

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2013040913

DECISION

This matter was heard before Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 7, 2013, in Bakersfield, California.

Cheryl Mallinson, Program Manager, represented Kern Regional Center (KRC), the service agency.

Claimant was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 7, 2013.

ISSUES

Whether KRC must provide Claimant with a \$200 clothing voucher.

FACTUAL FINDINGS

1. Claimant is a 52 year old man eligible for Regional Center services based upon a diagnosis of mild mental retardation.
2. Claimant lives with his wife in their home. Claimant has been employed at KRC as a client's rights advocate for 18 years and receives a salary for his services. He is

also the President of People First California (People First), a disability rights advocacy group supported by KRC. Claimant's wife is also employed. Claimant makes enough money from his employment to pay all of his monthly bills and have funds left over at the end of the month.

3. Claimant's Individual Program Plan (IPP) dated June 25, 2012, lists the services that Claimant receives from KRC and other generic resources and sets forth four objectives for Claimant. Objectives three and four are relevant here. Objective number three provides:

[Claimant] will continue to be funded for his independent living arrangement by maintaining employment during the next 12 months.

4. As services and supports for objective number three, the IPP provides:

3.1 [Claimant] will continue to be an advocate for clients' rights during the next 12 months.

3.2 [Claimant] will continue his outreach to local day programs to speak to clients regarding available services at Kern Regional Center.

3.3 [Claimant] will complete all of his assigned work duties to the best of his ability during the next 12 months.

3.4 KRC/SC will monitor progress on a quarterly face-to-face basis.

5. Objective number 4 of the IPP provides:

[Claimant] will increase his knowledge of issues relevant to developmentally disabled clients by participating in 'People First' during the 12 months.

6. As services and supports for objective number 4, the IPP provides:

4.1 [Claimant] will attend relevant conferences to gather information that is beneficial to developmentally disabled clients.

4.2 [Claimant] will inform KRC/SC of upcoming People First conferences in a timely manner, so SC can submit a purchase of service request, if appropriate.

4.3 [Claimant] will submit receipts for all of the expenses (i.e. travel, food) he would like to be reimbursed by Kern Regional Center.

4.4 KRC/SC will monitor progress on a quarterly face-to-face basis.

7. On or about April 13, 2013, Claimant attended a conference in Sacramento, California on behalf of KRC in his capacity as President of People First. Claimant and colleagues took a bus from Sacramento to Stockton, California where they planned to catch a train back to Bakersfield, California. Claimant placed his suitcase containing four prescription medications, a diabetes meter, and clothing consisting of underwear, socks, and two new pairs of pants, two new shirts and tennis shoes in the luggage compartment under the bus. The clothing was purchased specifically for the trip to Sacramento and was necessary appropriate attire for the meetings and speaking engagements pertinent to the conference. Claimant's suitcase did not have a name tag attached. The bus stopped many times on the trip from Sacramento to Stockton and passengers disembarked with luggage along the way. When Claimant reached Stockton, his suitcase was not in the bus luggage compartment. Claimant reported the missing baggage to the bus company, but it was never recovered.

8. Respondent was able to obtain replacement medication and a diabetes meter at no cost from Kaiser Permanente.

9. Claimant estimated the cost to replace the missing luggage and clothing as \$200.

10. On April 19, 2013, Claimant requested that KRC provide him with a \$200 clothing voucher at Sears to replace the missing clothing. KRC denied the request and issued a Notice of Proposed Action on April 19, 2013 citing the KRC Purchase of Service policy (POS) adopted on December 1, 1998 as the basis for the decision.

11. With regard to the purchase of clothing, the KRC POS provides:

KRC may fund basic clothing allowances for clients only if neither family nor SSI nor any other resources are available.

Clothing consists of garments and apparel essential to daily living.

KRC may purchase clothing only under the following conditions:

There must be no other source of supply or funding for clothing for the client. The client must not have funds available and the need must be of an emergency or desperate nature.

Up to \$200.00 per fiscal year may be authorized for individuals residing in health care facilities.

A one-time purchase up to \$200.00 may be authorized for clients living independently when a change in their status occurs (e.g., loss of SSI, pregnancy, medical conditions necessitating special clothing, return to active case management from "the streets" or jail, etc.) has resulted in their not having access to the garments and/or apparel essential to daily living.

Families of minor children are responsible for their child's clothing needs.

12. Claimant appealed KRC's denial of his request by filing a request for fair hearing on April 19, 2013.

LEGAL CONCLUSIONS

1. Claimant contends that KRC should provide him with a voucher for clothing because he was conducting KRC business consistent with his IPP at the time of the loss and that replacement of the clothing would be a financial hardship for him. KRC contends that its POS prohibits it from providing the requested clothing voucher. For the reasons set forth below, Claimant's appeal must be denied.

2. An applicant seeking eligibility for government benefits or services has the burden of proof. (See Evid. Code, § 500; Welf. & Inst. Code, § 4712, subd. (j).) The burden of proof in this matter is a preponderance of evidence, and rests with Claimant who is seeking to require KRC to fund a \$200 clothing voucher for him. (Evid. Code, § 115.)

3. In Welfare and Institutions Code section 4501, the legislature acknowledged the responsibility of the State of California for persons with developmental disabilities and its obligation to them. In doing so, the legislature acknowledged that developmental disabilities affect "hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic and legal problems of extreme importance." (*Ibid.*)

4. The Frank B. Lanterman Developmental Disabilities Act¹ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the

¹ Welfare and Institutions Code section 4500, et seq.

of developmentally disabled persons and their dislocation from family and community and (2) to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.

5. To comply with the Lanterman Act, a regional center must provide services and supports that enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Those services and supports may include protective and other social and sociolegal services, information and referral services, advocacy assistance, technical and financial assistance. (*Ibid.*)

6. Welfare and Institutions Code section 4646, subdivision (d), provides that individual program plans (IPPs) shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer at the program plan meeting.

7. Welfare and Institutions Code section 4646.4, subdivision (a), provides that Regional Centers shall establish an internal process so that, at the time of development,

scheduled review, or modification of a consumer's IPP or ISP the process adheres to federal and state law and regulation when purchasing services and supports. The internal process shall ensure: (1) Conformance with the regional center's purchase of service policies; (2) Utilization of generic services and supports when appropriate and (3) Utilization of other services and sources of funding.

8. Welfare and Institutions Code section 4646.5, subdivision (a)(1), provides that the IPP shall be prepared jointly by the planning team. Decisions concerning the consumer's goals and objectives, and services and supports that will be included in the consumer's IPP and purchased by the regional center or obtained from generic agencies shall be made by agreement between regional center representative and the consumer.

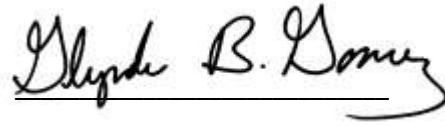
9. Welfare and Institutions Code section 4647 provides that service coordination shall include those activities necessary to implement an IPP, including purchasing or obtaining from generic agencies or other resources, services and supports specified in the person's IPP, coordination, or service, and support information.

10. Here, Claimant's suitcase was stolen from a bus during his ride home from a KRC sponsored, employment-related trip. Although the clothing was purchased specifically for the trip and is related to achieving objectives in the IPP, KRC is not required to purchase clothing as part of the IPP and its POS policy prohibits it from purchasing clothing except in specific circumstances, none of which are present in this case. Here, Claimant has resources to purchase replacement clothing, does not reside in a health care facility, and has not had the type of change in status identified in the POS. For the reasons set forth above and by reason of factual findings 1-12 and legal conclusions 1-9, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied.

DATED: June 17, 2013

A handwritten signature in black ink, reading "Glynda B. Gomez". The signature is written in a cursive style and is positioned above a horizontal line.

GLYNDA B. GOMEZ

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.