

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. 2018090667

DECISION

This matter was heard before Administrative Law Judge Heather M. Rowan, State of California, Office of Administrative Hearings (OAH), on November 7, 2018, in Redding, California.

Lauren Leisz, Human Resources Director, represented Far Northern Regional Center (FNRC or the regional center).

Claimant's mother and conservator represented claimant, who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on November 7, 2018.

ISSUE

Did FNRC appropriately deny claimant's request to fund legal services necessary to change the current co-conservatorship document?

FACTUAL FINDINGS

PROCEDURAL HISTORY

1. Claimant is 23 years old and has received regional center services since he was two years old. In 2013, when claimant turned 18, his mother determined that claimant should be conserved. She requested that FNRC fund the necessary legal fees to file the petition for conservatorship. Her request was initially denied but, on a request to reconsider, the request was granted. Claimant's mother hired an attorney to complete the necessary paperwork and file the petition. FNRC paid the attorney fees. The petition was granted, and claimant's mother was named as his conservator, and his sister, A.S., was named co-conservator.

2. A.S. was identified as a co-conservator because she was claimant's only sibling who reached the age of majority. She does not currently make decisions for claimant, and is only anticipated to do so if claimant's mother is unable. Claimant has two other siblings, a brother and a sister, who are now over 18 years old. Recently, claimant and his mother have found that A.S. is not an appropriate co-conservator for claimant. A.S.'s behavior has been erratic, she does not make good decisions, and she is married to a man who has been arrested several times for driving under the influence of alcohol. Claimant's mother has told A.S. that her husband is not to drive claimant, but A.S. does not respect her mother's request. Claimant's mother would like to apply to change petitioner's conservatorship and list his two other siblings as co-conservators.

3. Claimant's mother requested that FNRC pay the attorney fees relating to changing claimant's co-conservator. On August 28, 2018, FNRC issued a Notice of Proposed Action stated that it would deny the request for funding legal services. Claimant's mother appealed that decision. She also contacted Legal Services of Northern California, the court investigator who reviews conservatorships, and the attorney who

filed the prior petition. She has not been able to find assistance in filing the petition. While the attorney can perform this work for \$850, she cannot afford to pay this fee.

4. Claimant's mother submitted three letters from people who agree that A.S. is no longer an appropriate co-conservator, and that his other siblings are more appropriate. Douglas McMullin, M.D., wrote that having A.S. as a co-conservator presents "significant safety issues," but he did not state what those issues are.

FNRC'S POSITION

5. Larry Withers is the Associate Director of Client Services for FNRC. He met with claimant and his mother for an informal meeting regarding claimant's mother's request, the result of which was to uphold the regional center's denial. Mr. Withers testified at the fair hearing. He explained that when claimant's mother initially filed the conservatorship petition, FNRC's policy allowed the regional center to fund conservatorship services on a case-by-case basis. FNRC's policies have since changed.

6. FNRC's mission is to "provide services and supports that allow persons with developmental disabilities to live productive and valued lives as welcomed members of their community." Its purchase of service criteria allow FNRC to purchase services and supports for clients and families if they are directly related to the developmental disability; will further all or part of the client's Individualized Program Plan (IPP); and are not experimental. It is incumbent on the client's family to pursue other avenues of funding for the service or support before the regional center will fund. FNRC's policy recognizes that exceptions are necessary in some situations. In those cases, the Executive Director has discretion to authorize purchases if there are compelling individual circumstances.

7. In 2013, FNRC looked at several factors prior to a "purchase of services" for a claimant's conservatorship. Among these were whether the client's need for conservatorship was directly related to the qualifying developmental disability and

whether the client's family supported the appointment of the proposed conservator. Following a psychological evaluation of claimant, FNRC determined that claimant's conservatorship was directly related to his qualifying developmental disability, and funded the service.

8. In September 2017, the FNRC Board of Directors adopted a new policy regarding funding legal services for conservatorship. The policy stated that FNRC would "only fund legal services to pursue a limited conservatorship provided by a regional center vendored private conservator or the California Department of Developmental Services." The FNRC Board of Directors determined that it would no longer fund legal services for family-member conservators. The stated exception to the purchase of services policy continues to apply, however, and in "compelling individual circumstances," the regional center could still purchase services.

9. FNRC determined that, at this point, despite claimant and his mother's desire to change his co-conservator, his mother continues to be a capable and appropriate conservator. She makes all decisions with claimant's input, lives with him, and acts only in his best interest. A.S. does not make decisions regarding claimant at this time. FNRC did not find a current safety threat to claimant.

DISCUSSION

10. The Lanterman Act provides that every consumer of services through a regional center has a right to services and supports that allow the consumer to approximate the pattern of everyday living of their peers. (Welf. & Inst. Code, § 4501.) Consumers should also "be empowered to make choices in all life areas." FNRC must carry out the legislature's intent, which is 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 ... as well as promoting community integration, independent, productive, and normal lives, and stable and healthy

environments.” FNRC’s policy regarding only funding conservatorship in limiting circumstances is in line with the Legislature’s focus on integration and independence.

11. Claimant’s need for limited conservatorship was identified in 2013. Finding that the need was directly related to claimant’s developmental disability, FNRC funded the purchase of legal services. At this time, claimant’s mother is still his conservator, and is capable in continuing that role.

12. Claimant’s sister, A.S., is not currently making decisions for claimant. As co-conservator, she would only take an active role if the conservator were incapacitated. That is not currently the case. While claimant and his mother would like his other sister and brother to be co-conservators at this time, there is nothing to prevent his siblings from applying for a change of conservatorship at such time as claimant’s mother becomes incapacitated, and if A.S. is still unable to act in claimant’s best interests. Additionally, claimant’s other sister is studying to be a nurse, and his brother is adept with finances. There is no indication that they would not have input into claimant’s needs even if A.S. were the conservator.

13. Claimant’s mother’s dedication to her son’s well-being is apparent. She continues to act in his best interests. FNRC, however, is bound by the Lanterman Act, as well as its own policies. Those policies state that, absent compelling circumstances, it will not purchase legal services for conservatorship by a family member. Such compelling circumstances are not present here. Claimant’s appeal must therefore 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 that FNRC fund legal services for a change in conservatorship. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego*

Retirement Bd. (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because claimant is requesting services and supports not authorized by FNRC, he bears the burden of proof.

2. Pursuant to Welfare and Institutions Code section 4646.4, regional centers are to develop policies regarding purchase of services. Those policies must adhere to federal and state law, and further the consumer's IPP. The regional center adopted a policy that it will no longer fund legal services for conservatorship by a family member. Claimant's representative did not present evidence that this is a violation of law, or that it thwarts claimant's IPP.

3. The matters set forth in the Factual Findings have been considered. The evidence does not support granting claimant's request and his appeal must therefore be denied.

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ORDER

Claimant's request for Far Northern Regional Center to purchase legal services to amend his co-conservatorship is denied.

DATED: November 15, 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).)