

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2015080551

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on December 3, 2015, and January 20, 2016, in Alhambra, California.

Judy Perez, Supervisor, represented Eastern Los Angeles Regional Center (Regional Center or Service Agency).

Claimant's parents, who are his conservators, represented Claimant.¹

Oral and written evidence was received at the hearing and the matter was submitted for decision on January 20, 2016.

ISSUE

Should Regional Center grant Claimant's request for emergency parent-coordinated support living services (SLS) vendorization?

STATEMENT OF THE CASE

Claimant's parents seek emergency vendorization to provide parent-coordinated SLS. They assert that such vendorization is necessary to protect Claimant's health and

¹ Names have been withheld to protect Claimant's privacy.

safety and that no other alternatives are available. Service Agency counters that emergency vendorization is not required because Claimant is not in imminent danger and that SLS providers are available. As discussed below, Claimant has not established by a preponderance of the evidence that emergency vendorization is appropriate in his case.²

FACTUAL FINDINGS

1. Claimant is a 30-year-old Service Agency consumer with a qualifying diagnosis of intellectual disability.³ Claimant has poor articulation and is only able to speak in one-word to three-word sentences. He is able to perform most personal hygiene tasks, but requires prompting in some respects. He needs assistance in managing his money. He has no concept or awareness of time, and requires prompting for timed-tasks. For instance, he needs reminders about going to work and needs supervision when using the microwave or stove.

2. Claimant works approximately 20 hours per week as a courtesy clerk at a VONS grocery store, and has worked for the company for approximately eight years, with one eight-month hiatus. He takes public transportation to work, but is picked up at the bus station for his safety if he returns home at night. He also provides volunteer services at a local hospital. In 2008, he moved into a two-bedroom home owned by his parents, where a roommate initially shared expenses. He receives Federal housing

² On January 25, 2016, after submission of the case, Claimant's parents and conservators submitted a request for the Administrative Law Judge to retain jurisdiction to oversee implementation of any order directing Service Agency to grant emergency vendorization to Claimant's parents. Service Agency did not file a reply. Because the appeal is dismissed and Service Agency is not being ordered to grant emergency vendorization, Claimant's parents request is moot and is denied.

³ In July 2014, Claimant was diagnosed with Autism Spectrum Disorder, but it is unclear if Service Agency has formally accepted the diagnosis as a basis for eligibility.

assistance, and Service Agency provides rental assistance. Claimant's parents reside about six blocks from him.

3. Aura Marie Pawley, M.D., has diagnosed Claimant with severe anxiety disorder, and she opines that this condition presents a challenge to Claimant's goal of independent living.

Claimant has also been diagnosed with attention deficit hyperactivity disorder. Claimant has been prescribed psychotropic medications.

4. On February 4, 2015, Service Agency and Claimant's family agreed on the services to be provided to Claimant. The exact language of the Individual Program Plan (IPP) is still being developed, as each party insists on writing the document. The agreed services are listed in a document entitled "Service Provision Agreement based on Person Centered Planning Meeting (I.P.P.)" (Summary). In addition to the services set forth in factual finding number 5, Service Agency agreed to fund personal assistant services, a behavioral assessment, a psychological assessment, rental assistance, a transportation pass, and social skills services.

5. Service Agency and Claimant's family agreed in early 2015 that Service Agency would fund SLS and agreed on the provider, Choicess. The SLS vendor was to provide a live-in care giver for eight hours per day, at a rate of \$1,275 per month. Independent living skills (ILS) were also to be funded, in part to facilitate selection of a provider as services transitioned to SLS. The Summary contained the following language: "(SLS & ILS agencies directors to determine hiring [Mom] as parent coordinator at requested rate.)" (Exh. 102, at p. 1.) The names of two individuals who provided services to Claimant were listed in the Summary along with their titles "Craftman" and "Gardener" and the following language: "(SLS agency's director to determine hiring Alan and Tommas at requested rate.)" (*Ibid.*)

6. During the period of May 12, 2014, to January 12, 2015, Claimant received SLS from Listo, Inc. (Listo). Listo terminated services following several incidents, including one in which Claimant held a kitchen knife and pointed it at one of Listo's staff members and another in which Claimant pushed another staff member.

7. At the time of the IPP meetings, Claimant's parents had selected Choicess as the potential SLS provider. The agency started providing services on February 25,

2015, which services included performing an assessment. Choicess completed the assessment in May 2015, and agreed to hire the two individuals requested by Claimant's family. However, Claimant's parents thereafter disagreed with the agency's services and philosophy. For instance, the family concluded that Choicess did not provide sufficient staff coverage, and was upset that the agency replaced one of the staff members without first discussing it with the family. Claimant's mother concluded that the program design was dated and inadequate. A meeting to work things out was not successful, and services were terminated by mutual agreement in July 2015.

8. On July 29, 2015, having learned of the impending termination of Choicess' services, Claimant's then service coordinator, Vivian Lau (Lau), offered Claimant's mother, via e-mail, to fund 243 hours of parent-coordinated personal assistant services on an interim basis until a new SLS agency was found. Lau also included the names of four agencies for Claimant's mother to consider, California Pediatric and Family Services, Jay Nolan Community, Solution Plus Services, and Xclusive Services. Claimant's parents rejected this offer because they concluded that the rate payable to the care providers was inadequate. The amount was deemed inadequate, at least in part, because it was lower than that required to retain Claimant's prior staff and insufficient to cover liability insurance. Service Agency declined Claimant's parents' request for an increase in the rate, and this option has not been pursued any further.

9. In July 2105, Claimant's family started considering a new potential provider, SEEK Education, Inc. (SEEK). Although the agency was vendedored for ILS, the family liked the fact that SEEK's staff was trained in Applied Behavior Analysis (ABA) therapy principles. However, after some delays in coordinating health insurance contributions and after difficulties in coordinating the schedules of the family and the evaluators, on October 26, 2015, SEEK informed Claimant's mother that it no longer had the staff to conduct the assessment. In his e-mail to Claimant's mother, James E. King, Assistant Program Director of SEEK, stated: "Nevertheless, we will be continuously reviewing our availabilities [*s/c*] with careful considerations of your son's program, and notify you and the funding sources when the opportunity arises." (Exh. 3, at p. 27.) On January 15, 2016, SEEK informed Service Agency that an ILS assessment could be performed in February 2016.

10. In October 2015, Claimant's service coordinator at the time, Esmeralda Robles (Robles) made contact with 17 agencies to determine if they could provide SLS to Claimant. Robles inquired if they could provide the services as described in the Summary. In addition, Robles inquired about specific criteria she understood the family had, such as providing staff in two-hour shifts, providing male staff who can cook, providing a weekly schedule in advance, and providing ABA-trained staff. Six of the agencies, different ones from those included in the July 29, 2115 e-mail from Lau, were able to satisfy the criteria, and on October 13, 2015, Robles provided the names to Claimant's mother.

11. Claimant's family did not find any of the agencies included in the October 2015 list acceptable. As Claimant's mother explained at the hearing, the agencies did not seem sufficiently familiar with Claimant, as they had not been provided a copy of the IPP, and could not answer her pointed questions about services to be provided. Claimant's mother provided her version of the IPP to some of the agencies, and did not hear back from them.

12. One of the names on the October 13, 2015 list was Roman Empire Living (Roman Empire). As of the December 3, 2015 hearing, Robles reported that the agency had acceded to hiring the two individuals the family wanted as staff and was about to commence the assessment. However, at the January 20, 2016 hearing, Claimant's parents presented a December 22, 2015 email from Roman Empire, which stated, in part: "At this time, we are unable to accept your son's case. The tool that you have created is design[ed] as a program that doesn't not [*sic*] meet our mission and philosophy of the agency. [¶] . . . [¶] You want my staff to provide Behavior Intervention but we are not vendored for that. [¶] . . . [¶] The needs that you have for your [son] are not in our program design and quite frankly you want a [*sic*] an ILS agency to service the need that does not exist. I'm sorry but at this time we are not accepting the case because we are not qualified to do the service under the ILS guidelines. . . ." (Exh. 190, at pp. 2-4.)

13. The family asserts that Claimant's health and safety require emergency vendorization and cited examples where his health and safety can be affected without appropriate supports. For instance, he stares at people and the staring is not always welcome or understood. Recently, Claimant's father had to diffuse a situation at the gym

in which a man took issue with Claimant looking at him. Claimant likes to collect things, and does not realize the boundaries of private property. For instance, on April 2, 2014, despite a contrary directive from a staff person accompanying him, Claimant attempted to take a piece of wood from a neighbor's home. In November 2015, he cut a neighbor's satellite cables.

14. Claimant's parents are concerned about his emotional health and cite to the psychiatric diagnoses set forth in factual finding number 3. As observed by his parents, Claimant pretends to be a policeman and looks for "bad guys." Claimant is afraid of being alone. Two psychiatrists recommend that Claimant live with somebody. His parents note that while Claimant can speak, he cannot adequately advocate for himself.

15. Claimant's mother notes Claimant is adversely impacted by staff turnover. He has difficulty making friends and dealing with strangers.

16. While they search for a solution to Claimant's SLS needs, his parents have been helping Claimant. When he is not at work or in an activity, Claimant spends time with his parents. On August 1, 2015, they hired a live-in staff person for Claimant, who also participates in some activities with Claimant. Claimant receives In Home Supportive Services, and his mother provides the services.

17. On July 20, 2015, Claimant's parents requested emergency parent-coordinated SLS vendorization. On July 28, 2015, Lau informed Claimant's parents that Service Agency would issue a Notice of Proposed Action formally denying the emergency vendorization request. On August 10, 2015, Service Agency issued the Notice of Proposed Action denying the request. Claimant's parents filed a Fair hearing Request on August 8, 2015.

18. Claimant's parents have not filed a vendorization application. Claimant's mother started the process in 2009, but decided not to complete it at that time.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act

(Lanterman Act), Welfare and Institutions Code⁴ section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Legislature declared in section 4501: “[A]n 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. . . . Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. . . .”

2. In order to protect the rights of persons with developmental disabilities and to ensure delivery of needed services and supports, the Lanterman Act created regional centers, such as Service Agency, and gave them a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4501 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans (IPPs), taking into account consumer needs and preferences and service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives. It 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, and normal lives. The determination of which services and supports are

⁴ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

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. . . ."

4. One of regional centers' responsibilities is to secure needed services and supports, a process that involves vendorization and contracting with service providers. (§ 4648, subd. (a).) In pertinent part, section 4648, subdivision (a), provides:

"[(3)] A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

"(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

"(B) [T]he director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization. . . ."

5. As required by section 4648, subdivision (a)(3)(B), the Director of the Department of Developmental Services (Department) enacted regulations governing the vendorization process, which regulations are found in California Code of Regulations (CCR), title 17, section 54300 et seq. CCR, title 17, section 54310 sets forth the vendor application requirements and requires submission of an application to the "vendoring regional center." CCR, title 17, section 54322, provides for regional center approval or denial of the application. Once an application is approved, vendors must comply with specified requirements. (CCR, tit. 17, § 54326.) The vendoring regional center is responsible for ensuring that its vendors comply with vendorization requirements, and may terminate vendorization for noncompliance. (CCR, tit. 17, § 54370.) Appeals of termination of vendorization must be filed with the director of the vendoring regional

center (CCR, tit. 17, § 54380), and, if the appeal is denied, appeals must be filed with the Director of the Department or his or her designee. (CCR, tit. 17, § 54384.) "The decision of the Director is the final administrative decision." (CCR, tit. 17, § 54384, subd. (g).)

6. As pertinent to this matter, the regulations provide for emergency vendorization. CCR, title 17, section 54324, states:

"(a) The regional center is authorized to approve emergency vendorization for an applicant prior to the receipt of a completed vendor application if the regional center determines that the health or safety of a consumer is in jeopardy and no current vendor is available to provide the needed service.

"(b) If emergency vendorization is approved, the applicant may provide services for no more than 45 days.

"(c) The applicant shall meet all applicable requirements pursuant to Section 54320(b)(2) through (5) of these regulations.

"(d) The applicant shall submit a completed vendor application pursuant to Section 54310(a), (d) or (e) of these regulations within 30 days of the authorization by the vendoring regional center to provide the service.

"(e) Within 15 days after receipt of the vendor application, the regional center shall:

"(1) Review the vendor application as required in Section 54320(a) of these regulations; and

"(2) Notify the vendor of vendorization approval pursuant to Section 54322(d) of these regulations; or

"(3) Notify the applicant of vendorization denial pursuant to Section 54322(f) of these regulations.

"(f) The emergency vendorization shall lapse if the vendor application is not properly submitted or if the regional center does not approve the application within 45 days of the initial authorization.

"(g) If a lapse of emergency vendorization occurs pursuant to (f) above, in no case shall the regional center allow the vendor to reapply for emergency vendorization."

7. A review of section 4648 and the vendorization regulations makes clear

that a highly structured process is in place to ensure that consumers' needs are met by qualified providers. Applications must be filed with detailed information and supporting documentation, and qualifications and specific ongoing requirements must be met once vendorization is approved. In this scheme, regional centers bear initial responsibility for reviewing the qualifications of applicants to ensure compliance with the Lanterman Act and the vendorization regulations. A regional center may approve emergency vendorization pursuant to CCR, title 17, section 54324 only if the health or safety of a consumer is in jeopardy and no current vendor is available to provide the needed service. As its plain language and the regulatory scheme of which it is a part make clear, CCR, title 17, section 54324 governs exceptional, urgent, emergency situations in which the regular vetting process is temporarily bypassed.

8. It is undeniable that Claimant needs services and supports in order to enable him to approximate the pattern of everyday living available to people without disabilities. Nor can it be disputed that he needs prompting, guidance and supervision for his safety and well-being. However, the evidence presented at the hearing does not establish that his health or safety is in jeopardy if he does not receive SLS pursuant to emergency vendorization. Neither his health nor his safety is in imminent peril while the search for an SLS vendor continues. Claimant is able to perform activities independently and can communicate with others in the event he needs help or assistance. The fact that he has been able to continue to work and move in the community without significant incident in the year he has been without SLS confirms that his health and safety are not in jeopardy. While he has not been alone this past year, the personal assistance and supervision provided by his parents and others around him are an indication that, at least temporarily, this supervision is sufficient to preserve his health and safety.

9. In addition, it cannot be concluded that "no current vendor is available" to provide SLS. Service Agency has demonstrated that SLS providers are available who can meet the needs identified in Claimant's IPP. Some vendors have even gone as far as agreeing to hire the two individuals requested by Claimant's family to try to make the process work. The fact that with the possible exception of SEEK none of the providers were acceptable to Claimant's family is insufficient to render the vendors "unavailable." Parental choice is one of the factors to be considered in vendor selection, but it is not

the only one. In the existing circumstances, including the number of potential providers located by Service Agency and the offer of temporary parent-coordinated personal assistant services, Service Agency has recognized consumer choice and worked with the family to find SLS services for Claimant.

Therefore, the health or safety of Claimant is not in jeopardy absent emergency vendorization and there are vendors currently available to provide the needed service.

10. By reason of the foregoing factual findings and legal conclusions, Claimant's request for emergency parent-coordinated SLS vendorization is not required.

ORDER

Claimant's appeal is denied and Service Agency need not approve the request for emergency parent-coordinated SLS vendorization.

Dated: February 2, 2016

_____/s/_____

Samuel D. Reyes

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.