

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2015091123

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard the first part of this bifurcated matter, limited to oral argument on Westside Regional Center's Motion to Dismiss Fair Hearing Request, on December 2, 2015, in Culver City, California.

This matter was ordered bifurcated by Order dated November 25, 2015, to allow the ALJ to address the threshold issue of jurisdiction prior to conducting an evidentiary hearing. The November 25, 2015, Order provides that, if the ALJ denies the motion in whole or in part, the evidentiary portion of the hearing will proceed in February 2016; it further provides that, if the ALJ grants the motion in its entirety, he shall issue a decision.

Judith A. Enright, Enright & Ocheltree, LLP, represented Westside Regional Center (WRC or Service Agency).

Damian D. Capozzola and Timothy R. Laquer, Attorneys at Law, represented

claimant, who was not present.¹ Claimant's mother and father, claimant's conservators, were present.

The ALJ, having read the parties' moving and opposition papers and having heard oral argument, issues the following Decision:

FACTUAL FINDINGS

FACTUAL AND PROCEDURAL BACKGROUND

1. Claimant is a 23-year-old conserved woman who is a consumer of WRC based on a diagnosis of autism. She has resided in a community placement plan home on Ramsgate Avenue in Los Angeles since the spring of 2014. Two other WRC consumers also reside at the Ramsgate home, which is leased and operated by People's Care, a service provider vendored by WRC. On August 14, 2015, claimant's parents requested that WRC replace People's Care as the operator of the Ramsgate home. On August 26, 2015, WRC issued a Notice of Proposed Action letter denying claimant's parents' request.

2. On September 25, 2015, claimant's parents filed a Fair Hearing Request, seeking a decision compelling WRC to replace People's Care as the operator of the Ramsgate home on the ground that People's Choice is unable to meet the requirements set forth in the "Program Design."

3. On November 20, 2015, the Service Agency filed a motion to dismiss claimant's request for a fair hearing; the motion, with attachments, is marked as Exhibit 1. On November 25, 2015, claimant filed an opposition brief to the Service Agency's motion, as well as evidentiary objections; the opposition brief, with attachments, and the evidentiary objections, are collectively marked as Exhibit A. On November 30, 2015,

¹ Names are omitted in order to protect the privacy of claimant and her family.

claimant filed a request to supplement and a supplement to her opposition brief; the request to supplement is granted and the supplement, with attachments, is marked as Exhibit B.²

SERVICE AGENCY'S MOTION TO DISMISS

4. In its motion, the Service Agency argues that OAH lacks jurisdiction to conduct a fair hearing because the subject matter of claimant's request for a fair hearing lies outside the scope of the fair hearing provisions of the Lanterman Developmental Disabilities Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.³

² The parties, in their briefs and in oral argument, addressed conditions at the Ramsgate home; incidents involving claimant; actions taken and not taken by People's Care; claimant's condition and progress; claimants desire to remain at the Ramsgate home (albeit with a different provider operating the home); necessary parties to the dispute; costs to People's Care and to the other residents if People's Care is terminated as the provider at Ramsgate; the terms of the contract between the Service Agency and People's Care; the regional center's authority to terminate contracts with vendors and regional centers' supervisory obligations with respect to service providers (with reference to, e.g., *Morihoshi v. Pacific Home* (2004) 34 Cal.App.4th 482 and to section 4648.1, subdivision (d)); potential difficulties in replacing People's Care; Community Care Licensing supervision of People's Care; whether, if People's Care is replaced, claimant is entitled to supplemental services under section 4648, subdivisions (a) and (d); and other matters that, while they may be pertinent to a consideration of the merits of this dispute, are not material to the motion to dismiss for lack of jurisdiction under the Lanterman Act fair hearing provisions.

³ Further statutory references are to the Welfare and Institutions Code.

Specifically, the Service Agency argues that nothing in the Lanterman Act confers jurisdiction on OAH through the fair hearing process to order a regional center to dismiss or terminate a contract with a vendor. The Service Agency argues that the Lanterman Act affords claimant's parents alternative avenues to pursue if they are dissatisfied with the care provided by People's Care at Ramsgate.

5. Claimant argues that section 4710.5 provides authority for its position that a fair hearing is the appropriate avenue to pursue any instance where a recipient of services is dissatisfied with any action taken by a regional center. Claimant argues that she is entitled to a remedy for the wrong allegedly being done to her by the provision of inadequate services, and that a fair hearing is necessary to afford her due process and to allow her to be fully and fairly heard on the merits. She also argues that the Lanterman Act provisions governing the relationship between regional centers and the providers with which they contract may be enforced by consumers through the fair hearing process. Claimant requests that the Service Agency pay its attorney's fees in connection with this matter because claimant, by requesting a fair hearing, is vindicating the rights of regional center consumers generally.⁴

LEGAL CONCLUSIONS

1. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment" to "foster the

⁴ Claimant also objects to declarations submitted by WRC and to the timing of the motion. The evidentiary objections need not be considered, as the motion is decided on legal grounds. The timing of the motion is without undue prejudice to claimant; claimant had sufficient time to thoroughly brief and argue the motion, and the jurisdiction of OAH to hear this matter is properly addressed prior to a fair hearing.

developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible.” (§§ 4502, subd. (a), 4640.7.)

The Legislature intended “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.” (§ 4646, subd. (a).)

2. Regional centers are responsible for identifying services and supports necessary to address the goals and objectives of eligible consumers. (§§ 4646, 4646.5, 4648.) Regional centers identify, select, and obtain for consumers the services of qualified service providers through a process called “vendorization.” (§ 4648, subd. (a)(3)(A); Cal. Code Regs., tit. 17, § 54302, subd. (a)(78).) Each regional center is responsible for vendorizing providers for that regional center’s consumers, negotiating a contract for services with the vendors, and authorizing the provision of care to eligible consumers. (Cal. Code Regs., tit. 17, § 54320.)

3. There is ample authority in the Lanterman Act to support the proposition that a consumer who finds the services offered by a particular vendorized provider to be inadequate may request that the Service Agency identify and provide access to other providers of those services through the Individual Program Plan (IPP) process. (§ 4646.5.) The Lanterman Act requires the parties to develop goals, as well as the services and supports necessary to achieve those goals, in the process of creating an IPP. A client’s IPP “shall be reviewed and modified by the planning team . . . as necessary, in response to the person’s achievement or changing needs” (§ 4646.5, subd. (b).) The Lanterman Act directs service agencies to put in place services and supports designed to accomplish agreed-upon IPP goals in a cost-effective manner (§§ 4646, subd. (a), and 4648, subd. (a)(11)).

4. If a regional center fails, in the IPP process, to offer alternative services and

supports when a consumer is dissatisfied with the current service provider, the consumer may seek resolution of the dispute through the fair hearing process. (§§ 4700-4716.)

5. Claimant cited no authority that supports the proposition that OAH may, in the fair hearing process, upon a consumer's request, order a regional center to terminate a contract with a vendor that operates a residential facility. Nor did claimant cite authority to show that OAH may limit the discretion of regional centers as to which service providers they may vendorize, or may otherwise enforce provisions governing the relationship between regional centers and their vendors in the fair hearing process. Claimant relies primarily on section 4710.5, subdivision (a), which provides that "[a]ny . . . recipient of services, or authorized representative of the . . . recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's . . . best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing." Section 4710.5, though couched in broad language, must be read in the context of other Lanterman Act statutory and regulatory provisions governing how service providers are vendored, how they are selected through the IPP process to provide services to particular individual consumers, and how consumers may obtain a regional center referral to alternative vendored providers through that same process or, if necessary, through the fair hearing process. In that context, section 4710.5 does not provide a basis for a fair hearing in this matter.

6. In this case, claimant is asking OAH to order the Service Agency to terminate a contract with a vendored provider. Claimant is not asking the Service Agency to offer residential placement alternatives to the Ramsgate home, operated by vendored providers other than People's Care. That remedy, however, would, if supported by relevant Lanterman Act criteria, fulfill the legislative purpose undergirding

the Lanterman Act, and is available through the IPP process, the integral mechanism for the provision of services and supports under the Lanterman Act.⁵ Because the fair hearing request falls outside the scope of subject matter governed by the fair hearing provisions of the Lanterman Act, the request for fair hearing must be dismissed.⁶

ORDER

The Service Agency's motion to dismiss claimant's fair hearing request is granted. The fair hearing request is dismissed in its entirety.

DATE: December 10, 2015

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

⁵ Claimant may also pursue a consumer complaint with the Service Agency. Section 4731 provides that "[e]ach consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section." (§ 4731, subd. (a).) The procedure is for matters not appropriately addressed in the IPP process. (§ 4731, subd. (e).) Complaints not resolved by the consumer and the regional center are referred to the Director of Developmental Services. (§ 4731, subds. b & c.)

⁶ In light of the dismissal of claimant's fair hearing request, there is no need to reach the issue of attorney's fees.

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.