

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

THOMAS C. S.

Claimant

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH Case No. L- 2005030867

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on July 13, 2005.

Vince Toms, Consumer Services Representative, Inland Regional Center appeared on behalf of the service agency, Inland Regional Center.

Cheryl Cisneros, advocate, appeared and represented the claimant Thomas C. S. Lana A., the claimant's grandmother and conservator, was also present at the hearing.

The record remained open for submission of written closing briefs. The record was closed and the matter was submitted on August 8, 2005.

ISSUES PRESENTED

1. Should the service agency be required to resume providing respite to the claimant under a parental voucher system and should the respite be provided retroactively?

2. If the service agency is not required to continue to provide respite under a parental voucher system, what time period is appropriate for the transition from the voucher system to an alternate delivery system for respite?

## FACTUAL FINDINGS

1. Claimant Thomas C. S. ("the claimant") is a 19 year old man who receives services from the Inland Regional Center ("the service agency"). The claimant is eligible for regional center services due to diagnoses of autism and he receives services on that basis.

2. The claimant lives at home with his grandmother. He recently graduated from high school. Thomas has had aggressive behavior problems in the past. He has had episodes of explosive behavior usually at school after being teased by the other students. Currently, Thomas suffers from bad dreams at night. Thomas now attends a day program four days a week. Caring for the claimant can be very difficult and stressful for his grandmother, but the claimant's grandmother is devoted to providing a caring and supportive home for her grandson.

3. Until February 2005 the service agency provided the claimant's family with thirty (30) hours of respite per month funded by the service agency. Respite care is intended to give families temporary relief from the extraordinary duties required to care for the needs of a child with developmental disabilities. Respite care can be provided in the consumer's home or out of the home. Both the claimants' family and the service agency herein agree that the family needs respite and the amount of respite needed is undisputed.

4. Until February 2005, the service agency provided the claimant with respite care through a system known as the "parental voucher" system. This method of delivering respite care is a system whereby the respite services are arranged for and managed directly by the consumer's family. Under this method, the family hires the care providers, pays the care providers, and then submits the required time sheets and payment records to the service agency. The service agency then reimburses the family for the cost of the respite care provider.

There are two other methods of providing respite care to consumers. The first alternative is known as "preferred provider" respite whereby an agency is retained and the agency then hires the respite provider of the family's choice and the agency is responsible for paying the respite provider, maintaining the necessary records and submitting the records to the service agency for reimbursement. The other alternative method of providing respite care is known as "agency respite" whereby an agency is hired to provide respite care and the agency selects and provides the respite workers and the service agency reimburses the agency for the service.

5. In August 2004, the Department of Developmental Services ("DDS") enacted revised regulations governing the provision of services by regional centers that became effective in December 2004. These revised regulations were designed to ensure compliance with federal regulations relative to California's right to receive federal

funding for various services including respite care. The state enacted the regulation changes in an effort to maximize its ability to receive federal funding in order to help alleviate the state's ongoing budgetary constraints.

Under the old regulations, families using the parent voucher system submitted a statement each month to the service agency that verified they were maintaining required time records for their respite provider for a period of three years. The revised regulations now require far more detailed and complete service records to be maintained to support all billings, including billing for the provision of respite services and such records must be maintained for five years. These requirements for more detailed records are now imposed on those operating under the parental voucher respite system. The regulations require records be maintained that reflect the identification of the consumer and the services provided to the consumer including date, time, location and hourly units of respite services provided. The regulations also require records reflecting the name, date of birth, social security number, address, and telephone number of all direct care respite providers. Families using the parental voucher system have to complete a Home and Community-Based Services Provider Agreement and any family members providing care have to use a specific billing form and have to maintain copies of the respite service records for five years. Also, voucher recipients have the responsibility to provide worker's compensation insurance to employees and have to withhold federal, state, and local taxes.

6. When the regulations were changed, the service agency became concerned that consumer families would not have the inclination or the time to meet the new more stringent record keeping requirements. The service agency did not want to risk suffering the loss of federal funding if upon the auditing of their records by the federal government the service agency could not produce adequate records to support their respite payments. Therefore, the service agency decided to eliminate the parent voucher system for respite unless a family could prove they were maintaining the necessary records to comply with the record keeping regulations and withstand a federal audit. Alternatively, the service agency offered all families who had been using the parent voucher system, the two other systems of providing respite: the preferred provider system and the agency respite system. Most families opted to transition over to the preferred provider system since they could continue to use the same respite provider under that system, but would no longer need to maintain the records.

7. The claimant's grandmother wishes to continue using the parent voucher system for respite services. She had hired her daughter who is Thomas' aunt to provide respite care to Thomas. The claimant's grandmother believes it would be better for their family to continue with the parent voucher system rather than changing over to one of the other systems. Thomas is difficult to care for and he is comfortable with his aunt when his grandmother is not there. However, the claimant's aunt does not wish to go through what is required to become an employee of an agency simply in order to continue giving respite care to her own nephew. The service agency did offer to allow the family to continue to use the parental voucher system if they could produce adequate

records to demonstrate they were in compliance with the record keeping regulations. When the service agency requested the grandmother to provide proof of her record keeping, she was not able to provide records that substantially complied with the record keeping regulations. She has not maintained records for the three years that was previously required let alone the five years as is now required. The grandmother asserts she was not previously advised she needed to keep extensive records, but in fact the invoice she was submitting each month for reimbursement states clearly what their record keeping requirements were.

The claimant's grandmother acknowledges she did not notice or read those statements on the back of the invoices and argue that now that she knows what is required she will do a better job of record keeping. However, based on past performance, the regional center understands how difficult and involved this record keeping will be and the regional center is willing to risk the dire consequences if proper records are not maintained. Given the family's noncompliance with the regulatory record keeping requirements and the possibility that a continuation of parental voucher system might result in the loss of some federal funding as a result of that noncompliance, the service agency acted within its proper discretion in terminating the claimants' parental voucher respite. The difficulties this family faces are certainly overwhelming and the job they are doing is extremely commendable. There is no evidence, though, that establishes the service agency has abused its discretion or acted unreasonably in terminating the parental voucher system for respite services.

8. Prior to February 2005, the service agency gave the claimant's grandmother the opportunity to transition over to another method of respite delivery. The claimant failed to agree to another respite option and also failed to file an appeal of the service agency's decision. As a result, the claimant's parental voucher respite was terminated. Finally the claimant did file an appeal and the service agency treated it as timely even though it was not and the matter was set for hearing, but claimant's respite had already been stopped. The service agency has agreed to reimburse the claimant's family for respite for the months of March 2005 through August 2005 pending the outcome of this appeal. This will enable the family to continue receiving respite services during the transition to another form of respite systems.

In order to enable the family to smoothly transition from the parental voucher system to one of the alternative respite systems, it would be reasonable to allow a period of 90 days for the transition. The service agency should assist the claimant's grandmother in finding the appropriate agency to provide respite either through the preferred provider system or the agency respite system, whichever the claimant's family prefers, and the claimant's family should cooperate during the transition. The delivery of respite services should continue during the transition period.

## LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4416 provides that the DDS is responsible for ensuring statewide compliance with the laws relating to the care, custody, and treatment of individuals with developmental disabilities. The DDS then provides that care through the private non-profit community agencies known as regional centers by providing the services and supports needed for the developmentally disabled consumer. (Welfare and Institutions Code section 4620).

2. Welfare and Institutions Code section 4512, subdivision (b) sets forth that “services and supports” be provided to consumers of the regional centers as follows:

“[S]pecialized 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, 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 . . . ”

3. When deciding an issue of services to be provided to a consumer, the service agency has a duty to provide services to a consumer that meet the consumer’s needs and preferences while being a cost-effective use of public resources as well. (Welfare and Institutions Code section 4646, subdivision (a)). The service agency must also follow the intent of the Legislature as stated in Welfare and Institutions Code section 4646, subdivision (a) to provide services that take into account the needs and preferences of the consumer. The service agency is required to secure needed services and supports that will be effective in meeting the goals stated in the consumer’s individual program plan. (Welfare and Institution Code sections 4646, subdivision (a) and 4648, subdivision (a)(1)). There was insufficient evidence presented to establish that the claimant’s needs will not be met once the service agency terminates the parental voucher system of respite. The service agency will meet the claimant’s needs by properly providing respite through another system of respite delivery, as set forth in Findings 1,-8.

4. Welfare and Institutions Code section 4418.6 provides that respite care may be provided as part of a family care program for the developmentally disabled. Respite care is defined as “...temporary and intermittent care provided for short periods of time.” The purpose of respite therefore, is generally to give relief to a parent or caregiver from the ongoing burden of caring for a demanding child. The service agency is not required to fund respite services under a parental voucher system since vouchers are only an optional method of providing that service. Welfare and Institutions Code section 4685, subdivision ( c ) (3) provides that: “the regional center may utilize

innovative service-delivery mechanisms, including, but not limited to, vouchers”(Emphasis added). Effective December 2004, California Code of Regulations Title 17, sections 50604, 50605, 54310, and 54355 were amended to require more stringent record keeping from service providers. The service agency cannot make payment to the claimant’s family for parental voucher respite based on inadequate records without risking the loss of federal funding. The service agency acted reasonably in terminating the claimant’s parental voucher respite system. The service agency should provide the claimant a 90 day transition period and the parties should cooperate during the transition period. The claimant failed to establish that the service agency should be required to provide respite in the form of parental voucher respite, as set forth in Findings 1-8.

#### ORDER

1. Claimant’s appeal to require the service agency to provide respite to the claimants under a parental voucher system is hereby denied.
2. The service agency shall provide the claimant with a 90 day period of time to transition to one of the other respite delivery systems offered by the service agency.

#### 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 the State of California.

DATED: August 18, 2005

---

GREER D. KNOPF  
Administrative Law Judge  
Office of Administrative Hearings