

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2017031184

DECISION

This matter was heard before Administrative Law Judge Tiffany L. King, State of California, Office of Administrative Hearings (OAH), on May 1, 2017, in Sacramento, California.

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

Notice of hearing was properly served on claimant's conservator, in accordance with Welfare and Institutions Code section 4711.¹ There was no appearance by or on behalf of claimant.

Evidence was received and the matter was submitted for decision on May 1, 2017.

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

ISSUE

May ACRC terminate claimant's ongoing ACRC-funded services or supports based on her conservator's failure to sign claimant's Individual Program Plan (IPP)?

FACTUAL FINDINGS

1. Claimant is 46 years old and is eligible for ACRC services based on diagnoses of autism and mild intellectual disability. Claimant receives such services pursuant to the Lanterman Developmental Disabilities Services Act (§§ 4500 et seq.) (Lanterman Act). Claimant currently resides with her mother. She has been attending a day program, InAlliance, since approximately 2000.

2. On November 30, 2016, claimant's conservator, ACRC Service Coordinator Michelle Miller, and Patricia Reed of InAlliance met for claimant's annual Individual Program Plan (IPP) meeting. During the meeting, Ms. Miller filled out an ACRC 588 form, "Services and Supports for the Individual Program Plan" (588 form). The 588 form lists the services and supports for which ACRC will provide funding for the new IPP. The 588 form is part of the IPP, and the claimant or her representative's signature thereon is required to authorize ACRC to fund the listed services and supports. The IPP is then finalized and distributed to the IPP team. Ms. Miller presented the 588 form to claimant's conservator at the IPP meeting, but he refused to sign it.

3. Over the course of the next three months, ACRC made multiple requests that the conservator sign claimant's IPP. The conservator agreed to sign the IPP, but was reluctant to do so until the corrections or changes he requested were made to the document.

4. On February 1, 2017, Ms. Miller emailed the conservator to follow up on the outstanding 588 form. She reminded him the IPP was overdue. She further advised that, without the current IPP and 588 form signed, by law ACRC could no longer fund

services for claimant. Ms. Miller requested that the conservator sign and return the IPP and 588 form no later than February 15, 2017. If not received by that date, Ms. Miller advised ACRC must send a Notice of Action that it would discontinue services for claimant. That same day, the conservator responded by email:

I will mail back this week. This IPP meeting was later in the year. Been looking at addition (*sic*) services to supplement [claimant's] week. Let's prepare [claimant's] IPP earlier in the year so there's a two month window to coordinate before ACRC deadlines.

5. The conservator did not return the IPP and signed 588 form as promised. Over the next two weeks, he and ACRC exchanged several communications regarding his requests for changes to the IPP, but nothing specific to the 588 form itself. On February 16, 2017, Ms. Miller emailed the conservator, and again requested that he return the signed 588 form. He responded the same day, requested a copy of the "entire IPP," and indicated he would sign the 588 form and email it to Ms. Miller that day. He did not return the signed 588 form. Thereafter, ACRC proceeded with preparation of a Notice of Action regarding termination of ACRC-funded services for claimant based on the lack of a current IPP.

6. On March 2, 2017, Ms. Miller emailed the conservator a final copy of the IPP and 588 form. That same day, Sharon Wiggins, ACRC Program Manager, emailed the conservator stating:

We have made several requests of you to sign the 588 Supports and Services, the signature page of the IPP. You still have not done so. Please know that we will be sending you a

Notice of Action to inactivate [claimant's] case and terminate ACRC funded services.

7. On March 2, 2017, the conservator signed the 588 form and hand-wrote "signed to continue services" beneath his signature. At the bottom of the signature page, he made the following handwritten notation:

I was forced to sign form ACRC 588 against my will to continue services for [claimant]. Form signed in best interest of [claimant] to continue services.

8. On March 2, 2017, prior to receiving the signed 588 form from the conservator, ACRC issued a Notice of Proposed Action (NOPA) in which it proposed inactivating claimant's regional center case and terminating any ongoing ACRC-funded services or supports. ACRC asserted the proposed action was based on the conservator's failure "to comply with the Individual Program Plan process as defined in the Lanterman Act," and noted he had failed to sign claimant's IPP despite numerous requests. The NOPA advised the conservator of his right to appeal the decision and to request mediation.

9. On March 12, 2017, the conservator signed and filed a request for a fair hearing and mediation. On March 27, 2017, he withdrew his request for mediation. On March 28, 2017, OAH issued a Notice of Hearing setting the matter for 9:00 a.m. on May 1, 2017, in Sacramento.

10. As of March 2, 2017, claimant had a current and valid IPP on file with ACRC. At no time were ACRC-funded services or supports suspended, discontinued, or terminated due to the conservator's failure to sign claimant's IPP.

DISCUSSION

11. It is undisputed that a current IPP is in place and that there was no break in any ACRC-funded services or supports for claimant prior to or after the conservator signed the IPP on March 2, 2017. It is also undisputed that ACRC is no longer seeking to suspend, discontinue or terminate any of said services or supports for claimant based on the reasons stated in the NOPA. Accordingly, the proposed action by ACRC, and claimant's appeal therefrom, are moot and the appeal should be dismissed.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development 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.)

2. ACRC has the burden of proving it is authorized to terminate ACRC-funded services and supports for claimant. (*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 . . ."].) The standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

3. Section 4646 provides, in relevant 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 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, legal guardian or conservator, or authorized representative, 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, legal guardian, conservator, or authorized representative at the program plan meeting.

[¶] . . . [¶]

(f) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

(g) An authorized representative of the regional center and the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative ***shall sign the individual program plan prior to its implementation.*** If the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative, does not agree with all components of the plan, he or she may indicate that disagreement on the plan. ***Disagreement with specific plan components shall not prohibit the implementation of services and supports***

agreed to by the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative. If the consumer or, when appropriate, his or her parent, legal guardian, conservator, or authorized representative, does not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701. (Emphasis added.)

4. Section 4646.5 states, in relevant part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(8) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, authorized representative, or conservator requests an

individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

5. The matters set forth in the Factual Findings have been considered. As claimant is currently receiving ACRC-funded services and supports, there was no suspension or termination of those services, and ACRC is no longer seeking to suspend or terminate any services based on the reasons stated in the NOPA, the issue on appeal is moot and the appeal should be dismissed.

ORDER

Claimant's appeal from Alta California Regional Center's proposal to terminate services and supports is DISMISSED.

DATED: May 10, 2017

TIFFANY L. KING

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).)