

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2017090965

DECISION

Tiffany L. King, Administrative Law Judge Tiffany L. King, Office of Administrative Hearings (OAH), State of California, heard this matter at the Far Northern Regional Center in Chico, California, on November 2 and 8, 2017.

Claimant, who was not present at the hearing, was represented by her mother.<sup>1</sup>

The Far Northern Regional Center (FNRC or the Service Agency), was represented by Phyllis J. Raudman, Attorney at Law. Although not a named party, claimant's father was also present in support of FNRC's position.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was held open to allow the parties to submit claimant's most recent Individualized Education Program (IEP), dated November 6, 2017. The IEP was received by OAH on November 15, 2017, and marked as Exhibit 14. Thereafter, the record was closed and the matter was submitted for decision on November 15, 2017.

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<sup>1</sup> The names of claimant and her family are not used to protect their confidentiality.

## ISSUE

Is FNRC required to continue funding claimant's out-of-home placement through Remi Vista Inc.'s Bear Mountain facility in Redding, California?

## FACTUAL FINDINGS

1. Claimant is a 12-year old girl receiving regional center services based on her diagnosis of Mild Intellectual Disability. She is also diagnosed with Fetal Alcohol Syndrome (FAS). Claimant has been receiving services from FNRC pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code Section 4500 et seq.<sup>2</sup>

2. From birth until age 10, claimant lived with her parents and three siblings (two brothers and one sister) in their family home in Chico.<sup>3</sup> She attended public school in the Chico Unified School District where she had an IEP. An FNRC Progress Assessment Report, dated March 20, 2014, noted that claimant required assistance with personal hygiene, and that she engaged in disruptive behavior on a daily basis, physical aggression resulting in injury more than once in the past 12 months, and self-injurious or eloping behavior at least once a month. Claimant also had emotional outbursts which required intervention on a weekly basis. Claimant took medication, including Abilify, to help manage her behavior. While residing in the family home, claimant qualified for In Home Supportive

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<sup>2</sup> Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

<sup>3</sup> As an infant, claimant was placed in foster care with her parents, who ultimately adopted her. In addition to the three siblings at home, claimant also has one adult sibling who lives independently.

Services (IHSS), provided by her mother. She also received funding from FNRC for in-home respite care.

3. By 2015, claimant's behaviors had become increasingly unmanageable, both at home and school. In July 2015, claimant's behavioral medication changed from Abilify to Invega injections every 28 days. In November 2015, claimant's parents were experiencing marital trouble and her father moved out of the family home. Claimant continued to live with her mother and three siblings in the family home. Claimant's father contacted FNRC to discuss claimant's options, including possible out-of-home respite care.

4. On February 4, 2016, claimant was placed in the Cerro Vista crisis home, operated by Remi Vista and located in Redding, due to problematic behaviors at home, including elopement and aggression toward others. She was enrolled in Juniper School, a K-8 elementary school in the Redding School District. On November 28, 2016, after claimant's behaviors were stabilized, she transferred to the Remi Vista Bear Mountain facility (Bear Mountain), a long-term care facility for children in Redding. Claimant currently resides at Bear Mountain Sunday evenings through Friday evenings. She spends her weekends in Chico, alternating visits with her mother and father, who share joint legal and physical custody of claimant. No problems have been reported concerning these weekend visits. Claimant is in the seventh grade in a special day class at Juniper School and has an IEP.

5. Following claimant's transition to Bear Mountain on November 28, 2016, a meeting was held to discuss proposed changes to claimant's Individual Program Plan (IPP). One of the stated goals in the IPP was reducing claimant's severe behavior so that she could possibly live with her family again.

6. A progress report from Bear Mountain, dated April 18, 2017, noted that claimant was progressing positively with her personal hygiene. She was also working on improving her social and recreational awareness. The report noted that claimant had "a

difficult time with safety awareness,” and that increasing her safety awareness remained an ongoing goal. During the reporting period, claimant performed well at school, socially and academically. There were no problems reported or observed regarding her weekend visits with her parents.

7. FNRC held a quarterly case review on August 17, 2017. In attendance were claimant’s parents, Julie Ayotte (FNRC Service Coordinator), Wayne Doering (FNRC Case Management Supervisor), and Suzette Roberts, a licensed marriage and family therapist (LMFT) and claimant’s clinician and case manager at Remi Vista. Ms. Roberts noted that claimant had done well and shown great improvement at the Bear Mountain facility, and that she was not exhibiting the behaviors that led to her placement at the facility. She further indicated that Remi Vista was ready to begin transitioning claimant to return home. Claimant’s father stated that he would like to move claimant home with him “in the near future,” but expressed concern that the school in Chico would not be as good as Juniper School. Claimant’s mother disagreed with any transition and expressed her desire that claimant remain at Bear Mountain.

8. By letter, dated August 21, 2017, Remi Vista advised FNRC as follows:

[Claimant] came into our program on 2/4/16. During her placement at Remi vista (sic) she has worked on controlling her emotions, aggressive behaviors, hygiene and social skills. [Claimant] has come far and has shown that she can be successful in her daily routines. We no longer feel that she needs our services.

9. By letter, dated September 8, 2017, FNRC issued claimant’s parents a Notice of Proposed Action (NOPA), which indicated FNRC would discontinue funding for claimant’s residential placement services at Bear Mountain home. The reason for the

proposed action was that claimant no longer required the level of services being provided by Remi Vista, and that FNRC was required to provide services centered on claimant's needs on the most cost-effective basis. The discontinuance was to take effect within 30 days of receipt of the NOPA.

10. Claimant's father received the NOPA on September 12, 2017. He called Ms. Ayotte, Ms. Roberts, and Cindy Cooper (Program Manager, Remi Vista) to discuss his concern that funding would end in 30 days and what resources would be available to claimant. Claimant's father was assured the services would not in fact terminate within 30 days and that a transition plan would be put in place to help claimant with moving back home. Ms. Ayotte also spoke briefly with claimant's mother concerning available resources and the fair hearing process.

11. On or about September 22, 2017, claimant's father met with Ms. Roberts at Bear Mountain. They discussed a transition plan and timeline for claimant's return to Chico. They also discussed a target transition date of December 20, 2017, to coincide with the end of the school semester and start of winter break. Claimant's mother was not present at, and did not participate in, this meeting.

12. On September 22, 2017, FNRC received a Fair Hearing Request from claimant's mother. Claimant's mother sought: (1) continued funding for Remi Vista until all parties agreed on a return date to Chico for claimant; (2) a clear transition plan with written transitional services; and, (3) clear communication between FNRC and both parents prior to FNRC making decisions.

13. An informal meeting was held at the FNRC office on October 2, 2017. In attendance were claimant's mother and father, and Larry Withers (Associate Director of Client Services, FNRC). Also present was Lynne Pappas, M.D., claimant's psychiatrist and manager of claimant's medication for behavioral issues. At the meeting, claimant's mother asserted there was no communication between FNRC, Remi Vista, and claimant's parents

regarding the termination of funding or discussion of a transition plan. Claimant's mother believes claimant's improved behavior was a direct result of the structured environment at Bear Mountain and the excellent school program at Juniper. She believed it was in claimant's best interest to remain at Bear Mountain as long as possible or at least until the end of the school year in June 2018.

Claimant's father disagreed and indicated he was willing to have claimant transition back to Chico and live with him. He agreed with claimant's mother regarding the excellent care claimant received at Bear Mountain and the quality program at Juniper. However, he believed the improvement in claimant's behavior was due in major part to a change in her medication from Abilify to Invega. Claimant's father did not agree with the 30 day notice of termination, stating it was not feasible. He believed he would be prepared for claimant's return later in the year, and suggested it occur over the school's winter break in December. Claimant's father also believed a good reunification plan should be in place prior to claimant's return to Chico.

By letter, dated October 6, 2017, Mr. Withers summarized the matters discussed at the informal meeting. He further noted that claimant had done "quite well" at Bear Mountain and was no longer experiencing the "rage" behaviors she did before placement. He reiterated Remi Vista's position that claimant's behavior had been reduced to the point she no longer met the criteria to stay at Bear Mountain. Mr. Withers noted that FNRC could not continue to fund her placement in a program that is no longer appropriate. However, he agreed the 30 days' notice was "too soon to plan an appropriate transition plan." Accordingly, he extended claimant's placement at Bear Mountain until the start of winter break in December. Mr. Withers implored claimant's parents to work together with Remi Vista and Ms. Ayotte to develop an appropriate transition plan.

14. Following the informal fair hearing, Ms. Roberts provided a transition plan to claimant's parents. The transition plan included claimant going to Chico every weekend

and holiday until the final transition date. It also recommended claimant not be informed of her transition until the Thanksgiving holiday, which would allow her to say goodbye to her friends and staff at Juniper School. Ms. Roberts requested claimant's parents review, sign, and return the plan to Ms. Roberts.

#### FNRC'S EVIDENCE

15. Claimant's father testified at hearing. He believes claimant is ready to transition home based upon her improved behavior resulting from the Invega injections and Remi Vista's representation that she is no longer exhibiting the problematic behaviors which led to her placement there. Claimant's father asserted that claimant has had several weekend visits at his home without incident. She has also stayed for an extended visit over the 2016 Christmas holiday, and gone on family vacation. He has noticed a vast improvement in her behavior and believes she is ready to come home on a full-time basis. He further agrees with the December timeline proposed by Remi Vista for claimant's transition.

Claimant's father has taken several steps to prepare for claimant's return home. With Remi Vista's help, he has created visual aides to prompt claimant to perform certain tasks, such as cleaning her room or brushing her teeth. He has created and posted a job description for an after-school caregiver. He has discussed with FNRC options for in-home and out-of-home respite care for claimant as well as a behaviorist to help with claimant's transition. FNRC indicated it was amenable to funding these services.

16. Suzette Roberts has been claimant's clinician and case worker since she arrived at Remi Vista in February 2016. She testified that claimant is performing well and no longer exhibits the behaviors for which she was placed at the facility. Ms. Roberts believes claimant is ready to transition home and, therefore, implemented a transition plan in September to ensure her return home in December. She recommended claimant receive respite and behaviorist services after the transition. Ms. Roberts is unaware of any reason

claimant would be unable to change schools from Redding to Chico, and does not believe there would be any benefit to claimant if her transition were delayed until the end of the school year in June 2018.

17. Julie Ayotte has been claimant's FNRC case worker since January 2017. Ms. Ayotte testified she has been working with claimant's father to locate the respite, behaviorist, and daycare services recommended by Remi Vista. She noted that FNRC cannot authorize new services before the authorization for out-of-home placement authorization is terminated; however, she is able to help line up services to make a simultaneous transition. She has placed claimant on the waiting lists for three different behaviorists, and believes this service will be lined up by December or early January. Finally, Ms. Ayotte confirmed that should the transition fail, FNRC would provide funding for emergency placement in a crisis facility.

#### CLAIMANT'S EVIDENCE

18. Claimant's mother has been a registered nurse for 21 years. She stopped working when claimant was placed with them as an infant, and was a stay-at-home mother the entire time claimant lived in the family home. Claimant's mother does not dispute that claimant is doing "remarkably better" than when she left home. However, she believes claimant's improvement is the direct result of the structured environment at Bear Mountain. She further noted claimant enjoys being at Juniper School, has an art show and choir performance coming up, and likes her friends and teachers.

Claimant's mother was "shocked" when she received the FNRC letter with the NOPA to discontinue funding for Remi Vista. She believes claimant needs to be at Bear Mountain for stability and consistency, and asserted there has been no in-home training in either parent's home to implement a similarly structured environment there. She is also concerned that claimant's siblings are not fully prepared for her permanent return home. She noted that though weekend visits have helped, her siblings still suffer from physical



and emotional damage caused by claimant's prior behavior. Claimant's mother reiterated claimant should remain at Bear Mountain, and indicated a willingness to pay a portion of the costs to do so. If claimant is to be transitioned home, claimant's mother believes any such transition before the end of the school year is inappropriate. She will "not take responsibility" for the decision if claimant transitions in December.

19. Dr. Pappas has been treating claimant since 2010. She does not provide psychotherapy services, but is responsible for managing claimant's medication for her behavioral issues. Dr. Pappas testified that claimant was completely non-functional in the home setting before being placed with Remi Vista, despite "extreme effort by the entire family to provide everything possible." She noted claimant's placement at Bear Mountain has been a "tremendous success." She also explained that claimant has always been challenged with cognitive flexibility and lacks the ability to process and adapt to change as a normal functioning person would. Accordingly, she is "gravely concerned" regarding an abrupt transition in December without the necessary safeguards and resources in place to enable claimant's continued success. Instead, Dr. Pappas recommended claimant remain at Bear Mountain until the end of the school year and a transition plan be developed over the next six months, with specific services and providers in place to ensure a smooth transition to home.

20. Dr. Pappas was unaware that Remi Vista started claimant's transition process in September, with a target date of December for the final transition. She agreed that in and out-of-home respite care, caregiver, and behaviorist were the kinds of supports and services claimant would require to successfully transition home. She reiterated that identifying these services was insufficient, and that they must be in place and available to claimant when she moves home. Even if these providers were in place by the end of December, Dr. Pappas still disagreed that a December transition was appropriate. She explained that claimant's school is her "main job and world" right now, and that changing

schools will be one of the most significant transitions she will make. She opined that transitioning schools mid-year would be that much more difficult. Finally, Dr. Pappas concluded that removing the stability factor of the facility and school at this time would be detrimental to claimant.

## DISCUSSION

21. When all the evidence is considered, it was established that claimant no longer qualifies for the services provided by Remi Vista. It was undisputed that claimant has performed extremely well at the Bear Mountain facility and that she no longer exhibits the problematic behaviors that led to her placement. Additionally, she has had several weekend and extended visits at her parents' homes without incident. It was undisputed that claimant's improved behavior would eventually result in her returning home, though the parties disagreed on when that transition should occur. As her case manager, Ms. Roberts provided convincing testimony that claimant is ready to transition home at the end of December, and that there was no benefit to delaying the move until June 2018. The concerns of claimant's mother and Dr. Pappas that a transition in December rather than at the end of the school year would be more detrimental to claimant were speculative and not supported by the evidence. FNRC assured it would fund the services necessary for claimant's transition, and would assist claimant's parents in locating and lining up service providers to ensure a smooth transition. FNRC also confirmed it would fund an emergency placement in a crisis facility should the transition fail.

22. The Lanterman Act prevents FNRC from provide funding for a service which is no longer needed. Accordingly, its decision to discontinue funding for claimant's placement at Remi Vista was correct and should be upheld.

## LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established.

2. Where the Service Agency seeks to discontinue a service it has previously funded, the Service Agency has the burden to demonstrate that its decision is correct. It must do so by a preponderance of the evidence. (Evid. Code, § 115.) In this case, FNRC had the burden to show that funding for the existing residential placement services should be terminated, as set forth in the NOPA.

3. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with a developmental disability. These are services and supports that will allow such persons, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (§ 4502.) The Legislature declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).)

4. Section 4646.5 covers the planning process for the development of an IPP. The IPP must include a statement of goals based on the consumer's needs and time-limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources to achieve the IPP goals, and the identity of the service providers.

5. Section 4646, subdivision (a), states, in pertinent part: "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. ... 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, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

6. As set forth in Findings 20 and 22, the evidence established that claimant no longer qualifies for services provided by Remi Vista. Accordingly, FNRC's decision to discontinue funding for claimant's residential placement at Bear Mountain was appropriate and correct.

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## ORDER

Claimant's appeal from the Far Northern Regional Center's decision to discontinue funding of her residential placement at Remi Vista is denied. The regional center's action is upheld.

DATED: December 1, 2017

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