

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Agency Vendorization for Services for:

OAH No. 2012050755

Patrick N.,

Claimant,

and

San Diego Regional Center,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on July 6, 2012.

Ronald House, Attorney at Law, represented the San Diego Regional Center (SDRC).

Lanee N., claimant's mother, represented claimant and was assisted by her husband, Phi N.

Oral and documentary evidence was received and the matter was submitted on July 6, 2012.

ISSUE

Should SDRC be required to authorize Leisure Express as a vendor to provide out of home respite care to SDRC clients?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On May 1, 2012, SDRC notified claimant of its decision not to fund his

participation on an Alaska cruise sponsored by Leisure Express

On May 3, 2012, claimant filed his request for fair hearing and the matter proceeded to hearing.

At the time of the hearing, the cruise had already taken place, making that issue moot. However, pursuant to the parties' agreement, the issue at hearing was whether SDRC should authorize Leisure Express as a vendor to provide out of home respite care to SDRC clients so that claimant could attend their functions.

EVIDENCE INTRODUCED AT HEARING

2. Claimant is currently a 21-year-old male who qualifies for regional center services because of his diagnosis of autism.

3. John Scalia, SDRC resources Coordinator, who ironically was previously claimant's Consumer Services Coordinator, testified about his investigation to determine if Leisure Services could be vendored to provide out of home respite. Currently Leisure Services is vendored as a social recreation provider, one of the services suspended by Assembly Bill 9. In order for Leisure Services to be vendored as an out of home respite provider, Leisure Services would need to comply with the requirements of California Code of Regulations, title 17, section 54342, subdivision (a) (58). That regulation contains five sub-parts, one of which requires that the provider be licensed by the Department of Social Services (DSS) or the Department of Health Services (DHS), neither of which licenses Leisure Services' operations. Scalia testified that in his discussions with Leisure Services, he was told that Leisure Services does not wish to become licensed by either agency because Leisure Services does not want to operate a day care service in San Diego County.

4. Claimant's mother acknowledged that Leisure Services is currently not licensed, but she testified that she instructed Leisure Services not to apply for licensure until after this hearing and that she was informed that Leisure Services was interested in becoming licensed. Claimant's mother asserted that the Lanterman Act requires that

services be tailored to fit the individual's needs and that the services offered by Leisure Services meet her son's needs.

5. Numerous e-mails of the discussions between Scalia, claimant's mother and Leisure Services were introduced. These demonstrated that Leisure Services is currently not licensed by either DSS or DHS.

LEGAL CONCLUSIONS

THE LANTERMAN ACT

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with a qualifying developmental disability, regardless of age or degree of handicap, and at each stage of life. The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

3. Welfare and Institutions Code section 4648 states in part:

"In order to achieve the stated objectives of a consumer's individualized 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 by the consumer's individual program plan...
- (2) . . . Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.
- (3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer . . . which the regional center . . . determines will best accomplish all or any part of that consumer's program plan."

APPLICABLE REGULATION

4. California Code of Regulations, title 17, section 54342, subdivision (a) (58), outlines the requirements a vendor must meet in order to be classified as a vendor to provide out of home respite. Subdivision (A) requires the provider to be licensed by DSS or DHS.

EVALUATION

5. Claimant correctly asserted that the Lanterman Act requires that services be tailored to fit the individual's needs. However, both regional centers and providers of services must comply with the laws and regulations that govern regional centers. While it may be true that Leisure Services meets claimant's needs, nothing in the Lanterman Act permits SDRC at this juncture to vendor Leisure Services as an out of home respite provider because Leisure Services is not licensed by either DSS or DHS. Furthermore, nothing in the Lanterman Act requires a regional center to vendor any agency as the Lanterman Act leaves the discretion to vendor a provider to the regional centers and

provides an appeal process for vendors who wish to protest their denial of vendorization.

ORDER

Claimant Patrick N.'s appeal from the San Diego Regional Center's determination not to authorize Leisure Services as a vendor to provide out of home respite is denied. Leisure Services does not currently meet the requirements of California Code of Regulations, title 17, section 54342, subdivision (a) (58).

DATED: July 11, 2012

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.