

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2020050168

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter telephonically on June 23 and August 14, 2020, in Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Brittnee Gillespie, Attorney at Law, represented Claimant who was present for the first day of hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on August 14, 2020.

ISSUE

Is ACRC required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant Claimant's request for a rental exception?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a non-conserved 52-year-old woman who was found eligible for regional center services in 2014, based upon her diagnosis of autism. Claimant lives alone in an apartment in Sacramento, California. On or about May 17, 2019, during Claimant's annual Individual Program Plan (IPP) meeting, she requested ACRC approve a rental exception, which would require ACRC to pay her rent and certain household expenses, so that she can live in a stand-alone single-family home. Claimant believes she needs to live in a stand-alone home due to her hyperacusis, which is related to her autism diagnosis. Hyperacusis is sensitivity to everyday sounds, which can cause pain or physical discomfort.

2. On May 5, 2020, ACRC issued a Notice of Proposed Action (NOPA), denying Claimant's request for a rental exception. ACRC explained, in part, that payment of rent for a stand-alone home was "not required to meet [her] specific care needs and is not required due to any demonstrated medical, behavioral or psychiatric condition." ACRC also noted that generic and other resources are available to Claimant, including a "Section 8 housing voucher to subsidize [her] rent."

3. On May 8, 2020, Claimant timely filed a Fair Hearing Request. Claimant wrote that "[d]ue to [her] diagnosis of autism and hyperacusis, [she] must live alone in

a single family, stand alone residence." Claimant is "unable to tolerate the sounds others make in a shared living space, like an apartment complex." Certain sounds cause her extreme pain and she is unable to refrain from engaging in daily self-injurious behaviors.

Background

2014 SOCIAL ASSESSMENT

4. On March 18, 2014, prior to being found eligible for regional center services, ACRC completed a social assessment of Claimant, which included obtaining a history of claimant's medical, social and behavior issues. Claimant reported that up until 2010, she had lived with her parents. Her parents died and she has lived alone since that time. Claimant grew up attending schools in Northern Sacramento. Claimant did not receive any special education services while in school, because her father did not want her school record to reflect that she had received such services. He "did not think that having special education would look good for her."

5. Claimant reported "a number of health issues both physical and psychological." Her relevant medical conditions included: autism spectrum disorder (ASD), Tourette's syndrome, seizure disorder, bilateral hearing disorder, Tardive dystonia, obsessive compulsive disorder (OCD), and an auditory processing disorder. She did not list hyperacusis as one of her conditions. Claimant was also diagnosed with a seizure disorder, but her "doctors are unsure how much she is truly seizing, as some of the things that have been attributed to seizures may also be attributed to other disorders, such as Tourette's or tic disorders."

6. Claimant disclosed that she was a "regular head banger." She "primarily sits up against the wall and bangs the back of her head against the wall." Her head

banging "has been a constant issue throughout her life, even as an infant." Claimant was given a helmet to wear, but "does not like it and refused to wear it." Claimant was "'kicked out'" of California State University in 2005, because she "banged her head" during class "on a regular basis." Claimant also rocks her body "on a fairly constant basis," "flaps her hands," has vocal tics, including making "sounds, screeches or a barking noises" and "head shaking, unusual eye blinking and sudden jerking of the foot."

7. Claimant has a difficult time going to stores because "all of the items in stock are very visually 'busy.'" She also "does not like the noise of screaming kids or squeaking shopping carts" and "some sounds feel like 'drilling through [her] head.'" At some point in her life, a suggestion was made to her that she "wear earplugs or earmuffs but she does not like the feel of the plugs" so she does not wear any devices in her ears to block out noise.

8. Claimant also reported long-standing psychiatric issues. She had been "hospitalized on a psychiatric hold 'a lot,'" which she estimated was more than five times. Claimant was put on the holds because "people thought she was crazy because of all of her head banging." Her "neighbors would become bothered by her head banging and call the police." Claimant believed that her sensory issues cause her head banging.

PSYCHOLOGICAL EVALUATION

9. On April 29, 2014, ACRC referred claimant to Monica Silva, Ph.D., for a psychological evaluation as part of the initial assessment process. Dr. Silva issued a report concerning her evaluation. Dr. Silva obtained background information from

Claimant, including family information, her living situation, and her medical history. Dr. Silva also administered several diagnostic tests.

10. Claimant explained that she was the youngest child of four siblings. Claimant lived with her parents through most of her adulthood, but resided independently for periods of time, with her father's assistance in managing her "activities of daily living." Claimant was "evicted from different apartments due to an extensive history of head banging, which was disturbing to the other tenants." For a period of time when claimant was in her 20s, she resided with two roommates.

11. Since her parents died four years prior, she lived in an apartment with "a great deal of support from social services agencies." Claimant "has experienced severe difficulties residing independently and completing activities of daily living without assistance." Claimant received support from her "IHSS [In-Home Support Services] workers and has two different individuals who are assigned to her full-time during daytime hours." Claimant explained that "though she enjoys her apartment, she is seeking to move as her neighbors have two young children who are by nature noisy." The building next to her apartment was a "shop, which is also noisy."

12. Claimant reported a psychiatric history of tics and severe head banging. During her late 20s her head banging became more severe. She also had a tendency to bite herself and was "psychiatrically hospitalized on several occasions due to self-harming behaviors." She also had a history of attempted suicides. Claimant reported receiving a diagnosis of OCD, Tourette's, Borderline personality disorder, and depression. She did not report hyperacusis as one of her condition. She was seen by a psychologist who treated her for ten years starting when she was 12 years old.

13. Claimant also reported that she had “sensory sensitivities to sounds” and that she was highly resistant to “loud sounds.” Dr. Silva noted Claimant had been evaluated by an audiologist several times. However, Dr. Silva did not include any information in the report indicating Claimant reported receiving any type of treatment to address her sensory or behavioral issues.

14. Testing performed by Dr. Silva and documented on the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) Diagnostic Criteria for ASD, confirmed Claimant met the criteria for ASD. Dr. Silva noted in the portion of the ASD criteria related to hyper or hypo-reactivity to sensory input, that Claimant “reports a strong history of sensory sensitivities primarily to sound and touch” and that “[t]hese issues continue to be significant.”

Claimant’s 2014 Individual Program Plan

15. On July 29, August 7, and September 1, 2014, an initial IPP was conducted with Claimant and her ACRC Service Coordinator. Claimant’s goals included continuing to live independently. Claimant received 206 IHSS hours. Claimant also received Social Security as a source of income. Claimant worked part-time at a community college as an Assistive Technology Center. She used paratransit to get to and from work.

16. Claimant had lived in her apartment for four years, but was looking for a quieter living arrangement. Claimant felt the “noise from her upstairs neighbors increase her seizure activity and SIB [self-injurious behavior].” Claimant bangs her head when she is “frustrated or overwhelmed.” Claimant also scratches herself. Claimant has bi-lateral hearing loss. She has hearing aids, but does not wear them all the time because she is bothered by loud noises.

17. Services and support that were to be provided to Claimant by ACRC included access to ACRC's clinical team, an independent living skills (ILS) assessment and funding for ILS training.

ILS and Supported Living Service Assessments

18. In November and December 2014, Andrea Croom, Program Director for Inalliance, an independent living service company, performed an ILS assessment, evaluating Claimant's living skills and prepared a report. Claimant informed Ms. Croom that she was "not happy with her current apartment." Claimant complained that her neighbors had two small children and were "noisy." Claimant was on the list at a senior citizen apartment complex, for an apartment that Claimant believes would be less noisy.

19. In June, July and August 2015, Inalliance completed a quarterly ILS assessment and prepared a report. Claimant reported that she would like to find a quieter apartment complex in a neighborhood she could afford. Her objective was to receive support with reaching affordable apartments, surveying new apartments in her complex that may be quieter and receiving assistance in filling out necessary paperwork related to her apartment search.

It was also noted as a significant development that Claimant was referred to a hearing specialist at Kaiser San Francisco related to "Hyperacusis (bone inside ear being affected by hearing interference from wearing ear plugs and headphones to block out noisy upstairs neighbors.)"

20. On December 3, 2015, Inalliance completed a quarterly ILS assessment and prepared a report. Claimant reported that she wanted to move out of her apartment "due to roaches and bed bugs." An ILS instructor attended a meeting with

Claimant at a subsidized senior living apartment complex to obtain information about Claimant's status. Claimant was 36th on the waiting list.

21. On December 14, 2018, Claimant, with the assistance of Rosie Esget, her IHSS worker, prepared a Supported Living Services (SLS) consumer profile and submitted it to ACRC to evaluate whether Claimant qualified for SLS. Claimant included information about her daily living, the supports and services she utilized for daily living and her future plans. If approved, SLS are services funded by ACRC for a client living in their own housing. SLS support is wide-ranging and includes payment for staff who help the client with activities of daily living and community access. SLS staff can also help a client with locating housing.

Concerning her living situation, Claimant was living in a subsidized apartment building with 16 apartment units. Claimant lived in a downstairs unit. She required a downstairs unit due to mobility issues. She found that her "current living situation is not appropriate for [her] disability and has affected [her] health significantly." Claimant's future plans were to "live in a single story dwelling, without anyone living above [her]" so that she is "no longer in pain constantly and [her] health isn't jeopardized [sic] due to [her] hyperacusis."

Claimant reported that she had been hospitalized in the "past few years" due to mental health issues, including a six-week "Partial Hospitalization Program" and an eight-week "Intensive Outpatient Program" Claimant attributed all of those hospitalization to her "current living situation". Claimant had "severe hyperacusis and the noise from upstairs causes severe unrelenting pain." She believed that the pain caused an increase in her Tourette's disorder symptoms and self-injurious behavior, including head banging, biting, hitting and scratching. The noise also caused her to call the "sucicide [sic] hotline many times and become obsessed with standing on the

railroad tracks behind [her] apartment.” Due to her head banging and “loud verbal tics” her upstairs neighbor complained to the apartment complex manager and filed a restraining order against her as well. The apartment manager also threatened to evict Claimant.

22. On January 24, 2019, Allan Diwa, Claimant’s ACRC Service Coordinator at the time, called Claimant’s apartment complex property management company to discuss her ongoing issues with neighbor complaints. The representative informed Mr. Diwa that Claimant was offered another apartment in the complex but she declined the offer.

2019 INDIVIDUAL PROGRAM PLAN

23. On May 17, 2019, Claimant participated in an IPP planning team meeting, that included claimant’s attorney, Nalie Lor, ACRC Service Coordinator, Ms. Esget, and Irma Rossman, Program Director from Above and Beyond Home Care (ABHC), an SLS provider.

24. Claimant goals included continuing to live independently, but due to a diagnosis of hyperacusis, she believed she needed to live in a stand-alone single family home. Claimant told the planning team that her hyperacusis causes her pain when she hears certain types of noises such as “paper shuffling, people clicking pens, walking sounds, and etc.” She also believed that pain she experiences from the noise, triggers her Tourette’s syndrome, and causes her to bang her head on a wall, “bite and scratch” herself, “engage in repetitive rocking, and hand flapping.”

25. ACRC approved Claimant for SLS. During the meeting, Claimant also requested a SLS rental exception in order to have ACRC pay rental costs and housing expenses for a stand-alone single family home, so that she could live in a quieter

environment. Claimant was told during the meeting that ACRC would evaluate her request. Additionally, Ms. Rossman explained that ABHC would assess Claimant's SLS needs and help her locate housing options. Claimant asked that her request for a stand-alone single family home and rental exception be included in the written IPP.

26. At hearing Mr. Lor testified that after completing the 2019 IPP, he researched the rules and regulations for rental exceptions. Mr. Lor also communicated with his manager Toby Golden, Client Services Manager for ACRC. Mr. Toby testified at hearing that he reviewed the information provided by Claimant regarding her request for a rental exception. Mr. Golden requested Mr. Lor obtain more information from Claimant about how she was utilizing her SLS, to determine how best ABHC could assist her with the rental exception process.

ABHC Assessment and Information Submitted in Support of Request

27. In approximately July 2019, ABHC completed an SLS assessment to obtain more information concerning Claimant's needs. The written assessment was forwarded to Mr. Lor on July 22, 2019. The assessment noted that Claimant was "incredibly sensitive to sounds and smells, and her current residence is not suitable for her needs." ABHC stated that the "most appropriate housing for [Claimant] would be a stand-alone unit to avoid noise and scents from tenants above, below, and on any side of her home." ABHC also determined based on information provided by Claimant that she "has not been successful in finding affordable and appropriate living arrangements without assistance and funding provided by HUD housing voucher." One of ABHC's recommendations was for Claimant to request "financial assistance and/or exemption from ACRC to support her special needs of living arrangements."

28. Between July 2019 and April 2020, in support of Claimant's request for a rental exception, she and ABHC submitted information to ACRC regarding her monthly budget and expenses as follows:

Income (SSI and CalFresh)	\$1,059.72
Rent	(\$29.00)
Electricity	(\$160.00)
PG&E	(\$3.49)
Telephone	(\$153.99)
Cable	(\$32.97)
Food	(\$310.06)
Laundry	(\$58.00)
Service Animal Care	(\$217.87)
Hulu and News Paper	(\$50.00)
Total	(\$1015.38)
Amount Left:	\$44.34

29. Claimant and ABHC also submitted information on rental costs for several stand-alone single family homes ranging from two to three bedrooms and up to two bathrooms. Ms. Esget assisted Claimant with preparing the information for the rental exception process. Ms. Esget helped Claimant gather information concerning stand-alone single family homes for rent. She was not able to locate any one bedroom

homes for rent. The monthly rental costs for the homes averaged \$1,971 per month and required an average deposit of \$1,863.

30. Claimant also provided ACRC with several letters from her medical providers in support of her rental exception request. Generally, the letters explained Claimant had hyperacusis and needed to live in a stand-alone single family dwelling in order to avoid noise. Montague Groves Carr, M.D., a head and neck surgeon, wrote in a letter dated March 9, 2018, that Claimant has hyperacusis and that “anything to accommodate her to help avoid noise and sudden sounds in her living situation will go a long way to help with treatment of her hyperacusis.”

Benjamin Price, Psy.D., Claimant’s clinical psychologist, wrote a letter dated January 18, 2019, explaining that Claimant’s “current living environment is causing significant distress” and is “exacerbating a serious mental health condition.” Claimant attributed the issues to her “upstairs neighbor.” Dr. Price requested Claimant be assisted in finding a new living arrangement.

Curtis Lee Witcher, M.D., Claimant’s primary care physician for five years, wrote a letter dated January 24, 2019, stated that Claimant described living in a “chaotic living environment which causes her great distress.” He asked for Claimant to be provided “any assistance” to ensure that her health conditions do not worsen.

Leena Sumitra, M.D., wrote a letter dated July 19, 2019, explaining that she began treating Claimant on July 3, 2019, while Claimant attended a Partial Hospitalization Program. Dr. Sumitra explained Claimant had been in the program three times since 2018. Dr. Sumitra explained that “[a]ll three admissions have involved worsening mood symptoms as a result of her Hyperacusis.” Dr. Sumitra opined that “living around other residents leads to high risk of self-harm behaviors (head banging,

biting fingers) due to severe distress from noises in her housing environment.” Dr. Sumitra opined that Claimant required “stand-alone housing to reduce the acuity of her psychiatric symptoms.”

31. On April 28, 2020, ACRC held a meeting to discuss Claimant’s request. Present at the meeting were: staff physicians, including Barbara Friedman, M.D., Mary Rettinhouse, M.S., BCBA., an ACRC Autism Clinical Specialist, and Mr. Golden. The decision was made that additional information was needed concerning Claimant’s medical conditions, including the need for a “medical work up” and review of medical records since her initial evaluations in 2014. ACRC requested Claimant sign a release of information for any “current treatments and records associating with hyperacusis as well as records supporting [Claimant’s] diagnosis claims.”

32. On April 30, 2020, Claimant declined ACRC’s request to sign a release to give ACRC access to her medical information. Claimant also stated that ACRC had her medical records up until 2013, and that she had provided all of the relevant medical documentation related to her hyperacusis. Within a week ACRC issued a NOPA denying Claimant’s request for a rental exception.

Additional Evidence Submitted by Claimant

33. Claimant has lived in various settings throughout her life. After moving out of her parent’s home, she lived in a small house. She then moved to an apartment complex, in an upstairs apartment, which she also described as being too noisy. She was evicted from the apartment. She then lived briefly in a home with two roommates. The arrangement did not work because of the noise from the other roommates. She was engaging in head-banging and barking. Her roommates moved out and she fell into a depression. Claimant moved in with her mother, until her mother died. Claimant

lived in her mother's home until she was evicted by her brother. In 2010, she moved into her current apartment complex.

34. Claimant explained that she was diagnosed with hyperacusis in 2013, but believes that she has always had the condition. Claimant also believes that an audiologist at Kaiser made the diagnosis, but does not know if an evaluation was performed or if there are any documents concerning the initial diagnosis. Claimant did not disclose her hyperacusis diagnosis to ACRC when she applied for services in 2014, because she was overwhelmed by the process.

35. Claimant's condition causes her pain when she is exposed to everyday sounds. The sounds build up through the day. Claimant believes living in an apartment setting exposes her to more noise. She can hear neighbors talking on the phone, people walking up stairs, and doors shutting. She can also hear businesses operate next to her apartment. She is not able to block out the sound. Claimant has tried some treatments for hyperacusis, including having "pink and white noise" in the background for a couple of months. She was told by medical providers that she had to give the treatment more time. However, she stopped the treatment because it caused her more pain. She also wore earplugs to block out sound, but she can still hear the noise. The earplugs also affected her balance. Claimant has also used mindfulness techniques such as meditation, visualization and breathing. These techniques also have not been successful in treating her condition.

36. Claimant believes her self-injurious behavior is caused by the noise she is exposed to in her apartment. Claimant's depression and anxiety has gotten worse. She became suicidal and was hospitalized. However, the hospital was too noisy, so she left. Claimant does not believe anything can be done to treat her condition and that moving to a stand-alone home is the only treatment. She was offered another

apartment in her complex, but declined to move. Claimant believes she will be exposed to the same level of noise regardless of the location of the apartment in the complex. Claimant's long-term plan is to obtain a HUD Section 8 accommodation for a stand-alone home. She wants a rental exception, and to have ACRC pay for stand-alone housing while she waits for housing she can afford to become available.

TESTIMONY FROM ROSEMARY ESGET

37. Ms. Esget worked as Claimant's IHSS worker for two and a half years, 10 hours per day, six days per week. Ms. Esget observed Claimant engaging in self-injurious behavior every day at home, such as head banging, scratching, and biting. Claimant engaged in similar self-injurious behavior if she was waiting in a busy doctor's office. Ms. Esget would try to find a quiet place for Claimant when she engaged in the behavior, such as inside a vehicle or outside. Ms. Esget explained that overtime Claimant became more depressed and anxious.

ADDITIONAL LETTERS FROM MEDICAL PROVIDERS

38. Claimant also submitted additional letters from medical providers. From April 24 through May 29, 2020, Claimant had an occupational therapy evaluation performed by Denise Ramirez with Kaiser, related to her "sensitivity to sound." Claimant reported an "increase in noise in her current living situation triggers teretes [sic] and head banging." Claimant tried various coping strategies, which were unsuccessful, such as noise canceling headphones, ear plugs, calming background sounds, calming music, and weighted items such as cap or blanket.

39. Dr. Price wrote a letter, dated June 4, 2020, in which he requested Claimant be provided a "stand alone housing environment" to "reduce the severity of her psychiatric symptoms and improve her overall quality of life." Raymond Jones,

D.O., wrote a letter dated June 5, 2020, explaining that he began treating Claimant on February 4, 2020. He explained that Claimant has hyperacusis, with no successful treatment. He wrote that Claimant should be allowed to live in a "single-story, standalone single family residence," which he believes will "greatly benefit her condition."

40. Kaitlin Leggins, a Clinical Audiologist with Kaiser, wrote an updated letter in which she explained that Claimant has been a patient at the Kaiser Hearing Aid Center since 2011. She explained Claimant has bilateral sensorineural hearing loss. She also stated Claimant has a "known diagnosis of hyperacusis," which is described as a "unusual intolerance to ordinary environmental sounds." Ms. Leggins explained that a treatment approach for hyperacusis is to "gradually increase one's exposure to offending sound," which should be done in a "safe and fairly predictable environment." Ms. Leggins explained that Claimant should be accommodated to "reduce or avoid" sounds of daily living, or moved into a stand-alone, single-family residence.

41. John Auza, M.D., with Kaiser, wrote a letter dated June 2, 2020, in which he explained that Claimant is under his care for ongoing chronic conditions. He explained that due to the severity of Claimant's hyperacusis, she needs to move into a stand-alone housing to "reduce the acuity of her psychiatric symptoms."

42. Jonathan Royer, LMFT wrote a letter dated June 15, 2020, explaining he began treating Claimant for mental health issues in 2019. He explained Claimant has described her hyperacusis has impacted by her environmental noise, which has caused her to engage in self-injurious behavior. As a result, he is "hoping" Claimant "obtains the housing she needs to address the noise and hyperacusis that results."

Additional Evidence Submitted by ACRC

TESTIMONY FROM MARY RETTINHOUSE, M.S., BCBA

43. Ms. Rettinhouse, is an Autism Clinic Specialist for ACRC. She testified at hearing concerning her review of Claimant's records and request for a rental exception. Ms. Rettinhouse holds a Bachelor of Arts and Master of Science in psychology. Ms. Rettinhouse is board certified as an Assistant Behavior Analyst. For 15 years, she has worked in both private and public organizations, providing applied behavior treatment services to client. She explained that the goal of applied behavior treatment is to teach clients new skills and remediate challenging or difficult behaviors.

44. Ms. Rettinhouse was asked to consult with Mr. Lor regarding Claimant's diagnosis of hyperacusis and whether stand-alone housing was necessary to help treat her condition. Ms. Rettinhouse has not met Claimant in person. She offered to meet with Claimant, which Ms. Rettinhouse described as a "best practice" for recommending services and support to a client. However, Claimant declined to meet with Ms. Rettinhouse.

45. Ms. Rettinhouse has worked with clients diagnosed with autism and hyperacusis. She explained that it is common for people with autism to have sensory sensitivities, including sensitivity to sound. Ms. Rettinhouse has also worked with clients who have maladaptive behaviors related to sensory issues, including self-injurious behavior. Ms. Rettinhouse explained it is important to evaluate the underlying cause of self-injurious behavior in order to implement a treatment plan, otherwise the treatment plan may be wrong and lead to an increase in the behavior.

46. In order to evaluate the underlying cause of the behavior and develop a treatment plan, a behavior analyst completes a functional behavior assessment which

includes direct observation of client. The assessment also has an indirect information gathering component, which includes interviewing the client, caregivers and others close to the client with a set of questions. Once a functional behavior assessment is complete, the behavior analyst will develop a hypothesis concerning the cause of the behaviors and implement treatment procedures to determine if hypothesis is correct. Determining what strategies or intervention to try are function based. There are three general categories: preventive, reinforcement and consequence. For example, a person who is engaging in self-injury for attention, should not be given attention when engaging in that type of behavior.

47. Ms. Rettinhouse explained there could be multiple causes for self-injurious behavior. There are four different classes of behavior function: access to items such as food, escape for sensory sensitivity, automatic behavior that feels good such as twirling hair, and behavior elicited by a pain or illness that is more from a condition. Claimant has described that her self-injurious behavior is elicited from the pain she feels when exposed to sound and noise. Ms. Rettinhouse opined that there are interventions that can be used to address this type of behavior. Specifically, there are two national authorities detailing evidence-based interventions and practice for people with ASD: the National Standards Project (NSP) and National Professional Development Center on Autism Spectrum Disorder (NPDC). Based on the findings of the functional behavior assessment, the analyst would select evidence based interventions and practices and track and record data to determine if the interventions and practices are successful. The inventions are implemented until the behavior is successfully addressed. Sometimes the analyst will collaborate with a client's medical providers, for example if medication is also needed in addition to behavioral interventions.

48. Ms. Rettinhouse reviewed the 2014 Social Assessment and Psychological Evaluation performed on Claimant to determine her eligibility for ACRC services. Ms. Rettinhouse noted that Claimant reported a history of sensitivity to auditory noises, aggressiveness and self-injurious behavior, including head banging, since early childhood. She also had a history of suicide attempts. Claimant did not report participating in behavioral services to address the conduct.

49. Ms. Rettinhouse also reviewed Claimant's IPPs, hundreds of electronic records and letters Claimant submitted from medical providers in support of her rental exception request. None of the records referenced or described any behavioral services or interventions Claimant was provided to address her self-injurious behavior. There was also no explanation on how Claimant was diagnosed with hyperacusis or whether any type of assessment was completed. Ms. Rettinhouse opined it is critical to have an assessment to ensure the diagnosis is correct.

50. Ms. Rettinhouse discussed her review of Claimant's records and her request with Mr. Lor and Dr. Friedman. All agreed that ACRC needed more information from Claimant's medical providers regarding her diagnosis of hyperacusis and treatments and interventions she had been provided. Claimant would not agree to sign releases to allow ACRC to obtain the information.

51. Based on all of the information Ms. Rettinhouse reviewed, and her training and experience, she opined Claimant does not need to move into a stand-alone single family home to address her behaviors, because avoiding stimuli is not an appropriate long-term therapeutic approach or treatment. Avoiding stimuli may be implemented temporarily while working on tolerating typical noises and sounds to be fully included in natural environment. However, services can be effective for a variety of environments. Ms. Rettinhouse opined that ACRC needed more information about

Claimant's conditions to get a clear diagnostic profile, what treatments have been attempted, and to identify any other services or support Claimant requires.

TESTIMONY FROM DR. FRIEDMAN

52. Dr. Friedman is a staff physician with ACRC. Dr. Friedman testified at hearing. Dr. Friedman reviews records and reports to determine eligibility for service. She has experience working with clients with autism. Dr. Friedman was asked to review Claimant's records related to her diagnosis of hyperacusis and request for a rental exception. Dr. Friedman was not familiar with hyperacusis until she was asked to review information about the condition related to Claimant's request.

53. Dr. Friedman agreed that hyperacusis can be associated with autism. Treatments for hyperacusis include sound desensitization, which involves listening to a low level noise such as white or pink noise, a certain amount of time per day for six months or a year. Auditory integration therapy is also a treatment used, exposing a person to sounds for a prescribed period. A person may also need psychiatric intervention to help manage stress associated with the condition.

54. Dr. Friedman opined that based on her review of all of Claimant's ACRC records and letters submitted by her providers, there is no information concerning how and when the initial diagnosis of hyperacusis was made, what treatments were provided, how long the treatments were implemented and whether there was compliance by Claimant in implementing the treatment. Dr. Friedman opined that more information was needed from Claimant's providers, but Claimant denied ACRC's request that she signs a medical release to allow ACRC to speak to her providers.

ADDITIONAL EVIDENCE REGARDING ACRC'S DECISION TO DENY REQUEST

55. Mr. Golden and Carol Wilhelm, ACRC Client Services Manager, each testified at hearing regarding their role in the decision to deny Claimant's request for a rental exception. The decision was made based on information submitted by Claimant and in consultation with Ms. Rettinhouse and Dr. Friedman.

56. Ms. Wilhelm was involved in reviewing Claimant's rental exception request when it was referred to the SLS committee for review. Ms. Wilhelm explained that under the Lanterman Act, a client living independently in a home or apartment is responsible for rent or mortgage payments. There is a narrow exception that allows regional centers to pay rent for six months of rent and housing expenses if certain criteria are met. Claimant did not qualify for a rental exception because she has access to affordable housing through a subsidized housing program and she did not establish that her care needs require her to live in stand-alone home. In addition, looking at her budget, Claimant has costs she could cut to allow for more money for rent if she chose to move, such as cutting her animal costs and subscription services. SLS can provide her with assistance in finding suitable housing that fits her budget.

57. Mr. Golden also explained that Claimant does not qualify for a rental exception because there would be no savings to the state, because Claimant has access to subsidized housing. Any payment of rental and housing expenses through a rental exception would come from the state, and the state would be paying more for housing than if Claimant used her housing voucher.

Analysis

58. When all of the evidence is considered, Claimant did not establish that the Lanterman Act requires ACRC to grant her request for a rental exception. Claimant

did not establish that the payment of rent and housing expenses by ACRC is required due to a “demonstrated medical, behavioral, or psychiatric condition that presents a health and safety risk to [. . .] herself, or another.” Claimant has a long history of engaging in self-injurious behavior, including the same behavior she attributes to hyperacusis. She also has been treated for psychiatric issues since she was a child. Claimant’s behavior increased in her 20s, despite living in various living arrangements, including stand-alone homes. Claimant was not diagnosed with autism until 2014, when she was made eligible for regional center services. There is no evidence that Claimant received any type of functional behavior assessment or evidence-based treatment or interventions to address her behaviors, before or after she was found eligible for services. As a result, she has not benefited from the type of evidence-based treatments that are implemented to address the sensory sensitivities and resulting self-injurious behavior she has struggled with all her life.

59. Although Claimant contends she was diagnosed with hyperacusis in 2013, there was no evidence of this initial diagnosis in Claimant’s medical records provided to ACRC. Claimant also did not disclose her diagnosis during her 2014 social or psychological assessments. The first record documenting an issue with hyperacusis was in the summer of 2015, when Claimant mentioned during an ILS quarterly evaluation that she was getting treatment for hyperacusis. While the letters from Claimant’s medical providers state that Claimant’s behaviors are caused by hyperacusis and that stand-alone housing is needed to address the behaviors, the opinions are lacking in necessary detail and information concerning the basis for the initial hyperacusis diagnosis, assessments, and the results of evidence-based treatments, and interventions.

60. Ms. Rettinhouse persuasively opined that in order to evaluate the underlying cause of Claimant's behavior and develop a treatment plan, a behavior analyst must complete a functional behavior assessment, develop a hypothesis concerning the cause of the behaviors, implement treatment procedures and gather data to track the effectiveness of the evidence-based treatments and interventions. ACRC has offered to have such an assessment conducted, which would allow development and implementation of treatments. Ultimately, a stand-alone single family home is not required to address Claimant's behaviors, because avoiding stimuli is not an appropriate long-term therapeutic approach or treatment.

61. Additionally, payment of Claimant's rent and housing expenses would not result in savings to the State with respect to the cost of meeting her overall services and supports needs. Claimant has access to generic sources of funding for her rent. Claimant is eligible for a Section 8 housing voucher to subsidize her rent. Claimant did not present any documentation demonstrating that she attempted to use her voucher to obtain a stand-alone home, or any other potential housing which meets her goals. Claimant can also reduce some of her monthly costs to allow for money to be put towards rent for housing that meets her goals.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, Welfare and Institutions Code section 4500 et seq., regional centers accept responsibility for persons with developmental disabilities. Welfare and Institutions Code section 4512 defines developmental disability, in part, as "a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. . . . [T]his term shall include . . . autism."

2. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700 through 4716.) Claimant requested a fair hearing to appeal ACRC’s denial of her request for a rental exception. The burden is on claimant to establish entitlement to the funding, by a preponderance of the evidence. (*See Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, § 115).)

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 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. “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 social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives Services and supports listed in the individual program plan may include, but are not limited to, . . . assessment, assistance in locating a home, . . . behavior training and behavior modification programs.” (Welf. & Inst. Code, § 4512, subd. (b).)

5. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. Welfare and Institutions Code section 4646, subdivision (a) specifies:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system 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. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

6. The planning process for the IPP described in Welfare and Institutions Code section 4646, includes “[g]athering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.”

7. In deciding whether to fund a particular service or support, regional centers must consider that the consumer is responsible for funding services and supports that individuals who are not developmentally disabled typically fund. (§ 4646.4, subd. (a).) “Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.” (§ 4648, subd. (a)(8); see also § 4659.)

8. Pursuant to Welfare and Institutions Code section 4659:

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

[¶] . . . [¶]

(c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

9. Welfare and Institutions Code section 4689, provides in relevant part:

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 individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

[¶] . . . [¶]

(f) The planning team, established pursuant to subdivision (j) of Section 4512, for a consumer receiving supported living services shall confirm that all appropriate and available sources of natural and generic supports have been utilized to the fullest extent possible for that consumer.

[¶] . . . [¶]

(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.

(2) A regional center that has been contributing to rent, mortgage, or lease payments or paying for household expenses prior to July 1, 2009, shall at the time of development, review, or modification of a consumer's individual program plan determine if the conditions in paragraph (1) are met. If the planning team determines that these contributions are no longer appropriate under this section, a reasonable time for transition, not to exceed six months, shall be permitted.

(m) For purposes of this section, "household expenses" means general living expenses and includes, but is not limited to, utilities paid and food consumed within the home.

[¶] . . . [¶]

10. Pursuant to California Code of Regulations, Title 17, section 58611, subdivision (b):

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.

11. As set forth in Factual Findings and the Legal Conclusions as a whole, Claimant failed to establish that ACRC is required under the Lanterman Act to grant her request for a rental exception. Therefore, her appeal must be denied.

ORDER

Claimant's appeal of the denial of her request for a rental exception is DENIED.

DATE: August 27, 2020

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)