

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2018080578

DECISION

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), in Sacramento, California, on December 5, 2018.

The Service Agency, Alta California Regional Center (ACRC), was represented by Sami Elamad, ACRC staff.

Claimant was present at the hearing, and was represented by his mother and father.

Evidence was received, the record was closed, and the matter was submitted for decision on December 5, 2018.

ISSUE

May ACRC terminate funding of the Casa Allegra Tutor Group program for claimant?

FACTUAL FINDINGS

1. Claimant is a 45-year-old man who resides with his parents in their family home in Sacramento. He is eligible for ACRC services based on his diagnosis of Autism Spectrum Disorder.

2. Claimant has been receiving vendored services from Casa Allegra Community Services (CACS) since prior to 2003, when his regional center case was transferred from Golden Gate Regional Center (GGRC) to ACRC in the Sacramento region. Neither CACS nor its Casa Allegra Tutor Group (CATG) program is an ACRC vendor because they are located in San Rafael, outside ACRC's catchment area. ACRC has been funding CACS services through GGRC via "courtesy vendorization" since 2003.

3. Claimant is a talented baritone singer who has performed at numerous venues, and is capable of singing in various styles including classical, musical theater, Christian pop, and rock. Claimant's most recent ACRC Individual Program Plan (IPP) revised March 28, 2018, states that Objective No. 3 is as follows: "With day program support, [claimant] will complete a CD and become a Christian Contemporary Rock singer, through 1/19." Toward this end, the IPP states: "Alta will continue to fund Casa Allegra Tutor Group until Alta switches over to the new vendorization. ..." Claimant's five preceding IPPs from the years 2013 through 2017, each include a statement of goals: "[Claimant] will continue to participate in a specialized day program via Casa Allegra" and "[Claimant] will continue enhancing his singing techniques." CACS hired claimant's mother to provide the services, through CATG, to claimant, her son.

4. On July 30, 2018, ACRC sent claimant's parents a Notice of Proposed Action (NOPA), advising them that ACRC was terminating funding for the services claimant is receiving from CATG. ACRC's reason for the proposed termination is stated in its NOPA as follows:

Regional centers cannot purchase services from providers which are not vendored by or contracted with a regional center to provide services. The Casa Allegra Tutor Group program in which [claimant] is currently participating is not contracted with or vendored by any regional center to provide client services. Golden Gate Regional Center had originally vendored the Casa Allegra Tutor Group (as the vendoring regional center), and permitted ACRC to access Casa Allegra's services for [claimant] through "courtesy vendorization" because Casa Allegra is not located in ACRC's catchment area. However, ACRC has learned that Golden Gate Regional Center terminated Casa Allegra Tutor Group's vendorization in 2011. Therefore, the courtesy vendorization by ACRC is no longer valid. And Casa Allegra advised that it does not wish to become vendored by ACRC to provide services to [claimant].

However, ACRC has other vendored day programs available which are appropriate to meet [claimant's] needs. Your preference for [claimant] to continue receiving services from an unvendored provider does not obligate ACRC to continue funding that program when alternative appropriate services are available to meet [claimant's] needs.

5. Claimant's parents filed a Fair Hearing Request on his behalf on August 8, 2018, in which they state that the reasons for requesting a fair hearing are "[t]o prevent reduction or termination of services by ACRC while awaiting the availability of the Self Determination Program." Claimant's parents describe in the Fair Hearing Request what is

needed to resolve the matter as “[t]he cooperation of ACRC to continue funding the current program.”

6. On November 26, 2018, the executive director of CACS sent a letter via electronic mail to respondent’s parents, with a cc to ACRC, which states in relevant part as follows:

I am writing to let you know that Casa Allegra Community Services will be terminating services with [claimant] effective December 31, 2018.

We have been in conversation with you for some time with a recommendation that [claimant’s] needs could better be addressed by a local vendor or in the Sacramento area. We continue to believe that a change is in [claimant’s] best interest. We do not feel that we can provide appropriate oversight and support to move [claimant] forward in his desire to be a professional baritone. We also do not feel we can properly monitor his changing health and life needs.

As an agency, we are proud of our reputation for being accountable and truly making a difference in a person’s life. We are unable to do this being in Marin while you live in Sacramento.

7. On November 26, 2018, ACRC sent an electronic mail message to claimant’s parents, which states in relevant part as follows:

We are in receipt of the letter emailed to you this date by ...
Casa Allegra advising you it will terminate [claimant’s] services

from Casa Allegra effective December 31, 2018. ... Since [claimant's] Casa Allegra services will be ending soon, I recommend that you schedule a meeting with [claimant's] Service Coordinator as soon as possible to discuss alternative services which may be available to meet [claimant's] needs.

As a result of Casa Allegra's notice, ACRC hereby rescinds and retracts the Notice of Proposed Action it mailed to you on July 30, 2018. ... ACRC has reversed its decision and agrees to continue funding [claimant's] Casa Allegra services until Casa Allegra terminates them on December 31, 2018.

CLAIMANT'S EVIDENCE

8. Claimant's mother and father testified at hearing. Claimant lives with them, and they are available to provide care and support 24 hours per day. They help with his hygiene, and make sure he takes his medications. They also take care of his travel plans, including transportation, hotel reservations, and other arrangements necessary for his musical performances in other cities.

9. Claimant's parents have sought local vendors for services similar to what they provide through CACS. They have looked at programs suggested by claimant's ACRC service coordinator, and feel that because claimant requires the availability of 24-hour care, most of the suggested programs would not be able to provide necessary services. The one exception is the Self-Determination Program through the Department of Developmental Services, which provides consumers and their families with more freedom, control, and responsibility in choosing services and supports to help them meet their objectives in their IPP. Claimant's parents sought to enroll claimant in the Self-Determination Program in 2018, but were not among the applicants selected through the lottery system.

Consequently, they must wait for three years when the program is open to all eligible regional center clients, without the limitations of a lottery. Claimant's parents want to maintain the same level of care they are currently providing through CACS until they can enroll claimant in the Self-Determination Program.

ACRC'S EVIDENCE

10. Dale Dutton testified telephonically. Mr. Dutton was on the CACS Board of Directors during 2003 through 2010. He has known claimant's parents since before they moved from the GGRC to the ACRC catchment area in 2003, and has stayed in contact with them. In his view, it makes sense that claimant's parents provide services because they are in the same home and available 24-hours per day. It also makes sense to Mr. Dutton that claimant's parents work through a vendor in the ACRC catchment area rather than continuing with CACS. To his understanding, the purpose of the courtesy vendorization of CACS has been to allow for a transition to a local vendor. The courtesy vendorization has been going on for approximately 15 years, and in Mr. Dutton's view it is time to that ACRC facilitate a transition so that CACS can terminate its role. That being said, Mr. Dutton thinks that "it would be easy" to put something together between claimant and CACS for a short period of time if ACRC agrees, but that CACS does not want to remain involved for the long term.

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LEGAL CONCLUSIONS

APPLICABLE LAWS

1. The Lanterman Disabilities and Services Act, beginning at section 4500 of the Welfare and Institutions Code,¹ contains a number of provisions relevant to entitlement to services and supports.

2. The State has accepted a responsibility for persons with developmental disabilities and an obligation to them. Section 4501 provides, in part:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. ...

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. ...

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. ...

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

3. The Lanterman Act contains numerous provisions that elaborate on the nature of the services and supports to which developmentally disabled persons are entitled.

- Section 4502, subdivision (b), provides, in part:

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(1) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

(2) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

[¶] ... [¶]

(10) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and

leisure, the pursuit of their personal future, and program planning and implementation.

- Section 4512, subdivision (b), provides:

“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, 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; 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.

- Section 4620 provides, in part:

(a) In order for the state to carry out many of its responsibilities as established in this division, the state shall contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, to the end that these persons may have access to the services and supports best suited to them throughout their lifetime. ...

(b) The Legislature finds that the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies. Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

- Section 4640.7, subdivision (a), provides, in part:

It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living ... in the community.

- Section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by regional center system is 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. 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 plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

- Section 4648, subdivision (a), provides, in part:

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. Regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan. ...

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from

any individual or agency which regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

DISCUSSION

4. In 2001, claimant had a fair hearing.² The issue in that matter was: "One of claimant's goals is to become an accomplished performer. What are the services to which he is entitled to facilitate his pursuing that goal?" While the issues and the parties in the 2001 matter were not identical to the present matter, portions of the legal conclusions in the 2001 decision are appropriate to this matter, and are incorporated in the legal conclusions of this matter as follows:

Claimant is high functioning and is able to accomplish more than many disabled persons. But the fact that his disability is not as severe in degree as that of other persons does not mean that he is not entitled to services that meet his needs. Services and supports should be sufficiently complete to meet the needs of each person regardless of the degree of disability.³ Claimant is entitled to services that enable him to approximate the patterns of everyday living available to

² *In the Matter of Michael V. v. Golden Gate Regional Center*, OAH No. N 2000120114.

³ Welf. & Inst. Code, § 4501.

people without disabilities.⁴ Persons of claimant's age who are without disabilities generally can arrange to attend classes, auditions, rehearsals, and performances in the afternoon and evening hours. Generally they can adjust their schedules from day to day. Disabled persons are entitled to services that promote opportunities for them to be integrated into the mainstream of life in their communities⁵ and that empower them to live more independent, productive, and normal lives.⁶ They are entitled to services that foster their developmental potential⁷ and that facilitate their making choices in the way they spend their time, including time spent in education, employment, leisure, and the pursuit of their personal future.⁸ They are entitled to services best suited to them throughout their lifetime.⁹ ... The Lanterman Act recognizes that the nature of needed services

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Id.* at § 4502(b)(1), and § 4512(b).

⁷ *Id.* at § 4502(b)(1).

⁸ *Id.* at § 4502(b)(10).

⁹ *Id.* at § 4620.

is special and unique.¹⁰ Regional centers are to attempt to ensure that the service needs of consumers are met.¹¹

Regional centers are to assist persons with disabilities in securing services that maximize opportunities and choices for living in the community,¹² and those services are to reflect the preferences and choices of the consumer.¹³

Claimant has chosen to live with his parents and to pursue his musical ambitions. Services are to be flexible and individually tailored to the consumer.¹⁴ They are to be designed creatively so that they meet a consumer's unique and individual needs as those needs evolve over time.¹⁵

5. Claimant's reason for requesting a fair hearing in this matter is "[t]o prevent reduction or termination of services by ACRC while awaiting the availability of the Self Determination Program." The six IPPs from 2013 through 2018, support claimant's request to maintain his level of services. ACRC's NOPA, rescinded and replaced by its agreement to continue funding services provided via CACS until CACS terminates its services on

¹⁰ *Ibid.*

¹¹ *Id.* at § 4640.6(c).

¹² *Id.* at § 4640.7(a).

¹³ *Id.* at § 4646(a).

¹⁴ *Id.* at § 4648(a)(2).

¹⁵ *Id.* at § 4685(b)(2).

December 31, 2018, puts claimant's services at immediate risk. CACS cannot be required to continue services to claimant beyond the December 31, 2018 notice period, but is surely and strongly encouraged to do so in order that the parties to this matter have a fair opportunity to engage in further discussion to identify and transition to alternative modes of service delivery appropriate to meet claimant's needs before CACS services are terminated. The parties to this matter must take seriously their respective responsibilities to meet and confer in good faith within the framework of an IPP meeting, with the goal of achieving an agreement regarding alternatives to CACS, including possible local vendorization.

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ORDER

Claimant's appeal is SUSTAINED in part. ACRC shall continue to fund services provided via CACS until CACS is no longer willing to participate, or until such time that the parties reach an agreement regarding an alternative to CACS, whichever occurs sooner. No later than January 31, 2019, the parties shall convene an IPP meeting specifically to confer regarding alternatives to CACS.

DATED: December 18, 2018

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)