

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2018100706

DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on November 29, 2018, in Sacramento, California.

Claimant was represented by her brother.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

The parties were given an opportunity to introduce evidence, each party objected to the other's evidence pursuant to Welfare and Institutions Code section 4712, subdivision (d),¹ the objections were sustained, the record was closed, and the matter was submitted for decision on November 29, 2018.

¹ Welfare and Institutions Code section 4712, subdivision (d), provides:

The claimant and the service agency shall exchange a list of potential witnesses, the general subject of the testimony of each witness, and copies of all potential documentary evidence at least five calendar days prior to the hearing. The

FACTUAL FINDINGS

1. On October 10, 2018, claimant's brother, acting as claimant's court-appointed conservator,² signed a Fair Hearing Request and submitted it to ACRC. The Fair Hearing Request seeks the "removal of Wendi McCray as acting Service Coordinator and aspects of Consumer file." Claimant's brother identified the following actions by ACRC as being necessary to resolve his complaint: 1) "a confirmation letter addressed to the Conservator indicating the removal of current Alta Regional Service Coordinator, Wendi McCray, from [claimant's] services and consumer file," and 2) "assignment of a qualified service coordinator who will follow Lanterman Act and works directly with [claimant's] family and properly communicates with Conservator (brother)."

2. At hearing, ACRC offered documentary evidence and the testimony of Ms. Black. Claimant's brother objected to all of ACRC's proposed evidence, except Exhibits 1 through 3, on the grounds that ACRC did not disclose the proposed evidence at least five days before hearing, and instead waited until the beginning of the hearing to provide copies of its proposed exhibits. Claimant's brother explained he did not have an opportunity to review the proposed exhibits, did not know what they consisted of, and was objecting to them out of an abundance of caution.

hearing officer may prohibit testimony of a witness that is not disclosed and may prohibit the introduction of documents that have not been disclosed. However, the hearing officer may allow introduction of the testimony or witness in the interest of justice.

² No finding is made whether claimant's brother remains her court-appointed conservator as of the date of hearing.

3. Claimant's brother was offered, but declined, an opportunity to review the proposed exhibits before deciding whether he wanted to maintain his objections, was warned that the statutory disclosure requirements apply equally to both parties, and persisted on asserting his objections. Ms. Black conceded that ACRC did not provide claimant notice of the evidence ACRC intended to offer at hearing. Claimant's brother's objections were sustained, and none of ACRC's evidence was admitted for any purpose, except Exhibits 1 through 3 were admitted for jurisdictional purposes only. ACRC rested its case.

4. Claimant's brother offered documentary evidence, to which ACRC objected on the grounds that none of the evidence was disclosed prior to hearing. Claimant's brother conceded he did not provide ACRC advance notice of the evidence he intended to rely on at hearing. ACRC's objections were sustained, and none of claimant's brother's proposed exhibits were admitted for any purpose. Claimant's brother declined to call any witnesses, and rested his case.

5. The sole admissible evidence of claimant's brother's request for a new Service Coordinator for his sister was the Fair Hearing Request. There was no admissible evidence that ACRC denied the request or failed to respond to it. There was no admissible evidence that ACRC made a decision or took a particular action regarding the provision of services to claimant, or that ACRC gave claimant notice of its intent to make a decision or take a particular action regarding the provision of services to her.

DISCUSSION

6. Claimant's brother has the burden of proving that ACRC made a decision or took a particular action regarding the provision of services to his sister with which he is dissatisfied and believes to be illegal, discriminatory, or not in his sister's best interest. He failed to introduce any admissible evidence of any such decision or action. While his Fair Hearing Request asks for a different Service Coordinator and that Ms. McCray be

prohibited from acting in that capacity and having any involvement with his sister's case, he failed to establish that ACRC denied or failed to respond to his request. Therefore, claimant's brother failed to sustain his burden on appeal.

7. Claimant's brother's argument at hearing that he complied with the statutory disclosure requirement because his proffered evidence consisted entirely of documents ACRC already received was not persuasive. The purpose of the statutory disclosure requirement is to inform each party of the evidence the other intends to rely on at hearing, and the mere fact that one party already has, or should have, certain evidence does not provide notice that the other intends to rely on that evidence at hearing. Therefore, claimant's brother's argument was belied by his admission that he provided ACRC no advance notice of the evidence he intended to rely on at hearing.

LEGAL CONCLUSIONS

APPLICABLE BURDEN/STANDARD OF PROOF

1. Claimant's brother has the burden of proving by a preponderance of the evidence that ACRC made a decision or took a particular action regarding the provision of services to his sister with which he is dissatisfied and believes to be illegal, discriminatory, or not in his sister's best interest. (*Lindsay v. San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant's representative to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, he must prove it is more likely than not that ACRC made a decision or took a particular action regarding the provision of services to his sister with which he is dissatisfied and

believes to be illegal, discriminatory, or not in his sister's best interest. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

APPLICABLE LAW

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities, and pays for the majority of the "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible. (Welf. & Inst. Code, § 4502, subd. (a).) The state agency charged with implementing the Lanterman Act is the Department of Developmental Services, which is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (Welf. & Inst. Code, § 4520.)

3. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) Regional centers are required to "assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." (Welf. & Inst. Code, § 4640.7, subd. (a).) In so doing, "each regional center design shall reflect the maximum cost-effectiveness possible and shall be based on the service coordination model, in which each consumer shall have a designated service coordinator who is responsible for providing or ensuring that needed services and supports are available to the consumer." (Welf. & Inst. Code, § 4640.7, subd. (b).)

4. Welfare and Institutions Code section 4647, subdivision (b), provides the following regarding the assignments of service coordinators:

The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services, or persons described in Section 4647.2. The regional center shall provide the consumer or, where appropriate, his or her parents, legal guardian, or conservator or authorized representative, with written notification of any permanent change in the assign service coordinator within 10 business days. No person shall continue to serve as a service coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

5. ACRC is required to give advance notice of actions it intends to take with regard to the provision of services as follows:

(a) Adequate notice shall be sent to the applicant or recipient and the authorized representative, if any, by certified mail at least 30 days prior to any of the following actions:

(1) The agency makes a decision without the mutual consent of the service recipient or authorized representative to reduce, terminate, or change services set forth in an individual program plan.

(2) A recipient is determined to be no longer eligible for agency services.

(b) Adequate notice shall be sent to the recipient and the authorized representative, if any, by certified mail no more than five working days after the agency makes a decision without the mutual consent of the recipient or authorized representative, if any, to deny the initiation of a service or support requested for inclusion in the individual program plan.

[¶] ... [¶]

(e) If a person requests regional center services and is found to be ineligible for these services, the regional center shall give adequate notice pursuant to Section 4701. Notice shall be sent within five working days of the time limits set forth in Sections 4642 and 4643.³

³ Welfare and Institutions Code section 4642, subdivision (a)(1), makes eligible for initial intake and assessment services in the regional centers anyone believed to have a developmental disability and anyone believed to be at a high risk of having a developmentally disabled infant. Additionally, an infant considered to be at high risk of becoming developmentally disabled may be eligible for initial intake and assessment services in the regional centers. (*Ibid.*) Initial intake must occur "within 15 working days following request for assistance." (Welf. & Inst. Code, § 4642, subd. (a)(2).) "If assessment is needed, the assessment shall be performed within 100 days following initial intake." (Welf. & Inst. Code, § 4643, subd. (a).) But if delay in assessment would place a client's

(f) The advance notice specified in subdivision (a) shall not be required when a reduction, termination, or change in services is determined to be necessary for the health and safety of the recipient. However, adequate notice shall be given within 10 days after the service agency action.

6. Welfare and Institutions Code section 4710.5, subdivision (a), provides the following regarding the right to request a fair hearing.

Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. The opportunity to request a voluntary informal meeting and an opportunity for mutually agreed upon voluntary mediation shall also be offered at this time.

CONCLUSION

7. Claimant's brother failed to introduce any admissible evidence that ACRC made a decision or took a particular action regarding the provision of services to his health and safety at unnecessary risk, expose her to significant further delay in mental or physical development, or place her at imminent risk of placement in a more restrictive environment, "assessment shall be performed as soon as possible and in no event more than 60 days following initial intake." (*Ibid.*)

sister with which he is dissatisfied and believes to be illegal, discriminatory, or not in his sister's best interest. Therefore, claimant's appeal must be denied.

ORDER

Claimant's request for a different Service Coordinator and that Wendi McCray be prohibited from acting in that capacity and having any involvement with claimant's case is DENIED.

DATED: December 4, 2018

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.