

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STEVEN P.,

Claimant,

OAH No. 2011100869

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Napa, California, on December 19, 2011.

Claimant's parents, Peter P. and Angelina P., represented claimant.

Nancy Ryan, Attorney at Law, represented service agency North Bay Regional Center (NBRC).

The matter was submitted for decision on December 19, 2011.

ISSUE

May the regional center consider In Home Support Services (IHSS) for protective supervision a generic resource for providing respite services to claimant?

FACTUAL FINDINGS

1. Claimant is a six-year old boy who lives at home with his parents and older sister. He is eligible for regional center services based upon a diagnosis of autism. Claimant is in the first grade in a local elementary school, where he receives special education services.

2. Claimant is nonverbal. He acts out aggressively and impulsively, and he lacks safety awareness. Claimant requires constant supervision in order to prevent him from

running away and hurting himself or others. By all accounts, claimant's parents have done an extraordinary job of attending to claimant's need for intensive care and supervision.

3. Pursuant to claimant's October 2011 Individual Program Plan (IPP), he receives a variety of services from NBRC, including up to seven hours a week of in-home respite care. Claimant's parents have used respite care to go on a weekly date. This time has provided them with an opportunity to reconnect as a couple.

4. Claimant receives IHSS funding for protective supervision from the Sonoma County Department of Social Services in the amount of approximately 20 hours per week. Claimant's mother is his IHSS worker.

5. In a Notice of Proposed Action dated October 7, 2011, NBRC notified claimant that it was discontinuing his respite services on the grounds that his IHSS funding for protective supervision hours is a generic resource that can meet his need for care and supervision. Claimant appealed, and this hearing followed.

6. Suzette Soviero, NBRC Case Management Supervisor, testified at the hearing regarding NBRC policies and procedures regarding the provision of respite. The purpose of respite is to give parents a break from the constant responsibility of caring for children who receive NBRC services. NBRC's Procedure Memo 2315 sets forth NBRC's policy regarding the purchase of respite services. It requires NBRC to pursue alternative funding resources for respite and specifically provides that NBRC will not duplicate funding to pay for services that are provided by IHSS.

7. All IHSS services are not viewed as alternative funding sources for the provision of respite. IHSS funding for protective supervision, however, is viewed by NBRC as an alternative funding source for respite because it provides claimant with funds to hire a third party to provide direct care and supervision for him.

8. NBRC believes that claimant's parents can meet their need for a break from the constant care and supervision of claimant by using a small portion of protective supervision hours to hire someone to care for claimant when they go out on their weekly date.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.)¹ The 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

¹ All references are to the Welfare and Institutions Code unless otherwise indicated.

responsibilities to the developmentally disabled under the Act. (§ 4620, subd. (a).) The Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.)

2. Respite is one type of service provided to consumers. Respite provides intermittent care and supervision to a regional center client who resides with a family member. These services are designed to “(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, subd. (a).)

3. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Accordingly, regional centers are directed to utilize generic funding resources for the provision of services and supports when appropriate. (§ 4646.4, subd. (a)(2).)

4. With respect to IHSS services, the Act specifically prohibits regional centers from purchasing services that are otherwise available from IHSS. (§ 4659, subd. (c).) Pursuant to section 4686.5, subdivision (a)(5), the Act directs regional centers to consider IHSS funds as a generic resource for respite if certain conditions are met:

A regional center shall only consider in-home supportive services a generic resource when the approved in-home supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family service plan (IFSP).

In the instant case, the evidence established that IHSS funding for protective supervision provides claimant with funds to hire a third party to care and supervise him at home. This funding serves the dual purpose of providing claimant with supervision while also allowing the family time for a break from caring for claimant. Accordingly, IHSS funding for protective services meets claimant's respite needs, as set forth in his IPP. The fact that claimant's mother chooses to act as his service provider instead of hiring a third party does not alter this analysis. While hiring someone to care for claimant will require claimant's mother to forego some of the income she receives from IHSS for protective supervision, this loss of income does not abrogate NBRC's statutory duty to make use of IHSS funds when it can meet claimant's respite needs.

ORDER

The appeal of Stephen P., from the determination of North Bay Regional Center to discontinue funding for respite services, is denied.

DATED: _____

DIANE SCHNEIDER
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.