BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. FRANK D. LANTERMAN REGIONAL CENTER, Service Agency.	OAH Case No. 2016030588

DECISION

The hearing in the above-captioned matter was held on May 19, 2016, at Los Angeles, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Claimant appeared and was represented by his father (Father).[1] The Service Agency, Frank D. Lanterman Regional Center (FDLRC or Service Agency), was represented by Pat Huth, Waterson & Huth, LLP.

Evidence was received, the matter was argued, and the case submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

ISSUE PRESENTED

May the Service Agency terminate funding for the BCR adult daycare program, currently funded for 69 hours per month?

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[1] Titles are used to protect the family's privacy.

FACTUAL FINDINGS

THE PARTIES AND JURISDICTION

1. Claimant is a 29-year-old man who receives regional center services from the Service Agency. He receives the services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code section 4500, et seq.,[2] based on diagnoses of Autism and Mild to Moderate Intellectual Disability.

2. (A) On March 3, 2016, the Service Agency served a Notice of Proposed Action (NOPA) on Claimant. The NOPA form did not state the proposed action and the reason therefore; that was set out in an accompanying letter signed by Shoghig Dikijian, Regional Manager.[3] The proposed action was to deny further funding for the BCR adult daycare program, Monday through Friday, 69 hours per month. (Ex. 1.)

(B) The reason stated for the action was that the BCR program had originally been put in place to provide structure and supervision in the afternoons, because Father worked. Because Claimant had moved into a residential facility, the Service Agency asserted he did not need the supervision that the BCR program could provide, nor the structure. The residential facility, Blue Eagle Villas (BEV), could meet Claimant's needs, because it provided supervision, involvement in the community, and social and recreational activities. The Service Agency relied on sections 4646, subdivision (a), and 4646.5, subdivision (b), to support its position.

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[2] All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

[3] The NOPA form was not included in the exhibits. It had, however, been filed with OAH, and a copy has been added to exhibit 1.

3, Thereafter, Claimant submitted a timely Fair Hearing Request (FHR), bringing the matter within the provisions of section 4715, so that the services had to continue "aid paid pending." (Ex. 2.)

4. On March 23 and 29, 2016, Father and Helane Schultz, a Service Agency representative, participated in an informal meeting in an effort to resolve the matter. She proposed a period of time where Claimant would transition out of the BCR program, and into one that would be provided by BEV, with the BCR program to be terminated completely on September 1, 2016.

5. Claimant did not agree to that action either, and this proceeding followed. All jurisdictional requirements have been met.

BACKGROUND

6. As noted above, Claimant is afflicted by Autism and Intellectual Disability. He and his brother, also a client of the Service Agency, were raised by Father, who raised them alone. As also noted, Father took steps, beginning in late 2015, to transition Claimant to a residential facility. This effort by Father was undertaken with an eye toward the future; Father is aging and has taken steps to have both of his sons placed in residential facilities ahead of a time when he might not be able to care for them. Thus, in early 2016, Claimant began his stay at BEV. From statements made by Claimant at the hearing, it is inferred that this has not been an easy and painless transition; he wants to move home. Claimant lives with four others at BEV.

THE BRC PROGRAM

7. (A) For many years, Claimant attended a program until 2:00 p.m. He then attended the program at BRC, in Burbank, California. The program has many facets. The typical weekly program follows, paraphrased from a letter from BRC staff to the Service Agency, found at exhibit 9.

(B) On Mondays, Claimant participates in tennis training. He participates in Special Olympics bowling and tennis competition. Training includes stretches, drills, and practices. Other Monday activities include Action Club meetings and activities. Finally, he participates in "Weekend Reports" to promote self-advocacy and public speaking skills.

(C) On Tuesdays Claimant participates in a volunteer project at a nature center. He and the group work on activities and projects, and take a short hike. He also participates in a self-advocacy class. Claimant participates in food service and clean-up.

(D) Wednesdays are bowling days. He is described as a good team player who has learned to be supportive of other players on the team. The process promotes social skills.

(E) Claimant participates in a cooking class on Thursdays, usually helping to make the main course. He works with others to make a meal that will feed up to 40 people. He practices cooking and serving skills that are used at other events.

(F) On Fridays there are music and Karaoke classes for Claimant, which promotes self expression. He also participates in Men's Club, which allows Claimant to engage in group volunteer activities. He is part of the Wrestler's Club, which follows wrestlers; staff helps plan weekend events surrounding wrestling.

8. Claimant, during the year, has engaged in other activities through BRC. During the past year he has attended World Games Event, a wrestling event with Special Olympics, a Special Olympics Competition in Northridge, and train trips to Koreatown and to Carpenteria, California, the Los Angeles Arboretum and a Dodger game. (Ex. 9, p. 3.)

9. Claimant and his father, during the recent Individual Program Plan (IPP) meetings that pertained to Claimant moving to a facility, expressed a desire to continue participation with BCR. (Testimony of Ms. Garabedian.)

10. The BCR program costs approximately $7.00 per hour. If BEV were required

to hire an aide to assist Claimant in participating in programs or activities, the cost was estimated at $12.00 per hour at this time.

THE BEV PROGRAM

11. The Program Plan for BEV, where Claimant now lives, states that various recreational and leisure activities are made available to the residents. (Ex. 11, p. 7.) The program plan is a bit vague, however. For example, it states that residents "will have an opportunity to participate in leisure and recreational activities." They will "be encouraged to join clubs of their own choice." (Ex. 11, p. 7.) Clients will also be encouraged to make friends with whom they share activities and interests. There will be monthly activities for the residents and their families. (*Id.*)

12. At the hearing, the Service Agency acknowledged that BEV has not actually developed a program that adequately provides opportunities for Claimant, or other residents, to participate in leisure and recreational activities. BEV has represented to the Service Agency that it will develop a substantial program in the near future.

13. The BEV program plan indicates that BEV will provide or coordinate transportation "as required to meet the clients' needs and carry out activities as outlined in the program design. This will include, but not be limited to, transportation services to fill the following needs: . . . community outings and activities . . . Day or work program attendance." (Ex. 11, p. 7.)

OTHER MATTERS

14. The record does not establish what sort of program BEV will develop, and it does not establish when the program will be available. After the informal hearing, the Service Agency had a target of phasing in a BEV program beginning in July 2016, and as noted above, with a transition completed by September 2016. There is insufficient evidence in the record to sustain a finding that such timelines will be met. Further, there

is nothing in the record that allows a rational comparison of whatever BEV will later propose to the BCR program that has long been in place.

15. The Service Agency took the position that the cost of the BRC program was not the issue, and was not driving the effort to terminate funding for BRC. Instead, Service Agency staff contended that Claimant would be better served with a program that was run by the residential facility, as this would foster relationships between Claimant and others in the home. The record indicates that BEV has five residents, including Claimant.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 5.

2. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See § 4710.5, subd. (a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

4. Services provided must be cost effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§

4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many consumers families.

5. Section 4512, subdivision (b), of the Lanterman Act provides, in pertinent part, that

> "Services and supports for person with developmental disabilities" means 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. . . . The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy,

> . . . habilitation, . . . recreation, . . . behavior training and behavior modification programs, . . . community integration services, . . . daily living skills training . . . .

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6. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased, is made up of the individual consumer or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

7. The planning process includes the gathering of information about the consumer and "conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. . . . Assessments shall be conducted by qualified individuals . . . . " (§ 4646.5, subd. (a)(1).) Given that services must be cost effective and designed to meet the consumer's needs, it is plain that assessments must be made so that services can be properly provided, in a cost effective manner.

8. (A) In the NOPA, Service Agency relied upon sections 4646, subdivision (a), and 4646.5, subdivision (b), to support the proposed action. Neither statute provides strong support for the Service Agency's position.

(B) In essence, section 4646, subdivision (a), states the Legislature's intent that IPP's and the provision of services are centered on the individual and his family, and that they take into account the needs and preferences of the consumer and his or her family, "where appropriate." Further, IPP's are to promote community integration,

independence, and healthy environments. Also, the statute states the Legislature's intent that IPP's and services be effective in meeting the consumer's goals, that they reflect the preferences and choices of the consumers, and that they reflect the cost-effective use of public resources.

(C) Section 4646.5, subdivision (b), obligates the regional centers to review and modify IPP's as necessary, in response to the consumer's achievements or changing needs, and at least every three years. Where a consumer or his or her family requests review of the IPP, it shall occur within 30 days of the request.

9. Here it is clear that the consumer prefers to continue in the BRC program, which appears cost-effective. (Factual Findings 2-5, 9 & 10.) Thus, section 4646, subdivision (a), favors Claimant's position in some respects. While the idea of fostering integration with the small community that is the BEV facility is laudable, so is Claimant's continued participation in BRC. This is not to say that the goal of providing a stable place for Claimant to spend his afternoons has not been changed or modified. Plainly, BRC's program provides other benefits to the consumer.

10. An order terminating the BRC program at this time is not warranted, in that there is no evidence that BEV is anywhere close to having its program up and running. (See Factual Findings 12, 14.) And, given that BEV had claimed in its plan that various activities were available, when they are not, is telling. When a proper plan is put forward, the parties should convene an IPP meeting to discuss the efficacy of the proposed program.

ORDER

Claimant's appeal is granted. The Service Agency shall continue to fund the BRC program for 69 hours per month. The parties shall convene an IPP meeting if and when BEV submits a plan to provide services to Claimant that are similar to those provided by BRC.

June 1, 2016

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter, and both parties are bound by it. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days of this decision.