

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2019030254

DECISION

Administrative Law Judge Chantal M. Sampogna of the Office of Administrative Hearings heard this matter on May 8, 2019, in Lancaster, California.

Dana Lawrence and Jimmy Alamillo, Fair Hearing Representatives, represented North Los Angeles County Regional Center (Service Agency).

Claimant was present and represented himself.¹

Oral and documentary evidence was received. The record was held open until May 15, 2019, for claimant to provide utility bills confirming his residency. The record remained open until May 22, 2019, for the Service Agency to respond. On May 8, 2019, claimant submitted his utility bills, marked as Exhibit B. By May 14, 2019, the Service Agency submitted its three responses, marked collectively as Exhibit 25, noting the Service Agency did not object to claimant's submissions. On May 22, 2019, the record was closed.

¹ Titles are used to protect claimant and his family's privacy.

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ISSUE

Whether the Service Agency must retroactively fund claimant's State Supplementary Payment Restoration for the period of September 2016 through September 18, 2018.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 25; Claimant's exhibits A and B.

Testimony: Edie Bryant, Sheila Calove, Michael Jones, Osvaldo Bastida, Maira Sandoval, and claimant.

FACTUAL FINDINGS

1. Claimant is a 36-year-old unconserved man who resides with his husband and father. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)² based on his diagnosis of Mild-Intellectual Disability, and has been a consumer of the Service Agency for over 34 years. (§ 4512, subd. (a).)

2. In 2012, claimant resided with his husband and parents at 44803 Rodin Avenue, Lancaster, California 93535. At that time, claimant provided the Service Agency a

² All further statutory references are to the Welfare and Institutions Code.

copy of his sublet rental agreement which confirmed claimant paid one-quarter of the \$1,150 monthly rent and one-quarter of the utility bills, sharing the living expenses equally with his parents and husband. At that time, claimant received monthly Social Security Income (SSI) benefits in the amount of \$869, and received a single-rate State Supplementary Payment Restoration (SSP) check in the amount of \$183.10 on a quarterly basis. SSI/SSP funds are a monthly or quarterly cash benefit available to enable aged, blind, or disabled people to meet their basic living expenses.

3. These SSP payments continued, as documented in claimant's January 14, 2016 Individual Program Plan (IPP) and the August 11, 2016 IPP Addendum:

SSI will fund for SSI/SSP checks as long as [claimant] is eligible and as long as funding for this program is available. SSP will stop should [claimant] be out of the State of California for one month or more. ... NLACRC will send quarterly checks for SSP restoration to [claimant] on a quarterly basis for as long as he remains eligible and the State of California continues to fund this program. SSP will stop should [claimant] be out of the State of California for one month or more.

(Ex. 3.)

4. A. In September 2016, claimant and his husband and parents moved to a new residence located at 416 East Kildare Street, Lancaster, California 93535. At this residence, claimant paid \$400 towards the total rents, split the utilities evenly, and was meeting all of his monthly expenses. In an October 25, 2016, Notice of Proposed Action (October 2016 NOPA), the Service Agency informed claimant that effective October 16, 2016, it would be terminating claimant's SSP funds because he was living with his parents

and husband.³ Though only claimant's residence had changed, but not his living situation, the Service Agency decided claimant's living arrangement no longer qualified as independent living.

B. The Service Agency stated the following in its October 2016 NOPA:

The SSP Program was created to prevent the loss of an independent living arrangement for people receiving Supplemental Security Income by augmenting the cash assistance provided by the SSI program. The program is administered by the Department of Developmental Services (DDS) and regional centers.

Individuals with a developmental disability may be eligible for the SSP program based on the following criteria: 1) The consumer must be age 18 years of age or older, 2) The individual has an active case with a regional center, 3) The consumer is eligible for and currently receiving SSI and 4) The individual is living independently or semi-independently in the community, paying his or her pro-rated share of costs of the usual and customary monthly expenditures associated with a person residing independently in the community.

³ The parties did not dispute that the Service Agency terminated SSP funds effective October 16 2016. As such, funding for the period of time between September 2016 and October 15, 2016 would be duplicative and is not considered.

(Ex. 5.) Claimant requested a fair hearing but on October 27, 2016, claimant submitted a notice of resolution.

5. In April 2017, claimant requested retroactive SSP payments.⁴ The Service Agency denied the request in an April 6, 2017 NOPA. Claimant submitted a second Fair Hearing Request on April 25, 2017 and withdrew his request for hearing on May 25, 2017.

6. Between January and April 2018, claimant and the Service Agency continued to discuss his financial need for his SSP funding, and verbally confirmed his residence on Kildare street. Throughout this time, claimant's living situation remained the same, except for the very difficult loss of his mother in April 2018.

7. Effective July 13, 2018, claimant and his father and husband moved to 43230 Gadsden Avenue #174, Lancaster, California 93534. Claimant provided the Service Agency a copy of his SSI award and a copy of his lease agreement with MG Properties demonstrating he was a party to the lease and contributing to the \$1,393 rent. The Service Agency began paying claimant his SSP quarterly funds beginning October 1, 2018, based on the provision of the lease, and not based on any other changes to claimant's situation.

8. On November 28, 2018, the Service Agency sent claimant a Notice of Proposed Action denying claimant's request for retroactive funding of SSP funds for the period between September 2016 and September 18, 2018. The Service Agency informed claimant that he did not meet the criteria for living independently at that time due to his failure to provide a lease agreement for the time period in dispute.

⁴ Though the Service Agency repeatedly denied claimant's request, the denial was based on a lack of documentation and not due to claimant asking for retroactive pay. At hearing, the Service Agency did not dispute that SSP payments could be paid retroactively.

9. On December 18, 2018, the Service Agency issued a Notice of Proposed Action denying claimant's request for retroactive funding of SSP funds for the period between September 2016 and September 18, 2018. In this NOPA, funding was denied for the same reasons funding was denied in October 2016 as described at Factual Finding 4B. Claimant filed a Fair Hearing Request on February 27, 2019. This hearing ensued.

10. A. At hearing, the Service Agency submitted four Department memoranda to support its decision: A-1 Allocation Supplemental Security Income/State Supplementary Payment (SSI/SSP) (August 17, 1993 Memorandum); Allocation For Supplemental Security Income/State Supplementary Payment (SSI/SSP) Restoration Guide (September 6, 1995 Memorandum); Supplemental Security Income/State Supplementary Payment (SSI/SSP) Restoration Funds for Regional Center Consumers in Independent and Semi-Independent Living (August 2, 2011 Memorandum); and Supplemental Security Income/State Supplementary Payment (SSI/SSP) Restoration Funds for Regional Center Consumers in Independent and Semi-Independent Living (September 19, 2016 Memorandum).⁵

B. Edie Bryant, Consumer Services Supervisor, testified that prior to 2016, claimant was eligible for SSP because he was living independently. She further testified that sometime in 2016, the Service Agency learned of the memoranda cited above and that, after its review, the Service Agency now interprets and applies those memoranda as requiring claimant to provide proof of a lease agreement to obtain his SSP funds. She testified that the criteria for SSP eligibility cited in Factual Finding 4.B was taken directly from the August 17, 1993, Memorandum. Sheila Calove, Consumer

⁵ The Service Agency did not reference or cite to the Social Security Act or any statutes in the Welfare and Institutions Code in support of its denial of respondent's request.

Services Director, also testified that a consumer must provide a lease agreement to establish he is living independently. However, in response to questions from the ALJ, Ms. Calove acknowledged that despite Ms. Bryant's testimony, the language the Service Agency included in its October 2016 NOPA (see Factual Finding 4.B) is not contained in any form or iteration of any of the cited memoranda, nor is there any statutory or regulatory requirement that claimant provide the Service Agency a lease to be eligible for SSP funds.

C. 1) Ms. Lawrence and Mr. Alamillo acknowledged on behalf of the Service Agency that neither the cited language, purported lease requirement, or proposed definition of living independently is contained in any of the cited memoranda, nor are they supported by statutory or regulatory law. They argued, however, that the Service Agency interprets the memoranda to have the purported meanings. They further explained that the Service Agency bases this interpretation on the fact that titles of the 2011 and 2016 memoranda include the terms "independent and semi-independent living." They again acknowledged that other than the title lines, those memoranda do not define or otherwise comment on independent or semi-independent living.

2) The Service Agency did not dispute that during the period in question Claimant was a party to the lease, and paying for his portion of the rent and utilities, at the Kildare address, nor did it dispute that claimant was the primary care provider for his mother and father, and was living independently. The Service Agency did not provide any statutory or regulatory support for its denial of retroactive SSP funds to claimant; nor did it establish that claimant was not living independently, or that eligibility of the SSP funds required him to provide a lease agreement covering the time in question.

11. At hearing, claimant provided his driver's license which contains claimant's residence at the Kildare street address. After the hearing, claimant provided gas and public

works bills dated August 24, 2018, and electric bills covering service from June 11 through July 13, 2018, which provide claimant's residence at the Kildare address. Claimant testified that he resided at the Kildare address between September 2016 and September 18, 2018, and was a party to that lease; claimant's husband, Mr. Jones, corroborated this testimony. Claimant further testified that when the Service Agency first requested it, claimant provided his original copy of his lease for the Kildare residence to his Service Coordinator, Rose Garcia-Magg, and did not receive a copy back. He raised this fact to the Service Agency, but the Service Agency had no record of the lease agreement in question. Claimant further testified that he made many efforts to get a copy of the lease, and receipts of rent payments, from his respective landlord, Alicia Hill. However, Ms. Hill refused to provide the requested documentation and he could not afford to get copies of the payments from the bank.

12. Osvaldo Bastida, claimant's Independent Living Skills educator, testified that he was on the phone call when claimant called US Bank to receive receipts of rent paid to Ms. Hill, and that he heard the bank teller inform claimant that he would have to pay for the requested receipts. Maria Sandoval, Program Supervisor of claimant's ILS services, testified that she was on a phone call with claimant and Ms. Hill when Ms. Hill told claimant she would not give him any receipts for rent paid.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal a denial of his request to have Service Agency fund retroactive SSP for the period of time between September 2016 and September 16, 2018. Jurisdiction was established. (Factual Findings 1, 9.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998)

17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that claimant is entitled to the requested funding. (Evid. Code, § 115.)

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) 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." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, quoting from § 4620.)

4. A regional center is responsible for identifying and pursuing all possible sources of funding for consumers receiving regional center services, including governmental programs and state supplementary programs. (Welf. & Inst. Code, § 4659, subd. (a)(1).)

5. Welfare and Institutions Code, section 12150, provides:

Persons who are receiving federal supplemental security income benefits, or who but for their income, are eligible to receive such benefits under Title XVI of the Social Security Act, (§1381) or who are made eligible for supplemental benefits by other provisions of this chapter are entitled to receive state supplementation pursuant to this chapter.

6. To be eligible for SSI benefits, a disabled individual must have income within limits established by federal law, depending on whether or not the individual has an eligible spouse. (42 U.S.C. § 1382.) Living arrangements are not considered in determining eligibility, but may constitute a resource and reduce the amount of SSI benefits to the extent an individual receives in-kind support and maintenance while "living in another

person's household." (42 U.S.C. § 1382a(a)(2)(A).)

7. The Burton-Moscone-Bagley Citizens' Income Security Act for Aged, Blind and Disabled Californians (Income Security Act) (Welf. & Inst. Code, § 12000, et seq.) implements a state supplementation program pursuant to Title XVI of the Social Security Act and a program for state services to the aged, blind, or disabled. (Welf. & Inst. Code, §§ 12000, 12001.)

8. The object and purpose of the Income Security Act is to provide persons "whose need results from age, blindness or disability with assistance and services which will encourage them to make greater efforts to achieve self-care and self-maintenance, whenever feasible, and to enlarge their opportunities for independence." (Welf. & Inst. Code, § 12002.)

9. "The policy shall be followed of granting aid to the recipient in his own home or in some other suitable home of his own choosing in preference to placing him in an institution." (Welf. & Inst. Code, § 12202.)

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10. In this case, claimant established by a preponderance of the evidence that he is eligible under the Social Security Act and Income Security Act for SSP funds between October 16, 2016 and September 18, 2018. Claimant established by a preponderance of the evidence that his contribution to rent and utilities, being a named party on respective leases, and otherwise meeting his monthly expenses and living independently was consistent prior to October 16, 2016, between October 16, 2016 and September 18, 2018, and from September 18, 2018 current through the date of hearing. Claimant was eligible for SSP for the time periods prior to October 16, 2016, and between September 18, 2018 current through the date of hearing. The only change in his circumstances for the time period between October 16, 2016 and September 18, 2018, was that he no longer had a copy of his lease for the Kildare residence to provide to the Service Agency. The Service Agency failed to present any evidence that a lease was required to establish claimant lived independently between October 16, 2016 and September 18, 2018. The requested payments fall directly within the object and purpose of the Income Security Act. The Service Agency failed to present evidence or statutory or regulatory law which supports denying claimant's request for SSP retroactive payments for the time period in dispute.

ORDER

Claimant's appeal is granted with a modified effective date. The Service Agency is ordered to fund retroactive State Supplementary Payment Restoration for the period of time between October 16, 2016 and September 16, 2018.

DATED:

CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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