

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

v.

REGIONAL CENTER OF ORANGE

COUNTY.

OAH No. 2014020660

A Proceeding Under the

Lanterman Developmental Disabilities

Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on June 3 and 19, 2014. Claimant was represented by Valerie Vanaman and Sharon Robinson, Attorneys at Law, of Newman Aaronson & Vanaman. Claimant's mother was present throughout the hearing. Regional Center of Orange County (RCOC or Service Agency) was represented by Keith R. Dobyns, Attorney at Law, of Woodruff, Spradlin & Smart, A.P.C., and Paula Noden, Fair Hearing Manager.

Claimant presented Exhibits 1 – 8 and 12 and the testimony of claimant's mother, Nancy Donnelly, Carol Clayman, and Judy Mark, Consultant. The Service Agency presented Exhibits 1 – 9 and the testimony of Jack Stanton, Manager of Consumer and Community Resources, and Patrick Ruppe, Central Area Manager. The parties' exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

At the conclusion of the hearing, the record was held open until July 14, 2014, at the request of the parties for the filing of written argument. On July 14, 2014, both claimant and the Service Agency filed closing briefs. The

Administrative Law Judge received the closing briefs on July 16, 2014, and marked them as Exhibits 13 and 10, respectively.

Documentary and oral evidence and written argument having been received, the Administrative Law Judge submitted this matter for decision on July 16, 2014, considered the testimonial and documentary evidence outlined above, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should receive funding or reimbursement for residential services and supports received at Glennwood Residential Facility.

FACTUAL FINDINGS

1. Claimant is a 24-year-old, non-conserved adult. He is a consumer of and eligible for services from the Service Agency based on his diagnosis of Down Syndrome and developmental disabilities and/or handicaps.

2. Until 2013, claimant lived with his mother in the family home in Palatine, Illinois, which is west of Chicago. He attended public schools and received special education services. He then attended an adult transition program. In November 2011, claimant completed his schooling. Claimant had many friends in his home town.

3. In or about 2013, claimant's mother, who is his guardian and payee of his Social Security benefits, began considering whether she should relocate to another state so that claimant could live independently. She researched programs and available services for her son in other states. In July 2013, claimant and his mother moved to Mission Viejo in south Orange County, California, to live near their family and have their support. Initially, the two of them lived with

claimant's aunt. In August 2013, claimant began residing at Glennwood House of Laguna Beach, a 42-room adult residential facility for adults with developmental disabilities (Glennwood House). Claimant has his own room and receives all of his meals and snacks at Glennwood House. His mother pays approximately \$2,500 per month for claimant to live there. Two months after her son moved into Glennwood House, claimant's mother moved to her own place in Rancho Santa Margarita.

4. As set forth in his November 2011 Individualized Education Program, claimant was diagnosed with developmental delays at an early age. His general cognitive ability is in the extremely low range and his processing speed is significantly delayed. Claimant has always been cooperative and pleasant, ready to participate, tries hard, takes suggestions well, and enjoys peer contact. He waits to be addressed, enjoys routines, and wants to please others. He speaks in complete sentences and uses appropriate word order. Claimant continues to struggle when asking for clarification and organizing his thoughts. He has difficulty with his expressive vocabulary. During his free time in Illinois, claimant was involved in Special Olympics. At home, he enjoyed watching television, eating dinner, and listening to music. He had good relations with peers and had lots of friends. He felt he was adept at cleaning, vacuuming, and cooking. He liked being friendly. Assessments showed that claimant has strong social skills.

5. (A) On October 30, 2013, the Service Agency conducted an initial meeting to prepare claimant's Individual Program Plan (IPP). The service coordinator and claimant's mother participated in the meeting, which was held at Glennwood House in Laguna Beach. At the time of the IPP meeting, the Service Agency had begun providing claimant with the services of a center-based adult day program, transportation to the adult day program, and case management.

(B) As set forth in his IPP, claimant's level of intellectual disability is moderate. He is fully ambulatory and verbal although his speech may be difficult to understand at times. His health is stable. He is not taking any medications. Claimant is "very social," will initiate interactions with others, and enjoys various social activities, such as talking with friends and dancing. He lacks money management skills and requires that purchases be made for him.

(C) With respect to the hopes and dreams that she holds for her son, claimant's mother stated during the IPP meeting that she wants claimant to live in the least restrictive environment where he could benefit from a "social community." She added that claimant is receiving lots of assistance at Glennwood House with his laundry, cleaning, and shopping chores. He is able to get his own snacks, prepare sandwiches, pour liquids, and heat food in a microwave oven. He does not cook meals at Glennwood House because the facility prepares and provides all of the meals for its residents. Claimant needs to be reminded to set his alarm clock to wake each morning and to get ready to go to work. He has begun working at a restaurant in Aliso Viejo where he wraps utensils in napkins and performs other duties. Claimant's job coach picks him up from Glennwood House, takes him to the restaurant, and helps him with his duties. Claimant's mother indicated her son needs mobility training.

(D) At the IPP meeting, claimant's mother requested RCOC assistance or funding for claimant to continue to live and receive services at Glennwood House. The service coordinator informed her that claimant could not receive such assistance because Glennwood House is not an authorized vendor with the Service Agency. In the alternative, claimant's mother asked for independent living services for her son. The service coordinator replied that the Service Agency could not provide funding for independent living services for claimant to

live at Glennwood House because residing at the adult residential facility is not considered to be independent living. As a result of the IPP meeting, the parties agreed that claimant will continue to participate in his adult program, increase his daily living and independent living skills, and explore other living options, if he chooses to do so. The Service Agency agreed to monitor claimant's progress on an annual basis and to continue providing the adult day program and case management services.

6. (A) On November 8, 2014, claimant's mother met with the area manager and the service coordinator to discuss funding for her son's residence at Glennwood House and supportive services while claimant recovered from an injury. First, the Service Agency agreed to provide 40 hours per week of supportive services for an initial period of 30 days while claimant stayed at his aunt's home and recovered from his injury. Second, with respect to Glennwood House, said RCOC representatives reiterated that the Service Agency was unable to provide funding for claimant to live at Glennwood House because the facility was not a regional center vendor. If Glennwood House submitted a vendor application and met the vendor requirement under the applicable regulations, the representatives indicated that the Service Agency would consider funding options for claimant. The Service Agency representatives added that RCOC could not provide funding for independent living or supportive living services for claimant to live at Glennwood House because the facility was not a "home" within the meaning of the regulations but an adult residential facility.

(B) On January 9, 2014, the Service Agency issued a Notice of Proposed Action, denying claimant's request for funding to reside at Glennwood House and for funding for independent and supportive living services. On January 16, 2014, the service coordinator issued a letter which summarized the discussion at the

November 8, 2013 meeting. On February 11, 2014, claimant and his mother filed fair hearing requests appealing the Service Agency's decision and asking for reimbursement of claimant's costs of living at Glennwood House. On March 4, 2014, the Service Agency held an informal meeting with claimant's mother to discuss the appeal.

7. (A) Glennwood House is owned and operated by Glennwood Housing Foundation, Inc. (GHF), a non-profit organization dedicated to addressing the needs of young adults with physical and developmental disabilities. In the spring of 2013, after remodeling a former assisted living facility, GHF opened Glennwood House, 33,000 square foot residential facility that can accommodate up to 63 adults, who are 18 to 59 years old and have moderate to higher functioning levels (Levels 1 and 2). The facility is compliant with physical requirements of the Americans with Disabilities Act and has living and dining areas, a kitchen, and recreational and social spaces, such as patios and gardens.

(B) In addition to an executive director and assistant director, both of whom hold administrator certificates issued by the Community Care Licensing Division of the Department of Social Services, State of California (DSS), Glennwood House has an activities and volunteers director, a medical care director, chef, housekeeper, and up to 10 staff members. The facility provides residents with three meals and snacks daily, transportation to work and appointments, and activities, outings, and classes. The facility offers training, services, and supports to residents in areas such as arts and crafts, money management, grooming and laundry, exercise, social activities, and access to community resources. Glennwood House is a licensed community care or adult residential facility licensed by DSS. In its Facility Program Description, GHF states

that Glennwood House "will not be vendored with Regional Center of Orange County" but will accept clients who have qualified for regional center funding.

8. Claimant's mother visits her son at Glennwood House three times weekly and is one of a number of parent and community volunteers at the facility. She has participated in activities with claimant and other residents at Glennwood House and observed that claimant truly enjoys living there. He has made both male and female friends who are also young adults or about the same age and share his interests. Under the supervision of Glennwood House staff, claimant walks to the beach, which is nearby, sings and dances, takes part in arts and crafts activities, and participates in Special Olympics and bowling. He can choose to participate in a number of activities, is able to attend his day program, and can immerse himself in the Laguna Beach community. Because her son is a very social person, claimant's mother believes that Glennwood House meets claimant's needs in socialization and recreation and provides him with a collegial and age-appropriate environment that will allow him to grow as an independent and happy adult.

9. (A) In lieu of funding claimant's residence at Glennwood House, RCOC has offered to place and/or fund claimant's placement in a group home or an adoptive family to facilitate his transition to independent living. In Orange County, there are approximately 400 group homes vendored by RCOC serving developmentally disabled persons whose care needs are at Levels 2 through 4. Approximately 100 of these vendored group homes provide residential care and supervision to consumers with care needs at Level 2. Group homes typically provide residential care and supervision to six consumers.

(B) In or about June 2014, the Service Agency gave claimant's mother a list dated May 27, 2014, of 11 group homes in Orange County that the Service

Agency represented had vacancies and were appropriate for her son's needs and level of care. Claimant's mother called all of the group homes on the list. She was not able to talk to administrators at several of the group homes because no one answered the telephone or the line was disconnected. Two of the group homes did not have any vacancies. For those group homes that she was able to contact, claimant's mother found that the consumers living in those vendored facilities were elderly males in their fifties or sixties. She believes that the group homes vendored by RCOC are not appropriate for claimant because he would not be living with or have social interaction with peers and would have no friends with common interests. His mother has opined that group homes are restrictive and claimant would feel isolated and become depressed if he had to live in a group home. She is concerned about the frequent turn-over of consumers living in group homes. Claimant's mother added that an adoptive family home would likewise not be appropriate for her son. She indicated claimant already has a family and is entitled to live independently, make his own decisions, and enjoy life with friends who are of the same age.

(C) It was not necessarily established by the testimony of claimant's mother that there are no group homes available for claimant in the catchment area of RCOC. Claimant's mother wants claimant to live at Glennwood House and receive a monthly reimbursement from RCOC at a rate authorized by the Department of Developmental Services for consumers who live in a vendored residential facility. As such, claimant's mother is not completely unbiased and her testimony about the unavailability of appropriate group homes for her son had limited probative weight.

(D) The Service Agency has vendored a number of group homes in Orange County which have vacancies and may be appropriate for claimant's needs under

the criteria used by the Service Agency to match consumers with vendored facilities. The group homes vendored by the Service Agency do experience a degree of turnover in consumers inasmuch as consumers who reside in the group homes often wish to move to other group homes.

(E) It was not established that the determination of the Service Agency not to pay for claimant's residential services at Glennwood House constitutes, or results in, a violation of his civil rights as a disabled person. Claimant's evidence in this regard was not well-developed and was not persuasive.

10. Families who have young adults with developmental disabilities are concerned about their safety, access to the community and social interaction, and quality of life. The families believe it is important that the young adults with developmental disabilities be able to live in the community with peers having similar interests, have medical care and transportation, and enjoy a variety of activities and outings. The living options for young adults with developmental disabilities are currently limited; they may choose to live in group homes, with adoptive families, or independently with the aid of supportive living services. In addition, Orange County lacks affordable housing for regional center consumers.

11. Claims or allegations raised by the parties during the fair hearing or contained in the written briefs for which there are no specific findings in this Decision were deemed unproven and/or irrelevant or immaterial to this Decision upon consideration of all of the evidence.

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative

services and supports in the least restrictive environment and provided in natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)¹ The purpose of the Lanterman Act is to establish an array of services and supports which is sufficiently complete to meet the needs and choices of persons with developmental disabilities, regardless of their age or degree of disability, and at each stage of life, and to support their integration into the mainstream of the community. (§ 4501.) Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. (*Ibid.*) Consumers of services and supports, and where appropriate, their parents, should be empowered to make choices in all life areas; these include promoting opportunities for persons with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. (*Ibid.*)

Services and supports for persons 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. (§ 4512, subd. (b).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. Said determination shall be made on the

¹ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

basis of the needs and preferences of the consumer or his family and shall include consideration of a range of services options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. Services and supports may include special living arrangements, training, education, recreation, behavior training, daily living skills training, community integration services, community support, daily living and social skills training, and supported living arrangements. (*Ibid.*)

The Legislature has further declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that the regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services. Section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

2. Under the Lanterman Act, all issues concerning the rights of persons with developmental disabilities to receive services must be decided under the appeal and fair hearing procedures set forth in section 4700 et seq. (§ 4706, subd. (a).) As the party seeking services not agreed to by the Service Agency, claimant bears the burden of proving that the denial of services was improper and he should receive the services that he desires and are in dispute. (See § 4712, subd. (j).)

3. Cause does not exist to grant supported living services or independent living services to claimant under the Lanterman Act and the regulations promulgated thereunder, based on Findings 1 – 11 above.

Supported living services is any individually designed services which assists a consumer to live in his or her own home with support available as often and for as long as it is needed. (Cal. Code Regs., tit. 17, § 58614, subd. (a)(1).) A home is a house or apartment which is not a community care facility or certified family home and which a consumer chooses to own, rent, control, or occupy as a principal place of residence. (Cal. Code Regs., tit. 17, § 58601, subd. (a)(3).) A consumer shall be eligible for supported living services upon a determination made through the IPP process that the consumer is at least 18 years of age and has expressed a preference for supported living services among the options proposed during the IPP process and is living in a home that is not the place of residence of a parent or conservator of the consumer. (Cal. Code Regs., tit. 17, § 58613, subd. (a).)

Independent living services are functional skills services, supports, and training which are necessary for adults with developmental disabilities to be able to maintain a self-sustaining, independent living situation in the community. Independent living services include services, supports, and training in cooking,

shopping in natural environments, meal preparation, money management, and use of public transportation and community resources. Consumers receiving independent living services typically live alone or with roommates in their own homes or apartments and not in homes which are licensed. (See Cal. Code Regs., tit. 17, § 56742.)

In this fair hearing matter, claimant is not eligible for either supportive living services or independent services because he is not living in a home or apartment but, instead, at Glennwood House, which is a community care facility. Neither claimant nor his mother has expressed any preference during the IPP process for supportive living or independent living services. Claimant's mother wants her son to continue to live at Glennwood House.

4. Grounds do not exist to grant financial assistance or reimbursement to claimant to allow him to reside at Glennwood House under the Lanterman Act and the regulations promulgated thereunder, based on Findings 1 – 11 above.

In this appeal, claimant contends that, even though Glennwood House is not an authorized vendor of the regional center, the Service Agency can provide financial assistance for claimant to live at Glennwood House pursuant to a contract with claimant's mother under section 4648.

Section 4648, subdivision (a)(3), provides, in pertinent part, that a regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency, which the regional center and consumer or his parents, determine will best accomplish all or any part of the consumer's IPP. Vendorization or contracting is the process of identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. (§ 4648, subd. (a)(3)(A).) A regional center may reimburse an individual or

agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the Department of Developmental Services and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center. (§ 4648, subd. (a)(3)(B).)

Notwithstanding subdivision (a)(3)(B), section 4648, subdivision (a)(4), provides that a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment established by the Department of Developmental Services. If a rate has not been established by the Department of Developmental Services, the regional center may, for an interim period, contract for a specified service or support with a provider of the service or support necessary to implement a consumer's IPP and establish a rate of payment for said services.

Here, because Glennwood House is an adult residential facility licensed by DSS, and not an agency that is vendorized by or has entered into a contract with RCOC, the Service Agency may not pay or reimburse Glennwood House for any services or supports provided to claimant. As an alternative, claimant has proposed that the Service Agency enter into a contract with claimant's mother pursuant to section 4648, subdivision (a)(4), so that she can pay for the costs for her son to continue to live at Glennwood House. Claimant argues that his mother is the provider for the service because she is paying her son's costs for living at the facility.

Claimant's proposal is not allowed by section 4648, subdivision (a)(4), and cannot be granted in this matter. First, the Department of Developmental Services has established a rate of payment for residential services (Claimant's

Exhibit 8 and Service Agency's Exhibit 8) and the Service Agency need not enter into a contract to establish such rate. Second, even if an applicable rate had not been established, the Service Agency could not contract with claimant's mother for residential services because, while she is the payor, she is not the provider of the residential services at Glennwood House.

5. Grounds do not exist to grant financial assistance to claimant to allow him to reside at Glennwood House under Article 4 (Regional Center Alternatives for Service Delivery), Chapter 5, of the Lanterman Act, based on Findings 1 – 11 above.

Claimant has argued that the Service Agency should be directed to develop an alternative service delivery model pursuant section 4669.2 so that claimant can receive financial support to secure his own services at Glennwood House in lieu of any services provided by the Service Agency. Claimant's argument is not well-taken. Section 4669.2 provides that a regional center may explore and implement any regional center service delivery alternative providing, in part, financial support for consumers living in the community so that they may secure their own services. As such, the section is permissive and does not require a regional center to implement the alternative service delivery model contemplated by claimant. Furthermore, section 4669.2 in conjunction with section 4669.75 require a regional center to consult with local organizations while developing a proposal for a service delivery alternative, conduct public hearing on the proposal, and submit the proposal to the Department of Developmental Services for approval. Jurisdiction does not exist in this proceeding to order Service Agency to develop and implement a service delivery alternative for claimant to live at Glennwood House.

6. Discussion—It is understandable that claimant wants to continue to live at Glennwood House. The facility offers residential services and supports that enable claimant to live independently of his mother, to have the social interactions and activities that he enjoys, and to have access to the local community and his adult day program that are important for his growth and integration into the community. His mother strongly believes that Glennwood House is the most appropriate facility for her son and meets his needs. Unfortunately, the Service Agency is unable to pay for his residence and services at Glennwood House because the facility is not an authorized vendor of services for consumers of the Service Agency and has chosen not to participate in the vendorization process to demonstrate that it has the qualifications and resources necessary to provide services to such consumers in accordance with their IPP's and the laws and regulations governing delivery of services under the direction and oversight of the regional center. Claimant did not meet his burden of proving that he should receive payment from the Service Agency of the costs of living at Glennwood House.

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant from the determination of the Regional Center of Orange County to deny supportive living services and independent living services as well as payment or reimbursement of costs for receiving residential services and supports at Glennwood House is over-ruled, based on Conclusions of Law 1 – 6 above, jointly and for all. The determination of the Regional Center of Orange County is sustained.

Dated: August 11, 2014

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.