, and is adding a bar which will make it easier for her.

Claimant testified that she is comfortable being left alone during the day but for no more than two hours at a time. At night, she takes medications which make her dizzy. She does not sleep well, and often needs help during the night with repositioning and the placement of pillows so she can lie on her side. Claimant testified she has episodes of becoming confused with a drop in her blood pressure.

Claimant is agreeable to having her SLS hours reduced by two hours per day, but not any more. She would like to see the addendum she agreed to set aside.

Discussion

15. Claimant has the burden of establishing that the reduction of SLS hours she agreed to should not be implemented.

16. The evidence establishes that claimant is capable of being left alone up to two hours at a time. Even when she had 24 hour per day coverage, claimant often would send her SLS workers out to run errands that lasted two hours or more. Claimant did not establish that she had difficulties that she could not manage during these periods of time in which she was left alone in her home.

17. During the overnight trips to Napa to attend the Napa Pain Clinic, claimant stays by herself in a hotel room. Her SLS worker stays in a separate room. Claimant did not establish that she had any difficulties that she could not manage when has been left alone in the hotel room.

18. As of the date of the hearing, claimant's SLS hours had been reduced by four hours per day. Claimant did not establish that she has had any difficulties that she could not manage since the implementation of the four hours per day reduction.

19. The medical evidence presented does not support a determination that claimant requires more SLS hours that she agreed to in the July 25, 2012 IPP addendum. The testimony of RCRC Nurse Holmes was found to be the most persuasive regarding claimant's ability to be safely left alone for two hours per day, multiple times a day. Nurse McGlothlen did not offer an opinion regarding claimant's ability to be left alone. In his June 4, 2012, letter, Dr. Grigsby "strong recommends" 24-hour a day care for claimant to minimize risk of injury, but he did not express any opinion on whether claimant could safely be left alone in two hour increments with the emergency resources she has. Dr. Shatter's assessment of claimant's needs for caregiver hours in her May 7, 2012 letter is not found persuasive on the issue at hand. The medical evidence does not establish that claimant has a current problematic vertigo condition.

20. Claimant is concerned about the ability of Change 4 Change to staff reduced SLS hours. She did not establish, however, the reduction in SLS hours will make the staffing of services impossible. Change 4 Change Consumer Facilitator Ronda Kelley stated only that she has not yet tried to schedule workers with breaks during the evening hours. While employees prefer four hour shifts, she is working to create two hour shifts. In addition, she believes she may be able to schedule a two-hour break during the night shift.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500, et seq.) 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 Individual Program Plan (IPP) for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.)

2. The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.) The purchases of services and supports by regional centers are driven by the IPP, which must specify:

A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic resources or other agencies in order to achieve the individual program plan goals and objectives, and identification of the provide or providers of service responsible for obtaining each objective The plan shall specify the approximate start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(Welf. & Inst. Code, § 4646.5, subd. (c).) A regional center may only purchase services and supports that are consistent with stated goals and objectives in the IPP. (Welf. & Inst. Code, § 4646.5, subd. (c), & 4648.)

3. The amount of supported living services provided to claimant was determined by agreement, and were incorporated into her IPP addendum. Because claimant wishes to increase the amount of SLS hours provided to her, she bears the burden of proof as to each fact which is essential to her claim in this proceeding. And, because there is no statutory provision that provide otherwise, the standard of proof applied is preponderance of the evidence. (Evid. Code, § 500.)

It is concluded that claimant has not sustained her burden of proving that the agreed upon reduction in SLS hours should not be implemented. (Findings 15 to 20.) Claimant concerns about the reduction in the amount of SLS support she has been receiving are understandable as this presents a change in her current routine with which she is very comfortable. She has concerns about potential problems, and what may come to pass. Every problem cannot be anticipated, however, and she has flexibility in how she chooses to use

both her IHSS and her SLS hours. She has been provided with new emergency resources, including the Lifeline emergency response system, and she other community emergency resources available to her.

Should future problems arise, claimant has her case manager and planning team to work with her. But on this record, claimant has not presented sufficient evidence which would support a basis on which to set aside her agreement to the reduction of the SLS hours as set forth in the July 25, 2012 IPP addendum.

ORDER

The appeal of Debra Z. is denied.

DATED: November 1, 2012

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.