

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2013120864

DECISION

A fair hearing was held on February 6, 2014, before Jonathan Lew, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Chico, California.

Phyllis J. Raudman, Attorney at Law, represented Far Northern Regional Center (FNRC).

Claimant's parents both appeared. Claimant's father filed the appeal. Claimant's mother appeared by telephone.

Evidence was received, the record was closed, and the matter was submitted for decision on February 6, 2014.

ISSUE

Where claimant's parents do not both agree to her transition plan under Welfare and Institutions Code section 4519, should the funding for claimant's services, including personal attendant services, be discontinued while claimant resides outside of California?

FACTUAL FINDINGS

1. Claimant is age 15. She is eligible for services and supports from FNRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., based upon a diagnosis of Mucopolysaccharidoses

(MPS), Sanfilippo Syndrome A, the most severe form of a degenerative genetic disorder. Her complications from MPS include seizures and cognitive abilities ranging from 12 to 18 months with a scatter of higher skills. Claimant lives in Arizona with her mother. Her father resides in California.

2. Claimant's most recent Individual Program Plan (IPP) was executed by her mother on July 31, 2013. Although her mother disagrees with elements of the IPP, the following general description of her service needs contained in the IPP is not disputed:

[Claimant] has a number of health issues to address as a result of her diagnosis and her mother coordinates the entirety of her overall care needs. [Claimant's] health needs are such that she requires the use of adaptive medical equipment, assistance with feeding and nutrition and incontinent supplies. Due to the progression of her disorder [claimant] has choking concerns and her food must be specially prepared to ensure safety. [Claimant] has occupational therapy needs...

[Claimant] currently needs and desires to go to school, being placed full time in a regular education class in her local community so she can live at home and not be forced to live in another state. Currently, [Claimant] is in her 4th year at Queen of Peace Elementary School in Mesa, Arizona. Previously, [claimant] had been out of school for approximately three years. Far Northern Regional Center and [claimant's] parents have been unable to locate an appropriate educational placement in California. It is necessary for [claimant] to attend school out-of-state in order to access an appropriate education. [Claimant] will remain in the out-of-state placement.

3. FNRC issued a Notice of Proposed Action (NOPA) dated December 3, 2013, proposing to "[d]eny funding of all services including, but not limited to, personal attendant services for [claimant] while she resides out of California." The NOPA explained the reasons for FNRC's action as follows:

Legislative changes to the Lanterman Act prohibit Far Northern Regional Center from funding services outside of California without an identified and approved transition plan from the California Department of Developmental Services (DDS) for providing services to [claimant] within the State of California. [Claimant's mother] has rejected and [claimant's father] has approved the transition plan; since parents do not both accept the transition plan, the transition plan has been considered

rejected. [Claimant's mother] refuses to transition [claimant] to California and has established residence in Arizona.

4. Claimant's father opposes the cessation of claimant's current services. He filed a Fair Hearing Request on December 19, 2013. He would like to proceed with the proposed transition plan, which he executed and accepted on December 2, 2013.

5. Claimant's parents have filed for marital dissolution, with child custody proceedings pending in the Superior Court of Butte County. Prior to these events, FNRC had worked cooperatively with claimant's mother to obtain DDS approval to fund services out-of-state until June 30, 2013, which approval was obtained.

6. Under Welfare and Institutions Code section 4519, a request for out-of-state services cannot exceed six months, and any extension beyond six months "shall be based on a new and comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California." (Welf. & Inst. Code, § 4519, subd. (a).) Each comprehensive assessment and report must include identification of the services and supports needed and "the timeline for identifying or developing those services needed to transition the consumer back to California." (Welf. & Inst. Code, § 4519, subd. (c).) Each regional center is required to submit a transition plan for all consumers residing out-of-state to DDS, for whom the regional center is purchasing services. (Welf. & Inst. Code, § 4519, subd. (e).)

7. By letter dated September 9, 2013, FNRC made formal request to DDS for an extension allowing FNRC to continue purchasing out-of-state services for claimant for six months, effective October 1, 2013, through March 31, 2014. FNRC informed DDS that it had scheduled a comprehensive assessment on September 17, 2013, in Arizona, and that it intended to use the information from this comprehensive assessment "to develop a transition plan and summary report of the regional center efforts and timeline to provide services in California."

8. By letter dated October 24, 2013, FNRC provided a copy of the comprehensive assessment and a proposed transition plan for claimant to DDS. FNRC did so in support of its earlier request to continue purchasing out-of-state services for claimant through March 31, 2014.

9. By letter dated November 25, 2013, DDS approved FNRC's request, authorizing it to continue funding personal assistance services at a rate not to exceed \$9,140 per month, through March 31, 2014. The letter noted that: "The Department understands that FNRC will transition [claimant] back to California after the 2013/2014 school year. However, it is still the Department's expectation that FNRC continue an exhaustive research of all potential resources within the state."

10. On December 2, 2013, claimant's father signed the October 2013 transition plan. By so doing, he concurred with the transition plan sent to DDS on October 24, 2013.

11. Claimant's mother has neither executed nor approved the transition plan. By letter dated December 30, 2013, FNRC advised DDS that claimant's mother "intends to establish residency in Arizona for the purpose of obtaining services from Arizona."

Discussion

12. FNRC is required to submit a transition plan to DDS under Welfare and Institutions Code section 4519. The transition plan must be executed by both parents in this case. The parents have joint legal custody of claimant. They are claimant's authorized representatives. Larry Withers testified on behalf of FNRC. He is claimant's case management supervisor. Mr. Withers explained that it has been FNRC's policy over the years that consensus is needed from both parents of a consumer, and that where there is a disagreement, FNRC cannot choose one parent over the other. In this case, both parents do not agree with the transition plan. Absent agreement, FNRC believes it has no authority to overstep the parental/legal rights of either parent in this case.

13. Diana Anderson is FNRC's Director of Community Services. She confirmed that continued funding of claimant's out-of-state services is contingent upon approval of the transition plan. Ms. Anderson spoke with claimant's mother. Claimant's mother indicated that she was looking into securing services in Arizona for claimant. DDS has advised Ms. Anderson that any transition plan would no longer be in effect where a consumer is making efforts to obtain services out-of-state. Ms. Anderson explained that should claimant return to California she would be eligible for continued FNRC services. The NOPA relates only to the denial of FNRC funding for services in Arizona when claimant resides in Arizona.

14. Claimant's father testified at hearing. He desires claimant to continue in her current program until a Superior Court determines that her legal residence is not in California. He noted that custody issues will be considered by the Butte County Superior Court on February 20, 2014. He concedes that he has not located any comparable social services or funding sources should claimant return to California, and that claimant's special education and supportive service needs are currently being met in Arizona.

15. Claimant's mother believes that claimant will be able to meet eligibility requirements for continued supportive and special education services in Arizona.

LEGAL CONCLUSIONS

1. In accordance with the Lanterman Act, regional centers fund services and supports for eligible persons with developmental disabilities to enable them to “approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Ins. Code, § 4501.¹)

2. Section 4519 governs the provision of out-of-state services to eligible regional center consumers and provides as follows:

(a) The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director’s designee has received, reviewed, and approved a plan for out-of-state service in the client’s individual program plan developed pursuant to Sections 4646 to 4648, inclusive. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department’s statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer’s needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer’s needs, review of available options, and determination that the consumer’s needs cannot be met in California. An extension shall not exceed six months. For the purposes of this section, the department shall be considered a service agency under Chapter 7 (commencing with Section 4700).

(b) No funds shall be expended for the cost of interstate travel or transportation by regional center staff in connection with the purchase of any service outside the state unless authorized by the director or the director’s designee.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

(c) When a regional center places a client out of state pursuant to subdivision (a), it shall prepare a report for inclusion in the client's individual program plan. This report shall summarize the regional center's efforts to locate, develop, or adapt an appropriate program for the client within the state. This report shall be reviewed and updated every three months and a copy sent to the director. Each comprehensive assessment and report shall include identification of the services and supports needed and the timeline for identifying or developing those services needed to transition the consumer back to California.

(d) Notwithstanding subdivisions (a), (b), and (c), the State Department of Developmental Services or a regional center may expend funds allocated to it for the purchase of services for residents of this state and administrative costs incurred in providing services in the border areas of a state adjacent to California when the purchase is approved by the regional center director.

(e) Each regional center shall submit to the department by December 31, 2012, a transition plan for all consumers residing out of state as of June 30, 2012, for whom the regional center is purchasing services.

3. As set forth in the Findings, FNRC is unable to submit a transition plan to DDS for the simple reason that claimant's parents do not both agree with the proposed transition plan. Claimant currently resides in Arizona with her mother. Claimant's mother has no intention at this time of transitioning claimant's services back to California. Absent agreement by both parents to the transition plan, a transition plan cannot be submitted to DDS as required under section 4519. And without a transition plan FNRC is presently unable to meet the section 4519 requirement of identifying the services and supports needed and the timeline for identifying or developing those services needed to transition claimant back to California. (Welf. & Ins. Code, § 4519, subd. (c).) Under these circumstances, FNRC cannot meet the section 4519 requirements for funding out-of-state services. The appeal brought by claimant's father must be denied.

ORDER

Claimant's appeal is DENIED.

Dated: February 14, 2014

//s//
JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)