

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2014061191

DECISION

Administrative Law Judge Abraham M. Levy, Office of Administrative Hearings, State of California, heard this matter on October 30, 2014, in Riverside, California.

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

Claimant's mother represented claimant, who was present at the hearing.

The matter was submitted on October 30, 2014.

ISSUE

The Department of Developmental Services sets \$11 per hour as the rate to be paid for personal assistance services. Is IRC required to pay claimant's vendor a higher rate?

FACTUAL FINDINGS

1. Claimant is a 22-year-old conserved female who qualifies for regional center services due to moderate mental retardation and the chronic medical conditions of Esophagitis and convulsions. Claimant transferred to IRC from Westside Regional Center on February 1, 2014.

2. Claimant is dependent on others and requires someone to be available to assist her 24 hours per day due to safety issues, her deficits in health, and her physical and mental limitations. Claimant has been, and currently is, receiving regional center services in combination with services from other agencies.

Procedural History

3. On May 20, 2014, IRC issued a proposed notice of action that denied claimant's request that IRC pay claimant's vendor the same hourly rate claimant's vendor received from Westside Regional Center for personal assistant services. As explained in the notice of proposed action, claimant transferred from Westside Regional Center to IRC. Westside Regional Center paid claimant's vendor \$13 per hour. IRC stated that it could not pay claimant's vendor more than \$11 per hour because the Department of Developmental Services (DDS) set \$11 an hour as the rate IRC may pay for personal assistant services. IRC noted that claimant's vendor informed IRC that it could not provide services for \$11 an hour. On June 26, 2014, claimant requested a fair hearing. In her fair hearing request, she asked that IRC pay the claimant's vendor the same rate for personal assistant services Westside Regional Center paid.

4. On July 17, 2014, IRC filed a motion to dismiss claimant's fair hearing request. IRC argued that claimant's fair hearing request is not proper under Welfare and Institutions Code section 4710 because IRC did not plan to reduce, terminate, or change the amount of services claimant receives. IRC also argued that claimant cannot challenge the rate IRC pays claimant's vendor because DDS sets that rate. On July 31, 2014, Presiding Administrative Law Judge Robert Walker denied IRC's motion without prejudice.

Tesa Paterson, IRC Program Manager

5. Tesa Paterson is Program Manager for Resource Development and Transportation at IRC. She has a master's degree in public administration. Her role is to oversee the development of programs for consumers. Among her duties, Ms. Paterson negotiates with vendors regarding the amount IRC will pay for specific services.

Ms. Paterson participated in negotiations with claimant's vendor, Premier, for claimant's personal assistance services. Premier signed a contract on March 24, 2014. In this contract Premier accepted an \$11 per hour rate for personal assistance hours for claimant effective February 2014 through June 30, 2014.¹ No evidence was presented that this agreement has not continued to remain in effect. Ms. Paterson noted that a vendor can make a health and safety request appeal if it believes a higher rate is necessary to ensure the welfare and safety of a consumer. Premier did not appeal this rate. Ms. Paterson added that the rate Premier pays its employees, claimant's care providers, is between Premier and its employees.

¹ In its proposed notice of action, IRC said that Premier would not provide services to claimant at \$11 per hour. This statement is not accurate because Premier signed an agreement on March 24, 2014 that set \$11 per hour as the rate IRC would pay Premier for claimant's personal assistant hours.

DDS set the maximum rate of \$11 that IRC may pay for personal assistance hours. IRC does not have discretion to pay a higher rate. This rate is set by catchment areas and varies from one area to another. DDS has allowed Westside Regional Center to pay a higher rate for personal assistance services than IRC may pay.

The Testimony of Claimant's Mother

6. Claimant's mother is a committed advocate for her daughter. She wants the same personal assistant care providers claimant had in Los Angeles to continue to provide personal assistant care for claimant now that she lives in Riverside County. She did not dispute that claimant continues to receive 140 hours of personal assistance hours per month through IRC. Claimant also receives 30 hours of respite care per month; she attends a day program, and she has curb to curb transportation to the day program. In addition, claimant receives 260 hours of In Home Supportive Services per month.

Claimant's mother did not explain why the personal assistant providers from Los Angeles must continue to provide personal care assistance for claimant now that she lives in Riverside. She also did not submit evidence that these personal care assistants would not continue to care for claimant.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, the claimant bears the burden of demonstrating that IRC is required to pay claimant's vendor more than \$11 per hour for personal assistance services.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

3. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.) 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.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

4. When an individual is found to have a developmental disability under the Lanterman Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.)

5. Welfare and Institutions Code section 4501 states:

“Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements

6. The Lanterman Act also places “high priority” on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live “in their own homes” with “support available as often and for as long as it is needed.” (Welf. & Inst. Code, § 4689.) The range of supported living services and supports identified under Welfare and Institutions Code section 4689, subdivision (c), includes “recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; [and] providing respite and emergency relief for personal care attendants” Personal assistance is a service and support option that may be provided where it would “result in greater self-sufficiency for the consumer and cost-effectiveness to the state.” (Welf. & Inst. Code, § 4648, subd. (a)(11).)

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Limits on the Rates Regional Centers May Pay Service Providers

7. Welfare and Institutions Code section 4691.9, subdivision (a), reads as follows:

(a) Notwithstanding any other law or regulation, commencing July 1, 2008:

(1) A regional center shall not pay an existing service provider, for services where rates are determined through a negotiation between the regional center and the provider, a rate higher than the rate in effect on June 30, 2008, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2008, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization.

(2) A regional center shall not negotiate a rate with a new service provider, for services where rates are determined through a negotiation between the regional center and the provider, that is higher than the regional center's median rate for the same service code and unit of service, or the statewide median rate for the same service code and unit of service, whichever is lower. The unit of service designation shall conform with an existing regional center designation or, if none exists, a designation used to calculate the statewide median rate for the same service. The regional center shall annually certify to the State Department of Developmental Services its median rate for each negotiated rate service code, by designated unit of service. This certification shall be subject to verification through the department's biennial fiscal audit of the regional center. . . .

8. California Code of Regulations, title 17, section 57300, subdivision (d)(1), provides as follows:

(d) For those vendors for whom the Department establishes a rate, once the vendor has received notice of the rate established by the Department, any regional center, or its designee, purchasing or intending to purchase services from the vendor may negotiate with the vendor the level of payment for services provided to its consumers for a specified period of time. The level of payment may be less than but shall not exceed the maximum reimbursement possible during the period specified, using the rate established by the Department and the units of service used by the vendor to charge and invoice the regional

center for services provided to consumers as the basis for determining the maximum reimbursement possible.

(1) Each regional center and vendor shall mutually agree in writing upon the level of payment and the effective date for commencing and terminating payment at the agreed upon amount. . . .

Evaluation

Claimant's appeal is denied. IRC has not proposed to reduce, terminate, or change claimant's personal assistant services. (*Harbor Regional Center v. Office of Administrative Hearings*, 210 Cal.App.4th, 293, 312.) Claimant continues to receive the same amount of personal assistant services she received at Westside Regional Center with the same provider, Premier. Premier agreed to accept \$11 an hour from IRC to continue to provide these services to claimant now that claimant lives in Riverside. This amount is the maximum IRC may pay Premier for claimant's personal assistance hours, and Premier has not requested a health and safety waiver for a greater amount pursuant to Welfare and Institutions Code section 4691.9, subdivision (a).

Claimant wants a higher hourly rate to ensure that her care providers in Los Angeles continue to provide her with personal assistance services now that she lives in Riverside. But she did not show that these individuals will not continue to provide personal assistance services to her and that they, as opposed to providers who now live closer to claimant, must provide personal assistant services to her to ensure her self-sufficiency.

ORDER

Claimant's July 26, 2014 appeal is denied.

DATED: November 12, 2014

ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.