

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

Claimant

v.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency

OAH No. 2019081030

DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 27, 2019, in Sacramento, California.

Claimant's mother,¹ represented claimant. Racquel Roacho, Certified Interpreter, provided interpreter services in Spanish.

Matthew F. Bahr, Attorney at Law, represented Valley Mountain Regional Center (VMRC or service agency).

¹ The names and initials of claimant and claimant's mother were not used in this decision to protect their privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on October 14, 2019.

ISSUE

The issue submitted for decision is whether VMRC must provide funding for an attorney to represent claimant in the In-Home Support Services (IHSS) assessment, grievance, and appeal procedures.

Jurisdictional Matters

1. VMRC referred claimant to IHSS to request in-home support services. IHSS assessed claimant and approved 238.77 total hours per month, with 59.5 of the total hours designated for protective supervision. However, issues arose as to whether the hours were funded, and whether claimant's grandmother, who was approved by IHSS to be a provider, was qualified to provide services, whether claimant's parents were qualified or needed to shoulder some of the provider responsibilities when they were not at work, and whether the hours were sufficient for claimant's care. Claimant requested that VMRC provide funding for an attorney to assist claimant to "fight" IHSS. VMRC informed claimant that it could not provide funding for an attorney. Nonetheless, VMRC agreed to complete a VMRC Purchase of Services (POS) Exception and submit it to the POS committee for approval.

2. On August 6, 2019, VMRC Service Coordinator Tania Candelaria completed a "POS Exception Summary" setting forth the "Exceptional Service Requested" by claimant, the "Exceptional Circumstances," and the "Generic Resources Explored." With respect to claimant's request for attorney funding, Ms. Candelaria noted under "Exceptional Service Requested" the following:

Family is requesting that VMRC fund for an attorney to represent the family against IHSS' decision that neither parent is able to be the provider, nor anyone else.

Under the "Specify Exception Circumstances" heading, Ms. Candelaria wrote, with respect to claimant's request for attorney funding:

Family is not able to afford an attorney to help them appeal IHSS' determination of services.

Under "Generic Resources Explored," Ms. Candelaria wrote:

Family has been referred to El Concilio for legal services.

At the bottom of the POS Exception Summary, VMRC marked the box "Denied."

3. On August 13, 2019, VMRC issued a Notice of Proposed Action (NOPA) notifying claimant that it was denying claimant's request for "funding for an attorney to participate in the IHSS assessment, grievance, and appeal procedure." VMRC cited the reasons for the NOPA as follows: (1) IHSS did not deny services and claimant is currently eligible for the maximum amount of IHSS hours of 237 hours per month; (2) if claimant needs a service beyond the assessment service amount, claimant can obtain legal support through Disability Rights California, a legal advocacy agency contracted with the Department of Developmental Services; and (3) VMRC's Service Coordinator can participate in the IHSS assessment process at the parents' request. VMRC identified the three layers of consumer advocacy supports under the Lanterman Act²

² The Lanterman Act is the California law that gives people with developmental disabilities the right to the services and supports they need to live a more independent

as: (1) the consumer's parents; (2) the Service Coordinator; and (3) Disability Rights of California (DRC).

4. On August 27, 2019, claimant filed a Fair Hearing Request. The reasons for the request were because claimant's parents lacked the "sufficient resources for IHSS procedures," VMRC's Service Coordinator is not a lawyer and "is limited in this capacity," and Disability Rights California notified them that it could not assist in this case. Claimant's parents believe they have exercised their "due diligence" in utilizing the three layers of supports as provided under the Lanterman Act. The matter was set for an evidentiary hearing before an administrative law judge pursuant to Government Code section 11500 et seq.

Claimant's Evidence

5. Claimant's mother testified that she has exhausted all of her generic resources for lawyer services. Claimant's family cannot afford to hire an attorney to advocate on claimant's behalf with IHSS, thus exhausting the first layer of consumer advocacy supports. She obtained assistance from DRC last year for claimant's IHSS request for in-home support hours. Two individuals from DRC assisted claimant's mother to complete the forms, and one of them wrote a letter to her informing her "of the next step." Claimant's mother asked for DRC's assistance again this year, related to the same case, involving IHSS's funding and provider eligibility. DRC informed claimant's mother that they would not help claimant with IHSS, that DRC would send the IHSS information to her again, and that DRC was closing the case. Claimant's

and normal life. The act is part of Welfare and Institutions Code section 4500 et seq. (<https://www.disabilityrightsca.org/publications/rula-rights-under-the-lanterman-act-complete-manual>.)

mother believes that DRC is a generic resource that she has “gone through completely.” Thus, claimant exhausted another layer of advocacy support: the DRC.

6. Claimant’s VMRC Individual Program Plan (IPP), dated July 7, 2019, documented that a planning team meeting took place on April 15, 2019. The IPP stated that claimant’s mother requested assistance from VMRC in accessing generic resources. VMRC encouraged the family to “access [Family Resource Center] and [Office of Clients’ Rights Advocacy, DRC] for further advocacy beyond VMRC.” VMRC noted that it is “the payor of last resort,” and that “all generic resources must be exhausted.”

7. Claimant’s mother believes IHSS is ignoring her because “[she is] a mom.” She is clearly frustrated that IHSS has been nonresponsive to her inquiries. She admitted that VMRC’s Julie De Diego, Program Manager, Children’s Services, assisted her with phone calls to IHSS, but she felt frustrated because Ms. De Diego was not a lawyer and “could not help anymore.” Claimant’s mother further asserted that Ms. Candelaria “did not have time to read all of the [laws] of IHSS,” and this was further proof that she exhausted her advocacy supports through VMRC’s Service Coordinator.

8. Claimant’s mother could not provide any legal authority or case law to support her assertion that VMRC must fund legal services for claimant in IHSS’s assessment, grievance, and appeal procedures. She fervently believes that claimant needs more protective supervision, and if IHSS cannot fund it, VMRC must do so. She further believes that VMRC must fund a lawyer because claimant needs the help of a “professional,” and if claimant’s request for lawyer funding is granted, “IHSS will stop playing with me and [claimant].”

VMRC Evidence

9. VMRC did not provide any witness testimony. However, the jurisdictional documents were admitted, and VMRC requested that this court take official notice, pursuant to Government Code section 11515, of Welfare and Institutions Code sections 4512 and 4659.1. Section 4512 sets forth the services and supports that may be provided to persons with developmental disabilities, and section 4659.1 authorizes the regional centers to pay any health insurance copayments, coinsurance, or deductibles associated with the service or support, under certain conditions.

Discussion

10. Claimant presented no evidence that IHSS has denied services that claimant believes warrant legal services to be paid for by VMRC. The evidence suggests that IHSS is still in the assessment stage and is evaluating the eligibility of claimant's providers, including claimant's parents. VMRC's Service Coordinator is available for advocacy assistance with IHSS. However, claimant's mother has rejected VMRC's advocacy assistance, insisting on the services of an attorney, paid for by VMRC, because an attorney is a "professional" that IHSS will take seriously. Claimant has not fully utilized this layer of advocacy support.

11. Claimant claimed that DRC can no longer provide legal advocacy on behalf of claimant before IHSS. However, DRC closed its case in claimant's matter because it had already assisted claimant with IHSS forms requesting service, and provided claimant with additional information one year ago. It is not readily clear that claimant has requested DRC's advocacy assistance for any new issues involving IHSS, as IHSS has not denied services. Moreover, claimant did not provide any evidence that

claimant's mother sought the advocacy assistance from the Family Resource Center or El Concilio. Claimant has not fully utilized this layer of advocacy support.

12. Claimant's request for funding for an attorney was not supported by the evidence. In addition, claimant presented no legal authority or case law requiring VMRC to fund such a service or support. While the services of an attorney to advocate on claimant's behalf may be helpful, claimant is encouraged to work with VMRC's Service Coordinator for further advocacy support.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.)

2. Welfare and Institutions Code section 4512, subdivision (b), identifies services and supports provided to persons with developmental disabilities. Services and supports are made through the IPP process, and may include "advocacy assistance, including self-advocacy training, facilitation and peer advocates . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan."

3. Welfare and Institutions Code section 4640.6, subdivision (g), provides the areas that a regional center must have, or contract for:

(1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in

the criminal justice system as a victim, defendant, inmate, or parolee.

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

(3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.

(4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.

(5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the state council, in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

4. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because claimant is requesting services and supports not authorized by VMRC, claimant bears the burden of proof.

5. As set forth in Factual Findings 5 through 12, claimant has not met the burden of proof in this case. The Lanterman Act does not include attorney funding as a service and support pursuant to Welfare and Institutions Code section 4512, subdivision (b), nor is attorney funding a contracted service pursuant to Welfare and Institutions Code section 4640.6, subdivision (g).

ORDER

Claimant's request for funding for an attorney to represent claimant in the In-Home Support Services (IHSS) assessment, grievance, and appeal procedures is DENIED.

DATE: October 25, 2019

DANETTE C. BROWN
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.