

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LAKESIA M.,

Claimant,

vs.

GOLDEN GATE REGIONAL CENTER,

Service

Agency.

OAH No. 2012090515

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on September 27, and October 12, 2012.¹

Chad Carlock, Attorney at Law, represented claimant Lakesia M.

Rufus L. Cole, Attorney at Law, represented Golden Gate Regional Center (GGRC), the service agency.

Submission of the case was deferred until November 16, 2012, pending receipt of closing and reply briefs. Claimant's closing and reply briefs were timely received and

¹ This matter was consolidated for hearing pursuant to Welfare and Institutions Code section 4712.2, with OAH case numbers 2012090508, 2012090506, and 2012090507.

marked for identification as Exhibits B and C. GGRC's closing brief was timely received and marked for identification as Exhibit 11.

The record closed, and the matter was submitted for decision on November 16, 2012.

SUMMARY OF ISSUES

Claimant was informed by her social worker in early August 2012 that she would not be able to continue receiving Supportive Living Services (SLS) from Wheeler Supportive Living Services (Wheeler), because Wheeler's contract to provide SLS had been terminated by Golden Gate Regional Center (GGRC), effective October 1, 2012. Although claimant preferred to continue receiving services from Wheeler she agreed to receive SLS from DABS, another SLS provider, even though it meant losing her direct service staff. Claimant currently receives services from DABS, and as it turns out, her direct care staff from Wheeler "rolled over" to DABS and continues to provide her with direct care service. Claimant raises a number of legal challenges to the change in her SLS vendor. She argues that she is entitled to choose her SLS provider. She also asserts that because she was not present at an Individual Program Plan (IPP) team meeting and did not sign the IPP Addendum regarding the change in service providers, the service agency failed to follow the proper process for changing vendors. She also claims that she was not provided with adequate notice or information regarding her appeal rights, and that GGRC should have continued to provide her services through Wheeler during the pendency of her appeal.

FACTUAL FINDINGS

SERVICE AGENCY EVIDENCE

1. Claimant is a 26-year-old consumer of Golden Gate Regional Center (GGRC). Claimant lives with a roommate in an apartment. From about 9 a.m. until 3 p.m. she attends a day program, and after her day program concludes she receives Supportive Living Services (SLS). Until October 1, 2012, claimant received SLS from Wheeler.

2. By letter dated July 31, 2012, signed by Chief of Regional Center Services Lisa Rosene, GGRC terminated its contract with Wheeler to provide SLS to GGRC consumers, effective October 1, 2012.² According to Rosene, GGRC is prohibited from providing services to a consumer unless the vendor has a contract with GGRC.³

3. GGRC Social Worker Christine Catabay has been claimant's social worker for over two years. On about August 1, 2012, Catabay learned that Wheeler's contract with GGRC would be terminated, effective October 1, 2012. Once Wheeler's contract was terminated, Catabay explained that claimant did not have the option of continuing to receive services from Wheeler. The following day, Catabay participated in an Individual

² Wheeler's contract was terminated pursuant to California Code of Regulations, title 17, section 58672, subdivision (a)(3), which provides that GGRC may terminate its contract with an SLS vendor without cause, provided that GGRC gives the vendor 60 days notice of termination.

³ Pursuant to California Code of Regulations, title 17, section 58672, subdivision (b), once a contract has been terminated, the vendor must immediately cease providing services to a consumer who was covered by the contract.

Program Plan (IPP) Planning team meeting to discuss which SLS providers would be available to provide claimant with services. The IPP team identified Alternative Living Center (ALC), DABS and Omelagah as potential SLS providers.

4. On August 6, 2012, Catabay met with claimant and informed her of the need to switch SLS vendors due to the termination of Wheeler's contract with GGRC. Claimant was upset and sad because she was, in Catabay's words, "emotionally invested" in Wheeler's staff. Claimant relayed to Catabay that if she could not stay with Wheeler that she would agree to receive services from another provider. Catabay discussed alternative SLS providers with claimant, and claimant signed releases of information to potential SLS providers.

5. On August 30, 2012, Catabay met with claimant and a representative from ALC. Claimant did not want to receive SLS from ALC, as she believed the staff would not be able to provide her with the support that she needed. Claimant expressed to Catabay that she strongly preferred to receive services from DABS because she had a good rapport with the staff. Catabay advised claimant that if she was dissatisfied with the change in her SLS provider, she could file an appeal. Claimant told Catabay that she did not wish to appeal the switch from Wheeler, but that she would "fight" against having ALC as her new provider.

6. An IPP planning team meeting was convened on September 6, 2012. Although claimant was not present at this meeting, she asked Catabay to advocate for her preference for DABS.⁴ The planning team discussed claimant's concerns regarding

⁴ At hearing, Catabay explained that it is not unusual for social workers to advocate for their clients at IPP planning meetings without the presence of the client, where the planning team is simply identifying supports and attempting to devise a formal proposal.

ALC, and her wish to receive services from DABS. The planning team determined that although ALC was the most cost effective vendor, DABS was the most appropriate vendor to provide claimant with SLS. An IPP Addendum requesting funding for an assessment by DABS was issued on September 7, 2012. Although claimant did not sign this document, she was very much in favor of receiving services from DABS. Catabay did not think it was necessary to provide claimant with a Notice of Action regarding the change in SLS providers because claimant agreed to receive services from DABS.

7. Rosene explained that in order to provide services to GGRC clients, a vendor must have a contract to do so with GGRC. GGRC is prohibited from purchasing services from a provider who does not have a contract with GGRC. For this reason, in the event that a consumer said that she would only accept services from Wheeler, then the consumer would have to pay privately for such services. Rosene noted that although claimant preferred to receive services from Wheeler, she agreed to accept SLS services from another provider.

CLAIMANT'S EVIDENCE

8. Claimant filed a Fair Hearing Request during the last week in August. In her request she states the following reason for requesting a hearing, and what is needed to resolve her complaint:

I feel betrayed – [unintelligible] – angry that I did not have a choice to stay – no one cares. I want Wheeler to stay and my staff.

9. SLS staff helps claimant with cooking, shopping, self-help skills and other chores related to household maintenance. At hearing, claimant expressed her satisfaction with the services she received from the staff at Wheeler. The support she has

received has enabled her to achieve her goal of living independently. For this reason, claimant would have preferred to continue receiving services from Wheeler.⁵

10. Claimant would like to be able to choose her SLS provider, and if given a choice, she would choose Wheeler. Claimant added that if it is not possible for Wheeler to provide her SLS, she is agreeable to receiving services through DABS because she “feels that they can provide [her] with a good program.”

11. Glenda Presley is the Program Director and a supervisor at Wheeler. She supervises the direct care staff, and also performs some direct care as part of her regular duties. Presley has worked in the field for 37 years and is genuinely concerned for the welfare of her clients. She firmly believes that clients should be given an opportunity to be heard regarding their likes and dislikes. Claimant told Presley of her wish to continue receiving services through Wheeler.

12. Presley explained that after Wheeler’s contract was terminated, the direct care staff who worked with claimant “rolled over” to DABS. This has enabled claimant to receive SLS from the same direct service staff who formerly served claimant when she received services from Wheeler.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.)⁶ The purpose of the Act is to rectify the

⁵ As set forth in Factual Finding 12, after claimant transferred to DABS, she was able to retain the staff who served her through Wheeler.

⁶ All citations are to the Welfare and Institutions Code unless otherwise indicated.

problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible, and consistent with their needs and preferences. (§§ 4501, 4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer to implement his goals and objectives. (§ 4646.) Section 4646 contemplates that all decisions regarding the consumer's services and supports will be made with the consent of the consumer or his conservator or authorized representative⁷ in the context of an IPP planning meeting. Section 4646 also contemplates that the consumer will sign the IPP prior to its implementation. If the consumer disagrees with any part of the IPP, section 4646 requires the regional center to provide the consumer with adequate notice of his fair hearing rights, as is required by section 4701.⁸ Section 4710 requires that regional centers provide consumers with adequate notice of their

⁷ All references to the "consumer" in this discussion include the consumer's conservator.

⁸ Under section 4701 "adequate notice" includes notice of the reasons for the service agency's action, as well as the variety of rights that are afforded to consumers in connection with fair hearings.

appeal rights in cases where the agency makes a decision to change services set forth in the IPP without the mutual consent of the consumer.

3. Claimant raises a number of legal issues relating to the change in her SLS provider. She alleges that she was not provided with an adequate process under section 4646, in that she was not present at the IPP team meeting, and she did not sign the IPP Addendum regarding the change in service providers. She also alleges that she was not provided with adequate notice or information regarding her appeal rights (§§ 4710, 4701); and, that she was not provided with aid paid pending his appeal (§ 4715). Finally, claimant argues that she is entitled to receive services from a provider of her choosing. (Cal. Code Regs., tit. 17, § 58620, subd. (b).) As set forth below, these claims are without merit.

4. Although claimant was not present at the IPP team meeting and did not sign the IPP Addendum regarding the change in her service provider, claimant was promptly informed by Catabay that Wheeler could no longer provide SLS services. Catabay discussed other potential SLS providers with claimant, and advocated for her preference for DABS. She also verbally advised claimant of her option to file an appeal regarding the change in vendors. With claimant's consent, Catabay advocated for and secured the services of DABS. In her conversations with Catabay, claimant verbally agreed to receive services from DABS. Under these circumstances, any deviation from the requirements of section 4646 are de minimis because the consumer was informed of the need to change SLS providers, she was kept "in the loop" regarding the selection process, and she agreed to the change in service providers.

5. Claimant was not entitled to receive a Notice of Proposed Action under section 4710, and the concomitant notices that are required under section 4701, because claimant agreed to the change in providers. Against this background it cannot

be said that GGRC's decision to secure the services of DABS was "without the mutual consent" of the consumer. (§ 4710, subd. (a)(1).)

6. Claimant also asserts that she was entitled to have Wheeler continue providing her SLS services during the pendency of her appeal, pursuant to section 4715, subdivision (a), which provides that, under certain conditions, services that are being provided pursuant to a consumer's IPP "shall be continued" during the appeal period. This section is inapplicable to the instant case because at no time were claimant's SLS interrupted. Indeed, GGRC ensured that as of October 1, claimant continued to receive SLS from another vendor.

7. Finally, claimant alleges that GGRC's termination of the contract with Wheeler violated her right to choose her SLS vendor. She contends that such a right emanates from California Code of Regulations, title 17, section 58620, subdivision (c), which provides, in pertinent part:

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:

[¶]

(c) Choosing and changing their SLS vendors and direct service staff.

This regulation implements the overarching policy of the Act, which is provide services that take into account the consumer's needs and preferences. It does not, however,

afford the consumer with unbridled authority to determine which provider will provide services under the IPP. Instead, a consumer's preference for a service provider must be construed in the context of the service agency's rights and obligations under the Act, which, among other things, include the duty to ensure that the provider meets contract requirements, and that services are provided in a cost-effective fashion. (§§ 4648, 4659, 4640.7.)

8. In the instant case, GGRC exercised its right to terminate its contract with Wheeler pursuant to California Code of Regulations, title 17, section 58672, subdivision (a)(3), which authorizes a service agency to terminate the contract of a SLS vendor without cause, with proper notice. Upon termination of the contract, subdivision (b) of this regulation requires the vendor to "immediately cease providing services to, and remove any direct service staff from the home of, any consumer whose services were covered by the contract." Once the contract with Wheeler was terminated, Wheeler could no longer provide SLS services to claimant, and GGRC could no longer fund the services of Wheeler. Claimant's preference to stay with Wheeler did not abrogate GGRC's right to terminate its contract with Wheeler or its obligation to secure services from providers who have contracts with GGRC.

9. Claimant's appeal stemmed from her wish to retain the services of Wheeler, and in particular, her direct service staff. In spite of her preference she agreed to change her SLS provider, because she felt that DABS could provide her with a "good program." As it turned out, she was able to retain her direct care staff after she changed providers in October. Under these circumstances, there is presently no claim that remains unresolved, and there is no relief to be provided. Claimant's appeal is therefore denied.

10. Any contentions raised by the parties and not discussed above have been found to be without merit and are hereby rejected.

ORDER

The appeal of claimant Lakesia M. is denied.

DATED: _____

DIANE SCHNEIDER

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.