

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

LE ANDRE D.

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES

REGIONAL CENTER,

Service Agency.

OAH Nos. 2014020575

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on May 9, 2014, in Los Angeles, California

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on May 28 and June 9, 2014, in Los Angeles.

The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant was present and represented by his aunt-in-law, Valerie W.¹

Johanna Arias, Fair Hearing Coordinator, represented the South Central Los Angeles Regional Center (or Service Agency).

¹ Last name initials and family titles are used to protect the privacy of Claimant.

ISSUE

May the Service Agency replace Claimant's supported living skills services with independent living skills services and decrease the number of hours funded from 50 hours per month to 35 hours per month?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on Service Agency exhibits 1-15, Claimant's exhibits A-D, as well as the testimony of Service Coordinator Kia Wilson, Program Manager Daisie Flores, Dr. Sandra Watson, Dr. Deborah Posey, and Rosann Cotton.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 29-year-old, non-conserved male. He is a consumer of the Service Agency through his eligible diagnoses of mild mental retardation and epilepsy.
2. As discussed in more detail below, the Service Agency is providing funding for Claimant to receive 50 hours per month of supported living skills (SLS) services.
3. After reviewing the situation, and meeting with Claimant and his aunt-in-law on January 10, 2014, the Service Agency decided that independent living skills (ILS) services were more appropriate for him, and that his funding should be reduced from 50 to 15 hours per month. At the hearing, however, the Service Agency stipulated that it was proposing only to reduce the monthly hours to 35.
4. By a Notice of Proposed Action letter dated January 31, 2014, Claimant and his aunt-in-law were advised of the Service Agency's proposed decision.
5. On February 16, 2014, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, to appeal the Service Agency's proposed decision.

6. In his Fair Hearing Request, Claimant designated his aunt-in-law as his authorized representative in this matter.

7. This matter was originally scheduled to be heard on April 1, 2014. At Claimant's request, the hearing was continued so it could be heard the same day of his wife's hearing involving the same issue (OAH case no. 2014030727). Both hearings were ultimately scheduled for May 28, 2014. In making the continuance request, Claimant waived the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

CLAIMANT'S LIVING SITUATION

8. Claimant left the public school system a few years ago. He has since been attending the ARC of Los Angeles and Orange Counties (ARC) work activity program, five days per week, to gain job skills.

9. In early 2013, Claimant was living with his biological mother. At that time, he became engaged to Eva E. She also is a consumer of the Service Agency and is the subject of the companion case to this one. Eva's cognitive and adaptive skills delays are milder than Claimant's. Eva E. was living with her aunt, Valerie W. Claimant and his fiancé planned to move together into their own home after their wedding.

10. On April 2, 2013, an employee of a Service Agency vendor who provides SLS services, On My Own, contacted Claimant's Service Coordinator to advise her of Claimant's impending marriage and plans to live independently. On My Own recommended that SLS services immediately be put in place due to the urgency of the situation.

11. Claimant's biological mother moved to another state in May 2013. For a short time, Claimant lived with his brother. However, in June 2013, Claimant moved in with his fiancé and her aunt. In July 2013, Claimant and Eva were married. They continued living with Eva's aunt after their marriage.

12. When a consumer indicates a desire to live independently, the Service Agency will typically first fund ILS services. The focus of ILS services is to train a consumer living with a family in the skills needed to transition to an independent living situation. Once the consumer has demonstrated progress toward that goal and has saved enough money to live on his own, the Service Agency will replace the ILS with SLS funding. SLS services target skills needed to actually live independently, such as budgeting, daily care, etc. During the hearing, the Service Agency's hearing representative conceded that the difference between ILS and SLS services is slight, and that the pivotal issue in this case, from the Service Agency's perspective, is the number of hours of funding provided.

13. In Claimant's case, the Service Agency decided to skip ILS and begin funding On My Own to provide SLS to Claimant at the rate of 50 hours per month due to the urgency of the situation. The SLS funding became effective July 1, 2013, and Claimant has received that level of funding ever since.

14. By January 2014, Claimant and Eva continued to reside with Valerie W. It did not appear to the Service Agency that they had made any effort to find their own place to live or had saved enough money to do so. When Service Agency staff concluded the situation was not as urgent as initially presented, they decided to propose the service changes that are the subject of this case.

15. On April 18, 2014, clinical psychologist Gabrielle du Verglas, Ph.D., conducted a psychological evaluation of Claimant. Her findings were consistent with prior evaluations of Claimant. Essentially, Dr. du Verglas found Claimant had mild mental retardation, and that his adaptive living skills were mild to moderately delayed. She noted that while Claimant could be left in an apartment without supervision, he needed support to complete household tasks and access the community.

16. Dr. Sandra Watson is a psychologist employed by the Service Agency. She testified that 35 hours per month of ILS services are sufficient for Claimant, given his level of adaptive skills, the fact that he is still living at home, and is assisted by his wife and his aunt-in-law. Dr. Watson believes Claimant is a good candidate for an independent living situation, but that SLS services would be appropriate for him when he actually begins the process of moving into his own home and thereafter.

17. Claimant and Eva still plan to live on their own. Their search for a new home has been delayed mainly for financial reasons. Claimant did not receive his social security payments for a number of months due to an identity theft situation. Claimant's credit record has been damaged as a result. The couple has not been able to save enough money for a deposit on an apartment unit, because their income from social security and wages Eva receives from ARC are less than their monthly expenses.

18. In April 2014, the couple applied for residence in an apartment unit close to where they currently live. The application was rejected by the landlord due to the couple's lack of income relative to the rent.

19. Valerie W. intends to retire in the next year or two. She does not plan to indefinitely care for Claimant and Eva.

20. Dr. Deborah Posey is a friend of Valerie W. and she is also Claimant's optometrist. She testified that Claimant is patient, calm, kind and cooperative. She believes Claimant is capable of living on his own with his wife. Rosann Cotton is Valerie W.'s sister. Her testimony concerning Claimant was similar to Dr. Posey's. Ms. Cotton also corroborated Valerie W.'s plan to soon retire and not indefinitely support Claimant and Eva.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.²) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. A regional center seeking to terminate or modify ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proof regarding its proposed decision to modify the type of service Claimant receives and decrease the number of hours funded.

4. Various provisions of the Lanterman Act indicate that services and supports cannot be blindly funded, indifferent to the results, and indefinite in time. For example, the Lanterman Act requires the parties to develop goals, and identify the services and supports necessary to achieve those goals, in the process of creating an individual program plan (IPP). A consumer's IPP "shall be reviewed and modified by the

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

planning team . . . as necessary, in response to the person's achievement or changing needs," (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).) The service in question should not be continued unless reasonable progress has been made toward goals and objectives, and the funding has been cost-effective. (§§ 4512, subd. (b), 4646, subd. (a), and 4648, subd. (a)(11).)

5. Section 4512, subdivision (b), defines services and supports available for regional center funding to include "supported living arrangements." The ALJ is not aware of a specific statutory or regulatory definition of either SLS or ILS, and the Service Agency did not present any purchase of service policy concerning those services. However, the Service Agency conceded that there is little difference between the two. Therefore, replacing Claimant's SLS service with ILS does not appear to be warranted and the Service Agency failed to carry its burden on that issue. (Factual Findings 1-12.)

6. On the other hand, a reduction in Claimant's monthly hours of SLS is warranted. The Service Agency's initial decision to provide funding for Claimant to receive 50 hours per month of SLS services was based on the assumption that Claimant and his new wife would soon be moving into their own independent living arrangement. Due to the urgency of the situation, Claimant's SLS program was given significant funding. More than one year after receiving those intensive services, Claimant still resides at home with family. He and his wife have not yet been able to move out on their own. Since Claimant and his wife are no longer anticipating an imminent move, the intensive services are no longer warranted. The Service Agency's proposal to reduce the funding level is supported by the above-cited provisions of the Lanterman Act, which require modification of services and supports when progress has not been made, the services no longer fit the situation, and the funding stops being cost-effective. The new

level of services is warranted. Dr. Watson credibly opined that 35 hours per month of services are appropriate under the circumstances. A modest reduction of 15 hours per month under the circumstances is reasonable. (Factual Findings 1-20 & Legal Conclusions 1-5.)

7. The Service Agency agrees that an increase of hours could be warranted in the future if and when Claimant and his wife actually engage in the process of moving to an independent living situation. When that becomes a reality, Claimant and his wife should immediately contact the Service Agency to revisit this issue.

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ORDER

Claimant Le Andre D.'s appeal is granted, in part, and denied, in part. The Service Agency shall not replace Claimant's supported living skills services with independent living skills services. However, the Service Agency may decrease the number of hours funded from 50 hours per month to 35 hours per month.

DATE: June 16, 2014

ERIC SAWYER

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.