

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT**

**vs.**

**ALTA CALIFORNIA REGIONAL CENTER, Service Agency**

**OAH No. 2021020656**

**DECISION**

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and video conference on March 19, 2021, from Sacramento, California.

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

Claimant represented himself.

Evidence was received, the record closed, and the matter submitted for decision on March 19, 2021.

## ISSUES

1. Did ACRC violate Welfare and Institutions Code<sup>1</sup> Section 4731 when it failed to provide claimant with information regarding the complaint procedure under that section?
2. Did ACRC violate Section 4642, subdivision (a)(3)(B), when it failed to provide claimant with a “standardized information packet” referred to in subdivision (a)(3)(A)?
3. Did ACRC comply with the intake and assessment process and timelines set forth in Sections 4642 and 4643?

## FACTUAL FINDINGS

### Background

1. Claimant is a 40-year-old man who self-referred to ACRC based on his “suspicion” that he has Autism Spectrum Disorder (ASD). On November 10, 2020, he filled out ACRC’s online “Initial Intake Inquiry Contact” form. The following day, November 11, 2020, was a holiday. On November 12, 2020, Samida Gonzales, an ACRC office assistant, called claimant to explain ACRC’s services and the population it serves. She told claimant he should expect to receive a call back by December 3, 2020,

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<sup>1</sup> References are to the Welfare and Institutions Code unless otherwise stated.

emailed him the "intake packet," and forwarded the matter to Timothy Kuwazaki, Intake Manager.

## **ACRC's Intake and Assessment Procedures**

2. Camelia Houston has been ACRC's Director of Intake and Clinical Services (Director) for the past five years. Prior to this position, she was a Service Coordinator for nine years and a Client Services Manager for nine years. She testified at hearing.

3. Ms. Houston oversees ACRC's Intake Managers and clinicians. She is Mr. Kuwazaki's manager and she supervises the intake process. She explained she did not develop ACRC's intake and assessment procedure and does not know who did. The procedures have been in place since before she began as Director. She believes the process follows the procedures laid out in the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst. Code, § 4500 et seq), though she knows of no "legal review" of ACRC's processes. The Lanterman Act provides the statutory mandates with which regional centers must adhere. Ms. Houston reviewed claimant's intake procedure and believes it conforms to ACRC's policies.

4. Mr. Kuwazaki also testified at hearing. He has been an Intake Manager at ACRC for seven years and is familiar with ACRC's intake and assessment procedures. He explained the procedures followed once ACRC has had contact from a potential applicant. He also explained his understanding of the applicable sections of the Lanterman Act. Mr. Kuwazaki stated ACRC "follows the intake procedure in the Lanterman Act."

5. Mr. Kuwazaki explained ACRC begins processing an applicant at the first phone call, email, or online request. An office assistant makes the first contact, explains the five categories for which ACRC provides services, and informs the applicant he

must live in ACRC's catchment area. The office assistant performs a search within the statewide regional center database to determine whether the applicant is already linked to a regional center. The applicant provides basic personal information and is assigned an "inquiry number." The office assistant enters the information and produces an "Inquiry Family Data Sheet" (FDS), which is provided to the Intake Manager. The applicant is also mailed or emailed an Intake Information Form and asked to return it and given the option to provide ACRC any pertinent available records. The office assistant informs the applicant when he should expect a call back from an Intake Specialist.

6. Once Mr. Kuwazaki receives the FDS, he assigns an Intake Specialist to the applicant. He assigned claimant's inquiry to Intake Specialist Lindsay Mitsuhashi. He explained ACRC's process, in accordance with the Lanterman Act, is to conduct an inquiry to determine a "suspicion" the applicant is "believed to have a disability." To establish a belief of a developmental disability, ACRC obtains a history from the applicant, identifies the condition the applicant suspects he has, determines whether the applicant is connected to other agencies, and obtains records either from the applicant or after the applicant signs a records release. For claimant, this process involved his mother because the definition of Developmental Disability includes that the condition "originates before the individual attains 18 years of age," and she was identified as being able to provide information about claimant's childhood.

7. The "Initial Intake" begins when the Intake Specialist obtains information, discusses it with the applicant, and consults with ACRC clinicians to determine whether ACRC "developed a belief of a developmental disability." Once the Initial Intake begins, ACRC has 15 working days to complete that process. The Initial Intake includes a determination regarding whether ACRC will provide an assessment.

8. On February 17, 2021, Ms. Mitsuhashi sent claimant an email stating she had consulted with ACRC Clinical Staff and “per consult, ACRC would like to proceed with the intake process.” She explained claimant would receive an “Intake Agreement and Consent” form to sign and return. After he signs and returns the form, he will receive a packet of information including a Release of Information form, which allows ACRC to request information on his behalf.

9. Mr. Kuwazaki explained that if the Initial Intake “substantiates a belief of a developmental disability,” a 120-day period begins for the regional center to complete the assessment. This means if the regional center does not substantiate a belief that the applicant has a qualifying developmental disability, the 120-day assessment period is not triggered. Mr. Kuwazaki explained Section 4643 lists what an assessment may include, but each assessment is different:

(a) Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b).

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512 , the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations

that have been performed by, and are available from, other sources.

10. Claimant progressed to the assessment and was assigned a Unique Client Indicator (UCI) number, which replaced his "inquiry number." Mr. Kuwazaki assigned Hillary Santiago, Intake Specialist, to complete the assessment. On February 25, 2021, Ms. Santiago emailed claimant offering a social assessment telephone appointment on March 22, 2021. On February 26, 2021, claimant accepted the appointment.

11. Mr. Kuwazaki explained claimant's Initial Intake began on February 19, 2021, when claimant submitted his signed "Intake Agreement and Consent" form. The Initial Intake concluded on February 25, 2021, when ACRC developed a belief claimant has a developmental disability. On that day, the 120-day assessment period began. Mr. Kuwazaki stated ACRC must complete the assessment on or before June 15, 2021.

### **Information ACRC Provides at Intake**

12. Ms. Houston is familiar with the Lanterman Act, and specifically Sections 4731 and 4642. She explained Section 4731, by its terms, applies to "consumers" as defined in Section 4512, subdivision (d) ("Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a)."). Section 4731 refers to complaints a consumer may have regarding "any right to which a consumer is entitled" that a regional center has abused." It also requires that consumers or their representatives "shall be notified in writing . . . of the right to file a complaint pursuant to this section when they apply for services from a regional center. . . ." Generally, Section 4731 allows a consumer to file a complaint with the Department of Developmental Services (Department) against a regional center.

13. Ms. Houston acknowledged claimant was not made aware of this right to file a complaint under Section 4731, but stated he is not a “consumer,” as defined, and the complaint process does not apply to him. The process to appeal the intake process or eligibility falls under the fair hearing procedures in the Lanterman Act.

14. Ms. Houston also explained the legislature amended Section 4642 in 2019 to add subdivision (a)(3). The amendment to Section 4642 requires the Department to create “standardized information packets” that the regional centers will distribute to any person seeking services. Ms. Houston explained that to her knowledge, the Department has not created the standardized intake packets or distributed them among regional centers. She acknowledged Section 4642 was amended two years ago, and she suspects the Department has not distributed the packets because its attention was diverted by the pandemic.

## **PRINCIPLES OF LAW**

15. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) This includes a fair hearing “for resolving conflicts between the service agency and . . . applicants for [. . .] service.” (*Id.* at § 4705, subd. (a)(1).)

### **Burden of Proof**

16. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid.

Code, § 115.) Claimant therefore has the burden of proving by a preponderance of the evidence that he is entitled to the relief he seeks.

## **Regulations**

17. California Code of Regulations, title 17, section 54010:

(a) Any resident of the State of California believed to have a developmental disability . . . shall be eligible, upon application to the regional center, for initial intake, diagnostic and counseling services, and a determination regarding the need for assessment.

(b) Eligibility for ongoing regional center services shall be contingent upon the determination, after intake and assessment, that the person has a developmental disability that constitutes a substantial disability as defined in Article 1 of this subchapter.

[¶] . . . [¶]

## **Relevant Sections of the Lanterman Act**

18. Section 4512 states in part:

(a) "Developmental disability" means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in

consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

[¶] . . . [¶]

(d) "Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

19. Section 4642 states:

(a)(1) Any person believed to have a developmental disability . . . shall be eligible for initial intake and assessment services in the regional centers. . . .

(2) Initial intake shall be performed within 15 working days following request for assistance. Initial intake shall include, but need not be limited to, information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, including guardianship, conservatorship, income maintenance, mental health, housing, education, work activity and vocational training, medical, dental,

recreational, and other services or programs that may be useful to persons with developmental disabilities or their families. Intake shall also include a decision to provide assessment.

(3) (A) The department shall create, with input from stakeholders, standardized information packets to be provided to any person seeking services from a regional center. There shall be one information packet related to services provided under the California Early Intervention Services Act and another information packet related to services provided under the Lanterman Developmental Disabilities Services Act. The information packets shall be translated to provide language access, as required by state and federal law, shall be available in alternative formats and alternative modes of communication, as required by federal law, and shall include, at a minimum, all of the following:

(i) An overview of the regional center system.

(ii) A resource guide for consumers and their families.

(iii) Consumer rights.

(iv) Contact information for the regional center, the department, the office of clients' rights advocacy, and the protection and advocacy agency specified in Division 4.7 (commencing with Section 4900).

(B) Each regional center shall distribute the information packets at intake, upon transfer to receiving services under the Lanterman Developmental Disabilities Services Act, and upon request. Each regional center shall begin distributing the information packets within 60 days following the department providing the information packets and issuing directives regarding the distribution of the information packets. In addition to, and not in lieu of, this requirement, each regional center shall post the full content of the most updated information packet on its internet website.

[¶] . . . [¶]

20. Section 4643 provides:

(a) If assessment is needed, the assessment shall be performed within 120 days following initial intake. Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment. Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs

and is conditional upon receipt of the release of information specified in subdivision (b).

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

[¶] . . . [¶]

21. Section 4703.7 defines "services" for purposes of the Lanterman Act's Chapter 7: Appeal Procedure: "'Services' means the type and amount of services and service components set forth in the recipient's individual program plan pursuant to Section 4646."

22. Section 4731 is also in Chapter 7 of the Lanterman Act. That section provides:

(a) Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section.

[¶] . . . [¶]

(f) All consumers or, where appropriate, their parents, legal guardian, conservator, or authorized representative, shall be notified in writing in a language which they comprehend, of the right to file a complaint pursuant to this section when they apply for services from a regional center or are admitted to a developmental center, and at each regularly scheduled planning meeting.

## **ANALYSIS**

### **Failures Regarding Initial Intake**

23. The facts in this matter are not in dispute. On November 10, 2020, claimant filled out ACRC's online form: Initial Intake Inquiry Contact Form. On November 12, 2021, an ACRC office assistant telephoned claimant regarding his inquiry. The parties had a number of communications, and claimant was referred to an Intake Specialist, to whom he spoke on December 2, 2020. ACRC gathered available information, spoke with claimant and his mother, and requested claimant fill out releases so additional information could be attained.

24. On February 17, 2021, ACRC determined claimant would be referred for "Initial Intake," and sent him a consent form, which he returned on February 19, 2021. On February 25, 2021, claimant was referred for an assessment.

25. ACRC argued the Initial Intake does not begin until ACRC develops a belief an applicant may have a developmental disability, relying on Section 4642,

subdivision (a): "Any person believed to have a developmental disability. . . ." The statute does not state **who** must believe a person has a developmental disability before that person is eligible for "initial intake and assessment services." ACRC has determined its staff must have the belief.

26. ACRC has developed a procedure that includes an "inquiry process," which has no defined timeline and is not based on a statutory directive, during which it attempts to develop a belief the applicant has a developmental disability. After ACRC develops the belief, the Initial Intake period begins, and is subject to the 15 working day timeline.

27. While it is true that Section 4642 does not delineate who must "believe" a person has a developmental disability, the procedures set forth in Sections 4642 and 4643 are not unclear. Section 4642, subdivision (a)(1), states a person believed to have a developmental disability "shall"<sup>2</sup> be eligible for intake and assessment. Subdivision

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<sup>2</sup> California Code of Regulations, title 17, section 54300, falls among regulations discussing regional center vendors and is not controlling here. It is, however, instructive, as it directs:

Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense and words in the singular form include the plural form. Use of the word "shall" denotes mandatory conduct; "may" denotes permissive conduct; and "should" denotes recommended conduct.

(a)(2) contains a clear directive: "Initial intake shall be performed within 15 working days following request for assistance." Claimant requested assistance on November 10, 2020. ACRC's argument that Initial Intake does not begin until it "developed a belief" was not persuasive. A person who self-refers to a regional center and requests assistance does so because he is "believed to have a developmental disability."

28. Section 4642, subdivision (b), further directs: "Intake shall also include a decision to provide assessment." Thus, the Lanterman Act postulates a person will be in the Initial Intake process for 15 working days, within which time he will be told whether the regional center will provide an assessment.

29. Section 4643 then provides a procedure for assessment, if it is warranted. That section directs regional centers to conduct the assessment within 120 days. An exhaustive review of available statutory history revealed the Legislature has considered this timeline on many occasions and ultimately settled on 120 days for the assessment period, with a health and safety exception that does not apply here.

30. ACRC argued claimant's Initial Intake began on February 19, 2021, the day on which he signed the Intake Agreement and Consent form. Four working days later, ACRC determined it would refer claimant for an assessment. It argues therefore that the statutory deadline to complete claimant's assessment is June 25, 2021. These arguments turn on the validity of its "inquiry" process.

31. The Lanterman Act clearly provides a process for a regional center to determine eligibility that includes specific timelines. It specifies working days in one instance and calendar days in another. The eligibility process was created with timing in mind and the importance of connecting eligible persons with services as soon as

possible.<sup>3</sup> ACRC's "inquiry period" is contrary to legislative intent and deprives applicants of the timeline the Lanterman Act sets forth.

## **Failure to Provide Information**

32. Claimant's arguments regarding ACRC failing to provide him with an Intake Packet under Section 4642, subdivision (a)(3), and information regarding the complaint procedure under Section 4731 were not persuasive. Ms. Houston credibly testified the Department has not developed the Intake Packet or distributed it to the regional centers, which is a condition precedent to providing the packets to applicants.

33. Claimant is not a "consumer" under Section 4731. That section does not apply to him. First, a consumer is defined in Section 4512, subdivision (d), as a person who "has a disability that meets the definition of developmental disability," as defined. Claimant has not yet been found to meet that definition. Second, Section 4731, subdivision (f), requires a regional center to provide information about the complaint process in 4731 "when they apply for services." For purposes of Chapter 7, which governs appeals, "services" means: "the type and amount of services and service components set forth in the recipient's individual program plan pursuant to Section 4646." (Welf. & Inst. Code, § 4703.7.) Claimant does not receive services under an individual program plan. For these reasons, Section 4731 does not apply to him.

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<sup>3</sup> Section 4646, subdivision (c), confirms that time is of the essence: "An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment."

## **Conclusion**

34. While Lanterman Act violations have been established, what is unclear is whether those violations can be remedied. Claimant's Initial Intake period should have been completed, including whether an assessment would occur, 15 working days after his initial request for assistance, which was December 4, 2020. ACRC did not complete the Initial Intake in a timely fashion and did not begin taking steps to assess claimant until February 25, 2021. The legislature contemplated the assessment period would take 120 days, which for claimant is April 5, 2021 (120 days ends on April 4, 2021, a Sunday). It is not within the purview of this court, however, to determine whether that statutory deadline is reasonable under these circumstances.

## **LEGAL CONCLUSIONS**

1. Claimant did not establish by a preponderance of the evidence that ACRC violated Welfare and Institutions Code Section 4731, when it failed to provide him with information regarding the complaint procedure under that section.
2. Nor did claimant establish ACRC violated Section 4642, subdivision (a)(3), when it failed to provide him with a "standardized information packet" referred to in subdivision (a)(3)(A), because ACRC does not yet have a legal duty to do so.
3. Claimant established by a preponderance of the evidence that ACRC's Initial Intake and Assessment processes do not comply with Welfare and Institutions Code Sections 4642 and 4643, and his Initial Intake should have been completed by December 4, 2020. ACRC has until April 5, 2021, to complete claimant's assessment.

## **ORDER**

Claimant's appeal is granted in part and denied in part. ACRC shall not provide claimant information under Welfare and Institutions section 4731 or 4642, subdivision (a)(3).

Claimant's Initial Intake concluded on December 4, 2020. His assessment should be completed by April 5, 2021.

DATE: March 26, 2021

HEATHER M. ROWAN  
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. (Welf. & Inst. Code, § 4712.5, subd. (a).)