

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE

COUNTY,

Service Agency.

OAH No. 2014040079

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 23, 2014, in Santa Ana.

Keith R. Dobyms, attorney at law at Woodruff, Spradlin & Smart, a P.C., represented the Regional Center of Orange County (RCOC or Service Agency).

Lorraine Anderson, attorney at law, represented claimant. Claimant was present, as were her father and step-mother, her limited conservators.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 23, 2014.

ISSUE

Whether the Service Agency must fund, retroactively and prospectively, claimant's residential placement at Glennwood House of Laguna Beach (Glennwood House).

¹ Family titles are used to protect the privacy of claimant and her family.

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EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-10; claimant's exhibits A-E.

Testimony. Jack Stanton; Patrick Ruppe; Mojgan Majidi; claimant's step-mother; claimant.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 32-year-old conserved woman. She is an eligible consumer of RCOC services based on her diagnosis of mild intellectual disability. She has also been diagnosed with bipolar disorder with psychotic features.

2. In February 2004, claimant's parents requested that the Service Agency fund claimant's residential placement at Glennwood House. By letter dated February 27, 2014, the Service Agency notified claimant's parents that it was denying claimant's request. The Service Agency wrote that,

at this time RCOC is unable to fund for Glennwood [House] as it is not vendored with RCOC (Title 17 Section 54326(d)(4)(b). However, if Glennwood [House] chooses to submit a vendor application, and meets the vendor requirements outlined in Title 17 of the California Code of Regulations, RCOC would be happy to meet with the family to discuss funding for Glennwood [House].

(Ex. 2.) The Service Agency offered to discuss alternative community care facilities for claimant.

3. On March 22, 2014, claimant's parents filed a fair hearing request to appeal the Service Agency's determination regarding funding. In the fair hearing request, claimant's parents specified that the Service Agency should fund the placement because "[t]he IPP fails to provide an appropriate living arrangement in the least restrictive environment that provides for age appropriate and similarly situated individuals." (Ex. 1.)

CLAIMANT'S BACKGROUND

4. According to claimant's Individual Program Plan update of June 6, 2011, claimant has two older sisters and an older brother. She enjoys spending time with her extended family, is communicative, and has a good sense of humor. She engages in aggressive behaviors, eloping, and self-injurious behaviors, including scratching her arms until they bleed and picking at the sores. She has had delusional episodes. She requires prompting to accomplish her daily care needs.

5. Claimant lived in the family home until September 2013, when she moved into Glennwood House.

6. Glennwood House is owned and operated by Glennwood Housing Foundation, Inc., a non-profit organization dedicated to addressing the needs of young adults with physical and developmental disabilities. Glennwood House opened in the spring of 2013; it can accommodate up to 63 adults, who are 18 to 59 years old and have moderate to higher functioning levels (Levels 1 and 2). The facility has living and dining areas, a kitchen, and recreational and social spaces, such as patios and gardens. Glennwood House is an adult residential facility licensed by the Community Care Licensing Division of the Department of Social Services (DSS) to provide 24-hour non-

medical care. It does not provide services to residents with mental health issues that are not controlled by medication, or to residents with dangerous behaviors.²

7. Claimant enjoys living at Glennwood House, where she has made friends and feels part of a community. She wants to be as independent as possible, and enjoys working 30 hours per week, six hours per day, as a courtesy clerk through her day program at Vons. Claimant receives transportation to and from her job, and has a job coach working with her one-to-one.

THE SERVICE AGENCY'S DECISION TO DENY CLAIMANT'S FUNDING REQUEST

8. On February 26, 2014, claimant's parents attended a Planning Team meeting at the Service Agency. The Planning Team consisted of Arturo Cazares, Area Supervisor, Patrick Ruppe, Area Manager, and Mojgan Majidi, claimant's service coordinator. The purpose of the meeting was to discuss funding options for Glennwood House. Ruppe told claimant's parents that the Service Agency had offered to vendor Glennwood House as a Level 2 group home, but that Glennwood House had not submitted a vendor application. Ruppe explained that, unless Glennwood House became a vendor, RCOC could not legally provide funding.

9. At the Planning Team meeting, the parties explored the possibility of RCOC considering Glennwood House a "home" for purposes of funding supported living services (SLS) or independent living services (ILS) for claimant. The Planning Team told claimant's parents that Glennwood House does not qualify as a "home" as that term is defined in the regulations. Claimant's parents asked whether they themselves could be vendored; that would allow them to receive funding from RCOC so they could pay for the services other than room and board that claimant receives at Glennwood House. The

² Claimant takes Abilify, an anti-psychotic medication.

Planning Team told them that providing reimbursement for an individual residing in a non-vendored licensed adult residential facility would impermissibly circumvent the regulations.

10. Jack Stanton oversees community resources at the Service Agency, including residential placements, SLS, and ILS. He testified that residential care must meet the consumer's needs; there are different levels of care available at different facilities, as reflected in their staffing ratios. For Glennwood House to become a vendor, it would have to meet certain staffing ratio and rate structure requirements. Glennwood House would have to provide a staffing ratio of one staff member for every six residents; under its current DSS community care facility license, it need only provide one staff member for every 10 residents. The room rate would be \$2,400 per month; the Service Agency would fund \$1,153, and claimant would make up the difference with her wages and her Social Security income. Glennwood House currently receives payments in varying amounts, depending on the room and whether it has an ocean view. Stanton also testified that Department of Developmental Services (DDS) has stricter time frames and other requirements than DSS for filing incident reports if there are any reportable incidents involving a consumer.

11. Stanton testified that the Service Agency has provided Glennwood House with all the paperwork necessary to apply to become a vendor, as well as advice, in three meetings over the course of a six- to eight-month period. He testified that Glennwood House is unwilling to accept the rate structure and the staffing requirements. Claimant's stepmother supported that testimony, agreeing that Glennwood House told her it is unwilling to apply to become a regional center vendor because it does not want to change the pricing on the rooms it offers to private-pay patients. She testified that she understands that, if Glennwood House becomes a vendor, there would be Service Agency funding available.

12. In lieu of funding claimant's residence at Glennwood House, RCOC has offered to place or fund claimant's placement in a group home. In Orange County, RCOC funds over 400 group homes vendored to serve developmentally disabled persons whose care needs are at Levels 2 through 4. Many of these vendored group homes provide residential care and supervision to consumers with care needs at Level 2. Group homes typically provide residential care and supervision to six consumers. Stanton testified that claimant would receive more individual attention at a group home than she receives at Glennwood House. Patrick Ruppe, an Area Manager at RCOC who oversees 95 service coordinators, testified that the appropriate level of care for claimant would be Level 3 or a low Level 4, not the Level 2 offered at Glennwood House, which is more suited to highly independent individuals.

13. Mojgan Majidi, claimant's RCOC service coordinator, testified that she has received no reports of claimant eloping or being delusional or uncontrollable since claimant moved into Glennwood House; Majidi did receive such reports before claimant moved into Glennwood House. Claimant still engages in self-injurious behavior, however.

14. Claimant's parents believe that Glennwood House is meeting claimant's needs, and is providing her a setting in which she is thriving and improving. In addition to room and board, Glennwood House provides nursing staff, who make sure medications are taken, and support staff is available 24 hours per day to help residents with etiquette, hygiene, housecleaning, laundry, and mealtime and self-care tasks, transportation, and group activities. Because Glennwood House bills for these additional services separately from room and board, claimant's parents have requested that the Service Agency pay Glennwood House those amounts, or vendor claimant's parents so they can pay Glennwood House for those services.

15. Claimant is comfortable, relaxed, and secure at Glennwood House. She has made friends; she does not isolate herself in her room, but walks into common areas and socializes. She feels she is part of a community at Glennwood House. She feels engaged, and participates in social activities and group outings, in which her parents sometimes participate as volunteers. Claimant's parents want claimant to be as independent as possible.

16. Claimant's stepmother testified that claimant's self-injurious behaviors and other behavioral issues have declined greatly since claimant moved into Glennwood House. She testified that while the residents are free to come and go as they please, claimant does not go out by herself, and has become a very responsible person.

17. Claimant's stepmother testified that she and her husband have spent two years unsuccessfully looking for acceptable alternative housing. Other facilities do not offer the support, the group activities, and the sense of community and safety that Glennwood House affords claimant. Glennwood House is located on a bus line between claimant's parents' home and claimant's stepmother's place of employment, so in an emergency it would be easy for claimant to travel to her. Other facilities would not provide regular transportation to claimant's job, and would not be close to claimant's stepmother's place of work.

18. Claimant testified that she is happy at Glennwood House, that she has not been engaging in self-injurious behavior, and that she likes her job.

19. Claimant and her family strongly desire that claimant continue to live at Glennwood House, where she appears to be doing well. The evidence on the record, however, did not establish that the Service Agency has failed to identify and offer to fund living arrangement options for claimant designed to meet her needs, as identified in the IPP and Planning Committee process. The Service Agency offered to fund claimant's placement at Glennwood House in the event that Glennwood Houses seeks

and obtains vendorization, or to fund claimant's placement in one of the hundreds of group homes vendorized in Orange County.

LEGAL CONCLUSIONS

1. Cause exists to deny claimant's request that the Service Agency fund, retroactive and prospectively, claimant's residential placement at Glennwood House, as set forth in Factual Findings 1 through 19, and Legal Conclusions 2 through 10.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)³

3. Under the Lanterman Act, all issues concerning the rights of persons with developmental disabilities to receive services must be decided under the appeal and fair hearing procedures set forth in section 4700 et seq. (§ 4706, subd. (a).) As the party seeking services not agreed to by the Service Agency, claimant bears the burden of proving that the denial of services was improper and she should receive funding for those services. (See § 4712, subd. (j); *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) Claimant must prove that she is entitled to the funding by a preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code, § 115.)

4. The Lanterman Act requires that regional center funding of a residential facility placement is contingent on the facility being vendored by the regional center. Section 4648, subdivision (a)(3), provides, in pertinent part, that a regional center may, under vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or consumer's parents determine will best accomplish all or any part of the consumer's IPP. Vendorization or

³ All further statutory references are to the Welfare and Institutions Code.

contracting is the process of identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. (§ 4648, subd. (a)(3)(A).) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the DDS and has completed the vendorization procedures or has entered into a contract with the regional center. (§ 4648, subd. (a)(3)(B).)

5. Because Glennwood House is an adult residential facility licensed by DSS, and not an agency that is vendored by or has entered into a contract with RCOC, the Service Agency may not pay or reimburse Glennwood House for any services or supports provided to claimant.

6. The Lanterman Act and regulations allow regional center funding of SLS and ILS for consumers. Supported living services are individually designed services that assist a consumer to live in his or her own home with support available as often and for as long as it is needed. (Cal. Code Regs., tit. 17, § 58614, subd. (a)(1).) Independent living services are functional skills services, supports, and training necessary for adults with developmental disabilities to be able to maintain a self-sustaining, independent living situation in the community. Independent living services include services, supports, and training in cooking, shopping in natural environments, meal preparation, money management, and use of public transportation and community resources. Consumers receiving independent living services typically live alone or with roommates in their own homes or apartments, not in licensed group homes. (See Cal. Code Regs., tit. 17, § 56742.) A home is a house or apartment that is not a community care facility or certified family home and that a consumer chooses to own, rent, control, or occupy as a principal place of residence. (Cal. Code Regs., tit. 17, § 58601, subd. (a)(3).)

7. Claimant is not eligible for either supported living services or independent services because she is not living in a home or apartment but, instead, at Glennwood House, a licensed community care facility. Neither claimant nor her stepmother has expressed any preference during the IPP process for supported living or independent living services. Claimant's stepmother wants claimant to continue to live at Glennwood House.

8. Vendorizing claimant's parents so they can pay Glennwood House, thereby indirectly funding services that Glennwood House provides, is an impermissible circumvention of the funding provisions governing residential placements.

9. Claimant requests that, even though Glennwood House is not an authorized vendor of the regional center, the Service Agency can fund services that claimant receives at Glennwood House, other than room and board, by contracting with claimant's parents as providers or by vendorizing them, so that they can be reimbursed for the amount they pay for claimant to continue to live at Glennwood House.

10. Claimant's proposal is not allowed by section 4648, subdivision (a)(4). First, DDS has established a rate of payment for residential services (Ex. 8) and the Service Agency need not enter into a contract to establish such rate. Second, even if an applicable rate had not been established, the Service Agency could not contract with claimant's parents for residential services because, while they are the payors, they are not the providers of the residential services at Glennwood House.

ORDER

Claimant's appeal is denied; the Regional Center of Orange County's decision denying claimant's request to fund her residential placement at Glennwood House, retroactively and prospectively, is sustained.

DATE: September 30, 2014



HOWARD W. COHEN

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.