

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

Lauretta Doyle,

Appellant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Respondent.

OAH No. 2011090365

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on November 16, 2011, in Los Angeles, and on December 22, 2011, in Van Nuys, California.

Ruth Janka, Contract Administrator, represented the North Los Angeles County Regional Center (NLACRC).

Lauretta Doyle (Appellant) represented herself.

Oral and documentary evidence was received and the matter was deemed submitted on November 16, 2011. On December 14, 2011, the Administrative Law Judge reopened the record to receive more detailed testimony on the disbursements to third parties for the services provided by each care giver and respite worker during the audit period. The second day of hearing occurred on December 22, 2011, and the matter was deemed submitted on that day.

FACTUAL FINDINGS

1. Ruth Janka made and filed the NLACRC Position Statement in her official capacity as Contract Administrator for NLACRC.

2. Laretta Doyle is the parent of a developmentally disabled adult female (Z.D.), who is a regional center consumer based on diagnosis of cerebral palsy. NLACRC has authorized funding for respite hours for the family. Appellant has been approved as a parent/vendor by NLACRC since August 1997. As such, appellant has been provided funds from NLACRC for Appellant to obtain care for Z.D. and for respite services. At the time of her application, Appellant was informed of and agreed to abide by the requirement to maintain records of the day-care services performed and of the corresponding disbursements.

3. On May 22, 2003, Appellant completed an application for the purpose of procuring day-care services for Z.D. The regional center approved the application on May 29, 2003. At the time of her application, Appellant was informed of and agreed to abide by the requirement to maintain records of the day-care services performed and of the corresponding disbursements.

4. On May 6, 2010, pursuant to California Code of Regulations, title 17, section 50606, Appellant was informed of a pending fiscal audit of her day-care vendorization for the period beginning July 1, 2009, and ending April 30, 2010.

5. On August 27, 2010, the regional center issued a Parent Voucher Audit Draft Report informing Appellant of the audit findings and of the regional center's intent to recover \$18,935.60. In the Draft Audit Report, the auditor concluded that Appellant was overpaid due to an absence of records that adequately documented the billing and payment for the daycare and respite services that had been provided for Z.D. According to the documentation reviewed by the auditor, during the period from July 2009, through March 2010, Appellant disbursed checks for respite and day care services to individuals who did not actually perform the services. During this period of time, the day care and respite services were provided either by Yaneth Torres, Abimbola Moffett, Sharon Young, or Dinora Lopez, with the vast majority of services provided by Torres and Moffett. Yet, the documentation provided by Appellant shows that only Dinora Lopez directly received payment for respite services she provided in April 2010. All other payments during the audit period went to other individuals who were not listed as care givers or respite workers. As a result, the auditor found that Appellant did not provide supporting documentation for \$18,935 of the \$19,247 that Appellant billed the regional center for these services. Appellant was notified of the right to respond to the audit findings and recommendations prior to the regional center issuing its final audit report.

6. On October 11, 2010, after the auditor issued the Draft Audit Report, Appellant submitted time-cards for the day care and respite workers, along with notarized statements from these workers indicating they authorized Appellant to pay their salaries into the bank accounts of other individuals. The auditor considered the submission of these documents but determined that they were insufficient to change her original findings because they were submitted after the audit, and because they did not show that the day care and respite workers actually received payment for work they might have provided. On August 27, 2010, the auditor issued her Final Audit Report, which affirmed the original Draft Audit Report.

7. On December 10, 2010, appellant filed a Statement of Disputed Issues and a Request for Administrative Review with the Department of Developmental Services (DDS), disputing the NLACRC's Final Audit Report.

8. On January 10, 2011, NLACRC filed a Response to Appellant's Statement of Disputed Issues.

9. On August 3, 2011, Mark Hutchinson, Chief Deputy Director, Department of Developmental Services, issued a Letter of Findings – Final Audit Report for the audit period wherein DDS upheld the audit report findings and request for reimbursement.

10. Appellant testified that she had difficulty finding caregivers because of the relatively low pay for very difficult work of caring for Z.D., who has substantial physical limitations resulting from her cerebral palsy. The caregivers that Appellant hired were recent immigrants who did not have bank accounts. She testified that she did not want to pay these caregivers in cash because of the DDS requirement of parent vendors to keep financial records. She was directed by the caregivers to make the checks out to the caregivers' close friends or family. The caregivers would then receive the cash from these individuals.

11. Z.D. suffers from substantial physical limitations as a result of her cerebral palsy, including quadriplegia. She was attending UCLA during the audit period. She attended college five days a week during her college career. Z.D. testified at the hearing. She testified credibly that she needed her caregivers on a daily basis in order to meet the vicissitudes and challenges of college life. She needed help with things that non-disabled students take for granted, such as going from one class to another, opening a door to a classroom, or grabbing a book off a shelf in the library. She needed her caregivers throughout each day to help her attend classes and to help her engage in virtually all activities required of a college student. Through Z.D.'s determination and with the help she received from her care providers, Z.D. graduated Magna Cum Laude from UCLA in June 2011.

12. The person who provided most of the care for Z.D. during the audit period was Yaneth Torres. Ms. Torres testified that she provided care for Z.D. five days a week from six to ten hours per day. She verified the time set forth in her time cards as being consistent with the hours that she worked during the audit period. During Ms. Torres' employment providing care for Z.D., Appellant informed Ms. Torres that she would be paid by check because of the DDS requirement that Appellant maintain financial records of payments made for care and respite. Ms. Torres informed Appellant that she did not have a bank account and directed Appellant to write the checks to family members or close friends. While on the stand, Ms. Torres verified that the individuals to whom the checks were written were either family members or close personal friends, and that she directed Appellant to write the checks to these individuals.

13. Ms. Torres corroborated Appellant's and Z.D.'s testimony. Further, the documentary evidence, consisting of copies of cancelled checks, bank statements and time cards, corroborated all of their testimonies. The undersigned found the testimony of all three witnesses to be credible. Their demeanor and comportment while testifying lent further credibility to their testimony.

14. In observing Z.D. during her testimony, the undersigned noted that based on the substantial physical limitations caused by her cerebral palsy, Z.D. needed her caregivers every day and all day while at UCLA. These caregivers did not work for free. It should be noted that NLACRC does not dispute this fact.

15. The evidence presented at the hearing, including the testimony of Appellant, Z.D. and Torres, established: that the named caregivers in the time cards (exhibit 5) provided care for Z.D. during the audit period; and that Appellant paid the caregivers a total of \$19,247.30 that had been billed to the regional center, as set forth in exhibit 4.

LEGAL CONCLUSIONS

1. California Code of Regulations (CCR), title 17, section 54355, subdivision (g), sets forth the requirements under which a family member may be vendored to procure their own respite service.

2. CCR, title 17, section 54326, subdivision (a)(3), requires that vendors "maintain records of services provided to consumers in sufficient detail to verify delivery of the units of service billed: (A) Such records shall be maintained for a minimum of five years from the date of the origination or until the audit findings have been resolved, whichever is longer; (B) Records must specify for each consumer the date, actual service time, location and nature of services provided, and units of service provided pursuant to section 50604, subdivision (d)(3), as applicable. For goods and/or services purchased utilizing a voucher, the name of the actual provider of the goods shall be maintained pursuant to section 50604, subdivision (d)(3)(D); (C) Attendance data, as specified in (B) above, for the billing period shall be submitted to the regional center with the billings/invoices.

3. CCR, title 17, section 50604, subdivision (a), requires that all service providers maintain financial records that consistently use a single method of accounting and clearly reflect the nature and amounts of all costs and income. Subdivision (e) requires that all service provider records be supported by source documentation.

4. CCR, title 17, section 54326, subdivision (a), requires that vendors make available any books and records pertaining to the vendored service, including those of the management organization, if applicable, for audit and inspection.

5. In this case, there is no question that Appellant hired and paid day care and respite care workers to provide care for Z.D. The care givers provided care five days a week for as much 10 hours per day while Z.D. was attending UCLA. As noted in Factual Finding 11, Z.D.'s physical disabilities are substantial, which requires dedicated, hardworking caregivers who perform the work for low wages. Appellant was left with little alternative but to hire care providers from the immigrant community because no one else was willing to provide the care for the limited hourly wage authorized by law.

6. The evidence does not support a conclusion that that appellant is required to reimburse NLACRC a total of \$18,935.60. Such a conclusion would require the undersigned to find that Appellant did not hire anyone to provide respite care for Z.D. during the audit period. The evidence simply does not support such a conclusion. This is not a case of unjust enrichment on the part of Appellant. Although Appellant disbursed the checks for daycare and respite care to third party individuals as directed by the caregivers, the evidence established that the funds were in fact disbursed for their intended purpose; that is, to pay the daycare and respite care workers for providing care for Z.D. The caregivers received payment for the services they provided.

7. Cause does not exist to sustain the Final Audit Report issued November 9, 2010, and Letter of Findings issued on July 15, 2003, directing Appellant Laretta Doyle to reimburse respondent North Los Angeles County Regional Center in the amount of \$18,935.60. Appellant properly claimed reimbursement only for the amounts she paid for daycare and respite care services actually delivered as required under the vendor application.

ORDER

The Final Audit Report issued November 9, 2010, and the Letter of Findings issued on August 3, 2011, is overruled. The appeal by Laretta Doyle is sustained.

DATED: December 27, 2011

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings