

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2016010462

DECISION

This matter was heard before Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 13, 2016, in Pomona, California.

Daniela Santana, Fair Hearings Program Manager, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency). Claimant's father (Father) represented Claimant.

Testimony and documentary evidence was received, the record was closed, and the matter was submitted for decision on April 13, 2016.

ISSUE

Should the Service Agency be allowed to terminate respite services that are used to fund Claimant's participation at Club Aspire?

FACTUAL FINDINGS

1. Claimant is a 26-year-old male client of SGPRC. He is eligible for SGPRC's services based on a diagnosis of Cerebral Palsy, severe intellectual disability, and epilepsy. He is under the conservatorship of his mother and father.

2. Claimant is dependent on his caregivers to assist him in all of his self-care and daily living activities. He is wheelchair-bound, and he is unable to maneuver his wheelchair by himself. Claimant does not have bowel or bladder control. Claimant is non-verbal and capable of only very limited sign language. He communicates by using eye contact, gestures, noises, and pointing. Claimant has deformities of both of his hands and has the use of only his left finger. He has difficulties feeding himself, as he often has spills while using a specially-shaped spoon. His food is chopped into bite size pieces or mashed to help him eat and prevent choking. Claimant requires supervision at all times for his safety.

3. Since January 1, 2013, Claimant has attended Club Aspire, a community-based program that allows him to participate in a variety of social activities on Saturdays, such as bowling and going to the beach, for a total of 16 hours per month. SGPRC funds Claimant's participation in Club Aspire pursuant to an Individual Program Plan (IPP). The IPP includes long and short term goals and desired outcomes. Desired outcomes are generally stated as objectives for the consumer and include services and supports needed to achieve those outcomes. As reflected in Claimant's 2013 IPP, SGPRC initially funded Claimant's participation in Club Aspire as an extended day program. However, pursuant to Claimant's 2014 and 2015 IPP's, dated January 16, 2014, and February 25, 2015, respectively, SGPRC funded his participation in Club Aspire as a community integration service, in lieu of respite. The 2014 and 2015 IPP's specified that the goal of the service was to

provide a break for Claimant's parents from caring for their son who was living in the family home at that time.

4. On September 16, 2015, Claimant moved from his family home to his current residence, an adult residential facility located in Rosemead and operated by Climb, Inc. (Climb). Due to this change in circumstances, another IPP, dated October 21, 2015, was developed. This most recent IPP noted that SGPRC planned to terminate funding for Club Aspire as a respite service. SGPRC indicated that Claimant no longer resides in his parents' home, and therefore respite services are no longer needed. However, Claimant's parents requested SGPRC to continue the service to meet his social and community activity needs. Because termination of the service was in dispute, SGPRC continued to fund Claimant's participation in Club Aspire pending a final administrative decision, pursuant to Welfare and Institutions Code section 4715.

5. On December 11, 2015, SGPRC issued a Notice of Proposed Action notifying Father that it would be terminating respite services that Claimant receives to attend Club Aspire. SGPRC based its decision on the fact that Claimant's parents no longer have a need for respite and that Claimant's needs for community activity are being met through his day program and residential placement at Climb. In support of the Notice of Proposed Action, SGPRC relied on California Code of Regulations, title 17, section 54302, subdivision (a)(38), which defines in-home respite services as "intermittent or regularly scheduled temporary non-medical care and supervision provided in the consumer's own home." SGPRC also referred to its Purchase of Service Policy, which mandates that, in determining respite services, it "shall take into account the family's responsibilities for providing similar services to a child without disabilities...[and] other services and/or activities that are provided that may provide family members with relief from the

responsibility of continual care. These may include, but are not limited to, school, adult day services, work, day care, extended day/year program. . ."

6. On January 6, 2016, Father filed a Fair Hearing Request contesting SGPRC's termination of Claimant's respite services.

7. At the hearing, Father contended that Claimant should continue to receive respite so that he can participate in Club Aspire. Father argued that his son's needs for socialization and community integration are not being met during the weekends. During the week, Claimant attends a day program, Social Vocational Services (SVS), for six hours per day, from 8:30 a.m. to 3:30 p.m. When Claimant is at SVS, he participates in community outings such as going to shopping malls and eating at restaurants. Father reported that Claimant enjoys his day program. However, Father testified that Climb, Claimant's adult residential facility, does not offer structured social activities for Claimant on the weekends. Further, Claimant is unable to socialize with the three other male residents at his residential facility because two of them are blind, and the third resident is often isolated due to his aggressive behavior. Currently, Claimant attends Club Aspire every other Saturday. On Sundays and on the Saturdays that Claimant is not attending Club Aspire, Father has hired private caregivers to take Claimant out for social activities.

8. Giselle Salas, Manager of Client Services, testified on behalf of SGPRC. Ms. Salas confirmed that, Claimant was receiving respite funding to attend Club Aspire because prior to September 16, 2015, Claimant was living at the family home and his parents needed a periodic break from his on-going care. Given that Claimant is now placed at Climb, Ms. Salas testified that respite is no longer needed.

9. Ms. Salas further stated that, once a consumer is placed at a residential facility, SGPRC would typically continue to fund a day program. Thus, SGPRC continues to fund Claimant's participation in SVS. However, the residential

facility assumes the primary responsibility of promoting the consumer's social awareness and integration. In this particular case, because Climb is not vendored by SGPRC, SGPRC is limited in its ability to ensure that Climb provides social activities to Claimant on the weekends. Nevertheless, SGPRC can provide suggestions regarding Claimant's needs, which it has done so in this case. Both Claimant's service coordinator and the leadership team at SGPRC have had discussions with Climb about Claimant's social activities during the weekends. In response, Climb has set forth a proposed schedule of weekend activities for Claimant. Specifically, Climb has proposed the following activities for Claimant: (1) opportunities for socialization every Saturday and Sunday from 11:00 a.m. to 1:00 p.m.; (2) outings in the community lasting two to four hours with a Climb staff member on Sundays; and (3) programs, including music, movies, and structured opportunities for social interaction, on days when outings are not possible. Claimant's family, however, has elected not to participate in Climb's activities and, instead, has chosen to continue with Club Aspire and privately-funded social activities for Claimant during the weekends.

10. Ms. Salas conceded that, at Climb, Claimant is not socially matched with the other three residents. However, Claimant's parents chose Climb over other residential facilities for its amenities and its proximity to the parents' home. SGPRC is willing to offer an alternative placement where Claimant would be matched with his peers.

LEGAL CONCLUSIONS

1. Where a change in services is sought, the party seeking the change has the burden of proving that the change in services is necessary by a preponderance of the evidence. (See, Evid. Code, §§ 115 and 500.) In this matter,

the burden is on SGPRC to establish by a preponderance of the evidence that good cause supports the termination of respite services.

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act)(Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a 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." (Welf. & Inst. Code, § 4512, subd. (b).) The

determination of which services and supports the regional center shall provide is made "on the basis of the needs and preferences of the consumer or, when 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." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

4. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

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 the 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.

5. In addition, Welfare and Institutions Code section 4646, subdivision (d), states, "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals and objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained by generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting."

6. One of the services under the Lanterman Act that is available to consumers is respite. "In-home respite services" are defined in the Lanterman Act as "intermittent or regularly scheduled temporary nonmedical care and supervision provided in a client's own home for a regional center client who resides with a family member." (Welf. & Inst. Code, § 4690.2, subd. (a).)

Subdivision (a) of section 4690.2 further states that respite services are designed to "do all of the following: (1) Assist family members in maintaining the client at home. (2) Provide appropriate care and supervision in maintaining the client's safety in the absence of family members. (3) Relieve family members from the constantly demanding responsibility of caring for the client. (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members."

7. California Code of Regulations, title 17, which are regulations promulgated under the Lanterman Act, defines "in-home respite services" in a similar manner. (See, Cal. Code Regs., tit. 17, § 54302, subd. (a)(38).) In addition, California Code of Regulations, title 17, section 54302, subdivision (a)(29), defines "family member" as one who has a consumer residing with him, is responsible for

24- hour care and supervision of the consumer, and is not an unrelated licensed residential care facility or foster family service.

8. In this case, Claimant has been attending Club Aspire every other Saturday for 16 hours per month. SGPRC has been funding this service to Claimant through respite in order to address his parents' need for a periodic break while they were living with and caring for Claimant. The evidence established that, as of September 16, 2015, Claimant is living in an adult residential facility. He no longer lives with his parents. His parents are no longer responsible for his 24-hour care and supervision. Therefore, the need for respite services no longer exists. Moreover, Claimant is participating in a day program, which includes social recreational activities, for six hours a day during the week. Climb, Claimant's adult residential facility, has also proposed a number of structured social activities for Claimant during the weekends. Claimant's needs for interaction and socialization are being met or can be met through these services. Any additional weekend programs or activities would be akin to services that a family would be expected to provide to a child without disabilities. In sum, based upon factual findings 1 through 10 and Legal Conclusions 1 through 8, SGPRC's decision to terminate respite services that Claimant receives from Club Aspire was proper.

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ORDER

Claimant's appeal is denied. SGPRC may terminate respite services that are used to fund Claimant's participation at Club Aspire.

DATED: April 26, 2016

JI-LAN ZANG

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.