

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2014061186

DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter in Vacaville, California, on August 12, 2014.

G. Jack Bengé, Attorney at Law, represented North Bay Regional Center, the service agency.

Claimant was represented by his mother.

The record was held open until August 15, 2014, to permit claimant to provide a response to NBRC's legal brief. The response was timely received, marked as Exhibit D, and made part of the record.

The matter was submitted for decision on August 15, 2014.

ISSUES

Is NBRC required to pay for respite services provided to claimant in June and July, 2014, when the respite provider was not an approved NBRC vendor?

FACTUAL FINDINGS

1. Claimant is a 12-year-old consumer of the North Bay Regional Center (NBRC), who is eligible for regional center services based upon a diagnosis of autism. Claimant lives with his parents and siblings in Vacaville.

2. Claimant's Individual Program Plan (IPP) is dated September 27, 2012, and is supplemented by an Addendum dated May 16, 2014. The IPP provides that claimant is authorized to receive 78 hours of self- service respite care per calendar quarter.¹

3. For the past few years, claimant has received respite care from an individual who was selected by claimant's parents but employed by Bay Respite Care, an entity approved by NBRC to provide respite services to NBRC consumers.² On approximately May 1, 2014, the respite care provider advised claimant's mother that she would be leaving Bay Respite Care to attend graduate school, and that after June 1, 2014, she would not be able to provide respite services.

4. Claimant's mother sought a new care provider who she felt would be compatible and able to work with claimant. She identified a well-qualified individual, Julie Anders, on approximately June 1, 2014. Anders was not an employee of Bay Respite Care or any NBRC vendor.

5. Anders was not immediately hired by Bay Respite Care, because it was necessary for the company to perform a background check. In addition, she did not have a current cardiac pulmonary recitation (CPR) certificate, and she needed to take a CPR class in order to be re-certified. Anders had a conflict with the date of the first available free class was first offered by Bay Respite Care, and enrolled in the July 2, 2014 class. Anders was ultimately hired, following a criminal background check, by Bay Respite Care on July 15, 2014.

6. Claimant's mother advised NBRC in early June that their previous respite provider was leaving and that Anders was going through the hiring process. There was a discussion between claimant's mother and claimant's case manager in early June, and a follow-up discussion in mid-June with the case management supervisor, about either using a vendored respite provider on a temporary basis, or using the approved respite hours at a different time. Claimant's mother felt that changing providers would be difficult for claimant, and NBRC ultimately would not permit the hours to be carried forward.

7. Claimant is requesting NBRC to pay \$266.50 for the respite services Anders provided in June and July, 2014, prior to the time Anders was hired by Bay Respite Care.

¹ Claimant is permitted to select his own respite care worker.

² When a provider is approved, the term that is used is "vendored."

This cost was incurred directly by claimant. NBRC has declined to reimburse claimant for this expense because Anders was neither a vendored provider nor had she been hired by a vendored provider, when she provided the service. NBRC also argued that it should have been involved with Ander's selection.

8. There is no dispute regarding claimant's need for respite services or the number of hours he receives.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.)³ The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

2. The 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 supports needed by the consumer to implement his goals and objectives. (Welf. & Inst. Code §§ 4646, 4646.5, 4512, subd. (b).) Each consumer is assigned a service coordinator, who is charged with the task of implementing, and monitoring each IPP. (Welf. & Inst. Code § 4647.)

3. Welfare and Institutions Code section 4648, subdivisions (a)(3) provides:

¶. . .¶

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.

³ All citations are to the Welfare and Institutions Code unless otherwise indicated.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; the procedure for an individual or an agency to appeal any vendorization decision made by the department or regional center.

¶. . . ¶

4. Welfare and Institutions Code section 464, is supplemented by California Code of Regulations, title 17, section 50612, which provides in pertinent part:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

5. Claimant's IPP provides that he is entitled to receive 78 hours of self-service respite care each quarter, and this service will be paid for by the NBRC, when offered by a vendored provider. When claimant's previous respite care worker resigned, he acted appropriately in undertaking to locate a qualified replacement, and then arranging for Bay Respite Care, a vendored provider, to employ her. Claimant had no obligation to consult with or seek the approval of NBRC regarding the individual selected, and he kept NBRC

reasonably informed of his efforts to find a replacement. Unfortunately, claimant felt the need to begin using Ander's services before it was possible for Bay Respite Care to complete the hiring process. This necessitated claimant to pay her directly.

6. Pursuant to Welfare and Institutions Code section 4648, a regional center can only pay for services provided by vendored providers. Here, the service was provided by Anders, not by the vendored entity, Bay Respite Services. Except in the case of emergency situations, as described in California Code of Regulations, title 17, section 50612, a regional center is precluded from paying for services from a nonvendored provider. While it was very important and beneficial for the respite services to be available to claimant on an uninterrupted basis, the departure of claimant's prior provider, and the inability of Bay Respite Care to promptly hire her successor, did not constitute an emergency, which would authorize NBRC to reimburse claimant for the expense he incurred. The fact that claimant paid for respite hours in June and July does not, however, in any way change or reduce NBRC's obligation to pay for 78 hours of respite care in the current quarter, and if the hours cannot be used during this quarter, the remaining portion shall be carried forward for future use.

ORDER

1. Claimant's appeal requesting NBRC to be reimbursed \$266.50 for respite care is denied.
2. Any unused respite hours claimant that may have accrued as a result of paying directly for the June and July hours will remain available to him for future use.

DATED: August 19, 2013

KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by the decision. Either party may appeal the decision to a court of competent jurisdiction within 90 days.