

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANDREW H.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012090535

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on October 1, 2012, in Alhambra, California.

Noriko Ikoma represented the Eastern Los Angeles Regional Center (ELARC or regional center).

Claimant Andrew H. was represented at the hearing by his mother.

ISSUE

Should ELARC reimburse claimant's family for expenditures for personal assistant services for claimant?

FACTUAL FINDINGS

1. Claimant is a 12-year-old regional center consumer who has been diagnosed with autism and seizure disorder.

2. Claimant has exhibit numerous behaviors such as elopement, temper tantrums, throwing himself on the floor, throwing items, talking loudly in public and difficulty with emotional regulation.

3. Claimant has a history of seizures but over the years they have reduced in number and intensity. This past summer, claimant has had a recurrence of seizures, which have been more serious. Claimant's mother testified that claimant had grand mal seizures on four separate occasions during this past summer. Claimant was hospitalized after the first serious seizure he had on July 27, 2012. He stayed in the hospital for three hours for observation. Based on this incident, claimant's mother felt he needed a personal assistant who would know how to react in the event claimant had another seizure.

4. Claimant was scheduled to attend summer school but claimant's mother felt that the summer school program was not structured and therefore not appropriate for claimant. Rather than enroll claimant in summer school, claimant's mother hired Eva Hsieh, a personal assistant to care for claimant from June through September 2012. Claimant's mother provided records that the personal assistant worked 408 hours over the summer and was paid \$7,360.

5. This past summer, claimant's mother requested reimbursement from the regional center for the payments she made to Ms. Hsieh for the services she provided as a personal assistant during the summer of 2012.

6. On July 25, 2012, ELARC issued a Notice of Proposed Action denying claimant's request for funding to reimburse claimant's family for the personal assistant services provided by Eva Hsieh. Claimant appealed the denial of claimant's request for reimbursement.

7. The regional asserted that the request should be denied because claimant's mother did not seek regional center approval before hiring Ms. Hsieh. In the alternative, the regional center argues that if reimbursement is ordered, it should only include the months of August and September because during the months of June and July, claimant was eligible for an extended school year lessening the need for a personal assistant during those months. Under this alternative resolution, the regional center would be required to fund a total of 178 hours at the going rate of \$18 per hours, for a reimbursement total of \$3,204.

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

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

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 Individual Program Plan (IPP), per Code section 4646, subdivision (d). Consumer choice is to play a part in the construction 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 §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subds. (a) and (b), and 4648, subds. (a)(1) and (a)(2).) It should be noted that a priority is assigned to maximizing the client's participation in the community. (Code §§ 4646.5, subd. (2), and 4648, subds. (a)(1) and (a)(2).)

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 or toward the social, personal, physical, or economic habilitation or rehabilitation 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, . . . personal care, . . .

5. Services provided must be cost effective (§ 4512, subd. (b), *supra*), 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. (See, e.g., Code §§ 4640.7, subd. (b), 4651, subd. (a), and 4659.) Further, in monitoring services and support providers, a regional center should be responsive to consumers but it must also minimize duplication of services. (Code § 4697.) Pursuant to the above cited statutes, a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

6. The facts in this case call for a weighing or balancing between the needs and preferences of the consumer (and his parents) and the responsibility of the regional center to insure that services are cost effective. The regional center's suggested alternative resolution of this matter is a reasonable disposition of this case. The school district offered claimant the opportunity to participate in an extended school year for the months of June and July. Claimant's mother chose not to take advantage of this program. Therefore, claimant's request for reimbursement for the months of June and July should be denied. However, because of claimant's seizure episodes during the summer, claimant's family is entitled to reimbursement for the months of August and September.

7. Cause exists to order the Eastern Los Angeles Regional Center to provide funding to reimburse claimant for expenditures for a personal assistant for the months of August and September. This decision is based on Factual Findings 1 through 7, the testimony of all witnesses, exhibits 1 through 17 and A through H, and Welfare & Institutions Code Sections, 4501, 4512, 4640.7, subdivision (b), 4646, 4646.4, 4648, subdivision (a)(8), and 4651, subdivision (a), 4659, and 4697.

ORDER

The Eastern Los Angeles Regional Center shall reimburse claimant and/or his family a total of \$3,250 for payments made to Eva Hsieh for providing personal assistant services for claimant during the months of August and September. Claimant's request for reimbursement for personal assistant services for the months of June and July is denied.

DATED: October 16, 2012



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.