

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

REDWOOD COAST REGIONAL
CENTER,

Service Agency.

OAH No. 2015080898

DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on September 30, 2015, in Lakeport, California.

Claimant's mother represented claimant.

Kathleen Kasmire, client service representative, represented service agency Redwood Coast Regional Center (RCNC).

The matter was submitted for decision on September 30, 2015.

ISSUE

May the service agency consider In Home Support Services (IHSS) for protective supervision a generic resource for providing respite services to claimant?

FACTUAL FINDINGS

1. Kathleen Kasmire testified on behalf of RCRC, and claimant's mother testified on his behalf. The testimony of the witnesses and the documentary evidence established the facts set forth below.

2. Claimant is an eight-year-old girl who was diagnosed with autism in 2011 and has received services from RCRC ever since. She lives at home with her biological parents. At this time, neither parent is employed outside of the home. Her father was employed by the U.S. Postal Service, but is now unable to work as a result of his rheumatoid arthritis, fibromyalgia and carpal tunnel syndrome. Her mother suffers from a serious lung disease, and also serves as claimant's primary caregiver.

3. Claimant suffers from asthma as well as autism, and her mother is often up in the night to assist her with breathing. Claimant is in the second grade and attends school five days a week, but when not in school she requires regular and ongoing supervision. Her parents have installed deadbolts on the doors and gates at home, because she is at risk for wandering away and has done so in the past. She has received behavioral services to address her eloping behavior, to learn to understand and respect other people's boundaries, and to better read social cues, and to stop removing her clothes at inappropriate times and places.

4. In May 2015, RCRC assessed claimant's respite needs and determined she required up to 90 hours per quarter of respite. This calculation is based on a number of criteria set out in the assessment summary sheet, and neither the need for respite nor the number of hours is in dispute. During this assessment process, RCRC learned that claimant had begun to receive IHSS hours.

5. Claimant's Individual Program Plan (IPP) dated May 6, 2015, confirms claimant's need for 90 hours of respite per quarter. However, the IPP also identifies the fact that claimant is now receiving IHSS hours, which includes hours for protective supervision funded by the Lake County's Department of Social Services. Because claimant is now receiving these hours, RCRC advised claimant that it would no longer provide respite services once it was able to confirm that claimant will receive at least 30 hours of protective supervision hours per month. On June 8, 2015, RCRC received confirmation that claimant receives a total of 283 IHSS hours per month, which includes 30 hours and 20 minutes of protective supervision per month.

6. In a Notice of Proposed Action (NOPA) dated August 11, 2015, RCRC notified claimant of its decision to discontinue funding for respite services effective August 31, 2015, on the grounds that the IHSS protective supervision services provided by Lake County meets claimant's need for respite. RCRC based its determination on its restriction under the Welfare and Institutions Code from expending funds for goods and services that can be provided by generic resources.¹ Claimant appealed the decision and this hearing followed.

¹ In the NOPA, RCRC cited Welfare and Institutions Code sections 4646, subdivision (a), 4648, subdivision (a)(8), and 4659, subdivisions (a) and (c), as the basis for its decision.

7. Claimant's mother is her IHSS worker, and in that capacity is paid to provide claimant with protective supervision hours for 30 hours and 20 minutes per week. Claimant's mother also provides additional IHSS hours for the provision of other services, such as hygiene care and meal preparation. The compensation claimant's mother receives for this work is the family's sole earned income, and they cannot afford to give up the hourly income she receives to hire someone else to provide respite care.

8. When claimant is not in school, she is supervised by her mother and her father. Claimant's mother explained that they need respite hours over and above the IHSS hours to provide them with a break from caring for claimant. Respite care would permit claimant's parents to spend time together by themselves.

9. The purpose of respite is to give parents a break from the constant responsibility of caring for children who receive service agency services. IHSS funding for protective supervision, however, is viewed by RCRC as an alternative funding source for respite because it provides claimant's family with funds that can be used to hire a third party to provide direct care and supervision for claimant. RCRC is sympathetic to the fact that even with the IHSS hours provided, claimant's family does not feel it can afford to hire a third party to provide even limited respite hours; nonetheless, it asserts the primary purpose of IHSS funding is for protective supervision to provide care and supervision for claimant, rather than for family income. RCRC analyzes its obligations and limitations in the same way, regardless of whether a family member or a third party provides the IHSS services.

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.)² 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 and it is identified in claimant's IPP. (Finding 5.) 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

² All references are to the Welfare and Institutions Code unless otherwise indicated.

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):

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. With respect to IHSS services, 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.

Additionally, section 4659, subdivision (c), specifically prohibits regional centers from purchasing services that are otherwise available from IHSS.

5. In the instant case, the evidence established that IHSS funding for protective supervision provides claimant's parents with funds that could be used to hire a third party to care and supervise her at home. This funding serves the dual purpose of providing claimant with supervision while also allowing the family 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. While it is true that protective supervision is not exactly the same as respite, what matters here is that the IHSS funding simultaneously meets two important needs of claimant's family. Inasmuch as the funding for protective supervision services also serves the family'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, even though claimant qualifies for respite, RCRC 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 is working as her IHSS service provider instead of hiring a third party, does not alter this analysis. While hiring someone to care for claimant would require claimant's mother to forego some of the income she receives from IHSS, this loss of income does not abrogate RCRC's statutory duty to make use of IHSS funds when they can meet the respite need of the consumer. Additionally, while the evidence established that claimant requires significant supervision, the legal issue at hand relates to the funding source for claimant's services, not the amount of respite services required. The legal principle that controls this appeal, therefore, 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.

7. Claimant's mother presented a sympathetic case. Both she and her husband have serious health issues, very limited income, and claimant's asthma and autism present significant challenges for them. Neither the need for respite nor the family's limited financial means was ever in dispute, but as RCRC emphasized, the provision of respite is not based on a family's ability to pay for the service. Nonetheless, this decision is based on the current factual situation. In the event the facts change, based on the new circumstances, claimant can again apply for service agency funding of respite.

ORDER

The appeal of claimant, from the determination of RCRC to discontinue funding for respite services, is denied.

DATED: October 12, 2015

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Kirk Miller
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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.