

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2017060251

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on July 27, 2017, in Napa, California.

Claimant was represented by his mother. Claimant did not attend the hearing.

Jack Benge, Legal Specialist, represented the North Bay Regional Center (NBRC), the service agency.

The matter was submitted for decision on July 27, 2017.

ISSUE

Is NBRC required to provide funding for the fees associated with conservatorship proceedings?

FACTUAL FINDINGS

1. Claimant is an 18-year-old boy who lives with his family. Claimant receives NBRC services based on his diagnoses of autism spectrum disorder and mild intellectual

disability. Claimant will be starting his senior year at high school soon. Claimant receives various special education services through the school district.

2. Claimant has an Individualized Program Plan (IPP) dated March 28, 2017. NBRC is funding behavior services, and this has proved valuable in addressing behavior issues and social skills deficits. Claimant's IPP goals include increasing his independent living skills, continuing to live with his family for the time being, working towards attending community college, improving his social skills, and increasing his access to the community and participation in community activities.

3. During the IPP planning process, claimant's mother expressed to claimant's service coordinator, Ashley Allen, that the family planned to petition for a limited conservatorship and hoped that this could be funded by NBRC. Allen gave the family a publication disseminated by Disability Rights California entitled, "Limited Conservatorships & Alternatives" and encouraged them to review it. Allen noted in an addendum to the IPP that she "explained to the family that [NBRC] does not support funding for a limited conservatorship." Allen provided information on generic resources available for legal assistance, such as legal aid and legal self-help clinics.

4. Claimant's mother believes that claimant needs to be conserved for his own protection. She anticipates legal fees and court costs will be around \$3,500. She has been overwhelmed with managing claimant's day-to-day care, especially in dealing with doctors, the school, and financial institutions. She stated that claimant is unable to make decisions and is vulnerable to people taking advantage of him. She explained that although claimant has been taught how to prepare simple meals, how to cross the street safely, and how to make a simple purchase, he still requires supervision in performing these tasks. When counsel for NBRC suggested that a limited conservatorship might not best maximize claimant's potential, claimant's mother explained that she trusts the

superior court to make the correct decision and to deny the petition if it is not warranted.

Claimant's family does not believe that alternatives to a limited conservatorship, such as a durable power of attorney, are sufficient to protect claimant. Claimant's mother added that she does not have the time or energy to seek low-cost legal services. She is wary of using self-help legal services because she does not want to make a mistake.

5. In a Notice of Proposed Action dated May 8, 2017, NBRC notified claimant that the request to fund fees associated with limited conservatorship was denied, and explained:

It is the proposed conservator's responsibility to file a petition. North Bay Regional Center's role in the process of establishing conservatorship is to complete an assessment and submit a report to the Superior Court with its recommendations concerning a person's needs for a conservator in each of the seven areas specified at all [sic]. North Bay Regional Center cannot and does not fund the fees associated with legal services. This would not constitute a cost-effective use of public funds.

6. Allen has performed a court-ordered conservatorship assessment of a NBRC consumer on one occasion. She explained that it is an involved process with a short deadline. She interviewed the consumer and his teachers and consulted with a staff psychiatrist and a legal specialist in the preparation of the assessment.

7. Allen prepared the Notice of Proposed Action denying claimant's request. She explained that she denied the request because it involved the funding of legal

services, and not because she formed any opinion regarding whether a limited conservatorship would be appropriate for claimant.

8. NBRC argued at hearing that funding the conservatorship process would conflict with its role as defined in the Probate Code, which is to perform a neutral assessment for the court. NBRC further argued that a limited conservatorship would hinder claimant in reaching independence and added that it has programs and supports available to assist claimant with decision making now that he is an adult.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.¹) The Lanterman Act mandates that an “array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers have the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646.) The determination of which services and supports are necessary is made after gathering information and analyzing the needs and preferences of the consumer, the range of service options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

2. Section 4512, subdivision (b) defines “services and supports” as follows:

“Services and Supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal

services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, telehealth services and supports, as defined in Section 2290.5 of the Business and Professions Code, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

3. Probate Code section 1801, subdivision (d), provides that:

A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A

limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

4. Probate Code section 1827.5 provides that when a limited conservatorship is being sought for an individual with a developmental disability, the regional center will perform an assessment of the individual and will prepare a written report with findings and recommendations to the court presiding over the conservatorship proceeding.

5. Claimant has failed to establish that a limited conservatorship would further any of the goals of his IPP. In addition, claimant has not explored the possibility of generic resources which could assist in the process. Accordingly, claimant is not entitled to NBRC funding for the filing of a petition for a limited conservatorship at this time.

ORDER

The appeal of claimant from NBRC's Notice of Proposed Action dated May 8, 2017, is denied. NBRC is not required to fund limited conservatorship proceedings.

DATED: August 3, 2017

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.