

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

**In the Matter of:**

**CLAIMANT**

**v.**

**FAR NORTHERN REGIONAL CENTER, Service Agency**

**OAH No. 2021050575**

**DECISION**

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on July 1, 2021, from Sacramento, California.

P.J. Van Ert, Attorney at Law, represented Far Northern Regional Center (FNRC or regional center).

Claimant's mother appeared on claimant's behalf.

Evidence was received, the record closed, and the matter submitted for decision on July 1, 2021.

## **ISSUE**

Whether FNRC is required to fund legal services for claimant's mother's pursuit of conservatorship.

## **FACTUAL FINDINGS**

1. Claimant is an 18-year-old woman who is eligible for regional center services based on a Cerebral Palsy diagnosis. Her mother adopted claimant at 14 months. She is nonverbal except for the word "hi." Her mother understands claimant's needs based on her facial expressions and other gestures. Claimant cannot walk or sit up independently, she cannot eat or swallow, she is feeding-tube dependent, and she has multiple health concerns.

2. Claimant lives with her parents and three siblings, all of whom are eligible for regional center services. Claimant receives some services and supports from FNRC pursuant to the Lanterman Developmental Disabilities Services Act. (Welfare and Institutions Code Section 4500 et seq.) Generally, however, claimant's mother meets her children's needs and does not request regional center support on a regular basis.

### **Claimant's Request**

3. Claimant's mother desires assistance with the cost of legal services to obtain a conservatorship for claimant. She is primarily concerned that claimant is unable to give consent for medical treatment and fears that she will have a medical emergency at any time. Claimant recently had a "25-minute grand mal seizure," and

her mother fears a repeat occurrence, though she takes steps to prevent such a situation.

4. Because claimant reached the age of majority, claimant's mother is not able to consent on claimant's behalf. While claimant's pediatrician has graciously continued to see claimant, claimant's mother knows she will need to find claimant a new physician and consent will be needed to begin treatment. Were claimant conserved, her mother could make medical and financial decisions on her behalf.

5. Claimant's mother dedicates her time to her four children, all of whom are high needs. She does not have the time or skills to navigate how to conserve claimant.

## **FNRC's Denial**

6. On April 28, 2021, FNRC issued a Notice of Proposed Action (NOPA) stating: "The request for Far Northern Regional Center to fund legal services associated with the acquisition of a conservatorship is denied." The NOPA explained claimant's mother has not identified "an immediate and identifiable medical condition requiring consents, nor is she having problems accessing medical care." Claimant's mother filed an undated appeal. No issues were raised regarding timeliness.

7. Larry Withers is FNRC's Associate Director of Client Services. He has held this position for five years and has worked for FNRC for 28 years. Mr. Withers' duties include developing rules for the regional center, including the Purchase of Services (POS) Guidelines. The September 2017 POS Guidelines assist in determining when the regional center will fund conservatorship services.

8. The POS Guidelines allow for regional center funding of legal services for conservatorships in limited circumstances. Mr. Withers explained that FNRC is an “advocacy group,” and its mission is to promote independent living and access to society for people with developmental disabilities. Conservatorship is a “removal of civil rights,” which is contrary to FNRC’s mission. FNRC’s policy is to only fund the legal expenses associated with conservatorship when it “is absolutely necessary.”

9. The POS Guidelines state the four requirements that must be met for the regional center to fund conservatorship. Those four mandatory criteria are:

1. The needed legal services are not available through local mental health agencies, the public guardian or other public agencies;
2. The need for the services must be directly related to the qualifying developmental disability;
3. There is an immediate, identifiable medical or protective need for conservatorship which cannot be met through less restrictive means (i.e. Supported Decision Making, Power of Attorney, etc.); and
4. FNRC will not support including the powers of “prevention of sexual activity” or the “prevention of marriage,” in a limited conservatorship except in extreme or unusual circumstances.

10. Mr. Withers explained FNRC denied claimant’s request to fund conservatorship because there was no identified emergent need. He stated a medical

need is generally present when a consumer has a chronic and ongoing medical condition and the treating physician states that the consumer lacks the capacity to consent to treatment. For example, if a consumer has an ongoing medical issue that requires many medical appointments, services, and treatments, and medical consent is needed repeatedly, there may be an emergent need. For an isolated need for consent, the Lanterman Act allows FNRC's Executive Director to provide the consent.

11. In addition, a protective need arises when there is an identified threat to a consumer that puts her at risk of being the victim of a crime or otherwise being exploited. For example, a family member may be abusive, or become involved in a consumer's life following her 18th birthday "with designs on her social security disability income." FNRC cannot fund conservatorship as a preventative measure; there must be a present need. Mr. Withers noted multiple times that claimant is not at risk and is "in an excellent environment."

12. Mr. Withers commented that claimant's mother has expressed valid reasons to conserve claimant and explained claimant's mother may pursue conservatorship. FNRC will not fund conservatorship, pursuant to the POS Guidelines. Claimant's case manager, however, will assist claimant's mother in navigating the process and offering any resources of which she is aware. The regional center will perform the psychological evaluation for the conservatorship process free of charge.

## **PRINCIPLES OF LAW**

13. Claimant bears the burden to prove she meets the requirements to receive legal funding for conservatorship proceedings. She must do so by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.)

14. The Lanterman Act sets forth the regional center's responsibility for providing services and supports for eligible persons with development disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Ins. Code, § 4501.) An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (*Ibid.*) Additionally, "[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served." (*Ibid.*)

## **ANALYSIS**

15. The evidence presented at hearing supported claimant's mother's concern, care, and advocacy for her daughter. She is wholly responsible for her safety and care. Her mother's desire for conservatorship is not to limit claimant's participation in the community or necessary services, but to facilitate the same. With conservatorship, they would not face barriers to gain services claimant must "consent" to receive. She is unable to communicate except through facial expressions and cannot consent regarding medical and financial issues.

16. The Lanterman Act's stated goal is to provide services to consumers to foster independence. To that end, FNRC has developed guidelines for purchasing services that foster independence. Conservatorship is a limitation on independence because it allows another to make decisions on one's behalf. FNRC's POS Guidelines require "an immediate, identifiable medical or protective need for conservatorship

which cannot be met through less restrictive means.” Claimant’s mother would like to gain conservatorship as a preventative measure, not to address an immediate medical or protective need.

17. As Mr. Withers explained, claimant’s mother may contact her case manager for assistance in pursuing conservatorship, but FNRC cannot provide the funding. FNRC will provide the psychological examination. The law also allows the FNRC Executive Director to consent on a consumer’s behalf in some circumstances, such as to consent to a new medical provider.

## **LEGAL CONCLUSION**

18. Based on the Factual Findings as a whole, claimant did not establish that there is an immediate, identifiable medical or protective need for conservatorship as required for FNRC to fund legal services.

## **ORDER**

Claimant’s appeal from Far Northern Regional Center’s decision is denied. Far Northern Regional Center is not required to provide legal funding for conservatorship proceedings at this time.

DATE: July 7, 2021

HEATHER M. ROWAN  
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. (Welf. & Inst. Code, § 4712.5, subd. (a).)