

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2015050983

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on November 17, 2015, in Pomona, California.

Daniela Santana, Fair Hearing Manager, appeared and represented the San Gabriel/Pomona Regional Center (the Service Agency).

Claimant's foster mother,¹ claimant's duly appointed guardian, appeared and represented claimant, who was not present.

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

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency shall provide funding for out-of-home respite care services to give claimant's foster mother the opportunity for vacations and other necessities or activities of family life.

¹ Claimant and his foster mother are identified by title, not by name, in order to protect their privacy.

EVIDENCE CONSIDERED

Documents: Service Agency's Exhibits 1-6.

Testimony: Daniela Santana, Fair Hearing Manager; claimant's foster mother.

FACTUAL FINDINGS

1. Claimant is a 10-year-old boy with a diagnosis of Mild Intellectual Disability. On November 6, 2014, the Los Angeles County Department of Children and Family Services (DCFS) placed claimant in the care of his foster mother, who also cares for three other foster children.

2. The Service Agency issued a Notice of Proposed Action on or about April 22, 2015. The Service Agency denied claimant's request for overnight respite care services on the grounds that "residential placement services are currently funded for [claimant] through DCFS" and funding for any need for additional or alternate placement is available through DCFS. (Ex. 1.) On May 14, 2015, claimant's foster mother filed a Fair Hearing Request on behalf of claimant. All jurisdictional requirements have been met.

3. Claimant's most recent Individualized Program Plan (IPP), dated March 4, 2015, reflects that claimant has achieved independent functioning in various daily living skills, such as bathing, clothing, and feeding. Although he has difficulties in articulation, claimant is able to communicate in complete sentences.

4. However, claimant exhibits severe maladaptive behaviors, and is prone to violent outbursts. He kicks and hits others, screams, and cries loudly. He has threatened to break things and has caused minor property damage. His behavior is impulsive and spontaneous, and no apparent stimulus triggers the outbursts. The goals stated in the IPP include programming that will reduce claimant's aggression and inappropriate social behaviors, and enable the foster mother to take breaks from the specialized care and supervision required by claimant.

5. The Service Agency is currently funding Intensive Behavioral Health Treatment to address claimant's behavioral needs. Claimant receives 44 hours of direct intervention services and 10 hours of supervision. The Service Agency is also funding 16 hours per month of in-home respite care services. DCFS is funding claimant's residential placement. The school district is providing special education services.

6. Since 1991, claimant's foster mother has fostered so many children that she could not provide an accurate estimate of how many she has fostered. She remains particularly close to a woman whom she raised as a foster child. The former foster daughter is now an adult with children in Atlanta, Georgia. They regard each other as family. The foster mother occasionally travels to Atlanta to attend special occasions in her former foster daughter's life.

7. The foster mother requested overnight respite care services to enable her to attend the graduation of a child of her former foster daughter. The foster mother does not desire to have claimant removed from her care and transferred to another residential placement. She intends to provide ongoing foster care for claimant for the foreseeable future.

8. The Service Agency has an established written Purchase of Service (POS) Policy. The Service Agency may purchase residential services “only after all other alternatives have been exhausted.” (Ex. 5, p. 25.) Based on this established policy, the Service Agency denied claimant’s request.

9. The POS Policy also provides that the Service Agency may purchase respite care services “to provide family members with temporary relief from the continual care of a person with a developmental disability.” (Ex. 5, p. 26.) Respite care services include in-home respite service or no more than “21 days in a fiscal year of out of home respite services, in a licensed residential facility.” (*Ibid.*) The purchase policy expressly provides: “[Respite] services can be purchased for a short period during *planned* or emergency situations. Respite services are generally provided in the home; however, respite on a 24-hour basis will usually be purchased from a licensed community care or health facility.” (*Ibid.*, italics added)

LEGAL CONCLUSIONS

1. Claimant bears the burden of proof as the party seeking government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

2. Welfare and Institutions Code section 4686.5 states in pertinent part:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, all of the following shall apply:

(1) A regional center may only purchase respite services when the care and supervision needs of a consumer exceed that of an individual of the same age without developmental disabilities.

(2) A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer.

(3)(A) A regional center may grant an exemption to the requirements set forth in paragraphs (1) and (2) if 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. [¶] . . . [¶].

3. The regulations define “out-of-home respite services” as “intermittent or regularly scheduled temporary care to individuals in a licensed facility and which: 1) are designed to relieve families of the constant responsibility of caring for a member of that family who is a consumer; 2) meet planned or emergency needs; 3) are used to allow parents or the individual the opportunity for vacations and other necessities or activities of family life; and 4) are provided to individuals away from their residence.” (Cal. Code Regs., tit. 17, § 54342, subd. (a)(58)(E).)

4. In this case, the Service Agency is improperly characterizing claimant’s request as a claim for residential placement. Claimant’s foster mother is seeking only intermittent short-term out-of-home respite services to enable her to visit family in Georgia. Her request is consistent with a stated goal in the IPP to enable claimant’s foster mother to take breaks from the specialized care and supervision required by claimant.

5. The law allows for a maximum of 21 days of out-of-home respite care services. The plain language of the statute contemplates overnight out-of-home respite care by fixing the limitation by days, rather than by hours as in the case of in-home respite care. Moreover, the regulations allow such expenditures for vacations and other family life activities, such as those contemplated by claimant’s foster mother. The Service Agency’s POS Policy authorizes such purchases not only for emergency situations, but also for short-period planned situations on a 24-hour basis.

6. By currently funding 16 hours per month, or 48 hours per quarter, of in-home respite care service, the Service Agency has acknowledged that claimant’s care and supervision needs exceed that of an individual of the same age without developmental disabilities. The pending request falls within the authorized parameters for respite care services under Welfare and Institutions Code section 4686.5, subdivision (a)(2). Accordingly, claimant is not required to show cause for the exemption provided in Welfare and Institutions Code section 4686.5, subdivision (a)(3)(A).

7. Claimant’s foster mother has met her burden to show that she is entitled to additional overnight out-of-home respite care services, to allow her the opportunity for vacations and other necessities or activities of family life, to the extent the combined total does not exceed the limitations of Welfare and Institutions Code section 4686.5, subdivision (a)(2). The Service Agency did not present sufficient rebuttal evidence to show that DCFS would fund similar services.

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ORDER

Claimant's appeal is granted. The Service Agency is required to provide funding for out-of-home respite care services to give claimant's foster mother the opportunity for vacations and other necessities or activities of family life, to the extent the combined total of in-home and out-of-home respite care services does not exceed the limitations of Welfare and Institutions Code section 4686.5, subdivision (a)(2).

DATED: November 24, 2015

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Matthew Goldsby
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MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.