

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2014020756

DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on March 19, 2014, in Concord, California.

Claimant was represented by his father and mother.

Mary Dugan, Fair Hearing and Mediation Specialist, represented the Regional Center of the East Bay, the service agency.

The record closed, and the matter was submitted for decision on March 19, 2014.

ISSUE

Did the Regional Center of the East Bay err in discontinuing respite based upon natural support that is in place both in and out of the home, pursuant to Welfare and Institutions Code section 4648.(2)?

FACTUAL FINDINGS

1. Claimant is a 16-year old consumer of the Regional Center of the East Bay (RCEB) who lives at home with his father and his 17-year-old sister. Claimant's parents are divorced. During the school year, claimant has visitation with his mother every Wednesday from after school through the following Thursday morning when school begins, and the first, third and fifth weekends of the month, beginning on Friday after school, and

ending the following Monday when school begins. In the event of a Monday holiday, claimant remains with his mother to the following Tuesday morning. Claimant's mother also has seven weeks with the claimant during the summer.

2. Claimant is eligible for regional center services based upon a diagnosis of autism. Claimant also has been diagnosed with ocular albinism and nystagmus, and DeMorsier's Syndrome is suspected.¹ In 2013, claimant was also diagnosed with juvenile retinoschisis.²

3. Claimant attends school during the day. He walks to and from school every day independently. Claimant returns home from school at 3:30 p.m. Claimant has daycare at home until his father returns from work. Claimant goes to bed between 9:00 and 10:00 p.m.

4. Claimant's father's main concern is that claimant's school assignments have increased requiring four to five hours of supervision each night to help claimant complete his assignments. Father testified credibly that due to claimant's disabilities he would not do his homework if he does not have constant supervision. In addition, if claimant is left alone without supervision he will spend his time on the computer and will not understand that he has not worked on his school assignments. Claimant's father is requesting respite during this period, for supervision and not for tutoring, (which regional centers do not provide). Claimant's father requested 15 hours of respite per month to meet claimant's needs.

5. Claimant is mainstreamed in high school and is on track to receive a diploma. Claimant is functioning academically at his grade level and is even higher in math and science. Claimant is able to take care of most of his activities of daily living independently. Claimant is able to cook simple meals, do chores and can make purchases with minimal assistance. It is typical for a teenager of claimant's age and class rank to expect to have homework for long hours each night.

6. RCEB considered whether it should grant claimant's father's request for 15 hours of respite per month. RCEB determined that because of the custody agreement between claimant's father and mother, the claimant's father has natural support in place to provide him with respite from claimant's care needs.

7. RCEB issued to claimant a Notice of Proposed Action on February 5, 2014, which denied the request for respite. Claimant did not file a fair hearing request with 10 days; claimant is thus not entitled to receive aid paid pending his appeal. (Welf. & Inst. Code § 4715.)

¹ DeMorsier's Syndrome is the inability to process information through the senses.

² Juvenile retinoschisis is an inherited disease diagnosed in childhood that causes progressive loss of central and peripheral vision due to degeneration of the retina.

8. RCEB and claimant had an informal meeting on March 6, 2014, regarding father's request for funding of respite services. RCEB denied respite services after careful consideration and thorough review of claimant's file. RCEB concluded that according to claimant's Individual Program Plan (IPP) and his annual reviews that claimant does not meet the criteria for respite services according to consumer service standards. RCEB stated that respite is provided by RCEB when the care needs of the consumer are greater than those of a non-disabled person of same age. (Welf. & Inst. Code § 4686.5 (a).)

9. Claimant did not establish that he meets the standards for obtaining an exemption to the limitations for respite imposed by Welfare and Institutions Code section 4686.5.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500, et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and support their integration into the mainstream of life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and support needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. In-home respite is one type of service provided to consumers. It is defined under Welfare and Institutions Code section 4690.2, subdivision (a), as follows:

"In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.

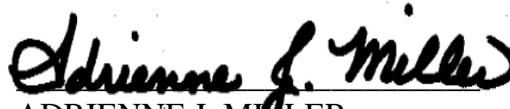
(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

RCEB has determined that claimant does not meet the criteria for receiving respite services. No evidence was presented at the hearing, which would support a determination that the regional center erred in making this determination. It is therefore concluded that RCEB has properly terminated respite services to claimant, as mandated by Welfare and Institutions Code section 4690.2, subdivision (a).

ORDER

Claimant's appeal is denied.

DATED: 3-25-14


ADRIENNE J. MILLER
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 ninety (90) days.