

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**REDWOOD COAST REGIONAL CENTER, Service Agency**

**OAH No. 2021080456**

**DECISION**

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on September 16, 2021, via telephone and videoconference.

Claimant was represented by her parents/joint conservators and was not present at the hearing.

Kathleen Kasmire represented Redwood Coast Regional Center (RCRC), the service agency.

The record was held open until September 17, 2021, for claimant to submit a complete copy of Exhibit E, which is an excerpt. Complete copies of Exhibits E and I were received and marked and admitted as Exhibits N and O, respectively. The record closed and the matter was submitted on September 17, 2021.

## **ISSUE**

Is claimant currently eligible to receive services from RCRC? Specifically, is claimant a resident of California and the catchment area served by RCRC for the purposes of determining such eligibility?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. RCRC issued a notice of proposed action dated July 2, 2021, notifying claimant that it agreed to activate claimant's regional center casefile upon her establishment of legal residency in the State of California and within the catchment area served by RCRC, but was denying claimant's requests to open a case file or provide funding or supports until claimant established such residency. On July 29, 2021, claimant requested a fair hearing. This proceeding followed.

### **Burden and Standard of Proof**

2. Claimant has the burden of proving by a preponderance of the evidence that she has met the criteria for eligibility. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; *Greatoroex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57; Evid. Code, § 500.)

### **Claimant's Legal Residence**

3. Claimant was born in Berkeley, California, in December 2000. She has two younger siblings. Claimant's parents purchased a home and the family moved to

Concord, California. Claimant was determined to be eligible for and received services from the Regional Center of the East Bay.

4. In 2009, claimant's parents experienced severe financial problems. Also, around this time, the parents of claimant's father were diagnosed with serious and progressive illnesses and required help in or near South Dakota. For these reasons, claimant and her family moved to South Dakota in 2009. Regional Center of the East Bay closed claimant's case file.

5. Claimant was placed at LifeScape, an intermediate care facility for developmentally disabled persons in South Dakota. LifeScape is a residential and educational program. The State of South Dakota paid a significant portion of the cost.

6. Claimant's father cared for both of his parents, through hospice. This took longer than expected.

7. Claimant's father had difficulty finding work in South Dakota.

8. In 2015, claimant's father found employment in California. He and claimant's mother and younger siblings moved back to California. Claimant remained at LifeScape in South Dakota. However, that job fell through and within approximately six months they moved back to South Dakota. Around this time, claimant's parents sold their house in Concord, California.

9. In early 2017, claimant's father found a job in Iowa and he moved to Iowa with claimant's mother and younger siblings. Claimant remained at LifeScape in South Dakota. However, in June 2017, after learning that the rest of the family had moved to Iowa, the State of South Dakota terminated funding for claimant to remain at LifeScape. Claimant was transferred to the closest residential facility in Iowa, but it was

three hours away from the rest of her family. Her health deteriorated quickly and severely. She lost weight, stopped walking, and became incontinent. Claimant's family was distraught and moved claimant into the family home. However, claimant's condition worsened and she was bedridden.

10. In 2018, claimant's mother moved back to South Dakota to establish residency, and therefore funding, for claimant to return to LifeScape. Claimant returned to LifeScape and has resided there since then.

11. In December 2018, claimant turned 18 years old. Since 2009, claimant has only been physically present in either South Dakota or Iowa.

12. In July 2020, claimant's mother and younger siblings moved from South Dakota and Iowa, respectively, to Arcata, California, which is in the RCRC catchment area. Claimant's mother rented an apartment, obtained employment, and enrolled claimant's younger siblings in a local public school. They continue to reside in Arcata. Claimant's father remained in Iowa and claimant remained in South Dakota.

13. The Northern Humboldt Union High School District (NHUHSD) has accepted claimant as a student and funds the educational portion of the cost for claimant to participate in the LifeScape program in South Dakota. Claimant's mother reports that NHUHSD has agreed to pay for a flight to transport claimant from South Dakota to Humboldt County and for a nurse on the flight.

14. In April 2021, claimant's mother rented a house in Arcata. The downstairs portion of the house is a separate unit which will be, with some accessibility modifications, suitable for claimant. Claimant's name is on the lease for this dwelling and the landlord will permit claimant's family to make the necessary modifications. Claimant receives supplemental security income from the Social Security

Administration and claimant's mother, on her behalf, uses some or all of these funds to pay rent for the downstairs portion of the house. Claimant's mother moved most of claimant's furniture and belongings into the downstairs portion of this rental house.

15. In March 2021, the County of Humboldt branch of the California Department of Health and Human Services (County) denied claimant's application for Medi-Cal benefits. On August 17, 2021, the County issued a letter rescinding the denial and approving claimant for Medi-Cal benefits retroactive to March 1, 2021. In this letter the County details claimant's citation to numerous federal regulations, including those governing out-of-state placements in institutions and interstate agreements. The County concluded that the original denial was in error and stated, "[I]t is the county's position that the residency of the claimant is no longer disputed, and she is acknowledged as a resident of California at this time. The county does not have the ability or authority to make interstate agreements."<sup>1</sup>

16. Claimant's mother reports that: (a) claimant's father intends to move to California and rejoin the family when his employment contract concludes at an

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<sup>1</sup> An attachment to the August 17, 2021, letter contains a timeline of events, including a statement that on June 11, 2021, claimant's mother reported that claimant had "just moved to Arcata." That is not true because claimant has not left South Dakota since 2018. However, this timeline indicates that the County's decision to acknowledge claimant as a resident of California was based upon Title 42 Code of Federal Regulations, section 435.403(c), and the conclusion that claimant was an "institutionalized person incapable of indicating intent before age 21."

unspecified time in the future, and (b) claimant wants to live with her family in Arcata. There is no claim that claimant is incapable of expressing intent.

17. Claimant's mother is concerned that moving claimant to California before RCRC services are in place, including nursing care, represents a severe danger to claimant's health. However, she reports that the LifeScape program is only for individuals younger than 21 years of age and claimant will be forced to leave LifeScape when she turns 21 in December, or no later than the end of the school year in the spring of 2022. Because of this, claimant's mother intends to move claimant to California soon regardless of whether RCRC provides services beforehand. Claimant's mother is frustrated that RCRC refuses to provide services that she regards as essential for claimant's safety, in light of the fact that RCRC acknowledges that it will provide such services on an ongoing basis once claimant physically enters California.

## **LEGAL CONCLUSIONS**

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (Welf. & Inst. Code, § 4500, et seq.)<sup>2</sup> (Act). 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. (§§ 4501, 4502; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code unless stated otherwise.

statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. Only residents of California are eligible to receive regional center services. (Cal. Code Regs., tit. 17, § 54010.)

3. Claimant cites title 42 Code of Federal Regulations, section 435.403. which provides that for the purposes of Medicaid eligibility, if a state arranges for an individual to be placed in an institution located in another state, the placing state is considered the individual's state of residence. Further, any action beyond providing information to the individual and the individual's family would constitute arranging or making a state placement (with exceptions inapplicable here). (42 C.F.R. § 435.403(e)(2).) However, state domicile is a matter of state law. (*Elkins v. Moreno* (1978) 435 U.S. 647, 662, fn. 16.). Accordingly, the federal regulations cited by claimant in this proceeding and by the County in the August 17, 2021, letter are not controlling here.

4. Pursuant to California's Government Code, section 244:

In determining the place of residence, the following rules shall be observed:

(a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

(d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.

(e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.

(f) The residence can be changed only by the union of act and intent.

(g) A married person shall have the right to retain his or her legal residence in the State of California notwithstanding the legal residence or domicile of his or her spouse.

Physical presence in the state is a factor of greater significance than the mental intent or outward formalities of ties to another state. The legal residence of a minor is generally the same as the residence of the parent with whom the minor resides; or the person who has custody of the minor. (§ 17.1.)

5. Claimant was a minor until December 2018. At that point, neither of her parents lived in California, and they had lived in California for just six months during the previous nine years. Claimant's parents evidenced some acts consistent with an intention to return to California during those nine years, but not enough to support a determination that they remained residents of California in December 2018, given the long span of time they were absent from California. Her father was and is a resident of Iowa. When Claimant became an adult in December 2018, she and her mother lived in South Dakota. As such, Claimant was a resident of South Dakota. Since then, claimant has remained in South Dakota. By the time claimant's mother returned to California in July 2020, claimant was an adult resident of South Dakota. However, as an adult



resident of South Dakota, claimant did not become a resident of California when her mother established residency in California in July 2020. Claimant remains a resident of South Dakota for the purposes of eligibility for RCRC services.

6. The concerns and frustrations expressed by claimant's mother are acknowledged. However, claimant failed to establish that she is a California resident for purposes of eligibility for services from RCRC, including services to prepare for her return to California. Accordingly, RCRC's denial of claimant's requests to open a case file or provide funding or supports until claimant established residency in California was proper.

## **ORDER**

Claimant's appeal of the notice of proposed action dated July 2, 2021, is denied. Claimant is not currently eligible for services from Redwood Coast Regional Center.

DATE:

MICHAEL C. STARKEY  
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.