

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT**

**vs.**

**NORTH LOS ANGELES COUNTY REGIONAL CENTER**

**OAH No. 2019030849**

**DECISION**

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this consolidated matter<sup>1</sup> on July 11, 2019, in Chatsworth, California.

Claimant<sup>2</sup> and C.L., the claimant in OAH case number 2019030853, were present throughout the proceedings and represented by Christian P. Richards, Jr., Chief Executive Officer for Choosing Independence.

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<sup>1</sup> Due to the similarity of issues and circumstances, this matter was consolidated for hearing purposes with OAH case number 2019030853.

<sup>2</sup> Claimants are not identified by name to protect their privacy.

North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Aaron Abramowitz, Enright & Ocheltree, LLP.

Submission of the matter was deferred pending receipt of written closing arguments. Written closing was timely received from the parties and were marked, respectively, as Exhibits 20 and C20. On August 16, 2019, the Service Agency submitted its Reply Brief and a Motion to Strike Portions of the Claimants' Closing Brief, which was marked as Exhibit 21. The record was reopened to allow Claimants to file and serve a response to Service Agency's Motion to Strike. Claimants filed an opposition to the Service Agency's Motion to Strike and Reply Argument (Motion to Strike), which was marked as Exhibit C21. The record was thereafter closed and the matter submitted for decision on August 26, 2019.

### **Issue Presented**

Whether the Service Agency must continue to fund supported living services to Claimant at his Canyon Country residence.

### **Evidence**

Documentary: Service Agency Exhibits 1 through 14, 17 through 19,<sup>3</sup> and Claimants' Exhibits C1, C3, C5, C9, C12, C19.

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<sup>3</sup> On her own motion, the ALJ marked the NLACRC Consumer Notes for Claimant dated 1/2/18-6/24/2019 as Exhibit 18 and NLACRC Consumer Notes for C.L.

Testimonial (Service Agency Witnesses): Yvans Jourdain, Adult Supervisor for C.L., Maria Bosch, Director of Consumer Services, and Sheila Gavrilof, Adult Supervisor for Claimant.

Testimonial (Claimant's Witnesses): Henry Boyd, Kim Boyd and Helene Taylor.

## **MOTION TO STRIKE**

1. The Service Agency in its Motion to Strike argued that "Claimants' Closing Brief is rife with ad hominin attacks on NLACRC's counsel and reference to information not contained within the record" and moved to have certain identified portions of the brief stricken. (Exhibit 21.) Claimants' opposition identified portions of the record they believed supported the statements made in their Closing Brief. Review of the record revealed that the identified statements were not supported by any testimony or documentary evidence presented at the fair hearing and the Service Agency's motion was granted.

2. On the ALJ's own motion, the ALJ struck pages 2 and 3 of Claimants' Motion to Strike as the pages contained additional attacks on NLACRC's counsel and again presents as facts, information that was not contained in the record.

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dated 1/2/18-6/11/19 as Exhibit 19. These exhibits were admitted into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i).

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

3. The Service Agency issued a Notice of Proposed Action (NOPA) dated February 20, 2019, informing Claimant that they were terminating the supported living services (SLS) being provided by their SLS vendor, Choosing Independence. The services were provided at Claimant's residence in Canyon Country (Canyon Country residence).

4. On March 14, 2019, Claimant timely filed a fair hearing request to appeal the Service Agency's decision.

5. A hearing in this matter was timely set for May 9, 2019. On April 26, 2019, the Service Agency's request to consolidate this matter with OAH Case Number 2019030853<sup>4</sup> was granted.

6. On May 2, 2019, Claimant's authorized representative filed an unopposed motion to continue the hearing, waiving the time limit prescribed by law for holding the hearing<sup>5</sup> and for the administrative law judge to issue a decision in the case.<sup>6</sup> On

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<sup>4</sup> Pursuant to Welfare and Institutions Code section 4712.2, subdivision (b), "A separate written decision shall be issued to each claimant and respective authorized representatives."

<sup>5</sup> Welfare and Institutions Code section 4712, subdivision (a).

<sup>6</sup> Welfare and Institutions Code section 4712.5, subdivision (a).

May 3, 2019, the continuance was granted. The consolidated matter proceeded to hearing on July 11, 2019.

## **Background**

7. Claimant is a 42-year-old non-conserved male who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst. Code,<sup>7</sup> § 4500 et seq.) "based upon his diagnosis of Borderline Intellectual Disability, Bipolar Disorder and Paranoid Schizophrenia." (Exhibit 14, NLACRC 000089.)

8. On September 24, 2018, the Service Agency was notified by Shirley Chang, Claimant's money management vendor, that the rent at Claimant's Sylmar apartment, which he shared with C.L., was scheduled to increase. The rent Claimant paid for his share of the apartment would increase from \$800 to \$875 a month and would make Claimant's continued residence at the Sylmar apartment unsustainable.

9. Choosing Independence was tasked with assisting Claimant locate more affordable housing. Choosing Independence eventually located the Canyon Country residence, a private home which had vacancies. Claimant was taken on a tour of the home. During the tour, Claimant agreed to live at the Canyon Country residence, picked out his bedroom, and signed a lease with Henry Boyd, the homeowner, which set Claimant's rent for his share of the room at \$650 a month plus utilities. Claimant moved into the Canyon Country residence in November 2018.

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<sup>7</sup> All further statutory references are to the Welfare and Institutions Code unless noted otherwise.

10. It is unclear from the record when Claimant's client services coordinator (CSC) Ani Markaryan was notified of Claimant's decision to move into the Canyon Country residence.

### **Informal Decision letter**

11. On May 8, 2019, the Service Agency issued an informal decision letter to Claimant stating that it would be terminating Claimant's SLS hours based on the statutory and regulatory requirements set forth in Health and Safety Code sections 1502, subdivision (a)(1), 1503, 1503.5 and 1508,<sup>8</sup> Sections 4646, subdivision (d) and 4689, subdivision (a)(1) through (a)(8), and title 17, California Code of Regulations sections 58620 and 58614, subdivision (a).

12. In the letter, the Service Agency contended that the Canyon Country residence was an unlicensed community care facility and the Service Agency could not continue funding Claimant's SLS hours through Choosing Independence at the Canyon Country residence.

13. The Service Agency also objected to "[t]he manner in which the decision was made to relocate you, the limitations imposed on you by the lease agreement, do not comply with the statutory and regulatory principles of SLS set forth in Welfare and Institutions Code Section 4689(a)(1) through (a)(8) and Title 17, California Code of Regulations, Sections 58620 and 58614(a), which provisions require that the consumer's preferences guide decisions concerning where and with whom they wish

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<sup>8</sup> These statutes define a "residential facility" and generally provide that no residential facility may operate in the state without a license.

to live, and that consumers have control over the environment within their own home.” (Exhibit 9, NLACRC 000063.).

14. The Service Agency concluded stating that “regional centers are only permitted to fund services and supports that are agreed upon by way of an individual program plan and are authorized by the regional center in advance and in writing.” (Exhibit 9, NLACRC 000063.).

## **DSS Complaint Investigation**

15. The Service Agency submitted evidence that on January 10, 2019, licensing program analysts (LPAs) with the Community Care Licensing Division (CCL) of DSS conducted a complaint investigation visit to the Canyon Country residence. At the time of the visit, Claimant was residing at the home with three other NLACRC consumers. The LPA’s determined that the home was an unlicensed adult residential facility and issued a Notice of Operation in Violation of Law (NOVL). The NOVL notified the home of the DSS determination and advised the home that an application could be filed with the licensing agency. Neither Mr. Boyd nor Choosing Independence submitted an application for licensure. Instead, Mr. Richards, on behalf of Choosing Independence, appealed the DSS determination.

16. The LPA’s who conducted the site visit did not testify at hearing nor were the Detail Supportives which typically document a DSS investigation submitted into evidence. Instead, the only evidence of the DSS complaint investigation was a copy of the Complaint Investigation Report. The Complaint Investigation report, which by its nature only provides DSS findings, provides no information as to how DSS came to the conclusion that the home was operating as an unlicensed facility by providing care and supervision to the consumers in the home. Additionally, there was no evidence

presented to indicate that DSS had denied Choosing Independence's appeal of its determination.

17. Based on the forgoing, there was insufficient evidence to conclude the Canyon Country residence is an unlicensed community care facility.

## **Individual Program Plan**

18. The Service Agency currently funds: (1) 424 (day) hours and 210.57 (overnight awake) hours of SLS with the vendor Choosing Independence,<sup>9</sup> (2) seven hours a month of money management/payee services; and (3) three days a week of participation in Build Rehabilitation Industries' (Build) Work Activity program. In addition, Claimant receives: (1) Social Security benefits of \$850 a month, (2) State Supplementary Payment (SSP) on a quarterly basis,<sup>10</sup> and (3) 37.43 hours of In-Home Supportive Services.

19. On May 7, 2019, an Individual Program Plan (IPP) meeting was held during which Claimant's current status, his future goals and his progress since the prior IPP were reviewed. Claimant, CSC Markaryan, Choosing Independence Program

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<sup>9</sup> Additional hours of SLS are received when the day program Claimant attends is closed or Claimant is ill.

<sup>10</sup> The record did not establish how much Claimant received in SSP funds. Further, ongoing funding is also dependent upon allocations per month of SSP funds in the state's budget each fiscal year.

Coordinator Renee Allen, and Build Program Manager Meghan Melby were in attendance.

20. The IPP noted that Claimant had moved into the Canyon Country residence in November 2018, with C.L. During the meeting, it was noted that the reason for the move was that, due to the scheduled increase in rent at his prior residence, Claimant was no longer able to afford living there. Claimant expressed at the IPP meeting that he was very happy with his current living situation.

21. During the IPP meeting, the Service Agency and Claimant agreed on the following outcomes: (1) Claimant will reside in the least restrictive environment with SLS support to maintain his independence; (2) Claimant will remain confident in his ability to complete tasks and continue to increase his attendance and productivity in the Build program; and (3) Claimant will maintain stable health.

22. To support Claimant's goals, the Service Agency agreed to fund SLS hours through Choosing Independence and to fund Claimant's participation in the Build program.

## **Residential Lease**

23. On November 2, 2018, Claimant entered into a lease agreement with Mr. Boyd. The lease agreement stated that the "[r]ental of the premises also includes 1 room & all common areas." (Exhibit 12, NLACRC 000078.) The lease also prohibits Claimant from having overnight guests and any pets.

24. Yvans Jourdain, Adult Supervisor for the Service Agency, is responsible for supervising 12 CSCs, including one who works directly with C.L. Mr. Jourdain is not familiar with Claimant and believes he may have met him on one occasion.

25. According to Mr. Jourdain, the lease agreement was atypical of what was found in other SLS agreements in that Claimant is not permitted to have overnight guests or pets. Further, Mr. Jourdain expressed that Mr. Boyd indicated that NLACRC representatives could not enter the home without notice and prior authorization from him.

### **Canyon Country residence**

26. According to Sheila Gavrilof, an Adult Supervisor for the Service Agency who supervises CSC Markaryan, it is up to consumers to seek their own housing as the Service Agency does not pay for individual housing.

27. Claimant's Consumer ID Notes document the difficulty in finding Claimant an appropriate placement within Claimant's financial means. Choosing Independence, however, upon learning that Mr. Boyd was considering selling the Canyon Country residence, convinced Mr. Boyd to consider leasing Claimant a room. After meeting with several NLACRC consumers who were going to be displaced by the scheduled rent increase at the Sylmar apartments, Mr. Boyd agreed to lease a room to four NLACRC consumers, including Claimant and C.L. As a novice landlord, Mr. Boyd came up with a generic lease agreement. Mr. Boyd included a "no pets" provision in the lease<sup>11</sup> as he did not want any liability associated with having pets in the home.

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<sup>11</sup> Such prohibitions are typical of many rental agreements. Rental agreements which permit renters from keeping a pet generally require additional payment in rent. Additionally, service animals are not subject to such prohibitions under federal and California law, which is noted in the Claimant's rental agreement.

28. Following receipt of DSS's NOVL, CSC Markaryan located a group home which would be willing to accept Claimant on a temporary basis. When presented with this option, Claimant repeatedly advised CSC Markaryan that he was happy at the Canyon Country residence and did not wish to move into a group home.

29. Supported living arrangements are, according to Maria Bosch, NLACRC's Director of Consumer Services, one of the least restrictive living options available. Group homes, as they must be licensed by DSS, are a more restrictive environment.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Pursuant to section 4710.5, subdivision (a), "Any ... 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 ... be afforded an opportunity for a fair hearing." Claimant timely requested a hearing to appeal the Service Agency's decision to terminate funding of his SLS hours. Jurisdiction in this case was thus established. (Factual Findings 3 and 4.)

### **Standard of Proof**

2. As the Service Agency is seeking to terminate funding for services currently being provided to Claimant pursuant to his IPP, the burden of proof is on the Service Agency to demonstrate that its decision is correct. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.).

## **Applicable Law**

3. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

4. The consumer's needs are determined through the IPP process. (§ 4646.) The process "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." (§ 4646, subd. (a).)

5. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the consumer's particular desires and preferences. (§§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a)(4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

6. Although an IPP must reflect the needs and preferences of the consumer, a regional center is not mandated to provide all the services a consumer may request. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§ 4646, subd. (a).) A regional center also has discretion in determining which services it should purchase to best accomplish all

or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

7. "Supported living services" is defined by the Lanterman Act as "a range of appropriate supervision, support, and training in the consumer's place of residence, designed to maximize independence." (§ 4646, subd. (h).)

8. The Legislature places a high priority on providing SLS to 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." (§ 4689.)

9. As set forth in Section 4689, subdivision (e), regional centers are required to "monitor and ensure the quality of services and supports provided. . ."

10. Regulations promulgated under the Lanterman Act define SLS as including any individually designed service which assists an individual consumer to live in his or her own home, with support available as often and for as long as it is needed; and to make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home. (Cal. Code Regs., tit. 17, § 58614, subd. (a).)

11. The governing regulations further specify that consumers receiving SLS have the right to make decisions that shape the nature and quality of their lives in accordance with their preferences, and consistent with the goals of their IPP. (Cal. Code Regs., tit. 17, § 58620.)

12. The Service Agency proposes to terminate funding of SLS hours being provided to Claimant at the Canyon Country residence as it contends that the Canyon Country residence is an unlicensed community care facility. The evidence, however, did not establish that the Canyon Country residence was an unlicensed community care facility.<sup>12</sup>

13. The Service Agency also appears to object to the nature of the residence. The Service Agency appears to assert that though it is Claimant's responsibility to find suitable housing, if the housing chosen by Claimant does not meet its approval, it will refuse to fund SLS services. The evidence established that there does not appear to be many vacancies which are within Claimant's financial means. Claimant's SLS provider located a vacant house and convinced the homeowner to rent the rooms in the house to NLACRC clients displaced by the rent increase at the Sylmar apartments. When Claimant toured the facility, Claimant chose to enter into a lease agreement with the homeowner. According to all the evidence, Claimant is very happy at the Canyon Country residence and has repeatedly stated that he would continue to room with C.L. The Canyon Country residence meets the stated objective of Claimant's IPP of residing in the least restrictive environment with SLS support.

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<sup>12</sup> The following analysis, however, may change upon a final determination by DSS on Choosing Independence's appeal.

14. The Service Agency's final objection to the Canyon Country residence is that provisions in Claimant's lease agreement prevent Claimant from having overnight guests without the landlord's written permission and from having any pets. Due to these restrictions, the Service Agency asserts that "no resident could actually receive all the services that are defined as part of SLS." (Exhibit 20.) Consumers, however, do not receive all the enumerated services. Instead, the SLS services are "tailored to meet the [Claimant's] evolving needs and preferences for support without having to move from the home of their choice. . ." (Cal. Code Regs., tit. 17, § 58614, subd. (b).)

15. What is more troubling, however, is the fact that NLACRC representatives were told by Mr. Boyd that they would need permission prior to visiting the Canyon Country residence. Such a condition prevents the Service Agency from meeting its mandate to monitor and ensure the quality of SLS services being provided. It is therefore appropriate to condition the continued funding of SLS services at the Canyon Country residence upon receipt of written assurance from Claimant's landlord that permits the Service Agency the authority to visit the residence without prior notice.

## **ORDER**

Claimant's appeal is granted in part and denied in part as follows:

1. Claimant will exert efforts to obtain a lease addendum from Henry Boyd, which expressly permits NLACRC representatives to visit the residence without prior notice. This may be done through Claimant's representative.

2. Within 30 days of the date of this Decision, the Service Agency will convene an IPP meeting with Claimant and other members of the IPP team as appropriate to determine whether the lease addendum was obtained. If the addendum is provided, the Service Agency will continue to fund SLS hours provided at the Canyon Country residence.

3. If Mr. Boyd refuses to provide such an addendum, the Service Agency will assist Claimant in obtaining suitable housing, which is within his financial means, and is consistent with the objectives of his IPP. This may be done through Claimant's SLS vendor. The Service Agency will continue to fund SLS hours at the Canyon Country residence until Claimant obtains such suitable housing.

DATE:

NANA CHIN

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.