

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2014030759

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Chico, California, on June 23, 2014.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Phyllis J. Raudman, Attorney at Law.

Claimant was present throughout the hearing and represented by his mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 23, 2014.

ISSUES

Is FNRC required to provide legal funding for conservatorship proceedings?

FACTUAL FINDINGS

1. Claimant is a twenty-eight-year-old man who is eligible for regional center services based on a diagnosis of moderate intellectual disability. He has also been diagnosed with Mild Other Specified Myoneural Disorder and Fragile X Syndrome. He is

non-verbal but is reported to express his needs and desires. Claimant enjoys good overall health and has not been hospitalized. He receives services and supports from FNRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)<sup>1</sup>

Claimant lives in the family home with his mother, stepfather, brother and niece. His mother is also a FNRC consumer, having been diagnosed with a mild intellectual disability. She provides claimant's In Home Supportive Services (IHSS). Claimant requires constant supervision during waking hours to prevent harm/injury in all settings. He also requires assistance with personal care and does not have bladder or bowel control.

2. Claimant's mother desires assistance with the cost of legal services to obtain a conservatorship for claimant. She is primarily concerned that he is unable to give consent for medical treatment and fears that he could have difficulty obtaining treatment in the future.

3. On March 6, 2014, FNRC issued a Notice of Proposed Action (NOPA) to claimant advising, "The request for Far Northern Regional Center to fund legal services associated with the acquisition of a conservatorship is denied."

The NOPA advised claimant that the reason for this action was as follows:

There has not been an emergent medical or safety issue identified that would constitute the need for conservatorship services.

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<sup>1</sup> Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

4. Claimant filed a Fair Hearing Request, received by FNRC on March 13, 2014, appealing that decision. The request stated:

[Claimant] is developmentally disabled he has a condition call fragile X syndrome this is a permanent condition. He is unable to make any normal reasonable decision in any situation. As his care provider and mother am asking to have conservatorship be granted. Os when needed I can make the decisions on his behalf most expecially medical or any other issue that may arise.

(Errors in original.)

5. Marlene McCollum is a FNRC Case Management Supervisor. She testified that the Lanterman Act does not apply a broad obligation on regional centers to fund legal services for its consumers. The regional center follows Purchase of Service (POS) Guidelines in determining when to fund conservatorship services. The POS Guidelines allow for regional center funding of legal services for conservatorships in one of two situations; when there is an immediate, identifiable medical or protective need requiring the conservatorship.

Ms. McCollum explained that a medical need is generally present when a consumer has a chronic and ongoing medical condition and/or the treating physician states that the consumer lacks the capacity to consent to treatment. A protective need arises when there is an identified threat to a consumer that puts him at risk of being the victim of a crime or otherwise being exploited.

6. FNRC's Multidisciplinary Team met on March 6, 2014<sup>2</sup> to determine whether the POS Guidelines would support funding in claimant's situation. The team determined that claimant had no immediate, identifiable medical or protective needs not being currently addressed through his Individual Program Plan (IPP). Claimant continues to remain healthy and there is no record of an emergent medical condition. There is no record of claimant being denied healthcare nor is there any evidence that he is unable to make his own healthcare decisions. There was no evidence that claimant is at risk of being exploited or becoming the victim of a crime.

Claimant does require supervision to remain safe. However, a conservatorship does not provide that. Supervision is addressed in his IPP throughout all settings. For example, claimant attends a full-time day program where he is appropriately supervised, and the County funds supervision hours in the home as part of his IHSS funding.

7. FNRC concluded that the POS Guidelines prevent funding legal costs to establish claimant's conservatorship. The regional center provided claimant's mother with a list of alternative resources that may be available including use of a Power of Attorney, information about court fee waivers should she choose to pursue conservatorship independently, and requesting a capacity evaluation/declaration from claimant's physician.

FNRC also informed claimant's mother of the ability of the regional center Director, or designee, to provide authorization for medical treatment in the event of an emergency where claimant is unable to give consent.

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<sup>2</sup> The FNRC Multidisciplinary team reviewed a prior request for legal services funding for a conservatorship on October 10, 2013. The team determined that the need was not consistent with the POS Guidelines and denied the request. A NOPA issued and claimant did not appeal that decision.

8. Claimant's mother expressed her concern that claimant may be unable to give his consent to future medical treatment. To this point, his physician has not refused medical treatment for claimant. Claimant and/or his mother have been allowed to consent to treatment. Claimant has been healthy and does not have any current medical concerns.

## LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services and supports for eligible persons with development disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Ins. Code, § 4501.) An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.)

2. Section 4512, subdivision (b) defines "services and supports" as follows:

"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 the 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 for each consumer 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 or, where 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.

Section 4640.7, subdivision (a) states:

It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.

3. The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

Section 4646, subdivision (a), provides:

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 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.

4. Section 4646.4, subdivision (a)(1) 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.

5. The California Probate Code, which governs conservatorships, provides the following in section 1801, subdivision (d):

Subject to Section 1800.3:

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

6. Claimant bears the burden of establishing that he meets the requirements to receive legal funding for conservatorship proceedings.<sup>3</sup> Claimant has not met that burden.

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<sup>3</sup> California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."



There is no evidence of an immediate, identifiable medical or protective need to conserve claimant.

## ORDER

The appeal of claimant is denied. FNRC is not required to provide legal funding for conservatorship proceedings at this time.

DATED: June 30, 2014

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SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings

## 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).)**