

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2015110156

DECISION

David Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the Westside Regional Center in Culver City on February 2, 2016.

Claimant was represented by her mother.¹ The Westside Regional Center (WRC or the Service Agency) was represented by Lisa Basiri, Fair Hearing Coordinator. Oral and documentary evidence was received and argument made. The record was closed and the case was submitted for decision on February 2, 2016.

ISSUE

The parties agreed that the issue to be decided by the ALJ is: Should Claimant continue to receive 84 hours per month of personal assistant services?

SUMMARY

Service Agency contends that Claimant is no longer eligible to receive personal assistant services. Claimant provided information, previously unknown to the Service Agency, supporting her request for the services to continue. The parties are ordered to exchange updated and accurate information to determine whether the services should continue.

¹ The names of Claimant and her family are not used to protect their confidentiality.

FACTUAL FINDINGS

1. Claimant is a 20 year-old woman receiving regional center services. She has been diagnosed with Mild Intellectual Disability, Pervasive Developmental Disorder and Borderline Intellectual Functioning. Claimant lives at home with her mother and father.
2. Certain relevant information is taken from the annual Individual Program Plan (IPP) prepared by the service coordinator, Jeff Moreno, assigned to Claimant by the Service Agency, as well as testimony and other documents. Based on the 2014 IPP (exhibit 5), prepared after an IPP meeting in July 2014, Claimant received a high school diploma in June 2014. Claimant had not decided whether to take college classes. Service Agency had provided 84 hours per month of specialized supervision from August 2013 to July 2014. Service Agency would begin funding 84 hours per month of personal assistance from August 2014 to July 2015.
3. Ms. Basiri testified credibly that specialized supervision and personal assistance are the same service. Service Agency uses the phrase specialized supervision to describe the service when it is provided to a high school student, but refers to it as personal assistance thereafter, as the consumer has completed high school and is presumably an adult. The Service Agency's applicable written policy, referred to as a service standard, refers to the same services, for all ages, generally as day care services (exhibit 6).
4. After a meeting in August 2015, a new IPP was prepared (exhibit 4). As discussed in more detail below, Mr. Moreno included that, based on Claimant's increased independence and because her mother was not working, personal assistance services would not be renewed but would end on October 31, 2015. A Notice of Proposed Action (NOPA) indicated that the service would end, and Claimant submitted a Fair Hearing Request (exhibit 2).
5. Mr. Moreno noted the following relevant information in the 2014 IPP. Claimant lived with her parents, both of whom worked. Her maternal grandparents also lived in the home. Claimant could attend her dressing and hygiene needs. She was forgetful and needed reminders to complete tasks. She assisted with household chores and was learning to use public transportation. She wrote songs and enjoyed music and dancing. She was shy and would only engage in familiar settings. Claimant was learning to cook and to do her laundry. During the IPP meeting, she answered questions when prompted by her mother. Claimant could keep her attention focused on a single activity for more than 30 minutes. Her speech was understood by others.
6. The 2015 IPP repeats the information from the 2014 IPP and reflects some changes in Claimant's capabilities. Claimant and her mother reported that Claimant is able to stay at home for six hours however mother would periodically call to check on her. Claimant could walk up and down the street on her own however her mother would watch her while Claimant was walking. Claimant was still unsure of her future activities—her mother wanted her to continue in school but acknowledged it was Claimant's decision.

Social skills training was requested and Claimant was to start attending The Gathering Place social skills program in mid-September. The IPP stated the Service Agency was to fund, but added a note that Mr. Moreno would “update.” The note, and funding, was not explained by any other evidence. Claimant was looking into attending a day program or school, with no notations about programs offered or funding sources. Claimant expressed an interest in working, and a “packet” was sent to a vendor, with no other notations about programs offered or funding sources. Claimant was able to express herself. When Claimant was upset, her mother indicated she would yell and avoid her responsibilities. “She engages in noncompliance and escape avoidance. Behaviors are manageable and required minimal/moderate interventions.” (Exhibit 4, p. 5.) Funding was provided by In-Home Supportive Services (IHSS), a county program utilizing federal funds, for 50 hours per month of services for Claimant. Mother was the IHSS provider.

7. An informal conference to resolve the issue of continued personal assistance services was held on November 4, 2015, between Claimant, her mother, and Mary Rollins from the Service Agency. In a letter following the conference (exhibit 3), Ms. Rollins indicated that personal assistance funding would be terminated as of December 31, 2015, because Claimant did not require constant supervision at home or in the community. Ms. Rollins suggested two day programs; one that focused on performing arts and another that focused on developing independent living skills. Ms. Rollins wrote that either of these programs, or another appropriate adult day program “would be more complimentary to [Claimant’s] capabilities than personal attendant services.” Ms. Rollins also suggested that respite services could be added at the rate of 21 hours per month, based on Claimant’s “age, need for some assistance and her tendencies to be argumentative” (Exhibit 3.) Claimant did not accept the offer and the matter proceeded to the hearing.

8. Ms. Basiri explained that, when Claimant was in school and her mother and father were working, specialized supervision was provided at the level of 84 hours per month. After Claimant graduated, and her mother was working, the name of the service changed to personal assistance at the level of 84 hours per month. As of the August 2015 IPP, Claimant’s mother was reported to no longer be working and Claimant was reported to have a greater level of independence. According to the service standard, Claimant was no longer eligible for the services.

9. As it applies to Claimant, the service standard (exhibit 6) states that day care services are provided to school-age children while family caregivers are at work or at education programs, and there is no other means to provide care and supervision. “It is provided to those whose health and/or safety would be in jeopardy without such care because of the nature of their disability or at risk status.” The services may continue and, for persons over age 22, the need would be determined by the planning team. The eligibility requirements, as they relate to Claimant, are summarized as follows:

- a. There are no alternative resources for supervision.

b. Both parents are working or attending a full-time vocational/educational program.

c. The consumer has severe behavior challenges that constitute a threat to the health and safety to the consumer or to others in the environment.

d. Other circumstances to be considered by the IPP team and regional center management that would qualify the consumer for these services.

Also considered are normal parental responsibilities for providing child care, as well as community programs such as local day care programs.

10. Claimant's mother is opposed to ending personal assistance services. She presented evidence that some of the information in the 2015 IPP is wrong, that Claimant's abilities are not as advanced as depicted in the IPP, and that Claimant's behaviors include risks to her health and safety.

11. Claimant's mother testified to employment that is inconsistent with the statement in the 2015 IPP that she was not working. Her job at Universal Projects, noted in the 2014 IPP, ended in December 2013. Since then, mother has worked intermittently and part time, sometimes 24 hours per week and sometimes 30 hours per week, as a personal companion caring for the elderly. She would work two or three times per week, and the position was as a live-in. The work was through an agency. Her last such work was in December 2015, and she is now looking for work. This information is inconsistent with the information known to the Service Agency and included in the IPP's.

12. According to mother, her father passed away in September 2014, and her mother no longer lives in the home. Mother's son and sister-in-law have provided supervision for Claimant. According to mother, the son has been paid by the Service Agency to provide specialized supervision or personal assistance, since 2010 or 2011. He is at the home every day, for an average of five hours, sometimes from 8 a.m. to noon, or from noon to 6 p.m. He takes Claimant to her social skills program and other places in the community. He cares for Claimant when mother is not there. Some of this information is inconsistent with the information known to the Service Agency and included in the IPP's.

13. Mother disputes that Claimant is able to walk near the home by herself. Mother disputes that Claimant can ride the bus by herself. Mother states that Claimant cannot be trusted in the home; that Claimant at times left a pot over the stove burner after the water has boiled out, left the water running causing flooding, and left lit candles in dangerous places in the home. Mother submitted recent letters from three of Claimant's aunts, an uncle and a cousin. (Exhibits B and C.) All of these relatives state that Claimant cannot be left by herself and requires supervision. Some refer to Claimant's inability to follow directions, slow reactions, difficulty in focusing on tasks, immaturity, and inability to make sound decisions. This information is inconsistent with the information known to the Service Agency and included in the IPP's.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code § 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. Where the Service Agency seeks to discontinue a service it has previously funded, Service Agency has the burden to demonstrate that its decision is correct. In this case, Service Agency had the burden to show that funding for the existing personal assistance services should be terminated, as set forth in the NOPA.

3. Welfare and Institutions Code section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with a developmental disability. These are services and supports that will allow such persons, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (Welf. & Inst. Code § 4502.) The Legislature declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Welf. & Inst. Code § 4685, subd. (b).)

4. Welfare and Institutions Code section 4646.5 covers the planning process for the development of an IPP. The IPP must include a statement of goals based on the consumer's needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals, and the identity of the providers of services.

5. Welfare and Institutions Code section 4646, subdivision (a), states, in pertinent part: "It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, and

reflect the cost-effective use of public resources.” Services by regional centers must be provided in the most cost-effective and beneficial manner (Welf. & Inst. Code §§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (Welf. & Inst. Code § 4648, subd. (a)(2)).

6. The planning process includes the gathering of information about the consumer and “conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.” (Welf. & Inst. Code § 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer’s needs, it is clear that accurate information must be gathered so that appropriate services can be provided.

7. Effective September 1, 2008, Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer’s need for extraordinary care, services, and supports and supervision.

8. Service Agency here used the information available to it to evaluate Claimant’s eligibility and need for personal assistance services. As of the IPP meeting in August 2015, that information included that Claimant’s abilities were such that she could be left unattended for periods of time, mother was not working, grandparents were also in the home, and there were no unusual behaviors or safety risks. Based on this information, Service Agency determined that Claimant was no longer eligible for personal assistance services. Efforts were made to find activities that would occupy Claimant’s time and advance her abilities, such as day programs, work scenarios, social skills training and school. Other than social skills training, no other programs are yet in place. There was little evidence about Claimant and her family’s progress in considering or implementing other programs that could engage Claimant during the day and provide skills and other benefits for her.

9. It appears that much of the information relied upon by Service Agency was not updated and accurate. Therefore, Service Agency, Claimant and her mother could not engage in the cooperative planning process required by law and described above to develop an appropriate IPP for Claimant. For example, more information can be gathered about mother’s work and efforts to find work, her son’s schedule of care for Claimant, the safety risks and behavior challenges presented if Claimant is at home, respite services, day programs or work programs. A comprehensive review would allow consideration of workable program for Claimant. Time will be allowed for the IPP process to work as designed, for the Claimant’s benefit. In the interim, personal assistance services should be continued. Under the circumstances, Service Agency, Claimant, her mother and any other interested persons will be ordered to exchange information, meet, and work to develop an appropriate plan within 60 days. Personal assistance services will continue until a new plan is developed or for 60 days, whichever comes first.

ORDER

Claimant's appeal of Westside Regional Center's decision to terminate funding for personal assistance services is granted in part and denied in part. Service Agency, Claimant, her mother and any other interested persons are ordered to exchange relevant information, meet, and develop an appropriate, updated Individual Program Plan for Claimant within 60 days. Personal assistance services will continue until a new Individual Program Plan is developed or for 60 days, whichever comes first.

DATED: February 5, 2016

DAVID ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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