

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

OAH No. 2015090434

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION GRANTING MOTION TO DISMISS

Administrative Law Judge Ralph B. Dash heard this matter on February 2, 2016 in Whittier, California.

Claimant's parents represented Claimant.

Judy Perez, Fair Hearings Coordinator, represented Eastern Los Angeles Regional Center (ELARC or Regional Center).

GENERAL BACKGROUND

On August 14, 2015, after three days of hearing in case number 2014100315, Administrative Law Judge Humberto Flores issued his final Decision. The Fair Hearing Request (FHR) at issue in that proceeding requested Regional Center to expand Claimant's specialized therapeutic services (STS) for "Post Secondary Support" (i.e. services to aid Claimant attend a community college) to include "community outings and the gym." Regional Center had denied this request in its Notice of Proposed Action (NOPA) dated

September 23, 2014.¹ Regional Center claimed that Independent Living Services (ILS) could provide the support Claimant needed for community outings and gym attendance, and there was no need to expand the much more expensive STS to do the same thing.

In his decision in case number 2014100315, Judge Flores did not extend STS to include community outings and the gym. Rather, Judge Flores issued an Order terminating all of Claimant's STS services, requiring Regional Center to substitute ILS in lieu thereof over a 90 transitional period. Judge Flores' Order states, "Eastern Los Angeles Regional Center's decision to terminate Claimant's Specialized Therapeutic Services is affirmed on the condition that the ELARC provide Independent Living Services. Claimant's appeal is denied. Claimant's Specialized Therapeutic Services shall be terminated 90 days after the date of this order to lessen the impact on the change in services."

In response to Judge Flores' Decision, Claimant filed a FHR on September 11, 2015, which is the subject of these proceedings. In her current FHR, Claimant requests "aid paid pending" for STS (i.e. that ELARC continue providing STS despite Judge Flores' Order) until that Order is "clarified." Claimant's FHR stated, in substance, that the first time she ever became aware that the entirety of her STS funding could be affected came when her parents read Judge Flores' Decision. Parents want ELARC to "correct the record" to confirm that elimination of all STS was never an issue before Judge Flores in case number 2014100315.

On December 11, 2015, ELARC filed a Motion to Dismiss the Fair Hearing Request in this matter. In its motion, ELARC asserts that, "To Judge Flores . . . the issue [in case number 2014100315] became: 'Should ELARC's decision to terminate therapeutic services

¹ No exhibits were offered in evidence at the hearing. All documentary evidence considered was attached to Regional Center's motion (Exhibit 1) and Claimant's response to the motion (Exhibit A).

affirmed?” ELARC contends that the issue of terminating all of Claimant’s STS did, in fact, become the issue Judge Flores was supposed to, and did, decide. It argues that “aid paid pending” cannot be ordered in this matter because there is no statutory basis therefor. At the hearing of this matter, ELARC acknowledged that it had not yet terminated or curtailed Claimant’s current STS. However, it also argued that under Judge Flores’ Order, it has the right to do so.

PROCEDURAL BACKGROUND OF THE PENDING MOTION

On December 22, 2015, Acting Presiding Administrative Law Judge Janis Rovner issued an Order which reads, in part:

1. Hearing on Motion to Dismiss: Upon review of Claimant’s fair hearing request filed on September 11, 2015, and RC’s motion to dismiss filed and served December 15, 2015, this hearing will be bifurcated in the interests of judicial economy and efficiency. Oral argument on the motion to dismiss, and evidence necessary to support or oppose any facts underlying the motion to dismiss, will be heard on February 2, 2016 at 9:00 a.m. at the Eastern Los Angeles Regional Center – 13215 Penn Street, Suite 410, in Whittier, California 90602. The administrative law judge (ALJ) will prepare a written ruling or decision after hearing the motion to dismiss.
2. Bifurcation is appropriate because the fair hearing request and the motion to dismiss address the threshold issue of OAH’s authority to proceed under the fair hearing provisions of the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4700 et seq.) If the administrative law judge (ALJ) denies the motion to dismiss in whole or in part, the evidentiary portion of the hearing on the merits of the case will proceed at a time to be scheduled in the future. If the ALJ grants the motion to dismiss in its entirety, the ALJ will issue a ruling or decision.

MANDAMUS PROCEEDING

At the February 2, 2016 hearing, Claimant for the first time disclosed to ELARC and to the Office of Administrative Hearings, that in November 2015, her counsel filed a Petition for Writ of Mandamus (Los Angeles Superior Court Case number 158790) challenging the Order Judge Flores issued in case number 2014100315. It appeared from the limited documentation that Claimant's parents had available at the hearing,² Claimant did not request and the superior court did not issue an interim order preventing ELARC from implementing Judge Flores' Order.

LAW GOVERNING THIS PROCEEDING

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) Chapter 7 of the Lanterman Act (Welf. & Inst. Code, § 4700 et seq.) sets forth a "fair hearing procedure" for resolving conflicts between the service agency and recipients of, or applicants for, service. If a regional center proposes to reduce or discontinue a service to one of its consumers, it issues a NOPA. If the consumer timely requests a fair hearing to challenge the proposed change in service, the regional center is required to continue providing that service (aid paid pending) until a final decision is rendered by the administrative law judge.

Under the Lanterman Act, there is no procedure for post-decision orders after a fair hearing is conducted. Instead, the Lanterman Act makes clear that the decision of the administrative law judge is "final," and that either party may appeal the decision to a court of competent jurisdiction within 90 days of receiving notice of the final decision. (Welf. & Inst. Code, § 4712.5.) California Code of Civil Procedure section 1085, subdivision (a),

² Claimant's mother was able to retrieve on her telephone a few pages that had been filed in the superior court in case number 158790.

provides, "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." Thus, once the final decision is rendered after a fair hearing, the superior court acts as the "appellate court" to review the fair hearing proceedings.

The superior court is vested with the authority to prohibit the final fair hearing decision from going into effect pending the issuance of its own decision. However, the Lanterman Act makes it clear that merely requesting the superior court to review the fair hearing decision does not operate as a stay of the implementation of that decision. Welfare and Institutions Code section 4715, subdivision (c) provides, "Any appeal to a court by either party shall not operate as a stay of enforcement of the final administrative decision, provided that either party may seek a stay of enforcement from any court of competent jurisdiction."

CONCLUSION

Claimant is attempting to use this proceeding to obtain what amounts to both a stay of the implementation of Judge Flores' Order in case number 2014100315 and the continued receipt of STS while she pursues her superior court mandamus proceeding regarding that decision. The relief Claimant seeks can only be ordered by the superior court. It is to that court Claimant must apply for such relief. Accordingly, the fair hearing request in this matter must be dismissed.

IT IS SO ORDERED.

DATED: February 10, 2016

_____/s/____

RALPH B. DASH

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.