

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DILLON H.,

Claimant,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2012100465

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 13, 2012, in San Leandro, California.

Claimant Dillon H. was present and was represented by his mother.

Kristin N. Casey, Attorney at Law, represented North Bay Regional Center (NBRC).

The record closed on November 13, 2012.

ISSUE

Whether NBRC is required to pay for the College Internship Program (CIP) for Claimant.

FACTUAL FINDINGS

1. Claimant, born September 22, 1992, is currently 20 years of age. He lives in Santa Rosa with his family. Claimant receives services from NBRC pursuant to a diagnosis of autism in accordance with his Individual Program Plan (IPP).

2. Claimant's most recent IPP is dated November 10, 2010. An addendum to the IEP was executed on September 12, 2012. It discusses a meeting held at that time concerning planning for Claimant's continued educational needs.

3. Following his high school graduation in 2011, Claimant twice applied to the College to Career program (C2C), which is held at the Santa Rosa Junior College under the auspices of the state Department of Rehabilitation (DOR). His applications were not accepted as he did not follow through as required. According to the program, Claimant failed to respond to telephone messages, and he "was deferred." Claimant disputes knowingly failing to return calls, but in any event, he was not accepted into the program.

4. Claimant's mother searched for other programs that might fit Claimant's needs and located the College Internship Program (CIP), which is based in Berkeley. Claimant was assessed by CIP staff and seven areas of need were identified: social thinking; emotion management and coping; career support; residential support; nutrition; and academic support. CIP developed a comprehensive plan for Claimant designed to address his needs. The summary is as follows:

Through addressing the above Areas of Need with the CIP program [Claimant] will be able to enhance his independent living skills of cooking, cleaning, emotion management, coping, social thinking, time management, and nutrition. In addition to independent living skills, [Claimant] will also be able to continue exploring and developing his academic and career skills. CIP would provide support to [Claimant] to continue monitoring his progress and helping him enhance these skills. Through participating in our program [Claimant] has the opportunity to enhance and also develop the necessary skills to bring him success as an adult.

5. Claimant wants to attend the CIP program because he believes it will keep him motivated and wanting to continue. He is feeling very sad and lonely at present, and feels that participating in the CIP program would change this. Claimant explained that there are two paths, and that he chooses the CIP path. He feels that if NBRC would pay for the CIP program, he would be happy and his needs would be satisfied.

Claimant's mother testified that Claimant suffers from Asperger's syndrome and that he responds very well to structure. She feels that he needs to have the type of structure that

is provided by the CIP program. Although some of the services provided by NBRC have been helpful, she believes they are not consistent or sufficiently integrated.

6. The CIP program is three years in length, and the annual cost is \$73,500.

7. NBRC denied Claimant's request to fund the CIP program. Instead, it offered a plan based in the Santa Rosa community that would cost approximately \$14,016 per year. (In the alternative, NBRC has offered to pay the same amount should Claimant decide to enroll in CIP or another program out of the NBRC catchment area.) Claimant appealed the denial and this hearing followed.

8. The services NBRC would provide and pay for on Claimant's behalf through vendors in Sonoma County would address the same needs as identified by the CIP program at considerably less expense. An assessment would first be conducted of Claimant's goals and needs. NBRC, through its vendors, could then provide assistance with counseling, obtaining housing, and living independently. The services would enable Claimant to live outside the family home with appropriate support, including teaching him to shop for groceries, cook, and pay his bills. Bus vouchers would be provided for transportation. The C2C program at Santa Rosa Junior College is available to Claimant, through the Department of Rehabilitation. That program would address Claimant's academic and vocational needs. Claimant's NBRC case manager would oversee the plan and be available to advocate for Claimant.

The C2C piece of the plan would not be available until the new school session beginning in the fall of 2013. In the meantime, however, Claimant could enroll in college classes and receive help from the school's disability resource department. And work could begin on locating housing, counseling could be instituted, and other services provided to assist Claimant in the transition, if he chose this path.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act:

[I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place:

A regional center may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP]

(Welf. & Inst. Code, § 4648, subd. (a)(3)).

4. A particular IPP notwithstanding, the direct purchase of services by regional centers is restricted in many respects. Regional centers are specifically charged to provide services in the “most cost-effective and beneficial manner” (Welf. & Inst. Code, § 4685, subd. (c)(3)) and with “the maximum cost-effectiveness possible” (Welf. & Inst. Code, § 4640.7, subd. (b)). To duplicate a service available elsewhere to a consumer is obviously not a cost-effective use of public funds. Accordingly, regional centers are required to “first consider services and supports in the natural community” (Welf. & Inst. Code, § 4648, subd. (a)(2).)

5. Services available through other agencies are commonly referred to as “generic resources.” In Claimant’s case, services offered through the DOR and Santa Rosa Junior College are generic resources available to Claimant. In addition, the plan devised by NBRC is much less expensive than the CIP program.

6. It is understood that Claimant and his mother prefer the CIP program, and their wishes are to be both considered and respected. But in these circumstances, it would violate the law for NBRC to ignore available community resources, and to pay for a very expensive private program instead. Accordingly, his appeal must be denied.

ORDER

Claimant Dillon H.'s appeal is denied.

DATED: November 20, 2012

MARY-MARGARET ANDERSON
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.