

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the elimination of  
preferred provider respite services of:

OAH No. 2017080670

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on September 25, 2017.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on behalf of claimant.

The matter was submitted on September 25, 2017.

ISSUE

Does claimant continue to be eligible for preferred provider respite services (PPR) despite having achieved a high degree of independence?

FACTUAL FINDINGS

1. Claimant, a 20-year-old woman, qualifies for regional center services based on a diagnosis of autism. Claimant currently receives PPR services. Her family

member provides the service. She is also eligible to receive job coaching, but is not currently receiving that service as she is no longer working due to an on-the-job injury.

2. On July 19, 2017, IRC notified claimant that she will no longer be eligible for PPR services because she has achieved a high degree of independence. IRC further noted:

Your service can no longer be provided . . . because respite services are meant to give a care giver temporary and intermittent breaks from providing care. [Claimant], you are an independent young woman who completes your daily living skills independently. You have daily safety awareness skills and you can stay home alone without supervision. [Claimant], you attend Riverside Community College and were employed at WalMart. . . . [Claimant], you are 20 years old. You reside in the parental home with [your] parents and siblings. You do not receive SSI benefits or In-Home Supportive Services. [Claimant] in September 2016, you began participating in the employment program earning minimum wage through Vocational Improvements Program, Inc. (VIP). You were working at WalMart until you injured yourself at work on April 3, 2017. You currently receive medical benefits through Medi-Cal.

3. Claimant's mother disagreed with IRC's Notice of Proposed Action and filed a Fair Hearing Request on July 31, 2017, seeking to keep the PPR services in place. Claimant's mother and IRC representatives attended an informal meeting on August 24,

2017, to discuss the fair hearing request. Following the meeting, IRC adhered to its determination that claimant was no longer eligible for PPR services.

4. The matter was called for hearing and neither claimant nor claimant's mother appeared. Neither claimant nor her mother contacted OAH or IRC regarding a request for a continuance. The Notice of Hearing and a subsequent letter from IRC dated September 18, 2017, notifying claimant and claimant's mother of the hearing date, were served at the address provided on the Fair Hearing Request. Service being proper, claimant is in default. IRC elected to present its evidence for a determination on the merits.

5. Keyla Echeverria, claimant's consumer service coordinator, testified at the hearing. Ms. Echeverria testified that claimant does not need assistance with her daily living skills; has good safety awareness; attends community college on her own; does not display any challenging behaviors; and can stay at home alone for a short period of time. During a recent IPP meeting, she discussed claimant's independence with claimant and claimant's mother and the need to remove PPR services. Claimant's mother said that claimant has decided to become a vegan and is now refusing to eat, so she needs the PPR services to continue. Ms. Echeverria told claimant's mother that other services would be more appropriate, such as independent living services that would help claimant learn to cook, do laundry, clean house, money management, and function on her own. Claimant agreed and Ms. Echeverria contacted vendors. Once a selected vendor contacted claimant, she indicated she was no longer interested in independent living services.

6. Brandie Parhm is the Program Manager that supervises claimant's consumer services coordinator. Ms. Parhm discussed claimant's Client Development Evaluation Report (CDER), dated June 27, 2017, which contains an assessment of claimant's skill level. The CDER, which was prepared in consultation with claimant and

claimant's mother, rates claimant's skill levels in the following areas: using hands; walking; using a wheelchair; taking medication; eating; toileting; bladder and bowel control; personal care; dressing; focusing on tasks and activities; verbal communication; non-verbal communication; social interaction; and emotional outbursts. Claimant is rated on a scale from 1 to 5, with 5 being totally independent. Claimant received scores of five in every area except one, indicating she is functioning with almost complete independence.

7. Ms. Parhm echoed Ms. Echeverria's testimony with respect to PPR services no longer being necessary; to that end, Ms. Parhm agreed that independent living skills would be a more appropriate service given claimant's level of independence.

## LEGAL CONCLUSIONS

### BURDEN AND STANDARD OF PROOF

1. In a proceeding to discontinue services that are currently being funded for an eligible consumer, the burden of proof is on the regional center to establish that by a preponderance of the evidence that termination of the service is warranted. (Evid. Code, §§ 115, 500; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### APPLICABLE LAW

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welfare & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more

independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. The State Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

4. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

5. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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, 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 . . . 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.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2). Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code Section 4646.4, subdivision (a), requires IRC to adhere to its Purchase of Service Standards (POS) when determining what services it will fund.

12. Welfare and Institutions Code section 4690.2, subdivision (a), defines respite services as "intermittent of regularly scheduled temporary nonmedical care and supervision" provided in the client's own home, for a regional center client who resides with a family member. The purposes of respite services are to assist family members in maintaining the client within the home, relieve family members from the responsibility of having to care for a client, and to attend to the client's basic self-help needs.

13. Welfare and Institutions Code section 4686.5, subdivision (a), provides that a regional center may only purchase respite services when the needs of the consumer exceed that of an individual of the same age who does not suffer from developmental disabilities.

## EVALUATION

14. In a proceeding where a regional center is seeking to discontinue services for an eligible consumer, the burden is on the regional center to establish by a preponderance of the evidence that the service is no longer necessary. IRC met their burden and claimant produced no evidence to contradict IRC's determination. Claimant has achieved virtually complete independence and there is no evidence that anyone is burdened by caring for claimant to the extent that they would need a break. Claimant worked in the past, and she currently attends community college. Claimant has no self-care needs and tends to her own personal hygiene. On this record, PPR services are no longer necessary and IRC may terminate them.

## ORDER

Claimant's appeal from the Inland Regional Center's determination that she is no longer eligible for Preferred Provider Respite Services, is denied.

DATED: September 27, 2017

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

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