

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH Case No. 2018051090

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 12 and 26, 2018, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was present on the first hearing day, was represented by his mother.¹

Karmell Walker, Fair Hearings and Complaints Coordinator, represented the South Central Los Angeles Regional Center (service agency).

ISSUES

Shall claimant continue to receive funding for community integration with job development and independent living services? Shall claimant also receive behavior modification services? (See Legal Conclusion 8.)

¹ Names are omitted to protect the privacy of claimant and his family.

EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits 1-8; claimant's exhibits A-J; and the testimony of Service Coordinator Churchill Onuselogu; Program Manager Joseph Velasquez; claimant's mother; and Willie Newman.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. The service agency determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)²

2. Claimant is a 32-year-old man who is a service agency consumer based on his qualifying diagnosis of moderate intellectual disability.

3. On December 13, 2004, letters of limited conservatorship of claimant's person were issued to claimant's mother pursuant to Probate Code section 2351.5, granting claimant's mother the power to act as claimant's authorized representative in this matter.

4. As described in more detail below, claimant's mother has expressed intense disappointment to the service agency several times in the last few years over its coordination of services for her son, as well as service agency vendors' ability to deliver the services.

5. A. The frustration of claimant's mother over this situation resulted in her submitting a fair hearing request (or FHR) to the service agency on May 17, 2018, before

² All further unspecified statutory references are to the Welfare and Institutions Code.

the service agency had issued a notice of proposed action or any other written denial of a service request. (Ex. 1.)

B. In the section of the FHR specifying the reasons for filing it, claimant's mother complained that (i) service coordinators assigned to her son the past two years have not provided appropriate service; (ii) individual program plan (IPP) documents over the past two years have contained false information; and (iii) vendors assigned to provide claimant with services, including independent living and community integration, have not provided appropriate services. (Ex. 1.)

C. In the section of the FHR specifying what is needed to resolve the complaint, claimant's mother requested (i) placing her son in programs that do not have clients with severe behaviors, so he will not regress; (ii) an appropriate community integration program, including a job and development of his work skills; and (iii) an appropriate day program and/or independent living services program.

6. In response to the FHR, the service agency issued a Notice of Proposed Action (or Notice). (Ex. 2.) The Notice did not propose to deny or reduce any service currently being provided to claimant. Instead, the Notice summarized claimant's recent history of receiving community integration with job development, independent living services (ILS), and recommended he also receive behavior modification services connected to work.

7. The hearing was scheduled for July 12, 2018. Based on the Office of Administrative Hearings' congested hearing calendar, good cause existed to set the hearing later than the 50-day time period provided for by section 4712, subdivision (a).

8. The hearing began on July 12, 2018. Both parties examined witnesses and presented documents to be considered. However, the hearing was terminated approximately 10-30 minutes before it was to be concluded, because claimant's mother felt ill and stated she could not continue.

9. A second hearing day was scheduled as promptly as possible, given the parties' schedules, and was completed on July 26, 2018.

CLAIMANT'S BACKGROUND INFORMATION

10. Claimant has been a service agency consumer for the past 18 years. His most recent IPP document notes his primary interests are in becoming more independent and going out into the community. (Ex. H.) Prior IPP documents also emphasized his interest in working and developing his job skills. (Exs. F-G.)

11. Claimant lives at home with his mother. He has an older sister, who also receives regional center services, but he does not have much contact with her. In addition to his mother, claimant gets much support from his aunt, as well as significant care from a longtime friend of the family, Willie Newman.

SERVICE AGENCY COORDINATION OF SERVICES

12. In 2017 claimant had at least three different service coordinators. Because claimant's mother expressed dissatisfaction with their performances, they were replaced without question by the service agency.³

13. Claimant's current service coordinator is Churchill Onuselogu. He has served in this role since January 2018. Mr. Onuselogu has over 28 years of experience in this field and currently acts as a team leader of other service coordinators. Program Manager Joseph Velasquez assigned Mr. Onuselogu to be claimant's service coordinator based on this depth of experience. Claimant's mother is satisfied with Mr. Onuselogu's performance

³ Pursuant to section 4647, subdivision (b), no person can serve as a service coordinator over a consumer's objection. It is therefore not necessary to decide the validity of the complaints raised by claimant's mother concerning these service coordinators.

so far, as she testified during the hearing that "Mr. Churchill has been good."

14. Claimant's mother believes many of her son's prior IPP documents contain false or outdated information. For example, she points out that claimant's last triennial IPP executed in 2016 lists a pharmacy and doctor unknown to her. She also testified some of claimant's psychological reports are not correct, but she did not provide specifics.

15. Claimant's mother also testified her son's IPP documents contain false information to the extent they discuss claimant's need for behavior modification services. Those discussions relate to the opinion of service agency staff that claimant's performance in prior programs had been impeded by his behavior, which claimant's mother disputes. However, the statement of an opinion by either a service agency or a consumer's family in an IPP document concerning the need for a service should not be considered a false statement.

16. An example of the above dynamics is seen in the report from Dr. Ali Redjaian, a licensed psychologist, which was admitted as exhibit D. Claimant's mother submitted this document to support her contention that claimant was previously the victim of a sexual attack by another consumer at a community day program. The report does not establish that occurred. However, the report does discuss claimant's recent inappropriate behaviors at a work site and recommends that claimant receive eight hours of behavior interventions aimed at helping him work more productively. While this report does not establish that claimant requires behavior modification, it does support the service agency's opinion that a discussion concerning the need for such a service is warranted, which in turn suggests the inclusion of such an opinion in an IPP document was appropriate.

COMMUNITY INTEGRATION SERVICES

17. In response to claimant's stated desire to go into the community, be employed, and receive supportive services to help him develop his job skills, for the past several years the service agency has funded a number of community integration services

that included claimant working at a job site. Claimant enjoyed the jobs he held in those programs.

18. There have been problems recently. Claimant attended the Pathways Independent Program before 2018. Claimant's mother testified the program was "great," but that claimant was removed from the program at the request of program staff when they decided they would not serve claimant with a one-to-one (1:1) support aide. Claimant next attended the Work & Service Coalition from January through April 2018. Claimant's mother withdrew claimant from the program in April 2018 because she believed claimant had been sexually attacked by another consumer, as discussed above. While it was not established by a preponderance of the evidence that such an attack occurred, it is clear claimant's mother earnestly believes such an attack occurred and that she sincerely decided her son could not remain in the program.

19. Recently a number of programs have been referred to claimant's mother for consideration. Service agency staff sent claimant's mother referral packages containing information about the prospective programs. Many were rejected by claimant's mother for reasons that were not proven to be arbitrary or capricious; some programs decided not to serve claimant. Examples of such referrals include Arc Mid-Cities, Asian Rehabilitation Service, Southwest Industries, ARC Long Beach, and A & C Life Skills Training Services.

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20. Just a few weeks ago, claimant's mother discovered a day program that included work at a local clothing store. Claimant has worked there for a few weeks and testified he likes working at the clothing store. However, claimant's mother testified she is not happy with the program so far, because claimant does too much paperwork, which consequently overlaps with activities he is doing in his ILS program. Claimant's mother has complained to the service agency about the current day program and an IPP meeting has been scheduled to discuss it.

21. During the hearing, claimant's mother testified that she could not name a day program she likes.

INDEPENDENT LIVING SERVICES

22. For the past several years, the service agency also has funded claimant to receive ILS. As with the community integration program, claimant's mother liked some of the programs, but not others. Over time, claimant's mother has expressed the following preferences for an ILS program: using male staffers; the same staffers are expected to report each time (which has presented a problem when the assigned staffer has taken a vacation or called in sick); and staffers are expected to be punctual.

23. In May 2018, the service agency agreed to fund claimant to receive 30 hours per month of ILS from Q Forward. The program got off to a bad start with claimant's mother, because the program director did not bring with him to a meeting the staffer who would work with claimant. Program Manager Velasquez testified that happened because the program director was dealing with a crisis involving another Q Forward consumer. In any event, claimant's mother lost faith in the Q Forward program and withdrew claimant from it.

24. On June 8, 2018, claimant's mother met with the owner of ILS provider Congregate Connect, and later approved her son to attend the program. The service agency agreed to fund claimant to attend that program for 30 hours per month. Claimant has been in the program since the beginning of July 2018. So far, Mr. Velasquez and Mr. Onuselogu believe the program has served claimant well without incident. Claimant's mother also testified she is happy with the program, so far.

BEHAVIOR MODIFICATION SERVICES

25. The service agency has received reports from some of claimant's prior service providers concerning claimant spending too much time in the bathroom and

soiling himself. As a result, the service agency included in the Notice the recommendation that claimant should be placed in a behavior modification program, with the added objective of preparing claimant to return to an employment program. Claimant's mother opposes such a placement because she believes her son does not have a behavior problem and that any issues at work are attributable to program staffers or other consumers. During the hearing, the service agency offered no evidence supporting this proposal, other than to mention that many day programs include a behavior component that may be helpful in integrating claimant.

OTHER RELEVANT EVIDENCE

26. Claimant testified during the first day of hearing. The ALJ is impressed by the content of claimant's testimony and his demeanor while providing it. It is clear that claimant loves his mother and that, in turn, his excellent progress is in large part due to her persistence. It is also clear from his testimony that claimant loves to work. He does not want to sit at home all day. He wants to work, be productive, and get paid for his efforts. Based on past events, he has learned to immediately report any problems to a supervisor at work. He likes working with Mr. Onuselogu and Mr. Velasquez. He agrees sometimes he spends too much time in the bathroom, but insists he is not hiding from work when doing so.

27. Claimant's mother testified that in the past her son has been placed in programs with lower functioning consumers. She believes that has caused her son to mimic the poor behaviors of the other consumers and regress in his own behaviors. Ms. Newman, claimant's longtime caregiver, also testified that claimant does not have any behavior problems, other than a rare instance of spending too much time in the bathroom.

28. Claimant's mother argues that in the past many of her son's problems were attributable to his service coordinators and their poor coordination of services. However, she concedes that Mr. Onuselogu and Mr. Vasquez have helped to staunch those

problems, and she currently is satisfied with the service agency's coordination of services.

29. Claimant's mother now blames service agency vendors for the current problems. She complains about vendor staff not being punctual, prepared, responsive, or willing to provide services contracted for by the service agency. She does not understand why some vendors reject claimant from their programs or put him on a waiting list. She is upset that some vendors are late to meetings or fail to provide acceptable information to her when she visits their programs for an evaluation, which she says is a waste of her time. She believes the vendors should be more accountable, and she would like the service agency to be more proactive with them when they fail to serve consumers like her son.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. As discussed in more detail below, an administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. A. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) On the other hand, when a regional center seeks to terminate, reduce or modify ongoing services, it has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

B. In this case, claimant is seeking certain orders, and therefore he has the burden of proving by a preponderance of the evidence he is entitled to them. However, to

the extent the service agency proposes to add behavior modification services to claimant's IPP, it bears the burden of establishing that is warranted.

ISSUES SUBJECT TO RESOLUTION UNDER THE LANTERMAN ACT

4. Pursuant to section 4710.5, subdivision (a), a consumer is entitled to a fair hearing when dissatisfied with a decision or action of a regional center, provided that a request for the fair hearing is submitted within 30 days "after notification of the decision or action. . . ."

5. Section 4710 delineates two types of notifications that a regional center is required to provide a consumer regarding a decision or action from which a request for a fair hearing can result. In subdivision (a) of section 4710, a regional center is required to provide a notification when it proposes to "reduce, terminate, or change services set forth in an individual program plan [IPP]" or when a consumer is determined to be no longer eligible for agency services. In subdivision (b) of section 4710, a regional center is required to provide a notification when it makes a decision "to deny the initiation of a service or support requested for inclusion in the [IPP]."

6. It is clear from the above statutes that jurisdiction does not exist to decide a request for services that is made for the first time in a fair hearing request, or that has not been previously requested for inclusion in an IPP and been the subject of a notification required by section 4710.5.

7. Pursuant to section 4646.5, subdivision (b), a consumer has the right to an IPP meeting within 30 days of a request. Pursuant to section 4646, subdivision (f), if an initial IPP meeting does not result in a final agreement, a subsequent meeting shall be convened within 15 days, or later if the parties agree. A consumer can request changes to existing services or new services during such a meeting. If a consumer's request is not granted, the regional center shall issue a notice required by section 4710, i.e., denying the request made. At such time, the consumer may file a fair hearing request concerning the

matter depicted in the regional center's notice under section 4710. These provisions indicate that a consumer has the right to rely on prompt action and decisions regarding funding requests made through the IPP process.

8. In this case, claimant's mother filed the FHR before receiving a notice from the service agency. The service agency did not object to this unusual order of events and the hearing went forward. However, proceeding this way was problematic, because it was not clear whether the parties equally understood what was in dispute in this case. Because a notice is typically the jurisdictional document that specifies the issues subject to an appeal and fair hearing request, the Issues section above tracks the Notice as opposed to the FHR. In the future, claimant's mother is requested to first make a demand of the service agency and await issuance of the type of notice required by section 4710, which notice is supposed to be prompt.

9. What is important to note from the above is that jurisdiction under the Lanterman Act is based on a request for services made to a regional center that is denied, or when a regional center proposes to eliminate, reduce or modify services. Here, there is no evidence of a request for service that was denied or a proposal by the service agency to reduce or discontinue claimant's services. Although claimant's mother has been dissatisfied with past community integration and ILS programs, the service agency has always agreed to fund them. The service agency has not terminated any of those services or tried to reduce or modify them. It was claimant's mother who terminated the programs in question. The lone exception is the service agency's proposal in the Notice to add a behavior modification program to claimant's existing constellation of services, which is an attempt to modify claimant's existing services. This issue is discussed in more detail below.

10. A. The bulk of the FHR contains complaints about the service agency's prior coordination of services and/or quality of services rendered by the service agency's vendors.

B. Section 4731 allows a complaint by a consumer “who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center . . . or service provider. . . .” (§ 4731, subd. (a).) Such a complaint is first submitted to the involved regional center’s director. (*Id.*, subd. (b).) If the consumer is not satisfied with the regional center’s proposed resolution, the complaint can be elevated to the Department of Developmental Services. (*Id.*, subd. (c).) This complaint mechanism shall not be used “to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an [IPP], for which there is an appeal procedure established in this division [referring to sections 4700-4716].” (*Id.*, subd. (e).) The latter statutory provision makes clear that general complaints about the performance of a regional center or its vendors should be handled under the procedure set forth in section 4731, not through a fair hearing under sections 4700 through 4716.

C. In this case, the bulk of the complaints contained in the FHR concerning the service agency’s past coordination of services or performance by its vendors do not concern the nature, scope or amount of services and supports included in claimant’s IPP and therefore are not subject to resolution in this case. Claimant’s mother can pursue a complaint under section 4731 concerning those issues.

11. Based on the above, the issues and complaints described in the FHR that are also reflected in the Notice simply can be resolved by an order affirming that (i) claimant should not be placed in programs with clients having such severe behaviors as to cause claimant’s behavior to regress; (ii) the service agency shall continue to provide reasonable funding for claimant to attend an appropriate community integration program, including development of his work skills; and (iii) the service agency shall continue to provide reasonable funding for claimant to attend an appropriate day program and/or ILS program.

INCLUSION OF A BEHAVIOR MODIFICATION PROGRAM

12. Behavior training and behavior modification programs are specifically delineated as services and supports that can be included in a consumer's IPP. (§ 4512, subd. (b).) In this case, some evidence was presented concerning the propriety of placing claimant in such a program. However, claimant's mother is opposed to doing so at this time and she presented evidence indicating such a placement is not warranted. This is contrasted to claimant attending a community integration, day, or ILS program that may feature a component involving behavior modification, which neither party seems to oppose. In any event, since the service agency failed to carry its burden of proof on this issue, the service agency shall not place claimant in a behavior modification program at this time.

ORDER

Claimant's appeal is denied, in part, and granted, in part, as follows.

The service agency shall not place claimant in a program with clients having such severe behaviors as to cause claimant's behavior to regress; the service agency shall continue to provide reasonable funding for claimant to attend an appropriate community integration program, including development of his work skills; and the service agency shall continue to provide reasonable funding for claimant to attend an appropriate day program and/or ILS program.

The service agency shall not place claimant in a behavior modification program at this time.

DATED:

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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