

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2018050519

DECISION

This matter was heard before Administrative Law Judge Heather M. Rowan, State of California, Office of Administrative Hearings (OAH), on June 12, 2018, in Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC or the regional center).

Claimant's brother and conservator represented claimant.

Evidence was received and the matter was submitted for decision on June 12, 2018.

ISSUE

Is there a legal basis for claimant's representative's request for an apology letter, removing Supervisor Sharon Wiggins from claimant's case, and assigning claimant a new service coordinator based on Ms. Wiggins's alleged legal violations?

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FACTUAL FINDINGS

PROCEDURAL HISTORY

1. Claimant is 47 years old and receives regional center services. Claimant's representative has been her conservator since 2014. On May 3, 2018, claimant's representative filed a Fair Hearing Request. He made three requests:

- A confirmation letter addressed to the conservator indicating the removal of current [ACRC] manager Sharon Wiggins from [claimant's] services and file for not properly following [the Welfare and Institution's Code];
- An issued statement of apology and acknowledgement for failure to follow [the Welfare and Institution's Code] laws from Alfonso Carmona at ACRC; and
- Assignment and mutual agreement of a service coordinator who isn't dehumanizing or retaliatory to [claimant] and will follow Welfare [Institution] Code and Lanterman Act.

2. Claimant's representative has filed several requests for fair hearing in the past four years. At the fair hearing at issue, the parties did not present a history or overview of claimant's services with ACRC, nor were her services at issue. Instead, the parties focused solely on claimant's representative's three requests. Claimant's representative did not present documentary evidence to support his requests.¹ His sole evidence was his sworn testimony.

¹ Claimant's representative reportedly submitted several documents to OAH through its secure file uploader. The documents were rejected and he was informed that any evidence he wished to present at the fair hearing must be brought to the fair hearing in hard copy.

3. Claimant's representative stated that in December 2017, he requested that ACRC replace Sharon Wiggins as claimant's service coordinator. Claimant's representative asserted that Ms. Wiggins, who is a Supervising Service Coordinator at ACRC, was not complying with the Lanterman Developmental Disabilities Services Act (Lanterman Act). Claimant's representative's complaints regarding Ms. Wiggins include not providing him with claimant's entire case file and not treating claimant with the dignity she deserves. Claimant's representative stated he did not have ample time to review claimant's last Individual Program Plan (IPP) in November 2017, and feels he was pressured to accept it, even though he believed changes should have been made. Claimant's representative also asserted that ACRC and Ms. Wiggins had meetings regarding claimant without including her representative. When claimant's representative requested claimant's file, Ms. Wiggins failed to provide the "entire file." In addition, claimant's representative's asserted reasoning for needing a new service coordinator was Ms. Wiggins's retaliatory and dehumanizing treatment of claimant.

4. When claimant's representative requested claimant's case file, he was given her case information, as well as several documents that had been redacted. ACRC informed claimant's representative that the redacted portions were protected attorney/client privilege communications. Claimant's representative informed ACRC that he is entitled to the entire case file, and no privilege may be asserted. He believes that ACRC has hired an attorney, shared claimant's case file with the attorney, and then asserted the privilege to avoid sharing the entire case file with claimant's representative. Claimant's representative stated that the privilege has been unlawfully asserted, because there is no litigation pending. He further asserted that ACRC hired an attorney to be claimant's service coordinator. He did not present any evidentiary support for his assertions.

5. Alfonso Carmona is the Director of Adult and Residential Services at ACRC. He oversees the division in which Ms. Wiggins and other service coordinators for adult consumers work. Claimant's representative stated that Mr. Carmona should issue him a letter of apology for not complying with the Lanterman Act, and not ensuring that ACRC employees comply as well.

ACRC'S POSITION

6. The regional center has a duty to act in the best interest of its clients and is bound by the Lanterman Act. ACRC has assigned four service coordinators to manage claimant's case. Claimant's representative has requested that each be removed, including Ms. Wiggins. Ms. Wiggins is a supervisor and was only assigned to claimant's case file because there were no service coordinators available who both worked with adults and who claimant had not dismissed from claimant's case. When ACRC received claimant's representative's request for a fair hearing, it was the first time it was made aware of the request for a new service coordinator. On May 14, 2018, after ACRC was made aware of the request, Wendy McCray was assigned to claimant's case as her new service coordinator. Ms. Wiggins, who is the service coordinators' supervisor, is listed on the case file as the supervisor, attends meetings concerning claimant, and consults with the service coordinator.

7. At times in managing claimant's case, ACRC staff has conducted internal meetings. Some meetings have been to share information and updates about the service coordinators' various caseloads. Others have been particularly held to discuss ideas regarding how to approach the communication difficulties they have had with claimant's representative. Claimant's representative has been invited to participate in claimant's IPP meetings, and claimant's service coordinators have kept in regular communication with claimant's representative.

8. Because of the difficulty that ACRC has encountered with claimant's representative, it hired an attorney to consult regarding its responsibilities and limitations. At one point, ACRC requested that claimant's representative only communicate through the attorney. The attorney advised ACRC that certain communications were privileged, and need not be released, or should be redacted, prior to sending the case file to claimant's representative.

9. ACRC's position is that it has complied with the Lanterman Act, has responded to claimant's representative's requests regarding service coordinators and access to the case file, and that no "apology letter" is warranted under the law. It has also acted under the advice of its attorney when communicating with claimant's representative and providing appropriate information.

DISCUSSION

10. The Lanterman Act provides that every consumer of services through a regional center has "[a] right to dignity, privacy, and humane care. . . ." (Welf.& Inst. Code, § 4502, subd. (b)(2).) Claimant's representative's request that claimant have a service coordinator who treats her with dignity, humanely, and who is not retaliatory is a reasonable request and is required by the Lanterman Act. No evidence was presented, however, to support the contention that claimant is not treated with dignity, or that there have been retaliatory actions against claimant. Additionally, claimant has been assigned a new service coordinator as of May 14, 2018. Claimant's representative stated that it is too soon, however, for him to determine whether she will work well for claimant.

11. Claimant's representative's frustration at fair hearing was apparent, as was his concern for claimant. He was unable, however, to offer examples or evidence of ACRC failing to comply with the Lanterman Act. Requesting that Ms. Wiggins is removed "completely" from claimant's case file and any involvement in claimant's case is not

reasonable. Each service coordinator has a supervisor, and all consumers' cases are discussed among the consumers' circle of care. That circle includes claimant, claimant's representative, the assigned service coordinator, and other ACRC employees, as well as claimant's service providers. Ms. Wiggins is an element of claimant's circle of care.

12. Claimant's representative's complaint that ACRC hired an attorney as a service coordinator to prevent claimant's file from being released is unfounded. As is his assertion that attorney/client privilege does not apply to claimant's file, to ACRC, or to any situation where litigation is not pending. ACRC released claimant's case file to her representative, except as to those portions that were redacted or not released on the advice of ACRC's attorney.

13. Claimant's representative's request for a new service coordinator was fulfilled prior to hearing. The evidence did not support that ACRC has not complied with the Lanterman Act. Neither removing Ms. Wiggins from claimant's case nor issuing an apology letter is therefore warranted. Claimant's request should be denied.

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. (Welf. & Inst. Code, § 4501.) Claimant's representative requests a new service coordinator, an apology letter, and for ACRC to comply with the Lanterman Act. Claimant's representative bears the burden of proving he is entitled to such relief. (*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 . . ."].)

2. Claimant was assigned a new service coordinator on May 14, 2018. As such, that request is moot.

3. Claimant's representative requested a letter of apology from Alfonso Carmona for ACRC's failure to comply with the Lanterman Act. Claimant's representative argued that ACRC's failed to comply because it has not provided access to the records he has requested. Pursuant to Welfare and Institutions Code section 4725:

(a) "Access" means the right to inspect, review, and obtain an accurate copy of any record obtained in the course of providing services under this division. A service agency may make a reasonable charge in an amount not to exceed the actual cost of reproducing the record, unless the imposition of the cost would prohibit the exercise of the right to obtain a copy. No charge may be made to search for or retrieve any record.

(b) "Record" means any item of information directly relating to a person with developmental disabilities or to one who is believed to have a developmental disability which is maintained by a service agency, whether recorded by handwriting, print, tapes, film, microfilm, or other means.

Pursuant to Factual Finding 12, claimant's representative did not establish that ACRC did not provide him with "complete records." The records to which he is entitled under the Lanterman Act are those "obtained in the course of providing services." Claimant's representative received claimant's file, except for records of internal ACRC meetings and records that are subject to the attorney/client privilege. ACRC's staff meetings, meetings to discuss strategies regarding its difficulty with claimant's representative, and meetings between employees and supervisors are not records

obtained in the course of providing services, and are not subject to disclosure with claimant's case file.

Evidence Code sections 952 and 954 provide that communications between a client and his or her attorney in the course of their relationship are privileged, and only the client, as the privilege holder, can waive the privilege. On the advice of its attorney, the regional center opted not to waive the privilege, and maintain the confidentiality of communications with its attorney.

4. Finally, claimant's representative requested that Sharon Wiggins be completely removed from claimant's case file. Pursuant to Factual Finding 11, removing Ms. Wiggins is not practical. Additionally, claimant's representative did not present evidence to establish a cause to remove Ms. Wiggins.

5. The matters set forth in the Factual Findings have been considered. The evidence does not support granting claimant's representative's requests. Claimant's appeal must therefore be denied.

ORDER

Claimant's request for a new service coordinator was granted prior to hearing, making that request moot. Claimant's requests for an apology letter and to remove Sharon Wiggins from claimant's case file are denied.

DATED: June 22, 2018

HEATHER M. ROWAN
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 ninety (90) days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)