

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013120625

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 22, 2014, in San Bernardino, California.

Leigh Ann Pierce, Consumer Services Representative, represented Inland Regional Center (IRC), the service agency.

Rudy L. Lozano, Authorized Representative, represented claimant.

Documentary evidence and testimony were received, and the matter was submitted on January 22, 2014.

ISSUES

Should IRC fund additional respite hours for claimant?

Should IRC fund social recreation hours for claimant?

STIPULATION

After documentary evidence and testimony was taken, the parties entered into a stipulation with respect to respite care hours. As a result, respite care hours are not an issue that needs to be decided in this decision. The parties' stipulation is as follows:

IRC agrees to fund 50 total hours of respite a month until July 31, 2014. At that time, IRC will reevaluate services for appropriateness. If these hours are changed, IRC will issue a proposed notice of action.

FACTUAL FINDINGS

1. Claimant is an 18-year-old girl eligible for regional center services based upon her diagnosis of mental retardation. Claimant resides in her family's home with her mother and three siblings, age 9, and two adopted children, who are 4. Claimant attends high school where she is in a special education program.
2. Claimant requested that IRC fund social recreation activity hours.¹ Claimant currently receives 176 respite hours through In Home Support Services and 30 hours per month of respite hours funded by IRC.
3. Claimant needs to develop social and communication skills. According to claimant's November 2013 Individual Program Plan (IPP), claimant does not have friends and does not seek to interact with her peers; claimant does not use words to communicate; claimant is able to repeat words but does not have functional speech; and claimant communicates by smiling, using a few sign-language signs and points to communicate. Claimant receives speech therapy at school, but according to the IPP, there has been little improvement in her speech.
4. In order to address her social recreational needs at school, claimant's school has set a goal for her to participate in a school choir or another appropriate activity by October 30, 2014. She is not participating in this activity at present.
5. At home, claimant engages in disruptive behavior with her younger siblings. She takes away their toys and has emotional outbursts one to three times a day.
6. Claimant's mother testified that since her son's suicide in December 2012, she has difficulty meeting claimant's social and emotional needs. She feels emotionally and physically exhausted. Claimant's mother has found it more difficult to meet claimant's needs since claimant turned 18.

¹ In claimant's fair hearing request, claimant's mother asked that IRC give claimant "back" social recreation hours. According to IRC, this service was discontinued in 2009 pursuant to Welfare and Institutions Code section 4648.5, which suspended the ability of regional centers to fund social recreation activities subject to specific exemptions. Claimant did not appeal IRC's action at the time. The issue here, thus, is not whether IRC may discontinue social recreation hours but whether claimant is eligible for such services in the first place.

7. Claimant's mother testified that she needs training and therapy, and she is actively pursuing those services.² Claimant's mother has been unable to participate in training and therapy because claimant has not been attending school two weeks out of the month this school year. During this two week period claimant refuses to go to school despite her mother's efforts. Her mother thinks her daughter's refusal to go to school is due to her monthly menstruation cycle. Her mother has scheduled an appointment with claimant's pediatrician in this regard.

8. Claimant's mother's sister-in-law provides respite care services for claimant through In-Roads. She does not provide social recreation services. In-Roads provides caregiving and social recreation services for individuals with developmental disabilities.³

9. Claimant's mother's sister-in-law also provides care to claimant on an unpaid basis. On occasion, she bathes claimant, reads to her and helps her with art projects. She also helps claimant's mother with cooking and cleaning. Every month, for about 4 to 5 hours, she takes claimant to the mall.

10. Claimant asserted that IRC should fund social recreation activities because these activities would be beneficial to claimant despite the prohibition against funding this service pursuant to Welfare and Institutions Code section 4648.5.

11. Kevin Urtz, IRC Program Manager, testified that, based on his review, claimant did not meet any of the exemptions that would permit IRC to fund social recreational services for claimant. Mr. Urtz stated that an alternate resource to social recreation activities is available to claimant because she attends school. Mr. Urtz did not, however, consider that claimant is currently not attending school two weeks out of the month, or that claimant has yet to participate in choir.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that

² IRC was unaware of claimant's mother's situation involving her son's suicide until the hearing. As a result, IRC reassessed respite hours for claimant and agreed to increase them.

³ In-Roads provides "community integration services" for individuals with developmental disabilities. This program involves time limited social recreational activities designed to help consumers integrate with their peers in community activities. See <http://www.in-roads.net/about.htm>.

services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

2. Claimant has the burden of proof by a preponderance of the evidence to demonstrate that IRC should fund social recreation hours for claimant. (Evid. Code, §§ 115, 500.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “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.” (Welf. & Inst. Code, § 4512, subd. (b).)

4. Welfare and Institutions Code section 4648 providers, in pertinent part, as follows:

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.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be

flexible and individually tailored to the consumer and, where appropriate, his or her family.

...

5. However, effective August 1, 2009, the Legislature determined that regional centers may not purchase, as part of a consumer's IPP, social recreation activities (except for those activities vendored as community- based day programs) or "nonmedical therapies, including but not limited to, specialized recreation." (Welf. & Inst. Code, § 4648.5.) In "extraordinary circumstances," the services listed above may be purchased if the service is "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." (Welf. & Inst. Code, § 4648.5, subd. (c).)

Evaluation

Claimant established that, due to her social isolation and her mother's problems meeting her needs, pursuant to Welfare and Institutions Code section 4648.5, subdivision (c), she requires social recreation activity hours in order to ensure that she is able to remain in her home, and no alternative service to social recreation activity hours is available to claimant.

At 18, claimant lacks friends and does not seek to make friends. She refuses to attend school two weeks out of the month. At home, she engages in aggressive behaviors with her younger siblings. The only social recreation activity referenced in claimant's IEP is choir, and claimant has yet to participate in this activity. As a natural support for claimant, claimant's mother presently is not as available to claimant as she was once due to her emotional struggles caused by her son's suicide. Her mother, in turn, does not have family members, aside from her sister-in-law, to help her with claimant.

Considered as a whole, these factors constitute an extraordinary circumstance under Welfare and Institutions Code section 4648.5 that requires Inland Regional Center to purchase social recreation activity hours for claimant.

ORDERS

Pursuant to the parties' stipulation, Inland Regional Center shall fund 50 hours per month of respite care hours through July 31, 2014. IRC shall provide claimant with written notice of any proposed action it intends to take thereafter regarding claimant's respite care hours.

Claimant's appeal of Inland Regional Center's November 6, 2013, decision denying claimant social recreation activity services is granted. Inland Regional Center shall purchase social recreation activity hours for claimant, as appropriate.

DATED: February 5, 2014

ABRAHAM M. LEVY
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 the decision.