

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2014060502

DECISION

Administrative Law Judge Regina J. Brown, State of California, Office of Administrative Hearings, heard this matter on July 7, 2014, in Oakland, California.¹

Seth W. Weiner, Attorney at Law, represented Claimant.

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

The matter was submitted for decision on July 7, 2014.

ISSUE

Whether the regional center is required to continue to pay the residential supplement and personal and incidental payments for Claimant to reside in a residential care facility operated by his mother.

¹ This matter was consolidated for hearing with OAH No. 2014060501. A single set of exhibits was established for these consolidated cases which will be maintained in that case file. A separate decision is being issued in each matter.

FACTUAL FINDINGS

1. Claimant is a 49-year-old male. He is eligible for regional center services because of a developmental disability. He resides in a residential care facility (facility) with his wife, sister, and brother-in-law who are all consumers of RCEB services.

2. Claimant lacks safety awareness and requires supervision at all times. He is able to communicate clearly. He attends a day program. Pursuant to his Individual Program Plan (IPP), he wants to remain with his family in the home.

Residential Care Facility

3. From 2007 to 2013, Claimant has resided at the facility which was owned and operated by James Malerich. Claimant received residential supplemental and personal and incidental (P&I) funds from RCEB. Claimant's mother worked as the administrator of the facility. She lived at the facility, but she did not have an ownership interest.

4. In 2013, Malerich told Claimant's mother that he was retiring. She decided to acquire the facility. On July 10, 2013, the California Department of Social Services issued a license to LRC Care Providers Inc., doing business as, Luce Residential Care (LRC), to operate and maintain an adult residential facility serving a total capacity of six developmentally disabled clients. Claimant's mother was the sole shareholder of LRC. Malerich and LRC entered into a lease agreement for \$2,500 per month for the facility, which was signed by Claimant's mother.

5. On April 1, 2014, LRC was vendorized by RCEB as an owner-operated facility. RCEB informed Claimant's mother that Claimant was no longer considered to be living outside of the family home because she owns the business, lives in the home with Claimant, and is considered to be a natural support for Claimant. In other words, RCEB could not pay his mother to care for Claimant in the family home.

6. In a Notice of Proposed Action, dated May 28, 2014, RCEB discontinued the funding of the residential supplement and P&I funds for Claimant to live at LRC, stating that: "Client lives with family member who is also a licensed residential provider. This is not 'out of home' placement."

7. Claimant appealed. An informal meeting was held on June 18, 2014. Claimant's mother stated that she had hired a full-time service provider who works as a caretaker for the six residents at the facility. The caretaker does not reside at the care facility. Claimant's mother continues to reside at the facility. RCEB upheld the decision to terminate funding of the residential supplement and P&I funds.

8. Claimant contends that: (1) the residential facility is a corporation and not a family home, and (2) an individual who lives at a residential facility owned by a family member is not precluded from receiving services and supports, including a residential supplement and P&I funds.

9. Margy Kane, RCEB Quality Assurance Supervisor, testified at hearing. According to Kane, an owner operated residential care facility receives \$907 per month to supplement the \$1,003 received from Social Security for a total of \$1,910 per month for each resident. If a resident is not eligible for Social Security, then RCEB pays the entire amount. The supplemental fees cover direct support, staff wages, fringe benefits, rent, liability insurance, food, household supplies, transportation expenses, office supplies, staff training, etc. Kane testified that these items are typically not paid to the parent of an adult child who lives with the parent, because, in effect, it would be paying the parent to care for his or her own child.

10. Ronke Sodipo, former Associate Director of Client Services, testified at hearing. According to Sodipo, residential supplemental funds are for out-of-home placements only. A client of RCEB is not considered to be living outside of the home if his or her parent lives in the same home. In this case, when Claimant's mother became the licensee of the facility and continued to reside in the facility, it became her home. A residential care facility provides 24-hour care for a consumer in exchange for RCEB funds. In a family home, RCEB does not pay for 24-hour care for a consumer because a regional center is not to replicate or take away all parental responsibility.

11. Sodipo also explained that RCEB provides services to consumers who live in the family home, but these services do not include things like, rent or food. Even if Claimant chose to live in his own apartment, RCEB would also provide support and services. According to Sodipo, it is not the intent of RCEB to force Claimant to change his living arrangement, and he can continue to live at the facility. However, the residential supplement and P&I would not be available. Instead, if additional supports are required, an assessment could be done, and things like an In Home Support Service referral, or RCEB-paid respite or personal assistance may be available. However, RCEB would first look to the mother as a natural support before providing other supports or services. If the mother transferred ownership of the facility and continued to live in the facility as the administrator, then RCEB could still provide residential supplemental and P&I payments.

12. Claimant's mother also testified that it is not her intent to make a profit with RCEB funds, and in fact, LRC has not been profitable. She believes that if RCEB funding ceases, there will be detrimental consequences. For example, Claimant would have to move and he and his wife would be separated.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.)² The Lanterman Act mandates 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.” (§ 4501.) The state pays for the “habilitation services and supports” for persons with developmental disabilities to allow such persons to live in the least restrictive environment possible and toward the achievement and maintenance of independent, productive, normal life. (§§ 4501, 4502, subd. (a), 4512, subd. (b).) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).)

2. An individual’s IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.) In implementing an IPP, the regional center must first consider services and supports in the individual’s natural community, home, work, and recreational settings. (§ 4648, subd. (a)(2).) While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services that reflect the cost-effective use of public resources, including the use of natural supports. (§§ 4512, subd. (e), 4646, subd. (a).)

3. Family relationships are considered a natural support. While the parent of a minor child has a duty to provide care and for the necessities of life for that minor child, the parent of an adult consumer would not have a similar responsibility. In determining needs, it is appropriate for the IPP team to determine what services and supports a consumer’s “natural supports” are willing and able to provide. What constitutes a natural support depends on the individual circumstances at that given time.

4. In this case, when Claimant’s mother chose to live in the facility, she assumed the duty to provide natural supports for Claimant. Essentially, Claimant is asking the regional center to pay for his expenses of daily living, and his mother to provide for his 24-hour care. It is not the intent of the Lanterman Act that a regional center use public funds to pay a parent to run a business and supervise her own children.

It has been established that under the circumstances, Claimant is not living in an “out-of-home” placement. In this particular living situation, Claimant’s mother is responsible for certain obligations as a natural support for Claimant. RCEB is not required to continue to pay the residential supplement and personal and incidental payments which cover the basic necessities of life within the responsibility of Claimant’s mother. This does not mean that Claimant is not eligible to receive other supports and services from RCEB.

² All references are to the Welfare and Institutions Code.

ORDER

Claimant's appeal is denied.

DATED: July 15, 2014

REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.