

that he meets the medical and funding criteria for certain other Developmental Services.

In January 2006 the petitioners instituted a program for their son called Relationship Development Intervention (RDI), an intensive home-based educational program. The petitioners maintain that because the program is home-based, rather than school-based, the petitioners' local school district will not fund their expenses for parent training and periodic program consultant services. The petitioners have applied to DAIL to fund these particular expenses under the Developmental Disabilities Program.

DAIL has denied the petitioners' request based on its "funding priorities" under its *System of Care Plan* that was established pursuant to the statute and regulations that underlie its administration of the Developmental Services Program (see *infra*). DAIL maintains that it is presently providing funding for the petitioners under this program for in-home "personal care services" and "flexible family funding", which includes respite care. However, DAIL has determined that the RDI program is primarily educational and is not required to end or prevent the petitioner's son from being institutionalized, which DAIL has concluded would be

necessary for such expenses to fit under current criteria for funding priority (see *infra*).

The petitioners in this matter readily concede that their son's personal care needs are being met at home and that implementing the RDI program is not necessary to prevent him from being institutionalized. Thus, the sole issue in the matter is whether the Department has followed its guidelines in determining whether the petitioners meet current funding priorities for this particular service, i.e., the expenses incurred in implementing their son's RDI program. Although the parents (who represent themselves in this matter¹) do not specifically allege otherwise, an examination of the pertinent statutes and regulations appears to fully support DAIL's position in this matter.

Under 18 V.S.A. § 8723, DAIL's responsibilities to administer programs for the benefit of developmentally disabled children and adults are to be "within the limits of available resources". The statutes specifically charge DAIL with the duty to create and administer a "system of care

¹ The hearing officer has strongly advised the parents to contact Vermont Legal Aid's Developmental Disability Project to obtain a legal opinion as to whether their local school district is meeting the requirements of federal and state special education law in providing their son with a "free and appropriate" education.

plan". That statute provides: "The commissioner shall determine the priorities of the plan based on funds available to the department." § 8725(b).

In accord with the above statute DAIL has developed and promulgated a "three-year plan, FY 2005-2007" as part of its overall *Vermont State System of Care Plan for Developmental Services*. That plan includes an "FY 2007 update", effective July 1, 2007. The update includes specific "funding priorities". Three of those priorities (out of twelve in all) concern children. As noted above, DAIL has determined that the petitioners' son meets two of them, i.e., support for "personal care tasks" and "respite". The only other priority that applies to children is for: "Support needed to prevent or end institutionalization in inpatient public or private psychiatric hospitals or nursing facilities or end institutionalization in Intermediate Care Facilities for People with Mental Retardation (ICF/MR)".

DAIL's System of Care Plan is detailed (63 pages) in its discussions of available fiscal resources and the amounts of research and public and professional input. In addition to not disputing DAIL's factual assessment that their son is not at risk of institutionalization, the petitioners do not allege that the Plan itself is anything but a thorough and

fair implementation of DAIL's legal duties responsibilities under the above statutes. Unfortunately, the Plan does not include home-based educational programs in its list of funding priorities. In light of this, the Board is bound by law to affirm DAIL's decision in this matter. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

ORDER

The Department's decision is affirmed.

#