

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request  
of:

ANTHONY U.

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH Case No. 2012070851

DECISION DENYING THE APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on August 23, 2012, in Los Angeles. The matter was submitted for decision at the end of the hearing.

Claimant, who was present, was represented by his father.<sup>1</sup>

Johanna Arias-Bhatia, Fair Hearing Manager, represented the South Central Los Angeles Regional Center (Service Agency).

ISSUE

May the Service Agency terminate funding for services provided by A&G Community Activities Support Services and transportation to and from the program?

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<sup>1</sup> Initials and family titles are used to protect the privacy of Claimant and his family.

## EVIDENCE RELIED UPON

In making this decision, the ALJ relied upon exhibits 1-9 submitted by the Service Agency, exhibit A submitted by Claimant, and the testimony of Lisa Holcomb, Service Coordinator; Johanna Arias-Bhatia, Fair Hearing Manager; Claimant's father; and Claimant.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a 38-year-old male consumer of the Service Agency based on his qualifying diagnosis of epilepsy.

2. For the past several years, the Service Agency has been funding the services described above for Claimant, on weekends, for a total of 40 hours per month, plus parental transportation of Claimant to and from the program.

3. Through a Notice of Proposed Action dated July 9, 2012, the Service Agency notified Claimant's parents that it intended to terminate the above-described funding.

4. A Fair Hearing Request was submitted on Claimant's behalf, appealing the Service Agency's proposed action.

5. On the day of the hearing, Claimant gave written authorization for his father to serve as his authorized representative in this matter.

### BACKGROUND INFORMATION

6. Claimant was involved in a serious motorcycle accident when he was 15-years-old, which resulted in serious brain injury. Thereafter, Claimant was diagnosed with seizure disorder. He has also been diagnosed with Mild Personality Disorder NOS, Mild Dementia and Optical Nerve Damage in both eyes.

7. Claimant is a non-conserved adult who lives at home with his parents and a younger sister. He attends an adult day program at Performing Arts Studio West in Inglewood, which he attends Monday through Friday.

#### A&G COMMUNITY ACTIVITIES SUPPORT SERVICES

8. According to literature submitted from the program, A&G Community Activities Support Services (A&G) provides "social and recreational activities for adult consumers. . . ." It is vendored with the Service Agency to provide community activities support services. Claimant's most recent Individual Program Plan (IPP) indicates that the funding has been provided in order for Claimant to socialize with his peers away from home.

9. Claimant's parents want the funding to continue because they believe it is an effective way for Claimant to socialize with his peers, as well as for him to be in the community more often. They fear that if Claimant cannot attend A&G on the weekends, he will get restless and bored, which may result in behavioral problems. Claimant's parents are elderly and they do not believe they can provide the same type of social or recreational opportunities. Claimant likes attending A&G and wants to remain in the program.

#### DISCUSSION

##### JURISDICTION AND BURDEN OF PROOF

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.)

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

Claimant submitted a fair hearing request to appeal the Service Agency's proposed termination of funding. Jurisdiction in this case was established. (Factual Findings 1-5.)

The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A regional center seeking to terminate on-going funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof, because it seeks to change funding for a service it has previously provided to Claimant. (Factual Findings 1-5.)

#### FUNDING FOR A&G COMMUNITY ACTIVITIES SUPPORT SERVICES

In light of the state's current budget crisis, various cost containment measures have been added by the Legislature to the Lanterman Act. For example, section 4648.5, subdivision (a)(2), expressly suspends regional center funding for "[s]ocial recreation activities, except for those activities vendored as community-based day programs." Section 4648.5, subdivision (a)(4), similarly prohibits funding for "[n]onmedical therapies, including but not limited to, specialized recreation, art, dance, and music. . . ."

However, section 4648.5, subdivision (c), provides an exemption from these funding prohibitions "in extraordinary circumstances" when a regional center determines that the service is "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs."

In this case, the literature from the A&G program, as well as Claimant's recent IPP, clearly establishes that A&G provides a social recreation activity. The testimony of Claimant and his father corroborates this point. Therefore, the funding falls squarely within the

suspension for social recreation funding pursuant to section 4648.5, subdivision (a)(2). To the extent Claimant uses the A&G program as a therapeutic release from stress or possible behavior problems, the funding would be suspended by subdivision (a)(4) regarding nonmedical therapies, including specialized recreation.

The exemption provided for in section 4648.5 does not apply in this case. It was not established that this is an extraordinary situation contemplated by subdivision (c) of that statute. The suspension of funding will not jeopardize Claimant's ability to reside with his family. Nor was it established that the A&G program is the primary or critical means of ameliorating Claimant's developmental disabilities. For example, no evidence was offered showing that Claimant has had any major emotional or behavioral episodes that would lead to a special incident report (SIR) generated either at Claimant's day program, A&G or home.

## LEGAL CONCLUSION

Cause was established pursuant to section 4648.5 to suspend funding for services through A&G Community Activities Support Services and parental transportation to and from the program. (Factual Findings 1-9 and Discussion.)

## ORDER

Claimant's appeal is denied. The South Central Los Angeles Regional Center may suspend the funding of services through A&G Community Activities Support Services and parental transportation.

DATED: September 5, 2012

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ERIC SAWYER,  
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.