

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022080472

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 13, 2022.

Stella Dorian, Due Process Officer, represented the North Los Angeles County Regional Center (NLACRC or service agency). Father represented Claimant, who was not present. Father and Claimant are not specifically identified to preserve their privacy and maintain confidentiality.

Ms. Dorian, Consumer Service Coordinator Delfina Corona, Resource Developer Trinidad Hicks, and Father testified. Documents marked Exhibits 1, 2, 4, 5, and 15 were received in evidence. Documents marked Exhibits 6 through 14 were marked for

identification only. A document marked Exhibit 3 was withdrawn. The record closed, and the matter was submitted for decision at the conclusion of the hearing.

ISSUE FOR DETERMINATION

Whether NLACRC should provide funding for Claimant's monthly rental expense to reside at an assisted living facility.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 13, 2022, Father requested "financial assistance" from NLACRC to pay the monthly rental expense for Claimant to reside at an assisted living facility. (Exh. 1 [A1].)

2. By letter and Notice of Proposed Action dated July 29, 2022, NLACRC denied the request explaining, "NLACRC does not have the statutory authority to fund for [Claimant's] board and care costs [at the assisted living facility, which is not named here to preserve confidentiality]. While NLACRC promotes a consumer's individual choice in living environment, the [regional center] also recognizes that it is the responsibility of the consumer and their family when making this decision to ensure there are sufficient financial resources to maintain their chosen living arrangement. Additionally, [the assisted living facility] is not vendored or contracted with NLACRC and may not be reimbursed to provide residential services to consumers. As such, NLACRC is unable to support your request for funding [Claimant's] placement at [the assisted living facility]." (Exh. 4 at p. 3 [A25].)

3. On August 2, 2022, Father filed a Fair Hearing Request on behalf of Claimant.

4. All jurisdictional requirements are met.

Claimant's Request for Financial Assistance with Rental Expense

5. Claimant is a 45-year-old non-conserved male consumer of NLACRC who presents with seizure disorder subsequent to a traumatic brain injury he sustained as a 17-year-old. On May 16, 2022, Claimant was deemed eligible, under the qualifying diagnosis of epilepsy, for services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.

6. Claimant's medical condition has not been conducive to steady employment. The jobs he held in the past were short-lived. He was last employed five years ago. Claimant is verbal. His short-term memory is limited. He falls frequently because of his poor balance, and as a consequence he requires assistance with his daily living activities at all times.

7. Claimant resided with his mother until her death in early 2022. While alive, Claimant's mother assisted Claimant with his daily living activities and helped prevent fall. When Claimant's mother died, Claimant was left without an assistant. On a date not established by the evidence, Claimant fell and hit his head. Claimant required brain surgery. In May 2022, Claimant was discharged from the hospital to the assisted living facility where he currently resides in a studio apartment-like setting with his own bathroom. In place of a kitchen, the apartment is equipped with a microwave and refrigerator. The assisted living facility provides Claimant with laundry service and

meals. Staff is available to assist Claimant who wears a device used for alerting the staff in the event he falls.

8. Residing at the assistant facility costs \$3,600 per month. Claimant's social security benefits pay \$1,100 per month. Father has been paying the remaining \$2,500 balance.

9. Father is the primary caretaker of his spouse who has Parkinson's disease. At hearing, Father explained, as a 77-year-old, he is physically unable to care for both Claimant and his spouse. Additionally, his financial contribution to Claimant's monthly rental expenses is unsustainable. According to Father's testimony, Claimant's placement at the assistant living facility is "an unplanned event," which "should be temporary for six months to one year" as he searches for a suitable rental consisting of a room with a private bathroom for Claimant. Father emphasized, "This would not be a permanent situation."

NLACRC's Position

10. Consumer Service Coordinator Delfina Corona explained she followed up on Father's request by exploring "the Self-Determination Program [SDP] and other options." Among other things, SDP provides NLACRC consumers with a budget and spending plan and permits them to choose or employ the vendored persons or entities they prefer to provide them with services and supports to meet a need. Ms. Corona explained the assisted living facility where Claimant currently resides is not vendored to provide services and supports to NLACRC consumers, including Claimant. Ms. Corona further explained, there is "no mechanism" for NLACRC to fund Claimant's rental expenses. On this point, Resource Developer Trinidad Hicks elaborated the applicable regulations governing vendorization of service providers have "no service

code for assisted living facilities” and concluded NLACRC is therefore “not able to vendor this type of facility.” Ms. Hicks testified, “The agency does not enter contracts with an entity or provider for which there is no service code.” Throughout her testimony Ms. Hicks cited California Code of Regulations, title 17, sections 50602, 54302, 54310, 54340, and 54342, which govern service provider accountability and vendorization—the process for identification, selection, and utilization of service vendors or contractors. These regulatory provisions support Ms. Hicks’ testimony.

11. The alternate living arrangement options Ms. Corona presented to Father for Claimant include group homes populated with four to six age-appropriate individuals and staffed according to the level of care required by the residents. Father previously declined the group home option during a June 13, 2022 individual program planning (IPP) meeting. Father reportedly informed Ms. Corona he was “uncomfortable having [Claimant] live in a Community Care Facility with him possibly being in a shared room or outside [a particular geographic] area.” (Exh. 4 at p. 3 [A25].)

12. Ms. Corona additionally presented Father and Claimant with “Supported Living Services (SLS) support and an apartment within the consumer’s financial means” as an alternate living arrangement option. Under this option, based on Claimant’s assessed needs, an NLACRC-funded SLS provider would assist Claimant with his daily living activities, including self-care, meal preparation, domestic chores, and transportation to medical appointments. At the IPP meeting Claimant rejected this option reportedly because “he likes the assisted living apartment and feels safe as staff are [*sic*] nearby him in case of a sudden fall.” (Exh. 4 at p. 2 [A24].)

13. Ms. Corona also proposed Claimant reside at Father’s home with NLACRC-funded Personal Assistant (PA) services. Father rejected this alternate living arrangement option reportedly maintaining Claimant’s residence at the assisted living

facility "is appropriate for him due to the fact that he's adjusted, it's close to the family home, it's a less restrictive environment and it would be less costly to the state." (*Ibid.*)

14. At hearing, Father again declined the proposed alternate living arrangement options. He expressed a preference for the assisted living facility where Claimant currently resides because it is five minutes away from his home. "Having [Claimant] close is fairly critical to me because I can't leave my wife for a long time," he testified. Father asserted Claimant "gets services which he doesn't need" and Claimant "wants to relinquish those and the use the money to assist with rental." Father did not specify the services NLACRC purchases for Claimant and which Claimant was offering to relinquish. Presumably, Father was suggesting foregoing the proposed NLACRC-funded SLS and PA services.

15. At hearing, Ms. Dorian suggested Claimant apply to the Department of Public Social Services for Medi-Cal, and if deemed eligible she recommended Claimant apply for the Medi-Cal Assisted Living Waiver (ALW). A brochure titled *Medi-Cal (California Medicaid) Assisted Living Waiver: Benefits, Eligibility & How to Apply*, entered in evidence as Exhibit 15, states ALW "provides assisted living services for elderly and disabled California residents who require a nursing home level of care, but prefer to reside in an assisted living environment instead of a nursing home." (Exh. 15 at p. 1 [A189].) ALW services include recreational, therapeutic, and social activities, care management, homemaker services (housekeeping and laundry), medication oversight, personal care (such as bathing, dressing, toileting, and eating), prepared meals and snacks, residential habilitation (one-on-one care assistance with a focus on improving socialization, self-help, and adaptive skills in regard to behavioral issue), skilled nursing/home health aides, and transportation. (*Id.* at p. 2 [A190].) ALW services are offered in Adult Residential Facilities, Residential Care Facilities for the Elderly, and

Public Subsidized Housing but ALW does not cover the cost of room and board in these settings. (*Id.* at p. 3 [A191].) The brochure states, “The amount that a program participant must pay is based on one’s income. In [California], in 2022, state residents who receive SSI and live in an assisted living setting receive a monthly payment of \$1,365.77. Of this amount, an individual can retain \$154/month as a personal needs allowance, while the remaining \$1,211.77/month must be paid to the residence for room and board. If an applicant has income over \$1,365.77/month, \$1,231.77/month goes towards room and board and the individual can keep \$154/month.” (*Id.* at p. 4 [A192].) ALW is approved for a maximum of 7,409 beneficiaries each year. There is a statewide wait list for program participation.

16. Father appeared interested in ALW.

NLACRC Service Standards

17. The service agency entered its *North Los Angeles County Regional Center Service Standards Adopted by the Board of Trustees January 12, 2022* (Approved by the Department of Developmental Services March 23, 2022) (*NLACRC Service Standards*) in evidence as Exhibit 5. Chapter V of *NLACRC Service Standards* addresses the service and procedural standards for “Family Supports and Living Arrangements.” It articulates the following philosophy:

It is the philosophy of NLACRC that consumers and/or their family members should decide where they live. This means NLACRC will work with families to maintain their minor children at home when it is the families’ preference and, for adult consumers, help them to access living options of their choice. To this end, NLACRC will work to empower

consumers and their family members as well as advocate on their behalf. The regional center is dedicated to providing family support and will plan with each family to identify services that meet each unique need. As such, the planning team should consider each family's responsibility to provide typical supports.

(Exh. 5 at p. 39 [A67].)

18. The living arrangement options available to NLACRC's adult consumers are grouped under the following categories: Licensed Residential Services (defined to include community care facilities, foster homes for adults, health care facilities, and state developmental centers); Independent Living Services (designed to give consumers supports needed to live in or transition to their own homes whether leased, rented, or owned); and SLS (which affords consumers the opportunity to live in homes they rent, lease, or own with support services available to the consumer in his or own residence as often and as long as needed).

19. In Chapter V of *NLACRC Service Standards*, rent, mortgage, and lease payments are discussed in the limited context of the SLS living arrangement option as follows:

Rent, mortgage, and lease payments for a supported living home and household expenses are the responsibility of the consumer and any roommate who resides with the consumer. NLACRC shall not make rent, mortgage, or lease payments on a supported living home, or pay for household

expenses of consumers receiving SLS except under [certain specified circumstances].

(Exh. 5 at p. 51 [A79].)

20. Chapter V of *NLACRC Service Standards* does not identify assisted living facilities as a living arrangement option available to NLACRC's adult consumers. It provides no standards for rent, mortgage, or lease payments in connection with assisted living facilities.

21. A preponderance of the evidence does not establish Claimant is entitled to NLACRC-funded rental payments for him to reside at the assisted living facility.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

2. Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id.* at 325, original italics.) In meeting the burden of proof by a preponderance of the evidence,

Claimant “must produce substantial evidence, contradicted or un-contradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

Discussion

3. Under the Lanterman Act regional centers, including NLACRC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including NLACRC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including NLACRC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

4. To those ends, the Lanterman Act specifically obligates regional centers, including NLACRC, to purchase services and supports in conformity with their purchase of service policies approved by the Department. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department reviews regional centers’ purchase of service policies “to ensure compliance with statute and regulation” prior to promulgation of the guidelines. (*Id.* at § 4434, subd. (d).) The purchase of service policies are deserving of deference because they reflect the regional center’s expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, purchase of service policies regional centers promulgate, including NLACRC, must account for consumers’ individual needs and preferences when making eligibility determinations for services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Regional centers, including NLACRC, must ensure “[u]tilization of generic services and supports when appropriate.” (Welf. & Inst. Code, § 4646, subd. (a)(2).)

5. In this case, the *NLACRC Service Standards* provides Claimant with an array of living arrangements from which to choose. Father, on behalf of Claimant, has rejected them all. The statement of philosophy included in the *NLACRC Service Standards* nonetheless suggests respecting that choice. Significantly, no statute or regulation authorizes NLACRC to support Claimant's preference for a residency (no matter how temporary) at an assisted living facility. The assisted living facility in question is not a vendored NLACRC service provider. Even if the vendored, NLACRC has no authority to fund rental payments to the assisted living facility.

6. Claimant has not met his burden of establishing his entitlement to support and service in the form of NLACRC-funded rental payments for him to reside at an assisted living facility of his choice.

7. No cause exists for NLACRC to fund Claimant's monthly rental expense to reside at an assisted living facility.

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ORDER

1. Claimant's appeal is denied.
2. North Los Angeles County Regional Center shall not fund Claimant's monthly rental expense to reside at an assisted living facility.

DATE:

JENNIFER M. RUSSELL
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.