

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2018041283

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna of the Office of Administrative Hearings (OAH) heard this matter on June 13, 2018, in Los Angeles, California.

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Claimant was present and represented herself.<sup>1</sup> Claimant was assisted by Marianna Rudy, a Spanish language interpreter.

Oral and documentary evidence was received and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

Whether the Service Agency must fund \$400 per month in rental expenses for

---

<sup>1</sup> Titles are used to protect the claimant's privacy.

claimant.

## EVIDENCE RELIED UPON

Documents: Claimant's exhibit 1; Service Agency's exhibits A through G.

Testimony: Adriana Tovar, Service Coordinator; Da Vonna Jenkins, Regional Manager; Lorenzo Hernandez, Executive Designee; Claimant.

## FACTUAL FINDINGS

1. Claimant is a 47-year-old woman who resides with her six children and three grandchildren. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> based on her diagnosis of mild intellectual disability. (§ 4512, subd. (a).) Claimant has been a client of the Service Agency for over eight years.

2. In a Notice of Proposed Action (NOPA) letter dated February 28, 2018, the Service Agency denied claimant's request for continued rental subsidy in the amount of \$400 per month.<sup>3 4</sup> FDLRC asserts that claimant's living expenses can be met through

---

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

<sup>3</sup> The NOPA and certified mail receipt were inadvertently left out of the exhibits entered into evidence, though these documents were submitted to OAH with the request for hearing. As these documents provide the basis for jurisdiction in this matter, and are the cause for claimant's request fair hearing request, the NOPA form DS 1803 and the certified mail receipt will be admitted into evidence as the third and fourth pages of exhibit A.

financial support from her four adult children, and determined the rental subsidy is excluded under section 4646.5, subdivision (b).

3. Claimant filed a Fair Hearing Request on April 24, 2018, asking that her \$400 per month rental subsidy continue.

//

#### SERVICE AGENCY'S PROVISION OF RENTAL SUBSIDY 2013 – 2018

4. A. In addition to her diagnosis of mild intellectual disability, claimant has been diagnosed with adjustment disorder with depressed mood and low borderline intellectual functioning, type-2 diabetes, and high cholesterol, and is developing arthritis in her left knee and right hand. She walks independently; requires minimal reminders to complete all self-care needs; has safety skills and does not require supervision during outings; maintains a safe and clean home that is free from hazards; and prepares meals and maintains the house for her six children (four adults and two teenagers) and three grandchildren.

B Claimant and her family live together in a four-bedroom apartment, section-8 housing. Claimant's expenses include \$1209 for rent, and additional costs to cover

---

<sup>4</sup>The NOPA informed claimant she had the right to appeal within 30 days of the receipt of this letter. The certified mail receipt shows claimant received the NOPA on March 3, 2018. The NOPA advised claimant that her services would continue during the appeal process if her request for a fair hearing was postmarked or received no later than 10 days after receiving the NOPA. (See § 4715, subd. (a).) The request for fair hearing was dated April 24, 2018. (These timeliness issues are further addressed in Legal Conclusions 4 and 5, and 12-14.)

utilities, phone, and food expenses. Between 2013 and 2018, claimant received monthly financial assistance through AFDC cash aid (\$550 per month), and from the Department of Public Social Services (DPPS), (\$639 per month for food purchases). Claimant currently has undocumented immigration status which prevents her from working or applying for social security benefits. She is working on obtaining her U-Visa based on a history of domestic violence, but this process could take at least two years. Considering this information, for six months in 2010, and then between 2013 and 2018, the Service Agency included in claimant's Individual Program Plan (IPP) a monthly rental subsidy in the amount of \$400 to supplement claimant's living expenses, paid through the vendor Passport to Learning, Inc.<sup>5</sup>

#### CHANGE OF CIRCUMSTANCES

5. Since claimant began receiving the rental subsidy, four of her children have become adults. Currently, claimant's children are the following ages and contribute the following amounts towards claimant's rent: 26-year-old daughter and three-year-old grandchild (provides claimant \$150 per month towards rent and \$150 per month for babysitting services, for a total of \$300); 24-year-old daughter, her husband, and two grandchildren, two-years-old and one-year-old (clients of FDLRC) (these adults provide claimant \$150 each towards rent, for a total of \$300); 22-year-old son (provides claimant \$150 per month towards rent); 21-year-old son (provides claimant \$150 per month towards rent); and a 16-year-old son and 14-year-old son (both attend high school and do

---

<sup>5</sup> Claimant's additional IPP services include 16 hours per month of parenting education and 15 hours per month of independent living skills, both services provided through Passport to Learning, Inc. Claimant's vendor's March 2018 progress report shows she is cooperative and actively implements these supports to improve her parenting and independent living.

not contribute towards rent). In total, claimant receives \$900 per month from her four adult children and a son-in-law.

6. The Service Agency decided that because four of claimant's children were now adults and claimant receives financial support of \$900 per month, she no longer needs any rental subsidy to supplement her living expenses. Claimant last received the rental subsidy for the month of February 2018. Adriana Tovar, claimant's service coordinator, Da Vonne Jenkins, claimant's regional manager, and Lorenzo Hernandez, the Service Agency's executive designee for claimant's case, testified at the hearing. All three witnesses had reviewed claimant's case and determined the bases for eliminating her rental subsidy was that four of claimant's children had reached majority and the adult children contribute financially towards claimant's expenses.<sup>6</sup> The Service Agency witnesses could not explain why it determined claimant did not need some level of rental subsidy for her two minor children. The credible testimony of claimant established that, even factoring in the rental contribution of her adult children, without the rental subsidy, claimant's income does not meet her living expenses, and she continues to require rent subsidy for her two minor children.<sup>7</sup>

---

<sup>6</sup> The Service Agency witnesses testified, and counsel highlighted in presentation of the Service Agency's case, that claimant did not submit her request for fair hearing in a timely manner, and submitted it more than 10 days after receipt of the NOPA, and therefore claimant has not been receiving the rental subsidy pending the appeal. Though the Service Agency highlighted this timing issue, it did not make any legal argument about how this timeliness issue should affect the ALJ's decision. Nonetheless, these issues are addressed in the Legal Conclusions.

<sup>7</sup> Additionally, the Service Agency witnesses were not aware that DPSS had issued a

## LEGAL CONCLUSIONS

1. An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

2. Adequate notice shall be sent to the recipient by certified mail at least 30 days prior to the agency making a decision without the mutual consent of the service recipient to terminate services set forth in an IPP. (Welf. & Inst. Code, § 4710, subd. (a)(1).)

3. A consumer who is dissatisfied with any decision or action of the service agency which she believes is not in her best interest, must, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. (Welf. & Inst. Code, § 4710.5, subd. (a).)

4. Upon receipt of a fair hearing request from a claimant, service agencies do not have the discretion to determine the appropriateness or timeliness of the fair hearing request. If a service agency believes that a fair hearing request does not comply with statutory requirements, the service agency may file a request to have the matter dismissed. (Cal. Code Regs., tit. 17, § 50966.)

5. Claimant requested a fair hearing to appeal the Service Agency’s decision to

---

CalFresh Overissuance Notice for Inadvertent Household Errors overpayment notice to claimant on June 1, 2018, informing claimant she owes DPSS \$3,498 based on a calculation error in claimant’s eligibility for CalFresh. The notice informed claimant her prior eligibility was for \$669 per month, but her new eligibility amount was \$86.50 per month. At the time of hearing, claimant intended to appeal this notice, as such these noticed changes in claimant’s eligibility for CalFresh subsidies constitute possible future changes to her income, but not yet a final change in the amount of her food subsidy.

terminate claimant's \$400 per month rental subsidy. Claimant's request for fair hearing was filed more than 30 days after she received the NOPA. The Service Agency does not have the discretion to determine the timeliness of a fair hearing request. If the Service Agency believed the fair hearing request did not comply with statutory requirements, it could have requested the matter be dismissed. The Service Agency did not request the matter be dismissed. Jurisdiction was established. (Factual Findings 1-3.)

6. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) The Service Agency has the burden of proving it is authorized to terminate Service Agency-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.)

7. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, quoting from § 4620.)

8. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer's independent, productive, and normal life that allows the consumer to "approximate the pattern of everyday living available to people without disabilities of the same age." (§§ 4501, § 4512, subd. (b).) Regional centers are responsible for conducting a planning process that results in an IPP, which must set

forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

9. The IPP is developed through a process of individualized needs determination, 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 the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. (§ 4646, subds. (a), (b).)

10. 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. (§ 4646.5, subd. (b).)

11. Cause does not exist under section 4646.5, subdivision (b), to modify claimant's IPP by eliminating claimant's rental subsidy service. Relying on the Service Agency's own analysis, which calculated a rental subsidy of \$400 per month based on claimant having six school-aged children who were not contributing to the cost of rent, the evidence established that claimant continues to need rental subsidy service for her two minor sons, who do not contribute rent. No evidence was presented that claimant was meeting her monthly expenses, and no evidence was presented that claimant did not need a rental subsidy to assist her with meeting her living expenses that arise from providing a home to her two minor children. Claimant's IPP must be centered on the claimant and her family's needs, including her two minor children. The prior rental subsidy of \$400 equates to a rental subsidy of \$66.50 per child. For claimant's two minor children, the facts

established she continues to require a total rental subsidy of \$133 per month. To the extent claimant's income changes in the future, for example if one of her adult children moves out or her CalFresh eligibility decreases, either party can challenge similar issues.

12. If a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of NOPA, services that are being provided pursuant to a recipient's IPP must be continued during the appeal procedure up to and including the 10th day after receipt of the final decision of the hearing officer. (§ 4715, subd. (a)(3).)

13. A regional center may reimburse an individual or agency for services or supports provided to a consumer if the individual or agency has a rate of payment for vendored or contracted services established by the Department of Developmental Services pursuant to the Lanterman Act, and has completed the vendorization process. (§ 4648, subd. (a)(3)(B).)

14. In this matter, claimant's request for a fair hearing was not postmarked or received within 10 days after receipt of the NOPA. Claimant's services did not continue during the appeals process. However, based on Legal Conclusions 12 and 13, section 4715 does not limit the ordering of retroactive services. Rather, section 4648, subdivision (a)(3)(B) provides that retroactive rental subsidy can be provided to Passport to Learning, Inc., the vendor associated with claimant's rental subsidy. Accordingly, the rental subsidy in the amount of \$133 per month must be paid to claimant, retroactively, effective March 1, 2018.

//

## ORDER

The appeal by claimant is granted in part and denied in part. The Service Agency is ordered to provide claimant a rental subsidy of \$133 per month, retroactively effective from March 1, 2018.

DATED:

---

CHANTAL M. SAMPOGNA  
Administrative Law Judge  
Office of Administrative Hearings

NOTICE

**This is the final administrative decision; all parties are bound by this decision.  
Any party may appeal this decision to a court of competent jurisdiction within 90  
days.**