

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2019101088

DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video-conference on August 17, and October 13, 2020. Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant was represented by his father, who is also his conservator.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 13, 2020.

ISSUE

Should ELARC be required to increase Claimant's money management / rent subsidy from \$1,752 to \$2,052 per month?

EVIDENCE

Documentary: Service Agency exhibits 1 through 24; Claimant exhibits A through U.

Testimonial: Venessa Grande, ELARC Service Coordinator; Lilia Ortega, ELARC Unit Supervisor; Channarith Pot; Matthew Trujillo; Greg Sylvester; Nannette Meldrum; and Claimant's father.

FACTUAL FINDINGS

1. Claimant is a 43-year-old male client of ELARC. He qualifies for regional center services under a diagnosis of autism.
2. Claimant is nonverbal, and he communicates by gestures or by using a facilitated communication device with assistance of his staff. Claimant needs prompting and assistance with many household and self-care tasks. He also requires constant supervision to ensure his safety.
3. Claimant currently lives in his own home with support staff in the home 24 hours per day, seven days per week.

4. It can be extremely stressful for Claimant to anticipate or participate in a new or different activity. Claimant will often perseverate on his anxiety and become unable to participate in preferred activities. He must have two staff members with him in order to safely participate in community activities. When Claimant experiences elevated anxiety, he may get "stuck" (i.e., perseverate), push or hit others, engage in self-injurious behaviors (e.g., biting his arm), destroy property (e.g., break a window), or attempt to flee. When Claimant becomes stuck, he may sit down wherever he happens to be. Sometimes, staff members are able to help Claimant re-engage with others and activities in a few minutes. However, at other times, Claimant will remain stuck and unable to move for 30 minutes or more. This can become a safety issue when Claimant is out in the community, and on at least one occasion, he sat down in the middle of a street. Claimant also has a need for his own "space" where he can eliminate interaction with others. He typically obtains this space by moving to an empty room to be by himself.

History of Living Arrangements to Meet His Needs

5. Claimant lived at home until about age seven, when he moved to a Level 2 group home for 11 years. During the time he resided in the Level 2 home, Claimant took a bus to school, where he participated in classes with additional support and supervision. Claimant was also able to travel by car and had frequent visits with his family.

6. In 1994, while waiting in his doctor's office for an appointment, Claimant became increasingly anxious. However, Claimant's caregiver did not recognize or respond to Claimant's rising level of anxiety. When Claimant could endure the wait no longer, he burst from the waiting room, brushing the caregiver aside. At that time, Claimant was six feet, five inches tall, and he weighed about 240 pounds. Given

Claimant's size, the force of him pushing the caregiver resulted in the accidental fracture of her arm.

7. After this incident, Claimant's group home would not allow him to continue residing there. Claimant lived with his parents for 10 days while they and the Service Agency searched for appropriate living arrangements. Although Claimant generally functioned well during this time, there were instances when he refused to exit a car or to enter his classrooms.

8. Unable to find a vacancy at any Level 2 facility, the Service Agency recommended Claimant move to a Level 4 facility. This level provides a higher staff-to-consumer ratio and houses consumers with increased needs who often have dual diagnoses (i.e., a developmental disability and other medical and/or psychological condition(s)) and may be violent. Claimant moved to a Level 4 group home, and while there, he began to regress and withdraw. Initially, he refused to get on the bus to school. Thereafter, Claimant's regression increased, and he remained in the bathroom for hours. He stopped bathing and would not eat with the other residents. Eventually, Claimant was spending over 22 hours per day in the bathroom or in his bedroom with the lights off, and he was not eating or tending to his hygiene. He lost 40 pounds.

9. In May 1994, Nannette Meldrum, a behavioral specialist, was contacted by the Service Agency and asked to provide emergency intervention for Claimant. She met Claimant's father, gathered information, interviewed those most knowledgeable about Claimant, and began to work with Claimant to extract him from his withdrawn state. Claimant eventually progressed, and he was able to move to a Level 2 group home. However, moving Claimant to the new group home required administration of a large amount of sedative medication.

10. In 1994, after Claimant moved to the new Level 2 group home, Ms. Meldrum and Claimant's aides attempted to re-establish Claimant's routines. Claimant was able to decrease his bathroom time, increase his attention to hygiene, and interact with some people. However, as a coping mechanism, Claimant continued to remain in the bathroom for approximately 15 hours per day, creating a problem for the group home operator, since Claimant was monopolizing the one bathroom available to the other consumers. Claimant also failed to respect other consumers' privacy, and he would enter their rooms uninvited. Consequently, the group home operator gave notice that Claimant would be evicted.

11. By this time, the Service Agency had contracted with the Whittier Area Parents Association for the Developmentally Handicapped (WAPADH), which administered a program called Delta Services (Delta) providing Supported Living Services (SLS) to consumers. (In 2015, WAPADH changed its name to Resource for Education, Advocacy, Communication and Housing (REACH).) Delta became the vendor for Claimant's one-on-one (1:1) aides and for the behavioral consultations by Ms. Meldrum. Delta also assisted in finding appropriate housing for Claimant. They determined that the least restrictive environment for Claimant would be a house where he would not have to live with others. Apartments were deemed to have potential detrimental effects due to the close proximity to others and the noise resulting from shared walls.

12. In February or March 1995, Claimant was moved into his own home, located for him by Delta to meet his specific needs. The home had two bathrooms, one for Claimant's use and the other for staff and visitors. An extra bedroom was needed for staff use. Additionally, since Claimant is sensitive to heat, it was necessary to have a home with central air conditioning.

13. To move Claimant, it was again necessary to heavily sedate him. Although Claimant is not aggressive, his size is imposing. The move to his new home and the resulting change in his routine had some traumatizing effects on Claimant, and he suffered regression. He was again spending over 22 hours in the bathroom or bedroom, but he eventually adjusted to the new setting. Gradually, Claimant began to explore the different rooms, come out for meals, interact with the staff, and venture out into the back yard.

14. Delta and the local education agency pursued Claimant's education options. However, Claimant was unable to travel regularly to attend school. Attempting to transport Claimant when he was unwilling caused him anxiety resulting in the inability to transport him. Despite many efforts to facilitate transportation, Claimant would not leave his home. Therefore, the local education agency began providing home teachers for Claimant.

15. Claimant's home teachers and Delta staff worked with Claimant on increasing his comfort level to leave his home. In very slow, gradual steps, it became possible for Claimant to take walks around his neighborhood and to local stores, and he was able to take short car rides. However, it was necessary to have two people with Claimant, as his size, anxieties, and easy distractibility made it difficult to maintain his full attention and to keep him in control.

16. Claimant's medical and dental needs are also affected by his discomfort with leaving his home. Any medical or dental appointments require substantial planning and increased staffing. For example, in December 1994, Claimant required dental treatment. Claimant was heavily sedated, and up to six people moved him to a gurney for transportation by ambulance to a hospital where the procedure was

performed under sedation. In 1997, Delta developed a plan to meet some of Claimant's medical needs by arranging for a doctor to make house calls.

17. Another period of regression occurred in 1997 after changes to Claimant's staff. Claimant was unable to take the types of walks or short trips in cars he had previously taken. Thereafter, Claimant progressed and was able to take neighborhood walks, but he was unable to travel by car for several years.

18. In 1998, the landlord informed Claimant that his house was going to be sold and that Claimant had to move. The knowledge of the need to relocate increased Claimant's anxiety. After a lengthy search, the staff located a new house that met Claimant's needs (i.e., at least two bathrooms, air conditioning, and affordable). In January 1999, Claimant was moved to a new home. He again had to be heavily sedated, and up to six people had move him to a gurney for transportation by ambulance to his new house. Claimant's routine was impacted again as it took him time to adjust to his new home. However, staff were able to persuade him to once again travel by car and participate in outings to the store, parks, and other community activities.

19. In early 2000, the landlord notified Claimant that his house was going to be sold. Claimant again experienced stress and anxiety about the need to move. After a search, Claimant's staff found a house in the same neighborhood. The house had two bedrooms and one and three-quarter's bath (shower but no tub). The rent was similar to a three-bedroom, two-bathroom home. Claimant again had to be heavily sedated, and up to six people had move him to a gurney for transportation by ambulance to his new house. Claimant's routine was impacted again as it took him time to adjust to his new home. However, he progressed and was able to eventually

participate in community outings. He was later able to have friends visit him at his home for limited periods of time.

20. In 2012, Claimant's landlord notified Claimant that the house was going to be sold and that Claimant would need to move out. After another long search, Claimant's staff was able to locate a house to meet Claimant's needs. Claimant moved to his current home. Due to his strong relationship with staff, Claimant was able to make the move with only mild sedation while riding in the staff's vehicle. Ms. Meldrum met them at the house, and spent time with Claimant while staff moved the furniture in. Claimant eventually became comfortable at his new home.

21A. Claimant's most recent Individualized Program Plans (IPPs), dated January 2018 and January 2020, document Claimant's difficulty transitioning and his increased anxiety over community outings and visitors following his move in 2012.¹ Claimant has worked with Ms. Meldrum, his behavioral consultant, twice per month to address his anxiety and behavioral issues and to increase his interaction with peers/friends.

21B. Claimant's 2018 and 2020 IPPs also note his staff's efforts to facilitate his participation in community outings. Since Claimant has difficulty transitioning, he requires two staff members to assist him to access the community safely. Claimant participates in a routine which begins with him communicating to staff via facilitated communication regarding his preferred activity. Staff then prepare Claimant for the outing, which typically involves at least an hour of Claimant engaging in quiet "alone

¹ Only the 2018 IPP was signed by Claimant's father/conservator.

time" so he can focus on controlling his anxiety. Claimant communicates when he is ready, and he takes anti-anxiety medication. During an activity, staff periodically ask Claimant how he is doing and if he wishes to continue with the outing. Sometimes Claimant will communicate to staff that he wants to return home due to his anxiety.

21C. In order to have Claimant become comfortable with a new activity outside the home, staff must take very small, gradual steps to facilitate that activity. For example, when Claimant wanted to go to a movie theatre, staff first took pictures of the theater parking lot and walkways to show to Claimant in order to slowly prepare Claimant for the outing. As of the 2018 IPP, Claimant was reportedly able to make it to the theatre parking lot but was not able to exit the car. As of the 2020 IPP, Claimant was able to enter the movie theatre and sit for about seven minutes before having to leave.

22. In March 2020, Claimant developed an infection in his jaw and his throat swelled up. It hurt to swallow, so he stopped eating and decreased his liquid intake. Eventually medical staff recommended Claimant be taken to the hospital. Since Respondent could not swallow medication, staff were unable to sedate him. Consequently, when the ambulance arrived, Claimant was uncooperative, and the ambulance staff felt it was unsafe to Claimant and themselves to attempt to transport him. Eventually, Claimant's staff called 9-1-1, and when sheriff's deputies and fire department personnel arrived, they determined they would need to sedate Claimant. It took five people to hold Claimant down so they could inject the sedative. After Claimant was sedated, the sheriff's deputies placed handcuffs on Claimant, wrapped him in blanket, and moved him to a gurney for transport to the hospital. This was a very traumatic process for Claimant.

23. Claimant returned home several days later. He ran inside, got into bed, and remained there for many days except to go to the bathroom. Staff brought food to his room. Around the 15th day home, he was able to walk into the kitchen to take his medication. About 53 days after he returned home, he was able to put clothes on. Seventy-nine days after returning home, he was able to take his first shower. This took several gradual steps over several days to accomplish (e.g., he first had to put his foot in the shower, then had to touch the water, etc.). Claimant is now able to sit on the couch for about 30 to 40 minutes per day. Achieving this goal began with Claimant going to touch the couch and then returning to his bedroom. Claimant continues to inform staff he is afraid to put on clothes because he fears he will have to go to the hospital. He still refuses to wear shoes.

24. As depicted above, Claimant experiences great difficulty regaining his routine after traumatic experiences which includes the times when Claimant has had to move to a new home. His thoughts and fears cause him to get stuck and unable to complete tasks and participate in daily activities. However, with staff support, Claimant progresses more each day to return to his routine and to improve his ability to participate in outings.

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25. Claimant's 2018 and 2020 IPPs document his current housing needs as follows:

Because of [Claimant's] special needs, he requires a home that is air conditioned and with his own bathroom. Staff must have a separate bathroom. [Claimant] has an ongoing fear that he will lose his home due to him having to move several times in the past and because of the issue of his landlord raising his rent in 2016. He has been living by himself, in this home since September 3, 2012, with support and protective supervision from his supported living staff 24 hours per day, 7 days per week. This is the most appropriate, least restrictive environment for him. . . .

[Claimant] has special needs, which consequently require the following: a home that is air conditioned and with his own space including his own bedroom and bathroom. Additional needs include, home to be a house not an apartment, at close vicinity to current medical physician (as [Claimant] is unable to go to the physician's office, and the physician comes to [Claimant's] house), and a quiet neighborhood near a grocery store. [Claimant] is unable to live with another person.

[Claimant] receives 24-hour support from REACH Supportive Living Services (SLS) seven days per week as well as Protective Supervision per his [In-Home Supportive Services (IHSS)] eligibility. ELARC funds for 24-hour SLS

services seven days per week, as this continues to enable [Claimant] to reside with the aid of support staff in his preferred living arrangement, his own home.

(Ex. 7, p. 64; Ex. 17, p. 139.)²

26. In addition to the SLS, the Service Agency funds Claimant's money management/rent subsidy, currently \$1,752 per month. This is a portion of the full rent, and Claimant pays the remainder. Claimant also receives State Supplementary Payment (SSP) funds totaling \$56.88 per month. Claimant's generic resources include SSDI at \$1,245 per month and 283 hours per month of IHSS.

History of Service Agency Subsidizing Rent

27. Claimant rents the house in which he resides. The Service Agency has been funding Claimant's money management / rent subsidy since 1995 when he moved to his own home.

28. In 1999, following a fair hearing, an Administrative Law Judge with the Office of Administrative Hearings issued a Decision in Case No. L-1999070288 noting that the Service Agency had agreed to pay a portion of Claimant's rent, and stating: "As the service agency has made such payments since February 1995, it should continue to do so unless there is some material change in circumstances as identified in a new IPP or as agreed by claimant's father." (Ex. L, p. 269, para. 53.)

² Cited page numbers indicate the .pdf page within the electronically-filed exhibits.

29A. In 2016, the landlord raised Claimant's rent from \$1,950 to \$2,150 per month. Claimant's father determined that Claimant could pay an additional \$50 from his private funds toward his rent. Claimant requested that ELARC fund the remaining \$150 increase of Claimant's rent. ELARC denied that request for increased rent subsidy and issued a Notice of Proposed Action (NOPA), citing a 2009 trailer bill as the basis for denial. Claimant appealed ELARC's decision.

29B. In March 2016, ELARC representatives met with Claimant's father and Greg Sylvester, one of Claimant's SLS providers. On May 10, 2016, ELARC and Claimant's father signed a Notification of Resolution (NOR) which was based on, and incorporated as an attachment, an informal decision documented in a May 8, 2016 letter. That informal decision included the following findings:

A notice of action was issued when ELARC was advised that the rental costs of Claimant's current residence had increased. ELARC was not denying funding rental costs but was in fact denying the increase in rent of \$150.00, totaling \$1,752.00 per month. ELARC has funded rental costs for over 20 years.

Claimant currently resides in a 4 bedroom, 2 bath home in the city of Whittier. He receives supported living services from [REACH] in order to be able to continue to reside in the least restrictive setting in the community.

The trailer bill of 2009 clearly states that regional centers are not to fund rent or mortgage payments for an individual living in a Supported Living circumstance. However, the

[trailer bill language (TBL)] does in fact allow for exceptions to the law under the following circumstance:

"(1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

(A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

(B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer."

In this specific case ELARC has funded rental expenses for the claimant for over 20 years and it does indeed appear that claimant meets the criteri[a] for exception to the TBL. During this 20-year period rental costs have increased, and Claimant has had to move in the past due to landlords

deciding to sell the home. Claimant has a history of extreme behavioral difficulties including a reported "traumatizing experience" in a group home. Claimant has particular needs related to his developmental disability that seem to be best met in a home where he resides on his own with the assistance of SLS staff. The home in which claimant rents is a four bedroom home, this living arrangement can be viewed beyond Claimants needs to live comfortably, however is most appropriate at this time.

(Ex. 4, pp. 43, 45.)

29C. The 2016 informal decision included the following resolution:

1. ELARC agrees to continue to fund claimants rent at the higher rate of \$1,752.00 which is an increase of \$150.00 dollars, for a period of one year. At the end of the one-year period ELARC will reassess Claimant's living situation and needs.
2. During this funding year, Claimant and SLS vendor will diligently search for housing options that both fit Claimant's needs and is more cost effective for both parties to fund. These alternative housing options will be provided in writing to Claimant's Service Coordinator on a quarterly basis.

3. Conservator/Father will share with Claimant's service coordinator claimant's household budget demonstrating what household expenses Claimant is contributing to.

4. Claimant with the assistance of his SLS vendor will apply for section 8 funding. Any denials must be provided to claimants Service Coordinator.

(Ex. 4, p. 45.)

30. From 2016 through the present, the Service Agency continued to fund the \$1,752 money management / rent subsidy for a portion of Claimant's rent. Claimant continues to pay the remainder.

31. In September 2019, Claimant's father requested that ELARC increase Claimant's money management / rent subsidy by \$300, to \$2,052, because the landlord had notified Claimant of a rent increase, effective October 2019.

32A. ELARC denied the request for increased money management / rent subsidy and issued a NOPA. The stated reason for the denial was:

Consumer's rent increase is not cost effective. . . . Before ELARC will consider a rent subsidy increase, ELARC will need detailed information regarding cost effective residences within the ELARC catchment area, if conservator would like this regional center to continue funding current services and supports. Furthermore, current additional exploration of generic resources must be exhausted.

(Ex. 1, p. 4.)

32B. As authority for its action, the Service Agency cited Welfare and Institutions Code sections 4646, subdivisions (a) and (d), 4685, subdivision (c)(3), and 4648, subdivision (8).

32C. Claimant's father filed a Fair Hearing Request appealing the Service Agency's denial.

33. At an informal meeting on October 22, 2019, ELARC included another statute in its analysis which was not stated in its NOPA: Welfare and Institutions Code section 4689 (as amended by the 2009 trailer bill), which addresses rent payments for consumers living in their own homes with SLS. That statute was addressed at length in an October 22, 2019 letter to Claimant's father from ELARC. Although this statute was not listed in the NOPA as a basis for denial, it was addressed in the October 22, 2019 informal meeting letter, and therefore, Claimant was given adequate notice to allow him to respond to ELARC's citation to this law at the fair hearing.

34A. In the October 22, 2019 informal meeting letter, ELARC discusses several subdivisions of Welfare and Institutions Code section 4689. ELARC notes that subdivision (a) (2) (stating "The services or supports that a consumer receives shall change as his or her needs change") "would appear to support [Claimant's] request, [since Claimant] has requested to remain in his current placement with [an increased] \$300 subsidy. . . ." (Ex. 15, p. 109.) ELARC also raises no dispute with subdivision (a)(3), (which provides "The consumer's preference shall guide decisions concerning where and with whom he or she lives"). ELARC also notes that subdivision (a)(6) (stating "The services or supports shall be flexible and tailored to a consumer's needs and preferences") "indicates that the IPP team needs to balance Claimant's wishes with his needs" addressed below.

34B. The October 22, 2019 letter lists Claimant's needs for appropriate housing, as identified by REACH. These needs include the following:

(1) Claimant needs at least two bathrooms, because Claimant cannot tolerate anyone using his restroom. This is because the bathroom has become a place of refuge for Claimant, where he be alone when his anxiety/stress became too much for him. Since Claimant requires staff support 24 hours per day, seven days per week, a second bathroom is needed at the house for staff and visitors.

(2) Claimant needs 1:1 SLS.

(3) Claimant needs to have no roommates. When Claimant experiences anxiety or stress, he requires time to be alone in his "space," without any distractions so he can refocus. This generally requires turning off any music, television, or other noises, and the staff must leave the room. Claimant has difficulty with people visiting his house, even when he has known them for years, and he needs a lot of preparation time for visitors.

(4) Claimant needs a home with air conditioning. Claimant has difficulty regulating the temperature of his body, and he easily overheats. His doctors have documented his need for the temperature in his house to be between 68°-70°. When Claimant gets too hot, it causes him stress and makes it difficult for him to engage in activities. He becomes self-injurious and physically aggressive if the temperature in his house is not kept between 68°-70°. In order to ensure that the temperature is maintained even during power outages, Claimant has a large generator that he keeps in a storage shed in his yard. During blackouts, he is notified by Southern California Edison, and he will have the generator running during those times.

(5) Claimant needs a house in close proximity to a supermarket and to his doctor's office since his doctor must make house calls due to Claimant's fear of going to a doctor's office or a hospital.

(6) Claimant needs ground floor access, with no stairs or second story.

(7) Claimant needs his own yard as a place to calm down when he becomes anxious.

(8) Claimant needs an on-site washer and dryer.

34C. In the October 22, 2019 letter the Service Agency stated it "does not have a dispute about 2 bathrooms, proximity to markets and medical care, ground floor access/stairs, air conditioning, [no] roommates, or 1:1 SLS. [Welfare and Institutions Code section 4689, subdivision (a)(2)] supports those housing provisions for this claimant." (Ex. 15, p. 109.)

34D. However, ELARC questioned the need for more than two bedrooms, a yard, and an on-site washer and dryer.

35A. At the fair hearing, the Service Agency also voiced concerns that Claimant was taking unknown psychiatric medications with only his primary care physician, not a psychiatrist, monitoring his medication regimen. Service Coordinator Venessa Grande testified that full access to Claimant's medical records would allow the physician on ELARC's clinical team to "recommend treatment and follow up to ensure [Claimant's] health and safety." However, due to a prior incident, Claimant's father is reticent to provide Claimant's medical records to ELARC because he does not trust it to keep Claimant's records confidential. Nevertheless, resolution of the parties'

disagreement over the provision of medical records is not crucial to ruling on the issue in this matter.

35B. There is no indication in prior documentation that Claimant's housing needs and ELARC's funding of the rent subsidy were based on any medical issues. Claimant's housing needs have been acknowledged by ELARC for many years, and his needs are related to the behavioral issues which arise from his developmental disability. ELARC specifically acknowledged in 2016 that "Claimant has particular needs related to his developmental disability that seem to be best met in a home where he resides on his own with the assistance of SLS staff." (See Factual Finding 29B.) Consequently, at this time, Claimant's father should not be ordered to produce Claimant's medical records for Claimant to obtain an increase in rent subsidy.

36. At the fair hearing, ELARC also contended that Claimant could be taught by SLS staff to adjust to living in an apartment, which would be a less costly housing alternative. Claimant's representatives credibly noted that Claimant's needs could not be met by living in an apartment. They pointed out that Claimant lives in a house because of the self-containment provided by that environment. He cannot tolerate loud noises and constant activity of people coming and going. In an apartment setting, with people living close to one another, there would be no control of noise or distractions, and it would be difficult to achieve the "quiet" space that Claimant requires. Claimant could become stuck and unable to move in front of someone's apartment door, in a carport, on a driveway, at the mailbox, or other common area. Additionally, if frightened, Claimant could run into another person's apartment or onto the second-story stairs and become stuck and unable to move for extended periods of time. This would present a safety hazard for Claimant and others. If the apartment complex had a pool or residents had pets, these would pose safety hazards for

Claimant as well. For these reasons, Claimant's IPP specifies that Claimant needs to live in "a house not an apartment." (See Factual Finding 25.) Additionally, Claimant would have difficulty storing and using his large, very loud backup generator in an apartment building.

37. Claimant's current home meets his needs as specified in his IPP and as noted in the October 22, 2019 letter. Additionally, as pointed out by Claimant's staff, it is ideally located on a cul-de-sac where traffic is limited. This makes it a safe place for Claimant to walk in the community. The location also allows Claimant to access his community with short car rides to local parks, Ralphs grocery store, the movie theatre, the REACH office, and Target, etc.

38A. The question remains whether funding the rent subsidy at the increased amount is cost-effective.

38B. Since 2016, Claimant's SLS staff have conducted searches to locate more cost-effective housing to meet Claimant's needs. Mr. Sylvester, and later Matthew Trujillo, looked for a smaller house for less rent that would meet Claimant's needs. Mr. Trujillo searched for two-bedroom and three-bedroom homes, and he also widened his search to include apartments.

38C. Claimant's 2020 IPP notes: "REACH SLS support agency has provided [ELARC] with quarterly reports of Cost Effective Living options that have been explored, and documentation indicating attempt to get [Claimant] on Section 8 Waitlist for LA County." (Ex. 17, p 140.) The 2020 IPP also noted that Claimant previously applied for Housing and Urban Development (HUD) funding through the Housing Authority of the County of Los Angeles. However, HUD informed Claimant

that his income was too high and that, in any event, he would receive a voucher for only a one-bedroom home.

38D. Mr. Sylvester testified credibly at the fair hearing. He was the SLS staff member who located Claimant's current home. He pointed out that, although Claimant's current home has four bedrooms and one and three-quarters bathrooms, he did not specifically search for a four-bedroom home. This was the only home that met Claimant's needs, and the rent was lower than in the other areas where he looked. Since 2016, Mr. Sylvester has continued searching for another house with lower rent to meet Claimant's needs. He has been unable able to find a one. Mr. Sylvester noted that he has also been unable to find either a two-bedroom or a three-bedroom home with lower rent than Claimant's current four-bedroom home.

38E. Mr. Trujillo credibly testified at the fair hearing. In his search for more cost-effective housing for Claimant, he discovered there are no houses to meet Claimant's needs that are less expensive than the house in which Claimant currently resides. Occasionally, Mr. Trujillo would locate a home that could meet Claimant's needs, but the rent was more expensive. Mr. Trujillo noted that he recently searched on Zillow and found two homes that could meet Claimant's needs, but the rents were \$2,900 and \$2,750 per month, which were not less than Claimant's current rent. Mr. Trujillo has found apartments for less rent, but these options were unsafe for Claimant. Given Claimant's needs and limitations, safety is a predominant factor when Mr. Trujillo is searching for residences. Despite his best efforts, Mr. Trujillo was unable to locate an appropriate place for Claimant to live for less rent than his current home.

39A. Mr. Sylvester testified that, although ELARC has insisted that Claimant must first utilize generic resources, ELARC has not specified what generic resources Claimant should be accessing. He noted that Claimant has a Southern California Edison discount and IHSS hours, and SLS staff have explored options with HUD and Section 8.

39B. Claimant's father testified credibly that Claimant's generic resources include: Medicare; Medi-Cal; Delta Dental insurance; IHSS; a Department of Social Service program that assists with prescription co-payments; food stamps; discounts from the water, gas, and electric companies; and a medical equipment necessity certification through Southern California Edison to operate the backup generator. Claimant's father insists he was never told what additional generic resources he should be accessing to help subsidize the rent. It is his understanding that the Lanterman Act requires the regional centers to identify and assist consumers in obtaining generic resources. However, when he asked Claimant's Service Coordinator to assist him, he was not provided with the requested assistance. Claimant's father asserted that if ELARC staff knows of any other generic resources he can access, they should "tell me what it is, and I will apply for it."

40. Claimant's bank statements from 2016 and 2020 were submitted in evidence. However, neither party discussed the bank statements or any specific amounts documented in those statements.

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LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, he bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. Although Claimant is not seeking funding for a new service, he is seeking an increase in funding, representing a change to the service. In seeking increased funding for his rent subsidy, Claimant bears the burden of proof that the increased funding is necessary to meet his needs. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) Claimant has met his burden.

General Provisions of the Lanterman Act

3. A service agency is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPPs. (Welf. & Inst. Code, §§ 4501, 4512, subd.(b), and 4646, subd. (a).)

4. In securing services for its consumers, a service agency must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

5A. Additionally, when purchasing services and supports, service agencies are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code §, 4646.4, subd. (a)(2).)

5B. "[T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659.)

5C. It is the intent of the Legislature that "regional centers shall continue to be the payers of last resort." (Welf. & Inst. Code, § 4659.10.)

Service Agency's Cited Bases for Denial & Other Applicable Laws

6A. The Service Agency cited three statutes in its NOPA as the bases for its denial of Claimant's increased rent subsidy: Welfare and Institutions Code sections 4646, subdivisions (a) and (d), 4684, subdivision (c)(3), and 4648, subdivision (8).

6B. Welfare and Institutions Code section 4646, subdivisions (a) and (d), provides:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, when appropriate, as well as promoting community integration,

independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. [¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

6C. Welfare and Institutions Code section 4648, subdivision (a)(8) provides: "In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following: (a) Securing needed services and supports. [¶] . . . [¶] (8) Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

6D. The third statute cited in the NOPA is applicable to minor children. Welfare and Institutions Code section 4685, provides, in pertinent part: "(a) [T]he

Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan. [¶] . . . [¶] (c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted." Since Claimant is an adult, this cited statute is not applicable here.

7. Although not cited in NOPA, the provisions of Welfare and Institutions Code section 4689 were addressed at the fair hearing. The first part of the statute sets out general principles applicable to this case:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

(6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

(8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

(b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.

(c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

8. As set forth in Factual Findings 1 through 37, Claimant is an adult with a developmental disability who prefers to live in his leased house with supports from his SLS providers and others. This is the best living situation tailored to meet his needs as specified in his IPP. Claimant would like to continue living in his current home without having to move elsewhere, and he seeks increased funding to do so.

9. However, there are limits placed on the funding of rent by a regional center, unless an exception can be found. Welfare and Institutions Code section 4689, subdivisions (h) and (i) state:

(h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.

(i) A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:

(1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

(A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

(B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household

expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.

(C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

10. As set forth in Factual Findings 1 through 37, the rent subsidy is required to meet Claimant's specific care needs as set forth in his IPP, and as demonstrated by his behavioral issues which presents a health and safety risk to himself or others. Additionally, ELARC specifically acknowledged in 2016 that "Claimant has particular needs related to his developmental disability that seem to be best met in a home where he resides on his own with the assistance of SLS staff." (See Factual Finding 29B.) There was no evidence that Claimant's needs have changed since 2016. To the contrary, given the trauma of his 2020 hospital transportation, Claimant's behaviors have regressed, and his need to remain in his current home has increased.

11. Nevertheless, the Service Agency can provide funding only if it is cost-effective. As Claimant's father correctly noted, "cost-effective" does not necessarily

mean the cheapest option. Rather, "cost effective" means "obtaining the optimum results for the expenditure." (Cal. Code Regs. tit. 17, § 58501, subd. (a)(6).) In balancing its obligations, the Service Agency must ensure that cost-effective options also meet a consumer's specific needs. In this case, Claimant's SLS staff have been diligently searching for alternative, more cost-effective living arrangements which would also meet Claimant's needs. Despite their search, they have located no other homes to meet Claimant's needs that are less expensive than the house in which he currently resides. Additionally, the Service Agency has identified no other viable cost-effective alternatives which would meet Claimant's individual needs.

12. Lastly, the Service Agency is required to utilize generic services and supports when appropriate. (Welf. & Inst. Code §, 4646.4, subd. (a)(2).) However, as Claimant's father noted, the onus should not be on Claimant to locate and access any generic services. The Service Agency must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659.) While asserting that it could not fund the increased rent subsidy because "additional exploration of generic resources must be exhausted," the Service Agency provided no further information regarding the identity of those generic resources. If ELARC was alluding to pursuing funding through HUD or Section 8, the evidence established that Claimant's staff have explored and pursued those options. Furthermore, ELARC is payer of last resort under Welfare and Institutions Code section 4659.10.

13. Based on the foregoing, Claimant continues to fall within the exception of section 4689, subdivision (i), and the Service Agency should grant Claimant's request for increased money management / rent subsidy payments.

14. However, the authority of Service Agency to make such payments is not unlimited. Welfare and Institutions Code section 4689, subdivision (i), requires the

regional center to conduct a quarterly “review [of the] finding of necessity,” and the regional center executive director to annually verify “that the requirements set forth in [Welfare and Institutions Code section 4689, subdivision (i)] subparagraph (A) continue to be met.” Consequently, Claimant, with his staff’s assistance, must continue searching for an alternative housing option that fits his needs and is more cost-effective, and ELARC should be provided with quarterly documentation of this search as well as any efforts to obtain funding from generic resources (e.g., Section 8). Additionally, Claimant’s conservator/father should continue to share with ELARC, on a quarterly basis, Claimant’s household budget indicating the income Claimant receives and the household expenses Claimant pays, including the amount he pays toward rent.

ORDER

1. Claimant’s appeal is granted. The Service Agency shall pay \$2,052 per month towards Claimant’s money management / rent subsidy beginning October 2020, as an exception to Welfare and Institutions Code section 4689, subdivision (h).
2. Claimant, with staff assistance, shall continue searching for an alternative housing option that fits his needs and is more cost-effective than his current home. Beginning January 2021, Claimant, through his staff, shall provide ELARC quarterly documentation of this search as well as any efforts to obtain funding from generic resources (e.g., Section 8) identified by the Service Agency.
3. Beginning January 2021, and on a quarterly basis, Claimant, through his conservator/father, shall continue to share with ELARC Claimant’s household budget indicating the income Claimant receives and the household expenses Claimant pays, including the rent charged and the amount Claimant pays toward that rent.

4. Claimant's need for the rent subsidy is subject to review as required by Welfare and Institutions Code section 4689, subdivision (i).

DATE:

JULIE CABOS-OWEN

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 90 days.