

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VINCENT D.,

Claimant,

vs.

REGIONAL CENTER OF THE EAST
BAY,

Service Agency.

OAH No. 2012100915

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Concord, California, on November 29, 2012.¹

Mary Dugan, represented Regional Center of the East Bay (RCEB), the service agency.

There was no appearance by or on behalf of claimant Vincent D.

The matter was submitted on November 29, 2012.

ISSUE PRESENTED

Whether RCEB may reduce claimant's in-home respite to 90 hours per calendar quarter at the dual client rate.²

¹ This case was consolidated for hearing with the case of claimant's brother, Robert D., who is also a regional center consumer. (OAH No. 2012100908.)

² The terms "dual client rate" and "dual respite services" mean that respite services are provided to claimant Vincent D. and to Robert D. at the same time by the same provider.

FACTUAL FINDINGS

1. Claimant Vincent D. is a 16-year-old boy who is eligible for regional center services because of a condition closely related to mental retardation, or which requires treatment similar to that required for individuals with mental retardation. Vincent D. has also been given psychiatric diagnoses, including attention deficit hyperactivity disorder, post traumatic stress disorder, oppositional defiant disorder, and reactive attachment disorder.

2. Claimant lives at home with his adoptive parents and his brother, Robert D., a 15-year-old boy who is eligible for regional center services due to mental retardation. Claimant and his brother are loved and well-cared for by their adoptive parents.

3. Claimant and his brother came to RCEB in 2010 from another regional center, which had granted them 144 hours per quarter of in-home respite. RCEB informed the consumers' parents of its view that the volume of respite awarded to the consumers was not justified, and that RCEB intended to gradually reduce the volume; RCEB felt that it would be too drastic to immediately reduce the volume to 90 hours per quarter, the statutory maximum in the absence of special circumstances. In 2011, RCEB reduced in-home respite to 120 hours per quarter at the dual client rate.

4. On September 25, 2012, RCEB issued Notices of Proposed Action to claimant and his brother, stating that the regional center is "unable to meet your request for continued funding of in home respite (dual client rate) at the volume of 120 hours per calendar quarter." Both consumers filed a timely appeal.

5. RCEB staff held an informal hearing on claimants' appeals on October 25, 2012. After the hearing, Case Management Supervisor Maria Garcia Puig informed claimants that she was not aware of any facts that would justify more than 90 hours of in-home respite per quarter of dual respite services.

6. Under state law, a regional center may not purchase more than 90 hours per quarter of in-home respite for a consumer unless

it is demonstrated that the intensity of the consumer's care and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer.

(Welf. & Inst. Code, § 4686.5, subds. (a)(2) & (a)(3)(A); all statutory references are to the Welfare and Institutions Code.) Claimant did not appear at hearing to present evidence on these points. There is, unquestionably, evidence that supports RCEB's decision to award respite services to claimant. The evidence does not establish, however, that additional respite, beyond 90 hours per quarter, is necessary to maintain claimant in the family home, or

that there is an extraordinary event that impacts the family members' ability to meet the care and supervision needs of claimant.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts "a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (§ 4501.) The Act provides 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." (*Ibid.*) Regional centers are required to carry out the state's responsibility to the developmentally disabled. (*Ibid.*)

2. The services and supports to be provided to a consumer are set forth in the consumer's IPP. (§ 4646.5, subd. (a)(4).) A consumer's IPP must be reviewed periodically in light of the consumer's changing needs. (§ 4646.5, subd. (b).)

3. A regional center "shall not purchase . . . more than 90 hours of in-home respite services in a quarter, for a consumer." (§ 4686.5, subd. (a)(2).) It is claimant's burden to establish that he meets at least one of the grounds, set forth in section 4686.5, subdivision (a)(3)(A), for an exemption from the 90-hour-per-quarter limit. Claimant did not produce evidence to establish grounds for an exemption. (Finding 6.)

ORDER

The appeal of Vincent D. is denied. He is not entitled to more than 90 hours of in-home respite per quarter of dual respite services.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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 90 days.