

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2016020986

DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, decided this matter following submission of written argument and documents.

Claimant represented himself.

Lauren Gardner, Attorney at Law, represented Redwood Coast Regional Center (RCRC).

Pursuant to an Order issued April 4, 2016, which conformed to an agreement by the parties, no hearing was convened. The parties submitted written argument and documentary evidence pursuant to a schedule.

The submissions were timely received, marked for identification, and admitted into evidence as follows: Claimant's initial submission (entitled "First Submission for April 15th, 2016 Deadline For Claimant Arguments as Ordered Submitted," dated April 13, 2016) Exhibit 2; RCRC's submission (entitled Service Agency's Objection to Claimant's Request for Unrestricted and Undisclosed Recording of Service Agency Staff," dated April 29, 2016) Exhibit 3; and Claimant's closing submission (entitled "Witness

Declaration as ADA Accommodation Motions to End Submissions Early as of 5/10/2016," dated May 10, 2016, as Exhibit 4.

The record closed on May 13, 2016.

FACTUAL FINDINGS

1. On February 24, 2016, Claimant filed a fair hearing request form with the Office of Administrative Hearings. In the request form, Claimant identified his reason for requesting a hearing as follows:

RCRC approved the use of a [cognitive] aid at Regional Center. However [it] also insist[s] on discriminating against myself by disclosing my personal use of an aid to others being served by them. This is discrimination and a violation of federal privacy law with a potential of exclusion due to needs. Arbitrary choice of law.

In the section that asks for a description of "what is needed to resolve your complaint," Claimant wrote:

RC may inform of aid but not by whom. The requirement otherwise is [unnecessarily] restrictive and violates due process. There is no proof such an aid itself violates privacy in intent when used for disability. Such restriction is a political preference in choice of law and deprives clients of constitutional rights.

2. On April 13, 2016, Claimant filed a document entitled "First Submission for April 15th, 2016 Deadline For Claimant Arguments as Ordered Submitted" and "Opening Statement." The document is four pages long. It begins:

There is few greater crimes against human advancement then that of tyranny disguised as freedom and an injustice to have not sought to unknot the unconstitutional hearsay manifest as any unjust law in this application.

The body of the document is largely unintelligible and irrelevant to the statements written in the fair hearing request. It is rambling and difficult to follow. On the last page, Claimant mentions RCRC, stating that it "must abide by the Rehabilitation act and the American's with Disability Act when doing so must permit constitutional due process before applying restrictions otherwise harm is done."

He concludes:

I do not desire nor conform to the duty to become a speaker of your beliefs to ask permission, anymore. I have already done so and it was approved as witnessed by an OAH judge. It is an inappropriate attempt to form my mouth and mind into a broken tape recorder unless it is my desire. Nor will I allow such unpaid and forced labor of myself to any others in any relevant future cognitive-adaptive technologic advancements if when I use them.

3. On April 29, 2016, RCRC filed a brief entitled "Service Agency's Objection to Claimant's Request for Unrestricted and Undisclosed Recording of Service Agency Staff." RCRC identified the "aid" Claimant referenced in his Fair Hearing Request as "the use of a secret recording device, without the knowledge or consent of those persons he is recording." Although RCRC does not so state explicitly, it is reasonably inferred that it refused to allow Claimant to do so, and that this action triggered Claimant's fair hearing

request. RCRC argues that to allow Claimant to secretly record, or record without consent, would violate the privacy rights of the persons he was recording.

4. RCRC proposed an addendum to Claimant's IPP as follows:

(Claimant) may choose to make audio recordings of his IPP meetings, and any other meeting with his RCRC Service Coordinator of the Regional Center. The Service Coordinator will inform any individual they are inviting to attend these meetings of (Claimant's) possible choice to make an audio recording. (Claimant) will take personal responsibility to inform individual(s) of his choice to record when he is meeting with RCRC staff or any RCRC vendored programs when the Service Coordinator is not present to assist in the notification. If any RCRC staff or vendor of RCRC denies (Claimant's) request to record a meeting, the Service Coordinator will assist (Claimant) in advocating for the accommodation.

RCRC asserts that Claimant rejected this proposal.

5. In his closing submission, Claimant appears to argue that he has the right to secretly record RCRC staff to accommodate his needs for accessibility. He cites his rights as a citizen, the Universal Declaration of Human Rights, and various state and federal statutes. Claimant asserts that secretly recording someone would not result in "real harm."

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act¹

is two-fold: 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 productive and independent lives in the community.

(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically: "[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers." (§ 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. This plan is arrived at by the conference of the consumer or his representatives, agency representatives and other appropriate participants. Once in place: "A regional center

¹ The Lanterman Developmental Disabilities Services Act is found in the Welfare and Institutions Code, beginning at section 4500. All statutory references are to the Welfare and Institutions Code unless otherwise identified.

may . . . purchase service . . . from an individual or agency which the regional center and consumer . . . or parents . . . determines will best accomplish all or any part of that [IPP].” (§ 4648, subd. (a)(3).)

4. Section 4710.5 provides that any applicant for or recipient of services, who is dissatisfied with any decision or action of the service agency which he or she believes is not in the recipient’s best interest, shall, upon timely filing of a request, “be afforded an opportunity for a fair hearing.”

5. Although it is not entirely clear, it appears that Claimant seeks an order that he may secretly record conversations with RCRC staff and vendors. Such recordings, however, would be against the law. California law requires that both parties consent to the taping of a private conversation, so that their rights to privacy are protected. Penal Code section 632 prohibits secret recordings, and a violation of the section is a misdemeanor punishable by a fine of up to \$2,500 and up to one year in the county jail.

6. Section 4646.6 provides that consumers of regional centers may electronically record the proceedings of their IPP meetings. However, the consumer or representative must “notify the regional center of their intent to record a meeting at least 24 hours prior to the meeting.”

7. Claimant’s request to record conversations at the RCRC without notice and permission from everyone speaking would violate the law. Accordingly, his appeal will be denied.

ORDER

Claimant’s appeal is denied.

DATED: May 16, 2016

MARY-MARGARET ANDERSON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.