

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

R.D.,

Claimant,

and

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH Case No. 2015090581

DECISION

A fair hearing in this matter convened before Marilyn A. Woollard, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on October 27, 2015, in Sacramento, California.

Claimant was represented by his mother, B.I.¹

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager, with Clarissa Sanchez, Legal Associate.

Oral and documentary evidence was presented. At the conclusion of the evidentiary hearing, the record remained open through November 16, 2015, to receive written closing briefs. On November 9, 2015, claimant and ACRC timely filed their closing briefs, marked for identification only, respectively, as Exhibits A and 14. On November 16, 2015, claimant timely filed his reply brief, marked for identification only as Exhibit B. ACRC did not submit a reply brief. On November 16, 2015, the record was closed and the matter was submitted for decision.

¹ Names are not being used for claimant or his mother to protect claimant's privacy. (See: December 1, 2015 Order re: Confidential Names and Confidential Names List.)

ISSUE

Did ACRC unreasonably delay its processing of claimant's request for day care services such that it should be ordered to retroactively reimburse B.I. for a supplemental share of day care costs, from May 27, 2015, through July 31, 2015?

FACTUAL FINDINGS

1. Claimant is a 17-year old boy who is eligible for regional center services as an individual with intellectual disability and Down's syndrome. He requires assistance with toileting, bathing, brushing teeth, dressing and shaving, but is able to eat and drink independently. He attends a special day class and has been tested at the 50th percentile for kindergarten-level reading and math. He lives with his mother B.I. and older sister in Sacramento. He receives 80 hours of In Home Supportive Services (IHSS) per month and SSI with his mother as payee.

2. During the time at issue in this appeal, claimant's ACRC service coordinator was Kang Xiong, who works with consumers in the Children's Unit. Claimant's annual Individual Program Plan (IPP) was conducted on May 11, 2015, by Ms. Xiong and B.I., shortly before claimant's 17th birthday. The IPP addressed the services and supports claimant would receive and ACRC would fund through May of 2016. B.I. and Ms. Xiong discussed respite services for claimant's family. B.I. told Ms. Xiong that she was interested in out-of-home respite care for claimant and the IPP provided for 14 days of such care per fiscal year. The IPP does not mention that B.I. requested day care services or that she informed Ms. Xiong that she anticipated full-time employment in the near future. Ms. Xiong told B.I. that, given his age, claimant would soon need to be transferred to ACRC's Adult Unit.

3. On May 28, 2015, B.I. began a full-time job with a state agency. She left a voice mail for Ms. Xiong that day and indicated she would like to start day care services for claimant. This was the first time Ms. Xiong heard about B.I.'s employment and day care services request. As described below, after receiving this request, Ms. Xiong followed ACRC's internal process to gather information necessary to substantiate claimant's need for day care services and supplemental financial assistance.

4. By July 13, 2015, B.I. had provided Ms. Xiong with all of the necessary documentation. The day care request was approved for vendorization processing the next day. By August 13, 2015, ACRC approved B.I.'s vendorization and authorized payment of a supplemental hourly rate toward B.I.'s total hourly cost for day care services, effective August 19, 2015, extending through May 2016. B.I. later requested that ACRC reimburse her for the supplemental share of day care funding that ACRC would have paid for the period from May 27, through July 31, 2015, based on her belief that ACRC had delayed this approval process.

5. *Notice of Proposed Action:* On August 19, 2015, ACRC issued a Notice of Proposed Action (NOPA) denying B.I.'s request to fund day care services retroactively to May 28, 2015. As reason for this action, ACRC explained:

A day care services checklist was sent to you via email on May 29, 2015, indicating items necessary to move forward with a request for day care services. These items were received from you in full on July 13, 2015. The information was reviewed and on August 13, 2015, you met with Client Services Manager, Maureen Paine, and completed the day care vendorization packet. The Regional Center had 45 days after the receipt of the completed application to begin the service. Therefore, the funding of day care services will begin no later than August 27, 2015.

6. *Fair Hearing Request:* On August 28, 2015, B.I. filed a Fair Hearing Request on claimant's behalf, seeking "reimbursement for day care dates from 05/27/2015 to 07/31/2015 as worker did not submit my docs in time. She was playing games. All is documented."²

7. At hearing, ACRC called the following employees as witnesses: Service Coordinator Kang Xiong and Client Services Managers Camelia Houston and Maureen Paine. B.I. testified on claimant's behalf. In her testimony and closing argument, B.I. asked to be compensated for approximately \$1,160 in reimbursement as well as for "any other damages regarding personal anguish, distress, and pain and suffering" caused by ACRC's delay in approving claimant's request.

Application Approval

8. Ms. Xiong was claimant's service coordinator during the day care application approval process. During this same time period, Ms. Xiong was also engaged in securing appropriate out-of-home respite care for claimant. The evidence established that there were some communication difficulties between B.I. and Ms. Xiong, particularly when they attempted to discuss these matters on the telephone, resulting in mutual frustration. For example, B.I. called Ms. Xiong after her working hours and, when they did speak during Mx. Xiong's work day, conversations had to occur during B.I.'s break time at work. There was often static from B.I.'s cell phone and, on at least one occasion, it was unclear if a call was disconnected or if a party had hung up. Ms. Xiong discussed this matter with her supervisor, Ms. Houston, who recommended that she use written communication with B.I. to avoid misunderstandings in the future.

² The parties clarified that claimant was in out-of-home respite for the first two weeks in August, paid for by ACRC. Consequently, the reimbursement request was only through the end of July.

9. Ms. Xiong testified that she has a bachelor's degree in counseling psychology. She has been employed by ACRC for nine years, more than five of which have been as a service coordinator in the Children's Unit. She was claimant's service coordinator from approximately mid-April through mid-July 2015. The evidence established that Ms. Xiong took appropriate and reasonably timely action to gather required documentation and submit B.I.'s request for day care service funding for approval.

a. On May 28, 2015, B.I. told Ms. Xiong that she was employed and required day care services. Ms. Xiong followed ACRC's Procedures Manual for Day Care/After School Care (Manual) and determined what documents were required to complete the day care request packet (Service Initiation Process). The Manual provides that "the effective date [of services] cannot be initiated until vendorization is in place with an associated purchase authorization."

b. On May 29, 2015, Ms. Xiong sent B.I. a list of all the documents and information ACRC needed to substantiate both the need for day care services and the need for financial assistance. Ms. Xiong advised B.I. to call or email her if she had any questions.

c. On June 30, 2015, Ms. Xiong received most of the required day care documentation from B.I.

d. On July 1, 2015, Ms. Xiong advised B.I. that she still needed claimant's school and holiday schedule and B.I.'s work verification on letterhead and her holiday schedule.

e. On July 2, 2015, Ms. Xiong received an email from B.I. with a letter from her employer on the employer's letterhead as required. Ms. Xiong prepared an IPP Addendum, indicating that B.I. has been paying for claimant's daycare since she began working in May, and that she requested ACRC's assistance with the supplemental (above-market rate) cost of the day care, based on claimant's level of need. The Addendum added a new goal and objective to claimant's IPP, for him to "receive adult supervision while his parent is working and while he is not in school, through 5/2016."

f. On July 6, 2015, Ms. Xiong informed B.I. that ACRC had received all necessary information. After reviewing ACRC's day care procedure, however, Ms. Xiong determined that she also needed B.I.'s paystubs and clarification regarding IHSS and Child Action. These items were on the list of required documents sent to B.I. on May 29, 2015.

g. On July 13, 2015, ACRC received all of the required documentation from B.I. to process the request. Ms. Xiong forwarded the completed day care package to Ms. Houston, who approved it and sent it to the Director of the Children's Unit for approval.

h. On July 14, 2015, ACRC approved the day care request. Ms. Houston signed a Vendorization Request on that date.

10. Ms. Xiong testified that, in her opinion, she and B.I. worked well together. Ms. Xiong believed B.I. was frustrated when they were communicating by telephone, particularly because she was processing both B.I.'s out-of-home respite request and day care request. Ms. Xiong was also frustrated because they were not communicating well. This was the reason she switched to written communication. She agreed that B.I. later became upset at her due to the length of the process and asked for claimant's case to be transferred to ACRC's Adult Unit, sometime in July 2015. Ms. Xiong did so, but she continued to monitor the transition until mid-August.

Ms. Xiong testified that this was the first time she had completed a day care services request. She followed ACRC's procedures and internal process required to process the request. She never asked B.I. for any documents that she would not have requested from the family members of any other consumer. After June 30, 2015, Ms. Xiong never asked for any additional documents from B.I.; she only followed up on previously-requested documents. After receiving all of the documents required from B.I., Ms. Xiong processed the application within two weeks, by July 14, 2015. In Ms. Xiong's experience as a service coordinator, ACRC cannot immediately fund services on request. It must follow its internal process to determine whether these services are appropriate. An exception might be made in a rare case involving an emergency placement, but that was not the situation with claimant. In Ms. Xiong's opinion, she worked diligently to process claimant's day care services request in a timely manner and she never discriminated against either claimant or B.I. for any reason.

11. Ms. Houston has worked with ACRC for 17 years, initially as a service coordinator and, for the last eight years, as a client services manager. She has supervised Ms. Xiong since 2007, and reviewed her work in this case. Specifically, Ms. Houston reviewed the day care package Ms. Xiong completed for approval before sending it to the director. Ms. Xiong was required to and did follow the procedures in the Manual. There was nothing unusual about the completed day care packet, which Ms. Houston approved for further internal processing the next day.

Based on Ms. Houston's experience, the time it took Ms. Xiong to submit the completed day care package was not appreciably longer than that for other consumers requesting similar services. The average is one-and-a-half to two months after receiving the request for services. More time can be required if the service coordinator does not receive required documents from the consumer's family. Ms. Houston was aware B.I. was not happy with Ms. Xiong, but it was ACRC's internal "best practice" to allow her to complete the pending service requests for respite and day care before transferring the case. Based on her review, Ms. Houston concluded that Ms. Xiong worked diligently to process the application. Ms. Xiong did not request any information or documents from B.I. that she would not have been required to request from another consumer's family. There was no evidence that Ms. Xiong had discriminated against B.I. or claimant for any reason, or that she had intentionally

delayed or hindered the application process. Ms. Houston saw no reason to retroactively reimburse claimant for services provided before the final approval.

Vendorization Approval

12. On August 5, 2015, ACRC forwarded the approved day care request to its Community Services and Supports (CSS) Specialist to initiate and complete the day care vendorization process required before ACRC could fund these services. CSS Specialist Adia Cunningham was assigned to this case. On August 10, 2015, B.I. signed the Vendor Application. On August 12, 2015, B.I. informed ACRC that she and her son were being discriminated against by the employees involved in this matter and indicated she would file a complaint against them on this basis. On August 13, 2015, ACRC notified B.I. that her vendorization application for day care services had been approved, with a POS for a maximum of 790 hours at a rate of \$5.50 per hour, effective August 19, 2015.

13. The evidence established that ACRC took steps to expedite the processing of B.I.'s vendorization application. Maureen Paine has been an ACRC client services manager for 15 years. She is the supervisor of claimant's new Adult Unit service coordinator, Rachael Bernath. Ms. Paine explained that she personally met B.I. at her workplace on August 13, 2015, to help facilitate finalization of the vendorization process and ensure that the Purchase of Service was in place once the rate letter was received from CSS. It was not typical to meet at a parent's worksite, but Ms. Paine did this because B.I. was having a hard time meeting with Ms. Cunningham. During their meeting, B.I. asked Ms. Paine if ACRC would make this funding retroactive. Ms. Paine considered this to be a formal request for services. She discussed it with a manager, and then she and Ms. Bernath wrote the NOPA denying B.I.'s request for retroactive reimbursement.

Ms. Paine testified that, in her experience, a two-and-a-half month time span from B.I.'s initial request for services (May 28) through vendorization and funding (August 15) was "within the average range" of processing such requests. She noted that delays in final approval often occur when parents do not timely submit all of the required documentation. In her opinion, there was no legal basis to retroactively fund claimant's day care services, because the regional centers have a minimum of 45 days to complete the vendorization process. Only 32 days had lapsed between July 14, 2015, when ACRC approved the day care request, to August 19, 2015, when the vendorization was finalized and services prospectively funded.³

B.I.'s Testimony

14. B.I. testified that day care services were mentioned at the annual IPP meeting, but Ms. Xiong told her they would not be added to the IPP because B.I. was not employed at

³ The 45th day would be August 28, 2015.

the time and an IPP addendum would be prepared if B.I. got a job.⁴ B.I. described the communication difficulties she had with Ms. Xiong, who she believed was not listening to her. She believed this delayed completion of the application. For example, B.I. did not quite understand what was required from Child Action and it took Ms. Xiong “weeks” to explain this to her. B.I. told Ms. Xiong at the annual IPP meeting that she works for her son’s IHHS hours. B.I. expressed considerable frustration about the frequent changes in claimant’s service coordinator. Her family has had seven or eight service coordinators since claimant began receiving services from ACRC and she believes this is discriminatory. It is frustrating to have different people coming into their home. Each new worker has to learn about claimant all over and this is very time consuming. When claimant’s former service coordinator retired, Ms. Xiong was “new to us” and she then informed B.I. that her son would soon be transferred again to a new worker as he was over 17. B.I. volunteered that this was likely “a bad experience” for Ms. Xiong as well as for her. The day care process was frustrating. B.I. asked for out-of-home respite placement for claimant, which she had never done before. B.I. requested reimbursement for the supplemental cost of day care services for approximately three days in May and \$580 per month for June and July, 2015.

Discussion

15. Based on a review of the record as a whole, there was no persuasive evidence that Ms. Xiong acted in any way to delay the processing of claimant’s day care request, either due to inexperience in this particular process or due to ill will against B.I. and/or claimant. Ms. Xiong’s testimony was candid and she was very credible. This conclusion is supported by Ms. Houston’s seasoned observation and review of Ms. Xiong’s work. The record further establishes that the vendorization process was completed expeditiously and well-within the statutory time frame. There is no legal basis for ACRC to retroactively reimburse claimant for the supplemental costs of day care services B.I. provided to claimant before the day care application and vendorization process was completed.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. The Lanterman Act gives regional centers, such as ACRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and

⁴ B.I. agreed that previous service coordinators have typically told her about the possibility of providing claimant day care services and that she has generally indicated her desire for such services if and when she obtained a job.

implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. The Lanterman Act authorizes regional centers to include day care as a service or support to consumers living with their families. (Welf. & Inst. Code § 4685 (c)(1).) In addition,

When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home. (Welf. & Inst. Code § 4685 (c)(6).)

4. In creating or amending a consumer's IPP, the regional center shall ensure the establishment of an internal process that adheres to federal and state law and regulation. (Welf. & Inst. Code, § 4646.4, subd. (a).) When purchasing services and supports, the regional center shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (Ibid.)

5. *Burden of Proof:* California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistent of which is essential to the claim for relief or defense that he is asserting." As no other statute or law specifically applies to the Lanterman Act, ACRC has the burden of establishing, by a preponderance of the evidence, that its internal process for responding to

claimant's requests for funding for day care services was appropriate. (Evid. Code, § 115.) Claimant has the burden of establishing that ACRC discriminated against him in processing this request.

6. The regulations pertaining to the Lanterman Act are contained in Title 17 of the California Code of Regulations. Regulation section 54320, subdivision (a), establishes the time limits and requirements for regional centers like ACRC to review and approve vendor applications. As relevant to this appeal, that subdivision provides that:

(a) The vendoring regional center shall review the vendor application identified in Section 54310(a) and, as applicable, (d) or (e) within 45 days after receipt from the applicant, to ensure all of the following:

(1) The vendor application is complete;⁵

(2) The applicant has complied with provisions of Sections 54342 through 54355 of these regulations, as applicable;

(3) Any required license, credential, registration, accreditation, certificate or permit:

(A) Is current,

(B) Has been issued for the service to be vendored, and

(C) Has a current address that matches the address on the vendor application.

(4) Staffing ratios and qualifications as specified in Section 56724, and 56770, if applicable, and Section 56756 or 56772 of these regulations are consistent with the program design as required in Section 56712 and Section 56762 of these regulations, if applicable, for applicants seeking vendorization as community-based day programs.

(5) The applicant has signed the Home and Community Based Services Provider Agreement (6/99), if applicable. . .

(6) That the applicant or person(s) disclosed pursuant to Section 54311 has not been determined to be an excluded individual or entity as defined in Section 54302(b)(1) and is not under

⁵ Additional processing time is authorized if complete information is not provided. (Cal. Code Regs., tit. 17, § 54320, subd. (b).)

investigation pursuant to the criteria in Section 54311(a)(6).

¶ . . . ¶

(Cal. Code Regs., tit. 17, § 54320, subd. (a).)

Vendors are to “bill only for services which are actually provided to consumers and which have been authorized by the referring regional center.” (Cal. Code Regs., tit. 17, § 54326, subd. (a)(10).)

7. As set forth in the Factual Findings and Legal Conclusions as a whole, ACRC has met its burden of proof. There was no persuasive evidence that the processing of claimant’s request for day care services was protracted. To the contrary, the evidence persuasively established claimant’s mother did not timely notify ACRC of her impending full-time employment and immediate need for day care services and that she did not promptly return all required documents. Claimant’s service coordinator acted promptly and without discrimination to approve the request. The evidence does not support a finding that emergency vendorization was appropriate.⁶ ACRC’s Vendorization Unit completed B.I.’s vendorization application in less time than allowed by statute.

ORDER

Claimant’s appeal is DENIED.

DATED: December 2, 2015

MARILYN WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)

⁶ California Code of Regulations, title 17, section 54324 provides, in relevant part, that “the regional center is authorized to approve emergency vendorization for an applicant prior to the receipt of a completed vendor application if the regional center determines that the health or safety of a consumer is in jeopardy and no current vendor is available to provide the needed service.” (Cal. Code Regs., tit. 17, § 54324, subd. (a).)