

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J.M.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2013090090

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on November 5, 2013, in Torrance, California.

Susan Hernandez, Special Projects Manager, represented Kern Regional Center (KRC or regional center or Service Agency). Gigi Thompson represented the Harbor Regional Center (HRC).

J.K.M. represented his son, J.M.¹ Gary Carwile also appeared as an advocate.

The matter was submitted on November 5, 2013.

ISSUE

The question in this matter is whether Kern Regional Center may discontinue funding for Self-Determination Pilot Services, since Claimant has moved to Harbor Regional Center catchment area, which is not eligible for the pilot program.

¹ Initials have been used to protect the family's privacy.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-11; Claimant's exhibits A-C.

Testimonial: Claimant's father, J.M., and Gary Carwile, parent advocate.

FACTUAL FINDINGS

1. Claimant is a 12-year-old male who qualifies for regional center services based on a diagnosis of Asperger syndrome.

2. Claimant formerly resided within the KRC catchment area, and was a KRC consumer. At KRC, Claimant participated in the Self-Determination Pilot program. Through this program, KRC provided a budget for Claimant and his family to choose services for Claimant, such as ski lessons, horseback riding, transportation, conferences and behavioral therapy. Claimant moved out of the KRC catchment area in February 2013, and he currently resides within Harbor Regional Center's catchment area. HRC is not part of the state's Self-Determination Pilot Services, and thus the Lanterman Act prohibits HRC from funding many of the programs that Claimant had access to through KRC's Self-Determination Pilot program. By letter dated August 8, 2013, KRC notified Claimant and his family that it proposed to discontinue funding for Self-Determination Pilot Services. The stated reason for the decision was that Claimant's move to Los Angeles County was not within the boundaries of the project and therefore he was no longer eligible for the program.

3. Claimant's family disagreed with KRC's decision and timely filed the instant fair hearing request.

4. During Claimant's most recent Individual Program Plan (IPP), dated May 14, 2013, HRC explained to Claimant's family which services could be provided through HRC, and how the family could access community services similar to those that Claimant had obtained through KRC. Claimant's family desired to keep its previous method of financial services through Self-Determination, and initially KRC accepted the family's request. An IPP addendum dated September 25, 2013, explained that KRC subsequently proposed to discontinue funding for services under the Self-Determination Pilot program.

5. At the hearing, KRC explained that Kern County was chosen to participate in the Self-Determination Pilot program because it is a rural area with limited availability and difficulty in providing services. The program was only intended to be available in the Kern County area. HRC cannot provide Self-Determination services because they are not part of the pilot program. KRC and HRC's position at the hearing was that because Claimant moved out of Kern County, he is no longer meets the criteria for participation in the Self-Determination program. Instead, Claimant is eligible for services through HRC's traditional case management.

6. Claimant's father testified at the hearing. He wants to continue with the Self-Determination program because the services that are provided work well for his son. He maintained that other programs before Self-Determination did not work. Claimant's father wants Self-Determination because HRC can only offer a fraction of the services that were previously offered. Many of the programs that Claimant desires would be at his parents' expense. Previously, Claimant received behavioral and occupational therapy, and funding for a special dentist; his family received funding for books, conferences, meeting with experts, respite, a service broker, and parent-education.

7. Gary Carwile (Carwile), advocate and behavioral specialist, also testified at the hearing. Carwile argued that determination of services should not be geographically determined. As an example of why Claimant needs funding through the Self-Determination program, he cited HRC's intention to provide fewer hours of respite services than were previously provided by KRC. He noted that HRC is asking Claimant's family to pay for services that KRC paid for under the Self-Determination program.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal and uphold KRC's decision to discontinue funding for Self-Determination Pilot Services, as set forth in Factual Findings 1 through 7, and Legal Conclusions 2 through 5.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. (Welf. & Inst. Code, § 4501.)

3. Services provided must be cost effective, 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. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

4. Section 4643.5 directly governs when a regional center consumer moves from one catchment area to another. It provides, in relevant part:

(c) Whenever a consumer transfers from one regional center catchment area to another, the level and types of services and supports specified in the consumer's individual program plan shall be authorized and secured, if available, pending the development of a new individual program plan for the consumer. If these services and supports do not exist, the regional center shall convene a meeting to develop a new individual program plan within 30 days. Prior to approval of the new individual program plan, the regional center shall provide alternative services and supports that best meet the individual program plan objectives in the least restrictive setting. . . .

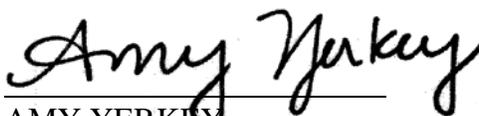
5. Given the foregoing, Claimant's appeal must be denied. KRC has demonstrated that the Self-Determination pilot program is not available through HRC, Claimant's current catchment area. Although HRC is not permitted to fund several of the programs that Claimant had previously received under the Self-Determination program, the evidence established that HRC will provide alternative services and supports for Claimant. Claimant's citation to Welfare and Institutions Code section 4685.7, regarding the Self-Directed Services Program, does not entitle him to Self-Determination services. The program is contingent upon receipt of a federal waiver, which was not established here.

ORDER

Claimant J.M.'s appeal is denied. Kern Regional Center may discontinue funding for Self-Determination Pilot Services.

HRC shall convene a meeting to develop a new individual program plan for Claimant within 30 days, pursuant to Section 4643.5, subdivision (c).

DATED: November 19, 2013



AMY YERKEY

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.