

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2014080586

DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter on September 29, 2014, in Santa Rosa, California.

Claimant was present at the hearing and represented by his mother.

G. Jack Bengge, legal specialist, represented service agency North Bay Regional Center (NBRC).

The record closed on September 29, 2014.

ISSUE

Whether NBRC was authorized to reduce or discontinue the number of supported living service (SLS) hours or independent living service (ILS) hours, Claimant is eligible to receive.

FACTUAL FINDINGS

1. Claimant is currently 23 years of age and lives with his mother and step-father in Sonoma County. Claimant has been diagnosed with borderline intellectual disability.

2. Claimant receives funding for services from NBRC in accordance with an Individualized Program Plan (IPP). The Addendum to the IPP dated August 5, 2014, states

that NBRC made an error, when on April 8, 2014, it authorized SLS and ILS hours for claimant. NBRC asserts it is precluded from providing these services in their current amount and form, because claimant lives in his mother's home. NBRC advised claimant of the reduction in service in a Notice of Proposed Action on August 8, 2012. However, NBRC has not yet discontinued the funding of these services.

3. In order to give claimant time to find alternative ways to address his transportation needs, NBRC will continue to fund 36 hours a month of SLS until October 31, 2014, at which time the funding will terminate. After that date, NBRC will fund 35 hours a month of ILS services, for a period of six months, for the purpose of assisting claimant to find housing outside of his mother's home.

4. Claimant was living in Lake County with his girlfriend, and his two young children, until August 2013. He is no longer living there, because he was convicted of domestic violence offense, required to attend a domestic violence prevention program, and to perform community service. A court restraining order prevented him from seeing his former girlfriend. Because he had no other place to live, he returned to his mother's home.

5. Claimant has a medical condition that makes it painful for him to walk, and he needs assistance to attend medical appointments with his doctor in Fairfield. The SLS service provider has been helpful in taking him to these appointments; his mother and step-father also have medical disabilities that make it difficult for them to drive or assist him with transportation needs. The SLS provider has also assisted claimant with transportation to his job. If SLS services are not provided, this may create a hardship for the family.

6. Claimant has qualified for a voucher to cover all or a portion of housing costs outside of his mother's home.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act:

[I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. The planning team includes the consumer or his representatives, agency representatives and other appropriate participants. Once the IPP is in place:

A regional center may . . . purchase services . . . from any individual or agency which the regional center and consumer . . . or [his or her] parents . . . determines will best accomplish all or any part of that [IPP].

(Welf. & Inst. Code, § 4648, subd. (a)(3).)

4. With respect to the provision of SLS, California Code of Regulations, title 17, section 58613 provides:

- (a) A consumer shall be eligible for SLS upon a determination made through the IPP process that the consumer:
 - (1) Is at least 18 years of age;
 - (2) Has expressed directly or through the consumer's personal advocate, as appropriate, a preference for:
 - (A) SLS among the options proposed during the IPP process;
 - and
 - (B) Living in a home that is not the place of residence of a parent or conservator of the consumer.

5. California Code of Regulations, title 17, section 58613 defines "home" as:

. . . a house or apartment, or comparable dwelling space meeting community housing standards, which is neither a community care facility, health facility, nor a family home certified by a Family Home Agency, and in which no parent or conservator of the consumer resides, and which a consumer chooses, owns or rents, controls, and occupies as a principal place of residence.

6. Claimant's initial IPP included SLS, and he demonstrated that he has used and would continue to benefit from SLS services, especially to assist with transportation needs. (Findings 2 and 5.) The IPP was modified by the Addendum dated August 5, 2014, at which time claimant was notified that he would not receive SLS services after October 31, 2014. (Finding 2.) California Code of Regulations, title 17, section 58613, does not permit NBRC to provide SLS services to regional center consumers when they live in the home of a parent.

7. The Notice of Proposed Action properly terminated SLS services effective October 31, 2014. Following that date, claimant will receive 35 hours of ILS per month, for six months, to assist claimant to find housing outside of his mother's home. At such time as claimant is no longer living with his mother, he may be eligible for additional services as determined through the IPP process.

ORDER

Claimant's appeal is denied.

DATED: October 3, 2014

_____/s/_____
KIRK E. 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.