BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH Case No. 2017010166

DECISION

The hearing in this matter was held before Joy Redmon, Administrative Law Judge, Office of Administrative Hearings, on February 15, 2017,[1] in Sacramento, California.

Brittnee Gillespie, attorney with Disability Rights California, represented Claimant.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Oral and documentary evidence was received at the hearing. ACRC timely submitted its closing brief on Monday, March 6, 2017. Claimant timely submitted her reply brief on March 8, 2017. Thereafter, the record was closed and the matter was submitted for decision.

ISSUES

1. Did ACRC fail to provide legally compliant notice pursuant to Welfare and Institutions Code section 4701 before terminating claimant's supported living services (SLS);

[1] The hearing in this matter was consolidated with OAH Case No. 2017010165. That case involved claims by claimant's mother against Alta California Regional Center. Despite a consolidated hearing, separate decisions are being issued.

2. Did ACRC fail to provide written notice in simple Chinese,[2] before terminating claimant's SLS with New Beginnings;

3. Did ACRC fail to provide a copy of claimant's Individual Program Plan's (IPP) in simple Chinese;

4. Did ACRC fail to obtain claimant's informed consent to change her SLS to independent living services (ILS) such that it invalidates her signature authorizing the change in an IPP Addendum dated October 28, 2016;

5. Did ACRC fail to implement claimant's IPP dated December 30, 2015, in that it ceased paying for the rental exception and providing SLS services from December 1, 2016, through the time of hearing;

6. Did ACRC fail to send a Notice of Proposed Action before terminating the rental exception provision of claimant's IPP such that she could have appealed the determination and requested aide paid pending a hearing?

FACTUAL FINDINGS

1. Claimant is a non-conserved 30-year-old woman eligible for regional center services based on a diagnosis of mild mental retardation, commonly referred to as an intellectual disability. Claimant, her twin brother, and her mother concurrently applied for and were deemed eligible for regional center services in 2013.

WRITTEN AND ORAL LANGUAGE COMMUNICATION WITH ACRC AND TRANSLATION SERVICES

2. Claimant was born in China and immigrated to the United States in October 2012, with her brother and mother, following her father's death in 2009. She generally speaks and understands Cantonese and Mandarin; both Cantonese and Mandarin are the

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[2] The parties in this matter specified that for the purpose of this hearing and decision, Mandarin and Cantonese refer to claimant's native spoken language and simple Chinese refers to written language. Simple Chinese utilizes written characters deemed simpler than the characters used in traditional Chinese.

main languages spoken in the home. She uses short sentences and simple words to communicate, but primarily smiles and giggles when being spoken to or speaking. She is not able to have reciprocal conversations in any language. She struggled with academics and stopped attending school at age 12. Claimant does not speak English and does not read or write in any language.

3. When initially deemed eligible for ACRC services, claimant, her mother, and twin brother were assigned an ACRC service coordinator, Brenda Nguyen, who was multi-lingual and able to orally communicate with claimant to the degree claimant was able to communicate with someone outside of her family. Claimant's IPP dated May 23, 2013, lists "translation services" as an agreed-upon service and support and specifies that translation services could be used to facilitate communication during IPP meetings. The IPP also specified that if claimant or her family requested translated documents, they would be provided. Claimant consented to the IPP. Claimant did not request the document be translated.

4. In claimant's next IPP, dated October 21, 2013, claimant's cousin, Zoey Trinh (a.k.a. Zoey Zheng and Hong Trinh) was identified as ACRC's "contact person" on claimant's behalf, ". . . who has also been helping all of them [claimant, her mother, and twin brother] with their paperwork." Ms. Trinh attended this and most of claimant's IPP meetings at ACRC. Translation services with identical language as contained in the prior IPP were included in the October 2013 IPP. Claimant consented to the IPP. Claimant did not request the document be translated at that time.

5. In approximately July 2014, claimant's service coordinator changed from Ms. Nguyen to Kris Takeda-Miller. Ms. Takeda-Miller does not speak Cantonese or Mandarin. The first IPP team meeting held after the transition to Ms. Takeda-Miller's caseload was on January 20, 2015. Claimant remained unable to communicate in English; however, no mention of translation services for meetings between claimant and ACRC was included in this IPP.[3] Ms. Takeda-Miller relied on Ms. Trinh to communicate with claimant during IPP

[3] The vendor utilized to provide SLS services to claimant pursuant to her IPP, as discussed more fully below, assigned an employee who spoke Cantonese and Mandarin.

team meetings.[4] Ms. Trinh testified at hearing with the assistance of a translator. She speaks English but testified she was not a fluent English speaker and did not "completely understand" what was discussed during IPP meetings when a translator was not provided for her. Ms. Takeda-Miller testified to her belief that she and Ms. Trinh sufficiently communicated during the IPP team meeting. Claimant consented to the IPP. The document was not translated into simple Chinese.

6. An IPP team meeting was held on December 30, 2015. Ms. Trinh attended and interpreted the meeting for claimant. Translation services were not included as a specified support or service in the IPP. Claimant consented to the IPP. This document was translated into simple Chinese and was provided to claimant following a request made in late 2016.

7. On October 28, 2016, Kevin Ha, an employee of New Beginnings, the vendor providing claimant's SLS services at that time, met with claimant in her apartment. Ms. Takeda-Miller and Ms. Trinh were not present during the meeting. Claimant signed an addendum to her December 30, 2015, IPP that stated claimant, ". . . will transition to an ILS provider to continue living independently in the community. New Beginnings SLS will terminate services on 11/30/16. [Claimant] has been referred to a new ILS provider, Lighthouse ILS." Under the section for services and supports to be added or changed, the addendum states that ACRC's, ". . . Service Coordinator will request funding for Lighthouse ILS; max 35 hours per month through 1/2017." As is discussed more fully below in the section regarding SLS services, this change was significant, among other reasons, because at that time claimant was receiving $487.55 for rent and living expenses pursuant to a rental exception granted by ACRC at New Beginning's request. According to ACRC, although not specified in the Addendum, claimant's rental exception would terminate when claimant transitioned to ILS.

8. Claimant testified at hearing but was unable to provide any details regarding

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[4] Ms. Trinh did not translate for claimant from English to Cantonese or Mandarin and Cantonese or Mandarin to English. Rather, she summarized or interpreted the conversation for claimant.

the discussion with Mr. Ha, signing the addendum, or her understanding of its significance. Claimant was not evasive. Rather, her inability to recall the meeting or signing the document was consistent with the description of her ability and communication level contained in the assessments, IPP's, and demeanor and testimony provided at hearing. Mr. Ha did not testify at hearing. Ms. Takeda-Miller testified that she believes Mr. Ha explained the addendum and its significance to claimant. Ms. Takeda-Miller's testimony on this point was unpersuasive. The Consumer I.D. notes submitted in evidence by ACRC contain an on-going description of the service coordinators' involvement regarding regional center clients and ACRC. Ms. Takeda-Miller's notes from that time do not contain any description of speaking with Mr. Ha about the meeting or signed Addendum. Moreover, she did not know specifically what was explained to claimant. It is unknown whether the Addendum was read to claimant or the concept contained therein was explained. It is unknown whether claimant had any questions and if those specific questions were addressed before she signed. Claimant is un-conserved and does not lack the authority to have consented to this change. However, claimant is developmentally delayed, does not read in any language, and speaks limited Cantonese and Mandarin. Claimant's testimony at hearing established that she did not understand what she was being asked to sign and was unable to explain the circumstances surrounding the meeting with Mr. Ha. Mr. Ha was not called to testify, and therefore, no evidence was presented establishing that claimant knowingly consented to the change from SLS to ILS. The document was not provided in English or translated into simple Chinese before she was asked to sign. Claimant was not given the opportunity to have the addendum reviewed by a family member, such as Ms. Trinh, before being asked to sign.[5] For the foregoing reasons, claimant's signature on the October 28, 2016, Addendum was invalid.

9. In November 2016, attorney Gillespie from Disability Rights California became involved in claimant's case. Claimant's next IPP team meeting was held on November 9, 2016. Ms. Trinh was again asked to interpret the meeting for claimant. No

[5] A translated version of the signed document was provided following a request made later in 2016.

reference to translation services in contained in the IPP. Claimant did not consent to the IPP; however, at Ms. Gillespie's request, the document was translated into simple Chinese following the meeting. On January 23, 2017, an addendum to the November 9, 2016, was signed by claimant accepting a maximum of three hours per month of translator services. This document was translated into simple Chinese.

SLS Services Including the Rental Exception

10. At the time claimant became an ACRC client, she shared a bedroom in the home of her paternal aunt with her twin brother and mother. Other extended family members lived there as well. Claimant and her extended family members began pursuing other living arrangements. In June 2013, Ms. Nguyen suggested claimant's family apply for benefits through California's Cash Assistance Program for Immigrants (CAPI). CAPI is a state-funded program designed to provide monthly cash benefits to non-citizens who are elderly, blind, or disabled and ineligible for supplemental social security income and state supplementary payments solely due to their immigration status. Ms. Trinh attempted to apply for CAPI on behalf of claimant and her extended family members, but was told they must first apply for and be denied social security benefits.

According to Ms. Nguyen's Consumer I.D. notes, on August 2, 2013, Ms. Trinh informed Ms. Nguyen that she no longer intended to file for CAPI benefits. The reason given in the notes states that, ". . . she [Ms. Trinh] doesn't want the sponsor (her uncle), especially her uncle's co-sign partner who happens to be quite wealthy, to be responsible for them financially. Zoey [Ms. Trinh] doesn't feel that this is the right thing to do, so she dropped the application."

11. In approximately November 2013, claimant, her mother, and her twin brother moved into an apartment on Lemon Hill Avenue in Sacramento with another aunt and her extended family. This arrangement quickly soured. In March 2014, Ms. Nguyen began pursing SLS for claimant, her mother, and twin brother.[6] In approximately April 2014,

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[6] Welfare and Institutions Code section 4689 sets forth the guiding principles for SLS. Generally, SLS consists of a broad range of services to adults with developmental disabilities who, through the Individual Program Plan (IPP) process, choose to live in

claimant was deemed eligible for SLS. At that time Ms. Takeda-Miller became claimant's service coordinator because she manages an SLS caseload. Ns. Nguyen, Ms. Takeda-Miller, and her supervisor, Carol Wilhelm (client services manager), met that month and discussed the need for claimant, her mother, and twin brother to obtain assistance moving into a new living situation.

12. Ultimately, Ms. Takeda-Miller successfully obtained New Beginnings as claimant's SLS vendor in approximately July 2014. New Beginnings submitted a request for a rental exception[7] on claimant's behalf to help pay for her rent and living expenses.

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homes they own or lease in the community. The range of services can include assisting in selecting and moving into a home; acquiring furnishings; choosing personal attendants or housemates; managing personal financial affairs; assisting with common daily living activities and emergencies; and assisting community involvement. Typically, a supported living service agency works with the individual to establish and maintain a safe, stable, and independent life in his or her own home.

[7] Welfare and Institutions Code section 4689, subdivisions (h) and (i), prohibit regional centers from paying a consumer's rent, unless an exception can be found. The relevant subdivisions state:

> (h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.
>
> (i) A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:

(1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

(A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

(B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.

(C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

California Code of Regulations (CCR), title 17, section 58611, subdivision (b), further limits a regional center's ability to make rent payments, stating:

The regional center shall not pay any costs incurred by a consumer receiving SLS in securing, occupying, or maintaining a home rented, leased, or owned by the consumer except when the executive director of the regional center has determined that:

(1) Payment of the cost would result in savings to the State with respect to the cost of meeting the consumer's overall services and supports needs;

(2) The costs cannot be paid by other means, including available natural or generic supports; and

(3) The costs are limited to:

(A) Rental or utility security deposits;

(B) Rental or lease payments;

(C) Household utility costs;

(D) Moving fees; and

ACRC's director approved the rental exception for claimant, her mother, and twin brother. Claimant's IPP dated January 20, 2015, specifies that Ms. Takeda-Miller was requesting $587 per month for claimant's rental exception. The amount was approved. In addition to the rental exception, claimant's other SLS included help with bathing, wearing clean clothes, menu planning, shopping, cooking, nutrition education, household chores, coordinating a monthly schedule and calendar, money management, paying bills, banking, making and going to doctors' appointments, and medication management. As noted above, claimant signed the IPP. Claimant did not work and had received no other income.

13. New Beginnings continued providing SLS services to claimant. Claimant's IPP dated December 30, 2015, specified that through December 2016, claimant's rental exception, paid through New Beginnings, was budgeted at $356.55 per month for rent and $131 per month for personal and incidental items.[8] The IPP provided for the similar SLS as in the prior IPP. Claimant signed the IPP. Claimant did not work and received no other income.

14. According to the progress notes from New Beginnings and Ms. Takeda-Miller's Consumer I.D. Notes, Claimant was compliant with the staff from New Beginnings. She did not, however, learn English and relied on the rental exception to pay her rent and personal incidentals. New Beginnings' staff provided services to claimant in her apartment. While claimant was compliant, claimant's mother was not. In a letter dated September 27, 2016, New Beginnings sent claimant a letter in English notifying her that services through New Beginnings would terminate in
60 days. The reason given was claimant's mother's disruptive behavior toward New Beginnings' staff.

15. After New Beginnings sent the notice of termination of SLS services to

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(E) Non-adaptive and/or non-assistive household furnishings, appliances, and home maintenance or repair costs.

[8] At some point, claimant's twin brother transitioned from SLS to ILS. He was employed and earned an income. His rental exception terminated.

claimant, Ms. Gillespie became involved. Over the course of the next two months, Ms. Gillespie pursued obtaining funding for claimant's rent through ACRC and outside resources such as CAPI.

16. A review of emails between Ms. Gillespie and ACRC staff, and Ms. Takeda-Miller's Consumer I.D. Notes, reveal that Alta took different and sometimes conflicting positions regarding the rental exception and if and how claimant may continue being granted the rental exception. On November 8, 2016, Ms. Gillespie emailed Ms. Takeda-Miller and her supervisor, Ms. Wilhelm, informing them that without the exception, claimant would not be able to pay her rent. Ms. Wilhelm responded by saying that, ". . . when the previous SLS vendor attempted to access CAPI for these clients, we were informed they have a sponsor who is legally responsible for assuring their housing and living expenses are funded;"[9] and that "[p]aying a client's rent and living expenses are not part of the services and supports of SLS."

17. The following day, the parties met for claimant's IPP team meeting. The schedule of services and supports indicated that New Beginnings continue the rental exception until November 30, 2016. Apart from the sponsorship issue, Ms. Wilhelm testified that a rental exception is only applicable to SLS, and not ILS. Since claimant consented to ILS, she was ineligible for the rental exception. This position was consistent with Ms. Wilhelm's November 8, 2016, email to Ms. Gillespie. Despite the forgoing, on November 9, 2016, Ms. Wilhelm sent Ms. Gillespie an email in which she stated, "[i]n order to continue to

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[9] In support of this position, ACRC points to 8 U. S. Code section 1183 subdivision (a), that specifies the requirements for a sponsor's affidavit of support. In relevant part it states that ". . . a sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty line during the period in which the affidavit is enforceable." ACRC provided no evidence establishing this provision applies to claimant, no evidence of the sponsor's identity, that the sponsor signed an affidavit of support, or that it is currently enforceable. Accordingly, no findings are made in this decision regarding the applicability of the federal statutory scheme as to claimant.

funding [sic] rent and other living expenses for [claimant and her mother] as you have requested, ACRC must ensure that all other potential funding resources have been accessed and exhausted." She goes on to encourage a CAPI application. This email raised the possibility that claimant may have actually been eligible for a rental exception despite the transition to ILS. Then again on November 15, 2016, Ms. Wilhelm sent an email to Ms. Gillespie stating, among other things, "[o]nce [claimant and her mother] are connected to a vendor we can ask the vendor to pursue the rental exception for them. If the vendor does not already have a sub-code to allow them to process a rental exception, that will need to be put in place . . ." The email goes on to specify other limitations such as exhausting other resources. This again raised the possibility of a rental exception despite claimant's proposed transition to ILS.

18. On December 22, 2016, Ms. Gillespie sent Ms. Wilhelm and others at ACRC an email stating, "[a]t the November 9th IPP meeting, we discussed that [claimant] would still qualify for the rental exception, even though she is currently getting ILS. That is still true, correct?" In response, Ms. Wilhelm confirmed she was sending Lighthouse, claimant's proposed ILS provider, information on the rental exception letter. In response, Ms. Gillespie sent another email the same day saying, "I am extremely concerned that these clients will be homeless if the rent is not paid by January 1st." Ms. Wilhelm responded by saying that there is no way to fund rent apart from the rental exception and that, ". . . these clients have a Sponsor who brought theme here from China and who is ultimately responsible for meeting their basic needs. The family has been paying the expenses for [mother] since October and for [claimant] since December. It would be the family leaving them homeless should they choose not to pay the rent and utilities at this time."

19. On January 6, 2017, a note by Ms. Takeda-Miller in the Consumer I.D. notes states that per Alta's legal services manager in an email to Ms. Gillespie, "I am unaware of any way for ACRC to pay [claimant's] rent and utilities at this time. If [claimant] makes a request to the planning team to pay these amounts, ACRC will issue a notice of proposed action regarding the denial and may appeal the denial. Alternatively, [claimant] can request a fair hearing at any time."

20. Claimant did not receive any funding for rent and personal incidentals following New Beginnings' termination of services. Ms. Trinh and her sister filled this

vacuum by paying claimant's rent and living expenses. According to Ms. Trinh, this has been an extreme financial hardship for her family.

REQUESTS FOR NOTICE OF PROPOSED ACTION

21. The services and supports from claimant's November 9, 2016, IPP states, "[c]lients requested NOA[10] for rental exception." In an email sent by Ms. Wilhelm to Ms. Gillespie later that same day it concludes by stating that, "[i]f you are not willing to assist your clients in accessing these generic resources and natural supports at this time, ACRC will issue NOAs to your clients at this time to terminate funding of their rental and living expenses, as you have requested." Ms. Gillespie responded via email that day confirming her willingness to help her clients pursue CAPI benefits and stated, "[m]y clients will need gap funding while they pursue this resource. Please let me know if ACRC can continue to provide rent and utilities throughout this process. Otherwise, please still send a Notice of Action to my clients." No Notice of Proposed Action regarding the rental exception was sent by ACRC to claimant.

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[10] A NOA refers to a notice of proposed action or "adequate notice." A regional center is required to send "adequate notice" to a consumer and his or her authorized representative, if any, when it makes a decision "to reduce, terminate, or change services set forth in an individual program plan." (Welf. & Inst. Code, § 4701, subd. (a).) The term "adequate notice" is defined in section 4701 to mean a written notice informing the consumer of certain information specified in the statute, including, but not limited to, the action the regional center proposes to take, the reasons for the action, the effective date of the action, and the specific law, regulation or policy supporting the action. (Welf. & Inst. Code, § 4701, subds. (a)-(d).) Adequate notice of a regional center's proposed decision or action is an essential element of the right to a fair hearing because it informs the consumer of the reasons for the decision or action, thereby permitting the consumer to present evidence at a fair hearing that contests the decision or action.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" determining the parties' rights and obligations, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4710-4716.) The standard of proof in this case is preponderance of the evidence because no statute or regulation (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This case presents procedural questions regarding the appropriateness of documents and notices sent or not sent, and whether the sent documents were required to be translated into simple Chinese. Claimant is asserting the right to reimbursement for these alleged procedural violations; therefore, she bears the burden of proof in this administrative hearing as to the requested remedy. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

2. In enacting the Lanterman Act, 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. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act gives regional centers, such as ACRC, a critical role in coordinating and delivering services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPP's, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647 & 4648.)

4. Welfare and Institutions Code 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. The statute defines services and supports for persons with developmental disabilities as "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." Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process to systematically review the services and supports consumers receive to ensure that generic services and supports are used whenever appropriate.

ISSUES NO. 1 AND 2, NOTICE BEFORE TERMINATING SLS BY NEW BEGINNINGS AND WRITTEN NOTICE IN SIMPLE CHINESE

5. Welfare and Institutions Code section 4710 subdivision (a) states that, "[a]dequate notice shall be sent to the applicant or recipient and the authorized representative, if any, by certified mail at least 30 days prior to any of the following actions: (1) The agency makes a decision without the mutual consent of the service recipient or authorized representative to reduce, terminate, or change services set forth in an individual program plan." Welfare and Institutions Code section 4701 specifies what must be contained in the notice to be deemed adequate.

6. Claimant asserts that ACRC was required to provide notice pursuant to Welfare and Institutions Code section 4710 that included the requirements specified in section 4701 before New Beginnings terminated SLS. Additionally, she asserts that if notice was required it needed to be provided in simple Chinese. Alta asserts that the specific requirements set forth in 4701 do not apply in this instance because the obligation to give such notice under section 4710 was not triggered. In this case, New Beginnings sent a 60-day notice of termination of SLS to claimant, not ACRC. Kevin Ha met with claimant on October 28, 2016, at that time claimant signed the IPP addendum purportedly consenting to terminating SLS and transitioning to ILS. No statute or regulation mandates the components of a notice when a vendor terminates services. In this case, ACRC was not required to send notice that complied with Welfare and Institutions Code section 4701 because it reasonably believed the decision to terminate SLS and begin ILS was a decision made with, ". . . the mutual consent of the service recipient . . .to change services set forth in [claimant's] IPP." While the legal validity of that consent is addressed below, Claimant's signature obviated the need for notice pursuant to section 4710. As no notice was required, the question of providing such notice in simple Chinese is moot.

ISSUE NO. 3, IPP'S IN SIMPLE CHINESE

7. Welfare and Institutions Code section 4646 subdivision (h)(1), requires a regional center to communicate in the consumer's native language, or, when appropriate, the native language of his or her family, legal guardian, conservator, or authorized representative, during the planning process for the individual program plan, including during the program plan meeting, and including providing alternative communication services. It further specifies that a regional center shall provide alternative communication services, including providing a copy of the individual program plan in the native language of the consumer or his or her family, legal guardian, conservator, or authorized representative, or both. The native language of the consumer or his or her family, legal guardian, conservator, or authorized representative, or both, shall be documented in the individual program plan.

8. Claimant asserts that despite her cousin's willingness to interpret and summarize relevant portions of IPP team meetings, she was entitled to receive copies of her IPP's in simple Chinese. ACRC asserts that section 4646 requires only that the regional center *communicate* with claimant and her family and does not specify that documents needed to be translated into simple Chinese to satisfy this requirement. Additionally, ACRC asserts that it did begin providing translated documents immediately after Ms. Gillespie made the request in November 2016, and that it was not obligated to do so until the request was made. These arguments are unpersuasive.

9. Although the first section of 4646 subdivision (h) emphasizes communication, the next section specifies that a regional center *shall* provide alternative communication services, including providing copies of IPP documents in the consumer's or *her family's* native language. Claimant's IPPs specify that her native language is Cantonese and Mandarin. While she does not read simple Chinese, the evidence established that members of her family do read simple Chinese. The importance of their ability to assist claimant in her interactions with ACRC cannot be overstated. Section 4646 subdivision (h)(1)-(3) places no requirement on a claimant to affirmatively make a request for translated documents in order to trigger a regional center's obligation to provide translated documents. In any event, claimant has now affirmatively requested

copies of her IPP's in simple Chinese, which will be ordered.

ISSUE NO. 4, VALIDITY OF OCTOBER 28, 2016, IPP ADDENDUM

10. It is undisputed that claimant signed an addendum on October 28, 2016, authorizing termination of SLS and implementation of ILS. This action was particularly significant in this matter because, at least at some points, ACRC took the position that the rental exception through which claimant received money for rent and personal incidentals was unavailable under ILS. Respondent is an un-conserved adult and can legally sign documents. That fact alone, however, is insufficient to establish that her signature was valid.

11. Claimant is developmentally delayed, does not speak English, and does not read or write in English. The document she signed was provided only in English. Claimant's testimony at hearing established that she did not understand what she signed or the Addendum's significance. The burden then shifts to ACRC to rebut claimant's testimony. Toward that end, ACRC called Ms. Takeda-Miller who testified that New Beginnings' employee Mr. Ha translated the addendum to claimant in Mandarin or Cantonese. Ms. Takeda-Miller provided no specific details about the conversation between Mr. Ha and claimant. Any general statement Mr. Ha may have told her about the conversation, is insufficient to base a finding that claimant knowingly signed the document because such testimony is administrative hearsay. Government Code section 11513 provides that although hearsay evidence may be used to supplement or explain other evidence it is not sufficient to support a finding unless it would be admissible over objection in civil actions. No such exception existed here and no additional evidence supplementing ACRC's position was provided. The evidence established that claimant's signature on the IPP addendum was invalid.[11] Without a valid addendum, claimant's prior IPP from December 2015 containing a provision for the rental exception remains legally effective and renders Issue 5 moot.

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[11] No finding is made in this decision regarding whether or not claimant's proposed transition to ILS is substantively appropriate.

ISSUE 6, NOTICE OF PROPOSED ACTION REGARDING RENTAL EXCEPTION

12. As noted previously, Welfare and Institutions Code section 4701 sets forth the specific requirements for notice when a regional center denies a client's request for services. ACRC argues that it was not required to provide notice to claimant regarding the termination of the rental exception. Despite the discussion back and forth over the rental exception, on November 9, 2016, claimant, through her attorney, specifically requested both orally and in writing, that ACRC provide a Notice of Proposed Action if it chose to no longer fund the rental exception. ACRC never provided the requested notice. Alta took different and at times inconsistent positions regarding the rental exception, including that claimant was precluded due her shift to ILS, that the newly proposed vendor, Lighthouse ILS, would have to make a request, and that claimant was not entitled to the rental exception because her immigration sponsors were legally obligated to provide for her rent and incidental expenses. Despite the wrangling, the evidence established that at least by November 9, 2016, the rental exception was not authorized after November 30, 2016. Under Welfare and Institutions Code section 4710 subdivision (a), the request of November 9, 2016, triggered ACRC's requirement for a notice compliant with section 4701 be sent to claimant.

13. The failure to provide notice in this case resulted in actual harm to claimant and her family. Had timely notice been sent following the November 9, 2016, request, such notice would have triggered claimant's ability to file for hearing before the exception terminated at the end of November 2016. Instead, claimant, through her attorney, worked cooperatively with ACRC and it appears from the email exchanges she was hopeful the rental exception would be continued or authorized through the new vendor. The emails from ACRC, coupled with the Consumer I.D. Notes reveal that ACRC had no intent to continue the rental exception. Claimant is among our society's most vulnerable individuals. The actions taken in this case resulted in a tangible risk that claimant could have been evicted from her apartment at the coldest time of year. While no substantive finding is made in this decision whether or not claimant was entitled to the rental exception after New Beginnings terminated services, the obligation to provide a Notice of Proposed Action was triggered on November 9, 2016.

REMEDIES

14. The Lanterman Act does not specifically authorize retroactive reimbursement. The statutes detailing the IPP process suggest that reimbursement is generally not available, particularly where the development of the IPP is supposed to be a collaborative process between the parties. As discussed above, the process necessarily requires prior consideration and approval of any support or service provided to an individual client and thus suggests reimbursement is not typically available. In addition, California Code of Regulations, title 17, section 50612, specifically limits retroactive authorization of services.

15. Yet, the lack of specific statutory or regulatory authorization is not necessarily dispositive of the issue. If the Lanterman Act is to be applied as the legislature intended, reimbursement may be available in particular cases where equity requires it. For example, section 4706, subdivision (a), includes broad language empowering the hearing officer to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Act] . . . ." In addition, the primary goal identified in the Lanterman Act is to enable clients with developmental disabilities to approximate the pattern of everyday living enjoyed by non-disabled people of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Based on the general principles articulated in the *Association for Retarded Citizens* case, some fair hearing cases previously decided by the Office of Administrative Hearings (OAH) have ordered reimbursement when the principles of equity apply, or when, if not granted, the purposes of the Lanterman Act would be thwarted. (See, e.g., *Tara R. v. Harbor Regional Center* (2000) OAH No. 2000110355; *H.G. v. Harbor Regional Center* (2002) OAH No. 2002090357.)[12]

16. Claimant requested several remedies for the alleged violations. Specifically, claimant submitted a declaration from her cousin My Tham stating that she had her sister, Ms. Trinh, have spent $3,151.96 on claimant and her mother for rent, utilities, and

[12] OAH decisions are not binding but are instructive.

incidentals including groceries. Claimant seeks reimbursement for transportation for trips provided by her cousins. Additionally, claimant seeks an order specifying that either SLS be reauthorized or the SLS rental exception be applied prospectively to her ILS. Claimant further seeks and an order requiring a Mandarin interpreter during all verbal communications with ACRC staff, including for IPP meetings. Finally, claimant seeks an order requiring all written communication from ACRC be provided in Chinese including IPP's, emails, letters, flyers, invitations, notices and notices of proposed action. The requests will be discussed separately.

17. Regarding reimbursement, claimant seeks funds beyond the amount specified in her last agreed-upon and implemented IPP. There was insufficient evidence provided that such expenditures were necessary or reasonable. In considering the specific violations found, and balancing the equities, ACRC will be ordered to reimburse claimant in the amount specified in that IPP from the time New Beginnings ceased paying the rental exception from December 2016 through the date of this decision, for a total of $1,950.20 ($356.55 x 4 [rent] + $131 x 4 [personal incidentals]. Claimant and her family will determine how the reimbursement is to be allocated among them.

18. Claimant's request for a determination regarding SLS or ILS services with a rental exception will not be ordered in this decision. Such a determination is a substantive matter that will be addressed by claimant's planning team. This decision holds that claimant's October 28, 2016, signature on the IPP Addendum agreeing to transfer to ILS is invalid. Therefore, ACRC will schedule an IPP team meeting to be conducted within 20 days following the date of this decision to address that matter.

19. ACRC will provide copies of claimant's prior assessments, IPP's, and Addendums in simple Chinese that have not already been translated and provided to claimant. ACRC agreed at hearing and in its closing brief to provide all future assessments, IPP's, notices, and Addendums to claimant in simple Chinese. That commitment will be included in the IPP developed pursuant to the team meeting held within 20 days of the date of this decision. The planning team can address claimant's request to provide translated copies of other documents, such as emails and flyers; however, no specific order regarding that portion of the request in contained herein.

20. Claimant's most recent IPP Addendum provides for up to three hours per

month of translation services by an interpreter. This will also be incorporated into the IPP developed pursuant to the team meeting held within 20 days of the date of this decision.

ORDER

1. Within 20 days of the date of this decision, ACRC shall reimburse claimant $1,950.20 for the rental exception and personal incidentals for December 2016, and January, February, and March 2017, consistent with the amount specified in claimant's IPP dated December 30, 2015.

2. Within 20 days of the date of this decision, ACRC shall schedule and hold an IPP team meeting during which claimant's planning team will address whether or not claimant will receive SLS or ILS.

3. The IPP developed pursuant to the meeting held as specified in Order No. 2 above, shall include a requirement that ACRC translate future assessments, IPP's, notices, and Addendums to claimant in simple Chinese. The planning team will discuss whether additional documents, such as emails and flyers will be translated into simple Chinese. The result of those discussions will be incorporated into the IPP.

4. The IPP developed pursuant to the meeting held as specified in Order No. 2 above, will include the requirement for up to three hours per month for translation services as agreed in claimant's January 23, 2017, Addendum.

5. Within 30 days of the date of this decision, ACRC will provide copies of claimant's prior assessments, IPP's, addendums and notices to claimant in simple Chinese that have not previously been provided.

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6. Claimant's other requests for relief have been considered, and are denied.

Dated: March 17, 2017

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JOY REDMON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)