

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

OAH No. 2017030483

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

---

DECISION

This matter was heard before Administrative Law Judge Heather M. Rowan, State of California, Office of Administrative Hearings, on April 10, 2017, in Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC or the regional center).

Claimant's brother and conservator represented claimant.

Evidence was received and the matter was submitted for decision on April 10, 2017.

ISSUE

Does claimant's representative have a right to reimbursement of legal fees he incurred in applying for conservatorship of claimant?

//

//

## FACTUAL FINDINGS

### PROCEDURAL HISTORY

1. Claimant is 46 years old and was diagnosed with autism and “mild mental retardation<sup>1</sup>” at approximately three years old. Records of claimant receiving regional center services are available since 2000, but appear to have started as early as 1993. She has several health conditions, including high blood pressure, diabetes, menorrhagia, and anemia. Between 2010 and 2014, the regional center contacted Adult Protective Services (APS) multiple times regarding concerns that claimant’s medical needs were not being met.

2. On June 23, 2014, the El Dorado County Superior Court granted the El Dorado County Public Guardian (EDCPG) conservatorship of claimant. The conservatorship was based on an outstanding need for a third party to oversee claimant’s medical needs and safety. Claimant’s representative learned of the temporary conservatorship and the possible permanent conservatorship. Claimant’s representative filed for and was granted permanent conservatorship, after paying an attorney \$3,000 to file and argue for conservatorship. Claimant’s representative requested that the regional center reimburse him for his out-of-pocket legal fees, stating that the regional center “forced” him to file for conservatorship of claimant. The regional center denied the request and claimant’s representative requested a fair hearing.

3. For purposes of the fair hearing, ACRC provided claimant’s Individual Program Plans (IPP) from November of 2009 through November of 2016. ACRC also provided “Consumer I.D. Notes” from October 2, 2000 through March 30, 2017.

---

<sup>1</sup> This term has been updated in recent years. Currently, the appropriate term is “intellectual disability,” and will be used from here forward.

## CLAIMANT'S BACKGROUND AND HEALTH HISTORY

4. Claimant lives with her mother in their family home in El Dorado Hills. She is 46 years old, and, as stated, qualifies for regional center services based on diagnoses of autism and intellectual disability. Claimant attends a day program to assist with socialization and other life skills. Her mother does not drive on the highway, and the regional center, along with claimant's day program, has provided transportation services to assist claimant in receiving regular medical care. Claimant's representative lives in Martinez, which is approximately an hour and a half from El Dorado Hills. He participates in claimant's care and oversight as much as possible.

5. Claimant's mother suffers from a mental illness for which she has been prescribed medication. Records throughout claimant's I.D. notes indicate that claimant's mother does not always take her medication, which makes it difficult for her to oversee claimant's medical and safety needs. In January of 2006, when claimant's father had been diagnosed with a terminal illness and was in assisted living, an unknown person called APS regarding concerns about claimant's welfare. By March of 2006, claimant's mother was reportedly not taking her medication and claimant was "basically neglected and alone." Out of concern for claimant's safety, the regional center contacted APS.

6. In 2006, based on a referral from APS, EDCPG's office opened an investigation regarding whether EDCPG should petition for conservatorship over claimant. After claimant's father passed away, APS inquired of ACRC whether claimant should be placed in a care home. ACRC informed APS that claimant's representative would like the family to stay together as long as possible. Claimant remained in the family home.

7. In November of 2010, claimant was suffering from "a potentially urgent health issue." She had been experiencing a heavy menstrual period for three weeks and needed to see a gynecologist. Claimant's mother did not understand the urgency of the

medical issue, and only said that claimant was "in charge of her own periods."

Additionally, claimant was prescribed two different blood pressure medications, but had been taking only one of the two. Her mother stated that she did not understand that claimant was supposed to be taking two medications for this condition. Claimant also had flea bites on her ankles, and stated that her cats have fleas. ACRC contacted both claimant's representative and APS. Claimant's representative was not aware the extent to which claimant's mother was unable to care for claimant, and reportedly agreed that more oversight for claimant was needed. ACRC determined that a referral to EDCPG would again be necessary.

8. Following this incident, with help from her day program, Inalliance, Inc., claimant was able to fill her necessary prescriptions. Inalliance assisted claimant in identifying her medications, purchasing a pill box, and understanding that her thyroid medication must be taken 30 to 60 minutes before breakfast. Even so, in December of 2010, claimant's health care provider found that claimant was missing periods, her medications were not being taken properly, and she needed to lose weight. The health care provider suggested that claimant be limited to one diet soda per day and that she receive education regarding nutrition. Claimant's mother denied that she needed help caring for claimant. A home visit by APS also found that claimant's medications were not properly administered, there was no healthy food in the home, and that claimant's mother stated they did not need assistance. APS and EDCPG determined that there was no "immediate danger" that would prompt conservatorship by the public guardian, but that oversight was necessary, particularly regarding claimant's medications. ACRC's I.D. notes indicate that the public guardian's office would call claimant's representative to update him on the situation.

9. Claimant began taking birth control pills in late 2010 or early 2011, but her mother had difficulty administering the pills. Additionally, in November of 2011,

claimant was reported to have gained weight and her mother was unable to change claimant's food choices. In May of 2012, Inalliance reported that claimant was not responding appropriately to questions and was unfocused. It was determined that her blood pressure was high, she was not taking the proper blood pressure medications, and she had gained weight. She again had flea bites on her ankle, some of which were infected.

10. In November of 2012, claimant again experienced heavy menstrual bleeding, despite having been prescribed birth control pills. She was lethargic, and was taken to a doctor who diagnosed her as anemic. The doctor determined that a birth control shot would be more effective in controlling claimant's bleeding, considering her difficulty in following a medication regiment.

11. Also in November of 2012, during an IPP meeting at claimant's home, ACRC noticed that both bathrooms in the home were in potentially unsafe states of disrepair. The subflooring was exposed, the shower in one bathroom had been gutted but not replaced, one sink would not drain and was unusable, the tile grout was moldy, and there were areas where the floor was open to the area under the house. Additional concerns involved whether claimant's mother was taking her own medication as prescribed. ACRC expressed its concerns to APS and EDCPG. ACRC also called claimant's representative to discuss the medical issues and the state of the house. ACRC informed claimant's representative that APS and EDCPG were involved and would conduct their own investigations, not controlled or overseen by ACRC. At this time, APS reportedly stated that if claimant's system of support was not meeting her needs, a temporary conservatorship would enable ACRC to find a suitable living situation where her needs could be met. This information was conveyed to claimant's representative.

12. In December of 2012, ACRC prepared information for APS and EDCPG regarding its concerns for claimant over the previous two years. APS scheduled a home

visit and interview. There were concerns that the upkeep of the home was too much for claimant's mother and perhaps alternate living situations should be explored. EDCPG determined that claimant was "on the edge" of needing conservatorship at that time and, consequently, they would not be filing for temporary conservatorship. ACRC continued to attempt to find appropriate oversight for claimant's medical needs and transportation.

13. By April of 2013, claimant's representative had completed the remodel of both bathrooms. The regional center conveyed this information to APS. Also in early 2013, ACRC identified a "personal attendant" service to transport claimant to medical appointments, assist her with her food choices and exercise, educate her about cleanliness, and oversee her medications. Claimant's mother was resistant to these services and to an intake interview. Eventually the service began, and both claimant and her mother found the service to be quite helpful.

14. In April of 2013, claimant's day program reported that when claimant was picked up, she smelled strongly of body odor, "litter box smell," and stale menstrual blood. She was making strange sounds and biting herself. ACRC asked claimant's mother whether claimant was having menstrual cycles again, despite the birth control injections. Claimant's mother was confused and anxious, and unclear about claimant's medication. A similar occurrence happened the following week. When asked if she had showered, claimant began biting herself and making sounds. Claimant's mother also continued to exhibit atypical and anxious behaviors. From April through June of 2013, claimant continued to express these outbursts of behaviors and have difficulty with her personal hygiene. Efforts were made to assist claimant in understanding the need to shower, wash her clothing and bedding, and change her clothes before leaving the house for the day. In August of 2013, claimant exhibited violent behavior toward one of her caregivers from the day program.

15. In October of 2013, claimant's mother's erratic behavior caused ACRC to inform APS that claimant's mother might not be taking her medication which would pose a health and safety risk to claimant. Around this time, claimant was diagnosed with Type II diabetes and put on medication. She was instructed to change her diet, get more exercise, and to check her blood pressure daily. In November of 2013, Claimant's mother reportedly stated that claimant demanded unhealthy foods and fast food and refused to have her blood pressure taken. If claimant's mother did not comply, claimant would make loud noises and bite herself. She also refused to have her blood sugar tested at home with her mother, though usually an aid worker could accomplish this. The I.D. notes express concern that the foods available to claimant in the home were frozen pizza, hamburgers, and processed foods. The notes indicate that claimant's mother was afraid to say no to claimant, which was not in claimant's best health interests. Additionally, there were indications that claimant's mother did not understand the seriousness of the Type II diabetes diagnosis. Claimant's doctor stated that without dietary changes, claimant would be insulin-dependent within one year.

16. ACRC contacted claimant's representative to discuss claimant's current health situations and her caregivers' concerns. Claimant's representative did not believe claimant's mother understood that addressing claimant's diet, exercise, and medication needs were urgent matters. Claimant's representative doubted that claimant's mother would be able to help create a regiment of diet, exercise, blood glucose testing, and appropriate medication. He suggested that he would call claimant nightly to check on her adherence to the schedule. He also suggested that claimant spending a period of time in a care home to help her develop healthy habits might be useful.

17. In December of 2013, claimant was introduced to nutritional classes to assist her in understanding the importance of her food choices. Personal attendants continued to help claimant grocery shop and prepare foods, as well as encourage her to

walk outside. There continued to be a concern regarding the foods claimant's mother was providing her, and this concern was relayed to claimant's representative.

Additionally, in January of 2014, because claimant was refusing to test her blood glucose on her own, and her mother was not able to assist her in doing so, claimant's doctor expressed that he would not be able to continue to manage her diabetes. At this point, considering claimant's blood glucose level was averaging around 270, when her target level was closer to 120, ACRC and the personal attendants expressed concern for her continued living at home. ACRC further cautioned that if claimant was not able to test her own blood glucose, APS and EDCPG might have to step in. This would allow claimant to be placed in a home that could oversee her medical care. Claimant's representative was informed of the situation.

18. In February of 2014, claimant was continuing to refuse to self-test and her mother was not encouraging the testing. Claimant's mother purchased cupcakes, fast food, and other unhealthy foods for claimant, resulting in high blood sugar levels. Claimant had several aggressive and self-injurious behavior outbursts through the month. Claimant's representative was informed of this and stated that he would attend claimant's upcoming doctor and gynecology appointments with her. Claimant's representative and claimant did not arrive in time to see the doctor for the appointment, but they saw her gynecologist. In March and April of 2014, claimant's doctor determined that her current medical needs could not be met in her current living situation. Both claimant's doctor and ACRC contacted APS with an update of claimant's medical situation. APS and ACRC then contacted claimant's representative regarding her current medical care. He was not able to provide information about his view of claimant and her mother's abilities to manage claimant's diabetes.

19. In May of 2014, claimant's representative asked ACRC about options for assisted living for claimant. In June of 2014, claimant's representative attended a



doctor's appointment where a representative from both APS and EDCPG were present. EDCPG stated it would move forward with temporary conservatorship. EDCPG was in contact with claimant's representative, who was learning more about conservatorship and assessing his options. EDCPG submitted a petition for temporary conservatorship on June 10, 2014. The court granted the petition on June 19, 2014. Claimant's representative filed for conservatorship in August of 2014. On October 10, 2014, the court granted the petition.

#### CLAIMANT'S REPRESENTATIVE'S ASSERTIONS

20. Claimant's representative testified that the regional center forced a conservatorship of claimant by the public guardian. The proceeding happened quickly and claimant's family did not have the opportunity to contest the action. He further argued that there was no reason for EDCPG to be involved in claimant's care and support because (1) claimant was adequately supported by her mother and her family, and (2) claimant's care under EDCPG was worse than prior to her conservatorship. He contended that he was forced to step in and apply for conservatorship over claimant when he learned of EDCPG's temporary conservatorship. Claimant's representative hired an attorney to apply for conservatorship over claimant at a cost of \$3,000.

Additionally, claimant's representative asserted that claimant's health and access to services decreased during the time she was under EDCPG's conservatorship. He believed that ACRC had an ulterior motive in requesting the EDCPG's involvement. Specifically, he believed one of claimant's service coordinators might have been biased because she had a brother who passed away as a result of diabetes. He also expressed that one of the service coordinators and a manager at ACRC "wanted [claimant] removed" from the family home because she "didn't like [claimant's mother]."

## ACRC'S POSITION

21. The regional center's duty is to act in the best interest of their clients. Through the IPP process, a client and her IPP participants outline her services, goals, and needs. In this case, the IPP team includes, among others, claimant, her ACRC service coordinator, claimant's mother, claimant's representative, and a participant from Inalliance. Claimant's I.D. notes document that ACRC has facilitated claimant's day program, personal attendant, doctor visits, and education for many years. There were times when ACRC's own service coordinators stepped in to transport claimant to doctor appointments when no other options were available. ACRC has documented for years that claimant's mother is not able, on her own, to provide for claimant in all areas of her care, but most especially her health care. Her IPP team has attempted to address claimant's various needs and identify whether they are being met.

22. At times, ACRC has filed reports with APS regarding its concerns that claimant's needs were not being met. It is well-documented that concerns regarding claimant's welfare date back to at least 2000. ACRC employees are required by law to file a report with APS if they suspect abuse or neglect. Such reports are separate from the IPP, which is also required by law. ACRC has attempted to maintain open lines of communication among all of claimant's IPP team regarding claimant's needs and health status. Once there is a need for APS to be involved, however, ACRC is not involved regarding the course of action APS takes, whether that is no action, or contacting the public guardian.

23. ACRC has encouraged claimant's representative to be as involved as much as possible with claimant and her mother. Claimant's representative has been on claimant's IPP team, made renovations to the house, maintained contact with ACRC service coordinators, encouraged claimant to continue her medication and glucose testing regiment, and has been present for many doctor appointments. Even so,

claimant's representative lives about an hour and a half away from her and cannot oversee her daily needs. At one point, when he was frustrated with ACRC and its service coordinators, claimant's representative threatened to remove claimant from services that ACRC coordinates. ACRC's reports to EDCPG as well as APS have consistently been in claimant's best interests. ACRC's support of the public guardian over claimant's representative to be claimant's limited conservator was based on claimant's representative living outside of the area and having his own family for which he is responsible as well as his threat to remove claimant from ACRC services.

## DISCUSSION

24. Claimant's representative's frustration is understandable. He is responsible for himself, his own family, the family home in which claimant and claimant's mother live, as well as the well-being of claimant and claimant's mother, both of whom have mental and physical health issues. The evidence clearly established, however, that claimant's representative was consistently made aware of the conditions in the home, claimant's mother's limitations in caring for claimant, and claimant's difficulties in both behavior and health. On more than one occasion, claimant's representative asked a service coordinator about alternate living situations that would be appropriate for claimant, and the practicalities of conservatorship. He shared ACRC's concerns that claimant might need more oversight than she was getting, but he understood that claimant had said she wanted to stay with her mother.

25. ACRC's action in reporting the current state of claimant's well-being to APS is understandable and justified in this situation. There were serious health risks that were not being addressed properly. Claimant's mother does not drive on the freeway, does not always take her medication, does not adhere to claimant's doctor's advice regarding diet and exercise, gets confused by claimant's medication regiment, and is afraid to tell claimant "no." Once APS had been notified, APS is obligated to

investigate and make recommendations. Whether APS contacts EDCPG is beyond ACRC's influence. ACRC is required, however, to make recommendations whenever a petition for conservatorship is filed for one of its clients, and must make such recommendations in the clients' best interests.

26. Finally, the Lanterman Developmental Disabilities Services Act (Act), which governs these proceedings and a regional center's actions, does not provide for attorney fees to be reimbursed whether for fair hearings, or other court proceedings. Accordingly, claimant's representative's request to be reimbursed for the legal costs he incurred to petition the court to be claimant's conservator must be denied.

## LEGAL CONCLUSIONS

1. Under the Act, the State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.) As defined in the Act, a developmental disability is a disability that originates before age 18, that continues or is expected to continue indefinitely and that constitutes a substantial disability for the individual. (Welf. & Inst. Code, § 4512, subd. (a).) Claimant is subject to services under the Act.

2. Claimant's representative is requesting that the regional center reimburse him for legal fees he incurred. Claimant's representative bears the burden of proving he is entitled to such attorney fees. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044 ["As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence..."].)

3. Generally, in absence of some special agreement, statutory provision, or exceptional circumstances, attorney's fees are to be paid by the party employing the attorney. (Code Civ. Proc., § 1021.) There are several exceptions to the general rule, which include: (1) where attorney's fees are specifically provided by statute; (2) where

attorney's fees are specifically provided by contract; and, (3) where a plaintiff in an equitable action recovers or preserves a common fund, or obtains benefits for himself and others.

The Act does not provide for the recovery of attorney's fees. No contract or purchase order containing an attorney's fees clause exists in this matter. It was not established that claimant's request for a fair hearing in this matter constituted an equitable action to recover or preserve a common fund.

4. The matters set forth in the Factual Findings have been considered. The history in this matter supports ACRC's report to APS, and the public guardian's conservatorship that followed. Claimant's representative did not establish a basis for an award of attorney fees.

## ORDER

Claimant's appeal from Alta California Regional Center's denial of reimbursement for attorney fees is denied.

DATED: April 19, 2017

---

HEATHER M. ROWAN

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 ninety (90) days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**