

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Claimant,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2016120678

DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, heard this matter on February 1, 2017, in Los Angeles, California.

Claimant,¹ who was present, was represented by Toni DeAzatlan, Attorney at Law. Aaron Abramowitz, Attorney at Law, represented the Eastern Los Angeles Regional Center (ELARC, or service agency).

Evidence was presented and argument was heard. The matter was submitted for decision on February 1, 2017.

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¹ Claimant's and her relatives' identities are not disclosed to preserve their confidentiality.

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ISSUE

Is ELARC denying Claimant the monthly Supported Living Services² (SLS) it agreed to fund through Claimant's long-time service provider?

OVERVIEW

This case involves a service provider, PALS, L.L.C. (PALS), which has provided years of effective care and services to claimant, whose needs have recently increased. ELARC and PALS recently agreed that more SLS support hours were necessary to keep pace with claimant's mounting medical and living-care related challenges, and that the services would be provided at a higher monthly rate. ELARC sought approval from the Department of Developmental Services (DDS) to fund the services at a higher rate. That request for DDS approval is still pending. ELARC contends that because the parties agree on the level of services to be provided, there is no real controversy to be decided here. Claimant contends that ELARC has not followed through with securing the higher funding rate because it failed to supply PALS with a formal agreement authorizing the increased services at the higher monthly rate.

² The Legislature places a high priority on providing opportunities for disabled adults, 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. (Welf. & Inst. Code § 4689.) "Supported living services" refer to the services and supports a consumer receives to assist the consumer with exercising choice in her life within the context of her daily activities.

FACTUAL FINDINGS

1. Claimant is a 53-year-old female with developmental disabilities. She is diagnosed with mild mental retardation, paranoid schizophrenia, anxiety, depressive disorder, diabetes, neuroleptic malignant disorder, congestive heart failure, hypertension, esophageal reflux, paralysis agitans (Parkinson's Disease), muscle weakness, tremors, right-knee arthritis, and peripheral vascular disease. She attends multiple medical weekly appointments to monitor her various conditions. Claimant becomes easily fatigued and may stay in bed all day unless prompted to be active. She is unable to maintain her personal hygiene and self-help tasks independently and relies on PALS' SLS staff to assist with these tasks. Claimant ambulates with a walker and grows fatigued after walking approximately 10 feet. She requires assistance and supervision in taking her medications without spitting them out. She needs assistance at her medical appointments to ensure that medical recommendations and directions are properly noted and followed.

2. PALS is an ELARC-vendorized service provider and receives regional center funding through a vendor payment process.³ PALS has provided services to Claimant consistently since approximately 2004. Claimant testified that she is very comfortable with PALS as her service provider, and she has no desire to consider alternative service providers. ELARC agrees that PALS is the vendor most desirable to meet Claimant's

³ Vendorization is the process of identifying, selecting, and obtaining for consumers the services of qualified providers. (Welf. & Inst. Code, § 4648, subd. (a)(3)(A); Cal. Code Regs., tit. 17, § 54302, subd. (a)(78).) Each regional center is responsible for vendorizing providers for that regional center's consumers, negotiating a contract for services with the vendors, and authorizing the provision of care to eligible consumers. (Cal. Code Regs., tit. 17, § 54320.)

needs due to Claimant's close familiarity with PALS' staff and her strong preference for its services.

3. Claimant's service needs are increasing. In 2014 she suffered a mental health breakdown, followed by several psychiatric holds. Wilmer Rivas, a PALS Case Manager, testified that Claimant's medical needs have intensified since 2009, and that presently she attends 16 to 20 medical appointments per month. As of October 2016, Claimant was taking nine medications for her medical conditions, and five psychiatric medications to help stabilize her moods. Guadalupe Reyes, ELARC's Service Coordinator assigned to Claimant's case, noted that Claimant recently had surgery to remove major artery blockage in her heart, and that since then Claimant has required a higher level of care.

4(a). In June 2016 ELARC and PALS were in discussions to determine the ongoing monthly rate for services PALS would be providing to Claimant. On June 9, 2016, Ms. Reyes sent an e-mail message to PALS' Chief Executive Officer, Rodney Mojarro, proposing that when Claimant required 24-hour, seven-days-per-week (24-7) care due to intense medical needs such as surgeries or hospitalizations, ELARC would fund those services at a rate of \$11,929 per month. Ms. Reyes further noted that Claimant did not want 24-7 care, so when such comprehensive care was not required, ELARC would fund SLS care for 12 hours per day for a total of 364 monthly hours at a rate of \$8,734 per month. Later that day Mr. Mojarro sent an e-mail response to Ms. Reyes regarding ELARC's rate proposals, stating: "PALS is in agreement with both rates. Thank you."

4(b). The parties agree that 364 hours of SLS care per month is currently appropriate for Claimant, absent a need for 24-7 care.

4(c). The monthly pay rate of \$8,734 for SLS support which the parties contemplated in June 2016 was higher than the previously-approved rate PALS was

paid, which was for 134 hours per month of SLS. Because the Lanterman Developmental Disabilities Services Act (Lanterman Act), which governs regional centers, requires that regional centers ensure the delivery of services to claimants in a cost-effective manner,⁴ this increase required ELARC to submit a request for a health and safety waiver exemption (waiver request) to DDS.

4(d). On November 3, 2016, ELARC submitted a formalized waiver request to DDS, seeking approval for a monthly pay rate of \$11,929 for 24-7 support services, and a monthly pay rate of \$8,734 for regular SLS support 12 hours per day.⁵ The waiver request ELARC submitted was the result of a months-long, involved process requiring ELARC to provide DDS with detailed, mandatory information regarding the vendor, the service code and type, the vendor's current rate, the proposed enhanced rate, itemized documentation supporting the new rate, the estimated fiscal impact of the rate increase for the current and subsequent fiscal years, a detailed description of existing services and why they are inadequate, a cost-effectiveness analysis, and so on. Ms. Reyes had begun compiling information and preparing the waiver request in June 2016, following her discussions with PALS and her e-mail exchange with Mr. Mojarro. As required by ELARC's operational guidelines, Ms. Reyes engaged ELARC's Community Services department to assist with preparing the waiver request. Cruz Garcia, an ELARC Community Services Specialist, testified that she worked with Ms. Reyes toward compiling the necessary information and preparing the waiver request. PALS also

⁴ See, e.g., Welf. & Inst. Code § 4646, subd. (d).

⁵ In its written request for a waiver ELARC erroneously stated that the regular SLS support was to be delivered 11 hours per day instead of 12, but that error was subsequently corrected.

supplied required documentation to ELARC in the form of medical information and reports, employee time-cards and time-sheets, and activity and work schedules.

4(e). Mr. Rivas asserted that since June 2016 ELARC has failed to timely provide a purchase of services agreement authorizing funding of the SLS support at the agreed-upon higher rate. Thus, he contended that ELARC had not “honored” its agreement regarding the rates proposed in June 2016. This sentiment was echoed by Mr. Mojarro in an e-mail he sent to ELARC on November 29, 2016, stating:

In response to [ELARC’s] most recent email . . . I have not been in agreement with the rates proposed on June 9, 2016 for some time now because the “agreement” was never honored.

PALS is further displeased that ELARC submitted the waiver request to DDS in November 2016 based on the rates discussed in June 2016. In PALS’ view, those previously-discussed rates were outdated by the time ELARC completed the waiver-request process. The evidence established that PALS timely informed ELARC that it was not in agreement with the June 2016 rates. On September 27, 2016, Mr. Mojarro sent an e-mail to Ms. Reyes proposing that ELARC authorize 364 hours per month of SLS at a rate of \$12,223.12. Mr. Mojarro’s further e-mail correspondence with ELARC expressed his frustration that ELARC’s waiver request had not sought higher rates than those contemplated in June 2016. Mr. Rivas testified that PALS cannot cost-effectively provide necessary services to Claimant any longer at the lower funding rates.

4(f). Ms. Garcia testified that ELARC has engaged PALS regarding re-negotiating a higher rate, but PALS has not provided ELARC with further cost-study and line-item budget information and documentation which would help to project PALS’ ongoing costs and justify a further rate increase. ELARC may submit a revised waiver

request at any time, but to maximize the possibility that DDS will grant it, this additional information and documentation must be included. The week before the hearing, Ms. Reyes visited Claimant and was confronted by Mr. Mojarro, who addressed Ms. Reyes angrily about ELARC's handling of the higher-SLS-rate-of-pay issue. Despite this apparent enmity, Mr. Rivas testified that PALS is still open to further negotiations with ELARC regarding a rate increase.

5. The evidence did not establish that Claimant has been deprived of funding for necessary services, or that a gap in service-provision has resulted due to the dispute between ELARC and PALS over the rate of payment. ELARC has continued to fund services for Claimant while the waiver request is pending. ELARC has temporarily funded Claimant's SLS supports under the broader designation of Independent Living Services (ILS), which can include SLS, and which provides a higher rate of payment. In January and February 2017, ELARC funded ILS supports at a rate of 399 hours per month, due to Claimant's recent surgery and temporary need for a higher level of care. ELARC has consistently maintained its approval for Claimant to receive 364 hours of SLS per month.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. and Inst. Code § 4500 et seq.⁶) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a regional center decision with which a client does not agree. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established.

⁶ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

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 or her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, Claimant, who seeks 364 hours per month of SLS supports per month, bears the burden of proof by a preponderance of the evidence that she is entitled to the funding. (Evid. Code, §§ 500, 115.) In essence, Claimant's entitlement to 364 hours of SLS is not in dispute. What Claimant sought to establish was that ELARC deprived her of that funding by acting unreasonably toward her preferred provider, PALS, thus failing to ensure that PALS would receive a higher rate of payment for the delivery of those services, and jeopardizing the service agency/vendor relationship.

APPLICABLE STATUTORY LAW

3. 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. 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. 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. 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

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. 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. The evidence established that PALS has consistently provided valued services to Claimant. The cost-effectiveness of these services is not in dispute. PALS is also Claimant's preferred service provider. These important factors provide a strong impetus for the service agency to continue to fund PALS' provision of services for Claimant.

9. Nonetheless, ELARC is obligated under the Lanterman Act to ensure that vendored services are supplied at a rate of payment established by DDS. While PALS' apparent frustration with the slow pace of the rate-approval process may be understandable, it does not amount to a denial of services to Claimant. ELARC submitted a waiver request at a pay-rate agreed upon by PALS many months earlier, yet by the time of the waiver request's submission PALS had rejected that pay-rate. Since then, ELARC has endeavored to update the waiver request with further data to support an even higher rate. That data must come from PALS, which has yet to supply it. The parties appear to have reached an impasse on this issue.

10. There is always a possibility that if a regional center and a vendor cannot reach an agreement as to fees, a parting of the ways may occur. Should that happen here Claimant will surely suffer, as she would lose a long-time service-provider with whom she is very comfortable. Yet, a potential falling out over fees does not excuse the

service agency of its responsibility to ensure the provision of cost-effective services to its clients. ELARC has continued to fund necessary services at a level sufficient to meet Claimant's needs, has engaged in a waiver request process with DDS, and remains open to further negotiations with PALS regarding a higher rate of payment. In sum, the service agency is doing its job.

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11. Claimant did not meet her burden of proof in showing that ELARC has denied her previously agreed-upon SLS supports, as set forth in Factual Findings 4 and 5, and Legal Conclusions 8, 9 and 10.

ORDER

Claimant's appeal is denied.

Dated:

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.