

**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. 2022100128**

**DECISION**

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings (OAH), heard this fair hearing by video and teleconference on December 6 and 19, 2022.

Claimant's mother (Mother) appeared by telephone on behalf of Claimant. (Titles are used to protect the privacy of Claimant and her family.)

Dana Lawrence, Fair Hearings and Administrative Procedures Manager, and Cristina Aguirre, Fair Hearing Representative, for North Los Angeles County Regional Center (Service Agency) appeared by videoconference on behalf of Service Agency.

Witness testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on December 19, 2022.

## **ISSUE**

Whether Service Agency must fund an unspecified amount of money towards Claimant's housing costs.

## **EVIDENCE RELIED ON**

Documents: Service Agency's Exhibits 1 through 9, 11 through 18, 21, and 23. Claimant's Exhibits A through L.

Testimony: Tsahi Banton, Consumer Service Coordinator; and Mother.

## **SUMMARY**

In 2019, based on Claimant's disabilities, the Housing Authority of the City of Los Angeles (Housing Authority) approved Mother for a Section 8 Voucher which enables her to rent a five-bedroom home. However, despite Mother's efforts, her rental applications for five-bedroom homes have been denied. As a result of the denials, Mother claims Service Agency must fund housing for Claimant to live in a five-bedroom home as a payor of last resort. Claimant failed to meet her burden to establish Service Agency must fund her request. Claimant's appeal is denied.

## **FACTUAL FINDINGS**

### **Evidentiary Matters**

1. On the first day of hearing, soon after the start of testimony, it was determined Mother could not access Service Agency's exhibits on Case Center due to technical issues. Mother also asked she be provided additional time to submit exhibits. To accommodate the technical issue and Mother's request for additional time to submit exhibits, the hearing concluded for the day and the ALJ issued an Order setting an additional hearing date for December 19, 2022, and directing Mother to provide her exhibits to Service Agency no later than December 12, 2022. Service Agency agreed to provide Mother with a pdf and a hardcopy of its exhibits.

2. Service Agency provided Mother with the exhibits as agreed. Mother did not comply with the Order. Rather, during the lunch break on the second day of hearing, Mother emailed Service Agency Exhibits A through L and asked they be admitted into evidence. Claimant's exhibits include communications between Mother and the Housing Authority and other related individuals which corroborate Mother's attempts to obtain a five-bedroom home using her Section 8 voucher. Service Agency objected to the exhibits based on relevancy, the untimeliness of the submission, and that, based on the untimeliness the exhibits' probative values would be outweighed by undue prejudicial effects.

3. Claimant's exhibits were untimely as they were not provided at least five calendar days before the hearing (Welf. & Inst. Code, § 4712, subd. (d)) and because Mother failed to provide them to Service Agency by December 12, 2022, as directed by the ALJ. Nonetheless, the exhibits provide context to Claimant's case and corroborate some of Mother's explanations of her efforts to find new housing. The untimely

submission is not unduly prejudicial against Service Agency. The probative value of Exhibits A through L is not outweighed by any potential prejudicial effect. Accordingly, Exhibits A through L are entered into evidence in the interest of justice.

4. At the conclusion of Service Agency's case, and during review of its exhibits admitted, Service Agency stated it wished to withdraw its Exhibit 10, a Home Health Care Certification and Plan of Care from Accent Care Home Care, covering a two-month period between January 11 and March 10, 2020. Service Agency did not ask for the document to be marked or entered in evidence. Mother asked she be allowed to include the document with her exhibits and Service Agency objected to her request. The request was taken under submission. In consideration of the arguments presented, Mother did not establish cause to grant her request. Mother's request is denied and Exhibit 10 is withdrawn from Service Agency's exhibits.

## **Jurisdiction**

5. Claimant is eligible for regional center services under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.) based on the diagnosis of Congenital Malformations of Corpus Callosum, other deletions of part of a chromosome, Epilepsy, and Unspecified Intellectual Disability.

6. Claimant lives with Mother and her four older sisters in a three-bedroom home. Mother asserts Claimant's disabilities require Claimant to have her own bedroom and a fulltime live-in nurse, who also requires a bedroom. Based on the size of Claimant's family, this would require Claimant to live in a five-bedroom home.

7. On August 30, 2022, Mother requested Service Agency provide financial assistance for Mother to secure a bigger home. On September 6, 2022, Mother followed-up on her request by telling Service Agency that in 2019 Claimant's doctor

approved Claimant for 24-hour medical care, which requires Mother to have a five-bedroom home to accommodate an individual room for Claimant and for a fulltime nurse.

8. On September 13, 2022, Service Agency issued the Notice of Proposed Action denying the request because it determined housing costs are considered a typical parental responsibility pursuant to Welfare and Institutions Code section 4646.4, subdivision (a)(4). (Statutory references are to the Welfare and Institutions Code unless otherwise designated.)

9. Mother requested the Fair Hearing on September 21, 2022.

### **Claimant's Service Needs**

10. Claimant's most recent Individualized Program Plan (IPP) was held on February 4, 2020, when Claimant was three years and three months old. Claimant suffers from seizures and has difficulty processing foods. At the time of the IPP, Claimant was using some sign language to communicate and was beginning to babble. She continues to need assistance with dressing, toileting, bathing, and daily living tasks. Claimant will hit and bang her head on the floor to get her needs met. Claimant is not able to assess for safety and needs adult supervision at all times. At the time of her IPP, Claimant was to be provided 137 Early and Periodic Screening, Diagnostic, & Treatment (EPSDT) hours of Licensed Vocational Nurse (LVN) level care. However, those hours were never fully staffed.

11. Claimant's IPP provides the following outcome goals:

Outcome 1: To provide Mother a break from her care and supervision of Claimant, Mother will arrange for, and Service Agency will fund, 30 hours per month of LVN level respite care to be provided by Accent Care.

Outcome 2: To allow Claimant to access her education, Mother will advocate for, and Service Agency will monitor, Claimant's educational program and supports.

Outcome 3: To help Claimant reduce tantrum behaviors and improve her communication and socialization skills, Mother will advocate for, Medi-Cal will fund, and Service Agency will monitor, Applied Behavioral Analysis services for Claimant.

Outcome 4: To ensure Claimant maintains optimal health, Mother will continue to provide Claimant access to preventative medical care, and Service Agency will monitor and request records as needed to ensure services are meeting Claimant's needs.

12. Since Claimant's February 2020 IPP, Claimant's IPP has been amended multiple times, primarily because of the Covid-19 pandemic. Based on school closures, shortage of nursing and respite staffing, and concerns about Covid-19 transmission, Mother has homeschooled Claimant since she has been of school age. Effective January 5, 2021, Mother signed a waiver to receive non-skilled nursing support, rather than LVN care, in-home.

13. Pursuant to Claimant's January 7, 2021 IPP Addendum and January 5, 2021 waiver of LVN level care, Outcome Goal 1 was amended to provide Mother will arrange for, and Service Agency will fund, 30 hours of non-skilled parent conversion respite support during COVID with DCC Staffing, a different respite provider. In

addition, Outcome Goal 6 was added, providing Mother will arrange for, and Service Agency will fund, DCC Staffing to provide up to 25 hours per week of non-skilled parent conversion personal assistance to assist Claimant with personal living tasks. (The record did not identify or contain information about an Outcome Goal 5.) At Claimant's April 13, 2021, IPP Addendum meeting, the non-skilled nursing hours were increased from 25 to 56 hours per week. Claimant's most recent IPP Addendum, dated May 16, 2022, continues Claimant's respite and personal assistance services.

### **Claimant's Request for Financial Assistance with Housing Costs**

14. Tsahi Banton is Claimant's Case Management Coordinator. She has worked as a coordinator for Service Agency for 20 years and has been assigned to Claimant's case since June 2021. Ms. Banton's credible testimony and the hearing record established the following regarding Mother's request for financial assistance with housing costs.

15. On October 15, 2021, during a phone call with Ms. Banton, Mother raised her concern that though she had a Section 8 voucher for a five-bedroom home, her applications had been denied due to, Mother believed, discrimination. Mother asked if Service Agency could assist Mother with her discrimination claims, but Ms. Banton explained Service Agency does not have control over housing, but she could make a referral to the Clients Rights Advocate. (Exh. 17, p. A184.)

16. During Claimant's December 28, 2021, IPP Addendum, Mother informed the IPP team she would like to access a bigger home that would provide Claimant with more room, but her applications continued to be denied. Mother explained at that meeting that the noise level in the current home, caused by the number of people and small space, caused Claimant to have spasms. The December 2021 IPP Addendum

does not indicate Mother asked Service Agency to assist Mother with supports or funding to obtain larger housing.

17. Mother's first request for financial assistance with housing costs was made at the end of August 2022. In response to this request, Ms. Banton attempted to reassess Claimant's current medical needs, as the LVN waiver was still active, and Service Agency did not have medical information showing Claimant required a fulltime live-in nurse. Rather, the most recent medical information Service Agency had for Claimant were Claimant's medical records for the period between October 2019 and October 2020, which did not support Mother's claim regarding required nursing care. In October 2022, Service Agency requested Mother sign a release of information so Service Agency could review Claimant's current medical needs, but Mother refused to sign the release. In addition to the request that Mother sign a medical release, and because of Mother's active waiver of LVN care, on October 3, 2022, Service Agency provided Mother a Referral for Clinical Consultation to determine Claimant's current nursing needs. However, Mother refused to cooperate with the referral.

18. Mother did not submit information in support of her claims that Claimant requires a fulltime live-in nurse; that Claimant's current living conditions contribute to Claimant having spasms, or the frequency or extent of such spasms; or that a larger home would diminish Claimant's spasms. Without current medical information, Service Agency could not update Claimant's medical needs or determine if there was any need for extraordinary care and could not, therefore, adjust Claimant's IPP to meet new service needs, if any, such as by funding for a fulltime live-in nurse.

19. Ms. Banton concluded by explaining Service Agency's Purchase of Service (POS) policies do not allow Service Agency to fund housing for minor clients because housing is considered a parental responsibility (see Exh. 18, pp. A227, A238, & A240),



and she knew of no provision of the Lanterman Act that provided Service Agency with such authority.

## **Claimant's Evidence**

20. Mother asserted the following: Service Agency failed to fully assess Claimant's needs and is failing to meet her service needs; Claimant needs her own room to prevent spasms; Claimant requires a fulltime live-in nurse, who requires a separate bedroom; Mother has exhausted the generic resources available to procure a five-bedroom home; and, therefore, Service Agency must fund for a five-bedroom home for Claimant as a payor of last resort.

21. At hearing, Mother submitted an October 31, 2019, letter from the Housing Authority noting that per Dr. Evelyn Baghdasraian's request for reasonable accommodation for Claimant, Mother was approved for the Exception Voucher Payment Standard of up to 120 percent to allow Mother to find suitable housing. (Exh. D.) Mother also submitted a Housing Authority Reasonable Accommodation Questionnaire completed by Claimant's doctor on January 6, 2022, affirming that claimant needs a reasonable accommodation "to increase the voucher payment standard to meet current real market value rent in the city of Los Angeles that is verifiable through comps within 2 miles of each property applied for." (Exh. I, p. B24.) Mother's documents do not establish Claimant's alleged medical need for her own bedroom or for a fulltime live-in nurse. The documents only support Mother's testimony she has a Section 8 voucher for a five-bedroom home and, even with the increased voucher amount, Mother has not been able to secure larger housing.

22. Mother explained at hearing that she has submitted multiple applications for five-bedroom rental properties but none of her applications have been accepted.

Mother claims her applications have been denied due to discrimination against Mother and her family based on her source of income, Claimant's disability, and the family's race.

23. Mother submitted emails and text exchanges from the September 2021 through January 22, 2022, period corroborating her efforts to utilize her increased voucher amount to obtain larger housing. (Exhs. A-L.)

In September 2021 Mother communicated with the Housing Authority to confirm the voucher limit.

In October 2021, Mother initiated a consumer complaint against Zillow claiming its agents were discriminating against her.

In October and November 2021, Mother communicated with the Fair Housing Council of San Fernando Valley by emailing a list of 15 homes she had applied to rent and stating her applications had been denied based on, as she believed, discrimination based on her source of income or another discriminatory basis; she sought help from the Disability Community Resource Center; and she asked the Housing Authority to help her with a home purchase, noting she had accumulated enough money from back paid IHSS payments to put towards a down payment.

In November 2021, Assembly Member Adrin Nazarian's office emailed the Housing Authority and asked it to assist Mother with finding housing with her Section 8 voucher and inquired about the Housing Authority's efforts to enforce rules against source of income discrimination.

Finally, in January 2022, Mother communicated with the Housing Authority and City of Los Angeles regarding her reasonable accommodation request to increase the voucher limit and the Housing Authority's failure to respond.

24. The evidence established Mother has made multiple efforts to obtain larger housing and has worked with multiple agencies to support her efforts. The evidence does not establish Mother's allegations of discrimination in her efforts to obtain larger housing with the family's current Section 8 voucher.

25. Mother also asserted Service Agency has denied all of Claimant's service requests since Claimant aged out of receiving early childhood services from Service Agency. Mother's claim is unconvincing. The evidence established Service Agency continues to fund respite and personal assistant services; has increased Claimant's personal assistant services; and has approved Mother's LVN waiver. Mother further claimed if Service Agency does not provide the requested funding, Claimant is at risk of being institutionalized. No credible evidence was submitted to support this claim.

26. Finally, Mother asserted that while recently serving on Service Agency's Board of Directors she learned Service Agency has a history of underserving and underfunding clients of color. Mother alleged Service Agency's refusal to fund Claimant's housing was evidence of Service Agency making service decisions which underfund and underserve a client of color. Mother's allegation is unsupported by credible evidence.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. The Lanterman Act governs this case. An administrative fair hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal Service Agency's denial of her request to have Service Agency fund housing costs. Jurisdiction was established. (Factual Findings 5-9.)

### **Burden and Standard of Proof**

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161-162) In this matter, Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant requires the requested funding for housing costs. (Evid. Code, §§ 115, 500.)

### **Regional Center Responsibilities**

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) 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.'" (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer's independent, productive, and normal life that allows the consumer to "approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must provide the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible and exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

7. Though regional centers have wide discretion in how to implement the IPP, "they have no discretion in determining whether to implement: they must do so." (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

## **Service Requirements**

8. Persons with developmental disabilities have the right to dignity, privacy, and humane care, to prompt medical care and treatment, and to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect. (§ 4502, subd. (b)(2), (4), & (8).)

9. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d),

4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

10. Services and supports for persons with developmental disabilities means "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability" or toward the consumer's achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).)

11. The IPP team determines a consumer's necessary services and supports based on the consumer's needs and preferences and must consider a range of service options proposed by IPP participants, the effectiveness of each option in meeting the IPP goals, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

## **Funding for Services**

12. Regional Centers must conform to their respective POS policy, utilizing generic services and supports if appropriate. (§ 4646.4, subd. (a)(1).)

13. Regional Center funds must not be used to supplant the budget or any agency which has a legal responsibility to serve a member of the general public. (§ 4648, subd. (a)(8).)

14. Regional Centers must pursue all possible sources of funding for services, including insurance. (§ 4659, subd. (a)(1).)

15. At the time of development or modification of a consumer's IPP, regional centers must ensure generic services and supports are utilized when appropriate and must not use POS funds to purchase services for a minor without first considering the

family's responsibility for providing similar services and supports for a minor child without disabilities, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(2) & (4); Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).) When considering the use of POS funds, Service Agency must provide for exceptions based on family need or hardship. (Cal. Code Regs., tit. 17, § 54326, subd. (d)(1).)

## **Consideration of Costs**

16. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

17. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC*, supra, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort. (*ARC*, *ibid.*)

## **Analysis**

18. Claimant failed to establish her family's housing costs could not be obtained from another source. Rather, the evidence established Claimant's requested housing costs are currently available through Mother's Section 8 voucher. Accordingly, Claimant failed to establish Service Agency is the payor of last resort for Claimant's requested housing costs. Further, Claimant failed to establish Service Agency's funding of an unspecified amount of housing costs currently available through Claimant's Section 8 voucher would be cost effective. (Factual Findings 14-25; Legal Conclusions 16 & 17.)

19. Claimant failed to establish the requested funding for housing costs was a service individually suited to Claimant's unique needs. Claimant did not establish she required her own bedroom, or she required a fulltime nurse who required their own bedroom. In addition, Claimant did not establish the requested funding for housing costs would assist in meeting any of Claimant's IPP outcome goals. (Factual Findings 5, 7, 10-26; Legal Conclusions 8-11.)

20. Claimant did not cooperate in Service Agency's efforts to determine if she had a need for extraordinary care, services, supports or supervision, which would necessitate financial assistance with a five-bedroom home. Based on Claimant's lack of cooperation with the assessment of needs process, including not cooperating with its request for a medical release or its referral to a clinical consultation, Service Agency was not able to determine if there were any exceptions to be applied to Claimant's request based on family need or hardship. (Factual Findings 14-18; Legal Conclusions 8-15.)

21. Claimant failed to establish Service Agency must fund her request for an unspecified amount of money towards Claimant's housing costs. (Factual Findings 5-26.) Were Service Agency to fund Claimant's request it would be acting against its POS, failing to utilize appropriate generic services and supplanting the budget of the Housing Authority, in violation of section 4646.4, subdivision (a)(1) and (8). (Legal Conclusions 12-20.)



## **ORDER**

Claimant's appeal is denied.

DATE:

CHANTAL M. SAMPOGNA

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.