

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

**Pursuant to stipulation of the parties, this decision has been
VACATED. See the Department of Developmental Services website
for information regarding the Self-Determination Program.**

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2021020022

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 23, 2021.

Jessica Franey, Attorney, Waterson Huth & Associates, appeared on behalf of Los Angeles County Developmental Services Foundation, Inc., doing business as the Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Vivian Haun and Christine Parker, Attorneys, Disability Rights California, appeared on behalf of claimant, a conserved adult (Claimant).^{1 2} Claimant's mother (Mother), who is his conservator, was present throughout hearing. Claimant was not present.

Oral and documentary evidence was received. The record was left open for the parties to file closing briefs by July 7, 2021, which were received and marked, respectively, as Exhibits NN and 17.

The record was closed and the matter was submitted for decision on July 7, 2021.

ISSUE

Whether payment of a rental subsidy by Service Agency is available to Claimant as a participant in the Self-Determination Program (SDP) under the Lanterman Act.³

¹ Lynn Martinez and Will Leiner, Attorneys, Disability Rights California, were present at hearing as observers.

² Claimant's and family members' names are omitted to protect their privacy.

³ At hearing, the parties both attempted to widen the scope of the inquiry to include evidence and testimony regarding, among other things, Claimant's continued need for a rent subsidy based on his past and current medical, behavioral, and psychiatric conditions and Mother's efforts to access generic housing resources for Claimant. The instant decision does not consider Claimant's need for a rental subsidy

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-17; Claimant's Exhibits A-NN.

Testimony: Alexis Cuevas, Srbiu Ovsepyan, Guadalupe Munoz, Eduardo Guillen, and Adrian Jimenez, and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 47-year-old conserved man, is an eligible consumer of FDLRC based on his diagnosis of mild intellectual disability. Claimant's additional diagnoses include: Schizoaffective D/O, Depressive type; Polysubstance Dependence H/O Pervasive Developmental D/O, ADHD and Learning Disabilities. (Exhibit D.)

2. Claimant has been living independently with Supported Living Services (SLS) support since approximately 2008. His primary source of income is Social Security Administration (SSA) in the amount of approximately \$1,300. He resides in an apartment in Montrose which he shares with a roommate, his brother. Claimant is eligible for 168 hours of protective supervision and 44 In-Home Supportive Services (IHSS) hours, for a total of 212 hours. Mother, who resides in Palm Desert, is Claimant's conservator and IHSS provider.

and/or whether generic housing resources have been accessed by Mother, which are inquiries that are outside the scope of the legal issue considered in this decision.

3. There is no dispute between the parties that Claimant's Individual Program Plan (IPP)⁴ goals include Claimant to live independently in the community.

4. FDLRC funded a rent subsidy for Claimant's apartment for approximately 10 years as a year-to-year exception based on Claimant's ongoing medical, behavioral, and psychiatric conditions. In January 2020, Mother expressed interest to Service Agency for Claimant to participate in the SDP. Prior to Claimant's transition into SDP, discussions and meetings occurred between Service Agency and Mother regarding the details of the SDP.

5. At all times, Mother was informed by FDLRC that Service Agency funded Claimant's rent subsidy as an exception and that FDLRC was required to terminate the rent subsidy if Claimant chose to participate in the program and transition from Service Agency's traditional system because SDP regulations do not allow for funds to be used towards room and board. Accordingly, Mother was aware that the money management authorization and any authorization linked to rent subsidy would be terminated and would not be included in the proposed budget for Claimant's SDP.

6. Nevertheless, Mother transitioned Claimant into the SDP and also requested that Claimant continued to receive rent subsidy from Service Agency while he participated in the SDP. Specifically, Mother requested that FDLRC provide Claimant with a rent subsidy using Purchase of Service (POS) funds in addition to, but separate

⁴ The Lanterman Developmental Disabilities Act (Lanterman Act) requires regional centers to develop a person-centered "individual program plan," or "IPP," for each client. (Welf. & Inst. Code, § 4646; further statutory references are to the Welfare and Institutions Code.)

from, the funding in Claimant's SDP budget. In December 2020, Claimant's SDP Spending Plan was approved. The SDP budget did not include a rent subsidy. (Exhibits 6 and 7.) Claimant nevertheless chose to voluntarily transition into the SDP beginning in approximately February 2021. Mother testified at hearing that she has been responsible for paying the rental difference since Claimant transitioned into the SDP.

7. By Notice of Action decision letter dated December 23, 2020, Guadalupe Munoz, FDLRC Regional Manager, notified Mother that FDLRC declined to continue rent subsidy for Claimant while he participates in the SDP. FDLRC cited as authority for its decision provisions of the Lanterman Act, title 17 of the California Code of Regulations (Regulations), and SDP guidelines which FDLRC asserted did not include payment for room and board and, therefore, required FDLRC to terminate the rent subsidies funded by Service Agency if Claimant participated in SDP. (Exhibit 1; §§ 4685.8, subd. (a), 4685.8, subd. (b)(1) and (b)(2), 4685.8, subd. (c)(2).) Mother was informed that Claimant could continue to receive a rental subsidy if he continued to participate in the traditional system and stopped his transition into the SDP. Mother declined that offer and continued to transition Claimant into the SDP while requesting that rental subsidies continue outside of the SDP under the traditional system.

8. Mother filed a Fair Hearing Request dated January 22, 2021, requesting continued payment of the subsidy "outside of S.D.P." (Exhibit 2.)

9. On February 10, 2021, the parties participated in an informal meeting regarding this matter. By Informal Meeting Decision letter dated February 17, 2021, Eduardo Guileen, Jr., FDLRC Regional Manager and Executive Director's Designee for the Informal Meeting, notified Mother that he was upholding FDLRC's decision to deny funding for rent subsidy while Claimant participates in the SDP because a rent subsidy support is not eligible for funding in the SDP and the law does not provide any

exceptions for housing assistance in SDP. The legal bases cited for the denial was the Lanterman Act and related laws. (Exhibit 3; §§ 4685.8, subd. (a), 4685.8, subd. (b)(1) and (b)(2), 4685.8, subd. (c)(3), 4685, subd. (c)(6), and 4689, subd. (h).)

10. By agreement of the parties, the matter proceeded to hearing on the narrow legal issue of whether FDLRC can continue to fund a rental subsidy for Claimant while he participates in the SDP, as more fully addressed in the Legal Conclusion section of this decision.

Claimant's Services

11. Claimant is receiving the same services in the SDP that he was receiving in the traditional service delivery system. In total, Claimant receives \$316,792.50 per year to purchase 24/7 SLS with 2:1 staffing from Giant Steps and also receives \$16,275.44 to purchase behavior intervention services. (Exhibits 5 and 6.) While Claimant is not receiving a rental subsidy in SDP, he is able to use SDP funds to purchase items that are not available to consumers in the traditional model. For instance, \$24,640.09 per year of Claimant's budget is allocated for Claimant to purchase an electric drum set, headphones, sound proofing equipment, bongo drum, drum lessons, an iPad or radio, and activity fees. (*Id.*)

12. Claimant's argument that the SDP puts him at a disadvantage by not providing him with a rent subsidy is unpersuasive. Among other things, Claimant's assertion ignores the fact that rental subsidies are not a regular service or support under the Lanterman Act. As FDLRC's evidence established at hearing and as demonstrated by Claimant's SDP budget, each service delivery system depends on a consumer's needs and preferences.

13. Mother testified at hearing in a forthright and credible manner regarding Claimant's challenges, including ongoing issues with elopement behaviors. She is concerned for Claimant's welfare if he must relocate to another residence based on financial necessity. Mother's concerns are well-founded based on Claimant's negative housing placement history prior to his Montrose residence.

14. Mother also testified that it is a financial burden to her to help pay Claimant's rent, requiring her to continue to work full-time when she is in her early seventies. Based on the lack of success in prior housing arrangements, Mother does not want Claimant to have to relocate from his current residence and believes his current residence is the optimum environment for Claimant. Mother reported that attempts to obtain affordable generic housing sources for Claimant, such as Section 8 housing, have been fruitless to date.

15. Service Agency has worked with Claimant to identify costs and spending in other areas of Claimant's budget that can be reduced to cover his rental deficit. However, while Claimant asserts that his budget cannot be re-allocated, the evidence is unclear as to whether Claimant has made good faith attempts to revise his budget to reduce or eliminate the rental deficit, such as accessing generic food resources.

16. Nevertheless, Mother confirmed that she voluntarily transferred Claimant into the SDP despite her awareness that FDLRC would terminate the rental subsidy payment after he enrolled in the SDP. Mother testified that she wanted Claimant to participate in the SDP because it would provide her with more control over Claimant's care and allow Claimant to access more items which could not be funded under the traditional system.

17. Among other arguments, Claimant asserts that Service Agency cannot condition his eligibility for or the receipt of a rent subsidy on his participation in the SDP because rent subsidies are available to consumers under the Lanterman Act. However, rental subsidies are not supports or services for persons with developmental disabilities as defined by the Lanterman Act, but are an exception. Rent payments are intended to be the consumers responsibility. Further, the assertion that FDLRC conditioned Claimant's participation in the SDP and improperly denied services and supports is unpersuasive.

18. In fact, FDLRC did not simply make a unilateral decision to terminate rent subsidies when Claimant became a participant of the SDP, as Claimant asserts. Based on the credible testimony of FDLRC staff, Service Agency thoroughly reviewed Claimant's request to continue rent subsidies using either SDP funds for rent payments or to continue to fund the rental subsidy as an exception under the traditional services model while Claimant participates in SDP. FDLRC staff, including Adrian Jimenez, FDLRC's SDP Specialist, contacted the Department of Developmental Service (DDS) to receive guidance and clarification to attempt to accommodate Claimant's request for continued rent subsidies.

19. Under the Lanterman Act, DDS is responsible for implementing the SDP and provides oversight of expenditure of SDP funds. (§§ 4685, subdivision (a) and 4685.8, subd. (b)(2)(A).) DDS confirmed to Service Agency that the law does not allow SDP funds to pay SDP participants' rent and regional centers cannot provide funding for rent outside of the participants SDP budget. Regional centers can fund some services outside of the SDP participants' budget. However, these services are limited to Competitive Integrated Employment (CIE) Incentives, Paid Internship Program (PIP),

SSI/SSP restoration payments, and costs for insurance co-payments, deductibles, or co-insurance. (Exhibit W.)

20. Claimant argues that FDLRC is following a narrow incorrect interpretation of the law in denying Claimant's request to continue to fund Claimant's rental subsidy. However, as more fully discussed in the Legal Conclusions, Service Agency established at hearing that it has correctly interpreted the applicable law in determining that FDLRC is precluded from funding Claimant's rental subsidy under the SDP or as an exception to under the traditional system while Claimant participates in SDP.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of his request to fund for a rental subsidy outside of the SDP under the traditional system while he participates in SDP. Jurisdiction in this case was therefore established. (Factual Findings 1-8.)

2. Because Claimant seeks benefits or services, he bears the burden of proving he is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

The Lanterman Act

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 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. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, 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, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or other "generic resource." Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund

a service specified in a client's IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

6. The Lanterman Act provides for an alternative model for funding services and supports, the SDP model. Participants in the SDP model "shall utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available." (§ 4685.8, subd. (d)(3)(B).) "[T]he IPP team shall determine the initial and any revised individual budget," which "shall be the total amount of the most recently available 12 months of purchase of service expenditures for the participant." (§ 4685.8, subd. (n)(A)(i).) "An adjustment may be made to the amount if . . . [t]he IPP team determines that an adjustment to this amount is necessary due to a change in the participant's circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures, or the IPP team identifies prior needs or resources that were unaddressed in the IPP, which would have resulted in an increase or decrease in purchase of service expenditures." (§ 4685.8, subd. (n)(A)(ii)(I).)

Services for Claimant

7. The Lanterman Act defines "services and supports" for persons with developmental disabilities as specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability. Rent subsidies do not fall within the definition of support and services, are intended to be the consumer's responsibility, and, when funded, are funded as an exception for a temporary time period under strict limitations. (§§ 4512, subd. (b), & 4689, subd. (h) & (i).) Rental subsidies are not a support or service that regional center consumers are entitled to receive.

8. The Service Agency denied funding based on portions of the Lanterman Act which describe the mandates of the SDP and require that the SDP “shall only fund services and supports provided pursuant to this division that the federal Center for Medicare and Medicaid Services (CMMS) determines are eligible for federal financial participation.” (§ 4685.8, subd. (a), (b)(1)-(2), (c)(3), & (c)(6).) (Factual Finding 9.)

9. Claimant argues that payment of a rental subsidy is eligible for federal financial participation because the rental subsidy is not “room and board” as defined by the CMMS. This argument is unconvincing. As Service Agency points out, the CMMS has determined that payment of a recipient’s room and board is not eligible for federal financial participation, defining “room” as “hotel and shelter type expenses including all property related costs such as rental or purchase of real estate and furnishings, maintenance, utilities, and related administrative services.” (Exhibit LL, p. AC0001542.) All property related costs, including the rental or purchase of real estate and utilities are included in the CMMS’s definition of “room.”

10. Claimant’s request for a rental subsidy is clearly included in the CMMS’s definition of “room,” is ineligible for federal financial participation and cannot be paid with SDP funds.⁵ The SDP is contingent upon the approval of federal funding and

⁵ Claimant’s argument that his enrollment in the SDP should not prevent him from receiving a rent subsidy because FDLRC provided this financial assistance in the traditional regional center system while he was enrolled in the Home and Community Based Services (HCBS) Waiver is not considered in this decision as superfluous based on the denial of rental subsidy payments under the SDP set forth in Legal Conclusion 9.

limits an SDP's participants funding of services to those that are federally reimbursable. (§§ 4685.8, subd. (q)(3) and 4685.8, subd. (c)(6).)

11. Claimant argues that his rental subsidy should be paid outside of the SDP under the traditional regional center services model. As previously described, rental subsidies are not part of the traditional regional center system "services and supports" provided to consumers but are defined under the Lanterman Act as a time-limited exception. (Legal Conclusion 7.) Further, rental subsidies, because they are not considered an intended service and support under the Lanterman Act and are not federally reimbursable, are not included by DDS as an exception for payment under the traditional regional center model for SDP participants. (Factual Finding 19.) Claimant's argument for a broad interpretation of what "services and supports" are included under the Lanterman Act and should be paid as an exception by the traditional regional center system is therefore legally unpersuasive.

12. FDLRC's position is consistent with the Lanterman Act.

ORDER

The evidence did not establish that the Service Agency is required under the Lanterman Act to fund for Claimant's rental subsidy while he participates in the SDP. Claimant's appeal is denied.

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.