

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Case No. 2016060492

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on November 1, 2016, in Delano. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, with her express consent stated at the outset of the hearing, was represented by Isabel Hinojosa and Ralph Pierro, who are both employed by the Delano Association for the Developmentally Disabled.<sup>1</sup> Claimant was also assisted by two ASL interpreters.

Kern Regional Center (service agency) was represented by Mark E. Meyer, MSW, LCSW, Special Projects Program Manager.

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<sup>1</sup> Claimant's name is omitted to protect her privacy.

## ISSUE

May the service agency reduce claimant's funding for in-home support services from 160 to 133 hours per month and change the category of those in-home support services from supported living services to homemaker services?

## EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits A-G and claimant's exhibit 1; as well as the testimony of Ms. Hinojosa and Mr. Pierro.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

1. Claimant is a 60-year-old woman who is a consumer of the service agency based on her qualifying diagnoses of moderate intellectual disability and cerebral palsy.

2. For the past several years, claimant has been funded by the service agency to receive 160 hours per month of supported living services (SLS), provided by the Delano Association for the Developmentally Disabled (DADD).

3. On June 1, 2016, the service agency issued a Notice of Proposed Action to claimant, advising that it intended to reduce her SLS hours from 160 to 68 hours per month. The stated reason for the proposed reduction was that the service agency's Supported Living Team had reviewed her file and concluded that she needed fewer hours of SLS, for reasons not specifically stated. (Ex. A.)

4. On June 6, 2016, the service agency received a Fair Hearing Request, which contained a request for a hearing to challenge the proposed reduction of services. (Ex. A.)

5. The hearing was initially scheduled for July 25, 2016. However, the hearing was twice continued at the joint request of the parties. In connection with the

continuance requests, claimant waived the time limit prescribed by law for holding the hearing and for the ALJ issuing a decision. (Ex. A.)

6. In July and September 2016, the parties participated in Informal Conference meetings to discuss the service agency's proposed service reduction. (Ex. C.)

7. As a result of those Informal Conference meetings, the service agency issued an Amended Notice of Proposed Action on September 12, 2016, in which it proposed to reduce claimant's funding for in-home support services from 160 to 133 hours per month and to change the category of those in-home support services from SLS to homemaker services.

#### CLAIMANT'S SUPPORTED LIVING SERVICE NEEDS

8. Claimant has been a long-time service agency consumer. She is non-verbal and must use a wheelchair. However, she lives independently in her own apartment.

9. DADD has been providing SLS for claimant to continue living independently. Ms. Hinojosa of DADD is her paid roommate. Ms. Hinojosa and other DADD personnel assist claimant with various living skills, including personal care and hygiene, nutrition and shopping, taking claimant out into the community for her errands and entertainment, domestic chores, clothing and laundry, safety, money managing, health and keeping medical appointments, and cleaning and maintaining her wheelchair.

10. By the end of 2015, the service agency was funding claimant to receive 160 hours per month of SLS provided by DADD. At that time, claimant also was receiving 102 hours per month of in-home support services (IHSS) funded by Kern County.

11. Effective January 1, 2016, claimant's IHSS hours were increased to 129.47 hours per month for reasons not established, an increase of approximately 27 hours per month.

12. In a March 3, 2016 DADD Assessment Report concerning claimant, Ms. Hinojosa wrote that claimant "has benefitted from having a roommate that can provide one on one support. [Claimant] continues to learn new ways to accomplish her day to day living tasks by physical, guided prompts, and by using her left hand. She also has medical issues that require close medical monitoring." (Ex. E.) Ms. Hinojosa recommended that the service agency continue to fund 160 hours of SLS per month for claimant.

13. On April 29, 2016, the service agency's Supported Living Team met and considered claimant's SLS needs. (Ex. D.) The team noted the increase in claimant's IHSS hours. For reasons not stated in the team's report, the team recommended reducing claimant's SLS to 68 hours per month. The team did not recommend converting claimant's SLS to homemaker services.

14. Claimant's individual program plan (IPP), created in February 2016, supports continued funding of SLS. During the hearing, however, the service agency's hearing representative argued that DADD's various assessment reports show claimant needs assistive or custodial services more akin to IHSS or homemaker services than SLS, which he characterized as involving more training. The service agency's hearing representative also argued it would be more cost-effective to recategorize the services from SLS to homemaker, but no evidence was offered concerning the respective pay rates for the respective services. The service agency's hearing representative also argued that the proposed reduction in total service hours was based on the statutory mandate to use generic resources where available, and that the increase in claimant's IHSS hours should lead to a commensurate reduction of her in-home support.

15. DADD issued an SLS Assessment Report for claimant dated July 12, 2016, in which Ms. Hinojosa detailed the specific tasks rendered by the IHSS workers versus the SLS staff. (Ex. 1.) In the report, Ms. Hinojosa concluded that DADD actually provides

claimant 110 hours per month during weekdays and 96 hours per month on the weekends, for a total of 206 SLS hours per month. (*Ibid.*) Ms. Hinojosa explained that this increase is related to more overnight care hours provided to claimant, for which DADD does not bill the service agency. (*Ibid.*)

16. A. During the hearing, Ms. Hinojosa and Mr. Pierro testified that a reduction of SLS hours will be detrimental to claimant's in-home program, because they actually spend more than 160 hours currently working with claimant.

B. Both also testified that changing the service category from SLS to homemaker would not be appropriate because it may result in a deterioration of claimant's services. Mr. Pierro testified that the SLS is the appropriate category because the services are provided to maintain claimant's independent living. Ms. Hinojosa testified that the homemaker category is not a good fit for claimant because that service is typically used for those who do not live independently and for tasks their caretakers (usually parents) need assistance in providing. Moreover, Ms. Hinojosa described homemaker services as those provided to a client without their input; homemaker providers simply do tasks asked of them by caretakers. In contrast, Ms. Hinojosa described claimant as being very involved in decisions regarding the actions of her SLS providers. Ms. Hinojosa concluded that SLS is appropriate because claimant lives on her own, the services are provided to allow her to continue doing so, and claimant still receives training to some degree on certain tasks.

## LEGAL CONCLUSIONS

### JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.<sup>2</sup>)
2. 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. (Factual Findings 1-7.)
3. The standard of proof is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)
4. A regional center seeking to terminate or change a service being provided to a consumer has the burden to demonstrate its proposal is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the service agency bears the burden of proving by a preponderance of the evidence that a reduction of, and categorical change in, claimant's in-home support services are warranted. (Factual Findings 1-7.)

### FUNDING FOR SUPPORTED LIVING SERVICES AND HOMEMAKER SERVICES

5. A. "Supported living services" are defined by the Lanterman Act as "a range of appropriate supervision, support, and training in the consumer's place of residence, designed to maximize independence." (§ 4354, subd. (h).)

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

B. The maximization of independence is a central tenet of the Lanterman Act. For example, section 4689 states that “a high priority is placed on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available, as often and for as long as it is needed, when that is the preferred objective in the individual program plan.” In this case, claimant’s operative IPP contains objectives and goals for claimant to continue living independently with assistance from DADD’s SLS program.

6. A. The range of supported living services and supports provided in the Lanterman Act include, but are not limited to, assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; social, behavioral, and daily living skills training and support; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; and facilitating community participation. (§ 4689, subd. (c).)

B. Regulations promulgated under the Lanterman Act similarly define supported living services to consist of any individually designed service which assists an individual consumer to live in his or her own home, with support available as often and for as long as it is needed; and to make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home. (Cal. Code Regs., tit. 17, § 58614, subd. (a).)

C. The regulations also specify that supported living services are to be tailored to meet the consumer’s evolving needs and preferences for support without having to move from the home of their choice, and include but are not limited to the following: (1) assisting with common daily living activities such as meal preparation,

including planning, shopping, cooking, and storage activities; (2) performing routine household activities aimed at maintaining a clean and safe home; and (3) locating and scheduling appropriate medical services. (Cal. Code Regs., tit. 17, § 58614, subd. (b).)

7. On the other hand, "homemaker service" is not exhaustively defined and discussed in the Lanterman Act or its regulations. In the regulations, homemaker service is simply given the Service Code of 860, and regional centers are instructed to "classify a vendor as a homemaker service if the vendor employs, trains, and assigns personnel who maintain, strengthen, or safeguard the care of individuals in their homes." (Cal. Code Regs., tit. 17, § 54342, subd. (a)(34).)

8. In this case, the provision of SLS to claimant by DADD fits within the above-described definitions and descriptions of appropriate SLS. Those services are being provided to allow claimant to continue to live independently in her own home. The service agency places too much emphasis on training, arguing that because claimant is not receiving training as a predominant feature of her SLS program, the service should be recategorized. But as shown above, training is just one of many components of SLS. Claimant's IPP clearly supports the continuation of SLS and the service agency has submitted no evidence demonstrating that her in-home support services should be changed from SLS to homemaker. To the contrary, the anecdotal evidence presented by claimant suggests that homemaker services are usually provided to a consumer who is not living independently and has no input into tasks that are part of the service. That is not claimant's situation. Finally, although the service agency argues recategorization would be cost-effective, no evidence was offered showing any savings would be achieved by changing the service category. (Factual Findings 1-16, Legal Conclusions 1-7.)



## REDUCING SLS HOURS BECAUSE OF GENERIC RESOURCES

9. The Lanterman Act also requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services. (§ 4659.) For that reason, regional centers shall not purchase any service that otherwise would be available from, including but not limited to, Medi-Cal, Medicare, or IHSS. (§ 4659, subd. (c).) Consistent with the above, a regional center “shall not purchase supported living services for a consumer to supplant IHSS.” (§ 4689.05, subd. (b).)

10. A. Therefore, regional centers are tasked with the dual responsibility to, on the one hand, ensure that consumers in supported living arrangements receive the appropriate amount and type of supports to meet the person’s choice and needs as determined by the IPP team; but, on the other hand, ensure that “generic resources are utilized to the fullest extent possible. . . . [As well as determine whether the services provided] are necessary and sufficient and that the most cost-effective methods of supported living services are utilized.” (§ 4689, subd. (p)(1).)

B. Finally, California Code of Regulations, title 17, section 54349, subdivision (g), mandates that regional centers shall authorize a SLS vendor to provide a service only if it is (1) cost-effective; and (2) cannot feasibly be provided without cost, or at a lesser cost, through generic or natural supports available in the community.

11. In this case, after claimant had been assessed to need 160 hours per month of SLS, her IHSS hours were increased by 27 hours per month. The two assessments from DADD presented in this case show that some IHSS tasks overlap with SLS. The regional center has a legal mandate to make sure IHSS hours are not duplicated or supplanted by SLS hours. Here, the evidence shows the increase of 27 hours of IHSS should result in a commensurate decrease of SLS hours. Claimant did not prove that such a reduction is unwarranted. Although her SLS provider argues she needs

more than 160 hours per month, DADD's March 2016 assessment, issued after this dispute arose, recommends 160 hours per month are necessary. If DADD staff believe an actual increase in claimant's monthly SLS hours is necessary, they and/or claimant should request an IPP meeting to address and discuss such an increase. (Factual Findings 1-16, Legal Conclusions 1-10.)

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## ORDER

Claimant's appeal is granted, in part, and denied, in part. The Kern Regional Center may reduce claimant's SLS program to 133 hours per month, but it may not recategorize claimant's in-home support services from SLS to homemaker services.

DATED: November 7, 2016

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ERIC SAWYER,  
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.