

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013020472

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST  
BAY.

DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on March 18, 2013, in Concord, California.

Mary Dugan, Fair Hearing Specialist, represented Regional Center of the East Bay, the service agency.

Arthur Lipscomb and Timothy Poe, Disability Rights California, represented claimant. Claimant and claimant's sister, who is his conservator, were also present.

The record was left open for receipt of closing briefs. The briefs were timely received and marked for identification as Exhibits 5 and W. The matter was deemed submitted for decision on March 29, 2013.

ISSUE PRESENTED

Must the regional center fund a six-month rent subsidy for claimant?

FACTUAL FINDINGS

1. Claimant is a 51-year-old consumer of Regional Center of the East Bay (RCEB) services. He is eligible for regional center services based upon a diagnosis of

severe autism and mild mental retardation. Claimant also suffers from diabetes.

2. Claimant lived with his mother in their home for 33 years until her death in January 2008. While living with his mother, claimant was known by his community and was able to walk around town independently. While claimant's mother was gravely ill, he was placed in a group home over several weekends. Claimant moved in with his sister for a short time after their mother's passing, before claimant's sister realized that she could not meet his care needs. At that point, claimant's sister sought a supported living arrangement for claimant, instead of placement in a group home, believing that claimant was traumatized by his experience in the weekend placements, his behaviors were such that a group home was dangerous for him and the other residents, and because she wanted him to continue to live in the least restrictive environment possible.

3. Claimant's RCEB case manager agreed that placement in a group home could be dangerous to all parties, and that a supported living arrangement was the best option for him. The goal of claimant's January 29, 2008, Individual Program Plan (IPP) was to live independently. A search for an apartment within claimant's budget ensued for several months until Inclusive Community Resources (ICR), an RCEB vendor, was hired in late 2008, to provide claimant's supported living services. RCEB agreed to fund a supported living transition plan through ICR until July 31, 2009.

4. In an addendum to claimant's IPP dated January 23, 2009, it was noted that claimant had been exhibiting behaviors at his day program including hitting walls or property destruction three times per week, wandering three times per week, inappropriate touching nine times per week, resisting instructions four times per week, perseveration ten or more times per week, and having tantrums five times per week. Previously reported behaviors included verbal aggression, assaultive behavior, and an arrest for inappropriately touching a minor. Claimant was attending a social recreation program to assist in extinguishing these behaviors, but the program was to be phased

out as he became familiar with his supported living services staff. ICR requested funding for a live-in attendant. RCEB agreed to fund supported living services at a monthly rate of \$6,189.77, which included \$1,384 for a live-in attendant, from February 1, 2009, through August 31, 2009. Claimant was to pay his portion of the rent and utilities through his SSI benefits. This arrangement was re-approved annually by RCEB through February 28, 2013.

5. The funding for the wages of claimant's overnight aide was used by ICR to pay for the two-bedroom apartment's rent. The overnight aide's salary was paid in the form of free rent in the apartment. At the time the arrangement was made, this method of funding supported living services by a regional center was not prohibited by the Lanterman Developmental Disabilities Services Act (Lanterman Act).<sup>1</sup>

6. The ICR Supported Living Services Budget Worksheets submitted to RCEB in February 2009, March 2009, April 2010, February 2012 and January 2013 were presented at hearing. The worksheets indicate that 40 hours per week of live-in support was provided by RCEB at a cost of \$1,534 per month. In the "Notes" section next to the live-in cost entry, the worksheet states, "No section 8 housing;<sup>2</sup> \$1,385.60 'in-kind' \$150 food." In this note, ICR was indicating that because claimant was unable to find federally-subsidized housing, his rent was being subsidized by an in-kind payment to

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<sup>1</sup> Welfare and Institutions Code, section 4500, et seq.

<sup>2</sup> Section 8, or the Housing Choice Voucher Program, is a Federal housing program, administered nationally by the Department of Housing and Urban Development, which provides housing assistance to low-income renters and homeowners. This assistance comes in the form of rental subsidies, limiting the monthly rent payment of the assistance recipient.

the aide. Claimant contends that the RCEB case manager was aware of this arrangement when it was made in late 2008.

7. In July 2009, the Lanterman Act was amended. The availability of rent subsidies were limited by the amendment, and only permitted upon a determination, verified in writing by the executive director of the regional center, that the certain criteria were met.

8. In February 2012, claimant was assigned a new RCEB case manager. His new case manager was unaware that supported living services funding was being used to subsidize claimant's rent. In October 2012, the funding arrangement came to the case manager's attention when ICR learned that labor laws prohibited it from paying the overnight aide's salary in the form of free rent. ICR requested RCEB to pay a rent subsidy for a six-month transition period<sup>3</sup> to allow claimant and his family to locate less expensive housing. RCEB refused, stating that it was unaware that this arrangement was in place, and did not believe the conditions for a rent subsidy were met under the 2009 criteria.

9. On January 24, 2013, RCEB issued a notice of proposed action in which it stated that it would not submit a rent subsidy exception request to the RCEB executive director for consideration because claimant did not meet the criteria for an exception. Respondent thereafter filed a fair hearing request. At hearing, the issue in dispute was whether claimant should receive a rent subsidy in the amount of \$400 per month, for a

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<sup>3</sup> Welfare and Institutions Code, section 4689, subdivision (i)(2), provides that if a regional center had been subsidizing a consumer's rent prior to July 1, 2009, it shall determine if the claimant meets the new conditions for a rent subsidy. If the planning team determines that the rent contributions are no longer appropriate, a reasonable time for transition, not to exceed six months, shall be permitted.

period of six months, to allow him to locate affordable housing in order to continue in his supported living arrangement.

#### RCEB EVIDENCE

10. On January 17, 2013, after learning that claimant had been using funding for supported living services to pay a portion of his rent, claimant's new case manager met with the supported living services committee<sup>4</sup> for advice on whether claimant was entitled to a rent subsidy under the 2009 criteria. The committee members considered claimant's annual reviews and the case manager's description of claimant and his challenges. The committee members advised claimant's case manager that claimant did not appear to meet the criteria for a rent subsidy.

11. After receiving the committee's advice, the case manager considered the information in claimant's file and the opinions of the family and ICR, and concluded that a rent subsidy was unwarranted because, in her opinion, claimant's health and safety risks do not rise to the level of that requiring a rent subsidy. However, RCEB agreed to continue to fund supported living services as long as claimant resides in a home or apartment that he can afford to rent on his own.

12. Claimant's case manager provided claimant's sister with contact information for four group homes as an alternative to a supported living arrangement, or for a temporary placement while locating an affordable apartment.

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<sup>4</sup> RCEB formed a supported living services committee of seasoned employees to give advice to newer case managers concerning the appropriate use of supported living services. Case managers are not required to follow the advice of the committee.

## CLAIMANT'S EVIDENCE

13. Claimant has lived successfully in a supported living arrangement since 2008. His lifestyle is more restrictive now than when he lived with his mother, but he has adapted to it.

14. Claimant's sister reports that after claimant was placed in the group home while his mother was ill, he was stressed and acted out aggressively. Claimant is very resistant to change. When put in a new environment, with new staff, his behaviors become extreme. In addition, because claimant has diabetes, he is on a special diet. When food that he is not permitted to eat is available to other roommates, claimant sneaks the food for himself. In claimant's sister's opinion, claimant's health, his safety and the safety of others will be at risk if he is placed in a group home. Claimant has a history of grabbing, touching inappropriately and hitting others when he is under stress. Claimant has been granted a Medicaid waiver on the basis of hygiene, diabetes, blood pressure, safety awareness and disruptive behavior.

15. Despite her reservations, claimant's sister visited the four group homes that RCEB suggested he move into in January 2013. Administrators at two of the homes advised her that they would not accept him. When claimant's sister visited a third option, she observed a female resident using the bathroom with the door open and decided that this would not be appropriate for claimant because of the way he behaves toward women. In addition, there was no monitoring of food. The other residents were elderly and the staff did not appear to be capable of handling claimant's behaviors. The last option was the group home claimant had tried in 2008. It was not clean and had caused claimant to act out aggressively afterward.

16. ICR's executive director, Julie Weissman-Steinbaugh, testified at hearing and wrote a letter to claimant's case manager recommending that he continue living independently with support. Weissman-Steinbaugh asserts that claimant's diabetes

creates physical and behavioral problems making it difficult for him to share a housing arrangement. His food must be closely monitored and claimant attempts to hoard and steal food. In addition, Weissman-Steinbaugh reports that claimant has a history of exhibiting socially unacceptable behaviors such as temper tantrums, aggression, sexual gestures, inappropriate hugging, grabbing, staring, and kissing without consent. Claimant also displays assaultive behavior once every six months, and shows no inhibitions about nudity. Finally, claimant attempts to escape the home, posing safety risks.<sup>5</sup>

17. Claimant's physician, Neil Fruman, M.D., wrote a letter dated March 12, 2013, in which he recommends that claimant remain in a supported living arrangement. Dr. Fruman reports that claimant requires careful food monitoring and daily exercise, and feels that placement in a group living situation would result in an exponential increase in his already high level of anxiety.

18. Claimant was unable to afford the apartment he was living in without the rent subsidy from RCEB. He moved to a less expensive home, but has been forced to rely on loans from family members to pay his rent beginning in February 2013. Claimant asserts that because he was receiving a rent subsidy, RCEB must fund a transition period of six months to give him time to locate a more affordable apartment.

19. Stephanie Suchit, a community support facilitator with ICR, is assisting claimant with locating less expensive housing. Suchit believes that if RCEB provides a six-month rent subsidy she will be able to locate housing that claimant can afford.

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<sup>5</sup> On February 26, 2009, a special incident report was filed as a result of claimant escaping from his apartment, entering a neighbor's apartment and causing upheaval, which required him to move.

Claimant is currently on the waiting list for low income Section 8 housing in Walnut Creek. Suchit has also applied for Contra Costa County low income housing for claimant.

20. Claimant's sister is confident that they will be able to find affordable housing within six months. Claimant is requesting that RCEB fund a \$400 per month rent subsidy for a six-month transition period.

## LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. 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.<sup>6</sup>)

2. Neither the Lanterman Act appeal process (§ 4700 et seq.) nor its implementing regulations (Cal. Code Regs., tit. 17, § 50900 et seq.) assigns burdens of proof. Here, because NBRC is seeking to terminate services it bears the burden of proof. (Evid. Code, § 500.) And, as there is no statute that provides otherwise, the standard of proof to be applied in this proceeding is the preponderance of the evidence. (Evid. Code, § 115.) Thus, RCEB must show by a preponderance of the evidence that claimant is not entitled to funding of a rent subsidy during a six-month transition period.

3. Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. The consumer's

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<sup>6</sup> All references are to the Welfare and Institutions Code unless otherwise indicated.



needs are determined through the IPP process. (§ 4646.) The process “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 the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments.” (§ 4646, subd. (a).) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost-effectiveness of each option. (§§ 4646, 4646.5 & 4648.)

4. Since 2008, the goal of claimant’s IPP has been for him to live in a supported living arrangement. Supported living services were funded by RCEB in order to meet this goal. Part of that funding was being used to subsidize the cost of claimant’s rent through in-kind funding of his overnight’s aide’s salary. (Factual Findings 3 through 6.)

Section 4689, subdivision (h), states that rent of a supported living home shall be the responsibility of the consumer and any roommate who resides with the consumer.

Section 4689, subdivision (i), provides in part:

A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:

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(2) A regional center that has been contributing to rent, mortgage or lease payments . . . prior to July 1, 2009, shall at the time of development, review, or modification of a consumer’s individual program plan determine if the

conditions in paragraph (1) are met. If the planning team determines that these contributions are no longer appropriate under this section, a reasonable time for transition, not to exceed six months, shall be permitted.

5. The supported living services committee and the case manager reviewed claimant's file and determined that he is not eligible for a rent subsidy under the July 1, 2009 guidelines. (Factual Finding 10 and 11.) However, claimant established that he has been receiving a rent subsidy since late 2008. (Factual Findings 3 through 6.) Therefore, pursuant to section 4689, subdivision (i)(2), RCEB must continue to provide funding for a reasonable transition time. The transition period is limited by statute to six months. Claimant established that he needs six months to locate housing within his budget. (Factual Findings 18 through 20.) RCEB shall fund a \$400 per month rent subsidy for a six-month transition period from February 2013 through July 31, 2013.

## ORDER

Claimant's appeal of the regional center's refusal to fund a rent subsidy in the amount of \$400 per month for a six-month transition period from February 1, 2013, through July 31, 2013, is granted.

DATED: \_\_\_\_\_

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JILL SCHLICHTMANN  
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.