

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2013041084

B.P.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Kern Regional Center, in Tehachapi, California, on July 23, 2013.

G.P. and M.P., Claimant's father and mother, appeared on behalf of Claimant B.P. (Claimant)¹

Cherylle Mallinson, Interim Director of Community Services, represented Kern Regional Center (KRC or service agency.)

Oral and documentary evidence was received and argument made. The record was held open until August 13, 2013, in order for Claimant to submit additional documents. Those documents, which included checks paid to their chosen respite provider, and a letter, were marked collectively as exhibit C-2. Thereafter, the record was closed and the case was submitted for decision on August 13, 2013.

ISSUE

The parties stipulated that the following issue is to be decided by the ALJ:

Shall the service agency be ordered to reimburse 30 hours per month of respite services at a rate of \$9.50 per hour from March 13, 2013, through August 31, 2013?

¹ Claimant and their family members are referred to by their initials or family titles to protect their confidentiality.

FACTUAL FINDINGS

1. Claimant is a 9 year-old boy and he resides with his father, mother, and brother (family). He is a consumer of the service agency by reason of his diagnosis of Autism.
2. Claimant filed a fair hearing request on or about April 26, 2013, after KRC denied Claimant's request for KRC to fund Claimant's chosen respite provider.
3. The dispute in this matter began when Claimant's prior respite provider stopped working for the family in March 2013. Thereafter, the family found Taylor, a 17 year-old boy who gets along very well with the family and the Claimant. Taylor will turn 18 on September 6, 2013. Initially, apparently without realizing Taylor's age, KRC approved Taylor to provide respite services. However, in April 2013, KRC informed the family that Taylor could not provide respite services because he is not yet 18 years of age, pursuant to California Code of Regulations, title 16 (CCR), section 54355, subdivision (g)(4)(C).
4. The family lives in Bear Valley, an outlying area, and it is very difficult to find respite workers willing to travel that far to work for the family. The only approved vendor KRC could offer was a 62 year-old woman, who is also a nurse at Claimant's school. However, when Claimant's family contacted that woman, it was determined that she would be unable to provide respite services. It was established that the family called a number of KRC's approved respite vendors, but was unable to find a vendor willing to work with Claimant, primarily because of where the family resides which is a long distance from many of the providers.
5. The family hired Taylor on their own and they submitted evidence that they paid him \$609.50 for services rendered between April 2013 and August 2013.
6. At hearing, the family indicated that it was not interested in trying to obtain a new respite provider at this point. When Taylor turns 18 in approximately one month, he will be able to provided respite services. Generally, the family's position on this issue would preclude them from seeking reimbursement for any respite after the date of the hearing. However, in this case, it would not make sense to find a respite provider for one month, and then switch to Taylor in September 2013. Further, it was established that that there is not any respite provider available to immediately provide services. Therefore, the family's decision to wait for Taylor is reasonable.

LEGAL CONCLUSIONS AND DISCUSSION

1. The Lanterman Developmental Disabilities Act (Lanterman Act) governs this case. (Welfare and Institutions Code sections 4500 et seq.)² A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the

² All further statutory references are to the Welfare and Institutions Code.

service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where a claimant seeks to establish the propriety of a service not previously agreed to by the service agency, the burden is on that appealing claimant to demonstrate the service agency's decision is incorrect. Where the service agency seeks to discontinue a service it has previously funded, the service agency has the burden to demonstrate that its decision is correct. In this case, KRC has the burden, although KRC has not refused to fund the services. Rather, KRC will not fund services provided by a person who is not yet 18 years of age. KRC was correct in its decision to deny funding for a respite provider under age 18. CCR section 54355, subdivision (g)(4)(C), clearly states that a person providing respite services must be 18 years of age. (Factual Finding 3.)

3. On the other hand, the family is understandably upset. In their view, Taylor would make a terrific respite provider and there are no other feasible respite providers. The family also feels that KRC has not been very helpful in obtaining a new respite provider, and KRC initially told the family that Taylor could be a respite provider.

4. Claimant's request for reimbursement is denied. The reason for this decision is because to do so would violate the law. While the age difference in this case may seem negligible because Taylor is almost 18 years of age, if reimbursement were ordered in this case, it would violate the law.

5. However, the fact that a respite provider has not been able to be located, by either KRC or the family, should not result in the loss of funding for respite which all parties agree is necessary. Thus, KRC would have funded for 30 hours per month of respite beginning April 13, 2013, and through August 2013, if a respite provider were available. KRC should still be required to fund these hours, and not obtain this "windfall" because of the fact that finding a respite provider has been difficult. Nor should the family not receive the services to which it is entitled. The total amount of time that KRC would have funded for respite because a provider had been unavailable is four and one-half months (between April 13, 2013, and through the end of August 2013), which equates to 135 hours at a rate of 30 hours per month. Therefore, it is appropriate to award this number of hours for the family to use when they are able to use Taylor, or another respite provider. In this way, KRC will be able to compensate Claimant for lost hours which Claimant was entitled to receive, and which the family was unable to utilize through no fault of their own.

6. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with

consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.” (§ 4502.)

7. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer’s needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

8. Section 4646 states:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources. (Emphasis added.)*

(b) The individualized program plan is developed through a process of individualized needs determination

9. Section 4648 of the Lanterman Act describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determine will best accomplish all or any part of the IPP. Section 4648, subdivision (a)(8), prohibits the use of regional center funds “to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” These are commonly referred to as “generic resources.” However, subdivision (g) provides that, where there are identified gaps in the system of services and supports, the Department of Developmental Services may provide the services directly.

10. Services provided must be cost effective (§ 4512, subdivision (b)), 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.*, §§ 4640.7(b), 4651(a), 4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the parents of children with developmental disabilities nor to restrict eligibility for or deny services to a consumer who is unable to pay. To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that 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. There is nothing in the Lanterman Act which gives consumers the absolute right to pick a desired vendor. Claimant did not establish that he is legally allowed to use a respite provider less than 18 years of age.

ORDER

Claimant B.P.'s request for reimbursement for funds spent on respite is denied. However, KRC is ordered to fund an additional 135 hours of compensatory respite for the family, in addition to the currently funded 30 hours per month of respite services. These 135 respite hours are compensatory and shall be funded by Kern Regional Center in a manner which enables the family to use the respite time when it best suits Claimant's needs.

IT IS SO ORDERED.

DATED: August 26, 2013,



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the 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.