

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANTS,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH Nos. 2015100859
2015100865

DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on December 3, 2015, in San Leandro, California.

Claimants were represented by their mother.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay, the service agency.

The record was closed and matter was submitted for decision on December 3, 2015.

ISSUES

1. Did Regional Center of the East Bay err by reducing the number of in-home respite hours it provides to claimants from 50 hours per month to 40 hours per month?

2. Did Regional Center of the East Bay err by transferring claimants' respite services from employer of record to full service agency services?

FACTUAL FINDINGS

Introduction

1. These matters were consolidated for hearing and for decision pursuant to Welfare and Institutions Code section 4712.2, with the consent of the parties, because they involve common questions of law and fact.

2. Claimants are brother (Claimant 1) and sister (Claimant 2); Claimant 1 is four years old and Claimant 2 is nine years old. Claimants are consumers of the Regional Center of the East Bay (RCEB). They live at home with their mother, older brother and three-year-old sister. Claimants are eligible for regional center services based upon diagnoses of autism. Claimants' three-year-old sister is also a consumer of RCEB, with a diagnosis of autism.

3. Claimants' maternal grandmother lives near the family, with claimants' aunt. Claimants' aunt is also a consumer of RCEB; she has severe developmental delays that consist of cerebral palsy and epilepsy. Claimants' aunt receives nutrition through a gastrostomy tube, is non-ambulatory and requires constant supervision. Claimants' maternal grandmother cares for claimants' aunt.

RCEB Assessment

4. Reva Ross, an employee of RCEB, became claimants' case manager in February 2015. Ross met with claimants' mother in the family home. Following the meeting, Ross authorized 30 hours of dual-rate in-home respite for claimants beginning March 1, 2015. Dual-rate respite provides one respite worker to care for two consumers at a higher hourly rate.

5. In April 2015, claimants' mother submitted a note to RCEB from a nurse practitioner stating that as a result of chronic back pain an increase in respite services was necessary. In response, RCEB increased the amount of dual-rate respite hours to 50 hours per month through September 30, 2015.

6. Ross later learned that claimants' respite worker was their maternal grandmother, and that claimants' mother provided the respite care for claimants' aunt. In August 2015, Ross learned that claimants' grandmother had requested an increase in respite hours due to an injury to her thumb.

7. Ross became concerned that despite her back condition, claimants' mother was providing respite care to claimants' aunt, and that claimants' grandmother, despite her thumb condition, was providing respite care to claimants. The purpose of providing respite care is to give the caregiver relief from the demands of constant care and supervision of a developmentally disabled family member. While they were requesting relief from providing constant care and supervision to their developmentally disabled family members, claimants'

mother and grandmother were taking on extra hours of caregiving for other family members, instead of taking a break.

8. RCEB's respite policy defines respite services as "intermittent relief for families from the constant care and supervision of their family member with a developmental disability who resides in the family home." Ross supports the provision of respite services to claimants' mother; however, after discussing the situation with her supervisor, Ross recommended that in-home respite services be provided by a full service agency rather than through an employer of record in order to meet claimants' needs, and to better serve the purposes of respite.¹

9. In reviewing the provision of respite care, Ross assessed the family's needs more carefully. She learned that Claimant 1 receives 220 hours of In-Home Support Services (IHSS) each month. In addition, Claimant 1 attends school approximately 80 hours per month. RCEB was providing 50 hours of dual rate in-home respite services, which Ross allotted half to Claimant 1 and half to Claimant 2. As a result, Claimant No. 1 received 325 hours of support or school services per month, or 82.5 hours of support per week.

Claimant 2 receives 283 hours of IHSS support per month, and attends school approximately 120 hours per month. Claimant 2 was receiving 50 hours of dual rate in-home respite from RCEB, and allotted half of that time to her. In total, Claimant 2 was receiving 428 hours of support or school services per month, or 110.75 hours per week.

Since there are only 168 hours in one week, Ross recommended reducing the number of in-home respite services to 40 hours per month, dual rate.

10. RCEB issued claimants Notices of Proposed Action on August 8, 2015, which proposed: 1) changing the employer of record in-home respite services to full service in-home respite services; and, 2) reducing the provision of respite services from 50 hours per month to 40 hours per month, dual rate, effective October 1, 2015. Claimants timely filed fair hearing requests.

Claimants' Evidence

11. Claimants' mother testified at hearing. With four children, three of whom suffer from autism, she needs help. Claimants' parents are separated and their father does not care for the children. Claimants' mother is not comfortable with leaving her children with someone she does not know. Because her mother cares for her sister full-time and is unable to leave the home, claimants go to their grandmother's home when respite services are provided. Claimants' mother goes shopping or attends to errands during this time.

¹ A full service agency provides respite care providers; an employer of record hires only providers identified by the family; in this case, Manos Home Care hires claimants' grandmother to provide in-home respite services for claimants.

12. Claimants' mother reports that she serves as the IHSS caregiver for Claimant 2, but an individual named Sal serves as the IHSS caregiver for Claimant 1. She does not feel that Claimant 2 would be comfortable with a caregiver other than her mother or grandmother.

13. Claimants' mother acknowledges that she provides respite care for her sister; however, she states that because of her back condition, she does not lift her sister, who is bedridden.

14. Claimants' mother provided a letter from Rebecca Riseman, N.P., which states that claimants' grandmother is physically able to care for children without limitation. Claimants' mother reports that claimants' grandmother had an injury to her thumb that has resolved.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500 et seq.) 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." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. In-home respite is one type of service provided to consumers. It is defined under Welfare and Institutions Code 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 which would ordinarily be performed by the family members.

3. RCEB proposes to purchase 40 hours per month of respite services for claimants. In light of the IHSS support services received and the amount of time claimants spend in school, 40 hours per month of in-home respite services are reasonable and appropriate.

4. RCEB has determined that engaging a full service respite agency to provide respite services, meets the goal of the services: claimants will be provided with care and supervision and claimants' mother will receive a break. Hiring claimants' grandmother to fulfill this role, when she too is overburdened and requesting relief from the constant care and supervision of a developmentally disabled family member, is incompatible with the reason for providing respite services. No evidence was presented at hearing which would support a determination that the regional center erred in making this determination.

5. RCEB has properly reduced the provision of respite services to claimants to 40 hours per month, dual rate, and has reasonably required that a full service agency be employed to provide those services.

ORDER

Claimants' appeals are denied.

DATED: December 7, 2015

JILL SCHLICHTMANN
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.