

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

A.M.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2013030370

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on June 13, 2013, in Concord, California.

Mary Dugan represented Regional Center of the East Bay (RCEB), the service agency.

Claimant A.M. was represented by her mother, who is her conservator.

The record was closed and the matter was submitted on June 13, 2013.

ISSUES PRESENTED

Whether claimant A.M. is entitled to day care services on an “aid-paid pending” basis, from September 30, 2012, the date those services were terminated, and continuing through the pendency of this appeal.

Whether RCEB is obligated to provide day care services to claimant.

FACTUAL FINDINGS

1. Claimant A.M. is a 27-year-old woman who is eligible for regional center services due to epilepsy and cognitive deficits. She carries other medical diagnoses as well. Claimant lives at home with her mother, who is her conservator, and her father and younger sister.

2. Claimant's most recent Individual Program Plan (IPP), dated September 16, 2011, provides that RCEB will fund A.M.'s participation in a day program (CAP Concord Adult Development Center); in-home respite at the rate of 90 hours per quarter; and "vouchered" day care at an approximate volume of 161 hours per month. Under vouchered day care, claimant's parents select and pay the day care provider, and RCEB reimburses them. At the time of the IPP, claimant's mother worked outside the home. (Claimant's father is disabled and does not work.) Day care was provided to supervise claimant in the morning, before her day program began, and in the afternoon, after her day program ended, while her mother was at work.

3. On September 9, 2012, case manager Doris Crumly met with claimant and claimant's mother for an annual review of the IPP. At that time, claimant's mother stated that she was off work, awaiting surgery for carpal tunnel syndrome.

Crumly told claimant's mother that, because she was not working outside the home, RCEB could not continue to fund day care for A.M. RCEB Purchase of Service Policy #3405.2 defines "day care as care and supervision for adolescents and adults ... who have specialized care needs and whose parent/parents/care givers are engaged in employment, education leading to employment or vocational training that can only occur beyond the consumer's regular school day/day program." Crumly prepared an addendum to claimant's IPP, dated September 12, 2012, which provided in part: "Both parents are now at home due to disability. Day care will end effective 9/30/12. Family will notify [case manager] if they resume work." Claimant's mother agreed to the addendum.

4. At some time after entering into the IPP addendum on September 12, 2012, and prior to March 5, 2013, Contra Costa County reduced claimant's In-Home Supportive Services hours from 224 hours per month to 54 hours per month. At that time, claimant's mother was her IHSS provider.

5. On March 5, 2013, claimant filed a Fair Hearing Request, challenging the termination of her day care services. At hearing, claimant's mother testified that she filed a Fair Hearing Request because, when IHSS cut her daughter's hours, she "knew [she] needed more help."

6. Claimant's mother contends that claimant is entitled to the continuation of day care services from September 30, 2012, through the date of this decision – referred to as "aid-paid pending" – because claimant's mother "did not know about [claimant's] rights" when she signed the IPP addendum, and did not know she could request a hearing at that

time. The evidence does not support claimant's contention. Claimant's mother agreed to the September 12, 2012 IPP addendum, which terminated day care services effective September 30. She consented to the termination of those services because she thought IHSS would continue to provide her with the service hours she felt she needed. It was only after IHSS reduced claimant's hours, that claimant asked to restore her day care services.

7. In addition to seeking aid-paid pending, claimant seeks day care services going forward. Claimant does not meet the regional center's criteria for day care services, as neither of her parents is engaged in employment, education leading to employment, or vocational training, that can only occur outside the hours of claimant's day program.

8. At the conclusion of the June 13, 2013 hearing, claimant's mother stated that her family would be moving to San Diego County three days later, on June 16. Claimant has not sought any pre-transfer planning services from RCEB. No other evidence was submitted concerning claimant's current living arrangements.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts "a responsibility for persons with developmental disabilities and an obligation to them which it must discharge."¹ The Lanterman Act provides 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.) Regional centers are required to carry out the state's responsibility to the developmentally disabled. (§ 4501.)

2. The services and supports to be provided by the regional center are set forth in the consumer's IPP. (§ 4646.5, subd. (a)(4).) Regional centers are obligated to review all IPP's on a regular basis to determine whether planned services have been provided, whether objectives have been fulfilled, and whether the consumer and the consumer's family are satisfied with the implementation of the IPP. (§ 4646.5, subd. (a)(6).) At each scheduled review of an IPP, or whenever an IPP is modified, regional centers must follow an "internal process" to ensure that the IPP conforms to purchase of service policies. (§ 4646.4.) An IPP can be modified by the planning team following the same process used to develop an IPP, "in response to the [consumer's] achievement or changing needs." (§ 4646.5, subd. (b).) If, after a planning meeting, the consumer does not consent to the changes proposed by the regional center, the regional center must issue a Notice of Proposed Action and inform the consumer of her appeal rights. (§ 4710, subd. (a)(1).)

¹ All statutory citations are to the Welfare and Institutions Code.

3. If a consumer files a timely request for fair hearing following the issuance of a Notice of Proposed Action, the consumer is entitled to a continuation of the disputed services until a final administrative decision on the appeal is issued. (§ 4715, subd. (a)(3).)

4. These principles demonstrate that claimant is not entitled to day care services on an aid-paid pending basis. In the September 12, 2012 IPP addendum, claimant consented to the termination of day care services effective September 30, 2012. (Findings 3 & 6.) Because claimant consented to the termination of those services, no Notice of Proposed Action was required.

5. The evidence fails to establish that claimant is eligible to receive day care services. It appears that, at this time, claimant has moved to the catchment area of another regional center, and her living arrangements are unknown. But, even if claimant were presently residing within the RCEB catchment area, she would not meet the requirements of RCEB's purchase of service policy for day care. Neither of claimant's parents is employed, or engaged in education or vocational training, during hours outside of claimant's day program.

ORDER

The appeal of claimant A.M. from the regional center's denial of day care services, and from its denial of day care services on an aid-paid pending basis, is denied.

DATED: _____

DAVID L. BENJAMIN
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 90 days.