

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**WESTSIDE REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2021030536**

**DECISION**

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference and telephone on May 26, 2021.

Julie A. Ocheltree, Esq., of Enright & Ocheltree, LLP, represented Westside Regional Center (WRC or Service Agency).

Claimant's Mother (Mother)<sup>1</sup> represented Claimant, who was not present at the hearing.

Testimony and documentary evidence were received. The record was closed and the matter was submitted for decision on May 26, 2021.

## **ISSUE PRESENTED**

Whether WRC should terminate the funding of Claimant's confinement at a hospital treating mental disorders?

## **EVIDENCE RELIED ON**

WRC: Testimony of Mahogany Joseph, Service Coordinator; Exhibits 1–7.

Claimant: Testimony of Mother, Exhibit A.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 27-year-old conserved male. He is eligible for regional center services based on a diagnosis of mild intellectual disability and epilepsy. He also

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<sup>1</sup> Names of Claimant and his Mother are withheld to protect their privacy.

has been diagnosed with impulse disorder and Attention Deficit Hyperactivity Disorder.

2. On October 23, 2012, Mother was appointed Claimant's limited conservator. (Ex. 7.) As Claimant's limited conservator, Mother has the power to determine Claimant's residence, has access to Claimant's confidential records, must consent to any marriage by Claimant, decides Claimant's education, and controls the right of Claimant to contract as well as Claimant's social and sexual contacts and relationships. Mother also has the exclusive authority to give consent for and to require Claimant to receive medical treatment that she, in good faith based on medical advice, determines to be necessary even if Claimant objects.

3. On March 5, 2021, WRC issued a Notice of Proposed Action (NOPA) to Mother. (Ex. 1.) The NOPA informed Mother that WRC would no longer financially or otherwise support Claimant's continued confinement at College Hospital unless Mother agreed to allow Claimant to move into a supportive living situation in the community.

4. On March 9, 2021, Mother filed a Fair Hearing Request requesting (a) the assignment of a new case manager; (b) WRC's assistance in finding an appropriate residential placement for Claimant in the same catchment area as WRC; and (c) assistance from Partners of Change, a supported living services (SLS) provider, in transitioning Claimant to a new location when he leaves the hospital. (Ex. 2.) On April 29, and April 30, 2021, Mother and Candace J. Hein, Esq., WRC Fair Hearing Specialist, held an informal conference to address Mother's concerns.

5. Mother and WRC were not able to reach an agreement regarding Claimant's placement at the informal conference, and this hearing followed.

## **Relevant Facts**

6. Claimant can meet his daily hygiene needs and can navigate his community. However, Claimant requires constant supervision and monitoring to ensure he does not fall into inappropriate behaviors or elopes. He cannot take public transportation alone and cannot count money. He takes various psychotropic and seizure medications daily, which must be monitored. Claimant is at high risk for injury or harm because of his frequent seizures, particularly when his medication levels are low or when he is without medication for extended periods.

7. Before his hospitalization, Claimant lived in an apartment with SLS support. He was authorized to receive 2:1 staffing on an as-needed basis. He also attended Liberty Employment Services five days a week, which provided job training and transportation, and educational classes at the library.

8. Claimant was admitted on an emergency basis to College Hospital's DDMI (Developmental Disability Mental Illness) unit on July 4, 2019. The DDMI unit is a locked unit. It was not made clear at hearing the basis for his admission. WRC was not involved in his admission to College Hospital. According to the hospital records, Claimant was admitted because of "aggression towards others at his placement." (Ex. 5.) At the hospital, Claimant was diagnosed with intermittent explosive disorder, mild to moderate intellectual impairment, and seizure disorder. Although by the end of August 2019, Claimant was eligible for discharge from College Hospital, he currently remains there until appropriate housing can be found.

9. In August 2019, WRC, with the assistance of Partners of Change, began investigating placements for Claimant for his transition from the hospital. These placements included licensed community care facilities. After several months, it

became clear that Mother disagreed with WRC's placement recommendations because she did not want Claimant to reside in certain areas known to have gangs. She also wanted Claimant to live in an apartment with SLS support.

10. WRC then worked with Partners of Change to find a suitable apartment placement for Claimant. Partners of Change recommended several apartments to Mother; it sent its latest recommendations on March 8, 2021. As Claimant's limited conservator, Mother would be required to co-sign or sign a lease for Claimant's apartment. However, Mother believed her signature would not be sufficient to qualify Claimant for a lease because of her problematic rental history, which included an eviction. Mother therefore wanted WRC to sign a lease on Claimant's behalf, but WRC declined to do so given Mother's conservator status. Consequently, Mother did not apply to any of the apartments identified by Partners of Change.

11. Because of the COVID-19 pandemic, Mother was in no rush to move Claimant from College Hospital because she believed he was safe there. In addition, WRC paused all residential placements from March 2020 until the beginning of 2021 because of the pandemic and the resulting staff shortage suffered by WRC's SLS vendors during this period.

12. On December 2, 2020, Claimant tested positive for COVID-19 as a result of exposure from others in the DDMI unit. He was asymptomatic but was moved to a COVID-19 unit for quarantine purposes.

13. During his hospital stay, Claimant has spoken with Crisis Response Project, which provides 24/7 access to crisis support, and Partners of Change staff via weekly telephone calls. Claimant's social worker and his behavior analyst at College

Hospital both support Claimant's discharge from the Hospital to an appropriate residential placement and his attendance at a day program for support. (Ex. 5.)

14. Sometime in April 2021, WRC was informed that Claimant could be placed at Plymouth Home, an enhanced behavior support home operated by the Center for Applied Behavior Analysis (CABA). WRC believes Plymouth Home would be an appropriate placement for Claimant. If Mother files the appropriate paperwork, Claimant is expected to transfer to Plymouth Home no later than mid-August 2021. The delay is to allow CABA to address current staffing shortages.

15. Mother has not sought a court order to continue Claimant's placement at College Hospital.

16. Mother is a strong advocate for her son. She blamed most of the issues regarding Claimant's placement on WRC's failure to communicate with her. She expressed frustration regarding WRC's failure to return her calls and texts. Mother acknowledged she initially indicated to WRC that she objected to placing Claimant in a home operated by CABA. However, at the hearing, Mother clarified that her objection was not to CABA but to the location of the home operated by CABA. Mother has no objection to the placement of Claimant at a home operated by CABA in the WRC catchment area.

17. Mother agrees with WRC that Claimant should no longer stay at College Hospital. Mother also now consents to Claimant's placement at Plymouth House, knowing that it is operated by CABA, because she now prefers to have Claimant living in a group setting.

18. Mother submitted her typewritten consent for Claimant's placement at Plymouth House to WRC; however, WRC requires a handwritten consent and supplied

Mother a new copy of the consent form and stamped envelope for its return. Mother has agreed to send her handwritten signed consent to WRC. She also has agreed to sign any papers required by CABA for Claimant's transition from College Hospital to Plymouth House. Mother further recognizes that Claimant's Supplemental Security Income (SSI) benefits will be used to fund Claimant's stay.

19. WRC has assigned a new service coordinator to Claimant in response to Mother's request.

## **LEGAL CONCLUSIONS**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) incorporated under Welfare and Institutions Code section 4500, et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. (Welf. & Inst. Code, § 4501.)

2. The bedrock principle of the Lanterman Act is that persons with developmental disabilities have "the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California." (Welf. & Inst. Code, § 4502.)

3. Individuals with developmental disabilities also have a right to receive treatment as well as habilitation services and supports in the least restrictive environment. Those treatment and habilitation services and supports should "foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least

restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.” (Welf. & Inst. Code § 4502, subd. (b)(1).)

4. The Lanterman Act’s individual program planning process also requires that services and supports provided to an individual with developmental disabilities be provided in the least restrictive setting and be based on the individual’s needs:

(a) 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, when 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.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, when appropriate, the individual’s parents, legal guardian or conservator, or authorized representative, shall have the



opportunity to actively participate in the development of the plan.

(Welf. & Inst. Code, § 4646, subd. (a) & (b).)

5. Since January 1, 2020, regional centers are prohibited from funding placements in institutions for mental disease except where an individual is in an “acute crisis” and only after (i) the regional center prepares a report detailing all considered community-based services and supports, and an explanation why those services and supports cannot meet the individual's needs, and (ii) the director of the regional center must confirm that those options are not available. (Welf. & Inst. Code, § 4648, subd. (a)(9)(C)(iii).) An “acute crisis” is defined as a situation in which the individual presents an imminent risk of danger to himself and others, the individual’s service and support needs cannot be met in the community, even with supplemental services, and due to “serious and potentially life-threatening conditions,” the individual “requires a specialized environment for crisis stabilization.” (*Id.* at subd. (a)(9)(C)(iv); § 4418.7, subd. (d)(1)(A–C), 6500, subd. (a)(1).)

6. Claimant is not in acute crisis and WRC does not believe Claimant should continue to be confined to the DDMI unit at College Hospital. Thus, WRC is prohibited from funding Claimant’s placement at College Hospital under Welfare and Institutions Code section 4648, subdivision (a)(9)(C).

7. The Probate Code also offers no basis to confine Claimant to College Hospital. Confining Claimant to a secure unit without his consent or a court order is outside the scope of Mother’s limited conservatorship powers as set forth in Probate Code section 2351.5, subdivision (b), and contrary to Probate Code section 2352, subdivision (a), which prohibits forced confinement upon voluntary admission.

Claimant's continued confinement without court approval is also contrary to Welfare and Institution Code sections 5358 and 6500.

8. In short, there is no basis to keep Claimant at College Hospital. Neither Mother nor WRC dispute that Claimant is entitled to and would benefit from residing in a lesser restrictive setting in the community. Mother has agreed to sign the necessary forms to transfer her son to Plymouth House, and WRC has agreed to continue funding Claimant's stay at College Hospital until he is ready to move to Plymouth House. As per the Order below, WRC shall fund Claimant's stay at College Hospital until he can be discharged to Plymouth House. If Mother refuses to consent to the transfer or to submit the necessary paperwork to effectuate the transfer, WRC shall fund Claimant's stay at College Hospital as long as the law permits but in no case past August 31, 2021.

## **ORDER**

WRC shall terminate its funding of Claimant's stay at College Hospital at the time of his discharge from College Hospital to Plymouth House. If Mother determines Plymouth House is no longer an acceptable placement for Claimant, WRC shall fund Claimant's stay at College Hospital as long as the law permits, but, except in extraordinary circumstances, not past August 31, 2021.

DATE:

CINDY F. FORMAN

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.