

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DONNA E.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service

Agency

OAH No. 2012030421

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter on May 23, 2012, in San Bernardino, California.

Leigh-Ann Pierce, Consumer Service Representative for Inland Regional Center, represented the regional center.

The claimant, Donna E. appeared in propria persona.

The record was closed on May 23, 2012.

SUMMARY

The regional center funds 16 hours per month of supportive living services<sup>1</sup> for claimant. Claimant applied for a temporary increase in her hours.

In this decision, it is determined that claimant is entitled to additional services and

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<sup>1</sup> Supportive living services also are referred to as independent living services.

supports.

## FACTUAL FINDINGS

### BACKGROUND

1. Claimant is a 33-year-old consumer of regional center services. Claimant is eligible for services because of a diagnosis of mild mental retardation. She lives in an independent living arrangement with her husband, who also is a regional center consumer. Claimant and her husband have a daughter who will be attending grade school in the fall of 2012. The regional center funds 16 hours per month of supportive living services (SLS) for claimant.

2. Cheryl Cay, who works through Community Integration Network, Inc., is claimant's SLS worker. An SLS worker is supposed to teach a consumer how to function independently. An SLS worker is not supposed to provide other direct services. For example, an SLS worker should not clean a consumer's home but should teach the consumer how to clean. An SLS worker should not provide transportation but should teach the consumer how to access transportation. An SLS worker should not manage a consumer's finances but should teach the consumer how to manage finances.

3. It is easy to provide examples of this distinction. Often, however, it is difficult for SLS workers to avoid providing services. One of the best ways to teach someone to clean his or her home is to demonstrate, and many regional center clients can learn things only with frequent repetition over a long period. Thus, an SLS worker may do a lot of demonstrating – i.e., cleaning – before a consumer masters the task. Nevertheless, the principle is there: An SLS worker is to teach a consumer how to live a more independent life.

4. It is anticipated that, over time, a consumer may become sufficiently proficient with a task that the SLS hours can be reduced or eliminated. It also is possible,

however, that a consumer is incapable of learning to deal with a particular task independently. Moreover, it is possible that additional needs will be identified from time to time that require additional SLS hours.

5. Ms. Cay is to use claimant's 16 hours per month as follows:

Money Management and Budgeting	5 hours
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Medical/Dental Health Services	5 hours
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Parenting Support	5 hours
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Emergency/Disaster Preparedness <sup>2</sup>	1 hour
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6. Claimant, anticipating the need for an OBGYN procedure and dental surgery, asked for seven additional hours of SLS each month for two months.

7. By a notice of proposed action dated March 12, 2012, the regional center denied claimant's request. The notice stated, in part:

You are capable of making and keeping medical appointments, as well as taking medications as prescribed independently. You are able to independently access community resources for food and other basic necessities. Your [regional center consumer service coordinator (CSC)] suggested that you use the current (5) hours to focus on medical and dental appointments; in addition . . . [you] should consider your family members as they are natural supports to assist with the care of your child.

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<sup>2</sup> The regional center requires consumers who receive SLS to have one hour per month of instruction regarding emergency and disaster preparedness.

The decision not to fund additional SLS hours is based upon the following statutes, regulations, and/or policies:

Welfare & Institutions Code (WIC), Section 5689(f) states "(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.

#### THE REGIONAL CENTER SUGGESTS THAT CLAIMANT BORROW HOURS

8. As noted in the footnote, the regional center requires one hour per month of instruction regarding emergency and disaster preparedness. Regarding the remaining 15 hours of claimant's regular allotment, the regional center is willing to be flexible. That is, if for two months, claimant needs to use seven additional hours each month for learning about medical and dental health services, the regional center will permit that. Claimant could, in effect, borrow seven hours from the hours allocated for assistance with learning about budgeting and parenting.

9. Claimant contends that that is not an acceptable solution because she regularly needs five hours a month in assistance with learning about each of the three categories – budgeting, health, and parenting.

#### THE USE CLAIMANT MAKES OF HER REGULAR 15 HOURS

10. Ms. Cay testified about the use claimant makes of the 15 hours. The following is a paraphrased summary of part of her testimony.

11. Ms. Cay has had to spend a great deal of time trying to teach claimant about money and budgeting. Claimant is prone to respond to schemes that appear to be

opportunities to “get something for nothing.” On one occasion, someone sent her what appeared to be checks, and she tried to cash them. They were non-negotiable. On another occasion, a woman asked claimant to sign some documents regarding claimant’s social security benefits. Claimant mistakenly understood it would be to her benefit, and claimant did as the woman asked. When Ms. Cay saw the documents, she realized that claimant, unwittingly, had become involved in perpetrating a fraud.

12. In addition to these special financial matters, Ms. Cay tries to teach claimant how to budget the family’s income. Ms. Cay testified that she always needs to use the entire five hours allotted to money management and budgeting.

13. Ms. Cay attends medical appointments with claimant in order to try to teach her to understand and act on the things medical professionals tell her. Claimant is diabetic and, in addition to seeing her doctor, must see a podiatrist regularly. Because of claimant’s diabetes, nutrition and diet have become particularly important. Ms. Cay tries to teach claimant to understand and act on the things medical professionals tell her about nutrition and diet.

14. Claimant sees her physician two times a month or more. During the past three months, claimant has seen her OBGYN physician four times, her podiatrist two times, and her dentist one time. Thus, during the past three months, claimant has had approximately five medical or dental appointments each month. She often must sit in a waiting room for quite a while before her doctor sees her.

15. Claimant needs to learn to supervise her daughter with regard to the daughter’s homework assignments. Also, claimant needs to learn how to cooperate with the daughter’s teacher in addressing the daughter’s behavior problems. During the school year, Ms. Cay and claimant attended weekly appointments with the daughter’s teacher. Ms. Cay tries to teach claimant to understand and act on the teacher’s suggestions for things claimant can do to help her daughter. By the end of the school year, the daughter’s

behavior problems became extreme, and the school wants the daughter to attend counseling sessions over the summer vacation in the hope that she can learn to behave more appropriately next year. The school wants claimant and her husband to attend the counseling sessions. Ms. Cay anticipates that she, also, will need to attend those counseling sessions in order to help claimant and her husband understand and act on the counselor's suggestions for things they can do to help their daughter.

16. Ms. Cay has taught claimant to set up a reward program for the daughter in order to try to modify the daughter's behavior, but so far it has not been effective.

17. Ms. Cay testified that ordinarily she needs to use the entire 16 hours of SLS time that is allotted. She testified that there are no hours to be borrowed to take care of the two months in which claimant will have additional needs.

#### FINDING REGARDING CLAIMANT'S RECURRING NEEDS

18. Based on claimant's demeanor in the hearing, it is found that Ms. Cay's testimony regarding claimant's needs is highly credible.

19. In the hearing, claimant was attentive, polite, and focused on the purpose of the hearing. Her demeanor was appropriate in every way. With regard to certain questions, claimant responded promptly and appropriately. She, however, struggled with relatively simple matters. When asked whether she had any objection to the regional center's documents being received in evidence, she appeared to be deep in thought but incapable of responding. After the undersigned administrative law judge offered an explanation of the matter, claimant continued to have a puzzled look on her face. The same was true when claimant was asked whether she had any questions she wanted to ask various witnesses. At first, she appeared to be deep in thought but incapable of responding – even with regard to her own witness, Ms. Cay. After a while, claimant did ask a few questions, but they were not probative. After a while, when asked whether she had questions, claimant quickly responded "No," as though she did not want to have to think

about the matter.

20. It is very believable that claimant finds it difficult to act on what Ms. Cay, a doctor, a nurse, a teacher, or a counselor tells her. She may, on a certain level, understand what people tell her, but that does not mean she is capable of translating that understanding into appropriate behavior.

21. Claimant testified that, if she were told to take a medication three times a day, she would need help with figuring out what that meant.

THE REGIONAL CENTER CONTENDS THAT MS. CAY SHOULD NOT PROVIDE  
TRANSPORTATION FOR CLAIMANT

22. The regional center contends that it is inappropriate for Ms. Cay to transport claimant to or from her appointments. Claimant can take public transportation, and if it is necessary for Ms. Cay to attend an appointment in order to teach claimant how to follow through regarding the subject of the appointment, Ms. Cay can meet claimant at the location of the appointment.

23. No evidence was offered as to whether Ms. Cay goes out of her way to pick claimant up at claimant's home and drop her off there. If it is necessary for Ms. Cay to attend certain appointments and if she does not have to go out of her way to pick claimant up, it would seem to be a waste of claimant's time to require her to take public transportation. It is not as though this is a missed opportunity to teach claimant how to use public transportation. She is proficient at using public transportation. She has done that for years.

24. In any event, unless Ms. Cay has been devoting a substantial amount of time to going out of her way to pick claimant up, claimant's taking public transportation will not result in any substantial saving of Ms. Cay's time. That is, claimant's taking public transportation will not cause Ms. Cay to be able to devote substantially less time to claimant's recurring needs regarding the three categories.

## CLAIMANT'S ADDITIONAL NEEDS FOR TWO MONTHS

25. Ms. Cay testified that claimant will have additional needs regarding medical and dental health services over a period of two months.

26. Claimant needs to have an OBGYN procedure performed.

27. Claimant needs to have dental surgery performed under sedation. Medi-Cal has approved the surgery. The procedure is scheduled for June 5, 2012, and is expected to last five hours. It will be done at a dental clinic in Redlands. Claimant's daughter will not be in school, and claimant will need someone to care for her daughter. The dental clinic requires that a responsible adult be present the entire time claimant is under sedation.

28. If public transportation to Redlands is available from the area in which claimant lives, claimant can take public transportation to her dental surgery. After having been sedated, however, she will need transportation from the dental clinic to her home.

## CLAIMANT'S TESTIMONY

29. The following is a paraphrased summary of part of claimant's testimony:

30. After being sedated at the dental office, I will need help to get home, and I will need help at the time of the OBGYN procedure.

31. I am not severely disabled. I am capable of taking public transportation. Before my daughter was born, I worked outside of the home. I worked through the Community Options program. I once worked at Arrowhead Regional Hospital, once at Subway, and once at Soup Plantation. I used public transportation to get to and from work.

32. For a while, I was an IHSS provider for my mother-in-law and brother-in-law. I cleaned their house, showed them how to wash clothes, and pushed my mother-in-law to the store.

33. I do not have a car.



## HUSBAND COULD TAKE TIME OFF FROM WORK

34. The regional center contends that claimant does not need additional SLS hours for the two months she will have additional needs because her husband, who is a natural support, can take time off from work and provide the additional help she needs.

35. Claimant's husband works full time. When he takes time off from work, he is not paid.

36. Claimant, her husband, and their daughter all receive social security benefits. Claimant's husband earns a salary. The regional center provides claimant with a \$92 independent living stipend each month and provides her husband with a stipend in that same amount. They have no other income.

37. Claimant testified that she and her husband do not own their home. They rent. They have no savings account and do not own a car. Claimant testified that, if she budgets "real good" they just get by each month.

38. Claimant's CSC spoke with claimant's husband about his taking time off from work to help claimant, and he said he was willing to do that. Claimant testified that she was concerned about her husband's taking time off from work and their losing that income.

39. Claimant's husband does not have a driver's license.

40. The husband's losing more than seven hours of pay each month for two months would impose a financial hardship on claimant and her family.

## LEGAL CONCLUSIONS

### GENERAL PROVISIONS REGARDING SERVICES AND SUPPORTS TO WHICH CONSUMERS ARE ENTITLED

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst.

Code § 4500, et seq.) The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (Welf. & Inst. Code § 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (Welf. & Inst. Code § 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code §§ 4646, 4646.5, & 4648.)

2. Welfare and Institutions Code section 4648, subdivision (a), addresses the matter of securing services and supports. That subdivision provides, in part:

(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.

[¶] . . . [¶]

(9)(A) *A regional center may, directly or through an agency acting on behalf of the center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease . . . .*

[¶] . . . [¶]

(9)(D) *Consumers are eligible to receive supplemental services . . . .*

[¶] . . . [¶]

(11) Among other service and support options, *planning teams shall consider the use of paid roommates or neighbors, personal assistance, technical and*

financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state. [Italics added.]

3. Welfare and Institutions Code section 4689, concerns services and supports for consumers in supported living arrangements. That section provides, in part:

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:

[¶] . . . [¶]

(2) *The services or supports that a consumer receives shall change as his or her needs change* without the consumer having to move elsewhere.

[¶] . . . [¶]

(6) *The services or supports shall be flexible and tailored to a consumer's needs and preferences.*

[¶] . . . [¶]

(8)(c) The range of *supported living services and supports available include*, but are not limited to . . . *recruiting, training, and hiring individuals to provide personal care and other assistance* . . . . [Italics added.]

#### REGIONAL CENTERS ARE ADMONISHED TO BE COST EFFECTIVE

4. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of an IPP, they are directed by the Legislature to provide services in a cost-effective manner. (Welf. & Inst. Code § 4646, subd. (a).) In addition, regional centers may not fund services that are available through another public agency. This prohibition, contained in section 4648, subdivision (a)(8), provides:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

5. Toward this end, regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.” (Welf. & Inst. Code § 4659, subd. (a).)

6. Section 4646.4 requires regional centers, when purchasing service and supports, to ensure that it is utilizing generic services and supports where appropriate.

7. There are a number of references in the Lanterman Act to natural supports, which include family. Section 4512, subdivision (e), for example, provides a definition of natural supports. Section 4646.5, subdivision (a)(4), provides that an individual program plan shall include a schedule of services and supports to be provided or obtained and shall identify who is responsible for providing or obtaining them. An IPP may provide that natural supports, which include family members, are responsible for providing or obtaining certain services or supports.

8. As noted above, the regional center's notice of proposed action in this case refers to Welfare and Institutions Code, section 5689, subdivision (f), which provides, "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. [Italics added.]

#### CLAIMANT'S HUSBAND IS NOT REQUIRED TO TAKE TIME OFF FROM WORK

9. By reason of the matters set forth in Findings 35 through 40, it is determined that the husband's losing more than seven hours of pay each month for two months would impose a financial hardship on claimant and her family.

10. If the husband's employer provided sick leave benefits for caring for family members, the husband, as one of claimant's natural supports, might be obliged to take sick leave and help claimant. Also, if claimant and her husband had a savings account that they could use to make up for lost income, the husband might be obligated to take time off from work. If the husband worked a night shift, he might be obliged to arrange his sleeping schedule so that he could help claimant.

11. There is nothing in the Lanterman Act, however, that requires a family member to give up an opportunity to earn income when that income is important in maintaining the economic wellbeing of his or her family. The husband, as claimant's natural support, is supporting her. He is earning a living for himself, for claimant, and for their daughter.

#### THE SERVICES AND SUPPORTS TO WHICH CLAIMANT IS ENTITLED

12. Claimant is entitled to services and supports that will enable her to take advantage of needed medical and dental services that are available to her.

13. The Lanterman Act authorizes the regional center to provide claimant with

personal assistance. Claimant's need for this assistance results from her living in a home she and her husband lease. If she were institutionalized or in some other living arrangement, she would not face these problems. Because she is in a home she and her husband lease, the regional center can provide support as often and for as long as it is needed. Claimant has a right to have services and supports that change as her needs change. She has a right to services and supports that are flexible and tailored to her needs and preferences. If it is not appropriate for an SLS worker to assist claimant, the regional center can recruit, train, and hire individuals to provide personal care and other assistance.

## ORDER

The appeal is granted. The regional center shall provide claimant with the services and supports that will enable her to take advantage of needed medical and dental services that are available to her.

DATED: May 23, 2012

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ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.**