

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

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER

Service Agency

OAH No. 2022040606

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter virtually via the Zoom application on June 1, 2022.

Stephanie Zermeño, Fair Hearings Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's father appeared on behalf of claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter submitted for decision on June 1, 2022.

ISSUE

Should claimant be placed in a residential facility or are there other options and resources available to maintain her within the family home?

FACTUAL FINDINGS

1. The following factual findings are derived from documentary evidence submitted by IRC and the testimony of Candace Bustillos, claimant's consumer services coordinator; Keniece Pursell, an IRC program manager; and claimant's father.
2. Claimant is a 14-year-old girl who qualifies for regional center services based on diagnoses of epilepsy and moderate intellectual disability.
3. Claimant lives at home with her father and father's fiancée. Claimant's father, according to claimant's most recent Individual Program Plan (IPP), is very active in claimant's care and wants the best for her. Claimant receives 100 hours of In-Home Supportive-Services (IHSS), and claimant's father's fiancée is the provider. Claimant also receives social security payments in the amount of \$734 per month. Claimant receives 130 hours per month of preferred provider respite, and IRC is working to find claimant a 1:1 aide for the summer months given that the school year is coming to an end.
4. On November 3, 2021, claimant's father requested residential placement for claimant because claimant's father felt it was difficult to continue to maintain claimant in the home. IRC denied that request, and it was not appealed.

5. On March 29, 2022, claimant's father again requested residential placement for claimant. IRC denied the request via a Notice of Proposed Action dated March 30, 2022. Specifically, IRC noted that it must consider every possible way to assist families in the home prior to considering residential placement. Given that behavioral services are deemed most appropriate to address problematic behaviors that make it difficult to maintain a child in the home, IRC recommended claimant's father pursue behavioral services to reduce or eliminate any challenges.

6. On April 11, 2022, claimant's father filed a fair hearing request seeking residential placement for claimant. Specifically, claimant's father explained that due to her behaviors, claimant needs 24-hour care, and it was becoming difficult for him to work and provide for the family.

7. On May 4, 2022, claimant's father and claimant's father's fiancée met with IRC representatives to discuss the fair hearing request. Following the informal meeting, IRC adhered to its determination that behavioral services, to be provided through claimant's insurance, are the most appropriate to address claimant's behaviors in order to maintain claimant within the family home. IRC also recommended claimant's father pursue additional generic resources, such as an increase in IHSS and other options through claimant's school, in order to exhaust all generic possibilities before considering residential placement.

8. Claimant's father's testimony at the hearing is summarized as follows: He is a single father, as claimant's mother abandoned her in 2020. Her mother has disappeared. It had been very hard for him to get providers to come into the home to help him, as a lot of the services were affected due to the COVID-19 pandemic. His mother used to help him, but she no longer does. When he filed the fair hearing request he was "kind of at a breaking point" because he just did not know how he was

going to care for claimant and keep a roof over his head. However, claimant's father noted that between the time he filed the fair hearing request and the present, he was in a better position and no longer feels claimant needs residential placement. The issues with finding appropriate caregivers has been resolved and he has someone in the home he likes. Claimant is getting the tools and assistance she needs at the moment, and might even attend summer school, which would help even more. He feels, at this point in time, that IRC is doing the best they can to provide what claimant needs to meet her IPP goals.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

Lanterman Developmental Disabilities Services Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized 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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any

consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the IPP and provision of services and supports be centered on the individual and take into account the needs and preferences of the individual and family. Further, the provision of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and be a cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and

individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code section 4690.2, subdivision (a), defines respite services as "intermittent or regularly scheduled temporary nonmedical care" for a consumer who resides with a family member. Respite services are designed to: assist family members in maintaining a consumer in the home; provide appropriate care and supervision to ensure the consumer's safety in the absence of family members; relieve family members from the constantly demanding responsibility of caring for the client; and tend to the consumer's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members. (*Ibid.*)

12. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources, including IHSS, "when a consumer or family meets the criteria of this coverage but chooses not to pursue this coverage."

Evaluation

13. It was not established by a preponderance of the evidence that claimant needs residential placement at this time. Claimant's father clearly wants the best for claimant and although it was difficult to find individuals to provide the services claimant has in place, that difficulty has been resolved since the filing of the fair hearing request. Additionally, there are other generic resource available (such as an increase in IHSS hours, behavioral therapy, or other supports through claimant's school district) that must be exhausted before considering a residential placement.

ORDER

Claimant's appeal from Inland Regional Center's determination that a residential placement is not appropriate at this time is denied.

DATE: June 14, 2022

KIMBERLY J. BELVEDERE

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.