

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2015080696

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on September 23, 2015, in Santa Rosa, California.

Claimant was represented by his mother.

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

The matter was submitted for decision on September 23, 2015.

ISSUE

May the regional center discontinue providing respite services to claimant on the grounds that In Home Support Services (IHSS) for protective supervision is a generic resource that meets claimant's respite needs?

FACTUAL FINDINGS

1. The testimony of NBRC Service Coordinator Marcia Parisi and claimant's mother, and the documentary evidence presented at hearing, established the facts set forth below.

2. Claimant is an 11-year-old young boy who is a NBRC consumer diagnosed with intellectual disability. He also exhibits autistic-like features such as delayed social skills, communication and atypical behaviors. Additionally, he suffers from a host of complex medical problems that require ongoing care and treatment. Claimant lives with his mother and his two siblings, one of whom is also a regional center consumer.

3. Claimant faces many challenges in his life. He functions in the range of moderate intellectual disability and has social and communication skills consistent with a five-year-old. In an NBRC respite worksheet dated March 18, 2014, it was noted that claimant requires help with his activities of daily living; and he behaves erratically, which can result in his hitting others or running away. In view of claimant's needs and the severe impact they have on his family's functioning, claimant's Individual Program Plan (IPP) has provided claimant with the maximum amount of in-home respite of 90 hours per quarter, which works out to 7.5 hours of respite per week.¹

4. On July 17, 2015, Parisi learned that claimant was receiving In-Home Support Services (IHSS) for protective supervision from the Sonoma County Department of Social Services in the amount of 38.15 hours per week. Claimant's IPP Addendum dated September 11, 2015, states that claimant's receipt of IHSS protective supervision hours "is seen as a generic resource that can meet the same needs that respite provides."

5. In a Notice of Proposed Action dated July 29, 2015, NBRC notified claimant of its decision to discontinue funding for respite services on the grounds that the IHSS protection supervision services provided by Sonoma County meets claimant's respite needs. Claimant appealed, and this hearing followed.

6. Claimant attends a special day class during the day, and is supervised by his mother when he is not at school. Claimant's mother works tirelessly to provide claimant with a safe and supportive environment. Claimant's mother is his IHSS worker, and in that capacity she is paid to provide him with protective supervision hours for 38.15 hours each week.² Claimant's mother believes that claimant requires respite hours in addition to the IHSS hours to provide her with a break from caring for claimant.

7. The purpose of respite is to give parents a break from the constant responsibility of caring for children who receive regional center services. All IHSS services are not viewed as alternative funding sources for the provision of respite. The primary purpose of IHSS funding for protective supervision is to provide care and supervision for claimant.

¹ The term respite, as used herein, refers to in-home respite. The provision of out-of-home respite is not at issue.

² Claimant also receives additional IHSS hours for the provision of other services, such as personal hygiene care.

IHSS funding for protective supervision is viewed by NBRC as an alternative funding source for respite because it provides claimant's mother with funds to hire a third party for 38.15 hours each week to provide direct care and supervision for claimant.

8. NBRC believes that claimant's mother can meet her need for a break from the constant care and supervision of claimant by using a small portion of protective supervision funds to hire someone to care for claimant. Given that claimant receives a total of 38.15 hours per week of IHSS hours for protective supervision, if claimant's mother uses 6.9 hours per week of funding for protective supervision to hire a third party to care for claimant while she takes a break, she would still have 31.25 hours per week of IHSS funding remaining to pay her for providing claimant with protective supervision.

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 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 Act. (§ 4620, subd. (a).) The 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.)

2. Respite is one type of service provided to consumers. Respite provides intermittent care and supervision to a regional center client who resides with a family member. These services are designed to "(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 which would ordinarily be performed by the family members." (§ 4690.2, subd. (a).)

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Accordingly, regional centers may not fund duplicate services that are available through another public agency. This prohibition, often referred to as "supplanting generic resources," is contained in section 4648, subdivision (a):

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

Regional 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.

4. Section 4659, subdivision (c), specifically prohibits regional centers from purchasing services that are otherwise available from IHSS. Section 4686.5, subdivision (a)(5), directs regional centers to consider IHSS funds as a generic resource for respite if certain conditions are met:

A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family service plan.

5. In the instant case, the evidence established that IHSS funding for protective supervision provides claimant's mother with funds to hire a third party to care and supervise him at home. This funding serves the dual purpose of providing claimant with supervision while also allowing his mother time for a break from caring for claimant. For this reason, IHSS funding for protective services meets claimant's respite needs, as set forth in his IPP. Inasmuch as the funding for protective supervision services also serves his mother's need for respite, it constitutes an alternative source of funding for respite. The use of one funding source to meet dual needs of a consumer is the most efficient use of public resources and is in keeping with the express provisions of the Act. Under these circumstances, therefore, even though claimant qualifies for respite, NBRC is precluded by statute from expending its resources to pay for such services when they are available through another publicly funded agency.

6. The fact that claimant's mother chooses to act as his IHSS service provider instead of hiring a third party does not alter this analysis. While hiring someone to care for claimant will require claimant's mother to forego some of the income she receives from IHSS for protective supervision, this loss of income does not abrogate NBRC's statutory duty to make use of IHSS services that meet the respite needs of the consumer. The legal principle that controls this appeal rests on the mandate set forth in section 4686.5, subdivision (a)(5), which requires regional centers to consider IHSS funds as a generic resource for respite if certain conditions are met. And, as set forth in Legal Conclusion 5, such conditions have been met.

ORDER

Claimant's appeal from the determination of North Bay Regional Center to discontinue funding for respite services is denied.

DATED: October 2, 2015

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Diane Schneider
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DIANE SCHNEIDER
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.