

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of the Appeal of:

CLIMB, INC.

Appellant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013020189

PROPOSED DECISION

This matter was assigned to Administrative Law Judge Coren D. Wong, Office of Administrative Hearings (OAH), State of California, for decision pursuant to California Code of Regulations, title 17, sections 56064 and 56065.

M. Elaine Henne, Director of Finance, represented CLIMB, Inc. (CLIMB).

Elizabeth Harrell, Information and Training Unit Supervisor, represented Eastern Los Angeles Regional Center (ELARC).

The record was closed and the matter was submitted for decision on February 27, 2013, pursuant to California Code of Regulations, title 17, sections 56064, subdivision (d)(1), and 56065, subdivision (a).

PROCEDURAL HISTORY

1. In a letter dated January 13, 2012, ELARC informed CLIMB that a recent review of ELARC's records showed that it had overpaid CLIMB a total of \$31,618.73 for providing services to consumer S.B. during the period of August 2011 through January 2012. ELARC's stated reason for overpayment was "authorization canceled effective 8/22/11, consumer hospitalized since 8/22/11."

2. On July 26, 2012, ELARC issued a Corrective Action Plan (CAP) based on the overpayment, alleging that CLIMB failed to comply with the terms of S.B.'s Admission Agreement and billed for services that were not provided. Specifically, the Facility Corrective Action Report described the alleged deficiencies as follows:

A substantial inadequacy as per Title 17 of the California Code of Regulations § 56054(a)(5) failure to comply with the terms of the consumer's Admission Agreement, specifically item 2 and contingencies stated on page 3 of 3.

Item 2 of the admission agreement requires that the residential facility abide by all regulations. Section 54326(a)(10) requires vendors to bill only for services that are provided. CLIMB to the contrary presented the regional center with electronic billing that showed [S.B.] as present, rather than in a skilled nursing facility. CLIMB should have indicated absent and then indicated the code for temporarily in health facility. As a result, regional center purchase of service department did not discuss cancelling services believing that [S.B.] continued in residence at CLIMB ARF III. Therefore the ID team did not make a determination that [S.B.] would or would not return to the facility.

After item 22, the admission agreement states that the obligation of the regional center to make payments ... IS ALSO CONTINGENT UPON PROVISION OF CARE AND SERVICES IDENTIFIED IN THE RESIDENT'S IPP, THE REGIONAL CENTER APPROVED PROGRAM DESIGN, AND THE PROVISIONS OF THIS AGREEMENT. CLIMB did not provide those services, as the consumer was not residing at the facility.

(Emphasis original.)

3. On August 15, 2012, CLIMB appealed the CAP, arguing that the new billing process did not allow CLIMB to enter a "code" indicating that S.B. was temporarily absent from the facility due to hospitalization, there was no Interdisciplinary Team meeting at which the decision to terminate S.B.'s placement at the Russell House was made, CLIMB staff provided services for S.B. while she was hospitalized and then convalescing in a skilled nursing facility, and the law entitled CLIMB to full payment during S.B.'s absence because her absence was due to hospitalization and her "bed" was not occupied by another resident.

4. An evidentiary hearing on CLIMB's appeal was held on October 23, 2012. On December 19, 2012, Ms. Harrell issued a written decision on behalf of ELARC

modifying the CAP by holding CLIMB liable for only one-half of the overpayment – \$15,809.36. Ms. Harrell provided the following explanation for the reduction:

While CLIMB staff have expressed that they deeply cared for [S.B.] and that they provided some services to her, visited with her, and kept in communication with health care staff while she was absent from CLIMB and was hospitalized then subsequently placed in the SNF, there is a need to acknowledge in this ruling that the billing for her bed while she was absent for a prolonged placement was an oversight on their part. However, by not initiating discussion for an ID team to convene in a timely manner regarding this issue, ELARC must assume some responsibility for this oversight as well.

Given careful review and consideration of the available information and in accordance with the [*sic*] Title 17 CCR Section 54382 (c) [*sic*] the Eastern Los Angeles Regional Center makes the ruling that the decision rendered in the July 26, 2012 correspondence from ELARC Community Services Specialist, Doris Weis, is upheld with the following condition: CLIMB is not responsible for full reimbursement of the overpayment (\$31,618.73) made by ELARC for the period of time (August 22, 2011 through January 12, 2012) that [S.B.] was hospitalized and subsequently placed in a Skilled Nursing Facility (SNF). CLIMB is responsible for 50% reimbursement of this overpayment (\$15,809.36).

5. On January 3, 2013, CLIMB appealed Ms. Harrell's decision to the director of the Department of Developmental Services (department).

6. On January 24, 2013, OAH received the department's request to conduct this appeal. On February 19, 2013, OAH served the parties with an Acknowledgment of Appeal; Request for Documentation and Appeal File instructing CLIMB to, if it had not already done so, submit a copy of its appeal and supporting documentation. OAH also requested a copy of ELARC's appeal file.

7. On February 27, 2013, OAH received ELARC's appeal file. CLIMB did not submit any additional documentation by the deadline specified in the Acknowledgment of Appeal; Request for Documentation and Appeal File.

ISSUE

Is CLIMB entitled to payment for services provided to S.B. from August 17, 2011, through January 15, 2012, a period during which she was temporarily absent from the

Russell House due to her need for inpatient treatment at a health facility, at the monthly rate established by the Department of Developmental Services?

EVIDENCE CONSIDERED

OAH received the following evidence, all of which is included in the record and was considered in reaching the decision in this matter:

1. Exhibit 1: February 22, 2013 correspondence from Elizabeth Harrell to William D. Young with the following attachments:
 - a. February 20, 2013 correspondence from Elizabeth Harrell to OAH
 - b. July 26, 2012 correspondence from Doris Weis to William D. Young with attachment
 - c. August 15, 2012 correspondence from M. Elaine Hanne to Gloria Wong with attachments;
 - d. September 7, 2012 correspondence from Elizabeth Harrell to William D. Young
 - e. United States Postal Service proof of delivery information;
 - f. September 17, 2012 correspondence from M. Elaine Hanne and Syuli Rumagit to Elizabeth Harrell with attachments
 - g. United States Postal Service Certified Mail Receipt
 - h. October 5, 2012 correspondence from Elizabeth Harrell to Syuli Rumagit
 - i. October 16, 2012 correspondence from Doris Weis to William D. Young
 - j. October 17, 2012 correspondence from Elizabeth Harrell to Syuli Rumagit
 - k. Admission Agreement
 - l. Special Incident Report
 - m. Community Living Arrangement (CLA) Quarterly Review Form
 - n. October 22, 2012 correspondence from William D. Young to Elizabeth Harrell
 - o. November 19, 2012 correspondence from Margarita Duran to William Young
 - p. I.D. Notes;
 - q. United States Postal Service tracking information;
 - r. December 19, 2012 correspondence from Elizabeth Harrell to Syuli Rumagit with attachments
 - s. January 7, 2013 correspondence from M. Elaine Hanne to Elizabeth Harrell
 - t. January 10, 2013 correspondence from Elizabeth A. Harrell to Elaine Harrell

2. Exhibit 2: January 3, 2013 correspondence from William Young and Syuli Rumagit to Terrie Deladillo with the following attachment:
 - a. December 19, 2012 correspondence from Elizabeth Harrell to Syuli Rumagit¹

FACTUAL FINDINGS

1. CLIMB is an organization that serves developmentally disabled blind and visually impaired adults. It operates adult residential facilities in five single family homes located throughout the San Gabriel Valley in Southern California, and is a vendor authorized to provide services to consumers who are receiving services from ELARC.

2. S.B. was a consumer receiving services from ELARC until she passed away on September 30, 2012. She was totally blind, relative to retrolental fibroplasia, with a diagnosis of profound retardation and schizophrenia, chronic undifferentiated type.

3. At all times relevant to this appeal, S.B. lived in one of CLIMB's adult residential facilities known as the "Russell House" in Monterey Park, California, except for the period of August 17, 2011, through January 15, 2012. During that period, she was hospitalized and then convalescing in a skilled nursing facility before returning to the Russell House on January 16, 2012. ELARC terminated S.B.'s placement at the Russell House on September 20, 2012.

4. CLIMB staff reported S.B.'s hospitalization to ELARC on August 22, 2011, five days after she was admitted. A Special Incident Report belatedly prepared by ELARC on October 15, 2012, documented communications between staff at CLIMB and ELARC about the status of S.B.'s placement at the Russell House during her hospitalization and subsequent convalescence as follows:

SC [service coordinator] maintained ongoing communication with Terry Del Mundo, Climb ARF 3 administrator, regarding the status of her placement at Climb ARF 3. SC discussed consumer placement status with Climb administrative staff on 1/13/12, 12/06/11 and 10/13/11. No indications were provided by medical specialists nor Climb administrative staff that [S.B.] would not be able to eventually return to Climb ARF 3.

As a result of [S.B.] now requiring Colostomy care and licensing issues related to need for increased care, SC indicated to Climb administrative staff that [S.B.] will require a Restricted Health Care Condition Plan (colostomy care qualifies as restricted health care condition under California Code of

¹ The remaining attachments to the January 3, 2013 correspondence were duplicative of documents included in Exhibit 1 and therefore were not separately listed.

Regulations, Title XXII) prior to her readmission to Climb ARF 3. SC explained that licensee is required to develop a written Restricted Health Care Condition Plan to address needs and services for colostomy care. SC provided Climb ARF 3 administrative staff with specific licensing requirements for written Restricted Health Care Condition Plan coming from California Code of Regulations, Title XXII. A completed copy of the plan was reviewed by both SC and Supervisor Margarita Duran on 1/13/12.

5. While S.B. was hospitalized and then convalescing in a skilled nursing facility, CLIMB staff continued to provide services to her. For instance, staff provided basic general services such as laundry and between meal snacks, initiated social activities by bringing S.B.'s roommates from the Russell House to visit, and served as the primary contact regarding S.B.'s care. CLIMB staff continued to submit electronic billings to ELARC for those services. Due to changes in ELARC's billing procedures, however, CLIMB billed for those services using a billing code that indicated S.B. was present at the Russell House because there was no billing code to indicate a temporary absence due to hospitalization. No other consumer occupied the vacancy caused by S.B.'s temporary absence from the Russell House.

6. At no time during the period from August 17, 2011, through January 15, 2012, did an Interdisciplinary Team meet to discuss the possibility of S.B. not returning to the Russell House or the termination of her placement there.

7. The evidence established that CLIMB staff provided services to S.B. that were approved by ELARC and authorized by her IPP during the period of August 17, 2011, through January 15, 2012. ELARC does not contend otherwise. Instead, it argues that CLIMB violated S.B.'s Admission Agreement by billing for services when she was absent from the Russell House. But her absence, which was temporary, was due to her need for inpatient treatment at a hospital and subsequent convalescence at a skilled nursing facility. No other consumer occupied the vacancy at the Russell House created by S.B.'s absence.

ELARC also argues that CLIMB used a billing code which indicated that S.B. was present at the Russell House. Therefore, ELARC argues, it did not know to schedule an Interdisciplinary Team meeting to discuss the status of S.B.'s placement. Such argument is belied by the Special Incident Report dated October 15, 2012, which states the following:

SC maintained ongoing communication with Terry Del Mundo, Climb ARF 3 administrator, regarding the status of her placement at CLIMB ARF 3. SC discussed consumer placement status with Climb administrative staff on 1/13/12, 12/06/11 and 10/13/11. No indications were provided by medical specialists nor Climb administrative staff that [S.B.] would not be able to eventually return to Climb ARF 3.

Furthermore, CLIMB candidly admitted that it made a billing error and explained that at the time there was no billing code for providing services during a temporary absence due to inpatient treatment at a health facility. Such explanation was uncontradicted and credible.

8. As discussed below, CLIMB is entitled to payment for services provided to S.B. from August 17, 2011, through January 15, 2012, at the monthly rate established by the department because CLIMB continued to provide services to S.B., her absence from the Russell House was temporary and due to the need for inpatient treatment at a health facility, no other consumer occupied the vacancy caused by her absence, and an Interdisciplinary Team never decided to terminate her placement at the Russell House. Therefore, there was no “overpayment” to CLIMB, and there is no legal basis for requiring CLIMB to reimburse ELARC \$31,618.73, or any portion of that amount.

LEGAL CONCLUSIONS

1. A “substantial inadequacy” includes the “failure to comply with the terms of the consumer’s Admission Agreement.” (Cal. Code of Regs., tit. 17, § 56054, subd. (a)(5).) S.B.’s Admission Agreement required CLIMB to abide by all applicable regulations. Additionally, the Agreement limited the services for which CLIMB could bill ELARC to only those which have been approved by ELARC, are identified in the consumer’s Individual Program Plan (IPP), and have actually been provided.

2. California Code of Regulations, title 17, section 54326, subdivision (a)(10), allows a vendor to bill only for those services that have been authorized by the regional center and actually provided to one of its consumers.

3. A regional center is required to pay its vendors on a monthly basis and at a rate established by the Department of Developmental Services for providing residential services to the regional center’s consumers. (Cal. Code of Regs., tit. 17, § 56917, subd. (a).) If a consumer is temporarily absent from the facility for 14 days or less during a particular month, “the established rate shall be paid for the full month” (Cal. Code of Regs., tit. 17, § 56917, subd. (h).) And if the temporary absence is due to the consumer’s need for inpatient care in a health facility, the regional center must pay the established rate, regardless of the length of absence, until another consumer occupies the vacancy created by the temporary absence or until the Interdisciplinary Team makes the decision that the consumer will not return to the facility. (Cal. Code of Regs., tit. 17, § 56917, subd. (h)(1).) A “health facility” includes a skilled nursing facility. (Health & Saf. Code, § 1250, subd. (c); *Ibid.*)

4. As discussed in Factual Findings 7 and 8, CLIMB staff continued to provide services to S.B. while she was hospitalized and then convalescing in a skilled nursing facility from August 17, 2011, through January 15, 2012. No other consumer occupied the vacancy created by S.B.’s temporary absence from the Russell House, and the Interdisciplinary Team never met to discuss terminating her placement at the facility. Therefore, CLIMB was not

overpaid for services provided during that period, and there is no basis for requiring it to reimburse ELARC \$31,618.73, or any portion of that sum.

ORDER

Appellant CLIMB, Inc.'s, appeal from the December 19, 2012 decision rendered by the executive director of the Eastern Los Angeles Regional Center is GRANTED. That decision is REVERSED, and CLIMB, Inc., owes the Eastern Los Angeles Regional Center nothing.

DATED: March 12, 2013

COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings