

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2016100833

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on November 28, 2016, in Pomona. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant, who represented himself, was assisted by an Armenian interpreter.¹

Daniela Santana, Program Manager, Fair Hearings, represented the San Gabriel/Pomona Regional Center (service agency).

ISSUE

May the service agency discontinue paying claimant's rent, provided as part of funding for claimant's independent living services program?

¹ Claimant's name is omitted to protect his privacy.

EVIDENCE RELIED UPON

In reaching this Decision, the ALJ relied upon exhibits 1-9 submitted by the service agency; exhibit A submitted by claimant; as well as the testimony of claimant and his independent living services assistant Sarah Gonzales.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 33-year-old non-conserved male consumer of the service agency based on his qualifying diagnosis of seizure disorder.
2. As described in more detail below, for the past several months the service agency has been paying claimant's rent at a local motel as part of the independent living services (ILS) program the service agency funds. The service agency had agreed to pay claimant's rent in return for claimant's written agreement that he would not own or store any weapons (including guns, knives or handcuffs) in his motel room and not seek employment as an armed security guard or where he would be in possession of a weapon. (Ex. 5.)
3. In a Notice of Proposed Action dated October 3, 2016, the service agency proposed to stop paying claimant's rent, effective October 28, 2016, because staff believed claimant had breached the written agreement by applying for a gun permit in order to be employed as an armed security guard; and by keeping a pair of handcuffs in his motel room.
4. On October 10, 2016, claimant submitted to the service agency a completed Fair Hearing Request form in which he appealed the proposed termination of rent funding. On the form, claimant wrote that he does not "have enough money to pay for rent" and that he wants the service agency to continue "paying my rent." (Ex. 3, p. 1.)

5. The service agency has continued paying claimant's rent while this matter has been pending. (Welf. & Inst. Code, § 4715, subd. (a).)

BACKGROUND INFORMATION

6. In addition to seizure disorder, claimant has been diagnosed with dysthymic disorder (chronic depression), attention deficit/hyperactivity disorder (ADHD) and neurotic depression (depression in an emotionally unstable person). Claimant takes prescription medications to help control his seizure disorder and impulse control (Depakote), behavior (Welbutrin), and pain (Ibuprofen). (Ex. 4, p. 5.)

7. Claimant has several friends who live nearby. His nearest relative is his brother, who lives about an hour away. Claimant has no difficulty in communication or mobility and he is in good health. His seizure disorder appears to be well controlled and he has not reported a seizure in several years. (Ex. 4, p. 5.)

8. Claimant's operative individual program plan (IPP) was created in June 2016. According to that document, claimant has a number of challenging behaviors, including physical and verbal aggression toward others; property destruction; inappropriate social remarks, mostly to women; making false allegations to attract or deflect attention; and various unsafe behaviors in the community, described in more detail below. (Ex. 4, p. 3.)

9. For the past several years, claimant has refused to attend a structured day program or work activity program. Instead, he has found miscellaneous jobs referred to him by friends or that he has found on his own, such as working at a restaurant. Claimant has not been able to hold any of those jobs for more than one or two months.

10. Claimant's dream is to be a police officer or a security guard. He testified that he would rather be an armed security guard than unarmed because armed guards make more money. But it appears from the record that claimant's preference is also

generated by the fact he is drawn to owning or possessing weapons, such as a gun, Taser, pepper spray, knife and/or handcuffs.

11. Claimant's interest in being a security guard and possessing weapons has gotten him into trouble. For example, claimant's IPP documents that in October 2013, he attended a church fair dressed as a security guard with a badge and a knife. (Ex. 4, p. 4.) During the hearing, claimant denied that happened. Claimant's IPP also reports that on another occasion, he tackled and handcuffed an unruly resident of the residential facility where he previously lived. (*Ibid.*) His IPP also reports that claimant has been arrested on a few occasions for impersonating a police officer, though formal charges were never filed. (*Ibid.*) During the hearing, claimant admitted that on at least one occasion, he dressed up as a security guard and stood outside of a bank in order to protect its employees, though he was not requested to do so. He also admitted during the hearing that once he placed plastic handcuffs on a roommate as "a prank." Claimant's penchant for dressing as a security guard was demonstrated during the hearing, as the ALJ observed that claimant wore to the hearing a dark jacket customarily worn by security guards, except there was no badge or patch.

12. Claimant previously resided at Rhema Care Group Home # 2, a level 4G adult residential facility. In addition to some of the incidents described above involving other facility residents, claimant also upset the facility administrator by bringing home with him weapons, such handcuffs and a Taser gun. The facility administrator asked claimant to stop bringing such weapons into the facility, out of concern for the safety of claimant, staff and the other residents. In April 2016, after claimant was found at the facility with handcuffs and a Taser gun, he was given a 30-day notice and evicted from the facility. (Ex. 4, p. 7.) The facility administrator took a photograph of the items confiscated from claimant, which included a security guard utility belt, two pairs of metal handcuffs and a Taser gun. (Ex. 8.)

THE RENTAL PAYMENT AGREEMENT AND AFTERMATH

13. After his eviction, claimant moved into a local motel on May 17, 2016, and has lived there ever since. The service agency has paid his rent at the motel the entire time. As support for claimant to live in the motel room (which the parties refer to as claimant's "apartment"), the service agency has created and funded an ILS team. Community Advocates Support Services (CASS) is the ILS vendor who plans and runs claimant's ILS program. Sarah Gonzales from CASS is claimant's primary ILS contact and spends most of the time with claimant. Crisis intervention services are also provided by vendor Creative Behavioral Educational Moment (CBEM), who identify and respond to any behavioral or life challenges encountered by claimant. The administrator of the Rhema facility is also funded to act as claimant's personal assistant and help mitigate any problem behaviors.

14. Given his past problems, the service agency only agreed to fund claimant's ILS program and pay for him to live in a motel if he signed an agreement (the contract), wherein he made certain assurances and promises. Claimant signed the contract (ex. 5), the salient provisions of which are:

I [claimant] acknowledge that to make a transition from residential placement into my own apartment requires the availability of funds to pay for monthly rent. **I acknowledge that San Gabriel/Pomona Regional Center (SGPRC) will pay my monthly rent contingent on my agreement to follow this contract of stipulations and provisions documented below:**

- I agree to accept support and assistance from an Independent Living Service Agency (ILS) or Supported Living Agency (SLS) provided by SGPRC.
- I will not store, possess or keep any weapons of ANY kind in my apartment. Such weapons include but are not limited to items such as: guns, handcuffs, knives, taser gun, pepper spray or mace are not to be kept at the apartment or in my possession. No illegal substances will be allowed in my apartment. I understand that even if I am "certified" or licensed to carry a weapon I will NOT carry one in the community or keep in my apartment.
- I agree not to possess or use a gun while in the community. I will not carry a weapon in the community and I agree to only use a gun while under the supervision of a certified gun trainer or in a gun range. NO EXCEPTIONS will be considered or permitted.
- I must maintain steady employment of at least 30 hours per week. I must demonstrate my ability to work consistently. I will NOT be employed as an armed security guard, nor will I seek employment as an armed security guard or any other type of employment where I would be in possession of a weapon. I will have the option to pursue employment as an unarmed security guard if I so wish. I MUST DISCLOSE

IMMEDIATELY to my ILS or SLS agency if I change jobs. I agree that this disclosure includes full information such as address and phone number of my employment. I will allow the ILS or SLS agency to visit me at my work location at least every two weeks. I must inform my Independent Living Service or SLS instructor of my schedule in writing.

My signature indicates that I have read and I agree to the provisions of this contract. **If I violate any provision of this contract, SGPRC will terminate funding of rent.** (All bold above is in the original.)

15. Among many goals and outcomes specified in claimant's IPP, claimant and his IPP team agreed that the service agency will provide services and supports to help claimant live independently and to find and keep a job. The IPP specified those goals are tempered by the contract, in which claimant has agreed to not possess any weapons at his home or to seek employment involving use of a weapon. The parties have also agreed that claimant will improve his behavior and will not engage in any unsafe behavior in the community. (Ex. 4.)

16. On June 15, 2016, service agency staff reminded claimant that he could not store pepper spray in his motel room, after becoming suspicious that he may have been doing so. Claimant was advised doing so would be a breach of the contract. (Ex. 7, p. 1.)

17. On June 24, 2016, claimant advised Lisa Ngo of CBEM that he "will buy some handcuffs" with money he recently received. (Ex. 7, p. 2.) He was advised doing so would be a breach his contract. On several occasions from July 5th through September 14th of this year, claimant advised his ILS team members and service agency staff that

he intended to obtain handcuffs or have returned to him the utility belt and handcuffs confiscated and kept by the Rhema facility. (Ex. 7, pp. 3-5.) Service agency staff warned claimant on several occasions that storing handcuffs at his apartment or possessing them at work would be a breach of the contract. (*Ibid.*) CBEM instituted crisis intervention measures to prevent that from happening. (*Ibid.*) Claimant's personal assistant also spoke with claimant about the situation. By mid-September of this year, claimant abandoned those efforts and he never obtained or possessed handcuffs. (*Ibid.*)

18. On September 14, 2016, claimant had a telephone conversation with his service coordinator, in which he stated he wanted to get a "permit to get a weapon so I can become an armed security guard." (Ex. 7, p. 5.) When advised that doing so would be a breach of his contract, claimant responded that he "wants to be able to work as an armed security officer and I need the permit to carry a weapon for my job." (*Ibid.*) The next day, claimant telephoned his service coordinator and told her he "will not have a gun." (*Ibid.*)

19. On September 20, 2016, claimant and his IPP team met at the service agency office to discuss his IPP. Joining claimant were Ms. Gonzales of CASS, claimant's personal assistant, and a member of CBEM. During the IPP meeting, claimant self-reported that approximately one month previously he had submitted an application for a permit to carry a gun, but that it had been denied by the state due to his seizure disorder diagnosis. Service agency staff contended that the act of applying for a permit to carry a weapon such as a gun was a breach of the contract, because claimant had promised not to seek employment where he would be in possession of a weapon. Claimant contended that there "should be no issue" because his application had been denied. Service agency staff decided to stop the IPP meeting at that time because they believed the contract had been breached.

20. On October 13, 2016, claimant's service coordinator had a telephone discussion with Lisa Ngo of CBEM. Ms. Ngo indicated that claimant was working as a security guard at that time and had told her he was "considering buying a baton" for his job. Ms. Ngo discouraged him from doing so and tried to focus claimant on saving money for his rent. (Ex. 7, p. 9.) It was not established that claimant ever procured a baton.

21. During the hearing, claimant presented copies of check stubs indicating he held security guard jobs for two different companies between August and October of this year. (Ex. A.) Claimant held each job for a month or two. According to him, he was laid off from one job when the property he was guarding was sold; it was not clear from his testimony what happened to the second job.

22. Claimant testified that both security guard jobs he previously held were "unarmed," in that he did not carry a gun. However, he testified that he carried with him pepper spray for one of those two jobs. Claimant had previously obtained a permit to carry and use pepper spray issued by the California Bureau of Security and Investigative Services (BSIS). During the hearing, claimant displayed his pepper spray permit issued by BSIS. Neither the service agency nor Ms. Gonzales of CASS was aware that claimant had obtained that permit or carried pepper spray while on duty.

23. It was not established that any weapon, as identified in the contract, has been stored or found in claimant's motel room. In fact, Ms. Gonzales and the other ILS vendor employees have authority to periodically search claimant's motel room for evidence of such weapons and nobody has found any. Although the service agency's Notice of Proposed Action alleges that handcuffs were kept at claimant's motel room, none of the documents presented by the service agency establish that had occurred, and Ms. Gonzales testified she has found nothing. No evidence was presented concerning where claimant kept the pepper spray he used at work.

24. Claimant testified that he is currently unemployed and has no money to pay his rent. He is afraid that if he is evicted from his apartment, he will not have any money to pay for rent and will become homeless. He cannot get Supplemental Security Income (SSI) benefits because he is not a citizen. His brother is trying to help him become a citizen. Claimant would like the service agency to assist him in becoming a citizen and/or obtaining SSI benefits so he can pay his rent from that source. Although he successfully obtained a permit to purchase a handgun, he has not bought one. His gun ownership permit is valid through 2020. After service agency staff told him they believed he breached the contract, they tried to place him in a residential facility in the high desert area. Claimant was not interested in that placement because it is far from his friends who live near his motel and jobs in which he is interested.

25. Ms. Gonzales from CASS testified and established the facts summarized below. As claimant's main point of contact from his ILS team and the person who spends the most time with him, she appeared knowledgeable of his behaviors and abilities and was a persuasive witness.

A. Ms. Gonzales began working with claimant in February of this year as part of the ILS assessment process. At first, claimant was very difficult to work with, but over time he has become more compliant.

B. Claimant does not have SSI benefits from which he can pay his rent. She believes claimant's lack of citizenship is one impediment. She once took claimant to an SSI office to apply for benefits but was told by staff there that claimant would not qualify, because he was employed at the time and he appeared to be "too high functioning."

C. Claimant has not saved any of his past income. Because claimant is not conserved, Ms. Gonzales cannot go through his mail or force him to save his funds. She is concerned that claimant is "frivolous" with his money. Instead of saving his income,

claimant has spent it on personal items for himself, friends or women Ms. Gonzales believes are taking advantage of him.

D. Ms. Gonzales has searched claimant's motel room and has not found any contraband; but claimant is secretive, which is why she did not know he had applied for a gun permit or obtained a pepper spray permit.

E. Ms. Gonzales believes claimant loses jobs after a month or two because he is too "high strung or defensive" and his employers tire of it. She believes a job coach and supportive employment program would help claimant keep a job longer.

F. Instead of terminating claimant's rent, Ms. Gonzales opined that he should be given a six month grace period, over which time he could gradually pay more rent each month.

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.)² An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant submitted a fair hearing request to appeal the service agency's proposed termination of rent payments. Jurisdiction in this case was thus established.

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

² Undesignated statutory references are to the Welfare and Institutions Code.

B. The regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision 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.)

C. In this case, the service agency bears the burden of proving by a preponderance of the evidence that terminating claimant's rent is warranted. (Factual Findings 1-5.)

GENERAL PROVISIONS OF THE LANTERMAN ACT

3. 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. (§ 4646, subd. (a).)

THE SERVICE AGENCY'S REASON TO STOP PAYING CLAIMANT'S RENT

4. A. Consistent with state and federal law, the Legislature places a high priority 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. (§ 4689.)

B. Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer. (§ 4689, subd. (h).)

C. However, pursuant to section 4689, subdivision (i), a “regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:”

(1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:

(A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer’s individual program plan, and is required when a consumer’s demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.

(B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.

(C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

5. Because this case is premised on claimant's alleged breach of the contract, general principles of contract law must also be considered. For example, where the words of a contract in writing are clear and unambiguous, its meaning is ascertained in accordance with its plainly expressed intent. (14A Cal.Jur.3d (Nov. 2016) Contracts, § 225.) While evidence of the intent of a party is competent and relevant to establish the legal effect of an equivocal act, if the terms of an agreement are set forth in writing, and the words are not equivocal or ambiguous, the writing constitutes the contract. (*Ibid.*) The parties' undisclosed intent or understanding is irrelevant to contract interpretation. (*Ibid.*) A breach of contract occurs when a party to a contract deliberately refuses to do that which he has agreed and is required to do under the contract. (*Id.* at § 381.) Anticipatory breach arises when a party repudiates performance of his obligations before they come due; if sufficiently significant, the anticipatory breach discharges the other party's obligations. (*Id.* at § 394.)

6. A. In this case, it was not established that claimant breached the contract in the manner claimed by the service agency. Specifically, it was not established that he

ever had in his possession in his motel room a weapon of any sort. Moreover, it was not established that claimant breached the contract by applying for a permit to carry a handgun. The contract prohibits claimant from seeking a position as an armed security guard or one in which he would possess a weapon. The contract does not prohibit simply applying for a permit to own or carry a weapon; in fact, the contract indicates such an act would not be prohibited, where claimant agreed that even if he was certified or licensed to carry a weapon he still could not actually do so. In any event, applying for a permit to carry a handgun is not the same as applying for a job involving possession of a weapon. The service agency's construction of the contract to the contrary is inconsistent with the express terms of the agreement and is therefore not valid. The service agency's contrary understanding of the meaning of that part of the contract is irrelevant, since the contract is clear and unambiguous. (Factual Findings 1-25; Legal Conclusions 1-5.)

B. However, claimant did breach the contract by working as a security guard and carrying pepper spray while on duty. As discussed above, claimant expressly agreed in the contract that he would not "seek employment as an armed security guard or any other type of employment where I would be in possession of a weapon." In another provision of the contract, a weapon is defined as including but not limited to "guns, handcuffs, knives, taser gun, pepper spray or mace." By holding a job as a security guard in which he carried pepper spray, claimant sought and obtained employment where he would be, and was, in possession of a weapon. (Factual Findings 1-25; Legal Conclusions 1-5.)

C. In addition, claimant committed anticipatory breach of the contract on several occasions. For example, he advised the service agency many times that he intended to obtain handcuffs. He then advised the service agency that he would apply for a permit to obtain a gun so he could be an armed security guard. He later advised

his personal assistant that he was considering purchasing a baton for use in his security guard job. While a baton is not expressly listed in the contract as a prohibited weapon, that list was meant to be illustrative and not exhaustive. A reasonable interpretation of the contract is that a baton is a weapon. Extensive effort by vendor and service agency staff was required to discourage claimant from obtaining those weapons. By constantly telling the service agency he planned to engage in acts that would have substantially violated the contract, claimant repudiated his obligation in the contract to abstain from doing so. Claimant's anticipatory breach discharged the service agency's contractual obligation to continue paying his rent. The service agency was not required to wait until claimant actually breached the contract, though he did; his repudiation of future performance was enough. (Factual Findings 1-25; Legal Conclusions 1-5.)

7. A. Since this case is brought under the Lanterman Act, general contract law can be persuasive but is not controlling. It must be remembered that section 4689 of the Lanterman Act generally requires consumers to pay their own rent as part of a supportive living arrangement, and provides narrow authority for a regional center to fund such rent.

B. Section 4689, subdivision (i)(1)(C), limits a regional center from funding rent longer than six months, unless the regional center verifies quarterly, and its executive director verifies annually, that the funding is meeting needs specified in the consumer's IPP. In this case, the parties agreed in the contract that it is not in claimant's best interests to possess weapons in his home or to seek and hold jobs involving use of weapons. Those provisions of the contract are included in the IPP. As discussed above, claimant has persisted in trying to obtain weapons and hold jobs using weapons. Continuing the rent payments would facilitate claimant's further attempts to obtain weapons or jobs involving use of them, which would undercut the goals and outcomes specified in claimant's IPP. For example, since being in the ILS program, claimant has

applied for and obtained weapon permits without the knowledge of his ILS team or service agency staff, as well as a job in which he carried pepper spray.

C. The service agency and its executive director are clearly dissatisfied with claimant's repudiation and breach of the contract, as well as engaging in potentially dangerous acts (possessing and/or using weapons) that are contrary to the goals and outcomes detailed in his IPP. By issuing the Notice of Proposed Action, the service agency indicated it will not continue to verify that funding claimant's rent will support his IPP. Section 4689 gives the service agency authority to withdraw approval for rent funding. Doing so in this case, under these circumstances, cannot be viewed as arbitrary or capricious. (Factual Findings 1-25; Legal Conclusions 1-6.)

8. Since claimant cannot pay his own rent, the termination of service agency rent funding will result in claimant being removed from the motel. Unless he is taken in by his brother, a new living arrangement must be identified for claimant by the service agency, such as a group home or similar adult residential placement. That will take some time. While no evidence was presented on the topic, it is assumed that three months will provide the parties sufficient time to locate, assess and contract with a vendor who can provide a suitable living arrangement for claimant. Claimant must be prepared to vacate the motel room he currently occupies in three months.

ORDER

Claimant's appeal is denied. The San Gabriel/Pomona Regional Center may discontinue paying claimant's rent, effective 90 days from the date of this Decision.

DATED: December 9, 2016

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.