

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RICHARD "DICKY" G.,

Claimant,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2012030169

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Fresno, California, on May 29, 2012.

The Service Agency, Central Valley Regional Center (CVRC), was represented by Shelley Celaya, Client Appeals Specialist and Hearing Designee.

Claimant was represented by Chris Campbell, Attorney at Law.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Shall claimant be discharged from Porterville Developmental Center (PDC) to a community based placement?

FACTUAL FINDINGS

1. Claimant is a 52-year-old man eligible for CVRC services based on a diagnosis of profound mental retardation secondary to Down Syndrome. He has keratoconus in both eyes and is legally blind. He is ambulatory but walks with a sideways gait and his feet everted. Claimant walks with a guide and requires assistance, generally hand-over-hand, with most activities of daily living. He may use a wheelchair for distance translocation. Claimant is non-verbal and communicates through sounds and gestures. If he likes something, he may smile, laugh, clap or hum. If not, he will move away.

Claimant feeds and toilets himself, though he does require assistance with aftercare. He also dresses himself with assistance in choosing clothing.

Claimant enjoys music and has wonderful rhythm. He does not like noisy environments or loud noises. It is the consensus of all who know him that he is a sweet, gentle man who is easy-going and friendly. He responds well to simple requests and does not exhibit any behavioral concerns.

2. Claimant was voluntarily placed at PDC in 1966 at the age of six and has continued to reside there since that time. He has been receiving services from CVRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

3. Claimant's mother became his conservator of the person in 1978. Two of his sisters joined his mother as co-conservators in 1998. Claimant's legal status at PDC is RCL 88 (admission or continuation on signature of probate conservator with court authority to fix residence). The Superior Court of the State of California, County of Monterey, in Case

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

No. P31590, issued an order dated December 5, 2003, that claimant's placement shall remain at PDC until further order of the court.

Michael Atteridge, a Probate Court Investigator, completed an Annual Review and Specially Ordered Investigator's Report to Court dated March 7, 2012. He concluded in part that "the conservatorship continues to be necessary" and "the conservatee's living at a residential facility known as the Porterville Developmental Center continues to provide the conservatee with regular interaction/socialization with his peers and this is the least restrictive setting for him at this time." There was no evidence that the investigator considered any alternative placements.

4. As indicated in his current Individual Program Plan (IPP), dated July 6, 2011, claimant's "preferred future" is to "learn to be more independent." The Placement Planning section of this IPP provided:

[Claimant] continues to reside on 21 North Sequoia Drive, where he is familiar with staff, peers, his surroundings, and his daily routine. He has resided at PDC for over 40 years. **[Mrs. G.J. mother/Conservator, is opposed to community placement.** There are no plans for community placement at this time; however, if placement were to be considered in the future, the necessary services and supports needed to make placement successful would include, but not be limited to the following: direct involvement and input from his family/conservators, a slow transition with diligent pre-placement planning/activity with numerous day and overnight visits, a small residential facility with similar peers/specialized home for the blind, adult day program/work site similar to paper shredding, ongoing medical monitoring for his open

medical conditions including a physician, nurse, physical therapist, dentist, podiatrist, nutrition services/registered dietician, psychiatric technician, vision services, sighted guide due to blindness, and other specialty medical services as needed, access to recreation and leisure services in the home, as well as the community (including bowling), adaptive equipment (high-sided compartment plate, Pedor shoes with Plastizote liner, and wheel chair may be used for long distance translocation), vocational services, and assistance with money management. The team agreed that Richard is appropriately placed on unit 21 in Program IV at Porterville Developmental Center at this time.

5. An IPP review was held on December 11, 2011, "to amend the Placement Planning section of Richard's Annual Individual Program Plan meeting dated 7/6/11, whereby it states that there are no plans for community placement." The review included the following:

Richard's Regional Center has informed the Team that although a home has not yet been identified, they will now actively begin to seek appropriate community placement. Richard's mother and sister, his co-conservators, are on record as being adamantly opposed to community placement and their lawyer was present at this meeting via Tel-conference to inform the Team their stance has not changed. . . His Regional Center feels strongly that the services he currently receives can be replicated and perhaps enhanced in the community. The

lawyer representing Richard's family again expressed his co-conservators strongly disagree and wish Richard to remain at Porterville Development Center.

6. Claimant's records and IPP's have continually documented his mother/conservator's opposition to a community placement for her son. As far back as 1982, a social evaluation performed by B.J. Pandya at PDC (then Porterville State Hospital), recommended that "Richard is ready for community placement. This item should be discussed at the team meeting on 10-8-81. Continue current programming until appropriate community placement is identified." Her report also noted that "he was recommended twice by the hospital for community placement in the past (1967 and 1970), but the parents refused to give consent for the placement."

7. On February 14, 2012, CVRC issued a Notice of Proposed Action (NOPA) to claimant, advising that CVRC was "proposing to discharge [claimant] from Porterville Developmental Center to a less restrictive community based care facility." The reason for the action was "to provide Dicky with the least restrictive environment to meet his needs. Dicky's needs can easily be met in the community."

The cited authority for the action, section 4502(a), provides:

Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which receives public funds.

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

8. Claimant filed a Fair Hearing Request, dated February, 2012, stating:

[Claimant] is in a conservatorship administered under the supervision of the Monterey County Superior Court, case number P31590. His conservators object to the proposed action and believe that Porterville Developmental Center is the least restrictive placement for [claimant].

9. Diane Kaus is a CVRC Program Manager whose responsibilities include supervising services and supports for consumers living in and transitioning from Developmental Centers. She testified to the major changes to the State of California's developmental center's qualification of consumers since claimant was first placed at PDC. The mandate to regional centers, especially in light of "California People First", has been on severely limiting consumer placement at developmental centers and striving to relocate all

consumers for whom community placement is appropriate.² Her testimony was uncontested that claimant would not be admitted to a developmental center today. She also identified pending Trailer Bill ³ language that proposes to mandate comprehensive assessments be completed by regional centers of any consumer residing in a developmental center on July 1, 2012, who is not committed pursuant to 1370.1 (a Penal Code section referring to defendants found mentally incompetent as the result of a developmental disability), has resided in the developmental center more than one year, and who has not had such an assessment in the prior two years. The assessments shall be for identified costs of moving individuals from developmental centers to the community, and for deflection of individuals from developmental center admission.

In responding to the mandate to identify individuals whose needs can be met in the community, claimant's IPP team determined that it is now appropriate to actively seek placement for claimant. While such placement has been considered for years, the team has in the past placed a high priority on the desires of claimant's family who continually opposed community placement.

² On April 24, 2009, Judge Robert Freedman, Alameda Superior Court, granted final approval of a class action settlement agreement in Capitol People First, et al. v. Department of Developmental Services, et al. The settlement agreement set forth agency responsibilities addressing access to services necessary for Californians with developmental disabilities to live in and participate in their communities and avoid unnecessary institutionalization. It also examined the use of state taxpayer dollars to continue to institutionalize individuals who could live successfully in community placements.

³ Department of Developmental Services Proposed Trailer Bill Language 652 Consumers With Challenging Services Needs.

Ms. Kaus explained that by current standards, individuals who “cannot be served in the community” would typically include consumers with extreme behaviors that are assaultive or dangerous to themselves or others, or who are too medically fragile. Claimant does not fit into these exceptions and she believes his needs can be met in the community.

Regional centers are also responsible for the cost effective use of public funds. Ms. Kaus testified to the costs of various placements and explained that the annual cost of placement for a consumer in a developmental center is approximately \$280,000 which she noted may increase to as much as \$330,000 in the current budget revisions. The annual cost for a Level 4D placement, which is being recommended for claimant, would be approximately \$42,000.

10. Susan Murray is a CVRC Case Manager and Developmental Center Liaison. She testified to placement efforts to determine an appropriate placement to meet claimant’s needs in the community. The proposed placement is in the Domingo Home, a level 4D, twenty-four hour residential care facility serving up to four adult/elderly individuals. Fe Domingo and her husband operate the facility which is located in Porterville in close proximity to PDC. Ms. Domingo has been a licensed psychiatric technician for 33years and has been employed at PDC. She has had experience working with claimant on and off for approximately ten years while at PDC and also employs staff that have retired from PDC.

Ms. Murray described the Domingo Home as “spacious, on a cul-de-sac, in a semi-rural area.” Ms. Domingo is very highly regarded and the quality of her home and program was not at issue.

Ms. Murray described how a transition plan would be developed with claimant’s IPP team to meet his needs in the transition. Staff would visit PDC to get to know him and his daily care needs. They would learn claimants “nuances, preferences and habits.” The transition would occur slowly. Claimant might visit the home first for a meal, then an

activity, and eventually for all day visits and then overnights. It was suggested that claimant participate in a day program at the Porterville Sheltered Workshop which he would visit to develop familiarity. The team would incorporate activities that claimant enjoys and participates in at his current placement.

Because of the Domingo Home's close proximity to PDC, claimant could retain the services of his current physicians (ophthalmologist, cardiologist etc.). The regional center also agreed to retain a vision specialist to aide the team in the transition and evaluate any barriers.

Ms. Murray concluded that claimant's needs could be met in the community "very, very, nicely." She stated that individuals such as claimant "today would never see the inside of an institution."

11. Dr. Kao Yang is a CVRC Staff Psychologist. She testified that she assessed claimant and recommended a community care facility or immediate care facility as the least restrictive placement to meet claimant's current needs. She reviewed records, met with claimant, interviewed staff, evaluated his diagnosis, level of functioning and level of care required. She noted he has "no behavior plans and is mellow and easy-going." It was her opinion that claimant could be served in the community with services similar to those provided him at PDC and such placement would be the least restrictive environment.

12. Dr. John Chapman is a Staff Psychologist at PDC. He testified that he was asked to conduct a Functional Analysis of Behavior (FBA) for claimant. The purpose of this assessment is to assess behaviors, identify antecedents, rewards and determine the need for a behavior plan. Dr. Chapman testified that claimant "has no behaviors" and "doesn't need extra help in that area." He stated that claimant would "not be placed at PDC today" and that "if his IPP needs are met through a step-by-step process, he is a good candidate for community placement."

13. Fe Domingo has been a Senior Psychiatric Technician at PDC for thirty-three years. She and her husband operate the Domingo Home. They live on-site and provide direct care along with retired staff from PDC. She testified to her knowledge of claimant and desire to possibly serve him. She explained how she would work with claimant's IPP team for a successful transition to the community placement. When asked about the risk of claimant falling and injuring himself, she explained precautions she has and will take including grab bars, supervision and staff training. She also stated that she had the experience of growing up with a blind grandmother.

14. Lindi Ellis is claimant's Individual Program Coordinator. She testified that claimant is happy at PDC. He is very involved and "goes to everything." He enjoys music, bowling, his foster grandparent relationship and his job shredding paper. She said he is the "perfect client, so mellow, everyone loves him." When asked if she had concerns with claimant moving to a community placement, she responded that if services and supports in his IPP are put in place, she did not see any needs that could not be supported in the community. It was her recommendation that the transition would occur slowly.

15. Diane Shelton is a PDC Psychiatric Technician and has been claimant's job coach for the past six years. She runs a "paper salvage" job site Monday through Friday where claimant is employed. She testified that claimant is happy, gets along with staff and would need time to adjust to a new home and staff if moved to a community placement. She stated that he has no behavioral concerns and should not have issues adjusting because he gets along with everyone.

16. Dr. Ron Marconi, M.D., conducted a Medical Assessment for Community Placement dated December 23, 2010. He concluded as follows:

Richard would be an excellent candidate for a placement in a small, group home where he could receive the medical level of care that he is currently receiving at Porterville Developmental

Center. The home could be one of the newer ones created for those with sensory deficits, particularly his visual deficits, including the [sic] profound mental retardation. He would also need the medical team to treat his medical problems. That would include primary care with availability of an ophthalmologist, cardiologist and ENT specialist. He would also need the support personnel, such as dietary, occupational therapy, physical therapy.

17. Ruanne G. is claimant's mother and one of his co-conservators. It was evident that she loves her son and truly desires the best for him. She explained the process of admitting claimant to PDC in 1966. He is the third of her four children and he was admitted at age six with what she said was "an agreement that he would be placed for life" so her other children would not become responsible for his care.

She was impressed with the staff and facility at PDC and has grown more impressed over the years. She explained that, at first, claimant made progress but it was "agonizingly slow." But he was happy and content, and she was very pleased with his placement. He is loved by staff and treated wonderfully. She agreed that claimant enjoys and takes advantage of activities at PDC and she is concerned that he would miss all the activities that he enjoys if he moved to a community placement.

Claimant's mother/conservator is understandably very concerned about a change in placement due to the extensive amount of time claimant has resided at PDC. She opined that the most humane decision would be to allow him to "live out his years where he is happy and comfortable, where he can continue to participate in the extra activities he enjoys." She noted that he has outlived the average live expectancy of individuals with Down Syndrome.

Claimant's mother/conservator also expressed her concern regarding claimant's continued medical care in a community placement. Claimant was recently diagnosed with an "abnormal atlantoaxial interval which increases significantly with flexion, consistent with instability." His physician, Dr. Nandan Bhatt, noted that this joint laxity is found in patients with Down Syndrome. "The danger with this instability which is significant in him is that a fall could result in a tear of the AA ligament with grave consequences from the odontoid process impinging on the medulla oblongata." Staff at PDC was made aware of this danger and the importance of preventing him from falling and damaging his neck.

Other medical concerns include hyperlipidemia (high cholesterol), impacted cerumen (ear wax build up), dermatitis and osteoporosis. Claimant is currently being considered for surgery to remove gallstones.

Claimant's mother/conservator was concerned that claimant has a wonderful life at PDC that could not be duplicated in a community home placement.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646, subdivision (a) provides:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on

the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Section 4648, subdivision (a)(1), specifies:

In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live as independently as possible in the community, and that allow consumers to interact with persons without disabilities in positive, meaningful ways.

4. Section 4500.5(a) provides:

The Legislature makes the following findings regarding the State of California's responsibility to provide services to

persons with developmental disabilities, and the right of those individuals to receive services, pursuant to this division:

- (a) Since the enactment of this division in 1977, the number of consumers receiving services under this division has substantially increased and the nature, variety, and types of services necessary to meet the needs of the consumers and their families have also changed. Over the years the concept of service delivery has undergone numerous revisions. Services that were once deemed desirable by consumers and families may now no longer be appropriate, or the means of service delivery may be outdated.

5. Section 4418.3(a) states:

- (a) It is the intent of the Legislature to ensure that the transition process from a developmental center to a community living arrangement is based up the individual's needs, developed through the individual program plan process, and ensures that needed services and supports will be in place at the time the individual moves. It is further the intent of the Legislature that regional centers, developmental centers, and regional resource development projects coordinate with each other for the benefit of their activities in assessment, in the development of individual program plans, and in planning, transition, and deflection, and for the benefit of consumers.

6. There is no doubt that the decision to seek community placement for claimant was difficult to make due to the heartfelt desires of the family over many years. Honoring the family's desire is most likely the reason claimant was not transitioned earlier. Fortunately, the reason why the PDC placement has worked so well for claimant is precisely why it should be anticipated that a community placement will also be successful. Claimant is described by everyone who knows him as easy going, extremely likable and a joy to work with. He is well known and cared for. There is no reason to believe that with proper

transition planning by a dedicated IPP team, including all necessary services and supports, claimant's community placement would be anything but successful.

This decision is not meant to discount the family's concern in any way. It is more than reasonable to be concerned with change after such an extended time period in the PDC placement. However, many changes have occurred in the delivery of services to the developmentally disabled since 1966. The evidence was persuasive that a developmental center placement would no longer be appropriate for claimant. With the continuing changes to the developmental center population, that placement becomes more and more inappropriate.

The evidence was also persuasive that claimant's needs could be met in a community placement with proper planning and oversight. The Domingo Home is a high quality placement with well respected staff. Its close proximity to PDC is ideal as claimant can maintain many of his current supports, including his physicians. Finally, the regional center's mandate to provide services that reflect the cost-effective use of public funds must be considered. That mandate also supports the decision to pursue community based placement.

ORDER

The appeal of claimant Richard "Dicky" G. is denied. CVRC shall take all steps necessary to further claimant's successful transition to a community based placement.

DATED: June 12, 2012

SUSAN H. HOLLINGSHEAD
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).)