

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Placement Funding with Desert Cove
Senior Living:

OAH No. 2016030856

CLAIMANT,

and

THE INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 28, 2016.

Claimant's sister represented claimant, who was present at the hearing¹.

Lee Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

The matter was submitted on April 28, 2016.

ISSUES

Is IRC authorized to fund claimant's request for residential placement at Desert Cove Senior Living (Desert Cove), even though Desert Cove is not a vendor of IRC?

¹ A certified interpreter in American Sign Language assisted claimant during the hearing.

SUMMARY

IRC is not authorized to fund claimant's request for residential placement at Desert Cove because Desert Cove is not currently a vendor of IRC. However, given that Desert Cove has applied for vendorization, IRC is authorized to fund claimant's request for placement at Desert Cove for 45 continuous days commencing on the effective date of this decision and order, under emergency regulatory provisions, because of claimant's unique challenges, his undisputed eligibility for regional center services, and the lack of a suitable alternative for him in light of his unique needs.

FACTUAL FINDINGS

BACKGROUND

1. On January 21, 2016, claimant requested residential placement funding with Desert Cove, a residential care facility for the elderly (RCFE) licensed by the Department of Social Services.²

2. On February 24, 2016, IRC notified claimant that his request for residential placement funding with Desert Cove was denied because Desert Cove was not a vendor of IRC. Claimant filed a fair hearing request appealing IRC's denial on March 9, 2016.

3. On March 21, 2016, representatives from IRC, claimant, and claimant's authorized representative, met to discuss claimant's request. Following the meeting, IRC adhered to its original determination denying placement at Desert Cove.

In its letter to claimant memorializing the informal meeting, IRC stated:

² Statutes and regulations governing the licensing and operation of residential care facilities for the elderly are contained in Health and Safety Code section 1569 et seq., and California Code of Regulations, title 22, section 87100 et seq.

I explained that the reason IRC cannot fund for placement at Desert Cove is because they are not vendored to provide services. Desert Cove's director, Erika, was teleconferenced during our meeting. She stated that she understands that she needs to be vendored and will begin the process. The issue is that there are not any new vendor orientation classes available. I advised Erika and you that I would assist with getting the process started.

After our meeting, I spoke to Erika again and explained that she may start the vendor application and process now. During this time, she may attend any vendor orientation meetings that are scheduled. I also spoke to you regarding two homes that are vendored with IRC and provide services for the hearing impaired. A packet was sent to each one to find out if they could meet [claimant's] needs and offer a tour. You were not opposed to looking at these placements but still have concerns if they would be appropriate. I also informed you of my conversation with Erika at Desert Cove and explained that I cannot guarantee a date or how long it may take for them to become vendored. If and when Desert Cove becomes vendored [sic], IRC could then refer [claimant] for placement at their facility.

DESERT COVE

4. Erika Haywood, the director of Desert Cove, testified telephonically at the hearing. Desert Cove is licensed with the Department of Social Services as a RCFE. Desert

Cove has 65 residents, including six deaf residents. Desert Cove has hired an American Sign Language Interpreter to assist its deaf residents and converted a large room into a lounge specifically for their deaf residents, fully equipped with a videophone and closed circuit television. The caregivers specifically hired to tend to the deaf residents take them into the community for socialization, to medical/hearing appointments, and other events in the community. The interpreters and deaf residents can understand claimant. According to Ms. Haywood, claimant appears to enjoy living at Desert Cove because he can socialize with the other deaf residents.

According to Ms. Haywood, Desert Cove applied for vendorization at some point after March 21, 2016, but before April 1, 2016, when she was notified that there were no vendor orientation classes available and that they “missed” the class offered in April 2016. Ms. Haywood stated that she had consistently been speaking with IRC from the date of the informal meeting through April 2016, and was not given the option to attend a vendor orientation class in April 2016. Later IRC told her the vendor class was “full.” Desert Cove remains extremely motivated to become an IRC vendor, and Ms. Haywood testified that the only remaining requirement is for her to attend the vendor orientation class.

EVIDENCE PRESENTED BY IRC

5. Cynthia Cabrera is a Consumer Services Coordinator for IRC. According to Ms. Cabrera, Desert Cove is not vendored to provide services to IRC, although her understanding is that Desert Cove has inquired about the vendorization process. Ms. Cabrera located two other residential placement facilities that provide “services” to the hearing impaired – Unlimited Solutions and Las Nubes. Ms. Cabrera did not visit the residences and does not know whether the persons providing services to the hearing impaired are also experienced in providing services to persons with cerebral palsy. Ms. Cabrera stated it was not typical for her to visit the residences, rather, she makes a formal request through IRC to find services to meet consumer needs and then provides the

consumer with options. Ms. Cabrera testified that both Unlimited Solutions and Las Nubes informed her that claimant's sister did not return their calls about placement for claimant.

6. Deborah Martinez is a Program Manager for the Senior Unit at IRC. According to Ms. Martinez, when a consumer services coordinator makes a request for a particular service, the request is matched with currently vendored services. Although the consumer service coordinators do not visit the residential facilities, IRC has liaisons who regularly visit the facilities to ensure compliance with regulations and vendor rules. Ms. Martinez stated that claimant's family needs to follow up with the vendored options IRC provided, until such time that Desert Cove is vendored. Ms. Martinez stated that the vendor class IRC requires of all vendors is offered once every six months, and currently, there are none scheduled. Ms. Martinez noted that generic resources may be able to assist claimant with his care, as well. For example, an evaluation from IHSS, respite, or some other service that could assist claimant that may have experience in dealing with deaf individuals.

EVIDENCE PRESENTED BY CLAIMANT

7. Claimant is a 60-year old male eligible for regional center services on the basis of a diagnosis of cerebral palsy. Claimant is deaf and speaks in American Sign Language as his only mode of communication. Due to claimant's cerebral palsy, it is difficult for him to sign and equally as difficult for a normally trained American Sign Language interpreter to understand him. Indeed, the certified interpreter provided at the hearing spent almost an hour with claimant prior to the hearing and still had difficulty understanding him when claimant testified. Claimant's sister, and authorized representative, was permitted to assist with translation. She is competent in sign language and lives with claimant on a daily basis so she is able to interpret his signs.

8. Claimant has lived with his parents all his life and also resides with his sister. Claimant's mother died in 2007 and he has primarily resided with his father. In January 2016, claimant's father suffered a significant health problem and will now be required to

reside in a veteran care facility. Thus, he can no longer care for claimant.

9. Claimant's Individual Program Plan describes claimant as a very friendly individual who would like to reside in a facility that serves deaf individuals. Claimant is ambulatory and can walk alone for 10 feet but requires assistance and perhaps a wheelchair beyond the 10 feet. Claimant does not have regular use of his right arm and therefore requires someone to be nearby almost all the time. Claimant can eat on his own and has complete control of bowel and bladder functions, but needs some assistance with dressing himself. Claimant lacks safety awareness to ride public transportation on his own. Claimant's biggest frustration is when someone does not understand him, and he will occasionally have an outburst because of the inability to communicate. Claimant desires to obtain more independence and become more social in the community.

10. Claimant's sister testified at the hearing. According to claimant's sister, claimant is not independent and she is concerned for his safety. She has spent many years searching in and out of the state for a residential facility that could meet claimant's needs. His needs are unique because he has cerebral palsy and is deaf; thus, he requires someone fluent in American Sign Language who is also trained to communicate and interact with a person who has cerebral palsy. Claimant's sister recently found a residential care facility for claimant, the California Home for the Adult Deaf (CHAD) in Arcadia. However, when the facility transferred to Riverside – within IRC's jurisdiction – their vendorization was terminated because they were unable to transfer their license from the Department of Social Services. The residents of CHAD therefore were transferred to Desert Cove until CHAD can become licensed in Riverside and vendored through IRC to provide services.

Claimant's sister has tried to contact IHSS for assistance, but IHSS did not have anyone who could communicate with claimant on its roster. They have nobody who can provide for claimant and he needs 24-hour care. Claimant's sister said that although she received a call from one of the two residential facilities and does not recall if she called

them back, she did not receive a call from the other facility. Regardless, claimant's sister does not feel that placing him in a residential facility that does not have other deaf residents will meet his needs. Claimant's sister said there really is "no other alternative" at this point other than Desert Cove to meet claimant's desire to obtain more independence and become socialized with his deaf peers. Claimant's sister considers their situation an emergency.

11. Samuel Peeples testified at the hearing. Mr. Peeples has been involved with CHAD for many years and explained that the purpose of CHAD was to deal with the needs of the adult deaf. Claimant has been involved with CHAD since he was in high school. Claimant would like to live in the CHAD facility but because they lost their lease, they had to move to Riverside.

Mr. Peeples was hired by CHAD in December 2015 to assist with the transition. During the process, they learned that they could not transfer the residential care facility for the elderly (RCFE) license issued by the Department of Social Services from the Arcadia facility to the Riverside facility. Because they cannot transfer the license, they cannot yet become a vendor of IRC. CHAD is in the process of obtaining its RCFE license from the Department of Social Services. In the meantime, they have worked with Desert Cove for placement of their deaf residents through a reduction of service costs and donation of their facilities. Some of those residents are clients of regional centers.

According to Mr. Peeples, since claimant has been affiliated with the people at Desert Cove, he has improved. They understand him "quite well." Mr. Peeples explained that deaf people are a family in and of themselves, and he fears that if claimant went to another facility with personnel that just know sign language – or one that does not have deaf residents – the staff and residents will not be able to understand him.

12. Claimant testified at the hearing with the assistance of an American Sign Language interpreter. The interpreter could not understand claimant so claimant's sister

had to assist. Claimant's testimony is summarized as follows: Claimant is very happy with the group of friends he has made at CHAD and enjoys socializing with them. Claimant wants to stay with the group whether they remain at Desert Cove temporarily, or move to CHAD in Riverside when they become a vendor. Claimant is afraid that if he went to a different facility, the staff will not understand him. Claimant expressed concern about who will take care of him when his father passes away because his parents had taken care of him since he was a child. Claimant asked, "where am I going to live?"

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports."

5. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting

the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6. Welfare and Institutions Code section 4646.4 requires the regional center to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services and prohibits regional centers from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan.

REGULATIONS APPLICABLE TO VENDORIZATION

9. Regional centers are permitted to purchase services from vendors in accordance with the applicable regional center purchase of service policy. (Cal. Code Regs., tit. 17, § 50612, subd. (a).)

10. Once a potential service provider has obtained all necessary licenses, submitted a complete application and all necessary documentation to the vendoring regional center, a regional center has 45 days to approve or disapprove vendorization. (Cal. Code Regs., tit. 17, § 54320.)

11. Emergency vendorization allows a regional center to approve vendorization

of an applicant prior to completion of the vendorization process if the regional center determines that the health or safety of a consumer is in jeopardy and no current vendor is available to provide the needed service. (Cal. Code Regs., tit. 17, § 54324.) If emergency vendorization is approved, the vendor applicant may provide services for no more than 45 days. (*Id.* at subds. (b) & (f).)

EVALUATION

12. Claimant and his family have expressed a preference for claimant to reside with persons who are already familiar with him and who can communicate with him at Desert Cove. Desert Cove is fully equipped to meet claimant's needs, serve a deaf individual with cerebral palsy, and have persons on staff dedicated to the hearing impaired who actually understand claimant and can take him out into the community to become more social. Claimant's IPP stated that the main goals he has is to become more social and more independent in his life. Generic resources such as IHSS are not available, as IHSS does not have anyone on its roster who can communicate with claimant, and claimant appears to require around the clock assistance.

Although two other facilities that provide "services" to the hearing impaired were offered to claimant, no evidence was submitted to show what those "services" were or if the individuals who provide the "services" are trained or familiar with communicating with a deaf person who also has cerebral palsy. No evidence was presented regarding whether either facility had other deaf residents present so claimant could be social while at the residential care facility or if the individuals who provide "services" to the hearing impaired are accessible around the clock. In other words, claimant met his burden and established that placement at Desert Cove is warranted in light of his unique needs, the goals stated in his IPP, and in accordance with the spirit and intent of the Lanterman Act.

However, Desert Cove is not a vendor. Thus, the only way IRC can pay for Desert Cove to provide residential placement to claimant is if the placement is necessary for

claimant's health or safety and no current vendor is available to provide the needed service. For the reasons discussed above, the two vendors that were identified that provide services to the hearing impaired do not appear to have services that meet claimant's unique needs. Claimant is no longer able to reside with his father and requires residential care because of the safety risks presented by his condition, as detailed in the IPP. No generic resources are available, as claimant's sister pointed out, because IHSS does not have anyone on its rosters who can communicate with claimant. Given that Desert Cove has applied to become a vendor³, the emergency vendorization regulation applies. IRC must therefore provide residential placement at Desert Cove in accordance with the emergency vendor regulations, for 45 days following the effective date of this decision and order.

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³ Regulations promulgated pursuant to the Lanterman Act require a regional center to approve a vendor's application within 45 days of submission if the vendor meets all licensing requirements and has provided all required paperwork. Desert Cove completed the required vendor paperwork but its application has not been approved pending attendance at the next "vendor orientation," which has not been scheduled. Although the issue of vendorization procedures was raised at the hearing, any determination regarding whether a regional center has followed the proper procedures must be made by the vendor 30 days after the receipt of written notification of denial, or within 30 days after the failure of the regional center to comply with applicable vendor regulations. (Cal. Code Regs., tit. 17, §§ 54380, 54382, 54384, 54386, 54388, & 54390.)

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ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund a residential placement at Desert Cove is granted. IRC shall fund claimant's placement at Desert Cove for 45 days pursuant to the emergency vendor authorization contained in California Code of Regulations, title 17, Section 54324.

DATED: May 10, 2016

_____/s/_____

KIMBERLY J. BELVEDERE

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 ninety days.