

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

In the Matter of:

CLAIMANT

v.

FAR NORTHERN REGIONAL CENTER, Service Agency.

OAH No. 2023010175

DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on February 8, 2023, from Sacramento, California.

Legal Services Specialist Debora Carmona-Mitchell represented Far Northern Regional Center (FNRC or regional center).

Claimant's father and mother are claimant's co-conservators and represented claimant.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on February 8, 2023.

ISSUE

Did FNRC properly deny claimant's request for a \$450 per month increase in her current rental subsidy?

FACTUAL FINDINGS

Background

1. Claimant is a conserved 31-year-old individual eligible for Regional Center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.¹ She currently lives alone in a three-bedroom house owned by her mother, located on Chestnut Rose Lane in Chico, California (the property). Claimant had one housemate who resided with her for a period that ended in or around December 2022. Claimant receives a rental subsidy from FNRC to offset the costs of living at the property.

2. On September 23, 2021, claimant's parents participated in an informal meeting with several FNRC representatives, including Larry Withers, the Associate Director of Client Services at FNRC. At issue was the denial of ongoing funding of a claimant's rental subsidy. The parties signed a written resolution following the informal meeting, contingent upon claimant and her actual or prospective roommates applying

¹ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

for Butte County Housing Authority Section 8 (Section 8) benefits as soon as possible.²

The resolution contained the following terms:

- FNRC will continue to fund rental subsidy at [the property] for [claimant] and her two (2) roommates at the current level until all of the roommates receive approval for and receive Section 8 benefits.
 - This will also require [the property] to pass the inspection and other requirements for Section 8 approval.
 - [Claimant's mother], the owner of the home, has agreed to participate in the Section 8 program as the landlord to [claimant] and her roommates.
- If for some reason this plan does not work out, FNRC will issue a new Notice of Proposed Action and the family can pursue a fair hearing to request ongoing funding of rental subsidies for [claimant].

3. On or about August 2, 2022, claimant, her father, her FNRC Service Coordinator, and several others who provide or coordinate support and services for claimant, participated in an Individual Program Plan (IPP) meeting. An IPP is a plan developed by regional center representatives, regional center clients, and interested parties that identifies the goals, services, and supports that will allow the client to live independently and participate in community activities. The IPP that resulted from that

² Section 8 benefits help low-income families obtain secure and safe private residences that may not otherwise be affordable through a housing voucher program funded by the United States Department of Housing and Urban Development.

meeting was approved by claimant's service coordinator and the FNRC Program Manager on or about September 23, 2022. In at least two sections within claimant's IPP, FNRC commits to the following to further claimant's independence and integration into her community:

FNRC will fund housing services of rental assistance of \$1,069 per month and administrative fees of \$27.25 per month through We Care A Lot Foundation (WCALF), effective 7/1/22 through 6/30/23.

4. Claimant's roommate paid \$450 in rent to live at the property. In early December 2022, that roommate moved out of the property resulting in a \$450 increase in claimant's rental obligation. Claimant's representatives requested a corresponding increase in claimant's rental subsidy. Upon review of claimant's case history, FNRC denied the request and also decided to terminate claimant's existing and ongoing rental assistance subsidy. FNRC issued a Notice of Proposed Action (NOPA), dated December 8, 2022, memorializing its decision and informing claimant's representatives of the right to appeal. Specifically, the NOPA includes the following:

Proposed action: Deny request for ongoing rental assistance and rental increase of \$450 per month.

Reason for action: Rental assistance for regional center clients should be temporary. [Claimant] does not have a medical, behavioral, or psychiatric condition that requires specialized housing options. Conservators did not apply for Section 8 rental assistance as agreed upon in the resolution of an appeal in September of 2021.

Effective date: Rental Increase – Immediately. Prior (ongoing) rental assistance – 30 days.

5. Claimant’s representatives timely appealed FNRC’s December 8, 2022 determination. This hearing followed.

Testimony of Larry Withers and Amendments to the NOPA

6. Larry Withers has worked as the Associate Director of Client Services for FNRC for approximately six years. He prepared the December 8, 2022 NOPA. Mr. Withers testified that the NOPA was poorly written and conveyed the impression that the regional center intended to terminate claimant’s rental subsidy within 30 days of issuing the NOPA, rather than continuing the subsidy through at least June 30, 2023, as specified in claimant’s IPP. It was always FNRC’s intent to continue the current rental subsidy through June 30, 2023. At hearing, Mr. Withers amended the NOPA on behalf of FNRC, to reflect FNRC’s decision more accurately by deleting the words “ongoing rental assistance and” from the “Proposed Action” section of the document. As amended, the NOPA identifies the regional center’s proposed action as: “Deny request for rental increase of \$450 per month.”

7. As early as 2020, FNRC had approved claimant’s request for a rental subsidy. The period of the previously authorized subsidy ended in 2021 and claimant’s representatives requested that the subsidy continue.

8. Mr. Withers described the statutory framework governing rental subsidies for regional center clients. He noted that Section 4689, subdivision (h), prohibits regional centers from providing living assistance such as rent, mortgage, or lease payments to consumers in supported living homes, as household expenses are the responsibility of the consumer and those who reside with the consumer.

Subdivision (i) of Section 4689 provides that an exception may be made to this prohibition when certain conditions are met which establish that living assistance is required to meet specific care needs unique to the consumer, such as behavioral issues that prevent the consumer from living with roommates. Such an exception shall not exceed six months unless necessary to meet a consumer's specific IPP goals. Mr. Withers testified that claimant does not qualify for an exception to the rental subsidy prohibition, as she does not have specific unique care needs or a demonstrated medical, behavioral, or psychiatric condition that presents a health or safety risk to herself or others.

9. As a compromise, in September 2021, claimant and the regional center agreed that FNRC would continue claimant's rental subsidy, while they worked to reduce claimant's need for the subsidy, by: (1) working to find claimant roommates to reduce claimant's portion of the rent for her three-bedroom residence; (2) having claimant and her roommates apply for and receive Section 8 benefits; and (3) having claimant's mother submit the property for inspection and satisfy all other requirements to have the property approved as a Section 8 residence.

10. According to Mr. Withers, claimant meets the criteria for Section 8 benefits. If claimant and any roommates receive Section 8 benefits, it would significantly reduce the need for a rental subsidy from the regional center, as the tenants' rent would be reduced to approximately one-third of their gross monthly income.

11. The compromise arrangement continued without review for approximately fifteen months. In December 2022, the basis for the subsidy was reviewed when claimant's service coordinator, Ximena Prado, requested an increase to help claimant meet her financial needs. Additionally, claimant's mother had recently

increased rent at the property from \$1,800 per month to \$2,100 per month, based on an assessment performed by her property management company.

12. While considering Ms. Prado's request, the regional center reviewed the history of claimant's rental subsidy as well as the agreement reached in compromise. During this review, Mr. Withers discovered that the plan to have claimant, her roommates, and the property approved for Section 8 benefits was ill-conceived. While reviewing the progress of their plan, he spoke with a Section 8 benefits coordinator and learned applications for Section 8 housing benefits are only accepted during a few months each year and that the application window had been closed for some time. Once the application process opens, assuming all qualifications and prerequisites are met, claimant would be placed in an applicant pool, subject to selection to receive benefits via lottery. Additionally, as claimant had not been able to begin the application process, claimant's mother was not willing to request that the property be listed as a Section 8 benefits qualifying rental property.

13. During a subsequent conversation with the Section 8 benefits coordinator, Mr. Withers learned that the application process would open approximately two weeks following the hearing. He also learned that Section 8 benefits cannot be approved for a recipient living in a property owned by a relative.

14. The regional center intends to continue to provide claimant with a rental subsidy through June 30, 2023, as that commitment is specified in claimant's IPP, which the regional center considers a binding contract. However, FNRC has determined there is no basis to increase claimant's rental subsidy or to continue claimant's rental subsidy beyond June 30, 2023, because claimant does not have a medical, behavioral, or psychiatric condition that requires specialized housing. The regional center will continue to work with claimant to find alternative means to afford

to remain at the property or to locate other suitable and safe affordable housing. These options include helping claimant locate roommates and utilize Section 8 benefits at an approved property not owned by a member of claimant's family.

Testimony of Claimant's Father

15. Claimant's father contends that a \$450 increase in claimant's current rental subsidy is appropriate, as claimant's sole housemate moved out of the residence after the September 2022 IPP was finalized. Had the departure of claimant's roommate been anticipated, the decrease in the total rents paid could have been considered during the IPP planning meetings and factored into the current rental subsidy.

16. Claimant's parents have been working hard to locate suitable housemates for claimant to help offset her rental costs but have been unsuccessful thus far. Claimant's father understands that claimant's supportive living services provider, Mains'L Services, is charged with assisting them locate roommates for claimant. Unfortunately, Mains'L Services has provided very limited assistance in claimant's efforts due to limited staffing.

17. Claimant's father contends that he and claimant's mother have done everything the regional center has asked them to do to secure Section 8 benefits. He realizes that the application process for Section 8 benefits is much more involved than anyone anticipated when they reached the compromise agreement with the regional center in September 2021. However, he assumed the regional center representatives had a basic understanding of the Section 8 benefits application and selection process and "knew what they were talking about ... because they are the experts."

Testimony of Claimant's Mother

18. Claimant has lived in the property owned by her mother since 2020. During the COVID-19 Pandemic, claimant temporarily moved in with her father because Mains'L Services could not provide sufficient staffing. The regional center has provided a rental subsidy to claimant since she moved into the property.

19. Claimant's mother has done everything she can to meet the requirements of the September 2021 compromise agreement. However, the application window for Section 8 benefits has been closed for a significant period since reaching the agreement. She is aware that the application window will soon open, but she is also aware that claimant is not eligible for Section 8 benefits while renting from her.

20. Claimant's mother testified that she has also tried to have Ms. Prado help her with finding roommates for claimant, but has been unable to obtain any meaningful level of assistance from her. She has also asked Mains'L Services about any efforts they have made to secure roommates for claimant and was informed that FNRC has not contacted Mains'L Services about finding roommates for claimant.

21. Although claimant's mother recently increased the rent to \$2,100, she did so at the behest of her property management company based on their assessment of the current appropriate rent for the property. She stated she must charge tenants rent consistent with the property management company's assessment and recommendations to continue to use their services. She added that current rent for the property is well below the rent typically charged for similar homes in the area.

22. Claimant's mother is frustrated that the regional center has been unable to secure roommates for claimant and are also unwilling to increase claimant's current

rental subsidy to cover the rent previously paid by claimant's former roommate. She is also frustrated that, even if ultimately selected and approved to receive Section 8 benefits, claimant cannot use those benefits at her current residence if her mother remains the property owner. Claimant's mother has looked for other suitable and safe places in the area for claimant to live and most have waiting lists for periods of up to three years. Others have no waiting lists at all due to limited supply and the ever-increasing demand for housing in the area.

Analysis

23. The pattern of decisions made by FNRC to subsidize claimant's housing costs or find alternative forms of subsidy to offset those costs, demonstrates that the regional center wants claimant to be able to afford to live at the property. They approved her for a rental subsidy in 2020. In September 2021, they extended the rental subsidy while the parties worked to secure Section 8 benefits for claimants and any roommates living at the property to reduce claimant's financial burden. In September 2022, FNRC approved an IPP for claimant that provides a rental subsidy of \$1,069 per month through June 30, 2023. These commitments were presumably made to further the goals identified in claimant's IPP and in furtherance of the purpose and goals of the Lanterman Act.

24. Through no fault of their own, the parties' plan to secure Section 8 benefits for claimant and her roommates has yet come to fruition. There have been typical but unexpected processing delays and the parties have discovered that claimant may not receive Section 8 benefits while renting a house owned by her mother. However, the current subsidy will continue through June 30, 2023, and the parties have time to work together on long-term solutions that may include applying

for Section 8 benefits, securing roommates to reduce claimant's rental costs, and seeking alternative Section 8-approved housing in the area.

25. Circumstances have also changed since claimant's last IPP was formalized. She no longer has a roommate to cover \$450 of the costs to rent the property. Claimant's parents have been unable to secure new roommates to help cover the rental costs, despite their best efforts and requests for assistance from the regional center and their supported living services provider. There is no other affordable housing available to claimant in the area. Considering that the regional center has provided a rental subsidy since 2020, and specifically extended that subsidy through June 30, 2023 to allow her to remain at the property while they work on alternative forms of subsidy, a \$450 increase of that subsidy through June 30, 2023, is warranted.

26. In support of its decision to deny claimant's request for a \$450 subsidy increase, the regional center relies on the rental subsidy prohibition and exception criteria specified in Section 4689, subdivisions (h) and (i), as described above. However, the current version of Section 4689 went into effect June 27, 2012. (See, Assem. Bill No. 1472 (2011-2012 Reg. Sess.) § 15.) Consequently, the same provisions of Section 4689 FNRC relies upon in denying claimant's request, had been in effect for several years when it authorized rental subsidies to claimant in 2020, 2021, and again in 2022.

27. There was very little evidence presented at hearing regarding whether claimant met or did not meet the criteria for an exception to Section 4689. Mr. Withers testified that, when considering the request to increase the subsidy, FNRC representatives reviewed the exception criteria and determined she did not meet them. He provided no specific information or independent documentation to support this conclusion. Additionally, less than three months prior to reaching this decision, FNRC approved an IPP for claimant that expressly provides that the regional center

give claimant a \$1,069 monthly rental subsidy through June 30, 2023. Only portions of claimant's 2022 IPP were offered and admitted into evidence at hearing. However, those documents when considered in light of the witness testimony at hearing, reasonably support the conclusion that the regional center determined claimant met the criteria for an exception to the rental subsidy prohibition described in Section 4689, or alternatively completely disregarded that prohibition.

28. That claimant was already receiving a rental subsidy specified in her IPP when her only roommate moved out, establishes that she needed financial assistance to achieve the goals specified in the plan. The resulting \$450 increase in claimant's living expenses is an actual but unexpected additional impediment to those goals. There was no evidence of any change in circumstances between September 23, 2022, when FNRC approved the IPP that included a rental subsidy for claimant, and December 8, 2022, when FNRC denied the request for an increase in claimant's rental subsidy because she did not qualify to receive any rental subsidy at all, that supports such a sudden and inapposite change. When all the evidence presented at hearing is considered, claimant established that the regional center's decision to deny her request for an increase in her rental subsidy was arbitrary, capricious, inconsistent with goals identified in her most recent IPP, and without merit. Accordingly, claimant's request for an increase in her rental subsidy should be granted.

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Act. (§ 4500 et seq.) All issues concerning the rights of developmentally disabled persons to receive services must be decided under the appeal and "fair hearing" procedures set forth in section 4700 et seq. (§ 4706, subd. (a).)

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.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. Claimant requested a fair hearing to appeal FNRC's denial of her request to increase her existing rental subsidy. The person seeking government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

4. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services, is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, based on a determination of which services and supports are appropriate for each consumer. (§ 4512, subd. (b).) The IPP must include goals and objectives for the client; the regional center must fund services and supports designed to "be effective in meeting the goals" articulated in the IPP. (§§ 4646, subd. (a), 4646.5, subd. (a), 4512, subd. (b), and 4648.) "Services and supports for persons with developmental disabilities" means specialized 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.” (§ 4512, subd. (b).) Services and supports listed in an IPP may include assistance in locating a home and supported living arrangements. (§ 4512, subd. (b).)

6. In deciding whether to fund a particular service or support, regional centers must consider that the consumer is responsible for funding services and supports that individuals who are not developmentally disabled typically fund. (§ 4646.4, subd. (a).) “Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” (§ 4648, subd. (a)(8); see also § 4659.)

7. In order to provide opportunities for adults to live in their own homes, regional centers provide supported living services. (§ 4689.) “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.” (§ 4689, subd. (h).) “A regional center shall not make rent ... payments on a supported living home,” except where certain conditions are met. (§ 4689, subd. (i).) The regional center executive director must verify “in writing that making the rent ... payments ... 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.” (§ 4689, subd. (i)(1)(A).) The regional center may make rent payments for not 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.” (§ 4689, subd. (i)(1)(C).)

8. As set forth in Findings 23 through 28, claimant established that the Lanterman Act requires FNRC to increase her current rental subsidy by \$450 per month

as requested. Claimant has already been approved for a rental subsidy, which is included in her current IPP. There has been a change in circumstances since claimant's most recent IPP was completed that has created an additional financial burden necessitating an increase in her current subsidy to meet the goals of her IPP. Both the regional center and claimant have taken reasonable steps to find alternative means to address this additional financial burden without success. Accordingly, claimant's request to increase her rental subsidy should be granted for the duration of the currently rental subsidy authorized in her September 2022 IPP.

ORDER

The appeal of claimant under the Lanterman Act is GRANTED. Far Northern Regional Center shall increase the amount of claimant's current rental subsidy, as specified in her current IPP, by \$450 through June 30, 2023.

DATE: February 23, 2023

ED WASHINGTON

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.