

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SOFIA F.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2012050162

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 14, 2012, in Alhambra.

Bertha C.,¹ claimant's mother and authorized representative, represented claimant Sofia F., who was not present.

Judy Castañeda, Fair Hearing Coordinator, represented Eastern Los Angeles Regional Center (Service Agency or ELARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 14, 2012.

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

ISSUE

Whether the Service Agency may terminate funding for claimant's independent living skills (ILS) services.

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-7.

Testimony. Judy Castañeda; Bertha C.

FACTUAL FINDINGS

1. Claimant is a non-conserved 25-year-old woman who is a consumer of ELARC based on her qualifying diagnosis of mild mental retardation. Claimant lives with her mother, stepfather, and brother, and spends time with her biological father every other weekend.

2. Claimant has been receiving Service Agency funding for 20 hours per month of one-to-one ILS instruction provided by Esperanza Services since August 2009. The Service Agency also funds a day program for claimant at Foothill Vocational Opportunities five days per week, six hours per day, and behavior management services for four hours per month.

3. Claimant's most recent Individual Program Plan (IPP) conference on July 27, 2011, attended by claimant and claimant's mother, reflects that claimant has some difficulty socializing and has some anger management issues; she has tantrums, yells, and slams doors, usually triggered by a social situation. She enjoys shopping and collecting purses. Claimant sees her boyfriend regularly, and also enjoys spending time with her father and going to the movies. She does not require assistance with self-care, but she does not know how to prepare meals, manage money, or count change, and has

only a limited understanding of community safety. Claimant does not know how to access public transportation.

4. Claimant's most recent Semi-Annual Report from Esperanza, covering the period from September 2011 to February 2012, states that claimant is not very familiar with the different values of currency, makes repetitive purchases of the same items, and does not count her change after a purchase. She requires prompting to make and attend doctor appointments. Claimant is learning how to read bus stop signs, but is afraid of using the bus system. She still requires prompting to do her household chores, and "struggles with how to go about finding a new place to live." (Ex. 6.)

5. By a notice of proposed action (NOPA) dated April 19, 2012, the Service Agency notified claimant that it would terminate funding for claimant's ILS services, effective June 1, 2012. The NOPA states that the reason for the action is that,

. . . Sofia is not planning on moving out of her mother's home within the next six month [sic]. This service has been in place since August 2009 and it was indicated at the time that the services should be put into place six months prior to Sofia moving out. ELARC recognizes that Sofia would benefit from adaptive skills training or community integration and this has been offered in place of ILS; however Sofia's mother has indicated that she wishes for ILS to continue.

(Ex. 1.) The letter cited Welfare and Institutions Code sections 4646, subdivision (a), 4646.5, subdivision (a), and 4512, subdivision (b),² as the legal authority for terminating the services.

6. On April 24, 2012, claimant submitted to ELARC a Fair Hearing Request, appealing the termination of funding for ILS services.

7. By letter dated May 15, 2012, after an informal meeting with claimant's mother on May 10, 2012, Ms. Castañeda wrote to claimant's mother upholding the decision to terminate ILS services funding. After reiterating the time-limited nature of funding for ILS services and the fact that claimant has received those services since August 2009, she wrote:

ELARC has offered 2 alternative services, AST or community integration services. . . . Mother stated that she was not interested in [in-home goals used by adaptive skills training (AST)] because she teaches claimant those things. . . . There are a variety of AST agencies that ELARC can recommend to work with [claimant]. Most of them will provide all of their hours in the community and goals in the home do not need to be incorporated into this service. AST can work on similar goals that [claimant] is working on now with ILS. AST will not work on apartment searching.

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

(Ex. 3.) Ms. Castañeda wrote that the community integration services providers will also work with claimant in the community on similar goals, and that:

[i]f at a later date [claimant] does become interested in looking for an apartment, ILS can be authorized to work with her again.

This writer understands mother[']s concern for [claimant] to transition to a new service. If parent is in agreement to switch from ILS to AST or community integration, ELARC will make the best effort to transition smoothly.

(Id.) At hearing, Ms. Castañeda testified that the transition could take place over two or three months. Claimant could meet with the staff of the new service provider and come to understand the process while still receiving ILS services for a month or so. ILS could then be stepped down while there is an overlap in services.

8. Ms. Castañeda testified at hearing that there is no indication that claimant has plans to move out of the family home in the immediate future. When the ILS services were requested in 2009, claimant was talking about moving out; that is still a hope of claimant's, but for some time in the future. At this time there is no goal for saving money for rent and a deposit on an apartment, claimant lacks the skills to pay bills when she does live in her own apartment, claimant is not actively looking for an apartment, claimant does not have a budget for living independently and has not saved money to live on her own, and claimant has not yet decided whether she will have a roommate. The AST services offered by the Service Agency would include cooking and cleaning in the home, safety awareness, money management, and shopping in the community. Community integration services focus on safety in the community,

accessing fire and police assistance, grocery shopping, and making and getting to medical appointments.

9. ELARC's Purchase of Service Guidelines (POS Guidelines) for ILS services notes that those services "may be purchased for adult consumers for the purpose of training the consumer, on a time limited basis, to safely and successfully master the skills to live in his/her own meaningful independent living setting." (Ex. 5.) The POS Guidelines further provide that, "[d]ue to the time limited nature of ILS, if the consumer is living in the parental/family home at the time of the request for ILS, there must be a plan of action with mutually agreed upon deadlines set for a move out date ([n]ot to exceed one year, [] [n]o more than six months for transition and/or six months for move out)." (*Id.*) The POS Guidelines provide that ILS hours are to be arranged for a period of six months, after which, upon review, funding may be authorized for an additional six months. "Upon completion of the authorized hours of training . . . a review by the planning team shall be made to determine if the consumer has attained the independent living skills outlined in the service plan. . . . If the consumer has not met the outlined objectives . . . , alternative services or programs shall be explored with the consumer." (*Id.*)

10. Claimant's mother testified that claimant hopes to live independently one day, either alone or with her boyfriend, and that she also hopes to marry. But claimant is not currently in the process of seeking another living situation, and claimant's mother admits that claimant is not ready to live on her own. Claimant's mother testified that claimant has made progress in ILS—she has learned to be more independent, has become more comfortable shopping for food and clothing and using an ATM, and is more aware of the necessity of budgeting her money, though her skills are not yet where they should be. She has a close relationship with her ILS counselor; changing the

service provider would be very disruptive and detrimental to claimant, as it is not easy for her to build relationships. Claimant has anger issues, but is now able to express herself better when she is upset. She has made progress at work. At Foothill Vocational, claimant's supervisors are very supportive; claimant would like eventually to work in the community with a job coach, and Foothill Vocational has chosen her to do some part-time work in a restaurant. Claimant's mother testified that the termination of ILS services funding was a surprise to her, as it was not discussed at the last IPP meeting.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's decision to terminate funding for ILS services. Jurisdiction in this case was thus established. (Factual Findings 1-6.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that it is entitled to terminate funding for claimant's ILS services. (Evid. Code, § 115.)

3. The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is 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." (§ 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. The Service Agency established by a preponderance of the evidence that it is entitled to terminate funding for claimant's ILS services. Under the Service Agency's service policy, ILS services are intended to be time-limited, helping consumers to develop the skills necessary to live independently. Claimant has been receiving ILS training for nearly three years, far longer than the time set forth in the Purchase of Service Guidelines. Claimant has no plans to live independently in the foreseeable future. Her mother testified that claimant hopes to live independently one day, either alone or with her boyfriend, but claimant is not currently in the process of seeking another living situation, and claimant's mother admits that she is not ready to live on her own. (Factual Findings 1-10.) Instead of ILS services, the Service Agency has offered to provide funding for adaptive skills training and community integration services to meet many of the needs now addressed by ILS services. Based on the lack of any plan for claimant to move out of the family home in the near future and the offer of alternative services and supports appropriate to meet claimant's current needs, the continued provision of ILS services is unnecessary at this time.

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ORDER

Claimant's appeal is denied. ELARC is not required to fund claimant's ILS services at this time.

DATED: June 19, 2012

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.