

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2015061183

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 27, 2015, in Alhambra.

Claimant¹ was present and represented himself with the assistance of Annette Kellam, Claimant's case manager from Community Advocates for People's Choice (CAPS). CAPS is Claimant's Supported Living Services provider.

Gerard A. Torres, Supervisor, Community Services Unit, Eastern Los Angeles Regional Center, represented Eastern Los Angeles Regional Center (Service Agency or ELARC).

Oral and documentary evidence was received. The record was left open until August 6, 2015 for Claimant to submit evidence to support his hearing testimony that he receives Supplemental Security Income (SSI). ELARC's response to Claimant's additional evidence was due by August 11, 2015.

¹ Party title is used in lieu of Claimant's name in order to protect Claimant's privacy.

Claimant did not submit any additional evidence. However, on August 4, 2015, ELARC submitted a letter and document previously provided to ELARC by the Claimant. The letter and document, with accompanying facsimile transmission sheets, were collectively marked for identification as Exhibit 6. ELARC's filing was not accompanied by any proof showing service of Exhibit 6 upon Claimant. Thus, there was no indication that Claimant had an opportunity to examine Exhibit 6, or interpose any objection to it. Accordingly, a Notice of Ex Parte Communication and Order was issued by the Administrative Law Judge on August 5, 2015 to allow Claimant to comment on Exhibit 6 by August 11, 2015. No comment was received from the Claimant. Exhibit 6 was not admitted into evidence because of the lack of notice to the Claimant, lack of foundation, and lack of authentication of the document, and, therefore, was not considered by the Administrative Law Judge in issuing the instant decision.

The matter was submitted for decision on August 11, 2015.

ISSUE

Should ELARC continue to pay Claimant monthly State Supplementary Payments (SSP) of \$61.20?

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-5; Claimant's exhibit A.

Testimony. Claimant, Annette Kellam, and Gerard A. Torres.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is an adult client of ELARC, and is currently receiving services pursuant to the Lanterman Developmental Disabilities Services Act, Welfare & Institutions Code section 4400, et seq. (Lanterman Act). He is eligible for services based

on a diagnosis of Borderline Intellectual Functioning. Claimant also suffers from Anxiety Disorder. He lives independently, pays his own bills, and contends he receives Supplemental Security Income (SSI) payments from Social Security.

2. ELARC informed Claimant by Notice of Proposed Action (NOPA) dated May 29, 2015, of its intent to stop paying Claimant's SSP of \$61.20 per month, effective June 29, 2015. Claimant was receiving SSP as part of a directive of the Social Security Administration that instructed regional centers to provide the SSP to eligible regional center consumers. The NOPA stated ELARC had been making the payments "in error."

3. On June 2, 2015, Claimant filed a Fair Hearing Request appealing ELARC's proposed action of terminating its payment of his monthly SSP. Claimant cited as the basis for his appeal his financial need for the SSP to meet his monthly expenses, including, but not limited to, his rent payment, electrical bill, and weekly psychologist visit \$25 co-payment(s).

4. ELARC has continued to pay the monthly SSP pending Claimant's appeal.

THE NOPA

5. ELARC's NOPA explained the reason for its proposed action as follows: "The regional center will provide SSP when an individual meets the qualifications according to the Social Security Administration. The consumer must receive SSI and reside in an independent living arrangement to receive this payment."

6. The NOPA cites Welfare and Institutions Code (Code) sections 4512, subdivision (b), 4647, subdivision (a), 4649, subdivision (a), 4848, subdivision (a)(8), and 4659, subdivision (a)(1) in support of ELARC's decision.² However, none of the cited

² All further statutory references are to the California Welfare and Institutions Code unless otherwise stated.

Code sections provides legal authority supporting ELARC's decision to stop Claimant's monthly SSP. Specifically, Code section 4512, subdivision (b), defines the phrase "Services and support for persons with developmental disabilities." Code Sections 4647, subdivision (a), and 4659, subdivision (a), relate to the requirements that service coordinators "purchase or obtain" services and supports for regional consumers from generic sources and identify and pursue all possible sources of funding from public entities and program. Code section 4848, subdivision (a)(8), generally provides that regional center funds shall not supplant the budget of any agency, and Code section 4659, subdivision (a)(1), requires the regional center to identify and pursue "all possible sources of funding" for consumers receiving regional center services. Consequently, because the NOPA cited no legal authority in support of ELARC's position to cease payment of Claimant's monthly SSP, ELARC's NOPA failed to provide Claimant with his due process right of adequate notice concerning the basis of its proposed action.

CLAIMANT'S MONTHLY SSP

7. At hearing, ELARC's hearing representative, Mr. Torres, testified that ELARC paid the monthly SSP to Claimant in error because the source of Claimant's monthly support is Social Security Administration (SSA) benefits, rather than the required SSI benefits. Mr. Torres testified that the SSP could only be paid to regional center consumers who received SSI, rather than SSA benefits, per the mandates of the federal regulations that governed the program. However, ELARC provided neither the ALJ, nor Claimant, with the specific regulations that governed the SSP distribution prior to or at the time of hearing.

8. Claimant testified at hearing and disputed ELARC's claim that he is paid SSA benefits. Rather, Claimant contended his monthly benefits are paid by SSI. Claimant's October 20, 2014, Individual Program Plan (IPP) supports Claimant's testimony, stating that "SSI is to fund for \$1111.00 per month as eligible." (Ex. 2 at p. 3.)

9. Claimant was not aware of the basis for ELARC's proposed action until the hearing. Further, Claimant's CAPS case manager, Annette Kellam, testified that she was not aware of the hearing, that Claimant did not inform her of the hearing, and that she was under the mistaken impression that she was going to assist Claimant at an informal meeting at ELARC to discuss his SSP. (Testimony of Ms. Kellam.) As a result, she had not assisted Claimant in preparing for the hearing, including gathering any necessary documents to support his testimony that he received SSI benefits prior to the hearing.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's proposed action of stopping his monthly \$61.20 SSP payments. Jurisdiction was therefore established. (Factual Findings 1-9.)

2. The party asserting a claim 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.) Where a change in the status quo is sought, the party seeking the change has the burden of proving that a change is necessary. (Evid. Code, §§ 115 and 500.) In this case, the Service Agency is seeking to change the status quo by its proposal to stop paying Claimant his \$61.20 monthly SSP. Accordingly, the Service Agency has the burden to prove by a preponderance of the evidence that its decision to stop paying Claimant the \$61.20 monthly SSP is correct.

INADEQUATE NOTICE

3. Under section 4710.5, subdivision (a), a person dissatisfied with a decision

or action of a regional center has the right to a fair hearing. An essential part of a fair hearing is "adequate notice" to a consumer of a service agency's proposed action.

Section 4701 defines "adequate notice" to mean a written notice informing the consumer of certain information specified in the statute, including, but not limited to, the following:

- (a) The action that the service agency proposes to take, including a statement of the basic facts upon which the service agency is relying.
- (b) The reason or reasons for that action.
- (c) The effective date of that action.
- (d) The specific law, regulation, or policy supporting the action.

4. Accordingly, a regional center is required to send "adequate notice" to a consumer and his or her authorized representative, if any, when it makes a decision "to reduce, terminate, or change services set forth in an individual program plan." (§ 4710, subd. (a).)

5. By reason of Factual Findings 5 and 6, the Service Agency did not provide adequate written notice of its decision to stop Claimant's monthly \$61.20 SSP. The Service Agency's NOPA does not include the "specific law, regulation, or policy supporting the action." (§ 4701, subd. (d).) Rather, it references various Code sections that did not address the issue at hand, and cites no specific law regarding the requirements for SSP funding. The letter also fails to include "a statement of the basic facts upon which the service agency is relying." (§ 4701, subd. (a).) Specifically, the letter indicates the Service Agency's decision is based on "error," but fails to specify the basis for the "error."

6. Given these factors, Claimant, as an adult consumer suffering from Borderline Intellectual Functioning and Anxiety Disorder who may be unfamiliar with the law, was prejudiced at the hearing by the Service Agency's failure provide adequate

written notice, thereby compromising his ability to effectively prepare for the hearing. In fact, it was clear that Claimant was not aware of the reason ELARC wanted to stop his monthly SSP until Mr. Torres testified at hearing.

SOURCE OF CLAIMANT'S MONTHLY BENEFIT

7. Further, Claimant's testimony, supported by his IPP, indicates that, contrary to ELARC's assertions, the source of Claimant's monthly benefit is SSI, rather than SSA, based on Factual Finding 8. ELARC has therefore failed to show that its proposed action of stopping Claimant's monthly SSP, assuming it had given sufficient notice, is warranted.

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8. By reason of Factual Findings 1 through 9 and Legal Conclusions 1 through 7, the Service Agency has not met its burden of establishing that cause exists to stop Claimant's monthly \$61.20 SSP.

ORDER

Claimant's appeal is affirmed.

DATE: August 21, 2015

_____/s/____

IRINA TENTSER

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.