

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2018010936

DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 2, 2018, in Napa, California.

This matter was consolidated for hearing with OAH Case Nos. 2018010945 and 2018010952.

Claimant was represented by Marian Chappelle¹. Claimant was present at the hearing but was unable to participate.

Jack Bengé, Attorney at Law, represented the North Bay Regional Center (NBRC), the service agency.

¹ Prior to the hearing, the service agency filed a motion to disqualify Chappelle as authorized representative based on its belief that Chappelle's position in this matter is in conflict with claimant's preference. The service agency withdrew the motion and consented to Chappelle acting as claimant's representative at the hearing, without conceding whether Chappelle's arguments reflect claimant's wishes.

The matter was submitted for decision on March 2, 2018.

ISSUE

Is NBRC obligated to move claimant into a licensed facility because supported living services are unable to meet her needs?

FACTUAL FINDINGS

1. Claimant is a 46-year-old regional center consumer. The exact nature of claimant's disabilities was not established. Claimant is wheelchair-dependent and has severely limited communication skills. She requires substantial support with all daily life activities. Claimant's Individual Program Plan (IPP) was not offered into evidence, and it was not established when her IPP planning team last met.

2. Claimant lives with two other severely disabled regional center consumers and her caregiver of many years, Marian Chappelle. They rent a home in Napa. The three consumers have lived together for much of the past 30 years, in various settings, including more than 20 years in a group home that was operated by Chappelle.

3. Claimant attends a day program which is funded by NBRC. She is the recipient of In-Home Supportive Services (IHSS), which is funded by the County. Chappelle is claimant's IHSS provider. NBRC funds supportive living services (SLS) to support claimant, and her two regional center roommates, in their home. For the hours that claimant is not in her day program or attended to by an IHSS provider, claimant is provided with a 1:1 SLS worker, during waking and sleeping hours. Claimant has been living in a home setting and receiving SLS since approximately 2012.

4. Prior to September 2017, SLS was provided to the three roommates by vendor Community Connections. Claimant's needs were met. This vendor cancelled its contract to provide SLS, and a new vendor, A Bright Future (ABF), was selected to provide SLS to the three roommates beginning in September 2017. The relationship

with ABF has not been successful. In October 2017, NBRC made a report to Adult Protective Services because Chappelle reported that ABF was not providing adequate support. Adult Protective Services deemed it to be a staffing issue and decided that no follow up was needed.

5. ABF has terminated the contract with NBRC and will no longer be claimant's SLS provider; however it has agreed to continue providing services until a new SLS vendor is in place. NBRC attributes ABF's failure mainly to Chappelle being difficult to work with and rejecting several SLS workers who were sent to the home by ABF. Chappelle asserted that ABF has sent workers who were not properly trained to care for the roommates, who failed to treat them with dignity, who neglected their health needs, and who acted inappropriately. NBRC acknowledged that there have been issues providing staff and that one of the workers provided by ABF did not properly care for one of claimant's regional center consumer roommates.

6. NBRC has had difficulty finding a new SLS vendor. NBRC attributes this in large part to vendors' reluctance to work with Chappelle. NBRC has been working assiduously to identify a new SLS vendor, but as of the time of the hearing, no vendor was in place to replace ABF. NBRC remains optimistic that a replacement vendor will be located soon. The new SLS vendor will assess claimant's needs and provide staff accordingly. NBRC will provide 24-hour SLS services, if that is what is needed.

7. Chappelle plans on moving out of the household and ending her role as IHSS provider. She will continue to have a social relationship with the three consumers. Chappelle believes that it is in the best interest of claimant to be moved into a licensed facility rather than to live in a household supported by SLS. Chappelle asserted that licensed facilities are more accountable than SLS providers because they are overseen by the state and employ individuals with better training and qualifications. The bedrooms in the current home lack fire exits, which would be required at a licensed

facility. Chappelle does not believe that NBRC is capable of providing adequate support to permit claimant to live safely in the home in Chappelle's absence. Chappelle believes that claimant has done well in SLS only because of her assistance and her oversight and training of SLS staff.

8. Chappelle pays more than half of the rent to live in the home. She also functions as the de facto head of household because the three consumers are unable to do so. As the responsible head of household, Chappelle has provided substantial support in addition to the hours she has worked as an IHSS provider. For example, she pays the rent, purchases supplies, and takes care of the pets. When Chappelle moves out of the household, the three roommates will require additional support to replace Chappelle's significant contributions. NBRC expressed confidence that it could provide additional support to enable the three roommates to live together in an independent household rather than in a licensed group home facility, even in Chappelle's absence.

9. In January 2018, Chappelle filed a Fair Hearing Request² on behalf of claimant stating:

NBRC will not pay what it cost for me to have quality care living in my own home. Currently [NBRC] has contracted "A BRIGHT FUTURE" as the supported living agency to serve me. Since 9-1-17 ABF has not served me. They have been extremely disruptive, I don't want them in my home. I need to live in a licensed facility so I can be safe and cared for. I

² The Fair Hearing Request was not offered into evidence by either party at the hearing. The Fair Hearing Requests of the three consumers are marked and admitted jointly into the record as exhibit 2.

have asked NBRC to help me move, I have not gotten a response in 2 months. Help me move to a[n] appropriate licensed facility. ABF not allowed in my home, all my caregivers are IHSS employees and are not qualified to meet my needs. My advocate of 32 years works every day of every shift to ensure my safety and quality of care, she cannot continue doing this, supported living isn't what I need to be safe and healthy.

10. NBRC service coordinator Sarah Ghafari and her supervisor Nagina Azizi-McCants visited claimant at her day program a few days prior to the hearing. The day program director reported that claimant appeared to be well cared for and that there were no concerns about her welfare. Azizi-McCants contacted claimant's father who said claimant is happy where she is and wants to stay together with her roommates. He did not express concerns about her health and safety. Claimant has very limited communication skills and did not express a preference at the hearing. The evidence was insufficient to establish whether claimant understands that Chappelle will no longer be living in the home. The evidence was also insufficient to establish what claimant's housing preference would be in this circumstance.

11. NBRC is willing to continue to support claimant through SLS and asserts that this would provide her with a less restrictive environment, with the widest range of opportunities in the community. NBRC believes that it would continue to benefit claimant to live in the Napa community with her longstanding regional center consumer roommates. NBRC believes that it can continue to provide adequate care and support even after Chappelle no longer has a role in the day-to-day life of the household. NBRC does not believe that there is a licensed facility available that would be able to

accommodate all three of the roommates and does not want to disrupt their strong bond by separating them.

LEGAL CONCLUSIONS

1. The burden of proof rests with claimant to establish that NBRC is obligated to terminate SLS services and move her into a licensed facility. (Evid. Code, §§ 115, 500.)

2. 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.³) 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.)

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

³ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

“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.

4. Section 4689 provides, in part:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of

disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principals:

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

(6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

(8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

[¶] ... [¶]

(e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes they own or lease.

5. California Code of Regulations, title 17, section 58613, subdivision (a), provides that regional center consumers are "eligible for SLS upon a determination made through the IPP process that the consumer ... has expressed directly or through the consumer's personal advocate, as appropriate, a preference for ... SLS among the options proposed during the IPP process." Subdivision (b) directs that "Consumers shall

not be denied eligibility for SLS solely because of the nature and severity of their disabilities.”

6. California Code of Regulations, title 17, section 58614, subdivision (a)(1), defines SLS as services which assist a regional center consumer to “live in his or her own home, with support available as often and for as long as it is needed.” Subdivision (b) provides examples of SLS:

(1) Assisting with common daily living activities such as meal preparation, including planning, shopping, cooking and storage activities;

(2) Performing routine household activities aimed at maintaining a clean and safe home;

(3) Locating and scheduling appropriate medical services;

(4) Acquiring, using, and caring for canine and other animal companions specifically trained to provide assistance;

(5) Selecting and moving into a house;

(6) Locating and choosing suitable house mates;

(7) Acquiring household furnishings;

(8) Settling disputes with landlords;

- (9) Becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community to the general public;
- (10) Managing personal financial affairs;
- (11) Recruiting, screening, hiring, training, supervising, and dismissing personal attendants;
- (12) Dealing with and responding appropriately to governmental agencies and personnel;
- (13) Asserting civil and statutory rights through self-advocacy;
- (14) Building and maintaining interpersonal relationships, including a Circle of Support;
- (15) Participating in community life; and
- (16) 24-hour emergency assistance, including direct service in response to calls for assistance. This service also includes assisting and facilitating the consumer's efforts to acquire, use, and maintain devices needed to summon immediate assistance when threats to health, safety, and well-being occur.

7. Claimant is severely disabled and requires substantial support, 24 hours a day. Claimant has been living in an independent household through SLS since approximately 2012. This was presumably based on a preference expressed by claimant or her personal advocate through the IPP process and a subsequent assessment finding her eligible. Claimant has thrived in this environment at least until September 2017, when NBRC contracted with a new SLS provider which has not been as successful.

8. Pursuant to section 4689, NBRC must place a high priority on enabling consumers to live independently, if that is their preference. The evidence did not establish that claimant has expressed a preference to be moved out of her current living situation and into a licensed facility. Should claimant in the future clearly communicate a preference to move out of independent housing and into a group home, NBRC is required to address claimant's preference through the IPP planning process. This process has not taken pace. Accordingly, an order directing NBRC to immediately move claimant into a licensed facility would be premature.

9. Chappelle is justifiably concerned that SLS may no longer be adequate to enable claimant to live independently once Chappelle is no longer living in the household, especially in light of the fact that there is no SLS provider in place to replace ABF. A household consisting of three profoundly disabled adults requires substantial, reliable, and dedicated SLS to ensure the safety and wellbeing of the residents.

10. NBRC has an obligation pursuant to section 4689 to ensure that claimant's housing preferences are met, and an obligation pursuant to section 4689, subdivision (e), to monitor and ensure the quality of services that claimant receives to live independently. This is especially true because claimant's ability to communicate problems she experiences with SLS is severely limited. NBRC acknowledged that it has had difficulty in providing SLS services since it switched providers in September. In light of this difficulty, and in light of the potential changes in claimant's SLS needs when

Chappelle is no longer an IHSS provider and roommate, it is incumbent on the IPP planning team to meet and assess whether SLS remains claimant's preference and remains able to meet her needs. The IPP planning team should keep in mind that claimant's health and safety are paramount and outweigh NBRC's goals of keeping claimant in the Napa community and keeping the three roommates together.

ORDER

Claimant's appeal is denied, insofar as her appeal seeks to direct NBRC to move her to a licensed facility. To the extent that claimant's appeal seeks to direct NBRC to assess whether claimant is receiving adequate services and supports through SLS, and whether SLS remains her preferred living arrangement, the appeal is granted. NBRC is directed to convene a meeting of claimant's IPP planning team within 30 days of this decision to address these issues.

DATED: March 16, 2018

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.