

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2014050795

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on June 25, 2014, in Torrance, California.

Gigi Thompson, Manager Rights Assurance, represented the Harbor Regional Center (HRC or Service Agency). Claimant<sup>1</sup> was represented by her powers of attorney, Vikki Rice and Marianne Teague.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on June 25, 2014.

ISSUE

Must the Service Agency continue to provide Claimant housing in a family home agency (FHA) setting as opposed to requiring Claimant to live in her own home or apartment with assistance from a supported living agency?

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<sup>1</sup> Party title is used in lieu of Claimant's name in order to protect Claimant's privacy.

## FINDINGS OF FACT

1. Claimant is a 46-year-old woman and a consumer of the Service Agency. Specifically, Claimant has been diagnosed with mild intellectual disability and is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.<sup>2</sup> In addition, Claimant, who was born with fetal alcohol syndrome, suffers from a mood disorder, reading disorder, a disorder of written expression, attention deficit hyperactivity disorder, and depressive disorder. Claimant also suffers anxiety attacks. Claimant currently resides in an FHA within the Service Agency's catchment area.

2. Claimant was adopted as a young child. Her adopted parents are now deceased. Claimant has no other family on which she can rely. Her powers of attorneys, Vikki Rice and Marianne Teague, serve as Claimant's primary support system. Ms. Rice and Ms. Teague assist Claimant in many areas, including her living arrangements and the management of her finances, and remain heavily involved in Claimant's life.

3. In 2011, the Service Agency placed Claimant in a FHA in Cerritos, California. A FHA is a family home in which adults with developmental disabilities live with approved families and receive services and supports in those settings as determined by their individual program plans. FHA's are designed to provide for the health and well-being of adults with developmental disabilities, and to maximize the choices of where they can live, work, and socialize.

4. In August 2012, the Service Agency moved Claimant to a FHA in Lakewood, California that was better equipped to address Claimant's needs. In February 2014, the individual who owned and operated the FHA advised Claimant that, due to an illness, she would no longer be able to open her home to Claimant, and gave Claimant

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

notice that she would need to move. In April 2014, the Service Agency reviewed Claimant's case as part of the process to find a new placement for her. The Service Agency determined that Claimant should move to an apartment or home with appropriate supported living services. Claimant disagreed with the Service Agency's determination that she should live independently, and expressed a desire to remain in a FHA placement. On May 7, 2014, the Service Agency sent Claimant a decision letter denying her request to remain in a FHA placement. Claimant subsequently filed a Fair Hearing Request on May 13, 2014. All jurisdictional requirements have been met.

5. In February 2014, after receiving notice that she would need to move out, Claimant interviewed for a placement at a HOPE residence. HOPE is an organization that provides nice homes and supports for low income clients. However, because of reports of Claimant's anger, outbursts, anxiety, nervousness, and lack of many independent living skills, HOPE concluded Claimant would not be able to manage herself on her own, and declined to accept her in its program.

6. On March 26, 2014, the Service Agency, Claimant, Ms. Rice, Ms. Teague, and representatives from Claimant's FHA met and developed Claimant's Individual Family Service Plan (IFSP). According to the IFSP, Claimant demonstrated great difficulty with social cues and how to handle day-to-day life situations. Her IFSP further stated that Claimant was very gullible, could become overly emotional at times, and had no ability for conflict resolution. In addition, in social situations, when she became upset, Claimant would react with almost childlike behaviors, such as sucking her thumb and pulling her hair. When she became angry, Claimant would pull at her face and eyes, and would dig in the sockets of her eyes. Claimant would also become defiant, would scream, and would fabricate stories or lies for no apparent reason. Claimant began attending therapy in January 2014 due to her difficulty managing negative emotions, including anger and frustration.

7. Claimant's IFSP also stated she demonstrated problematic behaviors at her FHA, such as hoarding items in her room and not properly cleaning. She required significant prompting to complete tasks, and required reminders to dress appropriately and complete personal hygiene tasks. In addition, Claimant called the property manager at all hours of the day to complain about other tenants, and would become verbally aggressive with the individuals who operated the FHA. Claimant demonstrated she could be easily distracted, and lacked a good sense of time, which rendered her unable to cook for herself without endangering herself and others.

8. Although Claimant, over the last eight years, has worked at a grocery store as a courtesy clerk, she requires heavy prompting to complete her work tasks. In addition, Claimant has demonstrated the need for support to help with her problem of misperceiving social interactions, which has led to disagreements with co-workers, the store's transfer of Claimant to different store locations due to her interpersonal difficulties, and a near-termination of her employment. Consequently, Claimant receives job coaching, as well as a reduction in her work hours to an amount more manageable for Claimant: from 40 hours to 16 hours per week.

9. Claimant is currently enrolled in classes for American Sign Language and a drawing at Long Beach City College, which she attends two days per week. Claimant has also volunteered at her local church for the last five to seven years by helping the children's ministry. Claimant can ride her bike independently, but gets lost easily in unfamiliar places.

## PSYCHOLOGICAL EVALUATION

10. On April 9, 2014, Dr. Nancy Kim performed a psychological evaluation of Claimant and prepared a report. Dr. Kim conducted a records review and behavior observations, and administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV) and the Adaptive Behavior Assessment System II (ABAS-II). Dr. Kim noted that

Claimant's tone, intonation, and demeanor were childlike, and observed her display childlike mannerisms during the administration of the test, such as counting on her fingers and displaying naïve facial expressions. At one time, Claimant said, "I have to go potty." Moreover, while waiting in the waiting room, Dr. Kim observed Claimant playing on her DS PlayStation. Claimant shared with Dr. Kim that she was watching a cartoon on her DS PlayStation entitled *BearShark*, which was a cartoon directed to children.

11. Dr. Kim administered the WAIS-IV to assess Claimant's cognitive abilities, and found that Claimant's verbal reasoning abilities appeared to be an area of weakness, relative to her nonverbal reasoning abilities, working memory, and processing speed abilities. Dr. Kim estimated Claimant's cognitive abilities to be at the third percentile and within the borderline range of abilities.

12. Dr. Kim distributed to Ms. Rice, who accompanied Claimant to the testing site, an adult form of the ABAS-II to assess Claimant's adaptive functioning in the areas of conceptual abilities (i.e., communication, functional academics, and self-direction), social abilities (i.e., leisure and social skills), and practical abilities (i.e., community use, home living, health and safety, and self-care). Dr. Kim found that Claimant's overall general adaptive composite score fell within the impaired range of abilities. Dr. Kim concluded that Claimant's deficits in adaptive functioning resulted in an inability to meet developmental and sociocultural standards for personal independence and social responsibility. Dr. Kim further concluded that without the strong support Claimant received from Ms. Rice, Ms. Teague, her FHA operators, employer and job coach, Claimant's significant deficits in adaptive living skills would negatively affect and limit her ability to effectively function in daily life at home, work, and within the community.

13. Dr. Kim recommended Claimant continue to receive individual therapy to assist her with learning adult social skills so that she could interact appropriately with others both at work and in her home living environments. In addition, Dr. Kim opined

that therapy could assist Claimant with her hoarding tendencies. Dr. Kim also recommended ongoing support of a job coach to assist Claimant with potential interpersonal difficulties with co-workers.

14. Dr. Kim further recommended that, given Claimant's significant deficits in practical living skills, Claimant would likely benefit from a living environment which provided high levels of support, structure, and supervision. In addition, Dr. Kim recommended that Claimant continue opportunities to learn and practice skills on a regular basis to increase her independence (i.e., cooking, meal planning, and money management). Dr. Kim also recommended that Claimant continue to attend school to provide opportunities for socialization and extracurricular activities.

#### INTERDISCIPLINARY TEAM MEETING

15. In April 2014, the Service Agency's interdisciplinary team held a meeting to discuss Claimant's residential placement. Hiram Bond, who had been the program manager of the adult division at the Service Agency for 15 years and who was familiar with Claimant and her file, attended the meeting. Mr. Bond testified at hearing. The team consisted of eight to ten members, but during the course of examination, Mr. Bond was forced to admit that the interdisciplinary team was not united in determining the Claimant's placement. Some believed Claimant should be required to live in her own home or apartment with assistance from a supported living agency,<sup>3</sup> while others believed Claimant should remain in a FHA where she could continue to be a part of a family environment. Mr. Bond concurred with the latter.

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<sup>3</sup> Neither party presented any evidence showing how many hours of supportive living services the Service Agency thought would be appropriate.

16. Mr. Bond explained that, generally, the living options process involved the goals of putting a client where he or she would be safe, have his or her needs met, and where the client had expressed a desire to be. In his opinion, a FHA would meet these goals, given Claimant's expressed desire to remain in a FHA, and the safety, comfort, and support the FHA setting has already provided Claimant. While Mr. Bond conceded that Claimant had a lot of strengths to support some of his colleagues beliefs that Claimant was a viable candidate for living in an apartment or home on her own, such as working (though with the support of a job coach), attending classes at Long Beach College, and volunteering at her church, he believed that simply looking at Claimant's strengths to the exclusion of everything else was a mistake. For example, Claimant had demonstrated that she was highly anxious, nervous, angry, and had a penchant for emotional outbursts, hoarding, and frequent lying, behaviors Mr. Bond believed, based on his 15 years' experience as the Service Agency's program manager of the adult division, to be inconsistent with successful independent living. Additionally, in his opinion, Claimant had not demonstrated she possessed certain core abilities, such as the ability to handle daily living tasks independently, including personal hygiene tasks without prompting (i.e., bathing and washing her hair), self-advocacy, cleaning her environment, managing her finances, and staying safe. Mr. Bond noted that Claimant was very childlike, and lacked stranger awareness and the judgment of knowing when she was in danger. This was especially concerning to Mr. Bond because more often than not, Service Agency clients who lived in apartments on their own could afford to do so only in crime-ridden neighborhoods, where they were often targeted for crimes, and often lived in fear. Also, Mr. Bond expressed concern that should Claimant have an emotional outburst with a stranger, she could place herself in a position of danger or injury. While Mr. Bond conceded that if Claimant lived independently, she would receive assistance from a supported living agency provided by the Service Agency, Mr. Bond

believed that Claimant, who suffered from a number of emotional problems, required a constant sounding board to ground her, redirect her, and to advise her, such as she currently received in her FHA environment. Such a resource would be not at Claimant's continuous disposal if she lived on her own.

17. Furthermore, Mr. Bond found instructive the psychological evaluation performed by Dr. Kim, and agreed with her recommendation that given Claimant's significant deficits in practical living skills, Claimant would benefit from a living environment which provided a high level of support, structure, and supervision. Mr. Bond explained that a FHA would provide such an environment where Claimant could be monitored, and had already shown to provide a safe, comfortable, caring, and supportive environment for Claimant.

## LEGAL CONCLUSIONS

The Service Agency must continue to provide Claimant housing in a FHA setting, as discussed in more detail below:

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), and 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same



services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

"Services and supports for persons with developmental disabilities" means specialized 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's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . special living arrangements, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . ."

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).) Services and supports are subject to regular periodic review and reevaluation, particularly in response to a consumer's changing needs. (§ 4646.5, subds. (a)(7) and (b).)

7. Here, Claimant met her burden of establishing that a FHA setting is a more appropriate placement for her than one requiring her to live independently, even with assistance from a supported living agency. The evidence showed, particularly through the April 9, 2014 psychological evaluation conducted by Dr. Kim, that Claimant's overall general adaptive composite score fell within the impaired range of abilities, and, as such, Dr. Kim concluded that Claimant's deficits in adaptive functioning resulted in an inability to meet developmental and sociocultural standards for personal independence and social responsibility. Dr. Kim further concluded that without strong support, Claimant's significant deficits in adaptive living skills would negatively affect and limit her ability to effectively function in daily life at home, work, and within the community. As such, Dr. Kim recommended that Claimant live in an environment which provided a high level of support, structure, and supervision. According to the credible and uncontroverted testimony of Mr. Bond, a FHA could provide such an environment, more so than living in an apartment with supported living services.

8. Mr. Bond, based on his knowledge of Claimant's behavioral, emotional, and limited living skills challenges, concurred with Dr. Kim's conclusion, and convincingly opined that a FHA placement would be more appropriate for Claimant than one requiring her to live independently. While reasonable minds can differ, as evidenced by the lack of unanimity at the interdisciplinary meeting, the uncontroverted evidence established that Claimant was, and continues to be, a highly anxious, nervous, and angry individual who hoards, lies, and who often has emotional outbursts. Such behaviors, according to Mr. Bond, were inconsistent with successful independent living, based on Mr. Bond's 15 years' experience as a program manager of the adult division. Additionally, Mr. Bond surmised, consistent with the conclusions reached by Dr. Kim, that Claimant had not demonstrated certain core abilities, such as the ability to handle daily living tasks independently, including personal hygiene tasks without prompting

(i.e., bathing and washing her hair), self-advocacy, cleaning her environment, managing her finances, and staying safe. Moreover, both Mr. Bond and Dr. Kim noted that Claimant demonstrated very childlike behaviors, and, as Mr. Bond mentioned, lacked stranger awareness and the judgment of knowing when she was in danger.

9. Given these factors, while Claimant could receive assistance from a supported living agency provided by the Service Agency if she lived independently, the evidence has shown that Claimant requires a more monitored and supervised environment where her needs could be met more appropriately, particularly as they pertain to her emotional, behavioral, and daily living skills problems. As such, the Service Agency shall continue to fund Claimant's placement in a FHA setting.

## ORDER

Claimant's appeal is granted. As such, the Service agency shall continue to provide Claimant housing in a FHA as opposed to requiring Claimant to live in her own home or apartment with assistance from a supported living agency.

Date: July 9, 2014

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CARLA L. GARRETT

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.