

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

D.A. and A.A.,

Claimants,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH Nos. 2016101079
2016101081

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Redding, California, on June 30, 2017.

The Service Agency, Far Northern Regional Center (FNRC), was represented by Phyllis Raudman, Attorney at Law.

Claimants were represented by their mother.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 30, 2017.

ISSUE

Is FNRC required to fund a specialized perimeter fencing system surrounding claimants' family home?

FACTUAL FINDINGS

1. This is a consolidated matter involving two brothers who are both eligible for and receiving regional center services. Claimant A.A. is a sixteen-year-old young man who is eligible for FNRC services based on a diagnosis of autism. His brother, D.A., is fifteen years old and qualifies for FNRC services based on a fifth category diagnosis. Claimants reside with their family in the family home and receive services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. Melissa Gruhler is the FNRC Associate Director of Client Services and is responsible for overseeing case management for the agency's consumers. She testified that, at various times over the past several years, claimants' family has sought funding assistance from FNRC for a hard-wired home alarm system with cameras, and specialized perimeter fencing to surround the family's property. The current Notices of Proposed Action (NOPA) denying the requests were issued on October 6, 2016.

3. The NOPA issued to claimant D.A. included the following proposed action:

Denial of funding for a perimeter security system (hard wire whole house alarm system w/ cameras) and property fencing for the property located at [family address]. Denial given by the Far Northern Regional Center Case Review Committee on 10/6/16.

The NOPA advised claimant that the reason for this action was as follows:

¹ Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

Fencing and home alarm systems are the financial responsibility of the homeowner. In addition, [claimant D.A.] currently receives 242 monthly hours of IHSS through Shasta County, which includes protective supervision. (California Department of Social Services – Protective Supervision Regulations identifies the need for a 24-hour care plan for how the recipient will be protectively supervised for any hours above those that are provided by IHSS or alternative resources.) Additionally, the authorized 51 hours per quarter of respite services can be accessed to assist with [claimant D.A.'s] supervision needs. Previous denials of similar requests were given on 7/17/14 and on 12/2/15- neither denial resulted in a request for a fair hearing appeal.

4. The NOPA issued to claimant A.A. also proposed to deny the request. The NOPA advised claimant that the reason for this action was as follows:

Case Review Committee denied funding for the fence and security system on 12-2-15. Fencing the property and installing a security system is the responsibility of the parent and/or homeowner. At last report, Far Northern Regional Center was funding in-home respite of up to 52 hours a quarter and Shasta County was funding 283 hours of IHSS, which covers protective supervision, for additional supervision needs.

5. Claimants filed Fair Hearing Requests dated October 10, 2016, appealing those decisions. The reason for the requests stated:

I disagree with the denial of an adequate perimeter alarm/safety system and perimeter fencing that is necessary in allowing my son [D.A. or A.A.] the ability and right to remain safely in his own home as well as safe limited access to the outdoors. I believe it is a direct violation of his civil and disability rights to be denied.

To resolve the complaint the requests stated:

Funding approval for the perimeter safety system and fencing system. These modifications will allow [D.A. or A.A.] to remain safely in his own home with similar rights, opportunities and activities as peers his own age without [D.A. or A.A.'s] disabilities giving [claimants] safe access to outdoor property and fostering independence.

6. On November 2, 2016, an informal meeting was held at FNRC, which included claimants' mother, Ms. Gruhler and FNRC Executive Director, Laura Larson. The parties discussed FNRC's denial of funding for the purchase of a home alarm system and perimeter fencing for the family home.

7. By letter dated November 7, 2016, Ms. Larson informed parent of the following:

After learning more about your sons and how they have learned to remove and dismantle existing security systems, I am reversing our previous decision not to install a "whole house" wiring system. Far Northern will pay the installation of a new security system. The new system will be embedded into

the doors and will have outside cameras, which will provide for ability to monitor outside activity from a cell phone.

Regarding the purchase and installation of a fencing system on your property to contain two teenage boys, I am upholding our previous decision. The cost of the fence you would like is close to \$60,000.00. The Purchase of Service Guidelines for Home Modifications provides that the service must reflect a cost-effective use of public funds.

There are many new devices on the market that help prevent wandering of children and adults, as well as quickly finding a wanderer. Some of these devices are:

1. Angel Sense GPS Tracker;
2. Amber Alert GPS;
3. Pocket Finder GPS;
4. Trax: This is a system that might work very well for your purposes. It is a tiny GPS-tracker that may be used to create safety zones (GPS fences);
5. Bikn: This system works both inside and outside your home with a 250,000 square foot range; and,
6. Care Trak Monitoring System; this system does not operate on GPS systems, it operates on telemetry or radio tracking signals. It has devices that can be worn or placed into a pocket or belt.

Anyone [sic] of these systems would be more cost effective and age appropriate than a fence. Please let us know if you are interested in any of the above-mentioned systems and we will

move forward to acquire the system for you.

8. Claimants' mother testified that FNRC had previously provided a home security system in the family home, which became ineffective as the boys grew and were able to reach and disengage the system. She became concerned that they would elope and be injured. Claimant D.A. has had incidents, noted in Shasta County Sheriff's reports, of wandering off requiring law enforcement assistance to locate him and return him to his home. His mother was concerned with the cost involved in these efforts, which have included California Highway Patrol air division helicopter response. She suggested that her fencing system request would be less expensive for the public.

9. Claimants' mother appreciated FNRC's decision to install the new security system with cameras. However, she believes that a specialized fencing system is required for her sons to be able to access the outdoors due to their supervision needs. She testified that the boys love to be outside and there is "no opportunity for independence without the customized fencing." She contends that it is "inhumane and undignified" for them to be unable to access natural settings to the maximum extent possible. She desires her sons to be independent and stated that there are skills she would like to teach them that cannot be taught without the perimeter fencing. In addition, she noted that respite hours have not been helpful due to difficulty accessing providers.

Claimants' mother testified that there is only one Shasta County contractor that is able to provide the fencing system that she is requesting. The family property is approximately two and one-half acres. The proposal from Abacherli Fence Company includes installation of a welded ornamental steel fence with a curved top rail fence style at a cost of \$58,000.

10. Ms. Gruhler testified that alternative services are available to meet claimants' needs. Specifically, she explained that installation is underway for the family's whole home,

hard-wired security system with cameras. This will protect claimants from leaving their home environment. Protective supervision needs are also covered, in part, through IHSS, and respite also offers a break to family from constant supervision. Each consumer's Individual Program Plan (IPP) provides for IHSS services as well as respite services. The IHSS services include protective supervision hours.

There are several available options for tracking systems that would assist with claimants' security when outside on the family property. The family has not requested any of the suggested tracking systems. Any of these options would be more cost-effective than spending \$58,000 to fence the family's two and one-half acre property.

Ms. Gruhler also explained that Purchase of Service Funding and Guidelines for Home Modifications mandates that "Home Modifications refer to physical changes made to a consumer's home to improve access and enable consumers with physical disabilities to be as independent as possible in their own homes." Generally, physical modifications to consumer or family homes are the responsibility of the consumer or their family. When FNRC does fund a modification, the service must reflect a cost-effective use of public funds.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with developmental disabilities. An "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . to support their integration into the mainstream life of the community . . . and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

Section 4646, subdivision (a) provides:

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 further the 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.

Section 4646.4, subdivision (a) specifies:

(a) Effective September 1, 2008, 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, or of an individualized family service plan pursuant to Section 95020 of the Government Code, 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:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

2. A party seeking to add a service or support to a consumer's IPP typically has the burden of demonstrating that its proposed addition is appropriate. Therefore, claimants bear the burden of proving that FNRC should be ordered to purchase the requested specialized perimeter fencing system.² Claimants have not met that burden.

The evidence does not support a finding that FNRC fund a specialized perimeter

² California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

fencing to surround the family's two and one-half acre property. Other, more cost-effective options remain available to meet claimants' needs, which have not been accessed.

ORDER

The appeals of claimants D.A. and A.A. are denied. FNRC is not required to fund the requested specialized perimeter fencing system surrounding claimants' family home.

DATED: July 13, 2017

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)