

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RICHARD W.,

Claimant,

OAH No. 2012020393

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

CORRECTED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings **(OAH)**, State of California, on July 17 and 18, 2012, and September 17, 2012, in Sacramento, California.

Robin M. Black, M.A., Legal Services Specialist, represented Alta California Regional Center (ACRC or the service agency).

Jonathan Elson, Attorney at Law, Disability Rights California, represented claimant. Claimant's mother and father, conservators, were also present. Claimant did not appear.

Evidence was received, and the record remained opened to permit the parties to submit written closing arguments. Claimant's Hearing Brief was filed on July 17, 2012, at the hearing. ACRC's written Closing Brief and Reply to Claimant's Hearing Brief was timely filed on September 28, 2012. Claimant's written Reply Brief was timely filed on October 5, 2012. The record was closed, and the matter was submitted for decision on October 5, 2012.

The Decision was issued in this matter on October 15, 2012.

On November 5, 2012, claimant requested that claimant's full name be deleted from the Order in the Decision, and amended to reflect claimant's first name and an initial for his surname.

In a telephone call to OAH on November 6, 2012, counsel for ACRC advised that ACRC had no objection to claimant's request to amend his name in the Order.

With the exception of the Notice following the Order, all corrections are reflected in bold print in this Corrected Decision.

SUMMARY

This case involves a request for SLS that was initially denied by ACRC on April 8, 2011, on the grounds that claimant did not meet the criteria for SLS. During an Individual Program Plan (IPP) meeting on July 7, 2011, claimant renewed his request for SLS, but also agreed to explore other placement options. Following the IPP meeting, claimant opted to move into a Level 4I residential care facility. Between August and November 2011, while staying at the residential care facility, claimant's daily living skills regressed, and his negative behaviors increased. In November 2011, claimant left the facility and returned to the home he currently shares with his father. Claimant renewed his request for SLS. In its Notice of Proposed Action (NOPA) dated January 24, 2012, ACRC denied claimant's request for SLS on the grounds that "SLS is designed to provide support, not 24-hour supervision, which is what Richard needs. Richard's needs for 24-hour supervision is [sic] best met by a board and care home. Additionally, consumers receiving SLS must be [sic] to direct their own staff when they are alone with the staff, and it was determined that Richard is unable to do so. Finally, a board and care home would be more cost-effective for Richard than SLS."

ISSUE

Should claimant's request to fund Supportive Living Services (SLS) be granted?

FACTUAL FINDINGS

CLAIMANT'S BACKGROUND

1. Claimant is a conserved 23-year-old male who qualifies for ACRC services based on a diagnosis of moderate mental retardation.¹ He has received regional center services since May 11, 1992. Claimant resides with his father, Jason Shapiro, in Lotus, California. Claimant's father and mother, Rose Shapiro, serve as his conservators. To assist with claimant's support at home, ACRC currently funds 168 hours per month of services from personal assistant Sixtus Aliriagwu.

2. Records and reports submitted by ACRC indicate that claimant started engaging in intermittent severe behaviors, including biting, hitting, pinching, scratching and head banging, at the age of three. These behaviors resulted in injury to him as well as to others. According to the reports, claimant's behaviors were unpredictable, and the antecedents difficult to discern. However, in December 2006, the predominant antecedent to claimant's severe behaviors was identified as occult temporal lobe seizures. Claimant's seizures have been stabilized through the use of seizure medication since early 2010. In addition, it was reported that claimant reacted to other internal stimuli, including physical pain, medication, and sensory overload. However, today when claimant experiences discomfort, he employs self-calming mechanisms, such as walking, pacing, swinging, lying down or listening to music while rocking, to enable him to tolerate his environment.

3. In June 2011, claimant's parents confirmed in a report to Critical Assessment

¹ Claimant's parents reported to ACRC that he has also been diagnosed with autism and seizure disorder. However, ACRC has no records to substantiate these diagnoses.

Personnel Shantal Shamoiei that claimant's behaviors began to decrease dramatically in February/March 2010 due to the change in claimant's seizure medications. However, the records and reports reveal that in August 2011, "all of the past extinguished behavioral excesses [were] back," after claimant was placed in the Amy Family Home, a level 4I residential care facility. In a Placement Assessment dated December 8, 2011, claimant's parents noted that claimant's "behaviors increased solely because the provider lacked the resources, knowledge, experience, expertise and skilled staff that should be inherent in a level 4I home." In addition, claimant's parents noted that the Amy Family Home care provider failed to notify claimant's parents on many occasions about claimant's escalating behaviors, and instead used Lorazepam "as a chemical restraint administered each morning in an attempt to curb his behaviors." According to claimant's parents, as a result of his placement in the Amy Family Home, claimant lost the self-care skills and positive behaviors that he had developed prior to his placement. In sum, claimant's parents believed that the residential care placement "did not provide the appropriate supports to ensure Rick's success and safety." Claimant was removed from the residential facility and returned to the home he shares with his father.

4. At hearing, claimant's father asserted that in December 2011, after claimant returned home, he developed and maintained a daily Behavior Log to record claimant's behaviors and responses. He confirmed that, since that time, claimant's behaviors have decreased significantly because he is supported by people who understand his needs and respond appropriately. Claimant's parents would like ACRC to consider their son's "safety, health and needs in determining the most appropriate services required to support and maintain his physical, emotional and psychological health and enable him to reach his potential and live a meaningful life."

PROCEDURAL HISTORY

5. Beginning in March 2010, claimant's parents expressed a desire for him to receive supported living services.

6. ACRC funded an SLS assessment which was conducted on May 12 and June 14, 2010, by independent assessor, Pamela La Pask, of Community Living Options. Claimant was not an active participant in the assessment process. However, in the Supported Living Profile completed by claimant's mother, with his input, and provided to Ms. La Pask prior to her assessment, claimant's mother wrote that: "Ricky wants to live in my own home close to my family and medical providers. I would like to live close to a park or nature trails. I want a yard with a swinging chair. I want a quiet home, no roommates and I want support staff that helps me." In addition, "[m]y circle of support will help me manage my health needs and develop a system to ensure that I am healthy and safe." Claimant's mother also noted that claimant indicated "[m]y supported living service staff will assist me with my medical obligations. They will also assist me in ordering my medication refills. My support staff will be thoroughly trained about me and my unique needs and important facts about my health and safety." In her report, however, Ms. La Pask noted her concerns regarding claimant's ability to express his desires, noting that claimant "is non-verbal and could not make statements as stated."

7. During the assessment, claimant's parents also provided Ms. La Pask with information regarding claimant's needs, abilities and interests. Based on this information, along with the information provided in claimant's Supported Living Profile, Ms. La Pask determined that SLS was not an appropriate placement for claimant. According to Ms. La Pask, claimant "needs assistance to complete most of his personal care needs thoroughly"; "has no interest in household chores" and "when [he] is asked to do household tasks he demonstrates avoidance behaviors and does not like to be prodded"; "does not know or understand money concepts"; his "communication skills are very limited and there are

times when he will simply not communicate at all"; "he is never left alone because of his disability that requires him to be constantly supervised"; he "is not a social individual [and] ... prefers to do things alone and in his own way"; he "is transported everywhere by his parents" and "cannot be on public transportation where the individuals that may be on the bus are unknown to him"; and he has "a history of behavioral excesses" which are "quite severe and very unpredictable." Ms. La Pask strongly recommended that claimant consider placement in a crisis home "to focus on [claimant's] level of care and possible appropriate resources for a structured behavior program."

8. On January 11, 2011, claimant's Service Coordinator, Mary Jo Dalton, noted in the Consumer I.D. Notes that:

Received a number of emails and exchanges stemming from David R's question: "Do we have enough information and a rationale to support a denial of SLS?" Replied to Sharon Wiggins that in my opinion we would have a stronger, clearer case with as Dr. Root suggests "... a comprehensive evaluation."

9. At a Planning Team Meeting on April 8, 2011, ACRC hand-delivered a Notice of Action denying claimant's request for SLS. An informal fair hearing was held on May 4, 2011, and ACRC's denial of SLS was upheld by the hearing moderator in a decision dated May 12, 2011.

10. Joe Donofrio has been the Executive Director of Community Housing Options: Integrated Community Employment and Social Services (CHOICISS), a supported living services provider for regional centers, since 1988. He is "[r]esponsible for the overall administrative, Fiscal and Program service related matters for the agency." On June 1, 2011, he performed a Supported Living Assessment to determine how claimant could best be

supported “in the community living in his own home and supported by a strong circle of support that include family, and care providers.” Mr. Donofrio noted claimant’s desires to: maintain or improve his overall health; live in his own home; live safely in his own home and be prepared for emergencies; maintain current relationships and have opportunities to create new relationships; participate in enjoyable activities; be as independent as possible in moving about his environment; and interview, hire and train staff that he feels comfortable working with, and he recommended that of the available 730 hours per month of SLS, claimant should receive 446 hours per month.

11. A CBEM (Center for Behavior Education and Management) Whole Person Assessment was completed by Ms. Shamoiei on June 8, 2011 to determine claimant’s level of self-sufficiency in his adult daily living skills. In the assessment, it was noted that claimant communicated by using two to five word sentences; “has good receptive language skills”; and “utilize[s] his expressive language skills.” He responded yes and no to requests regarding his needs and wants. He also vocalized discomfort and displeasure by moaning and crying. He “actively communicates injuries both verbally and through gestures.”

12. Ms. Shamoiei also noted that claimant “walked independently without any assistance”; “can transfer himself easily in and out of bed, a chair, a couch and a vehicle”; and “can swing in the backyard independently, but someone must watch over him to ensure that he does not wander off.” In addition, he spends time in his room alone watching television, looking at books and listening to music, and “walk[s] in and out of his bedroom freely, without any hesitation,” and “us[es] the restroom independently ... as needed without any assistance or verbal prompting.” Other than these times, “Richard is not typically left alone without supervision.” Claimant is responsible for “putting items up or away” in his bedroom. He is “medication compliant,” and “is no longer resistant to taking his medications” since his mother “started to crush up.... the large pills” claimant

had difficulty swallowing. Assessor Shamoiei noted that claimant “cannot take his medications independently,” without verbal prompting, and claimant’s mother “crushes up [his] medication and mixes it in with a quarter cup of soda four times a day during breakfast, late afternoon, dinnertime, and at bedtime.” However, claimant has “initiate[d] medication administration by indicating through verbal and nonverbal gestures that it is time to take medication.”

13. In addition, Ms. Shamoiei noted that claimant “bathes alone” but with verbal prompts and assistance, and “dresses himself” even though his clothes may not match. He is “independent in regard to his toileting”; “independent when transferring”; and “can feed himself independently.” Ms. Shamoiei also learned from claimant’s father that “Richard can access simple food items to eat when given a direct verbal prompt” but does not “operate cooking appliances” or “use a knife.” He “can use a fork and a spoon, as well as drinks from a cup without prompting or assistance.” During her assessment, Ms. Shamoiei observed Richard sitting at the table eating a banana, and then throwing the banana peel into the trash, and taking his plate to the sink, and throwing away his dirty napkin. Claimant’s mother also reported to Ms. Shamoiei that at a day program, claimant prepared peanut butter and jelly lunches with the use of “direct verbal prompts and partial physical assistance.” Claimant has “the ability to participate in completing his laundry with ... full physical prompts and assistance”; is “able to discriminate soiled from clean clothes”; and “can put his laundry away” with direct verbal prompts.

14. During the assessment, Ms. Shamoiei also learned that support staff member Lawrence Carroll “prepares Richard’s snacks and lunches, monitors or provides supervision, and goes on walks with him around the family’s property.” Mr. Carroll also reported to Ms. Shamoiei that claimant “is fearful of steps and may need partial physical assistance when he walks down stairs.” In addition, claimant “cannot be left alone or leave the home independently to go into the community.” He is transported by family members to attend

doctor appointments and visit relatives' homes, and "cannot travel independently." However, claimant "understands that he is required to stay on the sidewalks, as he does not walk on the streets with moving cars." He also "knows to walk around hazardous waste (i.e., animal waste, etc.) and other dangerous items such as barbed wires" His "social involvement is currently limited to family outings that occur approximately 1-2 times a month"; however, when he is out in the community, he "likes to go swimming and can be in the water alone, or with others, as long as he is supervised." Claimant "also enjoys going on walks," taking "long drives," and "camping in the family RV." Ms. Shamoiei also noted in her report that "Richard does not have an understanding of the concept of money," and therefore "does not manage his own money"; "does not make incoming or outgoing phone calls," and "would need prompting ... or assistance to do so"; however, he "use[s] the phone ... to speak with his step-father" He "does not understand the concept of 911 and has not demonstrated an ability to contact 911" in case of an emergency.

15. On her first visit to claimant's home, Ms. Shamoiei observed claimant "slap his forehead with an open-hand repeatedly, while crying, screaming, and yelling." The incident "lasted for 16 minutes." Prior to her departure that day, claimant's "behavior started to occur once again"; however, it "appeared to be decreasing in intensity" after approximately five minutes. Ms. Shamoiei noted in her report that claimant's support staff member reported "Richard is most successful in an environment where individuals are caring and respectful," and "does not like to be pressured into doing things he does not want to do." In addition, claimant's "personal space is very important to him and must be respected as much as possible." Finally, support staff member Carroll reported that claimant's "target behavior is managed best when he is given time and space ... as well as a few verbal prompts in order for him to calm down independently and return to baseline."

16. Claimant's IPP team met on July 7, 2011, as part of his annual IPP review. Claimant's parents renewed their request for SLS for claimant, but agreed to explore other

placement options. Service Coordinator Sharyl Davis² provided claimant with two options for Level 4I homes, and after touring the two homes, it was determined that claimant would move into the Amy Family Home in Meadow Vista, California on August 5, 2011. In addition, the IPP team determined that claimant would begin participating in the REACH Behavioral Adult Day Program (REACH) in Rocklin, California on August 8, 2011.

17. A Thirty Day Assessment of claimant's participation and performance at REACH revealed that claimant actively participated in classes teaching the necessary skills and attitudes when performing activities of daily living, including teeth brushing, using mouthwash, dental floss, grooming, washing face and hands, and tying shoe laces, as well as in classes teaching character building and self-advocacy. In addition, claimant participated in pre-employment/vocational training to develop new skills or enhance his capability for possible job placement, and demonstrated an ability to "mingle with other people in the community while engaging in activities that enhance [his] social and interpersonal relationships with others." However, on four occasions during his initial 30-day enrollment period, claimant also engaged in aggressive behaviors, including scratching, biting, and grabbing and biting others.

18. Beginning in mid-August 2011, while at the Amy Family Home, claimant started exhibiting behaviors that resulted in injuries to him and others. On a van ride to REACH, claimant was able to free his arm from his harness and scratch another consumer. One morning at the Amy Family Home, he was out of sorts and bit himself on the upper arm. By late September 2011, claimant's behaviors had escalated. He could not be transported to his day program due to kicking, and he bit a care home staff person who was assisting him into the van. Claimant's mother notified Ms. Davis that she believed the prospect of the two-hour van ride to the day program was triggering claimant's behaviors.

² Sharyl Davis took over as claimant's service coordinator in June 2011.

In early November 2011, claimant became aggressive towards the care home's dog. By mid-November 2011, his behaviors had escalated out of control, and the care providers at the Amy Family Home were having difficulty with him. It was reported by the owner of the Amy Family Home that claimant would not eat anything other than pizza or hamburgers, he was resistive to bathing, he was wetting himself, and was hitting his head against the wall. The owner of the Amy Family Home attributed claimant's behaviors to his use of the medication Abilify. On November 11, 2011, claimant's parents removed him from the Amy Family Home.

19. In a telephone conversation with ACRC Program Manager, Cynthia Harding, on January 17, 2012, claimant's father expressed his concerns that claimant's behaviors had regressed since his placement at the Amy Family Home. According to claimant's father, prior to his placement, claimant had not bitten himself or anyone for over a year, and had been toilet trained for seven years. Claimant's father requested a personal assistant and a day program for claimant while they waited for an appropriate residential placement, and asserted that claimant would be ready in six to eight weeks to transition to a care home. In an email to Service Coordinator Elizabeth Rehkop³ dated January 19, 2012, claimant's parents agreed to tour A Family Affair Day Program, and also expressed an interest in pursuing SLS.

20. In an email to Ms. Rehkop dated January 20, 2012, claimant's father wrote:

The visit to the day program went well. While I do have some concerns it is my feeling that this day program can be appropriate and offer Rick a better opportunity for a bit more independence and enjoyment, as opposed to being relegated to his home quarters and occasional day trips. Keeping Rick

³ Elizabeth Rehkop took over as claimant's service coordinator in November 2011.

socially integrated is important as well as is giving him the opportunity to develop new skills. I was particularly pleased with a few specific features of this program. Barbara King is a Speech Therapist, this is probably the one most significant area out of which I think Rick would glean the most benefit. The atmosphere is very calm, very professional and all areas seem very neat and well organized without too much clutter. Rick tends to do better without immense amounts of stimuli. The impression I've received is that there is a small group of consumers so while the space looks small it probably will not be very crowded in feeling to Rick. There appears to be sufficient space more segregated from the main area, should Rick need space.

Here are my thoughts on what would make a transition into this day program successful for Rick:

- * The first few days Jason transports and remains on premises for training, monitoring, and assisting both Rick and staff.

- * Next, Jason continues transportation until it's apparent that Rick understands where he's heading (to program) and that new behaviors don't materialize (as did with Amy Home/Reach scenario). Jason no longer attends program but possibly stays within a few minutes drive of A Family Affair for this step in the process.

* Next, if Rick does well with the last step, have Rick picked up at house, Jason can follow van to program for a couple of days. Recommend a 1:1 in van.

* Finally, Rick can be picked up with other consumers as long as there's a safe amount of space between Rick and others and an attendant that can monitor. Eventually, Rick can do very well with transportation but this is a fairly lengthy transitional process.

* Any and all staff with whom Rick will interact will need to be aware of and completely able to maintain Rick's behavior plan.

Here are the only concerns I currently have with what I've seen so far with this day program:

* Hours are 8am to 2pm, this can be a bit challenging for me to work around as Rick will need someone home midday. Can be worked around with a flexible P.A.

* The layout of the main area is fairly small and very open, with cubicles being the means of separation. Concerns are mostly for others and a bit for Rick regarding the noise level he experiences, and/or the potential noise level he may bring on occasion.

* Barbara mentioned the staff are restraint trained but seemed caught off guard by the question. I probed further and she mentioned they typically use very minimal physical contact

with consumers. When I explained that there may be times when Rick will need to be physically restrained to prevent injury to self and/or others, I detected concern. This needs to be addressed to completion. I did explain that currently Rick's behaviors are on the mend and we had seen none of these extreme behaviors for over a year prior to his last placement and day program.

* I would like a better understanding and familiarization with the specific staff that will be responsible for Rick's well being. He should always have a non-diminutive male (or non-diminutive and EXTREMELY confident female) within range, as Rick tends to bond very well with those that set and enforce strict boundaries and limits. Basically, Rick can always tell when he's running the show, or not. People that are skilled with reading Rick's moods/behaviors and that are skilled in physical protection methods, usually approach Rick with confidence and allow Rick into their personal space without the anxiety that smaller people often display. Allowing Rick to display closeness and affection is part of the critical stages of bonding.

Please let me know your thoughts. I would be interested in having Rick attend as soon as he has met with the behavior specialist you mentioned should be contacting us this week, Jim Hamman. As of the time of this email we have not yet heard from him but will let you know when we have.

Last thing to note, thank you for what you've done for Rick so far. It is greatly appreciated. I have to let you know that after speaking with Barbara King this morning that she let me know that they've been right here in Rick's own back yard for two years now and that for the past two years they haven't received any new consumers, only retaining the ones with which they started. This is exactly how long Rose and I have been pleading with E.D. county ALTA for services and they never once mentioned A Family Affair. Maybe someone can explain to me why this happens? Why is it that the Placerville office seems to place consumers outside of their county when they should be developing services locally and using the local providers already in existence? Regardless of what we've NOT received from the Placerville office it is important for you to know that Rose and I are appreciative of what you ARE doing.⁴

21. In email to Ms. Rehkop dated February 16, 2012, claimant's parents wrote:

Richard **[W.]** came back home on November 11, 2011. As of today, he has been in our care for over 90 days and the only service he is currently receiving from ALTA is 90 hours of respite quarterly. Cynthia Harding has repeatedly asked us to

⁴ The Consumer I.D. Notes for March/April 2012 confirm that claimant did not attend A Family Affair Day Program because the program could not assure claimant's parents that they would follow the behavior plan, including restraints, and they did not have sufficient staff to manage claimant.

keep our eyes looking forward and we are doing that.

However, our son has not received appropriate services over the past 27 months from [ACRC] and this is unacceptable.

Moving forward, we are requesting the following services be provided immediately until Supported Living Services is in place. Funding for appropriate care for 12 hours a day. There are 730 SLS hours each month. Currently, Alta is not providing services or funding for anything but 90 hours of respite quarterly which averages 7.5 hours weekly. The Best Practices Committee authorized 40 hours per week for a personal assistant for Richard. However, Best Practices failed to provide an appropriate service for Richard as we have learned that this service code is not able to provide the appropriate level of care that he requires. This needs to be rectified and the appropriate level of service provider needs to be authorized immediately. If this cannot happen immediately, we request that ALTA vendor an outside agency to provide for an appropriately trained and experienced individual(s) to provide care for Richard. This individual(s) must be able to perform all of the duties listed below. If these job duties cannot be performed by one individual, then ALTA needs to provide as many staff members as it takes to provide appropriate care for him. A care worker MUST have these qualifications in order to provide appropriate care for Richard: Trained in behavior management and have the ability to implement and adhere to a behavior plan. Trained in methods pertaining to protecting

the physical well-being of Richard and others. Punctual and reliable. Experienced and able to administer medication. Able to attend to Richard's hygienic needs. Able to prepare meals and accomplish light housekeeping duties. Show patience and compassionate [sic] towards consumers that are developmentally disabled. Be calm, consistent and stable. Able to transport as needed. Be able to take Richard out into the community. Richard Wilson is 23 years old and well past the age of majority. Therefore, there is no parental responsibility consideration adjustment that would apply to the hours of service that he is due. We are his conservators. As such, we are committed to ensuring that his needs are met and that his rights are protected. Rick requires protective supervision and other supports 24 hours per day, 7 days per week, 52 weeks per year. Currently, his father, Jason, is his primary caregiver and, as such, he is unable to work. His mother and father are providing care for him for 24 hours each day, 7 days a week with only 7.5 hours of respite weekly. Until SLS is in place we request that ALTA provide the services or funding support for his care for 12 hours each day and his conservators will continue to provide for his care for 12 hours of each day. We have been patient. This situation has gone on long enough. We request that you provide a response to our request for services immediately.

22. Cynthia C. Mendonza, M.S., B.C.B.A., is a self-employed Behavior Consultant. She "performs consultative services with staff and individuals responsible for implementing

behavioral technology in residential facilities and homes,” using assessments and data collection systems for decision making. Her client population “involves children and adults with autism, developmental disabilities and other behavioral disorders.” Ms. Mendonza was retained by claimant’s parents to perform a Functional Analysis Assessment and Positive Behavior Intervention Plan for claimant in order to “formalize his behavioral plan so that [he] may be successfully placed into a supported living environment.” Between February and April 2012, Ms. Mendonza interviewed claimant’s parents, reviewed data compiled by claimant’s father, and observed claimant, and prepared a Behavior Improvement Plan individualized to claimant.

23. In her Summary and Recommendations, Ms. Mendonza wrote:

Richard has a long history and variety of intensive behavioral services and supports. Prior to his 4i residential placement, Richard’s behavior was reportedly free of severe challenging behavior problems for one year. Because he was doing well, it was determined that he would be placed in the 4i residential setting. However, after three months, Richard demonstrated a significant increase in problem behavior and regressed in other skills domains (toileting, sitting at table during meal, traveling in autos free of extra restraints [beyond a standard seatbelt], and feeding self independently). Since he has returned home from the residential placement setting, he has demonstrated a decrease in challenging behavior problems. However, Richard still exhibits those behaviors at lower rates. Further, he is also no longer wearing adult diapers and will mand to use the toilet, he follows his meal routines (with

prompts), he washes his hands and face (with prompts), and he travels by car and only uses a seatbelt.

It is essential that a positive behavior plan be established and followed consistently so that Richard can continue to make progress in learning functional alternative replacement skills. Further, due to the severity of Richard's challenging behaviors, all who interact with him must work consistently. It is important that an activity schedule be designed so that all caretakers can create continuity in his daily activities. Richard works best when he can predict his environment and he can meet his needs effectively. Any positive behavior intervention plan should be monitored and supported by a qualified and certified Behavior Consultant.

24. At hearing, Ms. Mendonza described claimant as pleasant and calm. She confirmed that during her assessment, she observed claimant using effective verbal and non-verbal communications, and attributed his decreased negative behaviors to his placement in an environment "where his needs are being met," "he can communicate more accurately," and "he can escape as he needs it." Based on the data that Ms. Mendonza reviewed for her assessment, in conjunction with her assessment, she would not recommend that claimant be placed in a group home setting. According to Ms. Mendonza, claimant's behaviors before, during and after the Amy Family Home placement, "show a clear picture." Ms. Mendonza believes that claimant requires 24-hour care, but "can develop behavioral skills over time," and there is room for training claimant to choose words that correspond to their meaning. She also believes that claimant requires one-to-one staffing "because they can provide more communication skills training ... faster."

25. Ms. Mendonza contends that her Behavior Intervention Plan can be used by SLS staff to address claimant's behaviors because "it follows the crisis cycle of behavior." It should be effective during antecedent behaviors prior to a crisis, and can be used by anyone who is working with claimant. According to Ms. Mendonza, based on her observations, "use of restraints are not necessary," with claimant because claimant's behaviors have decreased over time. However, "preventive blocking works," or redirecting claimant, should be used in order to maintain claimant's safety. Ms. Mendonza believes that "people change over time," and the ultimate goal is to look to the environment and require that staff be trained to recognize the antecedents that are problematic to claimant and to prevent them. Ms. Mendonza also believes that you can look to claimant's successes over the past few months and "keep that going." Moreover, because claimant "communicates his needs through behaviors," staff "must be able to accurately interpret it" so they can identify the triggers and avoid any challenging behaviors. Ms. Mendonza contends that claimant "understands his environment," "has needs," and "has to find a way to communicate them." She believes that it is possible for claimant to increase his communication skills over time. In Ms. Mendonza's opinion, claimant can transition out of a setting with his father so long as he maintains a stable schedule and environment in the way his needs are met." Without consistency, claimant could rapidly lose the behavior skills he has regained since returning to his father's home.

26. On April 25, 2012, ACRC approved claimant's request to receive 168 hours per month of services from personal assistant, Sixtus Aliriagwu.

27. In a Fair Hearing Decision dated May 11, 2012, following a May 4, 2012 Informal Meeting, ACRC determined that it "was correct in denying the request to fund Supported Living Services for the following reasons: 1) Ricky has been assessed to need 24-hour supervision; 2) Ricky has been assessed to need a behavior management plan, trained personnel and weekly reviews by qualified persons working in the field of behavior

management which is not part of the SLS model; 3) Ricky would be unable to personally direct his SLS staff, as required by SLS guidelines; 4) it would not be cost-effective for ACRC to provide 24-hour care and supervision for Ricky in a private home; a care home would be a more cost-effective option for providing that level of care."

28. On July 3, 2012, Mr. Donofrio prepared an updated Supported Living Assessment on behalf of claimant. During this assessment, claimant's parents updated Mr. Donofrio as to "how things have been going since the group home experience." According to claimant's parents, the Amy Family Home "did not work for Richard," because they "did not follow through on the specific routines that worked for Richard" resulting in the loss of "rituals that worked best for Richard." Mr. Donofrio arrived for the assessment during claimant's breakfast routine, and observed claimant clean his dishes and wash his hands and face with prompting. Claimant also greeted Mr. Donofrio with prompting. Once in the living room, and throughout the discussion of claimant's need for services, claimant sat with his parents and Mr. Donofrio "on and off for most of the time while occasionally asking permission to go out on his swing or to get something to drink." According to Mr. Donofrio, when they all took a short walk around the house together, "Richard seemed very happy and calm and willing to be apart [sic] of the conversation"

29. Mr. Donofrio noted in his report that "because of the focus on individualized and personalized services ... [SLS services] provide[s] the foundation that allows individuals with challenging behaviors a greater opportunity for success." Mr. Donofrio noted that claimant's behaviors "are behaviors that can be supported in an SLS situation and in the community," and "[i]ndividuals that exhibit challenging behaviors have successfully been living in the community funded under SLS." In addition, Mr. Donofrio noted that "[s]upport staff are trained to support the specific needs of each person and carry out any action needed to support their individualized behavior plan," and "SLS services become the most beneficial to the individual because they can create routines and structures that work."

30. Mr. Donofrio opined and recommended that:

Group home settings are designed for a group of people who must fit into the design to be able to get along with others. These residents have no input into who lives or works in the home. Often just changing the dynamic of allowing a person to choose who lives and works for him will create a trust and confidence that increases the chance for success. Because SLS hires specifically to meet a person's individual needs it is very important to find the right support staff that can be trained specifically to the individual's needs and to help keep them safe and comfortable in the community. Richard, along with the Circle of Support/family, will be the one who decides who works best with him. If someone struggles with learning how to best support him, the focus is on finding a new person who can be hired and trained. Staff will learn his unique communication style to be able to support his right to live and full and included life.

Since Richard has returned to his dad's home, we have seen the success that consistent structure and expectations can bring. He is thriving and does not exhibit excessive negative and self-injurious behavior. SLS allows individuals like Richard, to understand what is expected of him and to work through good and bad days in ways that have been proven to work for him. A behavior plan is written for the purpose of discovering the ways that we can include and support someone to be

successful. SLS is designed to provide a support plan with Richards's [sic] specific needs in mind and if it's not working, the plan and strategies are reviewed and any alterations that are needed are put into action. SLS gives us the opportunity to truly listen and help an individual live a life of his or her own design. I have 22 years of experience providing SLS services and it is my recommendation that Richard can successfully have his needs met in this type of living situation.

31. At hearing, Mr. Donofrio explained that SLS began as a vendor service in 1992 and was developed by seven regional centers. Since they opened their doors, his agency has moved approximately 200 consumers from other living arrangements into an SLS setting. Mr. Donofrio has conducted approximately 30 SLS assessments, and of the 45 consumers for whom they currently provide SLS services, "more than half receive 24-hour services," and of the 10 consumers who have autism, more than half of them receive 24-hour support. His agency has served consumers with behavioral challenges, as well as consumers who are non-verbal. According to Mr. Donofrio "it's important to spend time with the consumer," to "listen and observe what is happening and occurring" so as to decide how best to support the consumer. If they are unable to determine the triggers for behavioral challenges, they consult with someone who can help them determine what they are missing, and if they don't understand the verbal communication of a consumer, they "look for something in their behavior" to determine how best to support them.

32. Mr. Donofrio confirmed that the purpose of his second SLS Assessment "was to find out the best way to support claimant in an SLS setting and to develop a game plan," and "not ... whether SLS was appropriate as opposed to an alternative because SLS is for anybody and everybody." The assessment took place over a period of

two days for a total of eight hours. He reviewed paperwork in preparation for his assessment and then “hung out with claimant and his family,” observed claimant, and interviewed claimant’s parents and personal assistant. Mr. Donofrio described claimant as easy going and polite, and testified that claimant “responded well to clear and concise directions. During the assessment, Mr. Donofrio “didn’t observe ... negative behaviors as [claimant] didn’t display them except walking away,” and although claimant “has little quirks ...,” “those are not negative ..., they keep him cool and he is tactile.” Mr. Donofrio explained that his agency cannot be an SLS provider for claimant because his agency does not operate in Sacramento.

33. Mr. Donofrio contends that the assessments he read regarding claimant that were commissioned by ACRC “were all about what [claimant] couldn’t do and therefore he wasn’t eligible for something based on those reflections.” However, in an SLS setting, they have learned to look at the strengths of the consumer to determine how to expand upon them. According to Mr. Donofrio, “if we get it right it works really well. If we get it wrong we try something else.”

34. Mr. Donofrio opined that claimant can “absolutely” be served in an SLS setting, with 24-hour support, and believes that it will be helpful, safe, and it “will work real well for him.” In addition, “he will never be alone in an SLS setting” because “there will always be someone with him for safety reasons.” According to Mr. Donofrio, “we use rituals a lot,” and “our job is to use them to help people get through their day and not to change them.” He contends that with training, SLS staff can be hired based on claimant’s needs which he communicates through his actions, and which SLS staff can build on. It is a “core responsibility” of SLS staff to teach consumers and to increase their skills. Mr. Donofrio contends that all of claimant’s needs can be addressed in an SLS setting, and it would help him to do more of his tasks, with a goal of reducing his behaviors, teaching him new skills, and increasing his independence. In Mr. Donofrio’s

opinion, SLS staff will also work with consultants to look at the protocols, consider the antecedents “so we can diffuse it,” and train staff to “get [their] radar on” to minimize the danger to claimant and themselves. In addition, a day program can help connect claimant with his community. In his 22 years of experience as an SLS provider, Mr. Donofrio is unaware of any regulations that prohibit claimant from receiving 24-hour supervision in an SLS setting, or that require claimant to possess the ability to direct one’s staff. Mr. Donofrio believes that “we all want to live a comfortable life and have people understand us,” and “SLS is to support people to help make their life work for them.”

35. In a sworn Declaration dated July 11, 2012, claimant’s personal assistant, Mr. Aliriagwu, stated that “his responsibilities with Richard include bathing, oral hygiene, helping Richard get dressed, making breakfast, helping him with his medication, going for walks and provide [sic] companionship. My work includes both support and supervision.” According to Mr. Aliriagwu, “Richard is able to tell me what he wants, and otherwise direct me when I work with him. Richard is able to communicate when he is hungry, make choices in what he wants to eat, and is usually the one who decides what activities we do for the day by, for example, asking to go for a walk,” and “when we go on walks, we occasionally encounter strangers, and Richard is polite and able to say hello.”

36. Mr. Aliriagwu stated in his declaration that he began working as a respite worker for claimant in 2009, and was hired by claimant’s family in 2010 to work with claimant on a one-to-one basis on the weekends only. He confirmed that he now works 168 hours per month as claimant’s personal assistant. Mr. Aliriagwu contended that claimant “was doing well” and “was able to ask for things” before his placement at the Amy Family Home in August 2011, and “had gone more than a year without significant behavioral issues.” However, Mr. Aliriagwu asserted that “[w]hen he first got back, he would start banging his head when he wanted anything. He didn’t ask for anything

anymore and acted as if he thought you can read his mind." He moved back to his father's home in December 2011, and "[f]or the past couple of months, he is mostly back to normal." In his opinion, "the group setting was not good for Richard because he generally has his own agenda and it is hard for him to be forced to follow along with the crowd. I believe that his behaviors at the Amy Family Care Home were his way of communicating his displeasure of being there."

37. In his Declaration, Mr. Aliriagwu also stated that "I enjoy working with Richard. We sing together, go for walks, and keep active during the day. He is affectionate and seems to genuinely enjoy my company." Mr. Aliriagwu is "not aware of Richard ever having a seizure in my presence." According to Mr. Aliriagwu, claimant's "aggressive behaviors generally show only when he is trying to hurt himself and you have to intervene to keep him safe, which then can cause him to direct his aggression to the person trying to keep him safe. In the right type of environment, and with his own staff person who knows him and knows how to help him deal with a stressful situations [sic], I believe those behaviors can be prevented." In addition, "I believe Richard needs staff to work with him on a one to one basis. That is how I work with him and it seems to work well. Based on my understanding of SLS, I believe that it is a service that can meet Richard's needs."

38. At hearing, Ms. Aliriagwu confirmed that he has known claimant since 2009, and as claimant's personal assistant, he assists claimant with his daily activities, including food, medications, showering, companionship and walking. Mr. Aliriagwu asserted that when claimant wants something, he will walk him towards the refrigerator, or walk towards him and raise his hand, and Mr. Aliriagwu will "ask him to use his words." They have also gone out into the community together, and claimant "was great," there were "no problems," and he "said 'hi' to people." Mr. Aliriagwu explained how claimant "was a totally different person behavior-wise" when he arrived home from his placement at the Amy Family Home. According to Mr. Aliriagwu, claimant "stopped asking for things," and started

blowing out for nothing, but "now he is back to the way I used to know him."

39. Mr. Aliriagwu has worked with claimant for 40 hours a week since April 25, 2012. He believes that claimant needs a one-on-one setting in which he is comfortable, and that setting cannot be provided in a group home. He enjoys working with claimant, and hopes to continue working with claimant if he transfers to an SLS setting. He is also willing to assist claimant in his transition to an SLS setting.

40. In a sworn Declaration dated July 11, 2012, claimant's father stated:

Rick is a very happy guy and is true to his feelings at any given moment. Rick is happiest when he has people around to help him who know him and understand him. He is successful as long as there is consistency in the way that people interact with him and help him with the things with which he needs help. He is becoming more and more verbally communicative. Although not all of his communication is verbal, Rick can express his basic wants and needs. When he verbally communicates his wants and needs, he expects that an immediate response will follow and does not always understand that certain requests take time to accommodate or respond to.

Rick's challenging behaviors are nearly always predictable. The triggers are very identifiable and/or preventable. Some common triggers include: fear, anxiety, hunger, tiredness, illness/pain. Addressing triggers with consistency and care results in little anxiety and no aggressive behaviors.

On occasion, in the past, it had been necessary to briefly physically intervene to prevent Rick from hurting himself by, for example, hitting his head on the wall. On these occasions, I would physically intervene by stepping in between Rick and the wall, put my hands over his hands, calmly tell him to settle down, until he calmed to a point where he would not be at risk for hurting himself. The entire physical contact would generally last no more than three minutes – only as long as necessary until he had calmed enough to where he wasn't going to hurt himself. In the past, Rose and I used the term "restraint" to describe this type of physical intervention. We have since learned that that term "restraint" carries with it a specific connotation and meaning very different from what we have done. We have never use "restraint" as I now understand that term – we have never used mechanical restraints, tied Rick down, or otherwise used any physical force other than to briefly and temporarily intervene to prevent Rick from hurting himself.

During the year before the placement at Amy Family Care Home, roughly August 2010 through July of 2011, Rick had no shown any violent or aggressive behaviors. The experience at the Amy Family Care Home caused Rick to regress behaviorally and some of the potentially self-injurious behaviors that he had all but put behind him resurfaced. Based primarily on what had happened at that placement, I filed a "4731 complaint" on Rick's behalf with the executive director of Alta California

Regional center (ACRC) explaining how Rick had been excessively medicated in an apparent attempt to control his behaviors, and how he had been subjected to the use of mechanical restraints, among other mistreatments. ACRC's response to the complaint agreed that Rick's right to be free from potentially excessive medication, his right to be free from harm, his right to be free from unnecessary physical restraints, his right to personal liberty, his right to receive treatment in the least restrictive conditions, and his right to receive services and supports as agreed upon had all been violated [sic]

It took several months after he moved back in with me to undo the damage that had been done as a result of his placement at the Amy Family Care Home, but fortunately, now that he has had one-to-one, appropriate support in place for nearly eight months, his behavior skills have returned and problematic behaviors are at a minimum. Rick has had no aggressive or self-injurious behaviors for at least three months. This is due to my creation of a simulated SLS environment, which includes the full care of his needs, as well as his day program, family and community outings, as well as effectively adhering to Rick's behavior plan.

Board and care homes in general are not appropriate for Rick because they have other consumers who can be unpredictable. Rick needs consistency to be successful. Also, in a board and care home, there is less than one staff person for each resident

so there would always be times when Rick may need support and not be able to receive it. Likewise, other consumers may go with unmet needs for the same reasons which may cause them to have behavioral problems which, in turn, creates an environment of instability and unpredictability. From my understanding, loud noises are common in group homes, which can be problematic for Rick. Rick has heightened sensory issues, as is most common in autism. I believe that Supported Living Services (SLS) can allow for the calm predictable environment that Rick needs whereas a board and care home cannot.

Rick would be best served in a SLS environment as he requires a one-to-one staff, where he can get the responses to his needs at the time he expresses them, as well as receiving care from providers that are trained specifically to work with Rick.

Through his communications, his behaviors, and his interactions, I believe that Richard has communicated a preference for SLS over other options.

41. At hearing, claimant's father explained that claimant's current "arrangement works exceedingly well for him." According to Mr. Shapiro, all negative and aggressive behaviors have "gone away," and claimant "is a very very happy person" who walks around singing or mumbling or being very chatty, and he smiles, laughs and is thriving. He does not believe that a group home setting will work for claimant because they are staffed for group care, claimant will not know that other consumers cannot provide for his needs, he would not have consistency, and unpredictable consumers can make demands on claimant

that could be detrimental. Mr. Shapiro contends that "predictability is part of his programming," and it takes much longer for claimant to process change. Although claimant is ultimately adaptable, "we cannot create too much stress for him during that transition time." Mr. Shapiro also explained that while claimant's verbal skills "did not come back as successfully," we are "close to where we were a year ago." Claimant communicates initially by facial expressions, and then verbally when he is hungry or tired, or wants Mr. Shapiro to leave his room. He also communicates through positive behaviors by taking Mr. Shapiro's hand and leading him to the kitchen or the yard. Mr. Shapiro confirmed that claimant needs a one-to-one staff ratio, and to live in a predictable environment, and believes that an SLS setting would be beneficial he is most peaceful when "someone is tuned in and dedicated to him." Mr. Shapiro does not envision staff waiting on claimant hand and foot, but does believe they need to be physically available to him at all times. Mr. Shapiro is willing to assist in setting up an SLS environment for claimant consistent with his current environment because "it works." According to Mr. Shapiro, the house is "set up in a Rick-friendly fashion," there is "no sensory overload," and there is routine, and claimant thrives in this environment.

42. Mr. Shapiro explained that an SLS environment is for claimant's own benefit, as "he will need to be independent because he will outlive us," and "there will come a time when I cannot physically help him." In addition, an SLS setting "is the least restrictive environment," and claimant "has been ready to achieve a more independent lifestyle, and he is entitled to that." Mr. Shapiro believes that SLS will improve claimant's independence because he will not have to conform to other rules. He asserted that because he does not own the home he shares with claimant, he is willing to move out to enable claimant to continue living there. Mr. Shapiro also explained that as claimant's care worker, he does not have the opportunity to enjoy claimant as his son, and "wants to be a parent." He would also like to return to work and be a productive member of society.

43. Rose Shapiro visits with her son one to two times a week. They dance, hike and swim together, and sometimes go on family outings. Mrs. Shapiro described their relationship as "very close." When claimant returned home from the Amy Family Home, Mrs. Shapiro was taking care of her father who had been diagnosed with cancer, and she and Mr. Shapiro agreed that it was not in claimant's best interest to expose him to that, so claimant moved in with Mr. Shapiro. At hearing, Mrs. Shapiro confirmed that claimant communicates verbally and people close to him understand his communication. He also communicates non-verbally through body language. Mrs. Shapiro explained that claimant needs a "calm, clear, consistent and flexible" environment in order to be successful. He likes his space, wants the opportunity to walk away from visitors, and wants to establish relationships in his own time. He also needs boundaries, and does not feel good if he does not know what is going to happen. Mrs. Shapiro believes that "SLS will help [claimant]," and contends that they will not be his caregiver all of his life, and "he shouldn't have to rely on us for all his needs," because "he needs a life fit for himself." If claimant is placed in an SLS environment, Mrs. Shapiro expects to be "just as involved in his life."

24-HOUR SUPERVISION/ABILITY TO DIRECT STAFF

44. ACRC issued a Notice of Proposed Action dated January 24, 2012, denying claimant's request to fund SLS. ACRC provided the following reason for its action: "SLS is not an appropriate service for Richard because SLS is designed to provide support, not 24-hour supervision, which is what Richard needs. Richard's needs for 24-hour supervision is [sic] best met by a board and care home. Additionally, consumers receiving SLS must be [sic] to direct their own staff when they are alone with the staff, and it was determined that Richard is unable to do so. Finally, a board and care home would be more cost-effective

for Richard than SLS.”⁵

45. Cynthia Harding has been a Supervising Counselor with ACRC for 15 months. She supervises 11 caseworkers, and is responsible for 950 cases. Claimant’s case was transferred to Ms. Harding’s unit during his placement at the Amy Family Home between August and December 2011. Ms. Harding met claimant once at a planning team meeting, and has spent approximately one hour with him. At hearing, Ms. Harding admitted that “I don’t know him well enough,” that she had not read any reports regarding claimant’s behavior since February 2012, and was “not familiar with services provided under SLS.” However, she echoed her support of ACRC’s decision to deny SLS to claimant on the basis that claimant needs 24/7 supervision to keep him safe, and “SLS is there to provide support, not to do things for the client,” and that claimant “cannot express his own wants and needs to his own staff.” In her opinion, a board and care home was an appropriate placement for claimant, despite the difficulties he experienced at the Amy Family Home. Ms. Harding admitted that while the Amy Family Home “was the wrong placement,” it “was new with little experience,” and their staff ratio “was one to one and a half.” In addition, Ms. Harding asserted that “individuals with autism live successfully in group homes.” Ms. Harding believes that “claimant could in the future have an SLS arrangement,” but “SLS is potentially dangerous to him and his staff.”

⁵ At hearing, and in ACRC’s written Closing Brief and Reply to Claimant’s Hearing Brief, ACRC raised the argument that claimant failed to establish eligibility for SLS pursuant to California Code of Regulations, title 17, section 58613, subdivision (a)(2). However, ACRC did not assert section 58613, subdivision (a)(2), as grounds for denial of claimant’s request to fund SLS. Therefore, this argument was not considered in this decision.

46. Carol Wilhelm has been a Supervising Counselor in ACRC's SLS unit for 12 years. She supervises 10 service coordinators, and is responsible for 450 SLS cases. At hearing, Ms. Wilhelm admitted that she has never met claimant, and has no knowledge of his behaviors over the past eight months. She confirmed that ACRC did not consider the Functional Analysis Assessment and Positive Behavior Intervention Plan prepared by Behavior Consultant Cynthia Mendonza when they denied SLS to claimant. However, she supports ACRC's decision to deny SLS to claimant on the basis that "he was not ready for SLS at the time." According to Ms. Wilhelm, "a key part of SLS is consumer choice and self-direction." Ms. Wilhelm contends that although ACRC provides SLS to individuals with mental retardation, and severe behavioral challenges, her overall concerns regarding claimant are that physical restraints are necessary to control his behavior, his behavior is unpredictable, he cannot self-regulate or redirect himself, there is no way for claimant to communicate with and direct his staff, and he cannot communicate with his parents if something happens to a staff member. According to Ms. Wilhelm, "SLS is not designed for that." Ms. Wilhelm contends that autistic consumers can grow and change and can improve their skills. She believes that claimant's "significantly limited communication skills" have improved since 2009; however, for claimant to obtain SLS in the future, he would need to find an effective way to communicate and increase his verbal skills. In addition, claimant would need to develop skills so that he was not in need of 24-hour supervision. In the meantime, Ms. Wilhelm believes that claimant should be placed in a board and care home

47. Elizabeth Rehkop has been a Service Coordinator in ACRC's Grass Valley unit for four years. She serves 75 consumers and is ACRC's liaison for 15 care homes. She has limited experience with children with disabilities, and currently has no consumers in her caseload that are receiving SLS. Claimant was assigned to Ms. Rehkop's caseload on November 10, 2011 as a result of his placement in the Amy Family Home. At hearing, Ms.

Rehkop admitted that she has met with claimant on two occasions “for no more than an hour,” has not seen claimant since November 2011, and “though I participated in the decision to deny SLS, I really believe it was out of my hands.” However, Ms. Rehkop supports ACRC’s decision to deny SLS to claimant on the grounds that “claimant is not capable of directing any kind of services for himself.” Ms. Rehkop asserted that “I don’t believe he will ever be capable of directing his own services.” In addition, Ms. Rehkop asserted that “SLS is more for support and not supervision and [claimant] requires it 24/7.” Regarding claimant’s safety in an SLS setting, Ms. Rehkop admitted that “I am not familiar with SLS ... so I don’t know if I can say.” Ms. Rehkop believes that claimant’s needs can be served best in a board and care home because although “it’s a more restrictive setting than living in one’s home,” their trained staff can provide 24-hour supervision and behavioral training.

DISCUSSION

48. From at least 2009, claimant functioned well under the care and guidance of his parents and personal assistant. He communicated verbally and through his actions (Factual Finding 36.) He walked independently, transferred himself in and out bed, a chair, a couch and a vehicle easily, used the restroom independently, could swing in the backyard independently, and go swimming (Factual Findings 12, 14 and 35.) He also listened to music, watched television, looked at books, put items away in his room, dressed himself, fed himself, took his plate to the sink, and threw away banana peels and dirty napkins independently (Factual Findings 12 and 13.) With prompting, claimant could bathe alone, wash his hands and face, fold his laundry, and greet visitors (Factual Findings 13, 23, 28.) In his first 30-days at the REACH day program, claimant actively participated in classes involving activities of daily living, as well as employment/vocational training, and mingled with other people in the community (Factual Finding 17.) However, after a reasonable attempt to live in a residential facility,

claimant's communication and daily living skills regressed, and his negative behaviors increased (Factual Findings 36 and 40.) It was not until a few months after claimant returned home from the residential care facility, that he regained his communication and daily living skills, and his behavioral challenges decreased. This resulted from the structured, predictable environment created by claimants parents (Factual Findings 37, 38, 40, 41, and 43.) The fact that claimant communicated and functioned well in his parents' home, and regained those skills despite his regression during his placement at the residential facility in August 2011, demonstrates that claimant is capable of learning how to communicate and how to apply daily living skills. The testimony of Mr. Donofrio and Ms. Mendonza was persuasive on this issue (Factual Findings 24 and 34.) The testimony of Ms. Harding, Ms. Wilhelm and Ms. Rehkop demonstrated that they did not have an accurate understanding of claimant's current communication and daily living skills or behaviors (Factual Findings 45 through 47.)

49. Therefore, the evidence established that Supported Living Services is an appropriate service for claimant. Claimant and claimant's parents are to be commended for the incredible journey they have taken to create an environment in which claimant functions extremely well, and where his behavioral challenges are minimal. Though claimant's needs are unique, the evidence demonstrates that he functions best with 24-hour supervision, on a one-to-one staff to consumer ratio, in an environment that is quiet, calm, and predictable (Factual Findings 14, 21, 24, 31, and 34.) An SLS setting can provide that environment and support those needs, and claimant is entitled to receive those services. Mr. Donofrio's testimony at hearing was instructive and persuasive in this regard (Factual Findings 32 through 34.) In addition, as set forth in the Legal Conclusions, the Legislature makes clear that developmentally disabled consumers are entitled to live in the least restrictive environment, and that "has always been a 'home' in the ordinary sense of the term as it applies to the lives of people without disabilities.

Such a home is not a 'facility' that is licensed or an institutional setting for the care of special populations." Moreover, claimant's father is willing to move out of the home they share in order to avoid unnecessarily disrupting claimant's current environment, and to allow claimant to continue his journey toward independent living. The evidence further established that a board and care home, as recommended by ACRC, does not approximate to any degree, the environment in which claimant flourished in 2009, and has thrived since December 2011.

50. The evidence also established that the department's SLS regulations enumerate the services and supports available to assist and meet the needs of SLS consumers (Legal Conclusion 7.) Therefore, ACRC's position that claimant should be denied SLS because he requires 24-hour supervision and cannot direct his own services, is without merit. SLS in practice is consumer-driven. (Welf. & Inst. Code, § 4689.) However, 24-hour services and supports are provided by SLS vendors (Factual Findings 31 and 34), and the ability to direct one's staff may be taught to consumers. Indeed, despite his communication barriers, claimant is able to communicate his preferences, especially with people who know him well. Mr. Aliriagwu's testimony at hearing was particularly persuasive on this issue (Factual Findings 35 through 39.) Therefore, there appears to be good potential in this case for claimant to communicate his preferences regarding living arrangements. More importantly, however, none of the enumerated services and supports is intended to serve as a condition precedent to consideration of, or a basis for, denying SLS to consumers. As set forth in the Legal Conclusions, the Legislature makes clear that the services and supports shall be designed and tailored to meet the consumer's needs with a goal of providing opportunities for consumers to acquire the skills necessary for independent living, and to integrate into "the mainstream life of their natural communities." Furthermore, ACRC is authorized by Welfare & Institutions Code section 4689, subdivision (e), to monitor the quality of the services and supports provided to SLS

consumers. It should be noted, however, that ACRC has taken the approach, since at least January 2011, to find a way to deny SLS to claimant (Factual Finding 8.) However, ACRC's approach directly contravenes the intent of the Legislature. As set forth in the Legal Conclusions, the Legislature has placed a high priority on providing opportunities for developmentally disabled consumers to live in a home "with support available for as often and as for as long as it is needed." As ACRC is charged with the responsibility for implementing the legislative intent, they should adopt that same priority.

51. While it may eventually be determined that claimant is unable to participate in SLS to the degree necessary or expected under California Code of Regulations, title 17, section 58620, or that SLS is not a successful living arrangement for him, it may also be that claimant will thrive in an SLS arrangement. As SLS was created and designed to promote "more independent, productive, and normal lives" for developmentally disabled consumers, it is an appropriate service for claimant.

52. All other assertions put forth by the parties at the hearing or in their written briefs that are not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid. Code, § 500.) ACRC

does not currently fund SLS for claimant. Therefore, the burden rests with claimant to establish that SLS is an appropriate service for him.

LANTERMAN ACT

2. In the Lanterman Act, the Legislature has created a comprehensive scheme to provide “an array of services and supports ... sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750 – 4571; see generally *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

SUPPORTED LIVING SERVICES

3. Welfare and Institutions Code section 4501 provides that:

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with

developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment and leisure, the pursuit of their own personal future, and program planning and implementation.

Therefore, section 4501 contemplates the consumer and his parents/conservators, together, being empowered to make choices in all life areas. And it contemplates that the consumer and his parents/conservators, together, participate in the decision making process so that the consumer is not excluded from making important life choices.

4. Welfare and Institutions Code section 4502 provides, in pertinent part, that:

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

- (a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual

and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

- (b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

[1] ... [1]

- (j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

5. Welfare and Institutions Code section 4689 provides, in pertinent part, that:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

- (a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

- (1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.
- (2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.
- (3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.
- (4) Consumers shall have control over the environment within their own home.
- (5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.
- (6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.
- (7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.
- (8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.
- (b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.
- (c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems;

securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation

[1] ... [1]

- (e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:
 - (1) Adherence to the principles set forth in this section.
 - (2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.
 - (3) Whether services and supports described in the consumer's individual program plan are being delivered.
 - (4) Whether services and supports are having the desired effects.
 - (5) Whether the consumer is satisfied with the services and supports.
- (f) The planning team, established pursuant to subdivision (j) of Section 4512, for a consumer receiving supported living services shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.
- (g) Regional centers shall utilize the same supported living provider for consumers who reside in the same domicile, provided that each individual consumer's particular needs can still be met pursuant to his or her individual program plans.

- (h) 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.

[1] ... [1]

- (m) For purposes of this section, "household expenses" means general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.
- (n) A supported living services provider shall provide assistance to a consumer who is a Medi-Cal beneficiary in applying for in-home supportive services, as set forth in Section 12300, within five days of the consumer moving into a supported living services arrangement.

[1] ... [1]

6. In its Final Statement of Reasons for the Supported Living Services Regulations, page 6, the Legislature declared that: "by adding Sections 4688 and 4689 to the Welfare and Institutions Code ... [this Legislature] placed a high priority 'on providing opportunities for individuals with developmental disabilities to be integrated into the mainstream life of their natural communities,' and 'on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan.'"

7. California Code of Regulations, title 17, section 56814, provides that:

- (a) Supported Living Service, as referenced in Title 17, Section 54349(a) through (e), shall consist of any individually designed service or assessment of

the need for service, which assists an individual consumer to:

- (1) Live in his or her own home, with support available as often and for as long as it is needed;
- (2) Make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home.
- (b) Supported Living Service(s) are tailored to meet the consumer's evolving needs and preferences for support without having to move from the home of their choice, and include but are not limited to the following:
 - (1) Assisting with common daily living activities such as meal preparation, including planning, shopping, cooking, and storage activities;
 - (2) Performing routine household activities aimed at maintaining a clean and safe home;
 - (3) Locating and scheduling appropriate medical services;
 - (4) Acquiring, using, and caring for canine and other animal companions specifically trained to provide assistance;
 - (5) Selecting and moving into a home;
 - (6) Locating and choosing suitable house mates;
 - (7) Acquiring household furnishings;
 - (8) Settling disputes with landlords;
 - (9) Becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community to the general public;
 - (10) Managing personal financial affairs;

- (11) Recruiting, screening, hiring, training, supervising, and dismissing personal attendants;
 - (12) Dealing with and responding appropriately to governmental agencies and personnel;
 - (13) Asserting civil and statutory rights through self-advocacy;
 - (14) Building and maintaining interpersonal relationships, including a Circle of Support;
 - (15) Participating in community life; and
 - (16) 24-hour emergency assistance, including direct service in response to calls for assistance. This service also includes assisting and facilitating the consumer's efforts to acquire, use, and maintain devices needed to summon immediate assistance when threats to health, safety, and well-being occur.
8. California Code of Regulations, title 17, section 58620, provides that:

Consumers receiving SLS shall have the right to make decisions that shape the nature and quality of their lives in accordance with their preferences, and consistent with the goals of the consumer's IPP. These rights shall include, but are not limited to, the following:

- (a) Choosing where and with whom to live;
- (b) Controlling the character and appearance of the environment within their home;
- (c) Choosing and changing their SLS vendors and direct service staff;
- (d) Participating actively in their IPP process so that the SLS they receive is based on their needs and preferences;

- (e) Receiving services appropriate to their evolving needs and preferences for support without having to move from the home of their choice, for as long as SLS remains the preferred objective, as determined in the consumer's IPP process; and
- (f) Informing the regional center about how satisfied they are with the services they are receiving, and to have this information taken into account in the regional center's periodic evaluation of the SLS vendor's service, pursuant to Section 58671(c).

9. In its Final Statement of Reasons for the Supported Living Services Regulations, page 2, the Legislature declared that: "SLS, as defined in these proposed regulations, fosters the independence and self-reliance of adults with developmental disabilities living in their own homes in integrated communities, while providing necessary protection to consumers, reasonable assurance that the services will achieve the intended results, and a way to these desired ends in a cost effective manner. Only by reconciling and meeting all three of *these imperatives - empowerment, protection, and fiscal responsibility* - can there be progress towards the legislature's goal, as expressed in Welfare and Institutions Code, Section 4750, of promoting 'more independent, productive, and normal lives,' for people with developmental disabilities." [Italics in original.]

10. In its Final Statement of Reasons for the Supported Living Services Regulations, pages 2 -3, the Legislature declared that: "The absolutely 'least restrictive environment' has always been a 'home' in the ordinary sense of the term as it applies to the lives of people without disabilities. Such a home is not a 'facility' that is licensed or an institutional setting for the care of special populations. A substantial number of people with developmental disabilities, however, continue to receive services through one or another institutional model that can not, by its very nature, provide the 'normal'

home setting prevailing generally in society. A group home (Community Care Facility), for example, which is less restrictive than a developmental center, may appear to approximate the living environment of non developmentally disabled people. Yet in fact it is not 'normal' in California for non-related adults to live communally under supervision in any sort of licensed residential facility."

11. As set forth in the Factual Findings and Legal Conclusions as a whole, and more specifically in Factual Findings 48 through 51, claimant met his burden of establishing that Supported Living Services is an appropriate service for him.

ORDER

1. Claimant **Richard W.'s** appeal of his request to have ACRC fund SLS is GRANTED.

2. On or before November 15, 2012, claimant's IPP team shall meet to determine the cost-effective services and supports necessary to ensure claimant's success in an SLS setting.

3. The IPP team shall place claimant in an SLS setting as soon as practicable, but no later than January 1, 2013.

DATED: **November 8, 2012**

REBECCA M. WESTMORE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)