

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WARDELL J.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES

REGIONAL CENTER,

Service Agency.

OAH No. 2012010531

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 23, 2012, in Los Angeles.

Johanna Arias-Bhatia, Fair Hearing Coordinator, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Wardell J. (claimant) was present; he was represented by his authorized representative and conservator, S.B.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 23, 2012.

ISSUE

Whether the Service Agency may suspend funding for claimant's services at A&G Community Activities Support Services.

¹ Initials and family titles are used to protect the privacy of claimant and his family.

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-9; claimant's exhibits A-E.

Testimony. Valdine Brown; S.B.; Wardell J.

FACTUAL FINDINGS

1. Claimant is a 46-year-old conserved man who is a consumer of SCLARC based on his qualifying diagnosis of moderate mental retardation.

2. Claimant lives at home with his cousin, S.B., who is also his conservator. Claimant enjoys going out in the community with family and friends and attending church on Sundays. He plays music and participates in the Special Olympics. He does not display inappropriate anger or self-injurious behavior, and deals effectively with frustration.

3. In accordance with claimant's most recent Individual Program Plan (IPP) dated September 26, 2011, claimant has been receiving Service Agency funding to attend a program at A&G Community Activities Support Services (A&G) at least twice a month for up to 40 hours per month. Claimant also receives Service Agency funding "to attend Marine Therapeutic Center, 5 days per week in efforts of increasing his social, emotional, and vocational skills." No earlier IPP was entered in evidence.

4. By a letter dated November 29, 2011, and an accompanying Notice of Proposed Action (NOPA), SCLARC notified claimant and his conservator of its proposed action to suspend funding for claimant's services at A&G, effective December 29, 2011, on the grounds that the A&G activities are social recreational services or nonmedical

therapies for which funding is suspended under Welfare and Institutions Code section 4648.5, subdivision (a)(2) and (4).²

5. On January 12, 2012, claimant's conservator submitted to SCLARC a Fair Hearing Request on claimant's behalf, appealing the proposed suspension of funding on the grounds that the A&G services "are imperative" for claimant as they "contribute[] to his ability to function and learn new skills in order [to] sustain himself in his home, programs and mental health." (Ex. 2.)

6. According to claimant's September 2011 IPP, in a section entitled "Community and Social Life," the Service Agency funds claimant's A&G program to provide him with "social and recreational activities . . . to increase his socialization skills." (Ex. 5.) A&G's program is designed "to deliver community integration options and participation in all available resources to support consumers in achieving their personal IPP goals and objectives set forth by the regional center as it relates to community activities." A&G's goal is "to enhance the quality of life for the consumer and support them [*sic*] in living a quality life utilizing a natural environment and also seeking structured programming available in the community. . . . The consumer outcome is to create an environment in which consumers can freely move about in their community and enjoy social and recreational activities." A&G helps consumers attend community social, civic, and educational events. "A&G is committed to providing services and

² All further statutory references are to the California Welfare and Institutions Code unless otherwise stated.

activities that will aide [sic] in community integration, enhance natural supports and meet the key quality of life concerns." (Ex. 7.)³

7. A&G is vendored by the Service Agency as "Community Activity Support," under Service Code 063, not as a "social recreation program." (Ex. 6.) This indicates that the Service Agency considers the services provided by A&G to be other than social recreational services. (See Cal. Code Regs., tit. 17, §§ 54342-54356.)

8. By comparison, the Marine Adult Therapeutic Center (Marine), which claimant attends five days per week with Service Agency funding, uses positive behavior management techniques to provide independence by enhancing daily living skills, community integration, and vocational skills. (Ex. 8.) At Marine, claimant sweeps the facility's floors and sets up tables for lunch; he also cleans tables and washes food trays at the Veteran's Hospital two days per week, works at a local food bank, participates in career days, and assists older consumers of the day program. Claimant also goes on community outings, participates in academic activities, learns meal preparation, learns recreational activities, and performs with a singing group at annual dances. (Ex. 9.) Marine Adult Therapeutic Center is vendored by the Service Agency as an "Adult Development Center," under Service Code 510.

9. S.B., claimant's conservator, testified that claimant has been a consumer at the Service Agency since his mother died in 1992. S.B.'s mother cared for him until she died in 2005; now claimant lives with S.B. Claimant requires supervision. During the week, claimant participates in activities at Marine, which he enjoys and where he is loved and cared for. At Marine the focus is primarily on learning and career training. On

³ There was no evidence that the A&G staff provides specialized recreation therapy, art therapy, dance therapy, or music therapy, or has the training and certification to do so.

Sundays claimant goes to church, where he is supervised by volunteer deacons. On Saturdays, claimant participates in A&G's program, where claimant learns social skills and participates in the community. Without A&G, claimant would be bored and depressed, with nothing to do and with no opportunities for social interaction. It is difficult for him to productively use his own time and participate in community activities without the program's structure and supervision.

10. Claimant testified that he wishes to continue to participate at A&G, where he enjoys being around his peers.

DISCUSSION

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant's conservator requested a fair hearing to appeal the Service Agency's proposed suspension of funding for claimant's services at A&G. Jurisdiction in this case was thus established. (Factual Findings 4 & 5.)

2. The party asserting a claim 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.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that its decision to suspend funding for claimant's services at A&G is correct. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers such as the Service Agency play a critical role in the coordination and delivery of services and supports. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing IPPs, for taking into account

consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. Section 4512, subdivision (b), defines the role of the IPP process as follows:

The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where 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

5. Services and supports for a particular consumer may include "community integration services . . . [and] social skills training . . ." (§ 4512, subd. (b).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).) The Legislature intends that the IPP and the services and supports provided by the regional center promote community integration, independent productive lives, and stable and healthy environments for consumers. (§4646, subd. (a).)

6. The Service Agency seeks to suspend funding for claimant's A&G program on the grounds that the program falls within a category of social recreational services and non-medical therapies for which funding is suspended under section 4648.5. That section was added to the Lanterman Act in 2009 to reduce spending due to California's severe budgetary constraints. (§ 4648.5, subd. (a)(4), (5).)

7. SCLARC funded claimant's A&G program to enable him to participate in social and recreational activities as a means of developing his social skills so he can participate in community life. (Factual Findings 3, 6, & 7.) Thus, the IPP's use of the phrase "social and recreational," in light of the purpose of the activity, is not determinative. Section 4648.5 looks at the service actually provided, not the labels that the parties may have placed on the service. The Service Code under which A&G is vendored, while not determinative in and of itself, lends further support to the conclusion that the A&G activities are focused on community integration. The preponderance of the evidence, including the IPP and the Service Code, as well as A&G's program description and testimony concerning the services provided to claimant, as set forth in Factual Findings 3, 6, 7, 9, and 10, supports the conclusion that the services in question are community integration services and not a social recreation activity subject to suspension under section 4648.5, subdivision (a)(2), or a non-medical therapy in the form of specialized recreation subject to suspension under section 4648.5, subdivision (a)(4).

LEGAL CONCLUSION

Cause was not established under section 4648.5 to suspend funding for claimant's services at A&G Community Activities Support Services. (Factual Findings 1-10, and Discussion.)

ORDER

Claimant Wardell J.'s appeal is granted. SCLARC shall continue to provide funding for claimant's services at A&G at current levels until such time as changed circumstances or a new IPP warrant otherwise.

DATE: March 2, 2012

HOWARD W. COHEN
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.