

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

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

OAH No. 2021020176

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 16, 2021, by telephonic conference due to the COVID-19 pandemic.

Claimant represented herself through part of the hearing. Christopher Wecks represented claimant at the start of the hearing but left the call before San Diego Regional Center (SDRC) completed its case.

Ronald R. House, Attorney at Law, represented SDRC.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on March 16, 2021.

ISSUE

Did SDRC comply with the terms of a prior fair hearing decision and a prior mediation agreement?

Jurisdictional Matters

1. Claimant is a 43-year-old regional center consumer. She is eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq. based on her diagnosis of Autism Spectrum Disorder. According to her most recent IPP dated August 4, 2020, claimant is very technologically adept and lives independently in a one-bedroom apartment. She receives assistance with grocery shopping, housekeeping, and transportation to her appointments. Claimant receives Supplemental Security Income, and 65 hours of In-Home Supportive Services. Through SDRC, claimant is also authorized to receive 60 hours of personal assistance, but claimant has difficulty findings support workers who are able to follow a work schedule that meets her needs.

2. On February 2, 2021, claimant submitted a fair hearing request in which she gave the following reasons she was asking for a fair hearing:

VIOLATION OF TERMS OF FAIR HEARING (3 YEARS AGO)
AND MEDIATION AGREEMENT (2 YEARS AGO) withheld
supports to which I am entitled under the AND AGREED IN .
[s/c] REQUESTING that the regional center and provider(s),
change its procedures for dealing with my case and others
in the future. (Capitalized in original.)

3. As a matter of resolving her complaint, claimant in the fair hearing request asked for "Expedited full-team Follow through with supports delineated in legal outcomes without delay, within two weeks. Zealous implementation including me throughout the process daily until settled with care for 90 days" and "Expunge factitious reputation to prevent my access to care I need medically for daily living and wellbeing."

4. At the start of the hearing on March 16, 2021, claimant stated that she was unable to access SDRC's exhibits which were submitted through the on-line digital platform CaseLines. Claimant's authorized representative, Mr. Weeks, asked claimant if she would agree to ask to continue the matter to review these documents and claimant elected to proceed with the hearing. Mr. Weeks at this point did not participate further in the hearing. The exhibits were identified for claimant and claimant did not object to their admission or make any motion. The documents for the most part are documents SDRC previously provided claimant or claimant submitted to SDRC.

5. During the hearing, claimant did not identify what terms and conditions from the prior fair hearing decision and prior mediation agreement that she believes SDRC has not followed. SDRC stated that it is unable to identify the fair hearing decision or mediation agreement she claims SDRC has violated but submitted into the record OAH Decision Case No. 2020010366, which was issued February 26, 2020. In her testimony and argument claimant stressed that SDRC has engaged in "systemic" violations of her rights under the Americans with Disabilities Act (ADA), but she did not relate these alleged violations to any specific conduct. She asked OAH to initiate an investigation into these purported violations. As she put it, she believes SDRC wants to "disenfranchise" her by working with her primary doctor and the police. Claimant's

request that OAH order an investigation into SDRC's practices is denied. Under the Lanterman Act, OAH has no authority to order such an investigation.

6. Though claimant did not point to specific terms of a decision or a mediation agreement SDRC supposedly violated, the record and OAH's February 26, 2020, decision have been scrutinized to ascertain whether SDRC has violated any terms of that decision or a mediation agreement. No mediation agreement was introduced at this hearing that claimant asserts SDRC violated. Based upon a review of that 2020 decision, two supports and services might be the issues claimant is raising: personal assistance service hours and transliterator services. The February 2020 OAH decision addressed only claimant's request for transliterator services. It is noted that claimant did not request that a transliterator service be made available for this current hearing.

Transliterator services involve a person who repeats words that are spoken in order to help an individual understand the communication. The transliterator service is an atypical service that SDRC has not used for its consumers. The service is used primarily for people who are deaf or hard of hearing. The service is not widely available and SDRC explained at the February 2020 hearing that it had trouble finding a transliterator provider for claimant for the February 2020 hearing.

Regarding personal assistance hours, SDRC has authorized 60 hours of personal assistance hours but claimant has been unable to find providers. Joanna Mull, claimant's services representative, has arranged for two vendors to provide this service but as of the time of this decision personal assistants have not been able to work with claimant.

7. In its February 26, 2020, decision and order, OAH denied claimant's request for transliterator services but ordered SDRC to "continue to evaluate claimant's

needs and the funding available for transliterator services and provide its decision regarding her request for transliterator services in a timely manner.”

8. After the 2020 hearing, SDRC assessed claimant’s need for a transliterator and approved 200 hours of transliterator services. Ms. Mull documented this approval in claimant’s March 19 and March 24, 2020, case notes. In claimant’s most recent IPP, SDRC made clear that a transliterator is available for all communications to ensure clear lines of communication because claimant feels that she is often not understood correctly.

9. With regard to personal assistance hours, the service SDRC has authorized, under the terms of claimant’s most recent IPP from August 2020, 60 hours of personal assistance. But as noted, although these services have been authorized, claimant has been unable to find a provider to help her. According to SDRC’s case notes and claimant’s email, Ms. Mull has diligently tried to arrange a provider for claimant but so far has not been successful.

Claimant’s Testimony

10. Claimant’s testimony is summarized as follows: Claimant was raised in a religious household and had a difficult upbringing. She did not start talking until she was eight and wasn’t able to communicate until she turned 11. Claimant was diagnosed with autism in her 30s. Despite these challenges, claimant obtained bachelor’s and master’s degrees and recently obtained a Ph.D. in psychology.

11. Claimant stated she wants to reorient the purpose of the hearing not to implement anything but to modify regional center policies and procedures in order to change the law. She said she requested this hearing for this reason. Claimant further said she is standing up against policies and violations of the ADA particularly for

persons in need of transliterator services. Claimant explained persons in Sacramento informed her to investigate the policies and procedures of the regional center. She said her chief witness has been somehow not available. Claimant added that she needs to know how SDRC will comply with the law and accommodate her due to her impairments. Claimant said she wants the decision to rule that SDRC's actions were illegal.

12. Claimant also said that SDRC worked with police and her primary care doctor to have her held against her will in a hospital in August 2020. She said SDRC has also worked with her primary care doctor to put her in a group home. As she phrased it, SDRC, her primary care doctor, and police want "to disenfranchise her" and the agenda to disenfranchise her is being implemented.

13. Claimant did not specify the laws SDRC is alleged to have violated and as mentioned above, OAH does not have the authority to initiate an investigation into SDRC for any such violations.

14. In addition, claimant testified she has difficulty accessing services since she moved to San Diego three years ago. Claimant further stated that her driver license has been suspended because of autism, and she needs personal support to get groceries now that her license has been taken away. Claimant also stated she does not have enough equipment at home to be able to read communications.

15. Claimant acknowledged that Ms. Mull offered to communicate with outside agencies to help her access services, but claimant said that she did not give her providers the right to communicate with SDRC. She added that there were violations of the ADA because her providers have not communicated with her in a timely manner.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 500.) In this case, claimant bears the burden to demonstrate that SDRC failed to comply with the terms of a prior administrative decision and/or mediation agreement.

2. The standard by which each party must prove those matters is the “preponderance of the evidence” standard. (Evid. Code, § 115.)

3. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act

4. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500, et seq.) The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible. (Welf. & Inst. Code, §§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

5. When an individual is found to have a developmental disability under the Act, the State of California, through a regional center, accepts responsibility for providing services to that person to support his or her integration into the mainstream life in the community. (Welf. & Inst. Code, § 4501.) The Lanterman Act acknowledges the “complexities” of providing services and supports to people with developmental disabilities “to ensure that no gaps occur in . . . [the] provision of services and supports.” (Welf. & Inst. Code, § 4501.) To that end, section 4501 states: “An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life. . . .”

6. “Services and supports” are defined in Welfare and Institutions Code section 4512, subdivision (b):

“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, . . . personal care, day care, special living arrangements, . . . protective and other social and sociolegal services, information and referral services, . . . [and] supported living arrangements, . . .

7. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659. In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

8. In order to be authorized, a service or support must be included in the consumer's individual program plan (IPP). (Welf. & Inst. Code, § 4512, subd. (b).) In implementing an IPP, regional centers must first consider services and supports in the natural community and home. (Welf. & Inst. Code, § 4648, subd. (a)(2).)

9. Pursuant to Welfare and Institutions Code section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, "where appropriate." Services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

Evaluation and Disposition

10. Claimant has the burden to show that SDRC violated the terms of a prior fair hearing decision and/or mediation agreement. However, contrary to her fair hearing request, claimant did not assert at the hearing her claim that SDRC violated any term of a decision or mediation agreement, but instead that SDRC has violated her rights under ADA and she wants OAH to order an investigation accordingly. As stated

above, OAH does not have the authority to order such an investigation and her request is denied. With respect to claimant's stated reason for this hearing as noted in her Fair Hearing Request, claimant did not prove that SDRC violated the terms of a prior decision and/or mediation agreement. In fact, SDRC has complied with OAH's February 26, 2020, decision and, after it evaluated claimant's need for transliterator services, authorized transliterator services. Regarding the other service SDRC has authorized, personal assistance services, SDRC has attempted to assist claimant to access these services with two different vendors, but claimant has not been able to find personal assistants who are willing to accommodate her schedule. Of note, regional centers are funding agencies, not staffing agencies; they authorize and fund services and cannot guarantee that a provider of those services will be located.

With this noted, claimant stated she needs personal assistance services to help her get groceries. She also stated she needs additional equipment to read communications. Due to claimant's difficulties communicating, SDRC will be required to inquire into claimant's need for this additional communication equipment and continue its efforts with vendors to arrange for personal assistants to help claimant.

ORDER

1 Claimant's appeal that SDRC violated the terms of a fair hearing decision and mediation agreement is denied.

2 Due to claimant's communication issues, SDRC will evaluate claimant's need for additional communication equipment and inform claimant in writing whether it can authorize any additional communication equipment.

3 SDRC will continue its best efforts with vendors and possible vendors to arrange for personal assistants to claimant. SDRC will regularly provide claimant in writing of its efforts in this regard.

DATE: March 30, 2021

ABRAHAM M. LEVY

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.