

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GERSON T.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2011111059

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on January 18, 2012, in Tehachapi, California.

Jeffrey F. Popkin, Associate Director, represented Kern Regional Center (Regional Center or Service Agency).

Irian M.¹, Claimant's aunt, represented Claimant.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Claimant may transfer from the Mountain Pathway day program to the Easter Seals day program.

FACTUAL FINDINGS

1. Claimant is a 31-year-old Service Agency consumer with diagnoses of mild mental retardation and epilepsy. He resides in California City, California, with his cousin Douglas M., also a Service Agency consumer, and his aunt, Douglas' mother.

¹ Initials have been used instead of family surnames to protect Claimant's and his family's privacy.

2. Claimant's most recent individual program plan (IPP) contains an objective for him to attend a day program for five days per week to increase his social skills and to allow him to interact with others in the community.

3. Claimant has been attending the Mountain Pathways day program for approximately three years. He and his cousin attend Monday through Friday. The program is located in Tehachapi, California, approximately 30 miles from his home. Service Agency provides transportation to and from the program for Claimant and his cousin.

4. Claimant's aunt would like to transfer Claimant and Douglas M. to the Easter Seals day program in Lancaster, California. The program is approximately 44 miles from Claimant's home. Claimant's aunt wants to keep both consumers together, as they support each other and Claimant is higher functioning. Claimant's aunt is concerned that Douglas M. may need emergency medical attention during the time he is in the day program, and he has no family in Tehachapi. In Lancaster, on the other hand, there are relatives, an uncle and a grandfather, who can look after the consumers in the event of an emergency. She is also concerned that a female consumer in the Mountain Pathways program is bothering Claimant.

5. The parties treated both programs as comparable, and no evidence was presented that one is better than the other. Claimant's aunt has brought her concerns about the female consumer to staff at Mountain Pathways, and they have taken steps to address the matter. Service Agency has agreed to undertake a quality review of the program.

6. Service Agency denied the transfer request because the program cost would be higher at Easter Seals due to higher transportation costs. It estimates that transportation to the new program would add 14 miles to each trip, which additional cost would be substantial if calculated over a long-term period, such as a year.

7. On November 4, 2011, Service Agency denied the transfer request, and on November 17, 2011, Claimant's aunt filed a fair hearing request.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Act, Welfare and Institutions Code² section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

² All further references are to the Welfare and Institutions Code.

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives. The statute defines services and supports for persons with developmental disabilities as “specialized 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.” Services and supports can include day programs. (*Id.*)

4. The Legislature has recently enacted section 4648, subdivision (a)(6)(D), which requires regional centers to utilize the least costly vendor to provide services and supports to consumers. The statute provides:

“In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

[¶] . . . [¶]

“(a) Securing needed services and supports.

[¶] . . . [¶]

“(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to subdivision (d) of Section 4548, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

[¶] . . . [¶]

“(D) The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected. In determining the least

costly provider, the availability of federal financial participation shall be considered. The consumer shall not be required to use the least costly provider if it will result in the consumer moving from an existing provider of services or supports to more restrictive or less integrated services or supports. . . .”

5. If competing programs are comparable and consistent with the consumer’s particular needs, section 4648, subdivision (a)(6)(D), requires Service Agency to fund the least costly one. The cost of transportation must be taken into account in the determination of the least costly provider. In this case, both programs are comparable and consistent with Claimant’s needs, and Mountain Pathways is the least costly provider. Claimant’s aunt’s concerns about Douglas M. are understandable, but are insufficient to warrant an exception to the statutory requirement. Staff members at Mountain Pathways have responsibility for providing care and supervision to consumers in their program, and must respond in the event emergency treatment is needed. Accordingly, Service Agency properly denied Claimant’s request to transfer to the Easter Seals day program.

ORDER

Claimant's appeal is denied, and Service Agency need not transfer Claimant to the Easter Seals day program in Lancaster, California.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.