

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2018100036

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 15, 2018, in Santa Ana, California.

Paula Noden, Fair Hearings Manager, represented Regional Center of Orange County (RCOC or Service Agency).

Claimant's sister represented claimant.¹

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on November 15, 2018.

ISSUE

Whether RCOC should fund claimant an additional \$600 per month to cover his expenses at Casa de Amma.

¹ Claimant and his sister are identified by titles to protect their privacy.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-14; claimant's exhibit A-Q

Testimony: Jack Stanton, Associate Director of Housing (RCOC); Marta Vasquez, Associate Financial Director (RCOC); Mercy Gordon, Service Coordinator (RCOC); Paula Noden, Fair Hearings Manager (RCOC); and claimant's sister.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a 53 year-old conserved male who qualifies for regional center services under the Fifth Category² based on a diagnosis of other specified neurodevelopmental disorder. Claimant currently lives by himself at Casa de Amma, an assisted living facility for individuals with special needs located in the City of San Juan Capistrano.

2. On September 11, 2018, RCOC sent claimant a Notice of Proposed Action letter denying his request for an additional \$600 per month to cover his expenses at Casa de Amma. On September 24, 2018, claimant filed a request for a fair hearing appealing the denial. This hearing ensued.

BACKGROUND

3. Claimant is able to walk on his own and communicate verbally. He is able to carry on a complex conversation and have a sense of humor. However, claimant's reading and writing skills have not progressed beyond the age of eight or nine. Claimant

² The "Fifth Category" includes disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability. (Welf. & Inst. Code, § 4512, subd. (a).)

is independent with most self-care tasks, but he is unable to make a hot meal or to take public transportation by himself. Claimant knows the value of things and can make purchases, but he needs assistance to budget his money. Claimant suffers from migraine headaches and requires supervision to consistently take his medication. Claimant likes to build hazardous devices using glass and electrical materials. He also exhibits hoarding behavior and does not clean his room without reminders. Due to these issues, claimant requires daily supervision to maintain his health and safety. Claimant has also required intensive employment coaching to maintain a job. However, claimant is currently successfully employed at Bluebird Canyon Farms located in the City of Laguna Beach.

4. From 2013 to June 2018, claimant lived at Glenwood Housing Foundation (Glenwood), another assisted living facility. On July 1, 2018, claimant moved into Casa de Amma.

5. Subsequently, claimant's Individual Program Plan (IPP)³ was updated with an addendum, dated September 5, 2018. According to this addendum, claimant currently receives all Supported Living Services (SLS)⁴ through Casa de Amma. Under the caption, "Services and Support that [claimant] Needs," is the following description:

³ Claimant's IPP contains Service Agency's and claimant's family's agreements, sets forth specific objectives and goals, and identifies the services and supports to achieve them. It also describes claimant's needs and behaviors.

⁴ SLS consist of a broad range of services to adults with developmental disabilities who, through the IPP process, choose to live in homes they themselves own or lease in the community. SLS may include assistance with selecting and moving into a home, choosing personal attendants and housemates, acquiring household furnishings, planning for emergencies, and managing personal financial affairs, as well as other supports. (Welf. & Inst. Code, § 4689.)

"[Claimant] will need the continued support of his sisters and [Casa de Amma] staff, financial support from his SSI/SSDI [Supplemental Security Income/Social Security Disability Income] and family, health benefits from Medi-Care/MediCal, HUD voucher to assist with housing expenses, and RCOC for case management." (Ex. 4, p. 3.) Long-term goals for claimant included the following: (1) residing in the least restrictive environment; (2) remaining in stable medical/dental health; (3) remaining employed with support as needed; (4) maintaining independence in activities of daily living; (5) participating in social recreational activities; (6) maintaining money management skills; and (7) maintaining an emergency plan. (*Id.* at p. 5.)

CLAIMANT'S FEES AND EXPENSES AT CASA DE AMMA

6. Casa de Amma is not a vendor of any regional center, and it is not under contract to provide services to Service Agency consumers. The Legislature has created a statutory scheme for vendoring direct service providers, for rate-setting, and to monitor the services and supports purchased by regional centers for its consumers.⁵ However, Casa de Amma has chosen not to be vendorized because it did not want to be subject to any of the auditing requirements for regional center vendors.⁶

7. Although Casa de Amma is not vendorized, Service Agency has elected to fund a portion of claimant's fees at Casa de Amma that constitutes SLS. As detailed below, Service Agency determined that the SLS portion of Casa de Amma's fee is \$2,340 per month. Because Casa de Amma is not vendorized, Service Agency currently pays this amount on claimant's behalf on a monthly basis through a pass-through entity.

⁵ Welf. & Inst. Code, §§ 4648, subd. (a)(3)-(5), 4648.1.

⁶ Welf. & Inst. Code, § 4648.1.

Claimant, however, is requesting an additional \$600 per month because the \$2,340 that Service Agency pays Casa de Amma does not cover all of his expenses.

8. The total cost of living on-site at Casa de Amma is \$3,918 per month, and claimant has other expenses that are not included in this fee. He must pay for eating out for lunch every day, dinners on Saturdays, and other social recreational outings in the community. For example, if claimant wanted to participate in an outing to an Angels' game with his peers, he would have to pay \$100 out-of-pocket. (Ex. 8.) Claimant estimated that the cost of the lunches, Saturday dinners, and community outings is approximately \$400 per month. (Ex. K.) In addition, claimant pays a total of \$215 per month in utilities consisting of \$72 for cable television, \$53 for gas and electricity, \$25 for internet services, and \$65 for cell phone services. (*Ibid.*) Thus, claimant's total monthly expenses at Casa de Amma are approximately \$4,533. (*Ibid.*)

9. Through his job at Bluebird Canyon Farms, claimant makes wages that fluctuate between \$700 and \$800 per month. Claimant also receives \$975 per month in SSDI income. Although claimant receives a Section 8 voucher from the Department of Housing and Urban Development (HUD), he cannot use that voucher towards his rent because Casa de Amma does not work with HUD. Thus, even after accounting for Service Agency's current level of funding in amount \$2,340, the entirety of claimant's \$975 SSDI income, and \$700 to \$800 of monthly wages, approximately \$518 to \$418 (\$4,533 minus \$2,340 minus \$975 minus (\$700 to \$800)) of his monthly expenses will not be covered.

SERVICE AGENCY'S DETERMINATION OF THE SLS PORTION OF CASA DE AMMA'S FEES

10. Service Agency determined the SLS portion of Casa de Amma's fees based on the cost of living off-site at the facility, which is \$2,340 per month. According to Casa de Amma, the services that it provides to those who live on-site and off-site are exactly

the same. If, for example, an individual was sufficiently independent to live at an apartment off-site nearby, Casa de Amma staff members would go to the apartment to deliver meals and to provide supervision and care. Consequently, Service Agency concluded that the SLS portion of Casa de Amma's fee is \$2,340, and the \$1,578 (\$3,918 minus \$2,340) difference between living on-site and off-site is rent.

11. Claimant asserted at the hearing that Casa de Amma had quoted to the family a rent of \$200 per month. Service Agency did not dispute that Casa de Amma has quoted \$200 of rent to its residents' families. However, in a November 6, 2018 email to Service Agency, Casa de Amma's executive director, Aaron Vorell (Vorell) indicated that the current cost of living on-site is \$3,918 per month while the cost of living off-site is \$2,340 per month. (Ex. 9.) In addition, Vorell estimated that Casa de Amma provides approximately 70 hours of SLS per month to claimant. (Ex. 7.) Based on Service Agency's current SLS vendor rates, if Casa de Amma was vendorized, Service Agency would fund claimant \$2,200 for 70 hours of SLS.

12. Claimant also contended at the hearing that the \$1,578 in difference between living on-site and off-site at Casa de Amma should be considered as a staff and service fee rather than rent. Claimant asserted that there was a qualitative difference between living on-site and off-site at Casa de Amma, in that claimant requires the intensive support of staff members who are immediately available in an emergency situation. Claimant submitted letters from Casa de Amma, Glenwood, and Integrated Resources Institute (which provides employment support services to claimant), indicating that claimant requires daily supervision due to concerns about his health and hoarding behavior. (Exs. L, O, and P.) Nevertheless, claimant did not present any evidence to refute the fact that the services Casa de Amma provided to its on-site residents were different from that

provided to its off-site consumers. Nor did claimant present any evidence that he required services beyond what is currently provided to him at Casa de Amma.⁷

13. Given the evidence in this record, it was established that the SLS portion of Casa de Amma's monthly fees is \$2,340, and the remainder of the fees, in the amount of \$1,578, constitutes rent.

TESTIMONY OF CLAIMANT'S SISTER

14. At the hearing, claimant's sister testified in a heartfelt and sincere manner about claimant's condition and needs. According to claimant's sister, her parents had adopted claimant as a child but had a difficult time dealing with his developmental disability. When claimant was 17 years old, claimant's parents turned over all caretaking responsibilities to claimant's aunt. When claimant was 40 years old, however, the aunt could no longer take care of him, and claimant's sister became her brother's conservator.

15. In 2013, claimant's sister placed her brother in Glenwood because Casa de Amma had a waitlist. In 2017, claimant experienced a health scare, and claimant's sister did not believe that Glenwood had sufficient staff members to meet claimant's needs. By 2018, Casa de Amma had an apartment available, and claimant moved in. Claimant's sister believes that Casa de Amma is the appropriate placement for her brother because it has more staff members to provide the intensive supervision that he needs.

⁷ Claimant was assessed by Service Agency as requiring a level two of support. Based on this level of support, if claimant were placed in a community care facility, claimant would be expected to contribute approximately \$1,026 per month in costs, and Service Agency would contribute approximately \$1,624 per month. Regardless, claimant did not express any interest in being placed at a community care facility.

16. On cross-examination, claimant's sister admitted that claimant's wages, consisting of approximately \$700 to \$800 per month, in addition to his \$975 in SSDI income, would cover the rent portion of Casa de Amma's fees. However, she testified that claimant requires additional funding from Service Agency to pay for his lunches every day, his Saturday dinners, and his participation in community outings. These expenses are currently being paid by claimant's family out-of-pocket.

LEGAL CONCLUSIONS

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that RCOG is required to fund an additional \$600 per month to cover claimant's expenses at Casa de Amma. (Evid. Code, § 115.)

2. Based on Factual Findings 1 to 16 and Legal Conclusions 1 to 12, cause does not exist to grant claimant's appeal.

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act)(Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, 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.” (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are “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.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature 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 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.

6. Welfare and Institutions Code section 4689 provides, in relevant 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:

[¶] [¶]

- (c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and

support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

[¶] . . . [¶]

- (h) Rent, mortgage, and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer.
- (i) A regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers receiving supported living services, except under the following circumstances:
 - (1) If all of the following conditions are met, a regional center may make rent, mortgage, or lease payments as follows:
 - (A) The regional center executive director verifies in writing that making the rent, mortgage, or lease payments or paying for household expenses is required to meet the specific care needs unique to the individual consumer as set forth in an addendum to the consumer's individual program plan, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another.
 - (B) During the time period that a regional center is making rent, mortgage, or lease payments, or paying for household expenses, the supported living

services vendor shall assist the consumer in accessing all sources of generic and natural supports consistent with the needs of the consumer.

- (C) The regional center shall not make rent, mortgage, or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis and the regional center executive director shall annually verify in an addendum to the consumer's individual program plan that the requirements set forth in subparagraph (A) continue to be met.

[¶] . . . [¶]

- (m) For purposes of this section, "household expenses" means general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.

7. Welfare and Institutions Code section 4648.5 provides:

Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's authority to purchase the following services shall be suspended...

- (a)(1) Camping services and associated travel expenses.
- (a)(2) Social recreation activities, except for those activities vendored as community-based day programs.
- (a)(3) Educational services for children three to 17, inclusive, years of age.

- (a)(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

[¶] . . . [¶]

- (c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

8. As set forth in Factual Finding 13, the evidence in this case established that the SLS portion of Casa de Amma's monthly fees is \$2,340, and the rent portion of the fees is \$1,578. As set forth in Factual Finding 8, part of claimant's request for funding consists of \$215 in utilities fees, which fall within the definition of "household expenses" pursuant to Welfare and Institutions Code section 4689, subdivision (m). While Service Agency is required to fund SLS, rent and household expenses are not included as SLS under Welfare and Institutions Code section 4689, subdivision (c). In fact, subdivision (h) of that statute prohibits Service Agency from funding the rent and household expenses of a supported living home, subject to a very narrow exception provided under subdivision (i).

9. Here, none of the requirements of Welfare and Institutions Code section 4689, subdivision (i), are met for Service Agency to fund claimant's rent and household expenses at Casa de Amma under this exception. No evidence was presented of a written verification from Service Agency's regional center executive director stating that making claimant's rent at Casa de Amma is required to meet the specific care needs

unique to him and is required due to claimant's demonstrated medical, behavioral, or psychiatric condition which presents a health and safety risk to himself or another.

10. Moreover, claimant's SSDI income of \$975, together with his monthly wages of \$700 to \$800, is sufficient to cover the rent portion of his fees at Casa de Amma. However, claimant's sister believes that an additional \$400 is needed to cover claimant's costs of eating out (lunches every day and Saturday dinners) and participating in community outings because these expenses are not included in Casa de Amma's monthly fees.

11. Nevertheless, under Welfare and Institutions Code section 4648.5, subdivision (a)(2), Service Agency is required to suspend funding for social recreational activities, except for those funded under a day program. Eating out for lunches, Saturday dinners, and other community outings are social recreational activities. Although an exemption for the suspension of social recreational funding exists under Welfare and Institutions Code section 4648.5, subdivision (c), no evidence was presented that eating out and participating in community outings are the primary or critical means for ameliorating claimant's developmental disability.

12. Based on the foregoing, Service Agency's decision to deny claimant's request for an additional \$600 per month to cover his expenses at Casa de Amma was proper.

ORDER

Claimant's appeal is denied. RCOC will not be required to fund an additional \$600 per month to cover claimant's expenses at Casa de Amma.

DATE:

JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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