

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2015090832

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on November 12, 2015, in Bakersfield, California.

Mark E. Myer, Program Manager, represented Kern Regional Center (KRC or service agency). Claimant was represented by his mother. Claimant's father appeared as a witness and was represented by Rex A. Schroder, Attorney at Law.

Documentary evidence and testimony was introduced by the parties. The matter was submitted for decision on November 12, 2015.

ISSUES

Is the Service Agency required to continue to provide funding for Claimant's current residential placement at SAILS Bakersfield, Inc., doing business as SAILS Westbrook Crisis, a crises intervention facility?

FACTUAL FINDINGS

1. Claimant is a 12-year-old Service Agency consumer. In addition to his qualifying diagnosis of Autism, Claimant has a history of self-injurious behavior (biting, scratching, hair pulling and banging his head), aggressive behavior (pushing, hitting or spitting), non-compliance and emotional outbursts including crying and panic attacks. Claimant also has a history of elopement. (Exhibit C-1, page 13.)

2. In June 2014, Claimant's aggressive and self-injurious behaviors worsened to such an extent that Claimant's mother and the regional center agreed to place Claimant in a crisis intervention facility known as SAILS Westbrook Crisis (SAILS). SAILS agreed to accept Claimant into the facility.

3. Claimant entered SAILS in July 2014, and has continued to reside there until the present. During Claimant's stay at the facility, SAILS issued three quarterly progress reports covering a period from August 2014 through May 2015. The progress reports all indicate that Claimant met his stated behavioral objectives in the areas of physical aggression, emotional outbursts, self-injurious behaviors, property destruction, and social behavior. Claimant met his goals in the area of non-compliance for the first seven months of his stay at SAILS. However, his acts of non-compliance increased in March, April and May 2015.

4. On September 8, 2015, the service agency issued a Notice of Proposed Action (NPA) setting forth its decision to terminate funding for Claimant's placement at SAILS. The Service Agency based its decision on Welfare and Institutions Code section 4646.4, subdivision (a)(1). Claimant's mother filed a Request for Hearing on September 21, 2015.

5. SAILS provides two beds for children between the ages of seven and 17 who are experiencing extremely challenging behaviors. The vendor agreement, signed by a representative of SAILS and the Executive Officer of the Kern Regional Center, states in pertinent part:

KRC has identified a need for a crisis intervention facility in order to provide intervention and stabilization for certain Consumers who are in crisis and require 24 hour care and supervision, and whose needs cannot be appropriately met within the array of other community options available. . . . Consumers may be in various types of crisis and at times extremely challenging and may display behaviors such as physical aggression, verbal aggression, property destruction, resistiveness, tantrums, self-injurious behavior, AWOL, have a forensic background, and require extensive assistance with their personal care. (Exhibit E-2, page 4.)

An Attachment to the above referenced vendor agreement notes that the "Facility provides crisis intervention and stabilization assessment and treatment planning services by our Behavioral Consultant within 24 hours of entry into the Facility. The Facility will also develop a plan for the client's transition to a permanent living situation." (Exhibit E-2 Attachment.)

6. The SAILS' Mission Statement states "To accept any child in Crisis, stabilize, comfort and house them, provide care, supervision, counseling and treatment until they can be reunited with their family or other permanent living arrangement can be made." (Exhibit E-3.)

7. Cherylle Malinson is the Director of Community Services for KRC. Her duties include negotiating with and monitoring crisis intervention facilities such as SAILS. Ms. Malinson testified that facilities such as SAILS are designed to provide relief from crises on a temporary basis. They are not intended to provide a permanent living arrangement for a consumer. Ms. Malinson stated that the reason that these are temporary placements is because these facilities provide a very restrictive environment. Usually the maximum stay at crisis intervention facilities is 90 days. Once a consumer is stabilized, the facility should create a plan to transition the consumer to a less restrictive environment. In fact, noted Ms. Malinson, regional centers are directed by statute to provide the least restrictive environment for consumers.

8. Cristina Blackmon is Claimant's Service Coordinator. Ms. Blackmon testified that Claimant's behaviors are now stable and manageable. She stated that Claimant has been residing at SAILS more than a year. KRC has convened a number of Community Options meetings to find a less restrictive living environment for Claimant. The Community Options participants, that include various KRC representatives, suggested various placements to Claimant's mother. None were acceptable to Claimant's mother except a facility called Sapphire. However, Sapphire declined to accept Claimant because Sapphire had at that time a consumer in residence who was potentially dangerous. The Community Options Committee suggested a statewide search to find an appropriate placement but mother understandably refused to allow Claimant to be placed outside of the area. As of the time of the hearing, Claimant had not been placed or accepted into another facility.

9. Claimant's father testified that he would be willing to allow Claimant to live with him rather than have Claimant placed in a residential facility.¹ He further testified that, based on his observations, he doesn't think that Claimant's current behaviors are such that he should continue to reside at SAILS. He does not believe that Claimant is currently in a crisis situation.

10. Claimant's mother testified that in June 2014, she had lost all child care options because of Claimant's aggressive behaviors. She stated that Claimant had attacked his grandfather who had been providing respite care. Claimant also attacked his mother on more than one occasion. In May 2014, Claimant bit a service provider who was at Claimant's home to train Claimant to communicate with an I-Pad. Claimant's mother also testified that she was informed by Claimant's school that Claimant could not remain in regular special education classes because he had been causing disturbances in class due to his emotional outbursts.

¹ Claimant's parents are divorced and live separately.

According to Claimant's mother, Claimant continues to exhibit self-injurious behaviors as he recently banged his head on the floor. Finally, Claimant's mother testified that even the workers from In-Home Supportive Services would no longer provide services because of Claimant's behaviors. Claimant's mother believes that SAILS has under-reported Claimant's behaviors in his progress reports.

11. Claimant's mother questions his father's motive in offering to have Claimant live with him. She stated that Claimant's father had never requested custody in the past, and doesn't understand what it takes to provide appropriate care and supervision for Claimant.

LEGAL CONCLUSIONS

1. The Lanterman Act, set forth in Welfare and Institutions Code section 4500 et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Legislature declared in section 4501: "[A]n array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. . . . Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. . . ."

2. Section 4512, subdivision (b), of the Lanterman Act defines the services that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual

program plan and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to . . . personal care, day care, domiciliary care, special living arrangements, mental health services, . . . community support, . . . facilitating circles of support, supported living arrangements . . .

3. The Lanterman Act also provides that “[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan (IPP) process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option.” (Welf. & Inst. Code, § 4512, subd. (b).)

4. Regional centers such as the Service Agency are responsible for developing and implementing IPPs, taking into account consumer needs and preferences and service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

5. Welfare and Institutions Code section 4646.4, subdivision (a), provides that regional centers shall establish an internal process when developing or reviewing an IPP, and this internal process shall ensure the adherence to federal and state laws and regulations, and when purchasing services and supports, shall ensure conformance with the regional center’s purchase of service policies as approved by the Department of Developmental Services.

6. SAILS Bakersfield Inc., was vendored to provide crisis intervention services for consumers who are experiencing mental or medical crises and engaging in extremely challenging behaviors, including physical aggression and self-injurious behaviors. SAILS is vendored to provide these services on a temporary basis until the consumer’s condition is stabilized. The maximum stay at a crisis intervention facility is 90 usually days. Claimant has resided at SAILS for more than a year. The evidence, including the progress reports from SAILS and witness testimony, established that Claimant’s condition has been sufficiently stabilized to transfer Claimant to his home or to a residential facility which provides a less restrictive environment. Such a transfer would adhere to those sections of the Lanterman Act which directs regional centers to provide services with the least restrictive environment. Therefore, cause exists to affirm the decision of the Service Agency to terminate funding for crisis intervention services heretofore provided by SAILS Bakersfield Inc.

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ORDER

The decision of Kern Regional Center to terminate funding for Claimant's placement at SAILS Westbrook Crises, and the crisis intervention services provided by SAILS Bakersfield Inc., is affirmed. Claimant's appeal is denied.

Dated: November 25, 2015


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.