

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Proposed Reduction of
Supported Living Services for:

OAH No. 2012040737

Kristina M.,

Claimant,

and

Inland Regional Center,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on June 28, 2012.

The Inland Regional Center (IRC) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Appeals.

Kristina M. (claimant) was present and was represented by her mother, Kathryn M.

Oral and documentary evidence was received and the matter was submitted on June 28, 2012.

ISSUE

Should IRC reduce claimant's Supported Living Services (SLS) from 20 hours per month to 12 hours per month?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On March 22, 2012, IRC notified claimant of its decision to reduce her SLS from 20 hours per month to 12 hours per month.

On April 10, 2012, claimant filed her request for fair hearing and the matter proceeded to hearing.

EVIDENCE INTRODUCED AT HEARING

2. Claimant is currently a 31-year-old woman who qualifies for regional center services because of her diagnoses of mild mental retardation.

3. IRC introduced its 2012 Individual Program Plan (IPP) which detailed claimant's needs and abilities. The IPP indicated that claimant's goals were to continue living in her condominium and to be more comfortable making her own decisions rather than relying on others for approval. Claimant's mother, her only living relative, lives in Europe six months each year. The services sought to be reduced were financial from two to one hour per month, housekeeping from four to one hour per month, and to discontinue community resources (currently funded at three hours per month) and participation in community life (currently funded at one hour per month). The rationale for reducing financial was the result of claimant's progress in paying bills and ability to access her account on line; she can also receive verbal prompts from her mother or SLS worker if need be. Despite claimant's SLS workers' request that the housekeeping services not be reduced because of claimant's "hoarding" behaviors, IRC's rationale for reducing housekeeping services was the result of IRC determining that it was claimant's "personal choice" to store her laundry in plastic bags rather than folding and putting it away. The rationale for eliminating funding for community resources and participation in community life was due to claimant's participation in many community activities and her ability to access her community resources.

4. Cynthia Alexander, IRC Program Manager, testified that SLS is intended to be a temporary service to assist consumers who live independently. She did not explain why IRC had funded this "temporary service" for over 10 years. Alexander testified that claimant's mother and SLS worker can give claimant verbal prompts as needed, and that they need not be physically on site to assist her. Alexander testified that claimant's mother is a natural support which IRC must consider. Alexander explained that if claimant requires additional services to live independently because she cannot manage her domestic tasks on her own, then the proper agency to provide those services would be In Home Supportive Services (IHSS), not SLS.

5. Hoang Nguyen, claimant's Consumer Services Coordinator, testified that in March 2012 she conducted her Quarterly Meeting with claimant, claimant's SLS worker, and the SLS coordinator to assess claimant's needs. Based upon that meeting and upon claimant's input and desires, it was mutually agreed upon that claimant's SLS hours should be reduced. Thereafter, claimant's mother, who was not present at the meeting, objected to that reduction and this hearing ensued. Nguyen did not explain why claimant's mother, who had previously requested the opportunity to attend the Quarterly meetings, was not advised of the meeting. Claimant attended this hearing and sat quietly next to her mother, never once participating in the proceedings. It was impossible to comprehend how claimant, on her own, could have "participated" and made an "informed decision" to reduce her SLS benefits as CSC Nguyen asserted.

6. IRC introduced numerous reports from claimant's SLS provider. Most distressing was the report prepared following the 2012 IPP meeting in which the SLS provider reported that, "In our opinion, [CSC Nguyen] was determined to reduce hours no matter what our input or attempts to justify what we believe [claimant's] needs to maintain her (20) support hours at a minimum."

7. Claimant's mother testified that her late husband was European and they own property in Europe where his family still lives. She spends six months each year

oversees visiting and taking care of family there. Although she is the only “natural support” for claimant, she is only available for six months out of the year. Claimant’s mother further testified that in 2010 claimant’s SLS hours were reduced from 32 hours per month to 20 hours per month. Since then, she has noticed an increase in her daughter’s hoarding behaviors and she fears additional decline should the SLS services be further reduced. Additionally, while she is willing to apply for IHSS services, she was previously informed that claimant would not qualify because she is not eligible for Medi-Cal because she receives an income from her late father’s estate. Moreover, the Redlands IHSS program ceased operations, so claimant’s mother is unsure where to apply. In any event, the evidence established that claimant currently does not receive IHSS benefits, and possibly does not qualify for them, making any assumptions by IRC based upon claimant receiving those benefits purely speculative.

LEGAL CONCLUSIONS

BURDEN AND STANDARD OF PROOF

1. In administrative proceedings, as in ordinary civil actions, the party asserting the affirmative generally has the burden of proof, including the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

“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.)

As IRC was seeking to reduce claimant’s SLS hours, it had the burden of establishing that those hours should be reduced

THE LANTERMAN ACT

2. 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.)

3. The Lanterman Act is found at Welfare and Institutions Code section 4500 *et seq.* Welfare and Institutions Code section 4501 states:

“The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is 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. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.”

4. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

“[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.”

5. The State Department of Developmental Services (DDS) is responsible for implementing laws related to the care, custody and treatment of persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) To comply with this mandate, the DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

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

A regional center must develop and implement an "individual program plan" (IPP) for each consumer which specifies the consumer's needs for services and supports. These services and supports must appear in statements of goals and also specific time-limited objectives in the IPP. Goals and objectives "shall be stated in terms that allow measurement of progress or monitoring of service delivery." (Welf. & Inst. Code, § 4646.5, sub. (a)(2).)

The IPP must be reviewed, reevaluated and modified no less than once every three years by a planning team composed of regional center staff, the consumer, and (where appropriate) the consumer's parents, to ascertain whether the planned services have been provided and if the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code, § 4646.5, sub. (b).)

7. Welfare and Institutions Code section 4646, subdivision (a), provides in part:

"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, where 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. . . .”

8. Welfare and Institutions Code section 4646.4 states:

“(a) Effective September 1, 2008, regional centers shall ensure at the time of development, scheduled review, or modification of a consumer's individual program plan... the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all the following:

- (1) Conformance with the regional centers purchase of service policies...
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding...
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's needs for extraordinary care, services, supports and supervision, and the need for timely access to this care...”

9. 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."

10. Welfare and Institutions Code section 4689 governs the provision of SLS and specifically provides, "Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities."

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage."

APPELLATE AUTHORITY

12. The purpose of the Lanterman Act is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental

disabilities, regardless of age or degree of handicap, and at each stage of life.” (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

13. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

EVALUATION

14. As noted above, the Lanterman Act authorizes regional centers to fund necessary services and supports “toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” The burden was on IRC to establish that the supported living services can be reduced and still achieve that end.

A review of all the documents indicated that it was appropriate to discontinue claimant’s community resources and participation in community life services because of her ability to access resources in her community and participation in community activities. However, given the input from claimant’s SLS provider and the testimony of claimant’s mother, as well as this court’s observations of claimant during this hearing, cause does not

exist to reduce claimant's SLS financial or housekeeping services. Additionally, although IRC argued that IHSS was a generic resource which claimant could use to pay for her SLS services, claimant's mother reasonably explained why she has not applied for that service and it is presently unknown if claimant is eligible, thereby making that generic resource speculative at this juncture and one that cannot be used as a basis for determining that "generic resources" are available to claimant.

ORDERS

Claimant Kristina M.'s appeal from the Inland Regional Center's determination to reduce her supportive living services is denied in part and granted in part. IRC shall reduce claimant's supportive living services from 20 hours per month to 16 hours per month by eliminating funding of community resources and participation in community life services. IRC shall not reduce funding for claimant's financial or housekeeping services.

Claimant shall apply for IHSS services within 30 days of the date of this order. Should she qualify for IHSS services which fund housekeeping or financial services, IRC may reduce claimant's supportive living services accordingly. Claimant's failure to apply for IHSS services will be grounds to permit IRC to further reduce claimant's SLS financial and housekeeping services as requested in this hearing

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.