

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Agency

OAH Nos. 2013120259

2013120267

2013120270

AMENDED DECISION¹

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on February 28, 2014.

Ronald R. House, Esq. represented the San Diego Regional Center (SDRC).

Claimant, who was present during the hearing, was represented by his aunt.

The matter was submitted on February 28, 2014.

ISSUES

1. Should claimant continue receiving Supported Living Services (SLS)?
2. Should claimant's aunt provide SLS to claimant?
3. Should SDRC be required to provide a neurological assessment of claimant?

¹ Decision stands as is. The only change made was in regards to the addition of the two additional OAH case numbers.

FACTUAL FINDINGS

1. Claimant is 24 years old and has been receiving Regional Center Services based on a diagnosis of mild Cerebral Palsy. Claimant wears glasses and two hearing aids. He is fully ambulatory and is proficient in the following areas: eating, bathing, dressing, personal hygiene, toileting (i.e. bladder and bowel control) and food preparation. Claimant's speech is easy to understand, he can competently engage in conversations, and can articulate his preferences, wants, needs and desires. In fact, claimant fully participated in the instant hearing and raised some very insightful points for consideration.

2. SDRC has been funding SLS services for Claimant. Claimant's aunt (aunt) has been, and currently is, very involved with claimant's care. At one point she requested to be paid as claimant's direct SLS provider. Initially, SDRC denied claimant's and his aunt's request that aunt be his direct SLS provider. The initial denial was based on SDRC's long-standing policy not to vendor individuals to provide SLS. Historically, SDRC has only vendored independent agencies to provide SLS. This policy was derived, in part, from a concern that if family members were vendored to provide SLS there would be inherent conflicts of interests. For example, family members may have a desire to keep earning money by providing SLS to a client as opposed to progressing toward the goal of moving the client toward independent living. Additionally, family members are considered as natural supports and the line between providing natural support for a client and providing paid supports becomes blurred. Finally, agencies are better situated to develop appropriate goals, objectives, and protocols designed to move a client toward independence. Agencies are required to have two years of experience in developing programs and the agencies must submit written program designs, staff training guidelines and service delivery policies/protocols to SDRC before they can become vendored. These checks and balances are necessary to ensure quality control over the services being delivered to clients. Nonetheless, at one point SDRC

decided to become creative in claimant's case and allow aunt to be his SLS direct care provider if she were hired by one of SDRC's vendored SLS agencies. Two of SDRC's vendored agencies tried using aunt as claimant's direct SLS provider; however, each of the agencies notified SDRC that the arrangement was not working. According to the agencies, aunt was too controlling and claimant was being hindered in his progress toward independence.

DOCUMENTARY EVIDENCE

3. Toward Maximum Independence Community Living Services (TMI), an agency with expertise in SLS and independent living services (ILS)² conducted an assessment of claimant on September 26, 28, and October 15, and 22, 2012. As a result of the assessment **TMI recommended that claimant receive ILS as opposed to SLS.** TMI estimated that claimant will need 73 hours per month of ILS to provide claimant with training in achieving 15 different goals and objectives.

4. Claimant's most recent Individual Program Plan (IPP), dated January 25, 2012, indicated that claimant is moving toward independence. At the time of his IPP, he expressed his desires as follows: "[Claimant] would like to enter a school or vocational program to improve his writing skills, computer skills, and to become an advocate for other disabled young people. He also would like to find a permanent place to live with his aunt. . . ." Currently, claimant attends Mesa College. His aunt attends classes with him and acts as his educational aide.

² SLS and ILS are different levels of living services. SLS involve relatively constant care and supervision. ILS, however, is primarily a training service involving intermittent training, without care and supervision.

5. Dennis O. Dominguez, M.D., Diplomate, American Board of Family Practice, claimant's primary treating physician, authored a January 9, 2013, letter concerning claimant's living service needs. In that letter Dr. Dominguez stated: ". . . He needs significant help and gains the majority of his support from his aunt who currently lives with him. Apparently there is an issue with the aunt living with him and him gaining support. I am writing this letter to encourage you to help stabilize his living situation, **perhaps in an independent living situation**, and see if arrangements can be made so that his aunt's presence, [name omitted], does not prevent him from getting the services he needs." (Exh. C³-2, emphasis added.)

6. On January 23, 2014, Robert Gray, Ph.D., performed a Neuropsychological Evaluation of claimant. In pertinent part, the report stated: ". . . [Claimant] may be able to make progress towards modified independent living and vocational goals, but currently it is **recommended that he continue to receive a high level of home based supervision, such as that being provided by his aunt**, in addition to outside services and accommodations. **As he gains skills, specific markers and goals can be established that would signal his capacity/readiness for increased independence.**" (Exh. C-6, emphasis added.)

7. On February 20, 2014, Matthew Williams conducted a "Community Living Assessment" of claimant. That assessment also recommended training in achieving 12 different goals and objectives and estimated that **58 hours per month would be an adequate ILS level to achieve those goals.** (Emphasis added.)

³ "C" refers to claimant's exhibits.

TESTIMONY

8. Claimant testified that he wants his aunt to be the person who provides living support for him. Claimant testified: "I need supported living". . . "I know I need this level of support and I want my aunt to provide the support." Claimant believes SDRC is trying to separate him from his aunt and from getting the support he needs. He is in the process of obtaining In Home Supportive Services (IHSS).

9. Aunt testified that it is not safe for claimant to live without some support. She agrees that the goal is for claimant to gain independence and autonomy. Aunt admitted that "A Better Life Together," a SDRC vendored SLS provider terminated her from providing services to claimant. Aunt testified that she does not know why she was terminated.

10. SDRC experts, including the Resource Coordinator, the Regional Manager, and the Associate Director of Case Management Services testified that, based on their review of records in this case, claimant would be best served by receiving ILS along with IHSS. Furthermore, they testified that given aunt's proven lack of ability to work with living services vendors, SDRC cannot continue allowing her to be claimant's direct care provider. SDRC tried to be innovative/creative in this situation, but it just did not work out.

11. Matthew Williams, the living services provider who authored the February 20, 2014, "Community Living Assessment," testified in conformity with his report. Mr. Williams explained that IHSS can address all of aunt's concerns about safety, keeping medical appointments, etc. Mr. Williams, who was present during the entire hearing and heard all of the evidence, testified that claimant would best benefit from ILS.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4648, subdivision (a)(1), provides, in pertinent part: "It is the intent of the Legislature that services and supports

assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow . . . adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways."

ANALYSIS

2. Should claimant continue receiving Supported Living Services (SLS)?

In analyzing this question, greater weight was given to the reports and testimony of the vendored agencies and the testimony of the SDRC experts than to the January 23, 2014, Neuropsychological Evaluation of claimant performed by Robert Gray, Ph.D.

Dr. Gray concluded that claimant should "continue to receive a high level of home based supervision, such as that being provided by his aunt, in addition to outside services and accommodations." However, Dr. Gray did not testify during the instant hearing and the basis for his recommendation was not subject to clarification. SDRC, however, presented the testimony of its in-house experts as well as testimony by Matthew Williams, an independent, vendored living services specialist who provides both SLS and ILS to regional center consumers. These witnesses were privy to all of the current information, including Dr. Gray's report and they were cross-examined about the bases for their ILS recommendations.

The evidence presented by SDRC established by a preponderance of the evidence that claimant will be best served by provision of ILS, not SLS.

3. Should claimant's aunt provide SLS to claimant?

No. Based on Legal Conclusion 2, above, claimant should no longer be receiving SLS. Instead, he should be receiving ILS. Aunt is not vendored to provide either SLS or ILS.

4. Should SDRC be required to provide a neurological assessment of claimant?

No. As set forth in Finding 6, a neurological assessment of claimant was performed by Robert Gray, Ph.D., on January 23, 2014. Accordingly, this issue is moot.

ORDER

The agency's conclusions that claimant should no longer receive SLS services, that aunt cannot continue as claimant's SLS provider, and not to provide a neurological assessment of claimant are affirmed.

DATED: April 10, 2014.

_____/s/____

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.