

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

**In the Matter of:**

**CLAIMANT**

**v.**

**GOLDEN GATE REGIONAL CENTER, Service Agency.**

**OAH No. 2022020067**

**DECISION**

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference on March 16, 2022.

Claimant was represented by his father.

The Golden Gate Regional Center (GGRC) was represented by attorney Erin M. Donovan. Lisa Rosene, director of regional center services, served as agency representative for the hearing.

The record was held open until March 18, 2022, for submission of written closing briefs. Both parties timely submitted briefs. The matter was submitted for decision on March 18, 2022.

## **ISSUE**

Must the regional center pay for suitable out-of-state residential care when no in-state residential care is available?

## **FACTUAL FINDINGS**

1. Claimant was born on November 9, 2010. Since 2013, he has been eligible for services from GGRC due to autism. Claimant also has serious medical needs related to gastrointestinal complications causing great discomfort and repeated hospitalizations. Claimant requires assistance with completing all personal care tasks.

2. Claimant lives with his parents and twin sister. Claimant's condition results in numerous behavioral difficulties. He is sometimes volatile and violent towards himself and his parents, as well as destructive. On February 13, 2021, claimant's father sent an email with the subject line "residential placement" to claimant's GGRC social worker since September 2020, Jaime Jenkins, and claimant's former social worker and current supervising social worker, Haley Bogosian. He stated that they needed to discuss residential placement for claimant as he and his wife were "exhausted physically and mentally" and needed to keep their options open to keep claimant and his family "safe."

3. Jenkins and Bogosian met with claimant's parents on February 23, 2021. On March 2, 2021, claimant's father asked Jenkins if there was any information on a placement, adding that he and his wife were desperate. On March 9, 2021, he inquired if there were any updates and asked how they get on a list for long-term placement.

Bogosian responded the next day, stating that there was no update, but that she was working with GGRC staff to locate long-term placement.

4. On June 2, 2021, claimant's father asked Jenkins if there was any news at all regarding a residential placement. On June 3, 2021, she replied that there was a possible placement in a shared group home facility that needed to assess whether claimant was a "good fit". She sent a release form for signature for claimant so she could send a referral packet to the facility. The facility was not able to accept claimant.

5. On July 12, 2021, claimant's father sent an email to Jenkins stating that the family was "always in a crisis and things are not good." He requested a referral to a short-term residential treatment program (Fred Finch) in California that he learned about. He forwarded the message on the same day to Bogosian asking if she could help or put them in touch with someone who could. She replied that they could have a meeting on July 16, 2021.

6. Five months after requesting a residential facility, on July 12, 2021, claimant's father informed Bogosian that claimant's psychiatrist referred the parents to a facility in Baltimore and another in Pittsburgh. On July 15, 2021, claimant's father notified Jenkins and Bogosian that claimant's psychiatrist agreed that claimant needed to go into a short-term residential treatment program. Claimant's father met with Jenkins and Bogosian on July 18, 2021. They did not inform him of anything that they or he needed to do to pursue out-of-state facilities. He followed up with Jenkins on July 19, 2021 about another out-of-state facility that needed a referral from GGRC before it could consider claimant.

7. On July 20, 2021, Bogosian informed Jenkins and Norman Manglona,<sup>1</sup> GGRC manager of regional center services, that the Fred Finch program might be a good placement for claimant. On July 21, 2021, Jenkins reached out to the Behavior Support Team as Manglona was possibly recommending a Statewide Specialized Resource Service (SSRS) listing for all specialized resources across the state to be available for individuals receiving regional center services. Jenkins reported that claimant's parents were desperately seeking help due to claimant's medical needs and aggressive behaviors. On July 22, 2021, Manglona directed Bogosian to proceed with that in-state facility.

8. Still unaware that GGRC was only considering in-state facilities, on August 12, 2021, claimant's father notified Jenkins and Bogosian that he had found a couple more out-of-state places for them to contact for claimant's placement. At Jenkins request, the next day, he provided website links to seven specific facilities. Six months had passed without placing claimant in an in-state facility. GGRC did not request him to provide any more information about the out-of-state facilities. GGRC did not provide any information about the process for considering any out-of-state facilities and did not notify claimant's family that it was not even considering out-of-state facilities.

9. On August 17, 2021, Jenkins and Bogosian had a telephone call with claimant's father. Bogosian reported to Manglona that the "family is really struggling"

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<sup>1</sup> Manglona has a master of social work degree and has worked for GGRC since 2009 when he was a student intern. He was a case manager beginning in February 2017, and is currently executive director.

and claimant is “suffering” and in need of “immediate treatment to get stable and safe.” She asked, “How long do we need to let the SSRS run before the team can decide that it is in the child’s best interest to proceed with other options as delaying this is detrimental to the child’s wellbeing?” She also reported that the “family is very eager to know how long they need to wait.”

10. On August 18, 2021, with no appropriate placements available in-state, claimant’s IPP planning team met and determined that a “4418.7”<sup>2</sup> was warranted for claimant and was approved by Manglona and the GGRC executive director. Six months after GGRC was notified that a residential facility was needed to keep claimant and his family safe, Amreen Panjwani, in the GGRC community services unit, requested Jenkins to identify which facilities the department needed to look into and what had been done to find claimant a “home outside of a 4418” [after care services for judicially committed patients] (not applicable to claimant), and to explain why a 4418.7 is needed.

11. On the same date, Panjwani notified the GGRC director that he had a 4418.7 request for claimant, and reported that claimant and his family were in crisis, claimant was a danger to himself or others, and the parents were terrified. A referral for claimant’s community integration assessment by the Department of Developmental Services (DDS), (the state agency under which all of the regional centers operate) occurred eight days later, on August 26, 2021. On the same date, claimant’s father

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<sup>2</sup> This Welfare and Institutions code section, subdivisions (a)(1) and (b), require the regional resource development project to immediately arrange for an assessment of the situation when informed by the consumer’s parents that the consumer’s community placement is at risk of failing.

notified Jenkins and Bogosian that claimant was on a waiting list for a specific facility in Baltimore (see Finding 6) and asked if they could write a note to the facility in support of claimant's placement. Jenkins replied that she would review his request with Bogosian and later added that they would be meeting about it with Manglona.

12. In late August 2021, claimant's father requested an emergency Individualized Education Program (IEP) meeting for claimant with school district representatives. Claimant's father notified Jenkins and Bogosian about the meeting and resulting proposed change to place claimant in a non-public school. However, when asked to sign a release of information for them to contact the school district, claimant's father refused. He was upset with GGRC's lengthy inaction while claimant's family continued to endure a critical situation at home. The new IEP is dated October 12, 2021, but was not received by claimant until after November 24, 2021. As of the date of hearing, claimant's father had not signed the release of information for GGRC to obtain records from the school district.

13. The DDS assessment was performed on September 2, 2021. On September 7, 2021, Jenkins emailed claimant's father that she was hoping to hear back from DDS. The assessment report was signed on September 15, 2021. It provided no indication that there were any placements available in California.

14. GGRC continued to search for an available in-state residential facility. No one from GGRC notified claimant's family that they had to do anything concerning the out-of-state placements they sent to GGRC on several occasions. No one informed them about the SSRS process.

15. On October 20, 2021, claimant's father asked Jenkins if there was any follow up with the referrals that were sent out and if there was a placement for

claimant. She replied that she had not heard back from any of the facilities. On November 11, 2021, claimant's father again asked Jenkins if there were any placement updates and when GGRC would start to look out of state. She replied the next day stating only that she had heard back from some facilities that were not accepting referrals.

16. Jenkins testified at hearing that she was aware that a residential placement "could take a lot of time." She did not give a range of time and did not testify that she notified claimant's family regarding how long it could be. She confirmed that the out-of-area in-state search did not begin until June or July 2021 (by which time claimant requested an out-of-state search), and the referral to DDS for an assessment to initiate the out-of-area (beyond the three local counties) search did not occur until August 18, 2021.

17. On January 7, 2022, claimant's father asked Jenkins again if there were any updates and if GGRC was now willing to look out of state. She replied, stating that Manglona was planning to meet with GGRC director, Lisa Rosene.<sup>3</sup> On January 19, 2022, Jenkins added that Manglona would be meeting soon with Rosene regarding his question. On January 20, 2022, claimant's father emailed Manglona to set up a call to discuss the search for an out-of-state placement for claimant.

18. Rosene offered to meet with claimant's father and the team to let him know that an out-of-state placement "is not an easy thing to do these days." Manglona spoke with claimant's father on January 24, 2022. Manglona did not answer

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<sup>3</sup> Rosene is a licensed clinical social worker who has been with GGRC since 1995. She has been the chief of regional center services since 2002.

his question regarding when GGRC made a request to DDS for out-of-state placement. Manglona did not explain the process for GGRC to do that. Instead, Manglona tried to provide an "overview of the challenges related to out-of-state placement."

19. On January 24, 2022, claimant's father emailed Manglona asking again if a referral was made to DDS since GGRC could not find a facility for claimant in California. On January 24, 2022, Jenkins emailed claimant's father, stating that the process for an out-of-state placement for claimant had not been initiated.

20. Manglona testified that as of the date of hearing, GGRC and DDS had not yet explored out-of-state facilities. He testified that there was no specific time frame for the "SSRS process to run" and that there was no DDS timeline for determining when no more other options are available. He did not explain how the lack of options was determined. He also testified at hearing (but did not previously notify claimant's family) that DDS would not authorize an "unnamed unidentified facility."

21. On January 25, 2022, Rosene emailed claimant's father, stating that the "process for placement out of state is very stringent and typically requires the school district to pay the educational portion of the placement." On January 26, 2022, Rosene informed claimant's father that claimant still had to be referred to a state operated crisis facility program (STAR) before GGRC could ask DDS to approve an out-of-state facility. She also stated that he must identify a specific facility and the cost.

22. Rosene testified at hearing that she coordinates with funding approvals by DDS. She testified that claimant cannot yet apply for funding for out-of-state facilities for two reasons: 1) GGRC has not yet exhausted its search for in-state facilities; and 2) claimant failed to provide information for one identified specific out-of-state placement with current availability, the rate the facility would charge for

claimant, and documentation concerning whether claimant's current school district would pay for any educational services during placement.

23. Rosene also testified that it was not appropriate for GGRC staff to reach out for an out-of-state placement even though claimant could not apply to some facilities without a referral from GGRC. She did not explain to claimant's father the DDS approval process and what, if anything, he needed to provide.

24. A STAR Assessment for claimant was completed on February 2, 2022. Rosene testified that as of the date of hearing, claimant had not been placed in a residential facility, but was scheduled for a second assessment on March 18, 2022 for possible placement.

### **Request for Fair Hearing**

25. On January 26, 2022, claimant submitted a fair hearing request stating that an out-of-state placement is needed to resolve the situation. The reasons in the request are that GGRC is unable to secure placement in California as it was unclear if GGRC had asked DDS for funding to help secure an out-of-state placement that claimant's parents requested nine [sic] months ago (July 12, 2021, see Finding 6) after no in-state placement was found.

26. GGRC has not issued a notice of proposed action. Since it has not yet denied claimant's request for an out-of-state placement, GGRC contends that claimant's request is not "ripe" and should be denied.

### **GGRC Analysis Opposing Out-of-State Placement at this Time**

27. GGRC does not dispute that a placement must be found for claimant. However, as of the date of hearing, GGRC is still "working through the steps."

## **GGRC CANNOT SUBMIT A FUNDING REQUEST TO DDS**

28. GGRC contends that all in-state options have not been exhausted, despite the fact that no options have been secured during the more than 13 months since claimant requested a residential placement. GGRC has not submitted a request for DDS funding for an out-of-state placement because a possible in-state option remains after completion of claimant's second STAR assessment (scheduled after the hearing).

## **CLAIMANT HAS NOT REQUESTED FUNDING FOR A SPECIFIC FACILITY AT WHICH HE WAS ENROLLED**

29. GGRC contends that it is prohibited from confirming funding for any facility requesting confirmation from a funding source. GGRC may not submit a funding request to DDS until the potential in-state facility declines to place claimant and claimant's parents have identified a specific out-of-state facility with information including claimant's enrollment and the cost. The parents have not provided this information because until the date of hearing, no one advised them it was needed. (Findings 19, 21 and 22.)

## **PARENT HAS PREVENTED GGRC FROM PURSUING ALL FUNDING SOURCES**

30. GGRC contends that the parent's refusal to provide a release for GGRC to communicate with claimant's school district has prevented it from confirming what parent conveyed to Jenkins and Bogosian: that the school district is willing to contribute for the educational portion of any residential placement. This information will be needed if and when GGRC submits a request for funding an out-of-state

placement. Since that has not occurred, parent's refusal has not yet prevented GGRC from pursuing all funding sources.

31. While GGRC's request was reasonable, parent's refusal was understandable. At the time of the request, parents were extremely frustrated that no in-state facility had been available for over six months and no out-of-state facilities had been pursued. The family continued to endure ongoing and increasing crises.

### **CASE<sup>4</sup> SUBMITTED BY CLAIMANT DOES NOT SUPPORT A FAVORABLE RULING**

32. GGRC contends that a March 2020 decision by an administrative law judge with the Office of Administrative hearings did not support a ruling in claimant's favor. The decision against DDS and the Central Valley Regional Center ordered DDS to reimburse claimant's parent for the cost of placement not funded by the school district, retroactive to November 2019 with continued funding by DDS for the placement.

33. Claimant submitted the decision as an attachment to an email he sent to GGRC counsel on February 4, 2022. It is among 209 pages in Exhibit A, comprised mostly of emails. Claimant did not contend at hearing or in closing brief that the decision supported a favorable ruling on claimant's request. While no analysis of the decision is needed in this matter, GGRC is correct in its assessment that the decision does not support claimant's request.

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<sup>4</sup> Only one case was submitted. Additional cases, in claimant's proposed exhibit B, were not submitted in evidence.

## **Claimant's Analysis Supporting Out-of-State Placement**

34. Claimant requests an order directing GGRC to submit a request for funding for the two out-of-state facilities in Texas that he identified to GGRC counsel prior to hearing, and an order for DDS to consider that request promptly, without any "unwarranted delay."

### **GGRC FAILED TO FIND ANY IN-STATE PLACEMENT SINCE FEBRUARY 2021 AND FAILED TO REQUEST DDS TO FUND AN OUT-OF-STATE PLACEMENT**

35. GGRC does not dispute its failure to find an in-state placement for the past 13 months nor its failure to request DDS to fund an out-of-state placement. GGRC claims there is no timeline to find an in-state placement and that as long as it is still looking for one, GGRC need not request DDS funding for an out-of-state placement. Claimant argues that his parents should have been kept apprised of the status, instead of repeatedly having to ask for updates. Claimant argues that the lengthy delay by GGRC frustrates the purpose of the law and is "at odds" with the law's remedial purpose to provide a developmentally disabled person the right to services that allow for a more independent and productive life in the community.

### **THE SCHOOL DISTRICT SHOULD NOT PAY FOR CLAIMANT TO ATTEND AN OUT-OF-STATE PLACEMENT AS GGRC IS OBLIGATED TO FUND THE PLACEMENT**

36. Claimant mischaracterizes school district payment for the educational portion of a residential placement. GGRC has not contended that the school district must pay for a residential placement. Instead, at the time of application to an out-of-state facility, GGRC must verify what portion, if any, the school district would pay for a

specific facility's cost. GGRC does not contend that DDS is not responsible for funding its applicable portion for placement.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), (Act), the State of California accepts responsibility for persons with developmental disabilities (§ 4501). 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. (*Id.*, § 4502, subd. (b)(3); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such, it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. DDS is the state agency charged with implementing the Lanterman Act. It contracts with regional centers that are charged with the responsibility of providing access to services and supports best suited for individuals with a developmentally disability. (§ 4620, subd. (a).)

3. Every service agency shall have a "fair hearing" procedure for resolving conflicts between the service agency and recipients of service. (Welf. & Inst. Code, § 4705.) Claimant requested a fair hearing due to the lack of action for an out-of-state placement. Jurisdiction is established in this matter.

4. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government-funded services. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, § 500.)

5. If the regional center determines, or is informed by the consumer's parents, that the community placement of a consumer is at risk of failing, and that admittance to an acute crisis home operated by the department is a likelihood, the regional center shall immediately notify the appropriate regional resource development project, the consumer, the consumer's parents, and the regional center clients' rights advocate. "Acute crisis home operated by the department" means property used to provide Stabilization, Training, Assistance and Reintegration (STAR) services. (Welf. & Inst. Code, § 4418.7, subd. (a).)

6. In these cases, the regional resource development project shall immediately arrange for an assessment of the situation, recommending the most appropriate means necessary to assist the consumer to remain in the community. The regional center shall request assistance from the statewide specialized resource service, as necessary, in order to determine the most appropriate means necessary to assist the consumer to remain in the community and shall provide the information obtained from the statewide specialized resource service to the regional resource development project. If, based on the assessment, the regional resource development project determines that additional or different services and supports are necessary, the department shall ensure that the regional center provides those services and supports on an emergency basis. (Welf. & Inst. Code, § 4418.7, subd. (b).)

7. In this matter, GGRC did not immediately notify the appropriate regional resource development project. GGRC knew that the family was in crisis during the seven months prior to the assessment. (Findings 2, 3, 5, 7, 9 and 11.)

8. The Act concerning services outside the state provides in pertinent part:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the client's individual program plan. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available.

(Welf. & Inst. Code, § 4519, subd. (a).)

9. GGRC claims it cannot request funds from DDS for an out-of-state option because, after 13 months, it is still pursuing in-state options. While the law does not specify any time period, or even a "reasonable" period of time, it is unacceptable to allow for more than a year to exhaust in-state options, particularly when claimant and his family are in constant crisis.

10. However, the legislature has not enacted any time provisions. GGRC had the option to request DDS funding on several occasions when there were no in-state options available. Its decision to keep looking appears to claimant to be obfuscation and contrary to the purpose of the Act.

11. GGRC repeatedly and intentionally kept claimant in the dark about out-of-state options for more than six months. (Findings 6, 8, 11, 15, 17.) Claimant was not notified until the day before his fair hearing request that the out-of-state process had not yet been initiated. (Finding 19.)

12. Considering the totality of facts, inequitable positions of the parties, and constraints of the law, claimant is entitled to some prospective relief if he is not currently or imminently residing in an in-state residential placement by the date of this decision.

13. If claimant is not currently or imminently living in a residential facility as of the date of this decision, GGRC must immediately pursue out-of-state funding for one of the two facilities chosen by claimant and for which claimant has provided GGRC with specific information requested. (Findings 22 and 34.)

## **ORDER**

Claimant's request is granted. If claimant is not currently or imminently residing in a residential facility, GGRC must immediately request DDS approval for one specific out-of-state facility chosen by claimant that has current availability and for which claimant has provided specific information requested by GGRC.

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.