

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for "Gap
Funding" Due to a Reduction in Claimant's
IHSS Funding:

OAH No. 2014060279

CLAIMANT,

and

THE INLAND REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on July 9, 2014.

Claimant's mother (Mother) represented claimant who was not present at this hearing.

Judith Enright, Attorney at Law, Enright and Ocheltree, represented the Inland Regional Center (IRC).

The matter was consolidated with OAH Nos. 2014060271 and 2014060266 for hearing only, and submitted on July 9, 2014.

ISSUES

1. Should IRC be required to provide "gap funding" to offset the eight percent reduction of claimant's In Home Support Services (IHSS)?

2. Should IRC be required to provide that "gap funding" retroactively to July 1, 2013, when claimant's IHSS hours were reduced by eight percent?

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FACTUAL FINDINGS

Jurisdictional Matters

1. Effective July 1, 2013, Senate Bill 67 (SB 67) reduced all consumers' IHSS hours by eight percent. Effective July 1, 2014, one percent of those services was restored.

On April 21, 2014, IRC notified claimant that it was denying her request that IRC provide "gap funding" to offset the reduction of her IHSS hours.

On May 23, 2014, claimant requested a fair hearing. Claimant was thereafter given notice of this hearing.

Evidence Presented At Hearing

2. Claimant is currently 10 years old, and qualifies for regional center services under a diagnosis of autism with mild mental retardation.¹ Her Individual Program Plan (IPP) outlined her services and supports funded by IRC and other agencies. Until July 1, 2013, claimant received 195 hours per month of IHSS. Effective July 1, 2013, SB 67 reduced claimant's IHSS funding to 179.24 hours per month. Effective July 1, 2014, one percent of those services was restored, resulting in claimant now receiving 181.21 IHSS hours per month.² In this hearing claimant sought to have IRC fund the IHSS hours that had been reduced, referring to that request as "gap funding."

3. Consumer Services Coordinator Candice Lambert (CSC Lambert) testified about her involvement with claimant and the request for "gap funding." She explained that IHSS is not a service funded by IRC. CSC Lambert testified that when she received claimant's request for gap funding, she tried to obtain more information regarding what needs were not being met. Claimant has never told CSC Lambert what, if any, of her needs had not been met or are not currently being met because of the IHSS reduction.

4. Mother did not testify about what needs, if any, had not been met or are not currently being met because of claimant's IHSS reduction.

5. A recent IRC decision where gap funding was ordered was introduced. However, as that decision is not precedential, it is not controlling here.

¹ Although the terminology for these diagnoses recently changed, this decision will use the language contained in claimant's Individual Program Plan.

² It was unclear the amount of IHSS hours was receiving before and after the SB 67 reductions because her January 2013 IPP stated she was receiving 188 hours per month, but her Request of Fair hearing and an e-mail to IRC indicated she was receiving 195 hours per month before the reduction, but another e-mail stated she was receiving 188 hours per month. For purposes of reaching this decision, the exact number of IHSS hours did not matter.

6. The Department of Developmental Services (DDS) has analyzed the impact on regional center services because of reductions in IHSS funding. In reports DDS published, DDS recognized that regional centers may be obligated to provide services based on the applicable needs of consumers due to IHSS reductions. A May 14, 2008, DDS report entitled, “Regional Centers Local Assistance Estimate, May 2008 Revision of the 2008-09 Budget” noted that it was anticipated that the Department of Social Services’s “proposed change to the [IHSS] program...impacts regional center purchase of service funds and services to individuals with developmental disabilities...Effective October 1, 2008, the fiscal impact to DDS is \$6.1 million...to replace services that will be eliminated due to the proposed reductions in the IHSS program. The annual impact in 2009-10 is estimated to be \$8.1 million.”

7. A 2008 DDS document entitled “New Major Assumption Other Departments’ Budget-Balancing Reductions [IHSS] Functional Index Change Proposal (Purchases of Services) [sic]” noted that “IHSS is considered a generic service...Regional Center Services are provided when identified in the consumer’s [IPP] and when the service or support cannot be funded through a ‘generic’ agency.” The document further noted that “Effective October 1, 2008, DDS will allocate additional funds to regional centers to pay for necessary services to allow consumers impacted by this proposal to remain in their homes.”

8. A January 8, 2010, DDS report entitled, “November Estimate, Local Assistance for Regional Centers, 2010-11 Governor’s Budget” noted that, “The current year estimate does not reflect any costs associated with funding reductions in [IHSS]...The IHSS service reduction has been challenged in court. Pending the outcome of the court action, DDS would need to determine the fiscal impact to regional centers as payor of last resort.” Further, “[t]he Governor’s Budget includes service reduction proposals in Medi-Cal, IHSS, SSI/SSP and other programs that will increase regional centers purchase of services costs in 2009-10.”

9. DDS used similar language in its reports analyzing the Governor’s 2010-11, 2011-12, and 2012-13 budget impacts.

Arguments

10. IRC argued that it does not pay parents money; rather service funding is determined based upon the consumer’s needs. IRC asserted that the law prohibits it from funding the reduction in service hours caused by the passage of SB 67 absent a showing of need. IRC asserted that claimant has never demonstrated that she has unmet needs because of claimant’s IHSS reduction. IRC argued that, if there are unmet needs, the proper way to proceed is by addressing those needs with the planning team during the IPP process. IRC further argued that because IHSS funding is not provided via the Lanterman Act, and does not follow the regional center vendorization rules, it is not a service that IRC can automatically fund absent the IPP and vendorization processes.

11. Claimant argued that as the payor of last resort, IRC should provide the “gap funding.” Claimant asserted that claimant’s needs have not changed; the only change has been a reduction in claimant’s IHSS hours.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine whether or not an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer’s needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory Authority

2. The Lanterman Act is set forth in Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 outlines California’s responsibility for persons with developmental disabilities, and the State’s obligation to provide services and supports to them.

4. Welfare and Institutions Code section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities” and notes that the “determination of which services and supports are necessary for each consumer shall be made through the individual program plan process” and “shall be made on the basis of the needs and preferences of the consumer...”

5. Welfare and Institutions Code section 4646 identifies a Legislative intent that regional center services and supports take “into account the needs and preferences of the individual and the family . . . to ensure that the provisions of services . . . [are] effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

6. Welfare and Institutions Code section 4646.4 requires the regional centers to consider generic resources and the family’s responsibility for providing services and supports when considering the purchase of supports and services.

7. Welfare and Institutions Code section 4648, subdivision (a)(1), requires regional centers to “secure services and supports that meet the needs of the consumer, as determined by the consumer’s individual program plan, . . .” Subdivision (a)(8) prohibits regional center funds being used to “supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

8. Section 4659 of the Welfare and Institutions Code requires regional centers to identify and pursue all possible sources of funding.

Evaluation

9. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services, and that the regional center must follow when securing those services.

Claimant had the burden of demonstrating her need for the requested services and supports. Claimant introduced no evidence establishing he had any needs in the past that were unmet due to the IHSS reductions, or that he has current needs that are being unmet due to the reduction. No evidence was introduced that claimant's needs had changed. The evidence established that the only change that had taken place was the IHSS reduction. However, the burden was on claimant to establish a need for the requested service. She did not meet that burden.

Moreover, although all of the DDS documents since at least 2008 predicted that the IHSS reduction would have a profound fiscal impact on regional centers as the "payor of last resort," the Lanterman Act and the regulations still require a consumer to demonstrate a need for a requested service. Claimant did not do so here. When the DDS documents are read in conjunction with the law and the stated Legislative intent, it is clear that DDS was anticipating a fiscal impact from consumers who could demonstrate a need for the requested services. In those cases, regional center funds should properly be used to pay for any unmet needs. Absent a showing of need, regional center funds cannot be used, especially in light of Welfare and Institutions Code section 4648 which prohibits regional center funds from being used to supplant the budget of another public agency.

And this makes sense. The Legislature required the Department of Social Services to reduce IHSS funding to address the state budget crisis. For the Department of Social Services to reduce its budget only to have DDS increase its budget by an offsetting amount would do nothing to address the budget crisis. This clearly is not what the Legislature intended with the passage of SB 67. SB 67 was intended to act as a budget reducing measure, not a budget transferring one. No evidence was introduced to suggest that regional centers need not comply with the provisions of the Lanterman Act or the regulations because of the passage of SB 67.

As claimant did not demonstrate what needs, if any, are not being met because of the reduction of his IHSS hours, his request that IRC provide "gap funding" is denied. Further, as claimant has failed to establish any needs that have previously gone unmet due to the IHSS reduction, IRC shall not pay that "gap funding" retroactively to July 1, 2013.

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ORDER

Claimant's appeal is denied. IRC shall not pay claimant for the IHSS "gap funding" nor pay it retroactively to July 1, 2013.

DATED: July 23, 2014

_____/s/_____
MARY AGNES MATYSZEWSKI
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 ninety days.