

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

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2022020325

DECISION

Laurie Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 28, 2022. The matter was consolidated for hearing with OAH Case Number 2022020112, but a separate decision will be issued in each matter.

Aaron Abramowitz, Attorney at Law, represented Frank D. Lanterman Regional Center (RC or Service Agency).

Claimant's mother (Mother) represented claimant, who did not appear at the hearing. (Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and his family.) Mother initially contended that she was

prepared to proceed with the appeal concerning claimant's brother but was not aware that claimant's case would also be heard on March 28, 2022. However, a notice of the hearing had timely been served on Mother. Two weeks prior to the hearing, Mother had declined the RC's offer to continue the hearing and mediation dates for the two cases. The parties participated in the March 18, 2022, mediation for both cases. At the outset of the hearing, Mother stated that she was not seeking additional time to prepare for hearing and wished to proceed with claimant's case.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 28, 2022.

ISSUE

The parties agreed that the issue for determination is: Must the Service Agency fund 30 hours per week of retroactive respite and retroactive State of Emergency (SOE) respite services for claimant from June 1 through August 30, 2021?

EVIDENCE

Documentary: Exhibits 1 through 11 and 14 through 16; A through C.

Testimonial: Guadalupe Munoz, RC Manager, William Crosson, RC Manager, and claimant's mother (Mother) and sister (Sister).

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FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 15-year-old female who qualifies for RC services with a diagnosis of autism spectrum disorder. Claimant is in the tenth grade. Her school does not have special education classes but provides claimant with accommodations. She lives at home with her parents, sister, and brother. Claimant's brother is also a RC client.

2. On March 24, 2021, the RC received a referral for claimant and initiated the intake and assessment process. An assessment was scheduled for March 30, 2021. The RC found claimant eligible for RC services on July 21, 2021. Her Individual Program Plan (IPP) was developed on August 31, 2021. Services were funded beginning on September 1, 2021.

3. On November 18, 2021, Mother asked whether the RC could retroactively extend the funding for claimant's respite services back to July 1, 2021.

4. In a Notice of Proposed Action (NOPA) dated December 13, 2021, the RC denied the request for retroactive reimbursement of respite services on the grounds that claimant was not a RC consumer and there was no IPP during that time period.

5. Claimant filed a timely Fair Hearing Request on December 20, 2021, as to the RC's denial of retroactive reimbursement for respite and SOE hours from June 1 through August 30, 2021, and this hearing ensued.

Authorized Funding for Respite and SOE Services

6. On March 24, 2021, the Regional Center's Intake Department received a referral for claimant and initiated the intake and assessment process. During this time, the RC requested claimant's medical records, mental health records, and education records for review. The RC also authorized funding for a psychosocial assessment and a psychological evaluation to rule out or substantiate a diagnosis of autism spectrum disorder and determine claimant's eligibility for RC services.

7. On July 21, 2021, the Regional Center's Multidisciplinary Eligibility Team reviewed the records and evaluation and assessment reports and determined claimant was eligible for RC services. The RC completed claimant's intake and assessment within 120 days of the March 2021 referral, as required by the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, §§ 4500 et seq.) (Lanterman Act or Act). The Act also requires regional centers to develop an IPP for any person who is eligible for RC services within 60 days.

8. On August 30, 2021, claimant's case was assigned to her first Service Coordinator, Delie Bishil. Ms. Bishil met with Mother to develop claimant's initial IPP on August 31, 2021. Thus, claimant's IPP was developed 41 days after July 21, 2021 eligibility determination, which was within the 60 days allowed.

9. During the August 30, 2021 IPP meeting, Mother discussed claimant's support needs with Ms. Bishil who initiated funding for two home-based supports: 30 hours per month of respite services from September 1, 2021 through August 31, 2022, and an additional 50 hours of SOE in-home respite from September 1, 2021 to December 31, 2021.

10. Regional Centers state-wide authorized SOE in-home respite services for RC clients on a temporary basis due to school closures, service disruptions, and other challenges posed by the COVID-19 pandemic. Both respite and SOE supports were to be provided through Mother's preferred respite agency, Needed Respite.

11. In November 2021, Ms. Bishil retired from the RC and claimant's case was assigned to a temporary Service Coordinator, Magda Carrero.

Request for Retroactive Funding of Respite and SOE Hours

12. Bill Crosson, Regional Manager, testified at the hearing. On November 18, 2021, during a telephone conversation with Mr. Crosson, Mother asked whether the RC could retroactively extend the funding for claimant's respite services back to July 1, 2021, in light of the fact that the RC's Multidisciplinary Team had made claimant's eligibility determination in July 2021.

13. Mr. Crosson explained that claimant was not determined to be eligible for RC services until July 31, 2021, her IPP was developed on August 31, 2021, and the RC initiated services for claimant on September 1, 2021. Therefore, claimant's request for retroactive services for the months of July and August 2021 could not be approved because this time period predates the development of her IPP.

14. To determine whether or not a service will be funded, the RC must ensure that the service is included in that client's IPP. For a service to be included in the IPP, the RC must determine that there is a need for the service. This determination of need is based upon information gathered and assessments conducted by qualified professionals. Once a need is established, the RC must then determine whether or not it is permitted by law to fund that particular service. This involves consideration of

multiple factors governed by the Act, including whether a generic funding source is available for that service.

15. Mr. Crosson explained that the RC did not authorize funding for respite and SOE services going back to July 1, 2021, because claimant was not yet a RC consumer in July and August 2021, and there was no IPP in place during that time period. Additionally, the RC completed claimant's intake, assessment, and IPP in accordance with the Act. Therefore, compensatory services are not warranted. Lastly, the RC is not permitted to fund retroactive services except in very limited circumstances, which were not established by claimant.

16. The RC considered whether circumstances allowing retroactive funding might exist for claimant. However, it determined that her circumstances did not meet the exception criteria described in the law. Claimant did not demonstrate that: the service had been preauthorized; there was an emergency situation before such authorization could be obtained; services were provided to claimant by a vendored service provider; or that she is requesting reimbursement for services provided for a limited time during which she was unable to reach the Service Agency.

Claimant's Evidence

17. Claimant's Mother and Sister testified at the hearing in support of retroactive reimbursement of respite hours and SOE hours for claimant. They dispute the date upon which intake occurred, which would then impact the RC's timelines.

18. Mother contends that she initially contacted the RC by email on December 17, 2020, asking for a determination as to claimant's eligibility for RC services. However, Mother was not able to provide any copy of the email she claimed

to have sent to the RC and the RC does not have anything in its records reflecting such a communication.

19. Mother submitted Exhibit A, dated December 21, 2020, asserting that it is an email response to her from a RC intake specialist who, Mother asserted, would not be involved in a case unless the intake process had already begun. However, Exhibit A is simply the face sheet to a secure message which has expired and cannot be opened. Accordingly, that document is not sufficient to establish that Mother initiated the intake process with the RC in December 2020. The consumer transaction records (ID Notes) maintained by the RC reflect that intake began on March 24, 2021, when Mother contacted the RC seeking an eligibility determination on behalf of claimant.

20. Mother argues that claimant's eligibility for RC services was delayed because the RC did not comply with the timelines required under the Lanterman Act. Had they been followed, Mother contends that claimant would have qualified for services as of June 1, 2021, and therefore should receive retroactive funding for respite and SOE services as of that date.

21. Mother asserts that since an assessment took place on March 30, 2021, the RC had 60 days (until June 1) to conduct the IPP. Accordingly, she contends that claimant should have been found eligible for services as of June 1, 2021. The RC contends correctly that the 60 days runs from the eligibility determination on July 31, 2021.

22. Mother argues that it is apparent that the RC could not possibly have conducted an intake on March 24, 2021, and then scheduled an assessment a mere six days later, on March 30. Mr. Crosson testified that this could have happened if there

were a last-minute cancellation, and an assessment appointment suddenly became available.

23. Sister asserts that because the RC failed to conduct the IPP meeting within 60 days of the assessment, claimant is entitled to retroactive reimbursement for respite and SOE hours, as requested.

LEGAL CONCLUSIONS

Standard of Proof

1. The Lanterman Act governs this case. 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.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant requests funding that Service Agency has not agreed to provide previously, and therefore she has the burden of proving by a preponderance of the evidence that she is entitled to that funding. (Evid. Code, §§115, 500.)

Statutory Framework

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, "the purpose of the [Lanterman Act] is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community"

and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from Welf. & Inst. Code, § 4620.)

4. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.) The types of services and supports that a regional center must provide are "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made through the IPP process "on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

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5. As set forth in Welfare and Institutions Code section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

Retroactive Reimbursement from June 1 to August 30, 2020

6. Claimant's request for reimbursement for respite care and SOE hours from June 1 to August 30, 2021, is a request for retroactive service authorization.

7. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. A purchase of service authorization must be obtained in advance from the regional center for all services purchased out of center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for emergency services "if services are rendered by a vendored service provider: (A) At a

time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

8. Thus, the regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. Here, while the COVID-19 pandemic constituted an emergency, none of the other regulatory requirements for retroactive funding is fulfilled. No evidence was presented that services were provided to claimant during the time period in question by a vendored service provider. Claimant is not requesting reimbursement for services provided for a limited time during which she was unable to reach the Service Agency.

9. Ordinarily, services are provided to the consumer through the IPP process. The consumer's IPP "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs, . . ." (Welf. & Inst. Code, § 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (Welf. & Inst. Code, § 4646.5, subd. (a).) The process of creating an IPP, by its nature, is collaborative. (Welf. & Inst. Code, § 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives and other appropriate participants. (Welf. & Inst. Code, §§ 4646, 4648, subd. (a)(6).) If the

consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (Welf. & Inst. Code, § 4646, subd. (i).) If the consumer or his parents do “not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.” (*Ibid.*)

10. The issue of retroactive reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed.

11. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . .” (Welf. & Inst. Code, § 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens, supra*, 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Otherwise, the general requirements that services should be funded through the IPP process (Welf. & Inst. Code, §§ 4646, 4646.5, and 4648) would be made superfluous. Thus, prior decisions in other fair hearing cases have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted. Prior OAH decisions pertaining to other consumers are only advisory, not binding.

12. Generally, four elements must be established in order to apply the doctrine of equitable estoppel: (1) The party to be estopped must be apprised of the facts; (2) the party must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) the party must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.) A vital principle of equitable relief is detrimental reliance, or as put by the California Supreme Court in the case *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795: "He who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted."

13. The evidence did not establish that claimant relied on the RC's conduct to her detriment.

14. Denying retroactive authorization and reimbursement in this case also will not thwart the purposes of the Lanterman Act. As discussed above, the funding and provision of services and supports to a regional center consumer is supposed to be collaborative. Claimant did not collaborate with the RC or seek preauthorization for respite care and SOE hours during the period in question. As a result, the Service Agency did not have an opportunity to suggest vendors or explore different options with her.

15. Therefore, cause does not exist to reimburse claimant for the respite care or SOE hours sought during the dates in question. Claimant satisfied none of the criteria set forth at California Code of Regulations, title 17, section 50612, subdivision (b)(1), for retroactive authorization. Additionally, the equities do not weigh in favor of granting retroactive reimbursement under the facts presented.

ORDER

Claimant's appeal is denied.

The Service Agency is not required to fund retroactive respite services or retroactive State of Emergency respite services for claimant for the period from June 1 to August 30, 2021.

DATE:

LAURIE PEARLMAN
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.