

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2017030482

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on June 12, 2017, in Watsonville, California.

James F. Elliott represented service agency San Andreas Regional Center (SARC).

Claimant's mother, who is claimant's conservator, appeared at the hearing on claimant's behalf. Claimant also was present.

The matter was submitted on June 12, 2017.

ISSUE

Must SARC pay \$1,407.60 to claimant, to reimburse him for State Supplementary Payments (SSP) that he should have received between January 1, 2013, and November 30, 2014?

FACTUAL FINDINGS

1. Claimant is an adult. He is eligible for services under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code § 4500 et seq.) and has received a variety of services through SARC for many years.

2. Claimant receives Supplemental Security Income (SSI) from the United States government. Because he receives SSI, he also is eligible for SSP from the State of California. SSP is available to persons with a variety of disabilities, not just to persons whose disabilities may qualify them for regional center services.

3. For SSP recipients who receive services from regional centers, the State of California distributes SSP funds by appropriating them to the state Department of Developmental Services (DDS). Regional centers such as SARC then obtain those funds for distribution to regional center consumers.

4. The amount of monthly SSP for which a person qualifies depends in part on the person's living arrangement. In January 2013, claimant began to live independently. When he did so, he should have begun receiving \$61.20 per month in SSP.

5. Claimant's SARC case manager did not realize in or before January 2013 that claimant's change of residence would qualify him for these additional SSP funds. Because of this oversight, SARC did not arrange beginning in January 2013 to obtain SSP funds for claimant from the State of California and to distribute those SSP funds to claimant.

6. SARC staff members became aware in October 2016 that claimant should have been receiving \$61.20 per month in SSP but was not. When they informed claimant that he should have been receiving this income, claimant asked SARC to obtain it for him going forward, and to obtain reimbursement for him for SSP that he should have received since January 1, 2013.

7. Claimant's SARC case manager arranged for claimant to begin receiving SSP. In addition, SARC obtained SSP funds for claimant from DDS for the months dating back to December 1, 2014. SARC notified claimant in writing that it could not obtain further SSP reimbursement for him, and claimant requested a hearing.

8. SARC has been unable to obtain SSP funds for claimant from DDS for the 23 months beginning January 1, 2013, and ending November 30, 2014. These funds total \$1,407.60 (\$61.20 per month multiplied by 23 months).

9. SARC's notice to claimant cited Government Code section 16304 as the statutory basis for SARC's inability to obtain full reimbursement from DDS of claimant's SSP. Government Code section 16304 addresses when and how money the Legislature has appropriated to a state agency is available for that state agency to spend. The evidence did not establish when or on what terms the Legislature appropriated money to DDS from which DDS might have paid SSP to SARC for SARC's distribution to claimant between January 1, 2013, and November 30, 2014.

10. In April 2017, claimant made a claim against DDS through the California Government Claims Program for the \$1,407.60 in SSP funds at issue in this matter. SARC provided a letter supporting this claim. On May 19, 2017, the Government Claims Program denied this claim, on the ground that the "State does not appear liable for the claimed damages. The Regional Centers are non-profit entities and not part of state government."

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. Lanterman Act services are provided through a statewide network of private, nonprofit regional centers, including SARC. (Welf. & Inst. Code, § 4620.)

2. As described in Finding 2, SSP is not itself a Lanterman Act service. The Burton-Moscone-Bagley Citizens' Income Security Act for Aged, Blind and Disabled Californians (Welf. & Inst. Code, § 12000 et seq.), which is distinct from the Lanterman Act, establishes claimant's entitlement to SSP from the State of California. (*Id.*, § 12150.)

3. The matters stated in Findings 4 through 8 establish that claimant deserves \$1,407.60 in SSP funds that he has not received.

4. The Lanterman Act requires SARC to identify and pursue all possible funding sources for claimant's living expenses, including SSI and SSP. (Welf. & Inst. Code, § 4659, subd. (a)(1).) The matters stated in Findings 4 and 5 establish that SARC did not fulfill this obligation. The matters described in Findings 7 and 8 establish that SARC has been unable to correct its error in full.

5. A fair hearing under the Lanterman Act addresses only "issues concerning the rights of persons with developmental disabilities to receive services under" the Lanterman Act. (Welf. & Inst. Code, § 4706.) The hearing officer may order SARC to provide Lanterman Act services, for which SARC pays using funds it receives from DDS; but the hearing officer has no authority to order DDS to provide funds to claimant or to SARC. The hearing officer also may direct SARC to provide services that SARC erroneously has not provided, but has no authority to direct SARC to pay consequential damages to claimant for any SARC error or omission. Finally, the hearing officer has no authority to direct SARC to take impossible actions, such as distributing SSP funds to claimant that SARC does not have and cannot obtain.

6. In this matter, by reason of the matters stated in Finding 8 and Legal Conclusion 5, no remedy is available to claimant through the Lanterman Act fair hearing process. If any remedy is available, claimant must seek it from a court with jurisdiction to enforce laws beyond the Lanterman Act's service requirements.

ORDER

Claimant's appeal is denied.

DATED: June 26, 2017

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This decision is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.