

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

In the Matter of:

CLAIMANT

v.

GOLDEN GATE REGIONAL CENTER, Service Agency.

OAH No. 2021050390

DECISION

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference and telephone on June 14, 2021.

Claimant was represented by her mother.

Lisa Rosene,¹ Director of Regional Center Services, represented Golden Gate Regional Center (GGRC), the service agency.

¹ Rosene did not testify in this matter as mistakenly presumed by claimant's representative.

The record was left open for claimant's representative to submit a written closing statement. The statement was received on June 18, 2021, and was marked for identification as Exhibit A.² The record closed, and the matter was submitted for decision on June 18, 2021.

ISSUES

Does the Office of Administrative Hearings (OAH) have jurisdiction in this matter?

If so, has GGRC failed to authorize or deliberately delayed the process to authorize claimant's sister as a vendor?

FACTUAL FINDINGS

1. Claimant is eligible for and receives services from GGRC. Claimant's mother is authorized as a vendor to provide independent living skills (ILS) services for claimant.

2. As a vendor, claimant's mother may hire others to perform ILS services for claimant. Claimant's mother wants claimant's sister to be authorized as a separate vendor to provide ILS for claimant. In August 2020, a community resource developer

² The argument referred to several facts, including in reference to previous decisions, that are not in evidence in this matter so are not addressed in this decision.

with GGRC sent a vendor application for claimant's sister to fill out. The developer added notes to assist in completing the application.

3. On September 3, 2020, the developer confirmed receipt of the application and replied that certain information was missing. Claimant's mother responded, but provided incorrect information. The developer continued to assist claimant's sister and mother with the application by numerous email and voicemail messages about specific corrections needed for the sister's ILS program plan that is required for vendor approval. The developer left another message on May 27, 2021, when she again informed both claimant's mother and sister that revisions needed to be corrected.

4. As of the date of hearing, the required corrections had not yet been made for claimant's sister to be approved as a vendor to provide ILS services for claimant. There is no evidence that the developer or anyone else with GGRC caused deliberate delay of the sister's vendorization application.

5. The manager of community services who oversees vendorization credibly testified at hearing about the vendorization process. Each vendor must provide her own program design. The manager also worked with the community resource developer assigned to the vendorization of claimant's sister. He confirmed that the vendor application of claimant's sister was not acceptable without specific changes.

6. On May 5, 2021, claimant's mother submitted a fair hearing request to GGRC contending that GGRC failed to vendorize claimant's sister and deliberately delayed the vendorization proceeding. In her request and at hearing, there was no claim or evidence that the process or delay was illegal, discriminatory, or not in the claimant's best interests.

7. On May 5, 2021, the GGRC director of regional center services replied by email that vendor appeals go directly to the executive director as they are heard differently than consumer appeals that go to OAH. The director also responded that the request would be treated as a vendor appeal, because it was not about services to the claimant.

8. Claimant's mother then submitted her fair hearing request directly to OAH. This hearing resulted. At the outset of the hearing, GGRC made a motion to dismiss based on the lack of jurisdiction by OAH.

LEGAL CONCLUSIONS

1. Evidence Code section 500 states: "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." GGRC has the burden of proof on the jurisdictional issue. Claimant has the burden of proof on the merits of her request for fair hearing.

2. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), the Legislature has created a comprehensive scheme to provide "a pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. (Welf. & Inst. Code, § 4501.)

Jurisdiction

3. California Code of Regulations, title 17, section 50966, subdivision (b), provides that if a service agency believes that a fair hearing request raises issues that

are not appropriately addressed under Welfare and Institutions Code section 4700 et seq., or for other reasons does not comply with statutory requirements, the service agency may file a request to have the matter dismissed with the agency responsible for conducting hearings. GGRC immediately contested claimant's fair hearing request, contending it was a vendor appeal heard differently than appeals to OAH. (Finding 7.) GGRC raised the same concerns at the outset of the hearing, and made a motion to dismiss due to lack of jurisdiction by OAH. (Finding 8.)

4. Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. (Welf. & Inst. Code, § 4510.5, subd. (a).) Claimant's representative was dissatisfied with the process to vendorize claimant's sister. Claimant's representative did not allege or provide evidence that the vendor process for claimant's sister is illegal, discriminatory, or not in the recipient's or applicant's best interests. (Finding 6.)

5. Fair hearing procedures under the Lanterman Act begin at Welfare and Institutions Code section 4710. Subdivision (b) of that section allows an individual to request a hearing if the agency makes a decision without the mutual consent of the recipient or the authorized representative to deny the initiation of a service or support requested for inclusion in the individual program plan. In this matter, there was no denial of the initiation of a service or support requested for inclusion in the individual program plan. (Findings 1 and 2.)

6. The fair hearing process is the procedure for consumers to use if they disagree with the nature, type or amount of services they receive, or that they are

requesting the regional center to provide. (Welf. & Inst. Code, § 4703.7.) Under this process, they are appealing a decision of the regional center about the services they are requesting or receiving. (*Id.*)

7. Claimant currently receives ILS services. There is no dispute about the nature, type or amount of these services. (Findings 1 and 2.) Claimant's sister has not yet been approved as a GGRC vendor. (Finding 4.) This issue is not an appeal of a decision of the regional center about the services claimant is requesting or receiving.

8. Based on the evidence in the record, claimant's request for hearing does not fall within the scope of the fair hearing process under the Lanterman Act provisions cited above. OAH does not have jurisdiction over this matter. The motion to dismiss by GGRC is granted.

No Deliberate Delay

9. Since there is no jurisdiction, the matter of deliberate delay is moot. Assuming solely for the sake of argument that OAH has jurisdiction over this matter, GGRC has not failed to vendorize claimant's sister for ILS services as the application is pending. (Findings 4 and 7.) The evidence established that GGRC staff has worked diligently on claimant's case in attempting to have her sister become a vendor to provide claimant with ILS services. (Finding 3.)

ORDER

The motion by GGRC to dismiss claimant's fair hearing request is granted.
Claimant's request for hearing before OAH is dismissed.

DATE:

BARBARA O'HEARN
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.