

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

COLTON M.,

Claimant,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2013070115

DECISION

This matter was heard before Administrative Law Judge Elaine H. Talley, Office of Administrative Hearings, State of California, in Redding, California, on August 21, 2013.

Claimant's mother represented claimant. Claimant attended most of the hearing. Sarah May, Executive Director of Area Board 2, attended the hearing as well.

Phyllis Raudman, Attorney, represented the service agency, Far Northern Regional Center (FNRC). Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is FNRC required to fund fencing around claimant's current home which is on a two-acre parcel?

## FACTUAL FINDINGS

1. Claimant is a 12-year-old boy eligible for services from FNRC due to a diagnosis of autism, full spectrum. He lives with his mother, brother, and his mother's boyfriend in a home on a two-acre parcel. The home is owned by his mother's boyfriend.

2. On May 20, 2013, claimant's mother submitted a letter on behalf of claimant to FNRC requesting that FNRC pay for the purchase of fencing around her boyfriend's two-acre parcel. She stated that she planned to move her family to the home on that parcel soon. She asserted that FNRC should pay for the fencing because claimant's disability impacts his understanding of dangerous situations, such as streets and waterways. The property is near a river and not far from Interstate 5.

3 On July 2, 2013, FNRC sent a Notice of Proposed Action to claimant's mother informing her that FNRC was denying her request to pay for fencing to enclose her boyfriend's two-acre property.

4. Claimant's mother completed a Fair Hearing Request, dated June 28, 2013, appealing FNRC's decision denying her request for fencing.

5. Judy Kruse, Associate Director of Case Management Services at FNRC, testified at hearing. She reviewed FNRC's Purchase of Service Guidelines for Home Modifications. Under these guidelines, FNRC may make home modifications for people with physical disabilities who require the modifications in order to access their homes. Specifically, the guidelines state:

Generally, physical modifications to consumer or family homes are the responsibility of the consumer or their family. In some cases Far

Northern Regional Center (FNRC) may fund  
home modifications under the following criteria:

1. The need for the service is directly related to the qualifying developmental disability.
2. The consumer has a physical disability that limits their ability to freely access their home environment.
3. The need for home modification has been evaluated and recommended by a physical therapist or occupational therapist.
4. All other sources of funding, such as (but not limited to) the local housing authority, Medi-Care, Medi-Cal, and non-profit organizations have been exhausted.
  - a. Written denials from community resources may be required.
5. The service must reflect a cost-effective use of public funds.
6. All home modifications must be provided by a licensed building contractor.
7. At least three (3) estimates from licensed contractors are required before authorizing home modifications.
8. The consumer or family must own the home in which modifications are planned or present documentation to FNRC from the owner agreeing to all modifications.
  - a. FNRC will not fund major structural changes to a rental property.
9. FNRC will fund the minimal modifications necessary to ensure safety and access.

Ms. Kruse testified that FNRC has purchased home modifications for consumers with disabilities who need the modifications in order to access their homes. Based on the Purchase of Service Guidelines, Ms. Kruse denied

the request for fencing based upon the following considerations: (1) claimant does not have physical disabilities that impact his access to his home; (2) the home is owned by claimant's mother's boyfriend; and (3) a two-acre fence is not the most cost-effective way to meet claimant's need for supervision. She was only aware of one time that FNRC had purchased fencing. That purchase was for claimant five years ago for a rental home that he lived in at the time. That rental home is owned by claimant's mother's boyfriend. The fencing is portable and is available for use for claimant at this time.

Ms. Kruse testified that FNRC does not dispute claimant's lack of safety awareness. FNRC is willing to purchase alarms for the windows and doors of the home where claimant lives. In addition, FNRC is willing to purchase the Care Track System for claimant. The Care Track Sentry Invisible Perimeter Alarm System acts as an "invisible fence" by setting off an alarm when the person with disabilities travels past a set distance from the base of the unit. The perimeter can be adjusted to meet the needs of the family of the person with a disability. For example, the night-time perimeter may be much smaller than the day-time perimeter.

Ms. Kruse stated that many FNRC families use door and window alarms and the Care Track System to help ensure safe supervision of consumers who do not have safety awareness and may leave their homes. Both the door and window alarms and the Care Track System are much less expensive than the estimated cost to fence the two-acre parcel. Ms. Kruse testified that FNRC has an obligation to provide services that are cost-effective.

6. Claimant's mother testified at hearing. She explained that claimant is nonverbal and is very energetic. She is requesting the fence so

claimant will be able to access the property. Because the property is next to a river, and he is attracted to water, he cannot freely access the outside without supervision. She said that, although the fence FNRC purchased for claimant's use at a previous rental home is still available, it is no longer suitable as a safety fence because claimant has grown and could easily climb it.

Estimates for fencing the two-acre parcel obtained by claimant's mother and her boyfriend varied considerably, from \$20,323 to \$37,480. Claimant's mother testified that claimant is able to unlock doors that are locked in the house. She was not able to persuasively explain why she believed claimant would not be able to open gates that would be part of the fencing.

Claimant's mother does not believe the door and window alarms offered by FNRC will work. She does not think they will be loud enough to alert her. This testimony was not persuasive. Ms. Kruse testified that many FNRC families use such alarms successfully.

Claimant's mother did not consider requesting FNRC fence a smaller area on the two-acre parcel in order to give claimant access to part of the outside of the property. She testified that she wanted to allow him to have access to the entire parcel.

FNRC and claimant's mother agree that claimant is a person who needs supervision due to his disability. Claimant receives funding from In Home Supportive Services (IHSS) for 272 hours per month of care and supervision. Claimant's mother works as his care provider under IHSS. In addition, claimant is eligible for 90 hours per quarter of respite services. A

respite worker comes to the home to provide those hours of supervision in order to give claimant's mother some time off from caring for claimant.

## LEGAL CONCLUSIONS

11. Pursuant to the Lanterman Act, a regional center provides services to a consumer with a developmental disability in accordance with the consumer's IPP. The Lanterman Act governs the process by which an IPP is developed and services are provided.

12. FNRC has determined that claimant has autism. This developmental disability qualifies claimant to obtain services and supports from FNRC under the Lanterman Act.

## BURDEN OF PROOF

3. An applicant seeking eligibility for government benefits or services has the burden of proof. (See Evid. Code, § 500; Welf. & Inst. Code, § 4712, subd. (j).) Thus, claimant has the burden of proving that FNRC should be ordered to purchase the fencing he requests. (Evid. Code, § 115.) The standard of proof in this matter is a preponderance of evidence.

## OVERVIEW OF LANTERMAN ACT

4. The Lanterman Act 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 purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons

and their dislocation from family and community” and “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.” Under the Lanterman Act, regional centers are “charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’” and with determining “the manner in which those services are to be rendered.” (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

#### THE LAW REQUIRES REGIONAL CENTERS TO BE COST EFFECTIVE

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.” (*Ibid.*) As the

California Supreme Court recognized in *Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390, while a regional center has “no discretion at all in determining whether to implement” an individual program plan, it has “wide discretion in determining how to implement” an individual program plan. (Italics added.)

6. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system 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. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. However, Welfare and Institutions Code section 4646.4, subdivision (a), provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the

consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

18. In addition, a regional center is responsible for using its resources efficiently. Welfare and Institutions Code section 4648, subdivision (a)(2), provides that:

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

#### CAUSE TO DENY CLAIMANT'S REQUEST FOR THE PURCHASE OF TWO ACRES OF FENCING

9. Pursuant to Welfare and Institutions Code sections 4646, subdivision (a), 4646.4, subdivision (a), 4648, subdivision (a)(2), and 4648.5, in conjunction with California Code of Regulations, title 17, section 54326, subdivision (d)(1), claimant has not established that the purchase of two acres of fencing would alleviate his developmental disabilities, assist his habilitation or rehabilitation, or achieve and maintain an independent, productive, and normal life in a cost-effective manner. FNRC identified more cost-effective ways to achieve the same goal of ensuring that claimant will be safe on the two-acre parcel. Because paying for the fencing for the two-acre parcel owned by the boyfriend of claimant's

mother is not the most cost-effective solution, FNRC properly denied claimant's mother's request.

## ORDER

Claimant's appeal from FNRC's decision to deny funding for fencing to enclose a two-acre parcel is DENIED.

DATED: September 3, 2013

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ELAINE H. TALLEY

Administrative Law Judge

Office of Administrative Hearings

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## 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 this decision. (Welf. & Inst. Code, § 4712.5, subd.(a).)**