

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2015100875

DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on December 10, 2015, in San Leandro, California. Interpreter Ayman Badr provided English/Arabic interpretation at hearing.

Claimant was represented by her mother.

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

The matter was submitted for decision on December 10, 2015.

ISSUE

Did the Regional Center of the East Bay make an error by discontinuing Claimant's in-home respite services as an employer of record and starting in-home full service respite provided by a service agency?

FACTUAL FINDINGS

1. Claimant is a 26-year-old consumer of the Regional Center of the East Bay (RCEB). Claimant is eligible for regional center services because of her severe

developmental delays consisting of spastic quadriplegic cerebral palsy and seizure disorder. She receives nutrition through a gastrostomy tube and requires constant supervision. Claimant is also non-verbal and non-ambulatory. She needs physical assistance with her toileting, bathing, and activities of daily living (ADLs). Claimant's mother is her primary caregiver and she provides excellent care for Claimant.

2. Prior to March 2014, Claimant's adult sister had been providing in-home respite services to Claimant through an agency, Manos Home Care. At some point, Claimant's sister and her family (including her husband and four children) moved in with Claimant and their parents in the family home in Oakland. Two of the four children are also consumers of RCEB.

3. In March 2014, RCEB issued Claimant's triennial Individual Program Plan (IPP). Ramona Baskerville was the assigned RCEB case manager. According to the IPP, effective April 4, 2014, RCEB stopped in-home respite services for Claimant because respite was to provide a break for the family and with the sister already living in the house she was not receiving a break. The IPP plan was to have RCEB review the respite protocol when a suitable provider was located who was not living in the home.

4. In January 2015, Claimant's sister and her family moved out of Claimant's residence to San Leandro. Claimant's mother requested to have in-home respite restored since Claimant's sister was no longer living in the home. RCEB approved the request. In March 2015, Claimant's sister began to provide 90 hours per quarter of respite services to Claimant, as employer of record, through Manos Home Care.

5. In or around April 2015, Claimant's sister requested additional respite hours and support for her two children because she suffers from acute chronic back pain that made it difficult for her to perform her own ADLs.

6. The sister's condition came to the attention of Claimant's case manager. She became concerned that if Claimant had a seizure or fell off the bed, with her acute chronic back pain and physical limitations the sister would not be able to assist Claimant. Also, if Claimant's sister could not care for her children because of her own ADLs, then how could she adequately provide respite care for Claimant. This presented an issue of health and safety for Claimant who requires an intensive level of care due to her severe disabilities. The case manager recommended that an outside provider come in to provide adequate respite coverage.

7. On October 8, 2015, RCEB issued a Notice of Proposed Action to discontinue employer of record respite services and start in-home full service respite with an agency worker. Claimant's sister would no longer be Claimant's direct care respite worker, effective November 15, 2015. The Notice of Proposed Action stated, as the reason for the action, the following:

[Claimant's mother and her sister] are each other's respite workers. They have both reported medical issues which make it difficult to care for their own children who are diagnosed with disabilities. Changing the respite services from Employee [sic] of Record (EOR) to Full Service will ensure that the health and safety concerns for [Claimant] will be adequately addressed and not further contribute to the medical issues that [Claimant's sister], (current provider) is experiencing.

Claimant's mother timely filed a fair hearing request.

8. RCEB conducted an informal meeting with Claimant's mother on October 27, 2015. Claimant's mother stated that her elder daughter, as the respite provider, gave her much needed assistance and relief from caring for Claimant. She also stated that Claimant gets nervous, fearful, and will have seizures if she is approached by a stranger. RCEB agreed that respite services would continue at 90 hours per quarter. However, given Claimant's sister's medical condition, in home respite care for Claimant would be provided through the full service category meaning that a vendor would provide the worker and pay the salary directly to the worker. This fair hearing followed.

9. According to Claimant's case manager, 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. However, in this case, while she was requesting relief from providing constant care and supervision to Claimant, Claimant's mother was taking on extra hours of providing respite for her grandchildren instead of taking a break. At hearing, RCEB reiterated that Claimant's mother is not required to leave the home while in-home respite services are provided by a full service agency.

10. 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." RCEB supports the provision of respite services to Claimant's mother. However, in-home respite services provided by a full service agency better serves the purpose of respite and Claimant's needs.

Claimant's evidence

11. Claimant's mother disputes that she has any existing medical issues, because she no longer has a problem with her finger. She states that she does not normally leave the residence because if Claimant does not see her, she will "act out." With her older daughter providing respite, this allows her to do quick errands or take a shower. Claimant is used to having her sister as the respite provider. At some point in the past, someone came to provide respite, but it did not work because of Claimant's issues with strangers.

Claimant's mother admits that even when her adult daughter is providing respite care, she is still close by and "does all the work" in caring for Claimant. Claimant's mother states that "every rule has an exception," and that an exception should apply in this case. In any event, she "will be with her daughter no matter what."

LEGAL CONCLUSIONS

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

2. The Lanterman Act defines in-home respite, a service provided to consumers, 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.

(§ 4690.2, subdivision (a).)

¹ All references are to the Welfare and Institutions Code.

3. In this case, RCEB has determined that engaging a full service respite agency to provide in-home respite services for Claimant meets the goals of the services. Claimant will be provided with appropriate care and supervision and her mother will receive a break. Hiring Claimant's sister to fulfill this role, when she has her own medical issues and is requesting additional relief from the constant care and supervision of her own developmentally disabled children, is incompatible with the reason for providing respite services.² The evidence presented at hearing did not support a determination that RCEB made an error in making this determination.

ORDER

Claimant's appeal is denied.

DATED: December 16, 2015

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Regina Brown
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REGINA BROWN
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.

² This decision does not address Claimant's ability to reinstate her sister as her respite care provider if her sister's medical condition improves.