

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

KARL B.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2012040640

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Sacramento, California, on December 17 and 18, 2012, and January 8, 2013.

Robin M. Black, M.A., Legal Services Specialist, represented Alta California Regional Center (ACRC).

Jonathan Elson, Attorney at Law, and Suzanna Gee, Attorney at Law, both of Disability Rights California, represented claimant. Claimant and his sister, Karen B., who serves as his conservator, were also present.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was left open for the parties to submit closing briefs. ACRC's written Closing Brief and Reply to Claimant's Hearing Brief was filed on January 23, 2013. Claimant's Closing Brief was filed on February 5, 2012. All documentary evidence provided at hearing was admitted with the exception of Claimant's Exhibit V- Declaration of Gary Knutla. ACRC's objection to Exhibit V is sustained. The record was closed and the matter was submitted for decision on February 6, 2012.

PROCEDURAL HISTORY

This case involves a request for Supported Living Services (SLS) that was denied by ACRC on March 28, 2012. A similar request had been denied by ACRC in December 2010. That denial was appealed and a decision was issued affirming ACRC's denial. This hearing was on the facts and evidence available since December 2010.

On March 28, 2012, ACRC notified claimant's sister/conservator of its decision to deny the request for SLS in a Notice of Proposed Action (NOPA) and an accompanying letter. Claimant filed a Fair Hearing Request (FHR) appealing ACRC's decision. The FHR was signed by claimant's conservator on April 6, 2012, signed by claimant on April 9, 2012, and stamped received by ACRC on April 11, 2012.

ISSUE

Should claimant's request for SLS be granted?

FACTUAL FINDINGS

1. Claimant is a 57-year-old man eligible for ACRC services based on a diagnosis of mild mental retardation due to Down syndrome. He is substantially disabled in the areas of expressive and receptive language, learning, self-direction, capacity for independent living, and economic self-sufficiency.

2. Claimant lives with his sister/conservator in her home, and stays two nights a week in his own home, which his sister purchased for him. Claimant and his sister/conservator have requested SLS so that claimant may live in his own home with support.

3. Claimant grew up in a small town in Wisconsin and lived with his parents until he was 49 years old. The population of claimant's home town was about 700 people and claimant was well integrated into the community there. He enjoyed helping with odd jobs at the family's hardware store and in the family home. He also rode his adult tricycle or

walked around town and enjoyed helping blow the noon whistle there. This fostered his positive relationship with police and fire department personnel. In 2004, after his parents died, claimant moved to California to live closer to his sister who now serves as his conservator.

4. After a few months of living with his sister, claimant was placed in a Mentor Home operated by an older couple. A Mentor Home is similar to a foster home, but for adults. There was one other tenant in this home and, after three weeks, the couple who operated the home informed claimant's sister that it was too difficult to have him as a tenant in the home because claimant often did not want to go to the same activities and social events that the other tenant and the couple who operated the home wanted to attend.

5. In March 2005 claimant moved to a board and care home. Claimant lived in that home for about four years until the home was closed suddenly due to mold infestation. During the time he lived at this board and care home his sister would often pick him up and drive him to activities. In addition, claimant would spend evenings and weekends visiting his sister, including many overnight visits.

6. From March 29, 2009, to June 15, 2009, claimant lived at another board and care home. This two-and-a-half month placement also ended abruptly. At that home a conflict arose when claimant wanted to go to church. According to claimant's sister, claimant reported to her that the "head of that board and care took her shoe off and hit [claimant] on the head with it when he was crying, as he wanted to go to church and they would not allow him to go, and I could not take him. When I reported that to [claimant's] ACRC worker, the caregiver suddenly closed that care home and left the area." Once again claimant and his sister were forced to find other living arrangements for claimant.

7. On June 28, 2009, claimant moved to another board and care home. One evening in November of 2009 claimant's sister spoke to claimant by telephone. He

complained to his sister that his hand hurt. She asked to speak to one of the caregivers at the board and care home. The caregiver told her that claimant's hand was fine and he was just complaining to get attention. The following day the staff at claimant's day program telephoned claimant's sister to report that claimant's hand was black and blue and very swollen. He was transported to a hospital where an x-ray revealed that claimant had two broken fingers. A few weeks later claimant injured his hip at the same board and care home. No one at the board and care home was able to explain how claimant sustained either of these injuries. Due to concerns about claimant's safety, his sister removed him from that board and care home in January 2010. He has been living at his sister's home since that time.

8. In January 2011 claimant's sister purchased a home for claimant. Claimant began staying at that home two nights per week in June 2011. Claimant stays at his home with a caregiver funded by In Home Supportive Services (IHSS).

9. Brenda Wilson, a program coordinator at Reese Alan Wilson Center, testified at hearing about claimant's behavior. She was familiar with claimant because he participated in a day program at the Reese Alan Wilson Center. She said that when claimant participated in her program in 2005 he exhibited some challenging behaviors, but he was "redirectable" at that time. Claimant left the program near the end of 2005. Claimant came back to the program on July 3, 2012. Ms. Wilson testified that claimant was more stubborn and resistant when he came back to the program in 2012. For example one day he refused to get on the van that transported him to and from the program because he wanted to sit in the front seat and another consumer was already seated in the front seat. Six calendar dates after he started this program, on July 9, 2012, the Reese Alan Wilson Center notified ACRC that they could no longer serve claimant because of his behaviors.

10. Jessica Gewirz is claimant's service coordinator at ACRC. She has met claimant and his sister/conservator on several occasions in program planning team meetings. Ms. Gewirz indicated that claimant's sister has requested SLS services on his behalf at these meetings. SLS services are provided in a consumer's home, which is not a licensed facility. Ms. Gewirz expressed that she has concerns about claimant receiving SLS services because she believes that claimant needs 24-hour supervision and might be more vulnerable if he lives alone in his home with only SLS services. She explained that board and care homes operate with licenses and there are consequences that can be imposed them by the licensing agency. She expressed concern about whether claimant would be able to direct staff and/or report problems if they arose.

11. Kimberly Sweeney, Community Services Specialist at ACRC also testified at hearing. She expressed concern about claimant being vulnerable as well. She gave a hypothetical example. She was not sure how claimant would react, or continue to be safe, if one worker left work at 3:00 pm and the next worker failed to arrive for work. Ms. Sweeney testified that she had never met claimant. But she conceded that other people who have mild mental retardation and limited communication, and who need 24-hour care receive SLS.

12. Carol Wilhelm, Supervising Counselor at ACRC , although testified that she had not met claimant prior to the hearing, she was on the ACRC team that reviewed and denied claimant's request for SLS. She referred to the five principles of community living outlined on the California Supported Living Network website. They are: 1) A Home of One's Own, 2) Choice and Self-Directed, 3) Relationships, 4) Community Membership, and 5) Flexible, Tailored Services and Supports (Exhibit 18). Ms. Wilhelm expressed concern about whether claimant would be able to express to SLS staff his wants and needs. After reviewing the documents available to her, she concluded that it appeared claimant's sister/conservator was making choices for him, rather than claimant making choices

himself. She also expressed concern about claimant's safety. It was not clear to her that, if a staff member injured or abused claimant, he would be able to report the injury or abuse.

13. Victoria Smith, Supervising Counselor at ACRC, is the supervisor of claimant's service coordinator. Ms. Smith expressed concerns that are similar to those of Ms. Wilhelm and Ms. Sweeney. She believes claimant may be vulnerable to abuse. She feared that if SLS staff become frustrated by claimant's behaviors, he might be vulnerable to abuse from the staff. Ms. Smith has not spoken to claimant's IHSS worker who has been providing care to claimant in his own home two nights per week.

14. Sean Suh, CEO/Owner of Reach Adult Development, Inc., testified at hearing about claimant's behavior in his day program. Mr. Suh owns a day program that claimant attended. Mr. Suh described behaviors claimant exhibited that made it difficult for him to participate in the day program and that eventually led to the mutual decision by the program and claimant's sister/conservator that claimant would no longer attend the day program. One such behavior was leaving the program to get lunch at a fast food restaurant without permission. The other behavior was refusing to leave the van that transported him to the day program in order to enter the day program and participate. Mr. Suh testified that program staff tried various strategies including bringing work to the van for claimant to do in the van. He said claimant did not ever hurt himself or others.

15. Claimant's sister/conservator testified at hearing that people who know claimant well, like his family and his IHSS workers can understand his speech. She did acknowledge that his speech can be very difficult to understand for people not familiar with him. He also uses gestures and pictures to communicate, and he will "keep at it" to help listeners understand him. She described his daily schedule. Claimant wakes up at 6:45 a.m. and takes his thyroid medication. At 7:00 a.m. he takes a shower, then gets dressed and has breakfast. He sometimes needs reminders to "hurry it up." He makes his bed, brushes his teeth, and shaves using an electric razor prior to being picked up by a van to

go to his day program. He returns from the day program around 2:30 or 3:00 p.m. At that time, an IHSS worker is at his sister's house. He watches television and exercises before it gets dark. Claimant tells his sister/conservator about his day when she returns from work. She believes he is capable of telling her if he suffered any abuse. Currently, he sleeps at his own house two nights a week and follows a similar schedule there. He has never left his own house without someone accompanying him. She believes claimant would do very well living in his own house with SLS. She indicated that claimant would like to have a roommate and he has shown her the empty bedroom and indicated that is where a roommate could live. She believes that there would be less behavior issues if claimant had more choices.

She described his experiences in group living situations since coming to California. (Described in more detail in Factual Findings 4, 5, 6, and 7). The first did not work out because claimant did not want to do the same activities as the other tenant, so he was asked to leave. The next worked well and she supported claimant well during the time he lived there, picking him up for frequent visits and overnight stays, but that home closed suddenly without notice due to a mold infestation. He then moved to another board and care home, but claimant reported to her that the owner had hit him and when his sister/conservator reported this to ACRC, the home closed abruptly. At the last board and care placement, claimant suffered two injuries that could not be explained by any of the staff, so his sister/conservator removed him from that placement. Claimant has been living at his sister's house since that time.

In January 2011 she purchased a home for claimant. He has been staying in that home two nights a week since then. He has the support of an IHSS worker when he is at his house. His sister/conservator believes living in his own home, and the support of SLS and IHSS is the best option for claimant. Her experience is that board and care homes were too isolating for claimant because they were not able to take him to all of his activities. She said

he has expressed to her many times that he wants to live in his own house, like she does, and all their other siblings do. She would help make sure his caregivers understand his routine and his communication.

16. Jennifer Pittam, Consumer Services Specialist, conducted a Supported Living Services Assessment of claimant in January 2012. Ms. Pittam has been involved with SLS, as a provider of services, and as an assessor, for 30 years. She was a founding member of the Supported Living Network. Ms. Pittam met with claimant when she assessed him and, although she did find his speech very difficult to understand initially, she was able to understand him better the more time she spent with him. Claimant expressed his preferences to Ms. Pittam during the assessment using post-it notes and pictures. He also was able to describe to his sister/conservator that something was broken at his house that needed to be fixed. It was his video cassette recorder.

Ms. Pittam noted that claimant was currently receiving 245 hours per month of IHSS, and the number of hours could increase if claimant was living at his own house and not live with his sister. Also, she noted that, if claimant had a roommate, he and his roommate could "share" some of the SLS hours.

Ms. Pittam opined that perhaps some of the difficult behaviors claimant had exhibited in the past in group situations would be reduced if he were in his own home with SLS. She said that, "typically majority rules in decision-making" in a group home. If claimant were able to make his own choices about going to church, bowling, swimming, or other activities, he might have less problematic behaviors.

She concluded that, "With many years of experience providing supported living services and assessing individuals for these services, I believe that [claimant] would do very well in a supported living situation, and that this is a very reasonable option to provide him with a home that is stable and meets his needs."

17. Michael D. Shore, Ph.D., Licensed Psychologist, completed a Neuropsychological/Functional Assessment of claimant. Dr. Shore has evaluated over 10,000 people with various developmental disabilities. Dr. Shore's assessment report concluded in part:

While this assessment clearly finds [claimant] to be developmentally disabled and in need of significant adult support in the fulfillment of both personal/domestic and community independent living skills, it also finds him to be quite capable of developing preferences, and intentions/goals, and pursuing, with support, that purpose that his intentions direct him towards. He is not a person limited to a reactive capacity that would involve perhaps the capability of expressing a preference between two presented options (chocolate v vanilla for an example), but rather a person with the greater capacity to express intentions that are beyond his own capacity to fulfill, requiring the assistance of others to realize.

One such example – his eagerness to later that day have pizza for dinner. He insisted on this, he was eager to have this...

Another such example – [claimant's] eagerness to attend a dance later the day we met, he [sic] eager to go, eager to go as Zorro, and certainly, he [sic] needing support to be able to attend.

And another, though this one a kind of inverse example – that [claimant] would have no intention of going with me to a part of his home that he did not wish to visit, despite my continued request, he [sic] unwilling to go without socks and shoes, and unwilling to don these at that time. That he was willing to put on socks and shoes later so as to go out with his sister, which he wished to do, speaks to the issue not being dressing [sic], but his intention to not do one thing, even as he sought to fulfill the realization of a goal that he shared with his sister, that they go out together.

[Claimant] can, and does make his wishes known, that which he will do, and won't do, that which he seeks to do, and those actions that he elects not to pursue.

Dr. Shore opined that claimant is able to express his desires and preferences, but he will need support to achieve those desires and preferences. He believes claimant can be successful in his own home with appropriate support.

18. Fran Greaves is one of claimant's IHSS workers. She has worked with claimant for over a year and currently provides assistance to claimant when he stays at his own home two nights a week. Ms. Greaves described his afternoon, evening, and morning routines. She indicated that it took her about one week to learn how to understand claimant. She said claimant is, "bullish on routine." He likes to follow his daily routine. Ms. Greaves indicated that she would be willing to help with transitioning from the current arrangement to one where claimant spent more time at his own house with SLS, and to continue to be one of his assistants.

DISCUSSION

19. Claimant has functioned successfully for over a year living in his own home two days per week with support. His experiences in group settings were not successful. Although ACRC staff members have concerns about potential abuse or neglect in claimant's own home, he was injured more than once in licensed facilities and no one at those facilities could explain how the injuries were sustained.

20. Therefore, the evidence established that Supported Living Services is an appropriate service for claimant. An SLS setting can provide claimant with the support he needs and the choices he desires. In addition, as described in the Legal Conclusions, the Legislature has made clear that developmentally disabled consumers are entitled to live in the least restrictive environment, and that "has always been a 'home' in the ordinary sense of the term as it applies to the lives of people without disabilities. Such a home is not a 'facility' that is licensed or an institutional setting for the care of special populations."

21. The evidence also established that the department's SLS regulations enumerate the services and supports available to assist and meet the needs of SLS consumers. (Legal Conclusion 7.) Therefore, ACRC's position that claimant should be denied SLS because he requires 24-hour supervision and cannot direct his own services is without merit. SLS in practice is consumer-driven. (Welf. & Inst. Code, § 4689.) However, consumers who receive 24-hour services and supports are provided with SLS (Factual Finding 11), and the ability to direct one's staff may be taught to consumers. Indeed, despite his communication barriers, claimant is able to communicate his preferences, especially with people who know him well. Therefore, there appears to be good potential in this case for claimant to communicate his preferences regarding his daily choices and living arrangements. More importantly, however, none of the enumerated services and supports is intended to serve as a condition precedent to consideration of, or a basis for, denying SLS to consumers. As set forth in the Legal Conclusions, the Legislature has

made clear that the services and supports shall be designed and tailored to meet the consumer's needs with a goal of providing opportunities for consumers to acquire the skills necessary for independent living, and to integrate into "the mainstream life of their natural communities." Furthermore, ACRC is authorized by Welfare & Institutions Code section 4689, subdivision (e), to monitor the quality of the services and supports provided to SLS consumers. As set forth in the Legal Conclusions, the Legislature has placed a high priority on providing opportunities for developmentally disabled consumers to live in a home "with support available for as often and as for as long as it is needed." As ACRC is charged with the responsibility for implementing the legislative intent, they should adopt that same priority.

22. While it may eventually be determined that claimant is unable to participate in SLS to the degree necessary or expected under California Code of Regulations, title 17, section 58620, or that SLS is not a successful living arrangement for him, it may also be that claimant will do well in an SLS arrangement, as such a setting would most closely resemble the living arrangement claimant has had for over 50 years of his life. As SLS was created and designed to promote "more independent, productive, and normal lives" for developmentally disabled consumers, it is an appropriate service for claimant.

23. All other assertions put forth by the parties at the hearing or in their written briefs that are not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a

preponderance of the evidence. (Evid. Code, § 115.) Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid. Code, § 500.) ACRC does not currently fund SLS for claimant. Therefore, the burden rests with claimant to establish that SLS is an appropriate service for him.

LANTERMAN ACT

2. In the Lanterman Act, the Legislature has created a comprehensive scheme to provide “an array of services and supports ... sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750 – 4571; see generally *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

SUPPORTED LIVING SERVICES

3. Welfare and Institutions Code section 4501 provides that:

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where

appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment and leisure, the pursuit of their own personal future, and program planning and implementation.

Therefore, section 4501 contemplates that claimant and his sister/conservator, together, being empowered to make choices in all life areas. And it contemplates that claimant and his sister/conservator, together, participate in the decision making process so that claimant is not excluded from making important life choices.

4. Welfare and Institutions Code section 4502 provides, in pertinent part, that:

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal

lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

- (b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

[11] ... [11]

- (j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

- 5. Welfare and Institutions Code section 4689 provides, in pertinent part, that:

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

[11] ... [11]

- (e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:
 - (1) Adherence to the principles set forth in this section.
 - (2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.
 - (3) Whether services and supports described in the consumer's individual program plan are being delivered.
 - (4) Whether services and supports are having the desired effects.
 - (5) Whether the consumer is satisfied with the services and supports.
- (f) The planning team, established pursuant to subdivision (j) of Section 4512, for a consumer receiving supported living services shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.
- (g) Regional centers shall utilize the same supported living provider for consumers who reside in the same domicile, provided that each individual consumer's particular needs can still be met pursuant to his or her individual program plans.

- (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.

[1] ... [1]

- (m) For purposes of this section, "household expenses" means general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.

- (n) A supported living services provider shall provide assistance to a consumer who is a Medi-Cal beneficiary in applying for in-home supportive services, as set forth in Section 12300, within five days of the consumer moving into a supported living services arrangement.

[1] ... [1]

6. In its Final Statement of Reasons for the Supported Living Services Regulations, page 6, the Legislature declared that: "by adding Sections 4688 and 4689 to the Welfare and Institutions Code ... [this Legislature] placed a high priority 'on providing opportunities for individuals with developmental disabilities to be integrated into the mainstream life of their natural communities,' and '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.'"

- 7. California Code of Regulations, title 17, section 56814, provides that:

- (a) Supported Living Service, as referenced in Title 17, Section 54349(a) through (e), shall consist of any individually designed service or assessment of the need for service, which assists an individual consumer to:

- (1) Live in his or her own home, with support available as often and for as long as it is needed;
- (2) Make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home.
- (b) Supported Living Service(s) are tailored to meet the consumer's evolving needs and preferences for support without having to move from the home of their choice, and include but are not limited to the following:
 - (1) Assisting with common daily living activities such as meal preparation, including planning, shopping, cooking, and storage activities;
 - (2) Performing routine household activities aimed at maintaining a clean and safe home;
 - (3) Locating and scheduling appropriate medical services;
 - (4) Acquiring, using, and caring for canine and other animal companions specifically trained to provide assistance;
 - (5) Selecting and moving into a home;
 - (6) Locating and choosing suitable house mates;
 - (7) Acquiring household furnishings;
 - (8) Settling disputes with landlords;
 - (9) Becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community to the general public;
 - (10) Managing personal financial affairs;
 - (11) Recruiting, screening, hiring, training, supervising, and dismissing personal attendants;

- (12) Dealing with and responding appropriately to governmental agencies and personnel;
- (13) Asserting civil and statutory rights through self-advocacy;
- (14) Building and maintaining interpersonal relationships, including a Circle of Support;
- (15) Participating in community life; and
- (16) 24-hour emergency assistance, including direct service in response to calls for assistance. This service also includes assisting and facilitating the consumer's efforts to acquire, use, and maintain devices needed to summon immediate assistance when threats to health, safety, and well-being occur.

8. California Code of Regulations, title 17, section 58620, provides that:

Consumers receiving SLS shall have the right to make decisions that shape the nature and quality of their lives in accordance with their preferences, and consistent with the goals of the consumer's IPP. These rights shall include, but are not limited to, the following:

- (a) Choosing where and with whom to live;
- (b) Controlling the character and appearance of the environment within their home;
- (c) Choosing and changing their SLS vendors and direct service staff;
- (d) Participating actively in their IPP process so that the SLS they receive is based on their needs and preferences;
- (e) Receiving services appropriate to their evolving needs and preferences for support without having to move from the home of their choice, for as long as

SLS remains the preferred objective, as determined in the consumer's IPP process; and

- (f) Informing the regional center about how satisfied they are with the services they are receiving, and to have this information taken into account in the regional center's periodic evaluation of the SLS vendor's service, pursuant to Section 58671(c).

9. In its Final Statement of Reasons for the Supported Living Services Regulations, page 2, the Legislature declared that: "SLS, as defined in these proposed regulations, fosters the independence and self-reliance of adults with developmental disabilities living in their own homes in integrated communities, while providing necessary protection to consumers, reasonable assurance that the services will achieve the intended results, and a way to these desired ends in a cost effective manner. Only by reconciling and meeting all three of *these imperatives - empowerment, protection, and fiscal responsibility* - can there be progress towards the legislature's goal, as expressed in Welfare and Institutions Code, Section 4750, of promoting 'more independent, productive, and normal lives,' for people with developmental disabilities." [Italics in original.]

10. In its Final Statement of Reasons for the Supported Living Services Regulations, pages 2 -3, the Legislature declared that: "The absolutely 'least restrictive environment' has always been a 'home' in the ordinary sense of the term as it applies to the lives of people without disabilities. Such a home is not a 'facility' that is licensed or an institutional setting for the care of special populations. A substantial number of people with developmental disabilities, however, continue to receive services through one or another institutional model that can not, by its very nature, provide the 'normal' home setting prevailing generally in society. A group home (Community Care Facility), for example, which is less restrictive than a developmental center, may appear to

approximate the living environment of non developmentally disabled people. Yet in fact it is not 'normal' in California for non-related adults to live communally under supervision in any sort of licensed residential facility."

ORDER

1. Claimant's appeal of his request to have ACRC fund SLS is GRANTED.
2. On or before March 15, 2013, claimant's IPP team shall meet to determine the services and supports necessary to ensure claimant's success in an SLS setting.
3. The IPP team shall provide claimant with SLS as soon as practicable, but no later than May 1, 2013.

DATED: February 20, 2013

_____/s/_____

ELAINE H. TALLEY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)