

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

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2022020112

DECISION

Laurie Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 28, 2022. The matter was consolidated for hearing with OAH Case Number 2022020325, but a separate decision will be issued in each matter.

Aaron Abramowitz, Attorney at Law, represented Frank D. Lanterman Regional Center (RC or Service Agency).

Claimant's mother represented claimant, who did not appear at the hearing. (Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and his family.)

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on March 28, 2022.

ISSUE

The parties agreed that the issue for determination is: Must the Service Agency fund retroactive respite services and retroactive State of Emergency (SOE) respite services for the period from July 11 to October 1, 2020?

EVIDENCE

Documentary: Exhibits 1 through 11 and 14 through 16; A through C.

Testimonial: Guadalupe Munoz, RC Manager, William Crosson, RC Manager, and claimant's mother (Mother) and elder sister (Sister).

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 21-year-old male who qualifies for RC services with a diagnosis of Autism Spectrum Disorder. Claimant also has been diagnosed with major clinical depression, has become non-verbal, and requires constant supervision and assistance. He lives at home with his parents and two sisters. Claimant's younger sister is also a RC client.

2. The RC found claimant eligible for RC services on July 29, 2020. Although claimant had sought to become a RC client as early as January 2009, there is a

substantial history of eligibility assessments for claimant which ended either in decisions of non-eligibility or his intake case being inactivated after claimant failed to appear for appointments or eligibility assessments. Claimant did not file any appeals on those occasions when the RC deemed him ineligible for services.

3. In February 2020, Mother telephoned the RC to have claimant's case reactivated. He was scheduled for an in-person psychological appointment at the RC on April 8, 2020. However, the RC had to cancel it due to the closure of the building at the start of the COVID-19 pandemic. Claimant's psychological appointment was rescheduled and conducted remotely on May 11, 2020.

4. Claimant became eligible for RC services as of July 29, 2020. Due to the RC's closure during the early days of the pandemic, there was a 22-day delay in claimant's eligibility determination.

5. Claimant's initial individual program plan (IPP), dated August 25, 2020, contains Service Agency's and claimant's family's agreements and sets forth specific objectives and goals, and the services and supports needed to achieve those objectives and goals. (Ex. 10.)

Authorized Funding for Respite and SOE Services

6. In March 2021, the Regional Center authorized funding for 30 hours per month of in-home respite services for claimant and an additional 50 hours of SOE respite services due to COVID-19. SOE funds were approved to alleviate the demands posed by clients who were not able to access their regular programs and services during the pandemic.

7. RC authorized in-home respite services for claimant through the agency Needed Respite from March 12, 2021, through February 28, 2022. Claimant's SOE respite services were authorized from March 12, 2021, through August 31, 2021. Mother informed claimant's service coordinator, Tamedrea Mason, that Mother had identified a caregiver who had agreed to be claimant's respite worker and to complete the requirements to become employed by Needed Respite.

Initial Request for Retroactive Funding

8. On March 15, 2021, Mother emailed Ms. Mason to request retroactive funding for claimant's respite services starting in 2009 and from August 2020. The RC denied claimant's request for retroactive reimbursement for respite services from 2009 through July 2020 because claimant was not eligible for RC services during that time period. Mother was advised that RC can only fund services and supports for regional center consumers. Claimant did not become a RC consumer until July 29, 2020.

9. The RC also denied claimant's request for retroactive reimbursement from August 2020 through March 11, 2021, because claimant did not request respite services until March 15, 2021. Additionally, the law does not allow regional centers to provide retroactive reimbursement except in very limited circumstances, and claimant's request did not meet the criteria for an exception to the law.

10. Mother asserts that she emailed a request for respite services to Ms. Mason in August 2020, but there is no documentation of her request, and Mother was unable to produce the emailed request. Additionally, Mother did not provide any documentation showing that she paid an individual or an agency to provide claimant with respite services. Mother also did not provide any documentation showing that she purchased respite services for claimant from August 2020 to March 11, 2021.

11. Although claimant was found eligible for RC services on July 29, 2020, and his IPP meeting was held on August 25, 2020, the RC did not render any services to claimant until March 11, 2021. Mother asserts that she sent numerous emails to the RC and also left telephone messages for staff with requests for services, but they were ignored by the RC. Mother contends that she was not informed about all services available to claimant and had to research this on her own.

12. RC's planning team met on March 18, 2021, and again on April 2, 2021, to discuss claimant's request for retroactive reimbursement and determined that claimant had not established that his circumstances met any of the limited requirements for an exception to the law. Mother did not request respite services from the RC in August 2020, nor did the RC authorize her to purchase respite services for claimant during the time periods requested.

13. Mother informed the RC that claimant's aunt had provided respite care for claimant during the periods at issue. However, Mother did not provide the RC with any documentation to support the request for reimbursement, such as timesheets, receipts, bank statements, or other documentation showing she paid for any services from 2009 to July 2020 and August 2020 to March 2021. Moreover, Mother did not purchase services from a respite agency vendored through the RC. Finally, there is no evidence of any emergency occurring from August 2020 through March 2021.

14. On April 5, 2021, Ms. Mason informed Mother that her request for retroactive reimbursement was being denied.

15. On April 8, 2021, the RC issued a Notice of Proposed Action (NOPA) denying claimant's request for retroactive reimbursement on the grounds that claimant was not eligible for RC services from 2009 to July 2020, and from August

2020 through March 11, 2021, because the RC had not authorized Mother to purchase services on those dates, Mother did not inform the RC she was going to purchase services during that time period, and Mother did not provide any documentation to support her request for reimbursement, such as timesheets, receipts or bank statements. The RC advised claimant of his right to appeal this determination. (Ex. 5.)

Previous OAH Case for Retroactive Reimbursement

16. On April 23, 2021, Claimant filed an appeal, requesting retroactive reimbursement of respite hours, COVID-19 SOE respite hours, and adaptive service hours from July 29, 2020. (OAH Case No. 2021050403.) The parties met informally on May 21, 2021 and attempted to resolve the matter. On May 28, 2021, they reached a settlement as to claimant's request for retroactive reimbursement for respite services and COVID-19 SOE respite hours. In order to resolve the appeal, the RC agreed to provide retroactive reimbursement for 30 hours per month of in-home respite and 50 hours per month of SOE respite for claimant from October 1, 2020, to March 11, 2021.

17. Mother accepted these terms and a settlement was reached. On June 8, 2021, Mother signed a Notice of Resolution (NOR), and the matter was closed.

November 2021 Section 4731 Complaint

18. On November 9, 2021, the RC received a complaint filed by Mother pursuant to Welfare and Institutions section 4731 (section 4731). That statute provides that a consumer can make a formal complaint to the RC if the consumer believes that his or her rights have been denied by the RC or a vendor. The RC conducted an investigation as to the four issues raised in Mother's section 4731 complaint. However, only three of those issues are pertinent to this matter. The first issue, not relevant here,

pertained to the RC exceeding the timelines for responding to Mother's request for Supplemental Security Income (SSI) legal advocacy services.

19. By letter dated December 9, 2021, the RC substantiated Mother's assertions that there had been several months' delay by the RC in reimbursing Mother for the retroactive respite services agreed to by the RC in the May 2021 settlement, and there had been a 22-day delay by the RC in determining claimant's eligibility due to the RC's closure at the start of the COVID-19 pandemic. (Ex. 1.)

20. However, the RC determined that Mother's contention that the RC had failed to provide her with accurate information regarding intake timelines and IPP timelines was unsubstantiated. The RC found that on May 21, 2021, when Mother met with Ms. Mauriz, the RC's Executive Director's Designee, Ms. Mauriz informed Mother that once a client becomes eligible for services, the RC has 60 days to complete the IPP. The IPP timeline Ms. Mauriz provided Mother was accurate. As for intake timelines, Ms. Mauriz did not recall any discussion of that with Mother during the May 21, 2021 meeting.

21. Mother disagreed with the resolution of her section 4731 complaint. She appealed the matter to the Director of the Department of Developmental Services (DDS) but missed the 15-day statutory timeline to file an appeal to DDS. (Ex. 11.)

December 2021 Fair Hearing Request

22. On December 23, 2021, claimant filed a request for a fair hearing appealing the denial of retroactive funding of respite hours and SOE hours for the period July 11, 2020, to October 1, 2020. (Ex. 3.) This hearing ensued.

Claimant's Evidence

23. Claimant's Mother and Sister testified at the hearing in support of retroactive reimbursement.

24. Mother asserted that the family "was bullied" into agreeing to settle the previous OAH case and that she would not have done so if she had been told that the RC had been 22 days late in making the eligibility determination as to claimant.

25. Mother contends that claimant should have been found eligible for services in 2009, or at least as of June 20, 2020, and should be awarded retroactive reimbursement for respite hours with those dates in mind. However, Mother did not appeal the 2009 or 2012 denials of eligibility, nor did she take any action when the RC inactivated claimant's case intake in 2015, 2018, and 2019. Those actions have now become final and cannot be challenged in this appeal.

26. Sister contends that the RC completed the assessment on May 11, 2020, and then had 60 days to conduct the IPP meeting, which was not held until August 25, 2020. Sister asserts that because the RC failed to conduct the IPP meeting within 60 days, claimant is entitled to retroactive reimbursement for respite and SOE hours.

LEGAL CONCLUSIONS

Standard of Proof

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) 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.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant requests funding that Service Agency has not agreed to provide previously, and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding. (Evid. Code, §§115, 500.)

Statutory Framework

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, "the purpose of the [Lanterman Act] is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "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.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made through the IPP process “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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the

preferences and choices of the consumer, and reflect the cost-effective use of public resources.

Retroactive Reimbursement from July 11, 2020, to October 1, 2020

6. Claimant's request for reimbursement for respite care and SOE hours from July 11, 2020 to October 1, 2020 is a request for retroactive service authorization.

7. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. A purchase of service authorization must be obtained in advance from the regional center for all services purchased out of center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for emergency services "if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

8. Thus, the regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. Here, while the COVID-19 pandemic constituted an emergency, none of the other regulatory requirements for retroactive funding is fulfilled. No evidence was presented that services were provided to claimant during the time period in question by a vendored service provider. Claimant is not

requesting reimbursement for services provided for a limited time during which he was unable to reach the Service Agency.

9. Ordinarily, services are provided to the consumer through the IPP process. The consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (Welf. & Inst. Code, § 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code, § 4646.5, subd. (a).) The process of creating an IPP, by its nature, is collaborative. (Welf. & Inst. Code, § 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (Welf. & Inst. Code, §§ 4646, 4648, subd. (a)(6).) If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (Welf. & Inst. Code, § 4646, subd. (i).) If the consumer or his parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (*Ibid.*)

10. The issue of retroactive reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed.

11. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to

receive services under [the Lanterman Act]. . . ." (Welf. & Inst. Code, § 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens, supra*, 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Otherwise, the general requirements that services should be funded through the IPP process (Welf. & Inst. Code, §§ 4646, 4646.5, and 4648) would be made superfluous. Thus, prior decisions in other fair hearing cases have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted. Prior OAH decisions pertaining to other consumers are only advisory, not binding.

12. Generally, four elements must be established in order to apply the doctrine of equitable estoppel: (1) The party to be estopped must be apprised of the facts; (2) the party must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the party must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.) A vital principle of equitable relief is detrimental reliance, or as put by the California Supreme Court in the case *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795: "He who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted."

13. The evidence did not establish that claimant relied on the RC's conduct to his detriment. In contrast, the RC relied on claimant's conduct when it entered into

the May 2021 settlement of the prior OAH case. Based on Mother's agreement to file an NOR in that matter, the RC agreed to provide retroactive reimbursement for 30 hours per month of in-home respite and 50 hours per month of SOE respite for claimant from October 1, 2020, to March 11, 2021. Accordingly, the doctrine of equitable estoppel precludes claimant from receiving the benefit of the May 2021 settlement and from now seeking the retroactive reimbursement claimant agreed he would not pursue.

14. Denying retroactive authorization and reimbursement in this case also will not thwart the purposes of the Lanterman Act. As discussed above, the funding and provision of services and supports to a regional center consumer is supposed to be collaborative. Claimant did not collaborate with the RC or seek preauthorization for the respite care and SOE hours he asserts his aunt provided to him during the period in question. As a result, the Service Agency did not have an opportunity to suggest vendors or explore different options with him.

15. Therefore, cause does not exist to reimburse claimant for the respite care or SOE hours sought during the dates in question. Claimant satisfied none of the criteria set forth at California Code of Regulations, title 17, section 50612, subdivision (b)(1), for retroactive authorization. Additionally, the equities do not weigh in favor of granting retroactive reimbursement due to the previous settlement of this issue.

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ORDER

Claimant's appeal is denied.

The Service Agency is not required to fund retroactive respite services and retroactive State of Emergency (SOE) respite services for claimant for the period from July 11 to October 1, 2020.

DATE:

LAURIE PEARLMAN
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.