

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOVETT M.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2012030168

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Sacramento, California, on April 24, 2012.

Claimant's mother (Mother) represented claimant. Claimant's brother also attended the hearing. Claimant was not present.

Diane Williams, Supervising Counselor, represented the service agency, Alta California Regional Center (ACRC).

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Is the claimant entitled to funding from the service agency for day care services?

FACTUAL FINDINGS

1. On January 4, 2012, Mother submitted a Fair Hearing Request to ACRC. Mother requested day care services for two of her children, claimant and her daughter, who are

both over the age of 18. Prior to the hearing, Mother withdrew her request for day care for her daughter, but continued to request day care for claimant.

2. Claimant is a 20-year-old man living with his family in Sacramento. He is eligible for ACRC services due to his diagnosis of mild mental retardation. Claimant has Glaucoma and is legally blind. He and his family relocated from Solano County to Sacramento in November 2011, at which time ACRC, claimant, and claimant's family developed his Individual Program Plan (IPP). According to his IPP, claimant lives with his mother and sister in the family home and is in "optimal health with no serious illnesses or hospitalizations in the past year." Claimant receives 63 hours per quarter of respite care funded by ACRC. Claimant's brother provides the respite care through an agency called Pacific Healthcare.

3. Claimant's IPP states that he attends Sacramento City College three days per week. His brother transports him to and from school. His schedule for the current semester, spring 2012, shows classes five days per week. The Disability Resource Center at Sacramento City College assists claimant with the following accommodations: claimant is allowed to have extended time on tests and materials are provided to him in enlarged print. He is also allowed to tape-record lectures and notes are provided to him via email by a class assistant.

4. At some point, Mother made a verbal request to ACRC to become vendored under service code 405 – which allows for parent vendored day care services. In a letter to Mother dated December 15, 2011, ACRC denied the request, stating, "...we are unable to vendor you directly based on felony convictions. This is not a denial of services for your children, but a denial of vendorization....Please contact [claimant's] service coordinator to complete an assessment of need to determine appropriate services."

5. A hand-written letter from Wanda Parker, dated November 19, 2011, was provided as evidence of Mother's employment. Ms. Parker's letter states that Mother works as an assistant to two different individuals and that her hours of work are weeknights from 11:00 p.m. to 7:00 a.m. However, no evidence was provided as to who Wanda Parker is. No other proof of employment was provided at hearing (for example pay stubs).

6. Although evidence of claimant's recent medical appointments was provided at hearing, no connection was made between the recent medical appointments, where claimant was treated for stomach pain and hemorrhoids, and a need for day care services. Specifically, it was not established that claimant, who attends Sacramento City College, is unable to care for himself weekdays from 11:00 p.m. to 7:00 a.m. while Mother is working.

7. Rob Franco, ACRC Supervising Counselor testified that the process for establishing a need for day care had not been completed for claimant. Typically, ACRC determines whether there is a need for day care services by assessing the consumer's ability to care for himself independently while the parent is working, verifying the parent's employment, and then evaluating generic resources that may be available, such as In Home Supportive Services (IHSS) and "natural supports." Mr. Franco testified that ACRC had not received all

the information needed from claimant and Mother in order to authorize or deny funding of day care services for claimant.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (the Lanterman Act), Welfare and Institutions Code section 4500 et seq.,¹ the State accepted 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. The Lanterman Act gives regional centers, such as ACRC, 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 kinds of services and supports that may be funded. It sets forth a collaborative process involving the consumer (or his family) and service agency representatives for identifying the appropriate services and supports directed “toward 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 may include day care. (*Ibid.*)

4. Where a change in services is sought, the party seeking the change has the burden of proving that the change is necessary to meet the consumer’s needs. (See Evid. Code, §§ 115 and 500.) Claimant is seeking to add a service, day care, to his IPP; therefore he has the burden to prove that day care is needed.

5. Section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer’s individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(b) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

6. The service agency is not authorized to fund the cost of day care services unless claimant's family has demonstrated that claimant requires specialized care that exceeds what is provided to a child without a disability. Since claimant is an adult, if it is established that he requires day care, ACRC would be authorized to fund such care. However, in this case, it has not been established that claimant requires day care.

ORDER

Claimant's request for funding of day care services is DENIED.

DATED: May 7, 2012

ELAINE H. TALLEY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)