

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

J.C.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013060414

DECISION

The hearing in the above-captioned matter was held on June 28, 2012, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Claimant appeared on his own behalf, and was assisted by David Gonzalez and Art Luna. The Service Agency, Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by Carmen Vasquez, Early Start Program Manager.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date. Based on that record, the ALJ hereafter makes the following factual findings, legal conclusions, and orders.

ISSUE PRESENTED

May the Service Agency stop paying \$375 per month to assist Claimant in paying the rent on his apartment?

EVIDENCE RELIED ON IN REACHING THIS DECISION

In making the decision that follows, the ALJ relied upon the Service Agency's exhibits, 1 through 5, and the testimony and argument put forth by its representative, Ms. Vasquez. He also relied upon the testimony and arguments of Claimant, David Gonzalez, and Art Luna.

FACTUAL FINDINGS

THE PARTIES AND JURISDICTION

1. Claimant is a 47-year-old man who is eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq,¹ based on a diagnosis of Mild Mental Retardation and Cerebral Palsy.

2. On or about May 8, 2013, the Service Agency issued a Notice of Proposed Action (NOPA) to Claimant, which stated that effective that same day, it was denying continued payment/supplementation of Claimant's rent. The reason for the action included the assertion that rent payment was Claimant's responsibility.

3. Claimant filed a Fair Hearing Request and thereafter, on June 5, 2013, an informal meeting was held at the Service Agency. On June 11 Ms. Vasquez wrote Claimant, informing him that after further consideration, the Service Agency had determined that it would continue to supplement his rent, until October 31, 2013, so that he could pursue housing within his budget. Claimant did not agree with that

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

outcome, and the matter proceeded to hearing. All jurisdictional requirements have been met.

CLAIMANT'S INDIVIDUAL PROGRAM PLAN AND SERVICES

4. Claimant's last Individual Program Plan (IPP) conference was held in September 2012. An IPP was generated, and received in evidence as Exhibit 5. The IPP reveals that in addition to his developmental disabilities, Claimant is legally blind, and is ambulatory with a walker. He lives in his own apartment. He attends Choix Vocational program, via transportation provided by that vendor, but paid for by the Service Agency. He attends that program three days per week, from 9:00 a.m. to 2:00 p.m. At the time of the IPP conference he was being considered for a desk job at Choix Vocational, but the issue of his status there was not considered at the hearing.

5. Claimant receives other support from the Service Agency, including passes for Access transportation and he attends a day program one day per week at First Street Gallery. The Service Agency provides 40 hours per month of Supported Living Services (SLS) through its vendor Inclusion Services.

6. Claimant receives assistance from IHSS (In Home Support Services), which provides someone to assist him, 93 hours per month. That person is David Gonzalez, who appeared with Claimant at the hearing, and who also provides assistance as an employee of the SLS vendor, Inclusion Services.

7. The IPP indicates that Claimant needs assistance with some activities of daily living, including dressing and bathing. While he can take his medications, he needs help in identifying the medications due to his visual impairment. On the other hand, he can prepare simple meals, eat them without spilling, and clean up after the meal without assistance, and he can use the toilet unaided. According to the IPP, Claimant is fairly social, which at times has been a problem because he appears to be too friendly, and can be taken advantage of. And, despite his social nature, he sometimes becomes

embroiled in conflicts with others around him. He can be easily frustrated, which can also lead to conflicts.

8. The IPP states that Claimant was then (in September 2012) transitioning from Independent living services to SLS. The two educators provided by that firm, Mr. Luna and Mr. Gonzalez, were assisting by taking him to medical and other appointments, and teaching self-help and budgeting skills. They were also teaching him to avoid being overly friendly with others; as mentioned above, this sometimes exposed him to harm, but with their help he had learned not to bring strangers back to his home. The SLS educators accompany him most of the time when he goes out into the community, as he cannot go out alone.

CLAIMANT'S RESIDENCE AND HIS FINANCIAL RESOURCES

9. Claimant lives in a one bedroom apartment within the Service Agency's catchment area. It is not clear from the record as to how long he has lived there, but it is plain from the IPP document that he had been living there for some time before the September 2012 IPP conference. He is very comfortable in that apartment, as he knows his way around it, and it has antique furniture that he prizes. There is enough space for him to move around, and this is important in the bathroom when he is showering. Access to the current apartment, from the outside,

10. The rent for Claimant's apartment is \$925 per month. Until approximately February 2013, his rent was being subsidized by a local businessman, who paid \$375 per month of the rent, while Claimant paid \$550. Claimant receives \$909 per month in SSI benefits.² He has no other income at this time. Thus, without assistance, he cannot continue to pay the rent at his current apartment.

² This number is gleaned from page 2 of the IPP, but on page 3, which lists what supports he receives from various agencies, it states he receives \$885. In that latter

11. It appears from the record that after he lost the private-sourced subsidy on the apartment, Claimant sought help from the Service Agency. The Service Agency agreed, through his service coordinator, to pick up the payment of the \$375 per month. There was no documentation of that change to the IPP at the hearing; Ms. Vasquez indicated that no amendment to the IPP was prepared, and no file notes—ID notes—were generated.

12. The 2012 IPP states that Claimant was comfortable in his apartment, but the idea of moving to a more cost-effective location had been discussed with him; it appears that his service coordinator was concerned that at some point Claimant's private rent subsidy would end. At the time of the IPP, Claimant showed some interest in finding a roommate, but the fact that the apartment has only one bedroom is a limitation on that solution to the problem of remaining in the current apartment.

EFFORTS TO FIND OTHER HOUSING

13. The NOPA states that over 10 apartments had been identified to Claimant as suitable home, but he had turned them down for various reasons, but mainly because he wants a one-bedroom apartment, instead of a studio. The NOPA goes on to state that he has not been cooperative with the Service Agency in finding a suitable and affordable place to live.

14. The testimony of Mr. Luna and Mr. Gonzalez indicates that they have helped Claimant locate another apartment, but a suitable one has not been found; they spoke of looking at over 15 apartments in recent weeks. For example, they checked one

place, it states he is receiving 82 hours of IHSS benefits, but the text in page 2 states he receives 93 hours of IHSS services. And, the NOPA states that he receives \$676.46 from SSI. (Ex. 1, p. 1.) This discrepancy is not explained by the balance of the evidence.

apartment, but the building had too many stairs, so access for Claimant, given his blindness and need for a walker, was not adequate. Another was located in a more accessible building, but the bathroom was very small, not suited for Claimant, who must maneuver in such a close (and hard) space with a walker. They found one apartment that appeared suitable, but it was in a building operated for people over 55 years of age; some sort of waiver would have to be obtained for Claimant to move into the space, and it did not appear that one would be forthcoming at any time in the near future.

15. While the testimony by Mr. Gonzalez and Mr. Luna on the point was not clear, it appears that Claimant would be eligible for section 8 housing, and that the current landlord would accept that subsidy, but Claimant is not far enough up the list, and the ongoing federal budget impasse further complicates access to that generic resource.

16. Ms. Vasquez acknowledged that if Claimant is unable to maintain his own housing, the Service Agency would be obligated to place him in a group facility. Mr. Gonzalez opined that in that case Claimant might need a level 4I facility, given his need for significant support. Ms. Vasquez did not know what such a facility would cost, but the ALJ, having on occasion conducted hearings where the costs of such facilities was in issue, is aware that a level 2 facility would cost over \$2,100 per month, and a level 4 facility would likely cost in excess of \$3,500 per month.³

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

³ The ALJ is entitled to evaluate evidence based on his experience and training. (Govt. Code, § 11425.50, subd. (c).)

2. Services under the Lanterman Act are to be provided in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See § 4710.5, subd. (a); see also, § 4646, subd. (g).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d); 4501; 4502; 4502.1; 4512, subd. (b); 4640.7, subd. (a); 4646, subd. (a); 4646, subd. (b); and, 4648, subds. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

4. Services that are provided must be cost effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.) To be sure, the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many consumers and families.

5. (A) Section 4512, subdivision (b), of the Lanterman Act provides, in pertinent part, that

"Services and supports for person with developmental disabilities" means 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. . . .

The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, . . . (Emphasis added.)

6. (A) Section 4689 pertains to the issue of supported living services, and was relied upon by the Service Agency. The first part of the statute sets out general principles applicable to a case of this type:

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:
 - (1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.
 - (2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.
 - (3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.
 - (4) Consumers shall have control over the environment within their own home.
 - (5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.
 - (6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.
 - (7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.
 - (8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.
- (b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.
- (c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to

encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

(B) Review of the foregoing provisions make clear that maintaining Claimant in his own home, and one of his choosing, is to be a priority of the regional centers when dealing with adult consumers; Claimant's preferences "shall guide decisions" about where he would live.

7. However, there are limits on the consumer's preferences, set out at subdivisions (h) and (i) of section 4689; they tend to bar payment of rent by a regional center, unless an exception can be found. Those two subdivisions state:

- (h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.
- (i) 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:
 - (1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

- (A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.
- (B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.
- (C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

8. The regulations add other limits on a regional center's ability to make rent payments. The California Code of Regulations (CCR), title 17, section 58611, at subdivision (b), states:

- (b) The regional center shall not pay any costs incurred by a consumer receiving SLS in securing, occupying, or maintaining a home rented, leased, or owned by the consumer except when the executive director of the regional center has determined that:

- (1) Payment of the cost would result in savings to the State with respect to the cost of meeting the consumer's overall services and supports needs;
- (2) The costs cannot be paid by other means, including available natural or generic supports; and
- (3) The costs are limited to:
 - (A) Rental or utility security deposits;
 - (B) Rental or lease payments;
 - (C) Household utility costs;
 - (D) Moving fees; and
 - (E) Non-adaptive and/or non-assistive household furnishings, appliances, and home maintenance or repair costs.

9. In this case Claimant's condition places limits on what sort of housing he can utilize. Access is important, given his visual impairments and his mobility impairments. Hence, there cannot be too many steps, small hallways, or small bathrooms. If a smaller apartment is found, Claimant would be exposed to the cost of storing some of his belongings, which would not help the cause of lowering his monthly expenses. The current apartment does not pose any health or safety risks to Claimant, and while another apartment might be found that does not pose a threat, finding one that is available for approximately \$500 per month is obviously difficult in the current housing market.

10. Plainly, assisting Claimant in maintaining his current apartment is cost effective as opposed to placing him in any sort of facility; the rent subsidy might be 10 percent, or less, than the cost of a placement. Indeed, even if a level 2 facility would be sufficient, the rent subsidy is less than 20 percent of placement cost. And, it appears that generic sources of income have been exhausted.

11. Based on the foregoing, Claimant can be found to come within the exception set out in subdivision (i) of section 4689, and within the confines of CCR section 58611, subdivision (b), and the Service Agency can continue to make the rent payments for a time.

12. However, the authority of the Service Agency, to make such payments, is not unlimited. The statute would require the Director to sign off on the expenditure on, at least, a yearly basis, and the expenditure is subject to quarterly review.

13. In these circumstances, Claimant is obligated to continue to look for another apartment, on a regular basis, including a studio, as opposed to a one bedroom apartment. He shall examine apartments cited to him by the Service Agency, so long as he and his assistants are able to do so. His SLS provider can assist him in doing so. They should document each apartment examined, by location, cost, and physical features. In the latter regard, a few pictures, taken on a cellphone or I-pad would assist the Service Agency staff in determining whether a potential apartment is in fact suitable. Furthermore, Claimant must take steps within 14 days of this order to seek a waiver so that he might move into the senior-type facility mentioned during the hearing. SLS staff should assist him, and document the efforts to his coordinator. The continued ability of the Service Agency to maintain the rent subsidy within the exceptions set out in the statute depend on Claimant providing evidence of the type that ELARC's staff and director could rely upon in drafting IPP provisions, and certifying that continued assistance is appropriate.

ORDER

The Claimant's appeal is granted, and the Service Agency will continue to pay \$375 per month toward his rent, as an exception to section 4689, subdivision (h). However, Claimant is ordered to continue to search for an apartment where his rent would be lower than his current location, and he shall examine apartments identified for

him by the Service Agency. Claimant shall document his efforts for the Service Agency. Claimant's need for the rent subsidy shall be subject to quarterly review, and the Director must make the findings required by section 4689, subdivision (i), at least on an annual basis, as required by that statute.

July 15, 2013

_____/s/_____

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision.