

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

EASTERN LOS ANGELES
REGIONAL CENTER,
Service Agency.

OAH No. 2013060789

DECISION

Jennifer M. Russell, Administrative Law Judge with the Office of Administrative Hearings, heard this matter in Alhambra, California on July 26, 2013. Edith Hernandez, Contractor, represented Eastern Los Angeles Regional Center (ELARC or service agency). Claimant's parents (Parents) represented him.¹

The matter was submitted for decision on July 26, 2013. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUE

Should the service agency reimburse \$11,933.17 to Claimant for the cost of supportive living services Bayberry, Inc. provided to him during the period March 1, 2013 to April 11, 2013?

FACTUAL FINDINGS

1. Claimant is a conserved 25-year-old consumer of ELARC. He is diagnosed with Asperger's Disorder, Obsessive-Compulsive Disorder, Expressive Language Disorder, Stuttering, and Borderline Intellectual Functioning (Provisional).

¹ To preserve confidentiality, Claimant and his parents' names do not appear in this Decision.

2. In early 2012, Parents requested an out-of-home placement for Claimant. Questions arose regarding the resources for financing the expenses attendant to an out-of-home placement for Claimant. The Social Security Administration informed Parents that Claimant may not be eligible to receive supplemental security income (SSI) benefits because an Irrevocable Trust Agreement dated June 15, 1988 (the Trust) had been previously established for his benefit. Parents also learned that Claimant would not qualify for MediCal benefits for the same reasons.

3. Parents sought funding from ELARC to meet Claimant's out-of-home placement needs, and on November 8, 2012, ELARC and Parents entered into an Interim Mediation Agreement providing for the following in connection with Claimant's out-of-home placement:

1. The Service Agency agrees to fund an assessment of Supported Living Service (SLS) performed by Bayberry, Inc., Napa, California, which is vendored by North Bay Regional Center, pursuant to a courtesy vendorization. The assessment may take place on November 9, 2012, and shall occur no later than November 30, 2012.

2. The vendor needs to provide an assessment report to the Service Agency no later than December 14, 2012. The Service Agency will schedule a staffing meeting for December 17, 2012 to discuss the assessment report and the start date of the SLS services. The Service Agency will have already presented its proposal on SLS monthly/hourly rates to Bayberry, Inc. The parties will discuss and negotiate in good faith to determine the level of services and the rate to be paid.

3. The Service Agency acknowledges that Claimant is not currently receiving In-Home Supportive Services (IHSS), and that it will fund the agreed-upon SLS services as long as Claimant has applied for and is actively pursuing IHSS services, or until Claimant is notified that he is not eligible for IHSS services.

4. If the parties have not finalized their agreement as to SLS services, they may proceed to hearing before Administrative Law Judge Mark Harman on January 17, 2013. The parties shall notify the Office of Administrative Hearings whether the hearing will go forward no later than January 10, 2013.

(Ex. 4.)²

² The entire Interim Mediation Agreement, including its signature page, was not produced at the hearing. The Administrative Law Judge obtained a copy of all pages of the agreement from the Office of Administrative Hearings' files in case number 2012090788.

4. The parties appeared to have modified the terms of the Interim Mediation Agreement when, on January 17, 2013, they executed a Notice of Resolution providing for the following:

ELARC and Bayberry SLS have agreed to a rate to start at approximately \$9100 for 1st month and \$7600 a month thereafter. Date of start is to be developed but most likely not before March 1, 2013. Additionally application for IHSS hours and SSI, MediCal are pending a Special Needs Trust agreement.

(Ex. 5.)

5. ELARC could not fund Claimant's SLS services until Claimant's eligibility for IHSS hours was determined. In turn, Claimant's eligibility for government benefits, including IHSS, depended on Claimant's legal counsel obtaining a court order approving a modification of the Trust agreement to provide that the trust assets supplement, but do not supplant, any government benefits for which Claimant may be eligible. Parents represented to ELARC that legal counsel was experiencing delays. All the parties therefore anticipated that Claimant's receipt of ELARC-funded SLS services would not begin before March 1, 2013, but at a later time. The parties contemplated that once a court approved modification of the Trust occurred, Claimant would apply for IHSS benefits, and ELARC would be able to fund Claimant's SLS services.

6. In February 2013,³ Bayberry, Inc., a provider of supported living and residential services for individuals with developmental disabilities, and ELARC entered into a Payment Agreement providing for the following payment rates and terms in connection with Claimant's out-of-home placement:

\$25.00/hr for Assessment (up to a total of 20 hours, not to exceed \$500.00 total per assessment)

\$6,500.00/month for SLS services

\$1,297.00/month for personal support until In-Home Supportive Services are in place. Rate includes 100 hours at \$12.97/hr. Upon approval of IHSS authorization, Regional Center funded support services (IHSS) will cease and Bayberry will reimburse ELARC the awarded amount retroactive to the day it becomes effective. . . .

\$1,500.00 total *one* time expense for transition services for the first month of services.

³ A Bayberry representative signed the agreement on February 6, 2013, and two ELARC representatives signed separately on February 25 and 26, 2013.

...

The effective date of this rate is **November 1, 2012**. This agreement shall remain in effect until either party provides thirty (30) days written notice to terminate this agreement or no longer than: **October 31, 2017**.

(Emphases in original.) (Ex. 6.)

7. On February 20, 2013, Parents communicated to ELARC that they wanted Claimant to begin his out-of-home placement “earlier than the end of February to get him ‘acclimated.’” (Ex.8.) For reasons not established, Parents were concerned that Claimant’s out-of-home placement would be in jeopardy if he did not enroll soon. ELARC responded to Parents on February 21, 2013 as follows:

As per the Notification of Resolution dated and signed January 17, 2013, the application for IHSS hours and medi-cal are pending on the special needs trust agreement. At this point we are unable to provide the funding that is necessary for [Claimant] . . . to relocate Please refer back to the Notification of Resolution.

(Ex. 8.)

8. On March 1, 2013, Claimant began his out-of-home placement, and for the period March 1, 2013 to April 11, 2013, Claimant incurred SLS expenses provided by Bayberry totaling \$11,933.17, which Parents paid out-of-pocket.

9. On April 12, 2013, in case number 1415656, the Superior Court of California, Santa Barbara County, issued an order approving modification of the Trust and authorizing its execution.

10. Parents thereafter sought reimbursement from ELARC for their out-of-pocket expenditure set forth in Factual Finding 8. In declining to reimburse Parents’ out-of-pocket expense, ELARC advised Parents of the following in a May 14, 2013 Notice of Proposed Action:

ELARC is . . . denying your request for ELARC to reimburse you with the amount of \$11,933.17 for the cost of Supportive Living Services . . . provided by Bayberry, Inc. starting March 1st, 2013 an up to April 11th, 2013. ELARC agreed to fund these services at a specific rate effective April 12th, 2013. Reportedly, this is the date when the Court Order was filed for the Special Needs Trust.

...

[T]he Special Needs Trust per your e-mail was filed April 12th, 2013. Per regulation, SLS vendor provider is required to apply for In Home Supportive

Services (IHSS) within five days of placement. Without the Special Needs Trust, provider was not able to apply for IHSS. ELARC did not receive prior notification of consumer moving and expecting funding for SLS arrangement effective March 1st, 2013. ELARC did not provide prior approval to start SLS services March 1st, 2013. At this point, parents need to also consider the Special Needs Trust to cover for related expenses.

(Ex. 2.)

11. Parents filed a Fair Hearing Request on May 21, 2013. Thereafter these proceedings ensued.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act),⁴ which mandates 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 of life in the community.” (Welf. & Inst. Code, § 4501.) Services and supports include supported living arrangements. (Welf. & Inst. Code, §4512, subd. (b).)

2. Claimant bears the burden of proving his entitlement to a reimbursement of his SLS expenses incurred during the March 1 to April 11, 2013 period by a preponderance of evidence. (Evid. Code, §§ 115 and 500.) Claimant has not met his burden.

3. ELARC and Parents resolved that ELARC would fund Claimant’s SLS expenses incurred in connection with Claimant’s out-of-home placement with the understanding that service agency funding would begin after obtaining court approval of a modified Trust agreement. Parents sought to begin Claimant’s out-of-home placement prior to any court-approved modification of the Trust agreement. ELARC duly notified Parents that it could not commence funding for Claimant’s SLS services because “the application for IHSS hours and medi-cal are pending on the special needs trust agreement.” Parents nonetheless elected to precede with an early start of SLS services for Claimant. Parents did so at their expense.

4. Cause does not exist for Eastern Los Angeles Regional Center to reimburse Claimant’s parent’s out-of-pocket SLS expenses by reason of Factual Findings 3, 4, 5, 7, 9, and 10 and Legal Conclusions 1 through 3, inclusive.

⁴ Welf. & Inst. Code, § 4500 et seq.

ORDER

1. Claimant's appeal is denied.
2. Eastern Los Angeles Regional Center's determination not to reimburse \$11,933.17 to Claimant for the cost of supportive living services Bayberry, Inc. provided to him during the period March 1, 2013 to April 11, 2013 is affirmed.

DATED: September 6, 2013



JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. This administrative decision binds both parties. Either party may appeal this administrative decision to a court of competent jurisdiction within 90 days.