

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021080781

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by videoconference on October 11, 2021. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant represented himself.¹

¹ Claimant's name is omitted to protect his privacy.

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (service agency).

ISSUE

Shall the service agency increase funding for claimant's supported living services from 16 hours to 24 hours each day of the week?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 1-14 (claimant submitted no exhibit); as well as the testimony of Ron Reeve, Service Coordinator, and claimant.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The service agency determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a 35-year-old man who is eligible for services under the Lanterman Act based on his qualifying diagnosis of Mild Intellectual Disability. (Ex. 1.)

3. Since at least June 2019, claimant has received service agency funding for 16 hours per day of supported living services (SLS) provided by Akuchi Family Services (Akuchi). (Ex. 3.)

4. On June 9, 2021, claimant and his service coordinator, Ron Reeve, had a telephone conversation, during which claimant requested his SLS funding be increased to 24 hours per day. (Ex. 1.)

5. On June 10, 2021, the service agency issued a Notice of Proposed Action advising claimant his request for the SLS funding increase was denied. (Ex. 1.)

6. On or about July 9, 2021, claimant submitted a Fair Hearing Request, which contained a demand for a hearing to challenge the service agency's denial of his SLS funding increase. (Ex. 2.)

Claimant's Background Information

7. Claimant is a single, non-conserved, unemployed man who lives alone in an apartment. (Ex. 4.)

8. Claimant's individual program plan (IPP) dated September, 30, 2019, indicates he also is diagnosed with Schizoaffective Disorder, Borderline Personality Disorder, Attention Deficit Hyperactivity Disorder, Depressive Disorder, Intermittent Explosive Disorder, and Oppositional Defiant Disorder. (Ex. 4.)

9. In addition to the SLS program described in more detail below, the service agency is providing claimant funding for rental assistance in the amount of \$1,081.35 per month. Claimant also receives \$56.88 per month in state supplementary payment benefits. (Ex. 4.)

Claimant's SLS Services

10. The service agency currently is funding 16 hours per day of SLS, seven days per week, provided by Akuchi. (Exs. 4-13.)

11. Claimant is independent with his self-care, but he receives support from SLS staff with meal preparation, budgeting, general deep house cleaning, laundry, and processing his mail. (Exs. 4-13.)

12. Claimant's SLS funding is for staffing support from 8 a.m. until midnight each day. Claimant is alone overnight. (Exs. 4-13.) However, due to staffing shortages experienced by Akuchi, SLS staffers generally are only at claimant's home from 10:00 a.m. until approximately 11:00 p.m. Claimant testified he and Akuchi are now in the process of interviewing prospective new SLS staff members and he hopes the new staffers will be available in a month or two.

13. Claimant's service coordinator, Ron Reeve, testified at hearing. He has been with the service agency over 30 years, and has been claimant's service coordinator for the last 11 months. Mr. Reeve has mixed feelings about claimant's request for increased SLS funding. While Mr. Reeve believes 24 hour support would benefit claimant, he does not believe it is necessary. Nobody from Akuchi, including staffers, have told Mr. Reeve they believe claimant needs 24 hour staff support.

14. A status report from Akuchi issued in April 2020 concludes claimant is well served with 16 hours per day of personal staff support, and also recommends claimant could benefit from "24-hour a day, 7 days per week On-Call support Service." (Ex. 13, p. 78.) The record does not reflect if claimant currently receives the on-call support, which presumably is a way for him to reach Akuchi telephonically anytime.

Claimant's Contentions

15. Claimant testified he needs his SLS funding increased from 16 to 24 hours per day so that his overnight hours from midnight to 8:00 a.m. will be covered by an SLS staffer. He offered in support the reasons explained in more detail below.

16. One reason claimant believes he needs overnight SLS coverage is because he suffers from a number of medical conditions which may cause an overnight medical emergency. Examples of such medical conditions are dizziness, shortness of breath, seizures, and sleep apnea. Claimant wants an SLS staffer present during the overnight hours to help him respond in case of such an emergency. However, the record does not show claimant has required such intervention in the past two years. Nor did claimant present medical documentation indicating any malady necessitates overnight care. Moreover, the record shows claimant is well versed in how to call 911 in the event of a perceived emergency.

17. Another reason claimant believes he needs overnight SLS coverage is because sometimes during the overnight hours he hallucinates, hears things, does not feel safe in his apartment, and therefore becomes anxious. Claimant also has been the subject of psychiatric holds under Welfare and Institutions Code section 5150. He fears that if he ever decides to harm himself overnight there will be nobody there to stop him. However, a more focused and cost-effective approach is mental health services to respond to claimant's anxiety of being alone or thoughts of harming himself.

18. Another reason claimant believes he needs overnight SLS coverage is his fear that neighbors will try to break into his apartment and harm him. However, there is no evidence in the record supporting this contention. On the contrary, the record

demonstrates claimant often has called the police to complain about neighbors and vice versa. There is no evidence that any of those complaints have been substantiated.

19. Another reason claimant believes he needs overnight SLS coverage is because he needs someone to give him his psychiatric pills and cook for him if he becomes hungry. However, it is not clear claimant needs to take medication during the overnight hours or, if so, that he is unable to take pills on his own. It also is not clear claimant is unable to prepare enough food to last him until his morning SLS staffer arrives. To the extent claimant is unable to do either activity, a more focused and cost-effective approach is for Akuchi to assist and train claimant so he will be able to do both activities on his own.

20. Claimant notes in the past he received SLS for 24 hours per day and that it was beneficial. Claimant does not understand why he cannot again receive 24 hours per day of SLS. However, approximately two years ago the service agency successfully reduced the funding to the present level after giving claimant notice and an opportunity to challenge that action.

21. Claimant also notes he would receive 24 hour care if he agreed to live in a group home. He does not understand why he cannot receive 24 hour per day support in his SLS program. However, the service agency, and recently Mr. Reeve, have advised claimant a group home would be more beneficial for him than living alone. Claimant refuses to live in such an environment and prefers to live alone.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. 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.)² Claimant timely appealed the service agency's denial of his service request, and therefore jurisdiction exists for this appeal. (Factual Findings 1-6.)

2. 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.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant is requesting an increase of his current funding, and therefore he has the burden of proving by a preponderance of the evidence that he is entitled to that funding increase.

² Undesignated references are to the Welfare and Institutions Code.

Applicable Provisions of the Lanterman Act

4. “Supported living services” are defined as “a range of appropriate supervision, support, and training in the consumer's place of residence, designed to maximize independence.” (§ 4354, subd. (h).)

5. Section 4646, subdivision (a), states the intent of the Legislature to ensure the provision of services to consumers and their families be effective in meeting the goals stated in an IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

Disposition

6. At face value, claimant’s request for increased funding is inconsistent with the premise of his SLS program, in that it would tend to foster his dependence on others, as opposed to maximizing his independence.

7. In addition, none of claimant’s stated reasons for overnight care are supported by evidence corroborating claimant’s testimony, nor are any alone or in combination a compelling reason to increase his SLS funding. Claimant’s service coordinator put it best: while the requested funding increase would benefit claimant, it is not necessary. In stressing the importance of providing services that are cost-effective, the Lanterman Act requires a greater showing than that a requested service would be beneficial. (Factual Findings 7-21.)

8. Based on the above, claimant has failed to meet his burden of proving by more convincing evidence that he requires the SLS funding increase. His appeal is denied. (Legal Conclusions 1-7; Factual Findings 1-21.)

ORDER

The service agency is not required to increase funding for claimant's supported living services program.

DATE:

ERIC SAWYER

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.