

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2015020568

DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on March 18, 2015.

Claimant's mother represented Claimant.

Neil Kramer, Fair Hearings Coordinator, represented San Diego Regional Center, the Service Agency.

The matter was submitted on March 18, 2015.

ISSUE

Should Claimant be allowed to attend Camp Harmon as out of home respite?

FACTUAL FINDINGS

1. Claimant is a 14-year-old male who receives services from the service agency on the basis of a diagnosis of autism.

2. Claimant resides with his mother, father, and younger sister in the family home. His younger sister is five years of age; his older sister is 20 years of age and attends a university out of town.

3. Claimant's most recent Individual Program Plan (IPP) is dated July 8, 2014; there is an amendment to the IPP, dated January 20, 2015.

Claimant is 95 percent potty trained, is nonverbal and has significant behavioral issues.

Claimant requires assistance with taking showers, grooming and dressing. Claimant's mother testified that recently claimant had a bowel movement in his pants five minutes before the school bus arrived. This accident required that she change him quickly before the bus got there; otherwise she would have been required to take him to school, thereby making her late for work.

Communication is claimant's biggest challenge. He becomes frustrated when he cannot speak and tell his parents what he wants or needs. He is able to say a few words and communicates via his iPad.

Claimant's behaviors are disruptive and interfere with his social participation almost every day. His behaviors include eating inedible objects, such as lotions, soaps and clothes. He picks at leather, furniture, windows and the edging on the blinds. Claimant has temper tantrums that occur at least once every two weeks and sometimes more depending on the situation. Claimant has scratched Easter Seals staff. One night, he pushed the screen out of his bedroom window, fled his room, and was found minutes later sitting in the Jacuzzi. Recently claimant has been waking up frequently during the night, reducing the amount of sleep that his family receives.

Claimant requires constant supervision during all waking and sleeping hours to prevent injury and harm in all settings.

Claimant attends the Institute for Effective Education five days per week. He is in special day classes with other children and requires one-to-one staff with him at all times. His classroom must be structured, and his routine closely followed. He attends Camp I Can (funded by his parents), once a week during the summer. He receives speech therapy, occupational therapy, and adaptive physical education once a week. He receives music therapy through California Music Company.

Claimant's behaviors make it difficult for the family to be with relatives and friends. The behaviors are ongoing and have been increasing. Therefore, his parents pursued and obtained Applied Behavioral Analysis (ABA) through their insurance company. Easter Seals (the provider) has increased its service hours to 25 hours per week because of claimant's safety concerns. His parents go out once per month. Parents utilize the San Diego Recreational Department twice a month during the summertime. Claimant has a one-on-one aide from 12:00 p.m. to 3:00 p.m. on Sundays. During this time, he is with other children and appears to enjoy the activities with the group.

4. Prior to authorizing claimant to receive out-of-home respite, the service agency performed an assessment. In this document, further behaviors were described.

Claimant has hit his mother, father and little sister. He pinches his mother, bites her and has gotten so large that she is “a little bit afraid of him.” He has hit his mother with his head on multiple occasions requiring her to seek medical treatment. In one instance the doctor thought she had a concussion, and on another she had a severe bloody nose causing concern that her nose was broken. He has scratched his younger sister’s face while riding in the car. He has bitten and pinched school staff. Claimant bites his forearm and will hit his head regularly.

Claimant has destroyed furniture in the home. He breaks anything he gets. He has ruined the carpets in the home and has tried to break car windows.

Claimant has tantrums, and most are due to his lack of communication skills. He will strip and touch himself and has no boundaries regarding where or when this is appropriate. He does this to get attention.

Though 95 percent toilet trained, claimant urinates everywhere in an effort to seek attention. He does not control his bowel movements appropriately. However, he is not in diapers, and his parents do not want him to go back to wearing them.

5. In addition to the services provided by claimant’s school district and medical insurance company (Finding 3), the service agency funds in-home and out-of-home respite.

6. Claimant filed a Fair Hearing Request, dated February 2, 2015, in which he requested that the service agency fund Camp Harmon in lieu of five days of out-of-home respite. An informal hearing occurred on February 18, 2015. The service agency denied the request because Welfare and Institutions Code section 4648.5 suspended the service agency’s authority to fund camping services unless an exemption applied. The service agency concluded that an exemption does not apply.

7. Toward Maximum Independence Family Support Services is claimant’s out-of-home respite provider. On the date of hearing, there was no home available to provide this service for claimant.

8. Camp Harmon is vendored by the service agency with the code of 850, which is the category for camping services. Camp Harmon is not vendored as an out-of-home respite provider.

9. Claimant’s request is consistent with one of the goals in the Amended IPP, dated January 15, 2015, stating that he be able to have an overnight trip with his family.

10. Claimant’s family would like to schedule a family vacation from July 3, through 8, 2015, in Santa Cruz. Claimant’s older sister will not be returning home for the

summer from university. They anticipate that they would drive up to Santa Cruz (with claimant), spend the night with his older sister, and then claimant would attend Camp Harmon. Thereafter, claimant would return to San Diego with his parents and younger sister.

Claimant's family has not had a vacation together since he was three years old because of his behavioral issues. Claimant's older sister went on vacation with other relatives. When they have gone on overnight trips or activities together, one parent has to be with claimant at all times. Claimant's older sister and his mother testified regarding the stress that providing care for claimant has caused his parents. Neither claimant's case manager (Debra Jackson) nor his program manager (Tamara Crittenden) disputed the foregoing findings.

If the claimant's request is granted, it will allow his parents an opportunity to have a break from the stress associated with providing him care. Additionally, it will allow his family to plan for a vacation, as typical families often do. Finally, it will allow his family to spend time with his older sister, who will not be returning home for the summer.

11. The service agency does not dispute that claimant presents significant behavior challenges for his parents. Claimant's mother has called his case manager in tears because of her frustration. Both his mother and sister testified that the family has endured significant stress providing care for claimant, and that they need a break from doing so.

12. It is clear from the evidence (specifically the IPP and testimony of his mother and sister) that claimant's family loves him dearly and is protective of him. The family has not requested that claimant be removed from the home. However, it is clear that the family is at its wits end and needs a break from providing his care and supervision, which was one of the primary reasons the service agency originally authorized out-of-home respite.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (§ 4500 et seq.)¹ 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 to support their integration into the mainstream life of the community." (§ 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 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. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.)

¹ All statutory citations are to the Welfare and Institutions Code.

2. Code section 4648, subdivision (a)(3), states:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

- (a) Securing needed services and supports.

[¶]...[¶]

- (3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, when appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

- (A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

3. Respite is one type of service provided to a consumer of the service agency. It is defined under 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 [sic] which would ordinarily be performed by the family members.

4. California Code of Regulations, title 17, section 54342, Out-of-home Respite Services – Service Code 868 states, in part, that regional center shall classify a vendor as a provider of out-of-home respite service if the vendor is licensed by the Department of Social Services or by an agency authorized by the Department of Social Services or is licensed by the Department of Health Services to provide out-of-home care to persons with developmental disabilities and is vendored by the regional center and provides services under certain other codes.

5. Beginning in 2008, the State of California experienced an unprecedented budget shortfall related to the severe national economic crisis. Every area of State government was impacted by this fiscal crisis, including the Department of Developmental Services (DDS). In response to that crisis, Assembly Bill 9 sought to suspend many services, including camp. Specifically, Code section 4648.5, subdivision (a), states, in part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

[¶]...[¶]

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

6. California Code of Regulations, title 17, section 54342, subdivision (15), defines Camping Services – Service Code 850 and states, in part:

A regional center shall classify a vendor as a provider of camping services if the vendor has staff that possesses demonstrated competence to supervise safety of camp activities and is:

[¶]...[¶]

(B) A residential camp which:

1. Possesses a valid fire clearance issued by the California State Fire Marshall, city fire department, or local fire district;
2. Complies with the requirements of Title 17, Section 30700 through 30753;
3. Has a registered nurse on staff at all hours of operation; or
4. Has received a waiver imposed by the appropriate agency or any of the requirements specified in 1 through 3, above are met
5. Provides:
 - a. A creative experience in outdoor living on a 24-hour per day basis for a limited period of time.
 - b. Services which [sic] use the resources of the natural surroundings to contribute to the individual's mental, physical, and social growth; and
 - c. Other consistent services.

7. Claimant's family loves him, but he is a challenge for his parents. They seek a short time away from his care and supervision to spend time with their other children on vacation. The service agency agrees and has authorized out-of-home respite for them to do so. There is no available home to provide out-of-home respite for claimant.

Claimant has requested that the service agency fund Camp Harmon from July 3, through 8, 2015, in lieu of out-of-home respite. Camp Harmon is vendored as a camping service provider, not as an out-of-home respite provider. There was no evidence presented that Camp Harmon could not meet claimant's needs during the requested period of time.

The service agency is prohibited from funding camping services unless an exception applies. There is no evidence that claimant's parents have requested that he be removed from the family home. However, given the purpose of the Lanterman Act to maintain developmentally disabled children in their home, the extreme challenges faced by claimant's family in providing his care, and the lack of availability of out-of-home respite, an exception exists in this case. Claimant's family needs this camping service to maintain him in the family home, and no alternative service is available.

ORDER

1. Claimant's appeal is granted.
2. The San Diego Regional Center shall fund camping services at Camp Harmon for five days for claimant in lieu of five days of out-of-home-respite.

DATED: March 27, 2015

VALLERA J. JOHNSON
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.