

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

EVA E.

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES

REGIONAL CENTER,

Service Agency.

OAH Nos. 2014030727

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on May 28 and June 9, 2014, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant was present and represented by her aunt, Valerie W.<sup>1</sup>

Johanna Arias, Fair Hearing Coordinator, represented the South Central Los Angeles Regional Center (or Service Agency).

ISSUE

May the Service Agency replace Claimant's supported living skills services with independent living skills services and decrease the number of hours funded from 35 hours per month to 25 hours per month?

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<sup>1</sup> Last name initials and family titles are used to protect Claimant's privacy.

## EVIDENCE RELIED ON

In making this Decision, the ALJ relied on Service Agency exhibits 1-14, Claimant's exhibits A-C, as well as the testimony of Service Coordinator Christilyn Otis, Program Manager Leah Chin, Dr. Sandra Watson, and Rosann Cotton.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a 27-year-old, non-conserved female. She is a consumer of the Service Agency through her eligible diagnosis of mild mental retardation.
2. As discussed in more detail below, the Service Agency is providing funding for Claimant to receive 35 hours per month of supported living skills (SLS) services.
3. After reviewing the situation, and meeting with Claimant and her aunt on January 10, 2014, the Service Agency decided that independent living skills (ILS) services were more appropriate for her, and that her funding should be reduced from 35 to 15 hours per month. At the hearing, however, the Service Agency stipulated that it was proposing only to reduce the monthly hours to 25.
4. By a Notice of Proposed Action letter dated January 31, 2014, Claimant and her aunt were advised of the Service Agency's proposed decision.
5. On March 13, 2014, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, to appeal the Service Agency's proposed decision.
6. In her Fair Hearing Request, Claimant designated her aunt as her authorized representative in this matter.
7. This matter was originally scheduled to be heard on April 25, 2014. Claimant's husband requested to continue his hearing involving the same issue (OAH case no. 2014020575) so it could be heard the same day of this matter. As a result, both hearings were ultimately scheduled for May 28, 2014. In this process, Claimant waived

the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

#### CLAIMANT'S LIVING SITUATION

8. Claimant graduated from the public school system a few years ago. She has since been attending the ARC of Los Angeles and Orange Counties (ARC) work activity program, five days per week, to gain job skills. She is doing well at ARC, so much so that she earns a wage for some of her activity.

9. In early 2013, Claimant was living with her aunt, Valerie W. At that time, she became engaged to Le Andre D. He is also a consumer of the Service Agency and is the subject of the companion case to this one. Le Andre's cognitive and adaptive skills delays are greater than Claimant's. Claimant and her fiancé planned to move together into their own home after their wedding.

10. On March 8, 2013, Valerie W. contacted Claimant's Service Coordinator to advise her of Claimant's impending marriage and plans to live independently. Valerie W. asked the Service Agency to provide funding for Claimant to receive SLS services immediately.

11. When a consumer indicates a desire to live independently, the Service Agency will typically first fund ILS services. The focus of ILS services is to train a consumer living with a family in the skills needed to transition to an independent living situation. Once the consumer has demonstrated progress toward that goal and has saved enough money to live on her own, the Service Agency will replace the ILS with SLS funding. SLS services target skills needed to actually live independently, such as budgeting, daily care, etc. During the hearing, the Service Agency's hearing representative conceded that the difference between ILS and SLS services is slight, and

that the pivotal issue in this case, from the Service Agency's perspective, is the number of hours of funding provided.

12. In Claimant's case, the Service Agency decided to skip ILS and begin funding On My Own to provide SLS to Claimant at the rate of 50 hours per month due to the urgency of the situation. The SLS funding became effective May 1, 2013.

13. In June 2013, Claimant's fiancé Le Andre D. moved in with her and her aunt. In July 2013, Claimant and Le Andre were married. They continued living with Claimant's aunt after their marriage.

14. On August 19, 2013, clinical psychologist Rebecca R. Holtzman, Psy.D., conducted a psychological evaluation of Claimant. Her findings were consistent with prior evaluations of Claimant. Essentially, Dr. Holtzman found Claimant has moderate mental retardation, but that her adaptive living skills are mildly delayed.

15. Effective September 1, 2013, Claimant's SLS funding was reduced to 35 hours per month. That reduction was made because Claimant qualified for In Home Supportive Services (IHSS) funding by that time. Service Agency staff also believed the lower amount was appropriate based on the results of Dr. Holtzman's psychological evaluation.

16. By January 2014, Claimant and Le Andre continued to reside with Valerie W. It did not appear to the Service Agency that they had made any efforts to find their own place to live or had saved enough money to do so. When Service Agency staff concluded the situation was not as urgent as initially presented, they decided to propose the service changes that are the subject of this case.

17. Dr. Sandra Watson is a psychologist employed by the Service Agency. She testified that 25 hours per month of ILS services are sufficient for Claimant, given her level of adaptive skills, the fact that she is still living at home, and is assisted by her aunt. Dr. Watson believes Claimant is a good candidate for an independent living situation,

but that SLS services would be appropriate for her when she actually begins the process of moving into her own home and thereafter.

18. Claimant and Le Andre still plan to live on their own. Their search for a new home has been delayed mainly for financial reasons. Le Andre did not receive his social security payments for a number of months due to an identity theft situation. Le Andre's credit record has been damaged as a result. The couple has not been able to save enough money for a deposit on an apartment unit, because their income from social security and wages Eva receives from ARC are less than their monthly expenses.

19. In April 2014, the couple applied for residence in an apartment unit close to where they currently live. The application was rejected by the landlord due to the couple's lack of income relative to the rent.

20. Valerie W. intends to retire in the next year or two. She does not plan to indefinitely care for Claimant and Le Andre.

21. Rosann Cotton is Valerie W.'s sister. Ms. Cotton corroborated Valerie W.'s plan to soon retire and not indefinitely support Claimant and Le Andre. Ms. Cotton also believes Claimant and Le Andre will be able to live together independently.

## LEGAL CONCLUSIONS

### JURISDICTION AND BURDEN OF PROOF

1. 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 to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant

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

requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

2. 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.)

3. A regional center seeking to terminate or modify ongoing 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 regarding its proposed decision to modify the type of service Claimant receives and decrease the number of hours funded.

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4. Various provisions of the Lanterman Act indicate that services and supports cannot be blindly funded, indifferent to the results, and indefinite in time. For example, the Lanterman Act requires the parties to develop goals, and identify the services and supports necessary to achieve those goals, in the process of creating an individual program plan (IPP). A consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).) The service in question should not be continued unless reasonable progress has been made toward goals and objectives, and the funding has been cost-effective. (§§ 4512, subd. (b), 4646, subd. (a), and 4648, subd. (a)(11).)

5. Section 4512, subdivision (b), defines services and supports available for regional center funding to include “supported living arrangements.” The ALJ is not aware of a specific statutory or regulatory definition of either SLS or ILS, and the Service Agency did not present any purchase of service policy concerning those services. However, the Service Agency conceded that there is little difference between the two. Therefore, replacing Claimant’s SLS service with ILS does not appear to be warranted and the Service Agency failed to carry its burden on that issue. (Factual Findings 1-11.)

6. On the other hand, a reduction in Claimant’s monthly hours of SLS is warranted. The Service Agency’s decisions to provide funding for Claimant to receive 50 hours per month of SLS services, and later 35 hours per month, were based on the assumption that Claimant and her new husband would soon be moving into their own independent living arrangement. Due to the urgency of the situation, Claimant’s SLS program was given significant funding. More than one year after receiving those intensive services, Claimant still resides at home with family. She and her husband have not yet been able to move out on their own. Since Claimant and her husband are no longer anticipating an imminent move, the intensive services are no longer warranted. The Service Agency’s proposal to reduce the funding level is supported by the above-cited provisions of the Lanterman Act, which require modification of services and supports when progress has not been made, the services no longer fit the situation, and the funding stops being cost-effective. The new level of services is warranted. Dr. Watson credibly opined that 25 hours per month of services are appropriate under the circumstances. Since Claimant is performing better at ARC than Le Andre, and has demonstrated greater aptitude than Le Andre in her adaptive functioning as measured by Dr. Holtzman, the fact that she receives less funding than her husband is not surprising. A modest reduction of 10 hours per month under the circumstances is reasonable. (Factual Findings 1-21.)

7. The Service Agency agrees that an increase of hours could be warranted in the future if and when Claimant and her husband actually engage in the process of moving to an independent living situation. When that becomes a reality, Claimant should immediately contact the Service Agency to revisit this issue.

## ORDER

Claimant Eva E.'s appeal is granted, in part, and denied, in part. The Service Agency shall not replace Claimant's supported living skills services with independent living skills services. However, the Service Agency may decrease the number of hours funded from 35 hours per month to 25 hours per month.

DATE: June 16, 2014

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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.