

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RISA B.,

Claimant,

v.

TRI-COUNTIES REGIONAL CENTER,

Service Agency.

OAH No. 2012080721

DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 4, 2012, in Simi Valley, California. Jackson Wheeler, Services & Supports Manager, represented Tri-Counties Regional Center (TCRC or Service Agency). Shara B., Claimant's mother (Mother), represented Risa B. (Claimant). Helen Pattison, a family friend, attended the hearing in support of Mother. Oral and documentary evidence was received at the hearing. The matter was submitted for decision on October 4, 2012.

ISSUES

1. Whether Service Agency properly denied Claimant's request to fund 20 hours per week of personal assistance for Claimant?¹
2. Did Service Agency remove "bank" hours without issuing a Notice of Proposed Action (NOPA)?
3. Did the Individual Program Plan (IPP) fail to state goals for Claimant to be enrolled in the Pathpoint, Inc. Integrated Work Program (IWP)?

¹ Claimant's August 21, 2012, Fair Hearing Request indicates that she is requesting 25 hours of personal assistance. At hearing it was determined that 20 hours was the accurate request made by Claimant.

FACTUAL FINDINGS

1. Claimant is a 33 year-old female who was diagnosed with mild mental retardation and cerebral palsy. She lives at home with her mother, who is her court appointed conservator. She has a sister who does not reside with Claimant and Mother, and Mother and Claimant's father are divorced. Father has no contact with Claimant. Claimant is currently attending the Pathpoint Inc. Self Determination program, five days per week, Monday through Friday, from 8:30 am until 3:30. Mother works full time as a special education teacher during the school year, in addition to performing related duties outside of her daytime work schedule, including completing paperwork, staff development, and tutoring. Although Mother receives some help from Claimant's sister on occasion, Mother has total responsibility for Claimant's care.

2. Pursuant to Claimant's July 5, 2012 IPP, and a subsequent IPP Amendment/Addendum to the July 5, 2012 IPP dated August 29, 2012, Service Agency funds 24 hours per month of in-home respite vendored by Channel Islands, to be used on weekends and evenings to give Mother needed breaks from caring for Claimant. Service Agency also funds eight hours per week of personal assistance service for Claimant to be provided by Catalina Hernandez, and 168 bank hours, which are only to be used when Claimant is sick or cannot attend the Pathpoint day program. Service Agency funds 23 days per month of an Adult Development Center (ADC) day program at Pathpoint Inc. Claimant has a one-to-one aide for 161.25 hours per month while in attendance at the Pathpoint program. Claimant also receives roundtrip transportation from home to the Pathpoint day program. In addition to the services funded by TCRC, Claimant receives 272.9 hours per month of In Home Supportive Services (IHSS), and \$1,102 per month Social Security Disability Income (SSDI).

3. Service Agency has funded Claimant's personal assistance hours at a rate of 20 hours per week during the school year when Mother is working full time, and eight hours per week during the summer months when Mother is not working full time as a teacher. However, during the July 5, 2012 IPP, Service Agency requested verification of Mother's work schedule and IHSS hours as a condition of continued funding of Claimant's personal assistance hours at the pre-July 5, 2012 IPP level, i.e. 20 hours per week during the school year and eight hours per week during summer break. On August 3, 2012, Mother submitted a written request to Service Agency to continue funding 20 hours per week of personal assistance during the school year. On August 6, 2012, Service Agency responded to Mother with a written request for documentation of Mother's work schedule, verification of IHSS hours and when they were being used, when respite hours were used, when personal assistance hours were used, and when parental supervision was being used for Claimant.

4. Mother failed to provide the documentation requested by Service Agency and on August 16, 2012, Service Agency notified Claimant that Mother's request to fund 20 hours of personal assistance would be denied. On August 21, 2012, Claimant filed the Fair Hearing Request (FHR) seeking 20 hours per week of personal assistance, reinstatement of the bank hours, and to have Claimant's IPP provide stated goals for Claimant to be enrolled into the Pathpoint IWP. Subsequently, on August 29, 2012, Service Agency amended the July 5, 2012

IPP, to advise Claimant that it would continue to fund eight hours per week of personal assistance, the summer rate hours, and 168 bank hours, until Mother provided verification of her work schedule and IHSS hours available to Claimant.

5. Service Agency continued to fund Claimant's Pathpoint Self Determination program in the July 5, 2012 IPP. The Self Determination program included various activities including safety/emergency preparedness, skill building in the areas of walking, signature writing, money safety, and communication; center-based activities such as bingo, puzzles, crafts, video and card games, and exercise; community based activities such as walking, shopping, going to parks and beaches, and a paid building and grounds maintenance work component. At the July 5, 2012 IPP, Mother indicated her desire to have Claimant transitioned from the Pathpoint Self Determination program into an IWP at Pathpoint, the Career Exploration Group. As both programs are components of Pathpoint's day program, Service Agency indicated in the IPP that Pathpoint would prepare and maintain an Individual Service Plan (ISP) for Claimant that would have appropriate goals and objectives and report Claimant's progress to TCRC annually. The IPP indicated that Claimant would remain in the Self Determination program temporarily while Claimant was on the IWP wait list for the Pathpoint Career Exploration Group vocational program. Finally, the July 5, 2012 IPP indicated that Claimant would continue to explore her opportunities for vocational-based programs at work sites that met Claimant's mobility needs.

6. Claimant's Mother did not provide the documentation requested by Service Agency to verify the IHSS hours received by Claimant, Mother's work schedule, or the schedule of other supports utilized by Claimant, until October 1, 2012. Mother had previously advised Service Agency in the 2010 and 2011 IPPs that Claimant was receiving 169 hours per month of IHSS. Debby Weinkart, Branch Manager for Adult Services, and Jill Mueller, Claimant's Service Coordinator, both testified that the IHSS and scheduling documentation arrived only a few days before hearing. Claimant had submitted an IHSS award letter earlier, but the document was heavily redacted and did not provide sufficient information regarding the actual IHSS hours being received by Claimant. The Schedule of Childcare Services and Supports ultimately completed and submitted by Mother to Service Agency was unclear and incomplete. The schedule did not sufficiently explain or describe what hours Mother provided care and supervision to Claimant, what in-home respite hours were being used, and what hours would be considered personal assistance hours. The schedule indicated that Monday through Friday, Claimant spent six hours per day at Pathpoint, she used 6.21 hours per day of IHSS service, five hours per day of TCRC "daycare," and two hours for transportation on the bus to Pathpoint and back home. The total hours listed for Monday through Friday was 19.21 hours per day. For Saturday, Mother listed 5.6 hours of in-home respite and 6.2 hours of IHSS, and Sunday 6.21 hours of IHSS.

7. As stated above, Mother's documentation of her work schedule, verification of IHSS hours and when used, and when respite and personal assistance hours were being used, were not sufficiently clear to determine the level of personal assistance Claimant required. However, it is important to note that Service Agency was providing 20 hours per week of personal assistance hours when Service Agency believed Claimant was receiving 169 hours of IHSS services per month, based upon Mother's verbal confirmation of the IHSS hours

received. After receiving verification of the IHSS hours from the Human Services Agency indicating that Claimant's IHSS hours were in fact 272.9 hours per month, over 100 hours more than previously suspected, it would be difficult to conceive that Mother continues to need the original 20 hours per week of personal assistance funded by Service Agency. Given Mother's failure to truthfully advise Service Agency of the correct number of IHSS hours actually being provided to Claimant by the generic resource, and her reluctance to provide sufficient documentation to Services Agency to assist in determining the appropriate level of personal assistance hours Claimant is entitled from TCRC, Claimant's request for continued funding of the 20 hours per week of personal assistance hours must be denied. Claimant failed to meet her burden of showing that Claimant's care and supervision needs over and above that which is being provided by generic resources, cannot be fulfilled using the eight hours per week currently being funded by Service Agency.

8. Mother's contention regarding Service Agency's failure to provide proper goals and objectives for Claimant's Pathpoint day program also lacks merit. Service Agency has not received a current ISP report from Pathpoint detailing Claimant's goals and objectives and the progress she has made towards transitioning into the IWP Career Exploration Group vocational program. According to Mueller, there is a disagreement between Mother and Pathpoint regarding Claimant's ISP which was delaying the preparation of the plan. Mother did not provide a current ISP from Pathpoint at hearing. Although Mother's FHR request asserts that Service Agency failed to prepare proper goals and objectives for Claimant's transition into an IWP at Pathpoint, both Mueller and Weinkart testified that Claimant's goals and objective for the Pathpoint program are prepared and monitored by Pathpoint and presented to TCRC in the ISP annually. Service Agency incorporates the ISP into Claimant's IPP if Claimant, Mother, and the Service Agency are in agreement with the ISP.

9. The July 5, 2012 IPP had sufficient notations of the goals and objectives that had presumably been outlined in the last ISP prepared by Pathpoint for Claimant. To the extent Mother disagrees with Claimant's progress in transitioning into the IWP Career Exploration Group, Service Agency and Mother should request an ISP from Pathpoint, review the ISP, and convene an IPP to make changes in the services provided, and/or the vendor itself if all parties agree that Pathpoint is no longer an appropriate placement for Claimant.

10. Mother's FHR appears to question the goals and objectives of Claimant's Pathpoint day program, but she failed to offer any evidence to establish the ineffectiveness of the Pathpoint program as it is currently being implemented. Service Agency is not responsible for preparing the ISP for the Pathpoint program. Pathpoint must prepare this document and report. Mother has not requested that Claimant be removed from the Pathpoint day program. Mother is simply requesting that Service Agency address the goals and objectives contained in the Claimant's IPP and determine whether Claimant's transition into the Pathpoint IWP can be expedited. It was unclear from the evidence when the next ISP is due from Pathpoint regarding Claimant's progress. However, Mother is free to request an ISP from Pathpoint, and subsequently request to convene an IPP to discuss Claimant's progress in the program. None of these steps had been taken at the time the FHR was filed

by Mother. Mother presented no evidence regarding Claimant's ISP or her progress towards transitioning into the IWP Career Exploration Group. Moreover, Mother did not submit a request to Service Agency to specifically include goals and objectives related to Claimant's transition into the Pathpoint IWP, other than her notations in the July 5, 2012 IPP that she wanted Claimant transitioned into the IWP at Pathpoint. Consequently, Service Agency did not issue a NOPA regarding the IWP goals and objectives issue, and conceivably this issue should not be in the FHR at all. Thus, on this evidence, it cannot be determined whether Claimant's goals and objectives in the Pathpoint program are appropriate without reviewing the current ISP. Mother has the burden of proof on this issue, and her burden has not been met.

11. Finally, Mother's contention that Service Agency terminated Claimant's bank hours without issuing a NOPA was not substantiated. Weinkart testified that Claimant retains her access to 168 bank hours to be used when Claimant is sick and unable to attend the Pathpoint day program. The July 5, 2012 IPP Amendment/Addendum confirmed that the bank hours remained in Claimant's supports and services package from TCRC. Consequently, Claimant's request to have these hours reinstated is denied.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant asserts that Service Agency should fund 20 hours per week of personal assistance services, reinstate bank hours removed by the Service Agency, and implement proper goals and objectives in Claimant's IPP. Consequently, Claimant has the burden to demonstrate that Service Agency's denial of funding for these services was inappropriate. Claimant bears the burden of proving, by a preponderance of the evidence, that the Service Agency's actions were inappropriate. (See Evid. Code, § 115.)

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500, et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

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 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 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." (Welf. & Inst. Code, § 4512, subd. (b).)

4. Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that

must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subdivision (b), 4640.7, subdivision (b), 4651, subdivision (a), 4659, and 4697.)

5. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subdivision (a), 4647, subdivision (a); 4646.5, subdivision (a)(4)). “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.” (Welf. & Inst. Code, § 4648, subd. (a)(8).)

6. Section 4686.5 states:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

7. Claimant failed to show that additional personal assistance hours are warranted in this case. Claimant’s own reluctance to provide necessary documentation to Service Agency to facilitate a determination of the appropriate level of personal assistance hours hindered Service Agency’s ability to properly consider Claimant’s request for 20 hours per week of personal assistance hours. Evidence offered by Claimant at hearing also failed to sufficiently document Claimant’s current need for additional personal assistance hours. Moreover, the revelation at hearing that Claimant is receiving 272.9 hours per month of IHSS, over 100 more hours than previously reported to Service Agency by Mother, suggests that Claimant’s generic resources are sufficiently covering Claimant’s current needs for care and supervision during the period Mother is working full time as a teacher. Service Agency had previously funded 20 hours per week of personal assistance hours when TCRC believed Claimant was only receiving 169 hours per month of IHSS. Consequently, on the evidence made available at hearing, it is concluded that the eight hours per week of personal assistance hours currently funded by Service Agency is sufficient to meet Claimant’s care and

supervision needs in conjunction with the generic resources available, respite funded by TCRC, and the Pathpoint day program.

8. Claimant's contention that Service Agency had improper goals and objectives in Claimant's IPP for her Pathpoint day program also must fail. Claimant's July 5, 2012 IPP properly outlined the goals and objectives for Claimant's day program. It specifically indicated Claimant was in the Self Determination program and was on the wait list to transition into the Career Exploration Group IWP. Pathpoint is responsible for articulating Claimant's goals and objective for the day program in its annual ISP for Claimant. It is unclear when the next ISP is due to Service Agency, but to the extent Mother wants to expedite this process, she must request an ISP from Pathpoint and ask that an IPP be convened to review and discuss the ISP. There are indications that Mother's disagreements with Pathpoint may be delaying this process. Service Agency should move forward with inquiring as to the status of Claimant's ISP and expedite the submission of this report if possible. There was insufficient evidence to conclude that Service Agency or Pathpoint failed to provide proper goals and objectives for Claimant's Pathpoint day program.

9. Claimant's contention that Service Agency removed 168 bank hours was not proven at hearing. In fact, evidence established that Service Agency funded the 168 bank hours in Claimant's July 5, 2012 IPP Amendment/Addendum, dated August 29, 2012. Consequently Claimant's appeal on this issue must be denied.

ORDER

Tri-Counties Regional Center denial of Claimant's request for 20 hours of personal assistance hours is affirmed. Claimant's appeal contending that Claimant's IPP had improper goals and objective for the Pathpoint day program is also denied. Claimant's appeal asserting that Service Agency removed the 168 bank hours is denied.

DATED: October 18, 2012



MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.