

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

In the Matter of:

CLAIMANT

vs.

FAR NORTHERN REGIONAL CENTER, Service Agency

OAH No. 2021120417

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter telephonically and by video conference on January 28, 2022, from Sacramento, California.

Far Northern Regional Center (FNRC) was represented by P.J. Van Ert, Attorney at Law.

Claimant's mother¹ appeared at the hearing and represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on January 28, 2022.

¹ Claramaria Granados served as a Spanish interpreter at the hearing.

ISSUE

Is FNRC required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to fund the cost of legal services necessary for claimant's mother to obtain conservatorship for claimant?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is an 18-year-old² client of FNRC who resides at home in Gridley, California, with his mother. Claimant is eligible for regional center services based on his Cerebral Palsy diagnosis. Claimant is unable to walk and uses a wheelchair. He is also unable to talk. He communicates with using "Dynavox," a communication program on his Chromebook which allows him to select images on the screen of the device. He can also respond to "yes" and "no" questions by shaking his head.

2. In the spring of 2021, claimant's mother requested FNRC to fund the legal costs associated with obtaining a conservatorship for claimant. On March 3, 2021, FNRC issued a Notice of Proposed Action denying the request, stating that "[t]here has not been an emergent medical or safety issue identified that would constitute the need for conservatorship services."

² Claimant's mother testified that claimant is 18 years old. Some of the FNRC documents submitted at hearing state that claimant is 21 years old.

3. On December 9, 2021, claimant's mother filed a Fair Hearing Request requesting an informal meeting with FNRC. On December 16, 2021, claimant's mother had an informal meeting with Larry Withers, Associate Director of Client Services for FNRC. During the meeting, claimant's mother explained that she needed to obtain conservatorship due to claimant's disability and the need to provide consent to medical treatment and make financial decisions. She expressed her concern that his ongoing medical decisions will become difficult without a conservator.

4. By letter to claimant's mother dated December 22, 2021, Melissa Gruhler, Executive Director for FNRC, issued a Fair Hearing Informal Meeting decision denying claimant's funding request. Ms. Gruhler stated in part that:

Our current policy limits the funding of conservatorship to two specific criteria. One is the presence of an immediate, identifiable medical condition which requires multiple consents for treatments or complex treatments. The other criteria is the presence of a protective need that cannot be met through a less restrictive measure, such as power of attorney or supported decision making.

In [claimant's] situation none of these two conditions are present. He is in good physical health and you have yet to have problems accessing medical care. In the event that occurs, FNRC's Executive Director can consent to medical treatment absent a conservator. Furthermore, [claimant] does not have anyone trying to take advantage of him financially or otherwise. As [claimant's] representative payee, you already control his financial affairs.

Ms. Gruhler informed claimant's mother of her right to proceed with a fair hearing. Claimant's mother appealed the Fair Hearing Informal Meeting decision.

Claimant's Evidence

5. Claimant's mother testified at hearing. She explained claimant requires one-on-one supervision at all times. He needs someone to feed and bathe him as well as assist with all of his care. His condition has become worse as he has gotten older. He communicates less and his muscle tone has decreased. Claimant cannot make any decisions on his own, which is why claimant's mother is seeking to have FNRC pay for the costs of obtaining conservatorship.

6. Last year, claimant developed a fever and neck pain. Claimant's mother took him to an emergency room (ER). A nurse at the ER told claimant's mother that because claimant was 18 years old, he would need to consent to medical treatment. Claimant's mother explained that he could not. The nurse recommended claimant's mother obtain conservatorship so she could make medical decisions for claimant. Claimant's mother ultimately left the ER with claimant after six hours of waiting for claimant to be seen, because he was in pain and wanted to go home. Claimant's mother called claimant's pediatrician and he prescribed claimant medication for his fever and pain. Claimant recovered.

7. Claimant has regular medical appointments and medical care. Claimant's mother has not had any difficulty obtaining care for claimant from his regular medical providers. Claimant's mother did not describe any situation in which claimant was denied medical treatment because he could not consent.

FNRC Evidence

8. Mr. Withers was assigned by Ms. Gruhler to review claimant's mother's request for funding of the legal costs to obtain conservatorship of claimant. In determining whether FNRC could grant claimant's mother's request for funding he referred to the September 2017 Purchase of Services (POS) Guidelines, which set forth the requirements that must be met for FNRC to fund conservatorship services.

9. The POS Guidelines state the four requirements that must be met for the regional center to fund conservatorship. The POS Guidelines provide in relevant part that:

[FNRC] will only fund legal services to pursue a limited conservatorship provided by a regional center vendored private conservator or the California Department of Developmental Services. FNRC may fund the legal services to establish conservatorship services as well as ongoing costs in the following circumstances:

1. The needed legal services are not available through local mental health agencies, the public guardian or other public agencies;
2. The need for the services must be directly related to the qualifying developmental disability;
3. There is an immediate, identifiable medical or protective need for conservatorship which cannot be met

through less restrictive means (i.e. Supported Decision Making, Power of Attorney, etc.); and

4. FNRC will not support including the powers of “prevention of sexual activity” or the “prevention of marriage,” in a limited conservatorship except in extreme or unusual circumstances.

10. Mr. Withers explained that based on the information he obtained from claimant’s mother, claimant did not meet any of the POS Guidelines criteria. Claimant’s mother reported in the informal meeting that claimant sees a GI specialist twice a year and receives Occupational or Physical Therapy on a regular basis to address physical issues related to his Cerebral Palsy condition, but otherwise was in overall good general health and did not have any major medical conditions. There was also no concern about claimant being taken advantage of financially. Claimant’s mother makes all of his financial decisions and is the payee for all of his public benefits.

11. Mr. Withers also explained that if claimant is denied medical care because he cannot consent, the Welfare and Institutions Code allows FNRC's Executive Director to consent to medical treatment absent a conservator. Claimant’s mother has not had to contact FNRC to pursue this option. Mr. Withers also explained that FNRC will pay for a psychological evaluation of claimant which is a required part of the conservatorship process, if claimant’s mother decides to pursue conservatorship independently.

Analysis

12. The Lanterman Act’s goal is to provide services to consumers to foster independence. FNRC has developed guidelines for purchasing services that foster

independence. Conservatorship is a limitation on independence because it allows another to make decisions on one's behalf. FNRC's POS Guidelines require "an immediate, identifiable medical or protective need for conservatorship which cannot be met through less restrictive means." Claimant's mother would like conservatorship of claimant as a preventative measure, not to address an immediate need. Additionally, there are less restrictive means of obtaining medical consent for claimant, if needed, including contacting the FNRC Executive Director to give consent.

13. When all of the evidence is considered, claimant's mother did not establish that the Lanterman Act requires FNRC to grant her request for funding of the legal costs associated with obtaining conservatorship for claimant. Therefore, her appeal must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 *et seq.*) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700-4716.) Claimant requested a fair hearing to appeal FNRC's denial of his request to fund the legal costs of obtaining a conservatorship.

2. The Lanterman Act sets forth the regional center's responsibility for providing services and supports for eligible persons with developmental disabilities to enable them to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) An "array of services and supports should be established. . . to meet the needs and choices of each person with developmental disabilities. . . to support their integration into the mainstream life

of the community. . . and to prevent dislocation of persons with developmental disabilities from their home communities." (*Ibid.*) Additionally, "[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served." (*Ibid.*)

3. The burden is on claimant's mother to establish that FNRC is obligated to fund the costs of obtaining a conservatorship, which is a new benefit. (See Evid. Code, §§ 115 & 500; see also *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

4. As set forth in the Factual Findings and the Legal Conclusions as a whole, claimant's mother failed to establish that FNRC is required under the Lanterman Act to grant her request to fund the cost of legal services necessary to obtain conservatorship for claimant. Therefore, her appeal must be denied.

ORDER

Claimant's mother's appeal of the denial of her request to fund the cost of legal services necessary to obtain conservatorship for claimant is DENIED.

DATE: February 1, 2022

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)