

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

Vs.

FRANK D. LANTERMAN REGIONAL CENTER,

SERVICE AGENCY

OAH No. 2018120751

DECISION

James Michael Davis, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 20, 2019, in Los Angeles.

Attorneys Cynthia J. Waterson and Jessica T. Franey, Waterson & Huth, LLP, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Claimant's adoptive mother (and authorized representative) represented Claimant, who was present throughout the hearing. The names of Claimant and her mother are withheld to protect their privacy.

Oral and documentary evidence was received. The record remained open to allow the following: Claimant to submit exhibits H through K, and N, the Service Agency to object, and the parties to submit written closing briefs. The parties timely submitted the exhibits and objections. The ALJ marked exhibits H, I, J, K and N for identification. The ALJ marked the Service Agency's objection to said exhibits as exhibit 11. Exhibits H, I, J, K and N are admitted, and the ALJ will give the exhibits their appropriate evidentiary weight. Exhibit O, Claimant's explanation of exhibit N, was also marked for identification.

On August 26, 2019, Claimant moved for a one-month extension for filing her closing brief. On August 28, 2019, the ALJ granted a one-week extension to all parties. The parties timely submitted their closing briefs on September 6, 2019. The Service Agency's closing brief was marked for identification as exhibit 12, and Claimant's brief was marked for identification as exhibit P. The matter was deemed submitted on September 6, 2019.

ISSUES

The parties agreed the issues are:

1. Whether the Service Agency should provide reasonable financial assistance to Claimant pending her receipt of SSI;
2. If so, should the financial assistance be retroactive?
3. Did the Service Agency racially discriminate against the Claimant with regard to the instant request for reasonable financial assistance?

EVIDENCE RELIED UPON

In reaching the Decision, the ALJ relied upon the Service Agency's exhibits 1-10; Claimant's exhibits A-N; and the testimony of Guadalupe Munoz, FDLRC Services Coordinator; Katie Ramirez, FDLRC Regional Manager; and Claimant's mother.

SUMMARY

Claimant contends that, as a Lanterman Developmental Disabilities Services Act (Lanterman Act) consumer, it is her right to receive reasonable financial assistance pending receipt of her Supplemental Security Income (SSI). But reviewing Claimant's budget reveals her financial shortfall is primarily rent and household expenses, which, under these facts, is non-reimbursable under the Lanterman Act. Further, Claimant has failed to exhaust generic resources, which is a prerequisite to receiving Service Agency

funding. Lastly, Claimant was approved for SSI, including back pay, making her request moot. Therefore, Claimant's claim for financial assistance is denied.

Claimant further contends the Service Agency, in providing her services, racially discriminated against her. As this contention is unsupported by evidence, it must fail.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Claimant is a 22-year-old, African-American, conserved female. She is eligible for FDLRC services under the Lanterman Act. (Welf. & Inst .Code,¹ § 4500 et seq.) Claimant's eligibility arises from a diagnosis of mild intellectual disability. She also suffers from Mosaic Turners Syndrome, which affects her gait and, on occasion, causes severe leg pain.

2. In September 2018, the Service Agency issued a Notice of Action letter (NOA) to Claimant. The NOA denied Claimant's request for financial assistance in the amount of \$1,913 per month.² Its rationale for denial was that "providing financial assistance in the amount of \$1,913 per month is not justified due to you not pursuing all possible generic agencies and because the Lanterman Act does not give regional centers authority to fund for the expenses of a client who lives in the family home." (Ex. 1, p. 2.) The NOA referred to sections 4648, subdivision (a), 4659, subdivision (a), 4680, 4689, subdivision (h), 4688.6, subdivision (a), and 4512, subdivision (b), as the underlying

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

² As discussed below, the dollar figure of \$1,913 was determined by reviewing Claimant's budget. (Ex. 8.)

legal basis for its decision. (*Id.* at pp. 2-3.)

3. In December 2018, Claimant filed a Fair Hearing Request (FHR), initially seeking an informal meeting. (Ex. 2.) Due to scheduling difficulties, the informal meeting never occurred, and this fair hearing ensued. All jurisdictional requirements have been met.

INDIVIDUAL PROGRAM PLAN AND RELEVANT AMENDMENTS

4. Claimant's individual program plan (IPP), dated May 3, 2018, reported that the desired outcome is that Claimant continue to live at home with her family. (Ex 4, p.1.) It further reported that living at home "provides the most appropriate and least restrictive living environment." (*Ibid.*) Claimant and her mother like the area in which they live in Pasadena.

5. The IPP Amendment, dated August 12, 2018, stated that FDLRC will fund 50-hours maximum over one year of legal advocacy support for Claimant's appeal of her denial of SSI. Legal advocacy services would span from July 2018 to July 2019. (Ex. 5.)

6. The IPP Amendment, dated October 23, 2018, stated that FDLRC will reimburse "personal assistant services in lieu of adult day programming and extended day [for] 184 hours a month from 11/1/18-10/31/19." (Ex. 6.) The personal assistant services are to be reimbursed at a rate of \$17.50 per hour. (*Ibid.*) It is unclear from the record who is providing Claimant's personal assistant services.

CLAIMANT'S LOSS OF DEPARTMENT OF CHILD AND FAMILY SERVICES FUNDING

7. In late July 2018, Claimant's mother contacted the Service Agency to inform them that the \$3,300 received per month by Claimant as a foster youth stipend ended upon her 21st birthday, which was in the fall of 2017. Claimant's mother further stated that her SSI application was denied. Claimant's mother stated that with recent increases in rent and Claimant's income reduction she could not afford to support

Claimant. Claimant's mother asked if the Service Agency could assist with paying for housing. Claimant's mother stated that Claimant is showing signs of depression and unhappiness based on the limited social opportunities available under their significantly decreased budget. (Ex. 9, p. 12.)

8. In response to Claimant's mother's financial concerns, Guadalupe Munoz consulted with the Service Agency's management. Management advised her to direct Claimant's mother to submit a budget sheet to better understand Claimant's situation.

9. Claimant's mother provided a family budget, dated August 18, 2018. (Ex. 8.) The budget detailed that Claimant received \$413 per month in income and had expenses totaling \$2,326, for a total monthly shortfall of \$1,913. None of the items outlined in the budget were related to her developmental disability. For example, under "Other" Claimant's mother listed \$125 per month of professional hair washing and braiding and listed \$30 for half³ the cost of Microsoft and Adobe software subscription services. (*Ibid.*) The biggest budget shortfall was \$1,042, which was half the monthly rent.

10. In early September 2018, Claimant's mother stated that unless the Service Agency can provide housing assistance, Claimant's mother did not think that she will be able to continue housing Claimant.

11. That same month, Ms. Munoz spoke with a representative from Linda L. Chappel & Associates, Inc., who were providing legal support for Claimant's resubmission for SSI benefits. The representative informed Ms. Munoz that the SSI reconsideration was filed several days prior, but that it could take up to eight months to receive a response from the Social Security Administration. (Ex. 9, p. 8.)

12. In the meantime, Ms. Munoz discussed various options available to assist

³ All half costs on the budget were split between Claimant and Claimant's mother.

Claimant with her financial shortfall. For example, residential placement and low income housing options were discussed. Claimant's mother was not interested and emphasized that she wished to keep Claimant living with her at their current residence.

13. Ms. Munoz testified that various generic options were also discussed with Claimant's mother as a means to mitigate Claimant's financial shortfall. As discussed above, Claimant was receiving 184 hours per month of personal assistance services to help with Claimant's college preparation and grooming. Claimant's mother was encouraged to apply for In Home Supportive Services (IHSS) as this could provide Claimant's mother financial compensation for her caretaker responsibilities. No evidence was submitted that indicated that Claimant has applied for or is currently receiving IHSS. Ms. Munoz further conveyed to Claimant's mother that the Department of Rehabilitation (DOR) may be able to provide financial assistance regarding Claimant's software subscriptions. No evidence was introduced that Claimant sought DOR assistance.

14. In February 2019, the Social Security Administration informed Claimant that Claimant's request for SSI reconsideration was approved. Claimant would begin receiving a stipend of \$664.24 per month, beginning in April 2019. (Ex. J.) In March 2019, Claimant was informed by letter that the stipend would be \$678.24 beginning in April 2019. (Ex. K.) The letter further stated that the \$678.24 stipend included \$164.24 from the State of California and that Claimant would receive back payments from August 2018 through February 2019 totaling \$6,670.40. (*Ibid.*)

CLAIMANT'S CONTENTIONS REGARDING RACIAL DISCRIMINATION

15. Claimant contends, without evidentiary support, that the Service Agency provides preferential treatment to undocumented California residents over African-Americans who are United States citizens. (Ex. 2.) Claimant further contends that the Service Agency racially discriminated against her based upon the Service Agency supporting greater numbers and expending more money on white, Hispanic and Asian

consumers than African-American consumers. (Ex. 2; see ex. G.) Claimant further contends that Claimant was not selected for the Department of Developmental Services Self Determination Program based upon the Service Agency's racially discriminatory practices. But Claimant's evidence is insufficient to support any of these contentions. Indeed, Claimant's evidence shows that the Service Agency's expenditure per capita on African-American consumers is higher than per capita expenditures on white, Hispanic and Asian consumers. In any event, Claimant has provided no evidence to corroborate her contention that her specific treatment by FDLRC is racially motivated.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based upon Factual Findings 1 through 3.

2. The burden of proof is on Claimant to establish that the Service Agency is required to fund the requested services and to prove the Service Agency discriminates against her. (Evid. Code, § 500.) The standard is a preponderance of the evidence. (Evid. Code, § 115.) As discussed below, Claimant has not met her burden.

CONSUMER RIGHTS UNDER THE LANTERMAN ACT

3. A consumer⁴ has rights under the Lanterman Act which are codified in a chapter titled "Persons with Developmental Disabilities Bill of Rights." (§ 4502.) For example, a consumer has "a right to. . . supports in the least restrictive environment." (§ 4502, subd. (b)(1).) Moreover, "supports should foster the developmental potential of

⁴ A "consumer" is one who has a disability that meets the definition of a developmental disability under the Lanterman Act. (§ 4512, subd. (d).)

the person and be directed toward the achievement of the most independent productive and normal life possible.” (*Ibid.*)

4. Lanterman Act services, in support of these rights, are to be provided in conformity with the consumer’s IPP. (§§ 4646, subd. (d), & 4512, subd. (b).) Consumer choice is to play a part in the construction of the IPP. (§ 4646, subd. (b).)

5. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law, each consumer’s particular needs must be met. (See, e.g., §§ 4500.5, subd. (d); 4501; 4502; 4502.1; 4512, subd. (b); 4640.7, subd. (a); 4646, subds. (a) & (b); and, 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken, and the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the consumer’s participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1) & (a)(2).)

6. The range of services provided to the consumer is extensive. Section 4512, subdivision (b), provides, in pertinent part, that:

Services and supports for person 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 . . . and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option of 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, . . . special living arrangements, . . . training, education, supported and sheltered employment, . . . assistance in locating a home, . . . paid roommates, . . . supported living arrangements, [and] technical and financial assistance[.] . . . 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.

CLAIMANT'S APPEAL

7A. 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 IPP. (§ 4689.) Therefore, the Legislature adopted the following procedures which provide opportunities for adults to live in their own homes:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

- (2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.
- (3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.
- (4) Consumers shall have control over the environment within their own home.
- (5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.
- (6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.
- (7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.
- (8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.
- (b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.
- (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. (§ 4689, subds. (a)-(c).)

7B. Based upon the foregoing, supporting Claimant's choice of living arrangement is a statutorily-mandated priority for the Service Agency.

8A. But, as noted in the Service Agency's NOA (Factual Finding 2), there are limits on a consumer's desires. As discussed below, these limits bar payment of rent and household expenses by a regional center, unless an exception can be found. Specifically, section 4689, subdivisions (a) and (j) provide that:

- (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.

8B. The regulations add other cost-related limits on a regional center's ability to make or augment rent payments. The California Code of Regulations, title 17, section 58611, at subdivision (b), states:

The regional center shall not pay any costs incurred by a consumer receiving SLS in securing, occupying, or maintaining a home rented, leased, or owned by the consumer except when the executive director of the regional center has determined that:

- (1) Payment of the cost would result in savings to the State with respect to the cost of meeting the consumer's overall services and supports needs;
- (2) The costs cannot be paid by other means, including available natural or generic supports; and
- (3) The costs are limited to:

- (A) Rental or utility security deposits;
- (B) Rental or lease payments;
- (C) Household utility costs;
- (D) Moving fees; and
- (E) Non-adaptive and/or non-assistive household furnishings, appliances, and home maintenance or repair costs.

8C. A further limitation on the availability of regional center funding is the requirement that the consumer first access generic sources before obtaining financial assistance from the regional center. Section 4648, subdivision (a)(8) prohibits regional centers from funding services which other agencies are legally responsible to provide and which receive public funds to do so. This in effect means that the Service Agency is legally required to ensure that all generic sources of funds are utilized prior to it providing funding to a consumer.

ISSUE NOS. 1 AND 2: PROVIDING REASONABLE FINANCIAL ASSISTANCE

9A. Claimant's request for reasonable financial assistance pending her receipt of SSI must be denied for three reasons. First, Claimant's budgetary needs are for rent and household expenses, which are not permitted except under unique situations not applicable here. (Factual Finding 9 and Legal Conclusions 8A & 8B.)

9B. Second, even if the Service Agency was permitted to provide reasonable financial assistance, it could only do so after Claimant has exhausted all available generic resources. (Legal Conclusion 8C.) As set forth in Factual Finding 13, Claimant has not yet pursued all available generic resources.

9C. Lastly, since the Social Security Administration has committed to monthly SSI payments beginning in April 2019 and back pay from August 2018 to February 2019 (which is prior to the date of Claimant's FHR), Claimant's request for financial assistance pending SSI is largely moot.

9D. Since Claimant's request for reasonable financial assistance is legally impermissible, the question of whether Claimant should be paid retroactively is nullified.

ISSUE NO. 3 RACIAL DISCRIMINATION

10. As set forth in Factual Finding 15, Claimant failed to prove by admissible evidence that FDLRC has been racially discriminatory in the services it has provided to Claimant.

DISPOSITION

11. It is Claimant's burden to prove by a preponderance of the evidence that the Service Agency must fund her request for reasonable financial assistance pending receipt of her SSI. As set forth in Factual Findings 4 through 6, the Service Agency is fulfilling its requirements under the IPP and its amendments. For the reasons set forth in Legal Conclusion 9, FDLRC cannot, at this time, legally support providing financial assistance for Claimant. Claimant has also failed to prove that the Service Agency racially discriminated against Claimant in providing her services. (Legal Conclusion 10.) Claimant's situation is evolving and the issue of Claimant's finances should be revisited at subsequent IPP meetings; but for the above-stated reasons, Claimant's request cannot be granted at this time.

ORDER

Claimant's appeal is denied.

DATE:

JAMES MICHAEL DAVIS
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.