

**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. 2019060564

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 27 and February 6, 2020, in Chatsworth, California.

Claimant was not present, but was represented by her attorney, Valerie Vanaman, of Newman Aaronson Vanaman LLP. Claimant's father/conservator (Father) was present on both hearing days, and testified.¹

¹ Claimant and her family members are identified by titles to protect their privacy. This case and OAH Case No. 2019080605 (involving a denial by Service Agency to pay

Dana Lawrence, Fair Hearing and Administrative Procedures Manager, and Jimmy Alamillo, Attorney, Contract Officer, Contract Administration Department, represented NLACRC (Service Agency or NLACRC).

Oral and documentary evidence was received. The record was left open for:

1) Service Agency's submission, by February 7, 2020, of NLACRC witness Dr. Arpi Arabian's handwritten notes, which were timely submitted, marked, and admitted as Exhibit 39, and

2) submission of parties' written closing briefs no later than February 28, 2020. Complainant and Service Agency filed their closing briefs on February 28, 2020, which were marked respectively as Exhibits 40 and S-24.

The matter was submitted for decision on February 28, 2020.

ISSUE

Whether NLACRC should continue to fund Claimant's out-of-state residence at Devereux Victoria based on Service Agency's assertion that there is an appropriate placement for Claimant in California?

for Claimant's out-of-state placement pending resolution of issue of Claimant's placement through fair hearing process) were consolidated for hearing, but a separate decision has been issued in each matter.

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-12, 14-22, and 24-40; Claimant's exhibits S1, S3, S4-S24.

Testimonial: Lilliana Windover, NLACRC Executive Assistant; Engrid Smith, NLACRC Consumer Services Supervisor; Maria Bosch, NLACRC Consumer Services Director; Dr. Arpi Arabian, NLACRC Behavioral Services Supervisor; Father; Dr. Gwennyth Palafox, Ph.D., Licensed Psychologist.

FACTUAL FINDINGS

Background Information

1. Claimant is a 28-year-old regional center client based on a diagnosis of Moderate Intellectual Disability. She is also diagnosed with Borderline Intellectual Functioning, Pervasive Developmental Disorder NOS, Schizoaffective Disorder, Tourette's Disorder, and Oppositional Defiant Disorder. In addition to the diagnoses, Claimant has complicated and severe behavioral needs. Claimant displays non-compliance, resistiveness, emotional outbursts, defiance to authority, sexualized behavior, sexual aggression, physical aggression, and verbal aggression. Father is Claimant's conservator. Claimant's significant family members include Father, Mother and her childhood nanny.

2. Claimant resides at Devereux Adult Community (Devereux) in Victoria, Texas, an out-of-state 24-hour residential treatment program. The facility is located in Victoria, Texas. Claimant was placed in the Devereux School Program through Los Angeles Unified School District (LAUSD) in February 2013. Claimant has a history of

living outside of her home. Prior to her placement at Devereux, she was placed at Excelsior Center in Colorado from 2006 through February 2013. Claimant was transferred to Devereux by LAUSD to continue her education based on the belief that she required a residential level of care.

3. Claimant's diagnoses are managed at Devereux with 1:1 supplemental support. At Devereux, Claimant lives in a girls' dormitory where up to six females reside in the same dorm. Claimant does not share a room. The dorm staff work closely with Claimant developing life skills such as meal preparation, housekeeping, chores, laundry/clothing care, self-care/personal hygiene and increasing her willingness to comply with directives. Claimant is reported to experience extreme mood swings and self-injurious behavior where she picks her skin until it bleeds. Her self-injurious behavior is reported to be intermittent and dependent on mood and can include hitting, biting, scratching herself, threats of harm to herself and suicidal ideation. According to Devereux, Claimant has a history of provoking arguments with her roommates and intrusive behaviors which often lead to temper tantrums, and she requires constant redirection and reminders from adult supports. Devereux staff often remind Claimant of her coping skills and provide her with methods to utilize those skills.

4. Claimant participates in a pre-vocational site-based program located on the Devereux campus five days a week. She also receives family therapy 30 minutes twice a month, group therapy one hour weekly, and individual therapy twice a month or as needed. Claimant's medical needs, including the administration of multiple medications, is met by the Devereux health staff.

5. NLACRC has previously presented Father with support and resource options for out-of-home placement in California, which were rejected by Father due to

a variety of concerns, including Claimant's health and safety. Based on a 2014 OAH decision issued after hearing, Claimant continues to reside at Devereux.

6. NLACRC requests funding from the California Department of Developmental Services (DDS) every six months to pay for Claimant's out-of-state placement at Devereux, based on Service Agency's ongoing representation that no suitable place for Claimant to live had been identified in California. DDS continued to fund Claimant's out of state placement at Devereux with the expectation that NLACRC would continue to search for all potential resources within the state. NLACRC followed DDS's directive and continued to track Claimant's progress at Devereux, assess Claimant and her needs, and develop a suitable California residential placement and support for Claimant.

7. In late 2018, with the ongoing goal of developing an appropriate in-state placement of Claimant and moving her back to California from Devereux, NLACRC arranged for a Whole Person Assessment to be conducted by Stephanie Young Consultants to assess Claimant's program needs. (Exhibit 12.) Young, a Licensed Family and Marriage Therapist (LMFT), recommended further assessment of Claimant to develop an appropriate program. (*Id.* at p. 27.) Most relevant to this matter, Young recommended that the IPP and services developed for Claimant be highly structured and consist of a "step down" program from the Devereux program. Young stressed the need for the program to be in place well before Claimant transitioned to the program and for the transition to take place only after careful planning.

8. In December 2018, NLACRC held a meeting to assess Claimant's support needs to transition Claimant back to California. By that time, NLACRC had identified a Community Placement Plan (CPP) home (CPES; Antelope Valley area) and a day program (California Spectrum/ETHOS) to serve Claimant. CPES was not a vendor and

was waiting for Community Care Licensing (CCL) to approve the home. NLACRC intended the date of occupancy for Claimant to be within one to two months based on the anticipated wait time for CPES to be vendorized. (Exhibit 17.) However, CPES was not vendorized until late April 2019.

NLACRC's 2019 Proposed Action Moving Claimant to California

9. By letter dated May 22, 2019, NLACRC notified Father that "After reviewing [Claimant's] current treatment and placement needs, NLACRC has determined that there are available placement options for [Claimant] in California and as such, the Center no longer has statutory authority to purchase out-of-state services for [Claimant] and will be terminating these services effective 6/30/19." (Exhibit S-5.)

10. On June 7, 2019, Father filed a Fair Hearing Request appealing NLACRC's proposed action and requesting continuing funding by Service Agency of Claimant's Devereux placement.

Claimant's Individual Program Plan (IPP)

11. The February 8, 2018 IPP currently in place for Claimant provides that NLACRC is to pay for Claimant's placement at Devereux while Regional Center continues to conduct an "out of catchment area search and invite father to tour group homes in the State of California." (Exhibit 5, pp. 19-20.)

12. The March 12, 2018 IPP Addendum similarly provided for continued NLACRC funding of Devereux. At that time, NLARC acknowledge that, while it continued to seek community supports and services in California, "there is no suitable place for [Claimant] to live." (Exhibit 7.)

13. The February 15, 2019 IPP Quarterly Report, memorialized the June 26, 2018 meeting between Claimant, Father, Devereux representatives, and NLACRC staff. The report states that Claimant's Devereux placement "continues to be appropriate." (Exhibit 9, p. 5.) While there is reference to NLACRC's intention to develop an appropriate placement for Claimant in California, the report does not articulate an outcome of changing Claimant's programming and services to California.

14. The February 15, 2019 IPP Progress Report, memorialized the December 11, 2018 meeting between Claimant, Katherine Alvarez, Case Coordinator; Susan Nelson, Therapist; Paul Dixon, Vocational Manager; Lisa Mendoza, Nursing Manager; Ramon, Dorm Unit Manager; Engrid Smith, NLACRC Consumer Services Supervisor; and Dr. Arpi Arabian, BCBA NLACRC Behavior Services Supervisor, and Father. The report continued to identify Devereux as the appropriate "level of care," noting that "placement options are being sought for [Claimant] to return to California." (Exhibit 14, p. 4.) Discussion of a potential group home in Antelope Valley for Claimant is noted, including Father's preference for a San Fernando Valley location and request that any potential home staff have the same as or better training than the Devereux team. Dr. Arabian's opinion that Claimant is a candidate for Supported Living Services is included in the report, as well as NLACRC's intent to provide Father with information regarding its month's Supported Living Orientation. (*Ibid.*)

15. The February 15, 2019 IPP Addendum provides a unilateral discussion by NLACRC of transition planning Claimant back to California. (Exhibit 15.) Without providing any specific detail, the addendum calls for ETHOS to serve as Claimant's individualized community based day program in California, establishing "an anticipated start day" within one to two months due to vendorization. (*Id.* at p. 1.) Similarly, Claimant's transition from Devereux to the CPES Antelope group home is

discussed, with an "anticipated occupancy" due to vendorization within one to two months. NLACRC notes Father's approval for Claimant's assessment for supports within the services from California, but his lack of agreement for Claimant's move back to California. Regional Center commits to "complete the assessments for [Father's] review regarding the planning for [Claimant's] return back to California." (*Ibid.*)

16. The April 16, 2019 IPP Progress Report memorialized the meeting between Claimant, Father, Adriana M. Pyles & Associates, Clinical Supervisor, and Engrid Smith, CSS NLACRC. (Exhibit 20.) The report referenced ongoing discussions between Claimant's family and NLACRC to return Claimant to California; the Antelope Valley CPES home is identified by NLACRC to meet Claimant's needs. Father's concern that he "needs to be able to look at the organizations overall operations" before approving the move back to California is noted. NLACRC, in turn, writes that it "reminded [Father] that services in California are customized based on the individual" and that Claimant "would be assessed for her individual need." (*Id.* at p. 2.)

17. By agreement of both parties, Claimant's recommended further assessments were not completed prior to NLACRC issuing the NOPA. On May 21, 2019, Father, Tiki Thomson, CPES Associate Vice President, and Engrid Smith toured the Palmdale/Lancaster group home that NLACRC proposed as an appropriate placement instead of Devereux. At the time of the tour, the home was empty. There were no residents and no staff at the proposed group home. Father expressed reservations that no plan details regarding programs and services was in place at the time of the tour and he could not agree to Claimant's relocation back to California until a detailed IPP with proposed services and programs was finalized. There was discussion of Father meeting with potential SLS providers in the near future. Based on their discussions, Father believed that he and NLACRC were still in the transitional

planning stages of moving Claimant back to California and intended to continue to engage in the planning process with NLACRC. Service Agency, on the other hand, was in the process of drafting the May 22, 2019 NOPA at the time of the May 21, 2019 visit despite the fact that recommended assessments had yet to be completed and no specifics were in place regarding the program and services Claimant would be provided upon her return to California. No subsequent IPP was developed between Claimant and NLACRC for Claimant to move to California, nor was there agreement to any program other than Devereux before the NOPA was issued by NLACRC on May 22, 2019.

18. NLACRC attributed the failure to perform recommended assessments and provide Father with an IPP detailing programs and services prior to issuing the NOPA to Father's refusal to agree to moving Claimant from Devereux to California. Service Agency is unconvincing. The facts demonstrate that Father justifiably expressed concern and reluctance to provide unequivocal agreement to a transition plan that had yet to be finalized. NLACRC provided Father with little but the promise that a plan would be developed once he agreed to move Claimant from Devereux. However, as Claimant's conservator, he was entitled to expect that the IPP procedure be followed in accordance with the Lanterman Act and that he be provided with an IPP that expressly spelled out the programs and services to be provided to Claimant upon her move to California. Instead, he was provided with the outlines of a proposed program and services, and he was issued a NOPA when he articulated concern that NLACRC's vague promises of an individually tailored program were insufficient to justify Claimant's move from Devereux based on her level of complex and demanding needs.

19. In its closing brief, NLACRC essentially admits that no California program and services were finalized before Service Agency issued the NOPA terminating funding for Devereux:

In accordance with statute, NLARCR identified vendors to provide services to Claimant upon her relocation to California. Following a review of program designs submitted by vendors [Service Agency Exhibits 25, 26 & 27], CPES was selected as Claimant's residential service provider and ETHOS was identified to provide community integration and therapeutic services. As testified to by Director of Consumer Services Maria Bosch and Dr. Arpi Arabian, both program designs allow for programming to be specifically tailored to Claimant's needs. Thus, the potential is for Claimant to receive services equivalent to, if not beyond, those currently received at Devereaux but in a less restrictive environment. As testified to by CSS Smith, further assessment was contemplated to individualize these services.

(Exhibit 40, p. 4.)

Claimant's Continued Out-Of-State Placement is Warranted

20. Based on the current lack of an IPP detailing the California program and services to be provided to Claimant, there is no basis to evaluate whether NLACRC has identified an in-state program that meets Claimant's needs. As of the hearing, NLACRC had identified vendors and a potential program that it asserts will be tailored after additional assessments to meet Claimant's individual needs. Under the circumstances,

termination of funding for Claimant's Devereux placement is premature. Accordingly, NLACRC's continued funding of Claimant's Devereaux placement is warranted under the Lanterman Act.

LEGAL CONCLUSIONS

Standard of Proof

1. Service Agency, as the party seeking to terminate government benefits or services, bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

Statutory Framework

3. The Lanterman Developmental Disabilities Services Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) 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 state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), 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.)

4. The right to services is an entitlement and the services and supports to be provided under the Lanterman Act are identified in the consumer's IPP. (Welf. & Inst. Code, §§ 4500.5 and 4500.3, subd. (d).) Regional centers are required to conduct a planning process and develop an IPP for any person found to be eligible for regional center services. (Welf. & Inst. Code, § 4646.) The legislative intent of the Lanterman Act is to ensure that "the provision of services to consumers² and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources." (Welf. & Inst. Code, § 4646, subd. (a).) An IPP must be prepared jointly by the planning team, and must identify the consumer's goals, objectives, and services and supports that will be included in the consumer's IPP. (Welf. & Inst. Code, § 4646, subd. (d).) In addition to reflecting the client's particular desires and preferences, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, and contain a statement of time-limited objectives for improving the client's situation. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. The elements of the IPP planning process include, among other things, the gathering of information and conducting assessments, development of specific

² "Consumer" means a person who has a disability that meets the definition of a developmental disability under the Lanterman Act. (Welf. & Inst. Code, § 4512, subd. (d).)

goals, and a schedule of the type and amount of services and supports to be purchased by the regional center. (Welf. & Inst. Code, § 4646.5.) Modification and changing of the IPP based on the consumer's changing needs must be done through the IPP process. (Welf. & Inst. Code, §§ 4646, 4646.6, subd. (b).)

6. In cases where the regional center and the consumer cannot agree on the IPP, the initial step is to have a second IPP meeting within 15 days of the disagreement. (Welf. & Inst. Code, § 4646, subd. (f).) If no agreement results after the second IPP meeting, then regional center can send written notice of a denial or service. (Welf. & Inst. Code, §§ 4646, subd. (g) and 4701.)

7. Funding for out-of-state services is governed by Welfare and Institutions Code section 4519, which provides:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the client's [IPP]. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director

determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension shall not exceed six months.

Funding for Out-of-State Services

8. NLACRC did not follow the procedural and substantive IPP requirements mandated by the Lanterman Act prior to issuing the NOPA. Service Agency has not identified a legal basis to act outside of the IPP process in the case of out-of-state placement. Because recommended assessments are outstanding and the IPP process is incomplete, NLACRC failed to establish through a preponderance of the evidence that its proposed action terminating Claimant's out-of-state placement at Devereux is supported under the Lanterman Act. Service Center's NOPA is premature. Currently, no IPP has been developed by the parties which provides for the detailed services and supports Claimant requires for California placement prior to terminating funding for Devereux.

9. Based on Factual Findings 9 through 20 and Legal Conclusions 1 through 8, NLACRC shall continue to fund Claimant's placement in Devereux.

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ORDER

1. Claimant's appeal is granted.
2. NLACRC shall continue to fund Claimant's out-of-state placement in Devereux beginning July 1, 2020 until a California placement that meets Claimant's individual needs, including specific programs and services, is identified through the IPP process.
3. The parties shall meet within 30 days of the date of this decision to identify necessary assessments which are outstanding and to develop an IPP regarding Claimant's future placement.

DATE:

IRINA TENTSER
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.