

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

Claimant,

v.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2016041128

DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 19, 2016, in Los Angeles, California.

Claimant,¹ who was not present, was represented by his conservator, Dennis W. Rihn, Attorney at Law.

Jacob Romero, Fair Hearing Coordinator (FHC Romero), represented the Eastern Los Angeles Regional Center (ELARC, or service agency).

Evidence was presented and argument was heard. The record was left open for ELARC to supplement the record with additional evidence regarding ELARC's de-funding of transportation by May 26, 2016. ELARC complied on May 23, 2016, submitting additional evidence consisting of a one-page letter from FHC Romero and a one-page attachment showing transportation de-funding figures. This evidence was marked as

¹ Claimant's and his parents' identities are not disclosed to preserve their confidentiality.

ELARC's Exhibit 11. Claimant was given until May 31, 2016, to lodge any objections. On May 26, 2016, Claimant submitted a letter in which he did not object to Exhibit 11, but pointed out a single discrepancy, noting that the de-funding of transportation for May 2016 would be \$192.99, rather than the \$202.18 figure stated in Exhibit 11. Claimant recalculated the de-funding figures in a one-page attachment, which, along with Claimant's letter, was marked as Exhibit B. ELARC did not object to Claimant's Exhibit B, which was admitted into evidence. Exhibit 11 was also admitted into evidence, and the matter was submitted for decision on May 31, 2016.

ISSUES

Should ELARC continue transportation funding as a component of the overall monthly Supported Living Services (SLS) funding Claimant's service provider receives?

FACTUAL FINDINGS

1. Claimant is a 57-year-old conserved male with developmental disabilities. He is diagnosed with moderate intellectual disability, major depression, borderline personality disorder, expressive language disorder, and hyperthyroidism. He resides in a 24-hour SLS setting provided by REACH Community Specialist (REACH). Claimant requires full-time supervision due to elopement and self-injurious behaviors. According to his September 2015 Individual Program Plan (IPP), he is eligible for and receives In-Home Supportive Services (IHSS) of approximately 277 hours per month. (Exhibit 4.)

2. Before 2000, Claimant lived in several group homes, but had disruptive behavioral issues and had been asked to leave. As a result, he moved back home with his parents. While living with his parents, who are now deceased, Claimant began participating in a day service program provided by Resource for Education, Advocacy,

Communication and Housing (REACH).² ELARC funded the day service program provided by REACH. Claimant's parents would drive him to a pick-up place five days per week, where a REACH employee would take custody of him.

3(a). In about 2000, Greg Sylvester, a REACH Community Specialist since 1985 who testified credibly at the hearing, began negotiating with ELARC to secure SLS for Claimant. REACH sought reimbursement of \$9,591 per month, less \$1,627 per month for in-home services, for a total of \$7,963 per month. In a proposed budget, REACH described its projected costs by describing a staff position, the hours and schedule of that person, and the monthly cost of his or her services. For the "Vocational and Training Counselor (Day Service Program)" position, under "Hours/Schedule," the proposal offers the description: "6 hours/day (9:00 a.m.]-3:00 p.m.] 5 days/week Transportation 4 hours/month Circle M[etings]." The projected cost for these services alone, including transportation, is listed as \$1,518 per month. (Exhibit A, Att. A.)

3(b). On October 10, 2000, ELARC agreed to reimburse REACH \$7,585 per month for REACH's services. In a "SLS Individual Rate Determination Worksheet" dated the same, it estimated transportation costs of \$181.47 per month as a component of the \$7,585 per month projected total. (Exhibit 8.) ELARC thereafter paid the monthly reimbursements using its service code³ number 896 for SLS. ELARC also used its service code number 880 to reflect transportation costs as a component of the \$7,585 per month total. Since then, the transportation costs have varied from between

² REACH was previously known as Whittier Area Parents' Association for the Developmentally Handicapped (WAPADH).

³ Service codes are set forth by the California Department of Developmental Services (DDS), which has the authority to periodically audit a regional center's expenditures.

approximately \$175 to \$211 per month. (Exhibit 11.) ELARC alone determined which service codes it selected to use for processing its reimbursement funding of Claimant's services. Mr. Sylvester had no knowledge of which service-code numbers ELARC was using, as that was an internal regional center process involving ELARC's accounting practices alone.

4. For many years, Mr. Sylvester attended the IPP meetings on behalf of Claimant and REACH. There was no discussion of transportation costs in terms of how they figured into the service agency's ongoing funding of monthly services. The same yearly reimbursement budget was approved again and again. (Testimony of Greg Sylvester.)

5. Claimant's mother passed away in 2013 and his father passed away in November 2015. By that time, Claimant was residing at home in a 24-hour SLS arrangement provided by REACH. The change in REACH's provision of day care services program services to an SLS program was not renegotiated in terms of either the program or the transportation costs. The evidence did not establish that ELARC carefully reassessed Claimant's transportation needs with his 24-hour SLS arrangement as opposed to the day care services program, or asked REACH for input on the subject.

6. In October 2014, an ELARC fiscal auditor informed ELARC's assigned Service Coordinator, Norma Duenas, that there was a "duplication of services" related to transportation in Claimant's case. (Exhibit 7.) In a February 28, 2016 email to REACH, Felipe Hernandez, ELARC's Chief of Client Services, explained the problem, according to ELARC, as follows:

There was an authorization put in place [by ELARC] for the separate transportation component at some point in time. I have thus far been unable to determine which [case] coordinator input the authorization. . . . The current [case]

coordinator states the authorization was already in place when she was assigned the case back in 2007. After much discussion from October through December 2014, the regional center decided that the audit exception [in which additional transportation costs are separately paid] could not continue. To the best of my research this appeared to be an error on our part and should not have been agreed to outside of the negotiated SLS rate. . . . [S]hould you consider this to be a health and safety issue, you may pursue that avenue as it is the only route to renegotiate an SLS rate. This does require that the regional center be in agreement with your classifying the situation as a health and safety concern. . . . However, even if there is agreement . . . the Department of Developmental Services is the final authority to approve a rate increase.

7(a). On December 22, 2014, Mr. Sylvester wrote a letter to Service Coordinator Duenas regarding ELARC's intention to terminate the transportation-funding portion of Claimant's monthly SLS. Mr. Sylvester informed ELARC that for more than two years, WAPADH (which provides the REACH program) had been losing money in providing services to Claimant, and that terminating transportation funding would "accelerate the insolvency of [Claimant's] project." Mr. Sylvester further stated that in 2001, he and Claimant's parents negotiated with ELARC for a monthly services rate for Claimant's SLS, and that the transportation funding was a part of the rate the parties eventually agreed upon. (Exhibit 3.)

7(b). Mr. Sylvester testified that he is concerned that the service agency's denial of transportation costs from the overall monthly services budget has placed Claimant's

case in financial jeopardy, as REACH has been operating at a monetary loss for several years in providing services at a rate set many years ago.

8. Service Coordinator Duenas did not testify at the fair hearing.

9. Mr. Rihn has known Claimant for over 45 years as a friend of the family and a personal confidante to Claimant's parents and older brother. He has been an advocate for Claimant's care for decades and was involved in the negotiations with ELARC when WAPADH and the REACH program were originally funded by ELARC. When Claimant lost his mother and father, Mr. Rihn became Claimant's conservator.

10. Mr. Rihn testified credibly that the SLS program REACH offers is a completely positive experience for Claimant and a "blessing" in Claimant's otherwise challenging life. Mr. Rihn closely monitors Claimant's care and has been aware for several years now that the actual cost of REACH's services has exceeded the overall rate of \$7,585 which was negotiated and established almost 16 years ago. He is deeply concerned that if ELARC continues to reduce the overall monthly budget by deducting transportation costs as they have, the SLS funding for REACH will be jeopardized. If REACH discontinues its services to Claimant for economic reasons, that result will be to Claimant's extreme detriment. Mr. Rihn believes the service agency is acting in bad faith in this matter by reneging on its original "deal," i.e., its agreement for funding of Claimant's services at \$7,585 per month, which included transportation funding.

11(a). Mr. Romero stated that ELARC is justified in deducting its original calculation of transportation costs because when the original calculation of \$7,585 was made, Claimant was receiving day care program services, and transportation costs for that program were more significant than transportation costs are for Claimant's current SLS arrangement. He relied on the September 17, 2015 IPP to show Claimant has lesser current transportation needs than before, such that transportation funding is no longer justified. Mr. Romero further noted that the 880 service code ELARC used for years is for

day care programs, not SLS.

11(b). The evidence showed Claimant still has various transportation needs related to his current SLS program. The September 27, 2015 IPP describes several transportation-related activities involving Claimant, including: Claimant's attendance in an arts class located at REACH's office; biking, swimming, or playing basketball at the Whittier YMCA; and "free day" outings to a comic book store and restaurant in Norwalk. (Exhibit 4.) Mr. Sylvester testified that Claimant's current transportation needs are frequent.

11(c). Mr. Romero argued that there was no documentation or written contract of a "deal" between ELARC and Claimant dating back to the negotiations for Claimant's \$7,585 monthly funding for services, and that hence, ELARC could not have reneged on its agreement to provide continuing transportation funding. This assertion was unpersuasive. The service agency's SLS Individual Rate Determination Worksheet, signed and dated by three service agency employees on October 10, 2000, includes a projected monthly transportation cost of \$181.47 which was included in totaling the overall budget at \$7,585 per month. (Exhibit 8.) Thus, the absence of a contract does not diminish the evidence that ELARC did, as Mr. Rihn asserted, include transportation costs in its overall monthly funding of Claimant's services, and then paid such costs for over 13 years. It is also undisputed that REACH is a regional-center-vendorized service provider and receives regional center funding through a vendor payment process, not pursuant to a formal contract. Lastly, ELARC's obligations to serve Claimant's needs are statutory, as set forth above, and not contract-based.

12. ELARC suspended the funding for transportation services on April 30, 2015, at a rate of \$9.19 per day, Mondays through Fridays. Since it suspended this funding, Claimant has received a total of \$2,701.86 less funding from May 2015 through

June 2016.⁴

13. The Service Agency did not dispute that REACH has consistently provided appropriate, cost-effective services to Claimant since 2000 and continues to do so presently. The latest IPP quarterly review reported that Claimant is doing well under REACH staff's care and supervision, despite the recent passing of both his parents.

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LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. and Inst. Code § 4500 et seq.⁵ An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established.

THE STANDARD AND BURDEN OF PROOF

2(a). The standard of proof in this case is the preponderance of the evidence, because no law or statute requires otherwise. (Evid. Code § 115.)

2(b). When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161

⁴ On December 31, 2014, ELARC provided Claimant's father, his then conservator, with a Notice of Action and 30-day notice to terminate services, but Claimant's father did not appeal.

⁵ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

(disability benefits.) In this case, although the service agency agreed before to provide the funding at issue and did so for many years, Claimant's father, his then conservator, did not request a fair hearing and appeal the service agency's termination of transportation funding when the funding was discontinued in April 2015. Thus, Claimant, who now seeks to reinstate that service-funding, bears the burden of proof by a preponderance of the evidence that he is entitled to the funding. (Evid. Code, §§ 500, 115.)

APPLICABLE STATUTORY LAW

3. Welfare and Institutions Code section 4646 states in part:

- (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.
- (b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents . . . shall have the opportunity to actively participate in the development of the plan.

[¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team.

Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents . . . at the program plan meeting.

4. Welfare and Institutions Code section 4646.4 states in part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(c) Final decisions regarding the consumer's individual program plan shall be made pursuant to Section 4646.

5. Welfare and Institutions Code section 4646.5 states in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. [¶] . . . [¶]

6. Welfare and Institutions Code section 4646.5 states in part:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving

regional center services. These sources shall include, but not be limited to, both of the following:

- (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.
- (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. [¶] . . . [¶]

7. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following: [¶]
. . . [¶]

- (a)(3)(B). A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization. [¶] . . . [¶]

ANALYSIS

8. Welfare and Institutions Code section 4646 requires regional centers 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. In this case, the evidence showed that REACH has consistently provided valuable, effective services to Claimant and has done so based on budgetary rates set nearly 16 years ago. The cost-effectiveness of these services is not in dispute. REACH is also Claimant's, and his conservator's, preferred service provider. These important factors provide a strong impetus for ELARC to continue to fund REACH's services for Claimant. Although ELARC's 2015 withdrawal of transportation funding was not initially appealed by Claimant's father, who at the time was near the end of his life, both REACH's long-time case manager and Claimant's current conservator are very concerned REACH may be unable to continue providing services on the current reduced funding. In addition, the Service Agency's IPPs and progress reports showed Claimant has ongoing transportation needs which REACH must meet in order to provide various life-enriching services to him.

9. REACH plays a central role in ensuring Claimant meets the needs and goals set forth in his most recent IPP. ELARC's perceived accounting error, unearthed during an internal audit, should not be the deciding factor in making REACH a non-viable service provider to Claimant. A needed and cost-effective service should not be jeopardized or even denied to a consumer due to the complexities of bureaucratic service codes. Such a result would be anathema to the overarching mission of regional centers, as mandated by the Lanterman Act, to secure appropriate, preferred, cost-effective services, and to be innovative and flexible in delivering those services.

10. Claimant met his burden of proof in his appeal regarding reinstatement of the transportation component of services provided by REACH, as set forth in Factual Findings 1-5, 7, 9, 10, 11(b), 11(c), 12 and 13, and Legal Conclusions 8 and 9.

ORDER

Claimant's appeal is granted. The service agency shall reinstate the transportation component of its funding for Claimant's Supported Living Services provided by REACH, as previously established.

Dated: June 9, 2016

JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.