

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

In the Matter of CLAIMANT,

v.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2019090098

DECISION

Administrative Law Judge Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter on January 8, 2020, in Lancaster, California.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Ms. R., claimant's legal guardian,¹ appeared on behalf of claimant, who was not present.

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

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 8, 2020.

ISSUE

Whether Service Agency must continue to fund claimant's personal assistant service.

EVIDENCE RELIED UPON

Documents: NLACRC's exhibits 1 through 17; Claimant's exhibits A, E, and F.

Testimony: Kathryn Watts, Consumer Services Supervisor; Legal Guardian.

Jurisdictional Matters

1. Claimant is a 17-year-old male residing with Mr. and Ms. R., his legal guardians. 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 (§ 4512, subd. (a).)

2. On August 12, 2019, Service Agency issued a Notice of Proposed Action (NOPA) informing claimant it would cease funding claimant's Personal Assistant (PA)

² Statutory references are to the Welfare and Institutions Code, unless otherwise specified.

service. On August 22, 2019, claimant timely requested a fair hearing. All jurisdictional requirements are satisfied. (See § 4710.5.)

Claimant's Care and Supervision Needs

3. Claimant was placed in the care and custody of his legal guardians approximately 10 years ago with a diagnosis of down syndrome and mild intellectual disability.³ In November 2011, claimant suffered bacterial meningitis and soon after suffered several strokes. In addition, he was diagnosed with Moyamoya, a disorder of the blood vessels in his brain, which required surgeries to correct.

4. Claimant is 49 inches tall and 68 pounds, and is in good health. As a result of the strokes, claimant has restricted use of the right side of his body which limits his performance of daily life activities, e.g., feeding himself, grasping utensils with his right hand, dressing himself, and completing hygienic care. In addition, the strokes caused damage to claimant's neurological responses, which results in intermittent incontinence when sleeping.

5. Claimant does not know how to prepare food or how to handle money. Claimant requires someone to be with him at all times to prevent him from wandering, such as running off when getting out of the car, and to prevent him from choking on foods when he eats. As claimant has grown, he has become stronger. Currently when he wanders off or resists redirection, claimant clenches the left side of his body with such strength that Ms. R. cannot redirect him without the assistance of another adult.

³ Originally a foster family placement, in early 2011 the juvenile court appointed Mr. and Ms. R. to be claimant's legal guardians.

Claimant's Eligibility for Aid to Families with Dependent Children – Foster Care Benefits

6. Aid to Families with Dependent Children – Foster Care (AFDC-FC) is a cash benefit paid by our federal and state governments to out-of-home care providers for the care and supervision of a child placed in foster care.

7. Care and supervision includes “food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.” (§ 11460, subd. (b).)

8. Section 11464, subdivision (a), provides that children who are both placed in foster care and who are regional center consumers are eligible for the AFDC-FC dual rate of \$2,617 per month because they have special needs that may require care and supervision beyond what is typically provided in foster care. Children with extraordinary care and supervision needs, such as severe deficits in self-help skills, may be additionally eligible for a supplemental rate of \$1,000 per month. In this case, claimant is eligible for AFDC-FC benefits totaling \$3,617 per month – the combined dual and supplemental rate – based on his extraordinary care and supervision needs set forth in Factual Findings 3 through 5.

9. Ms. R. has been an employee with Los Angeles County Health Services for 35 years, but has been on medical leave since approximately 2018. Mr. R. works full-time in construction, leaving the home at 5:30 a.m. and returning at 6:30 p.m. Since claimant’s placement, and through March 2019, claimant’s legal guardians were able to meet his care and supervision needs without PA services.

Individual Program Plan Outcome Number 6: Receipt of Personal Assistant

10. NLACRC Service Standards provides the following:

Personal assistant services are to assist with bathing, grooming, dressing, toileting, meal preparation, feeding, and protective supervision is [sic] a typical parental responsibility for minor children. Personal assistant services for minor children will be considered on an exception basis when the needs of the consumer are of such a nature that it requires more than one person to provide the needed care. There may be exceptional circumstances as a result of the severity and/or intensity of the developmental disability that may impact the family's ability to provide specialized care and supervision while maintaining the child in the family home. Eligibility and/or use of generic services such as In-Home Support Services will be explored and accessed where possible prior to NLACRC funding as an exception.

(Ex. 8, p. 26.) When determining a consumer's need for a PA, NLACRC will assess whether a consumer's behavioral or medical issues are of such severity that a parent requires assistance in the home in order to adequately care for the consumer.

11. Legal guardians are no longer able to provide for claimant's care and supervision needs without the services of a PA because as claimant has matured, he has grown stronger, and Ms. R. is contending with health challenges. In 2017, Ms. R. was diagnosed with breast cancer and underwent chemotherapy. Currently, Ms. R. is in

remission, but side effects from chemotherapy have caused her to have neuropathy in both her hands and feet. Consequently, Ms. R. has less strength and endurance, moves and reacts more slowly, has limited fine motor skills, and is limited in her ability to assist claimant with his needs.

12. Because of these changed circumstances, in April 2019, NLACRC amended claimant's Individual Program Plan (IPP) by adding outcome number six, "[Ms. R.] will receive assistance with constant care and supervision that [claimant] requires (04/2019 – 07/2019)," and "NLACRC will fund for 3 hours of personal assistance per day Monday through Friday." (Ex. 3.) The service provision was limited to a three-month period because, at the time, Ms. R. and her doctor did not know whether Ms. R.'s neuropathy would persist. However, at hearing Ms. R. presented a June 20, 2019, letter from her treating physician, Neeraj Agnihotri, M.D., in which Dr. Agnihotri states Ms. R.'s "extensive treatment caused her to have ongoing neuropathy" which causes a "[t]ingling and painful sensation in her hands and feet," and which is "most likely permanent." (Ex. E.)

13. On June 4, 2019, NLACRC amended outcome number six to provide a total of nine hours of personal assistance per day, Monday through Friday, for the month of July 2019. This additional authorization was to meet claimant's care and supervision needs during the summer recess when he did not attend school and Ms. R. was unable to do so without assistance.

14. Kathryn Watts, Consumer Services Supervisor, testified at hearing. Ms. Watts supervises claimant's service coordinator, Angie Guevara, and approved the April and June 2019 authorizations for claimant's PA. Ms. Watts testified NLACRC agrees claimant is eligible for PA services based on his unique needs and exceptional

circumstances, but in July 2019, she subsequently realized her authorization for NLACRC funding for the PA services was in error.

15. Ms. Watts cited sections 4684, subdivision (d)(2), 11460, subdivision (b), and 4648, subdivision (a)(8), and explained Service Agency's position as follows: a) section 4684, subdivision (d)(2), provides that AFDC-FC benefits are for care and supervision as defined in section 11460 (see Factual Finding 7), and provides that regional centers shall separately purchase other services contained in a child's IPP; b) therefore claimant's total AFDC-FC benefits are a generic resource, a public fund disbursed for the specific purpose of meeting claimant's care and supervision needs; and 3) section 4648, subdivision (a)(8), prohibits Service Agency from purchasing the PA service because regional center funds may not "supplant the budget of an agency that has legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

Fair Hearing Request

16. On August 12, 2019, NLACRC issued a NOPA informing legal guardians that it would no longer fund claimant's PA because claimant was in receipt of AFDC-FC⁴ benefits, a generic resource which Service Agency cannot supplant. The October 21, 2019 hearing was continued due to Service Agency's error about claimant's benefit

⁴ In the NOPA, Service Agency incorrectly identified claimant's benefit as Adoption Assistance Program funding.

source, and the parties agreed that claimant's April and July 2019 PA service provision would continue until a decision was issued.⁵

17. On August 22, 2019, claimant requested a fair hearing. In response to the question "Describe what is needed to resolve your complaint," Ms. R. requested that the April and July 2019 provision of services continue and that claimant receive an additional six hours of PA services on weekend days. Evidence was not presented regarding claimant's weekend hour needs, and this request had not previously been discussed by the IPP team. Accordingly, the following analysis and order do not address claimant's request for PA services on weekend days.

LEGAL CONCLUSIONS

Jurisdiction

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 Service Agency's termination of funding for his PA service. (Factual Findings 1-2,16-17.)

Burden and Standard of Proof

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

⁵ Claimant receives three total hours of PA services on weekdays (Mondays through Fridays) when school is in session and nine total hours of PA services on weekdays when school is not in session.

(1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Service Agency seeks to terminate funding of the PA service being provided to a consumer and has the burden to demonstrate by a preponderance of the evidence that its proposal is warranted. (Evid. Code, §§ 115, 500.)

Regional Center Responsibilities

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, hereafter, *ARC v. DDS*, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must secure the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible, and with exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

Service Requirements

7. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client 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, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

8. Section 4512 provides the following:

A. Services and supports for persons 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 consumer's achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).)

B. The IPP team determines a consumer's necessary services and supports on the bases of the consumer's needs and preferences, and must consider a range of service options proposed by IPP participants, the effectiveness of each option in meeting the IPP goals, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

C. Services and supports may include personal care and facilitation. (§ 4512, subd. (b).)

D. Facilitation means "the use of . . . personal assistance by an individual . . . that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that affect his or her life." (§ 4512, subd. (g).)

9. Service coordination includes those activities necessary to implement an IPP, including securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the consumer's IPP. (§ 4647.)

Consideration of Costs

10. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

11. Regional centers must identify and pursue all possible sources of funding for consumers receiving regional center services. (§ 4659, subdivision (a).)

12. Regional center funds may not supplant the budget of an agency that has a legal responsibility to provide the service in question to the consumer and is receiving public funds for that purpose. (§ 4648, subd. (a)(8).)

13. If a needed service or support cannot be obtained from another or generic source, a regional center must fund it. (*ARC v. DSS, supra*, 38 Cal.3d at p. 390.) Though regional centers have wide discretion in how to implement the IPP, "they have no discretion in determining whether to implement: they must do so." (*ARC v. DDS*, 38 Cal.3d at p. 390, citing § 4648, subd. (a)(8).)

Regional Center Responsibilities to Children Receiving AFDC-FC

14. Regional centers must separately purchase or secure the services contained in the IPP, but which are not allowable under federal or state AFDC-FC provisions. (§4684, subd. (c)(1), (3).)

15. AFDC-FC benefits are for care and supervision, as defined in subdivision (b) of section 11460, and the regional centers must separately purchase or secure other services contained in the child's IPP. (§ 4684, subd. (d)(2).)

16. Service Agency agreed that one of claimant's necessary services and supports suited to meet claimant's unique needs is the PA service as provided in claimant's April and July 2019 IPP amendments. However, Service Agency argued that the AFDC-FC dual rate and supplemental benefits are a publicly funded resource which, pursuant to section 4684, is provided to legal guardians to fund the care and supervision of the consumer and that, therefore, the AFDC-FC benefits are a generic resource which must be used to fund claimant's PA service.

17. Contrary to Service Agency's assertion, All County Letter (ACL) 08-17 issued by the Department of Social Services (DSS) on March 28, 2008, provides information regarding the dual agency care rate, effective July 1, 2007, and the requirements of Senate Bill 84, which enacted Welfare and Institutions Code section 11464. (Senate Bill 84, Stats. 2007, ch. 177 (SB 84).)

18. A. ACLs issued by DSS are directed to stakeholders in the foster care system and are issued to, for example, all county welfare directors and administrative law judges, to identify and clarify program requirements.

B. ACL 08-17 was issued to, among others, administrative law judges, and clarifies the roles and responsibilities of child welfare service and regional centers for children eligible for the dual and supplemental rate explained in Factual Finding 8.

C. Under the section titled "Major Dual Agency Care Rate Changes Enacted by SB 84," page 3, ACL-08-17 provides that SB 84 "[s]pecifies regional centers may not deny a dual agency child any service or reduce services based on receipt of

AFDC-FC . . . [which] are not a generic resource under the Lanterman Act.” (Ex. 15, p. 3.) Under the section titled “Care and Supervision,” page 10, ACL-08-17 provides that “[r]egional centers are financially responsible for separately purchasing or securing the services that are in a dual agency child’s . . . IPP . . . without regard to receipt of [AFDC-FC] benefits.” (*Id.* at p. 10.)

Analysis

19. It was established by a preponderance of the evidence that provision of the PA service provided for in claimant’s April and July 2019 IPP amendments is a necessary service and support for claimant. Claimant’s AFDC-FC dual rate benefit and supplemental rate of \$3,617 per month do not constitute a generic resource. Service Agency is financially responsible for separately purchasing or securing PA services for claimant without regard to claimant’s receipt of AFDC-FC benefits. (Factual Findings 1-15; Legal Conclusions 3-18.)

ORDER

1. Claimant’s appeal is granted.

2. North Los Angeles County Regional Center shall continue funding personal assistant services for claimant at a frequency of three hours on weekdays (Mondays through Fridays) when school is in session, and nine hours on weekdays when school is not in session, until it has been determined through the individualized program planning process that such services are neither necessary, appropriate, or effective to meet claimant's needs.

DATE:

CHANTAL M. SAMPOGNA
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.