

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2014100615

DECISION

On January 8, 2015, Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant.

The matter was submitted on January 8, 2015.

ISSUE

Is Inland Regional Center required to permit claimant's mother to be an Alternate Consumer Services Coordinator for her child?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant receives services from the Inland Regional Center. She qualifies for

services from IRC on the basis of moderate mental retardation¹. On August 26, 2014, claimant's mother requested to participate in the Self-Determination Program, which is a new program that was to take effect on January 1, 2015. On approximately September 3, 2014, claimant's mother requested that IRC allow her to be claimant's Alternate Consumer Service Coordinator (CSC).

2. On September 10, 2014, IRC notified claimant that IRC had not yet determined if it is feasible for claimant to have an Alternate CSC. An Alternate CSC can be a case management services option. IRC informed claimant that it had decided to form a committee to explore the feasibility of training claimant's mother, and others who may have similar requests, as Alternate CSCs.

3. On October 2, 2014, claimant's mother filed a fair hearing request appealing IRC's decision regarding her request to participate in the Self-Determination Program, as well as her request to be claimant's Alternate CSC.

4. In an October 20, 2014, letter, IRC notified claimant's mother that the Self-Determination Program would not be implemented until sometime in 2015 and that IRC can't participate in the program yet. The letter further stated that during a telephone conference with IRC on October 16, 2014, claimant's mother requested that a fair hearing take place on both the issue of the request to participate in the Self-Determination Program and the issue of being claimant's Alternate CSC. On December 1, 2014, claimant's mother withdrew her fair hearing request regarding participation in the Self-Determination Program.

5. On December 15, 2014, IRC notified claimant's mother that IRC denied her

¹ Although the terminology for these diagnoses recently changed from mental retardation in DSM-IV to intellectual disability in DSM-V, this decision will use the language contained in the claimant's Individual Program Plan.

request to be an Alternate CSC for claimant.

BACKGROUND

6. Claimant is a twenty-two year old woman with moderate mental retardation, chronic esophagitis and convulsions. Claimant's mother adopted claimant seven years ago and has taken care of her for the past nine years. The two first met when claimant was a student at McBride Special Education Center, where claimant's mother worked as a special education teacher.

7. Claimant's mother has over twenty-two years of experience working with disabled people. She worked for fourteen years as a special education assistant and as a health care assistant at the Los Angeles Unified School District. She also worked as a special education teacher from 1994 to 2004 at McBride Special Education Center, where she worked with children with mild to severe disabilities. Claimant's mother has a Bachelor of Arts degree in liberal arts from California State University. She received her Master's Degree in Special Education in 2000 from National University. She also received her Master's Degree in Marriage and Family Therapy from University of Phoenix.

8. Claimant has an individual program plan (IPP) dated February 26, 2014, that sets out the plan for the support necessary for claimant's well-being. The IPP was prepared by claimant's CSC, Alisa Terry, in conjunction with claimant's mother and claimant.

CLAIMANT'S EVIDENCE

9. Claimant's mother believes that, based upon her experience and knowledge of her daughter, she is in a better position to be her daughter's CSC than any other person. She testified that each IRC CSC manages about seventy consumers. As a result, the CSCs are not able to provide sufficient attention to each consumer.

10. Claimant's mother understands that there is a problem for IRC to provide her with training to be an Alternate CSC because it is not feasible to train one parent at a time.

However, she believes that other parents would also want to be Alternate CSCs for their children if they knew it was an option.

11. Claimant's mother understands that the new Self-Determination Program will provide her with the increased input into her daughter's case management that she seeks, but that program will not be functioning until much later this year, and originally, only a few families will be chosen to participate. The program will not be fully implemented until about three years from now. Accordingly, she seeks to become the Alternate CSC now so that she can have more control over her daughter's case management.

IRC'S EVIDENCE

12. Kevin Joseph Urtz is the Director of Adult Services at IRC and has been in that position for only four weeks. Prior to taking that position, Mr. Urtz worked for twenty-three years as a Program Manager at IRC's Riverside Transition Unit, where claimant was assigned. In that role he oversaw thirteen CSCs, and he occasionally met with families. The Transition Unit oversees the care for consumers ages sixteen to twenty-three. Mr. Urtz has a Bachelor of Science degree in Psychology and a master's degree in Social Work.

13. Mr. Urtz reviewed claimant's records and had previously met with claimant's mother regarding her request. He discussed her request to be claimant's Alternate CSC with Alisa Terry, someone in the IRC's human resources department, and IRC's Senior Training Specialist. In order for a non-employee of IRC to work as an Alternate CSC, that person would have to undergo the same orientation and training regarding all the same case management responsibilities as employees of IRC who work as CSCs. All new employee CSCs are given an extensive orientation and training schedule with the initial orientation lasting two weeks and ongoing training thereafter. Mr. Urtz consulted with both IRC's human resources department and IRC's Senior Training Specialist to come up with a modified training schedule appropriate for an Alternate CSC. That schedule consisted of four days of orientation, including one day working on the computer systems

to write an IPP for the consumer. Unfortunately, use of the computer for that purpose would require access to IRC's consumer information management system called SANDIS. Parents are not allowed to have access to SANDIS because access for one purpose would necessarily allow access to other, confidential consumer information in violation of the Health Insurance Portability & Accountability Act of 1996 (HIPAA)² Privacy Rules. Accordingly, without some sort of client portal to SANDIS where consumers and parents can view only the information relevant to them, it is not possible for IRC to train a non-employee to be an Alternate CSC. IRC does not anticipate the creation of any client portal to SANDIS anytime soon.

14. Mr. Urtz discussed with IRC's Senior Training Specialist the possible implementation of the modified training schedule. The Training Specialist concluded that, in order for it to be practical for IRC to implement that schedule, IRC would need at least a few participants. Currently, claimant's mother is the only parent requesting to become an Alternate CSC. Mr. Urtz also testified that having a non-employee on the property of IRC would also pose a liability issue, which would need to be addressed.

15. Because of the above issues, Mr. Urtz concluded that it is not feasible at this time to allow claimant's mother to become an Alternate CSC for her daughter. Given that the Self-Determination Program will address many of claimant's mother's concerns related to participation in her daughter's case management once it is implemented, there is even less reason to spend extensive time and funds finding solutions to the above problems. Mr. Urtz is unsure exactly how long it will take to implement the Self-Determination Program, but he anticipates that by October 2015 IRC will receive funding for about two hundred forty-four spaces in the program. There is no guarantee that claimant's mother

² The Health Insurance Portability & Accountability Act of 1996 provides extensive requirements for privacy standards for an individual's health information.

will receive one of those spots, but she is currently on the list of those to be considered. In about three years, all regional centers will have the program fully implemented.

16. Mr. Urtz testified that on average IRC's CSCs manage about seventy-six clients each. He further testified that the IRC's CSCs are required to listen to the consumer and his or her family when formulating an IPP.

THE PARTIES' ARGUMENTS

17. IRC argued that Welfare & Institutions Code section 4647 allows for a parent to take the role of Alternate CSC only if the IRC director agrees and it is feasible for the parent to do so. Currently, it is not feasible to allow claimant's mother to be an Alternate CSC for her daughter, and as a result the director will not agree to such an arrangement.

18. Claimant's mother argued that she and her daughter should not be limited because other parents have not requested to be Alternate CSCs. She feels that she has the appropriate training and background to be an Alternate CSC and that she is in the best position to take on that role regardless of the feasibility for IRC.

LEGAL CONCLUSIONS

THE BURDEN AND STANDARD OF PROOF

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that she is entitled to have her mother act as claimant's Alternate CSC.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People*

ex rel. Brown v. Tri-Union Seafoods, LLC (2009) 171 Cal.App.4th 1549, 1567.)

THE LANTERMAN ACT

4. Welfare and Institutions Code, Section 4647, provides:

- (a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.
- (b) The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services, or persons described in Section 4647.2. The regional center shall provide the consumer or, where appropriate, his or her parents, legal guardian, or conservator or authorized representative, with written notification of any permanent change in the assigned service coordinator within 10 business days. No person shall continue to serve as a service coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

- (c) Where appropriate, a consumer or the consumer's parents or other family members, legal guardian, or conservator, may perform all or part of the duties of the service coordinator described in this section if the regional center director agrees and it is feasible.
- (d) If any person described in subdivision (c) is designated as the service coordinator, that person shall not deviate from the agreed-upon program plan and shall provide any reasonable information and reports required by the regional center director.
- (e) If any person described in subdivision (c) is designated as the service coordinator, the regional center shall provide ongoing information and support as necessary, to assist the person to perform all or part of the duties of service coordinator.

5. The IRC Operation Manual, Section 2.6, entitled "Alternate Consumer Services Coordinators: Philosophy and Procedures" provides in pertinent part:

. . . When an individual or entity other than the IRC designated Consumer Services Coordinator indicates a desire to choose an alternate (Consumer Services Coordinator), he/she makes a written formal request to the Executive Director upon which an interview (of the alternate) will be indicated by one or more Chiefs of Case Management Services. During this interview an [assessment] will be made as to the feasibility for the alternate to serve as the Consumer Services Coordinator. The assessment is based upon the alternate accepting all of the legal reporting responsibility as stipulated in Welfare and Institutions Code Section 4500.

[¶] . . . [¶]

The duties and responsibilities of the Alternate Consumer Services Coordinator . . . may include . . . Implementation, oversight, and monitoring of the consumer's Individual Program Plan . . . Appropriate/relevant mandated training sessions coordinated by IRC staff. . . . Documenting standards as required by the Lanterman Act and IRC policy and procedure. This also refers to the complete spectrum of documentation to include ongoing reports such as the Annual Review, IPP, and Quarterly but to also include all forms, applications and procedural documents. . . . Attend IRC New Staff Orientation.

EVALUATION

6. The preponderance of the evidence demonstrates that granting claimant's mother's request to act as her daughter's Alternate CSC is not feasible at this time for several reasons. There is currently no method to allow her to access the SANDIS system to prepare claimant's IPP and provide necessary reports without violating the privacy rights of other consumers under HIPAA. IRC would have to create a training program for claimant's mother. IRC also has liability issues related to having a non-employee parent on the premises. In addition, the Self-Determination Program once implemented will allow claimant's mother to have a more direct role in her daughter's case management. Mr. Urtz spent considerable time and effort evaluating claimant's mother's request and made every effort to find a feasible solution to the issues presented to allow her to act as claimant's Alternate CSC. However, it is not currently feasible to do so.

Pursuant to Welfare and Institutions Code, Section 4647, subdivision (c), IRC has the

discretion to allow a parent to act as an Alternate CSC, and can do so only if it is feasible.

The regional center is, therefore, not required to allow claimant's mother to act as claimants Alternate Consumer Service Coordinator.

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ORDER

Claimant's appeal is denied.

DATED: January 22, 2015

_____/s/_____

DEBRA D. NYE-PERKINS

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 ninety days.