

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

Case No. 2014050942

DECISION

Abraham M. Levy, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 2, 2014, in San Bernardino, California.

Claimant was represented by his mother. Claimant was not present at the hearing.

Leigh-Ann Pierce, Consumer Services Representative, represented the Inland Regional Center (IRC).

The matter was submitted on July 2, 2014.

ISSUE

Should IRC be required to reimburse claimant \$7,600 for the cost of advocacy services provided by IHSS advocates to help claimant obtain In-Home Supportive Services (IHSS) hours?

FACTUAL FINDINGS

Jurisdiction

1. Claimant is a 6-year-old boy who qualifies for regional center services based on a diagnosis of mild mental retardation.

2. In a notice of Proposed Action dated April 30, 2014, IRC denied claimant's request for reimbursement in the amount of \$7,600.00 for a fee claimant paid on January 21, 2014 to IHSSadvocates, an organization that helps individuals obtain or retain IHSS benefits. IHSSadvocates helped claimant obtain an increase in his IHSS hours. Claimant disagreed with IRC's decision to deny his reimbursement request, and he submitted a fair hearing request on May 15, 2014.

Fee Incurred By Claimant for Services Rendered by IHSSadvocates

3. On July 25, 2013, claimant's mother retained IHSSadvocates to represent her in the appeal process after IHSS determined that claimant was not entitled to protective supervision hours.

4. Per the retainer agreement, claimant's mother agreed to pay IHSSadvocates retroactively, on a contingency fee basis, only if she was successful.

5. After a hearing in September 2013, claimant's appeal was granted. He was deemed eligible for 179 hours of monthly IHSS services, retroactive to March 2013.

6. Claimant received \$9,000 in retroactive payments. IHSSadvocates submitted an invoice to claimant's mother in the amount of \$7,600 for its services. Claimant's mother paid IHSSadvocates the \$7,600.

7. Claimant's Individual Program Plan (IPP) meeting was held on April 11, 2014, after claimant's mother paid IHSSadvocates. During the IPP, claimant's mother asked IRC to reimburse her for the \$7,600 fee she paid to IHSSadvocates. Claimant's mother said that she was required to retain IHSSadvocates because Martha Haynes, an individual who provides advocacy services for IHSS and who is vendored with IRC to provide these services, declined to represent claimant at the IHSS hearing.

8. Marilee Gibbons, IRC Program Manager, testified at the hearing. Ms. Gibbons confirmed that Martha Haynes was an IRC vendor who assists IRC consumers with their IHSS appeals. Ms. Gibbons testified that Ms. Haynes did not inform the IRC that she declined to help claimant with his IHSS appeal. Ms. Gibbons explained that the IRC is prohibited from making retroactive payments for services pursuant to California Code of Regulations, title 17, section 50612, subdivision (a), with limited exceptions for an emergency. Ms. Gibbons opined that claimant did not qualify for retroactive reimbursement under this exception.

9. Shawna Timmons is claimant's Consumer Services Coordinator. Ms. Timmons testified that claimant's mother did not inform her that she was retaining IHSSadvocates to assist in claimant's IHSS appeal. According to Ms. Timmons, the first time claimant's mother requested IRC to pay for IHSSadvocates was during claimant's IPP meeting in April 2014, about nine months after claimant's mother retained IHSSadvocates.

10. Claimant's mother testified at the hearing. She said she contacted a number of organizations for advocacy assistance relating to her son's appeal of IHSS's denial of protective supervision hours. None of the organizations agreed to help claimant. Claimant's mother contacted IHSSadvocates. She was glad she did, and she appreciated the results they were able to obtain for her son.

11. Claimant's mother admitted that she did not contact IRC before she retained IHSSadvocates.

LEGAL CONCLUSIONS

1. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. (Welf. & Inst. Code, § 4501.) When determining which services and supports to provide for a consumer, the regional center must consider several factors, including cost-effectiveness. (Welf. & Inst. Code, § 4512, subd. (b).) The Lanterman Act encourages the regional centers to control costs and conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), and 4697, subd. (4)(b)(2).)

2. Section 4648, subdivision (a)(8), provides that "[r]egional center funds shall not be used 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."

3. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subd. (a), 4647, subd. (a), 4646.4, subd. (a)(4)).

4. California Code of Regulations, title 17, section 50612, subdivision (b), prohibits retroactive funding by the regional center, with limited exceptions that are inapplicable here.

Evaluation

5. Claimant is not entitled to be reimbursed for the cost of services IHSSadvocates provided him. Neither claimant nor his mother informed IRC that Ms. Haynes declined to represent him, or that he needed advocacy services. Further, as set forth under California Code of Regulations, title 17, 50612, subdivision (b), claimant is not entitled to retroactive funding by IRC for the services he agreed to pay IHSSadvocates.

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ORDER

Claimant's appeal is denied. IRC's denial of reimbursement for \$7,600 for services provided by IHSSadvocates is upheld.

DATED: July 17, 2014

_____/s/_____
ABRAHAM M. LEVY
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.