

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

**In the Matter of the Appeal of:**

**CLAIMANT**

**v.**

**FAR NORTHERN REGIONAL CENTER**

**OAH No. 2022120242**

**DECISION**

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in person on May 26, 2023, in Chico, California, and on June 29, 2023, via videoconference from Sacramento, California.

Margaret Long, Esq., represented Far Northern Regional Center (FNRC).

Chad Carlock, Esq., represented claimant, who was not present. Claimant's mother and father, who are his authorized representatives and conservators, also attended the hearing.

Evidence was received, the record closed, and the parties submitted the matter for decision on June 29, 2023.

## **ISSUES**

1. A. Should FNRC be required to pay claimant for Personal Assistance hours worked by his parents between May 1, 2020, and June 30, 2022?  
  
B. If so, at what hourly rate should claimant's parents be paid?
2. Should FNRC reimburse claimant's parents for travel expenses related to claimant's medical appointments between 2009 and 2022?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 30-year-old male consumer of FNRC. For many years, claimant has received services from FNRC based on qualifying diagnoses of Autism Spectrum Disorder (ASD) and mild intellectual developmental disorder (formerly diagnosed as intellectual disability). For several years before 2021, claimant did not have an Individual Program Plan (IPP) in place with FNRC. Despite not having an IPP, FNRC funded Personal Assistance (PA) hours for claimant.
2. As of March 2021, FNRC funded 240 PA hours per month for claimant. Allevery HR & Payroll, a third-party vendor, acted as the employer of record for the PA workers. The gross rate for PA hours was \$23.49. After Allevery's management fees, the PA workers earned \$16 per hour.
3. On March 5, 2021, claimant's parents sent Larry Withers, FNRC's Associate Director, a letter requesting to increase the pay rate for claimant's PA hours. They explained they were unable to find qualified employees due to the 2018 Camp

Fire in Paradise, California, the COVID-19 pandemic, and the low rate of pay. They requested an increase to \$55 per hour.

4. On March 11, 2021, claimant's FNRC service coordinator, Melissa Whelchel, conducted a telephonic IPP meeting with claimant's parents to develop an IPP for claimant. On March 18, 2021, Ms. Whelchel distributed the written IPP based on the meeting. As noted in the IPP, claimant's parents reported he suffered from unpredictable and uncontrolled seizures and needed constant supervision to maintain his safety and well-being. They explained claimant always needed two PAs to ensure his safety and repeated their request to increase the PA pay rate.

5. Regarding the PA hours, Ms. Whelchel noted at the end of the IPP, "FNRC will continue to fund Personal Assistance up to 240 [hours] per month through Allevity HR and Payroll at the current vendor rate effective 7/1/20-6/30/21 and [sic] is set to roll to the next fiscal year." She also noted she would arrange for a nursing assessment to use "as part of an application FNRC will complete to request a Health and Safety waiver through DDS on behalf of [claimant]. The request will be regarding the family's stated desire to allow for a rate exception (increase in current rate limit) for the pay [claimant's] personal assistants receive." Additionally, she noted she would present claimant's medical documentation to FNRC's clinical director to determine whether claimant's seizures/epilepsy should be added as a qualifying diagnosis.

6. On May 27, 2021, FNRC sent claimant's parents a memorandum summarizing the services it would fund. Through the memorandum, FNRC stated it would authorize an increase "through Allevity (as the employer of record) to two (2) staff at 18 hours per day, for a total of 36 hours per day. We would have to subtract the IHSS [In-Home Supportive Services] hours [claimant] receives from this amount. I

am assuming he receives the maximum of 283 hours. We can readjust the figures below if he receives fewer IHSS hours."

7. FNRC also clarified, "These hours will be back dated to 5/1/2020 per your request." Further, "These hours will be paid at the current vendored rate we are funding now. If the Department of Developmental Services (DDS) approves a health and safety waiver for a higher rate, we will reimburse the difference. It is DDS' decision to increase the rate and whether they make the rate retroactive."

8. On November 3, 2021, as FNRC was in the process of seeking the health and safety waiver from DDS, Mr. Withers emailed claimant's parents and explained, "We have a lot of clients with severe behaviors and IHSS only covers the 'quiet' hours and can be used for things like shopping, etc." Later the same day he sent claimant's parents another email to which he attached a sample daily staffing schedule for claimant. In the email, he explained the schedule was just an example FNRC needed to include in its packet to DDS seeking the increased PA pay rate. He noted the IHSS hours "can be in addition/overlap to PA time." At the top of the schedule, he wrote, "The schedule below is the proposed schedule for [claimant] when the Health and Safety Exemption allows the family to pay more than the current \$16.00 per hour. Currently, due to the loss of some workers recently and the current staffing shortages, these hours have mostly been filled by his parents."

9. On or about November 17, 2021, FNRC's Executive Director, Melissa Gruhler, sent a letter to DDS seeking a Health and Safety Waiver for claimant. In the letter, Ms. Gruhler noted FNRC had reviewed claimant's medical records and was in the process of adding epilepsy as a qualifying condition. She also noted claimant's parents were having difficulty hiring PA staff due, in part, to the low rate of pay. She explained claimant's parents requested a PA pay rate of \$55 per hour for care from a registered

nurse (RN) but suggested an RN might be unnecessary and that a rate of \$25 to \$30 per hour might be more appropriate. Finally, she explained:

Lastly, given the intense needs that [claimant] has, we agreed to increase his personal assistance hours to 42 hours per day, or 18 hours at 2:1 staffing and 6 hours at 1:1 staffing. [Claimant] never sleeps more than a few hours each night and has aggressive assaultive behaviors on a daily basis. In addition, with the seizure disorder he must be watched at all times and needs special attention when in the community, bathing, or in any situation when he may suffer an injury if a seizure occurs.

10. On December 10, 2021, DDS personnel emailed Mr. Withers and authorized a PA pay rate increase to \$32.68 per hour. Mr. Withers explained at hearing this was the gross hourly rate and that after Allevery's management fees, the PA workers would earn \$25 per hour. The email noted the effective date of the new rate would be December 15, 2021.

11. Mr. Withers also explained at hearing how FNRC decided on 42 PA hours per day. First, FNRC started with 48 hours per day, which is 24 hours for two PA workers. Next, it subtracted six hours per day because claimant receives 283 IHSS hours per month, or approximately six hours per day. IHSS hours are a generic resource that must be exhausted before regional center funding.

12. On January 6, 2022, FNRC personnel notified Allevery of the increased PA hourly rate. For a few weeks, FNRC and Allevery negotiated about whether Allevery could accommodate the increased rate. Ultimately, it decided it could not. FNRC

contracted Mains'l, a different third-party employer, in approximately February 2022. Mains'l was the third-party employer until July 1, 2022, when claimant converted to a self-determination program.

### **Claimant's Request for Back Pay for Claimant's Parents**

13. On an unspecified date after July 1, 2022, claimant requested \$953,757.60 in back pay for the time claimant's parents performed PA hours from May 2020 through June 2022. The request consisted of multiple components.

#### **UNPAID HOURS (MAY 2020 – MARCH 2022)**

14. Claimant requested payment for his parents' 23,880 "unpaid hours" between May 2020 and March 2022. His parents calculated their unpaid hours by multiplying the number of days in each month by 42 PA hours. From that amount, they subtracted 240, the number of PA hours for which claimant already received payment. They then multiplied the unpaid hours by \$32.68. According to their calculations, FNRC owes \$780,398.40 for unpaid hours from May 2020 through March 2022.

#### **UNPAID HOURS (APRIL – JUNE 2022)**

15. Claimant also requested payment for his parents' "unpaid hours" from April through June 2022, when Mains'l was the third-party employer. He sought 1,723.5 hours, consisting of 641.25 hours for April, 610 hours for May, and 472.25 hours for June. His parents calculated those hours by multiplying the number of days in each month by 42 PA hours. From that amount, they subtracted the number of hours for which claimant already received payment. They then multiplied the unpaid hours by \$32.68. According to their calculations, FNRC owes \$56,323.98 for unpaid hours from April through June 2022.

## **PAYMENT FOR HOURLY RATE INCREASE (MAY 2020 – JUNE 2022)**

16. Claimant also requested his parents be paid the hourly rate difference between \$32.68 and \$16 for hours they worked between May 2020 and June 2022. His parents calculated that number by multiplying the hourly rate difference, \$16.68, by the number of hours FNRC funded in each of those months. According to their calculations, FNRC owes \$117,035.22 for the hourly rate increase from May 2020 through June 2022.

## **Claimant's Parents' Request for Travel Reimbursement**

17. For several years, claimant's father has been vendored through FNRC to provide travel services to drive claimant to various medical appointments. On an unspecified date in 2022, claimant's parents requested reimbursement for such travel expenses from 2009 through 2022. In total, they sought \$69,084.29.

## **Notice of Proposed Action**

18. On November 16, 2022, FNRC issued a Notice of Proposed Action (NOPA) denying claimant's request for retroactive payment of PA hours. FNRC identified the reasons as follows: "Request for retroactive payment does not meet legal requirements. Parents/conservators are considered natural supports and should not be paid for care. In addition, the care of [claimant] is a responsibility of conservatorship. The request is not a cost-effective use of public funds and may be considered a gift of public funds."

## **FNRC Denial of Travel Reimbursement Request**

19. On November 22, 2022, FNRC sent claimant's parents a letter denying their request for travel reimbursement. Specifically, the letter notified them,

According to the California Government Code Section 16304 and Article 1, Section 2 of the contract between [FNRC] and [DDS], FNRC cannot provide reimbursement for any claim older than three fiscal years from the present. The State of California is not required to pay late claims since the funding for the old fiscal years has reverted.

20. FNRC's letter also notified claimant's parents, "In addition, this request is considered a vendor payment issue and is not an appealable decision under Title 17, California Code of Regulations, Section 54380."

### **Claimant's Request for Fair Hearing**

21. On November 30, 2022, claimant's father, on his behalf, submitted a Fair Hearing Request to FNRC. In the request, claimant's father wrote, "FNRC directed us ([claimant's] parents) to work/fulfill agreed upon [hours] under [claimant's] health & safety waiver from 5/1/2020-6/30/2022 and to be paid retroactive. Also for promised back pay to be paid for past travel and per diem." This hearing followed.

### **FNRC's Evidence**

22. Mr. Withers has worked for FNRC for approximately 30 years. He became involved with claimant's case in approximately 2013 to 2015. His understanding is that FNRC does not fund care provided by "natural supports," which includes parents and conservators. He acknowledged that in approximately 2008 or 2009, FNRC's Executive Director made an exception to pay claimant's mother for 40 hours of PA time per week. In addition, FNRC funded claimant's father's PA hours occasionally, but FNRC never addressed what amount each individual parent would receive. The exceptions were based on a "staffing issue." Based on his conversations with the Executive



Director, Mr. Withers did not believe the intent of the exceptions was to allow both of claimant's parents to quit their jobs to care for claimant full time. Furthermore, he understood the exceptions to include a 40-hour weekly limit based on California labor laws that restrict employees from working more than that.

23. Mr. Withers further acknowledged that claimant's parents continually requested an increase in the number of PA hours and the pay rate since at least 2019. After FNRC learned of and confirmed claimant's epilepsy, it increased the PA hours to 42 per day retroactive to May 1, 2020. It also submitted a waiver request to DDS to increase the PA pay rate, which was approved effective December 15, 2021. A DDS representative told him on the phone the approval was not retroactive, and the approval documentation did not state it would be retroactive.

24. Regarding claimant's parents' request for travel reimbursement, Mr. Withers acknowledged helping them organize their receipts and notes into a centralized spreadsheet. By doing so, he did not intend to commit that FNRC would pay the requested amounts. Rather, he was trying to organize the request into a single document. He did not promise to claimant's parents that FNRC would reimburse them.

25. Diana Anderson was FNRC's Associate Director of Community Services until she retired in 2020. She has worked as a retired annuitant for the past three years. She explained FNRC only has access to funds in the current fiscal year and two most recently ended fiscal years. As a result, FNRC cannot fund travel reimbursements older than three years because funds for those fiscal years are no longer available.

26. According to Ms. Anderson, Allevery did not bill FNRC for any PA hours after July 2021. If Allevery had billed, FNRC would have paid up to 40 hours per week. She did not specify if FNRC would pay 40 hours per week for claimant's mother,

claimant's father, or both. FNRC would only ever pay the PA rate in effect at the time the employees worked the hours. FNRC has no mechanism to pay a higher rate retroactively.

### **CLAIMANT'S EVIDENCE**

27. Claimant's parents both testified at hearing. Collectively, they explained that since claimant's seizures began in March 2020, one or both of them have been with him constantly. Claimant rarely sleeps more than a few hours at a time and is a strong man. Claimant's parents sleep on separate mattresses on either side of his mattress, and they never sleep at the same time. One of them is always awake in case claimant wakes, needs assistance, or has a seizure. His seizures can be violent and claimant's mother cannot manage them independently. Claimant's father is the only person who can help claimant through his seizures by himself, and even he struggles.

28. For years, claimant's parents repeatedly requested a higher PA pay rate because they had enormous difficulty recruiting and retaining qualified staff to help claimant. After his seizures began, it was nearly impossible for them to hire any help. After DDS authorized the higher pay rate, they saw a "huge impact" on recruitment. They started receiving some help as of June 2022, just before claimant transitioned to the self-determination program. Even with the help, in October 2022, claimant's father was forced to quit his job with the Paradise Unified School District (PUSD), where he had worked for 26 years, to care for claimant. Before quitting, he worked remotely while in the same room as claimant. He counted these hours toward his PA employment.

29. Claimant's father is claimant's authorized IHSS provider. He does not believe IHSS is an appropriate level of care for claimant and only applied for IHSS

because a different ALJ ordered him to do so following a previous fair hearing. When calculating the hours worked, he does not take into account whether he provided IHSS hours. Rather, on one day, he counted himself as working 24 hours and his wife working 18. The following day, he counted himself as working 18 hours and his wife working 24. He alternated that way for each day.

30. Claimant's parents expressed shock and disbelief that FNRC refuses to pay them for their PA hours on the basis that they are "natural supports." In their view, because claimant is an adult, they have no legal obligation to care for him. Additionally, they noted that FNRC always knew they were the ones providing almost all the PA hours. They reason that FNRC is responsible for funding 42 PA hours retroactive to May 1, 2020, and that it should not matter who provided those hours. They also believe the pay rate increase should be retroactive because nothing in the authorization said it would not be retroactive, and they are not responsible for the months-long delay in the waiver application process.

31. FNRC's initial vendor agreement with Allevity was for 240 PA hours per month. As a result, claimant's parents only ever billed for that much time. They worked more than 240 hours per month and tracked that time on timesheet "to be worked out later." Claimant's parents never submitted timesheets for more than 40 hours per week either through Allevity or Mains'I. Claimant's father believes he submitted timesheets directly to FNRC, but never for more than 40 hours per week. Nevertheless, they contend that the Labor Code does not limit them to 40 hours per week. Everything billed through Allevity and Mains'I has been paid.

32. Regarding the travel reimbursements, claimant's parents insist neither Mr. Withers nor anyone else at FNRC told them about the three-year limitation until recently. To the contrary, they recalled specific conversations in which Mr. Withers

assured them FNRC would reimburse the travel expenses. They noted that Mr. Withers spent hours summarizing their receipts and notes into a single document. They reason that if the three-year limit truly barred their reimbursement, Mr. Withers would not have spent his time that way once it became clear they included receipts dating back to 2009. Additionally, claimant's mother recalled a previous OAH fair hearing that "turned into a mediation" during which the ALJ instructed claimant's parents and FNRC to cooperate and collaborate on compiling the relevant mileage reimbursement documentation.

## **Analysis**

### **CLAIMANT'S REQUEST FOR BACK PAY FOR CLAIMANT'S PARENTS**

#### **Retroactive PA Hours (May 2020 – June 2022)**

33. As noted in the NOPA, FNRC seeks to deny claimant's request for retroactive payment because the request does not meet legal requirements, parents/conservators are "natural supports" who should not be paid for care, and the request is not a cost-effective use of public funds and may be considered a gift of public funds.

34. Claimant's parents, who are also his conservators, qualify as natural supports. (Welf. & Inst. Code, § 4512, subd. (e).) However, FNRC did not prove their status as natural supports forbids their employment and payment for PA hours. To the contrary, Mr. Withers acknowledged FNRC's Executive Director made an exception and paid claimant's mother 40 hours per week and claimant's father occasionally for PA hours. FNRC's argument based on natural supports is therefore rejected.

35. In May 2021, FNRC agreed to increase claimant's PA hours from 240 per month to 42 per day. FNRC confirmed this would be retroactive to May 1, 2020. Although it argued at hearing that the increase was designed to attract and retain qualified personnel, and not to financially enrich claimant's parents, that reasoning is inconsistent with applying the increase retroactively. Indeed, FNRC knew at the time that claimant's parents had provided nearly all the PA hours. Furthermore, Mr. Withers confirmed he based the number of hours on two people providing care for 24 hours each day, minus six IHSS hours. That calculation is consistent with the reality: claimant's two parents were each providing 24-hour care, but claimant's father also collected six hours per day of IHSS funding. Based on those facts, it is evident that claimant's increased PA hours were calculated to ensure his parents were compensated for their time.

36. A different conclusion would be completely illogical. If claimant's parents cannot claim the retroactive PA hours, no one can. Claimant's parents cannot go back in time to hire PA staff and then use the retroactive PA hours to fund their services.

37. Neither in the NOPA nor at hearing did FNRC argue claimant's parents did not actually provide PA services for the hours claimed. In contrast, claimant's parents credibly testified that they spend nearly every minute of every day watching claimant and tending to his needs. Therefore, claimant established that his parents worked the hours claimed. As a result, claimant should receive payment for 42 PA hours per day from May 2020 through June 2022, less the number of hours for which they were already paid.

## **Appropriate PA Pay Rate for Claimant's Parents**

38. Claimant further requests that his parents should be compensated at the increased PA rate of \$32.68 retroactive to May 2020. This position is without merit. DDS's authorization to increase the pay rate clearly provided an effective date of December 15, 2021. Before that date, claimant's parents should be compensated at the rate that was effective at the time, which was \$16 after expenses.

39. However, from December 15, 2021, through June 30, 2022, claimant's parents should also be compensated at the original rate of \$16. The increased rate was designed to attract and retain qualified staff. Although it may have been necessary to increase the rate to attract other third-party employees, claimant's parents were willing to work for the original rate. Indeed, they did so for years. When selecting a service provider, FNRC must consider, among other things, the cost:

The cost of providing services or supports of comparable quality by different providers, if available, shall be reviewed, and the least costly available provider of comparable service, including the cost of transportation, who is able to accomplish all or part of the consumer's individual program plan, consistent with the particular needs of the consumer and family as identified in the individual program plan, shall be selected.

(Welf & Inst. Code, § 4648, subd. (a)(6)(D).)

40. Claimant's parents were willing to provide services at the rate of \$16 per hour. Therefore, paying them an increased rate is inconsistent with the legal requirement that FNRC select the least costly provider.

## **Back Pay Calculation**

41. As explained above, claimant is entitled to receive payment related to his parents' provision of PA services. The appropriate time frame is May 1, 2020, through June 30, 2022. The appropriate pay rate is \$16 per hour.

42. In total, claimant's parents worked 25,603.5 PA hours between May 1, 2020, through June 30, 2022, for which they were not already compensated. Multiplying \$16 per hour by 25,603.5 equals \$409,656. That is the amount FNRC shall pay claimant for his parents' uncompensated PA hours.

## **CLAIMANT'S PARENTS' REQUEST FOR TRAVEL REIMBURSEMENT**

43. Claimant's parents' request for travel reimbursement is rejected because this hearing is not the appropriate venue to pursue that claim. Fair hearings are meant to address the rights of "persons applying for or receiving services" pursuant to the Lanterman Developmental Disabilities Services Act (the Lanterman Act). (Cal. Code Regs., tit. 17, § 50900.) Vendors, on the other hand, are not entitled to a fair hearing. Rather, a different portion of the DDS regulations governs vendors' rights and appeals. (Cal. Code Regs., tit. 17, § 54380 et seq.)

44. Here, claimant is the party, and his right to reimbursement for services he received is the appropriate focus of his fair hearing. His parents, in their capacity as vendors for travel services, are not a party to this hearing and must pursue other legal remedies, if any, to seek reimbursement for their travel expenses.

## LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700–4716.)

2. The Lanterman Act outlines the regional center’s responsibility for providing services and supports for eligible persons with developmental disabilities to enable them to “approximate the pattern of everyday living available to people without disabilities of the same age.” (Welf. & Inst. Code, § 4501.) An “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . to support their integration into the mainstream life of the community . . . [and to] prevent dislocation of persons with developmental disabilities from their home communities.” (*Ibid.*) Additionally, “[i]t is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.” (*Ibid.*)

3. “It is the intent of the Legislature that regional centers shall find innovative and economical methods of achieving the objectives contained in individual program plans of persons with developmental disabilities.” (Welf. & Inst. Code, § 4651, subd. (a).) “In order to achieve the stated objectives of a consumer’s individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following . . . If necessary to expand the availability of needed services of good quality, a regional center may take actions that include, but are not limited to, the following: . . . Using creative and innovative service delivery models, including, but not limited to, natural supports.” (Welf. & Inst. Code, § 4648, subd. (e).) “Natural



supports” are “personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.” (Welf. & Inst. Code, § 4512, subd. (e).)

4. Here, claimant seeks retroactive back pay for his parents’ provision of PA hours from May 1, 2020, through June 30, 2022. He also requests that the rate of back pay be \$32.68. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to the funding sought. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, claimant must prove it is more likely than not that he is entitled to the relief sought. (*Lillian F. v. Superior Ct.* (1984) 160 Cal.App.3d 314, 320.)

5. As discussed above, claimant established he is entitled to receive back pay for his parents’ provision of PA hours from May 1, 2020, through June 30, 2022, at the rate of \$16 per hour. FNRC agreed that claimant was entitled to that level of care, and claimant’s parents were the only, and most cost effective, provider available for that service. FNRC did not prove that claimant’s parents’ status as natural supports prevent them from being paid for their care in this case. As a result, FNRC shall be

required to pay claimant \$409,656 for the 25,603.5 PA hours his parents worked between May 1, 2020, and June 30, 2022, at the rate of \$16 per hour.

## **ORDER**

Claimant's appeal is granted. Far Northern Regional Center shall pay claimant \$409,656 for the 25,603.5 PA hours his parents worked between May 1, 2020, and June 30, 2022. Claimant's parents' request for reimbursement of travel expenses is denied without prejudice to their rights to seek relief, if any, in an appropriate forum.

DATE: July 14, 2023

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Section 4713 of the Welfare and Institutions Code within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**FAR NORTHERN REGIONAL CENTER, Service Agency.**

**OAH No. 2022120242**

**ORDER ON APPLICATION FOR RECONSIDERATION**

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a decision in this matter on July 14, 2023. On July 28, 2023, Far Northern Regional Center (FNRC) applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713. FNRC submitted the application for reconsideration to Case Center, OAH's electronic evidence platform. The application was submitted within 15 days of the final decision and was served on claimant, but was not filed with OAH or served on the Department of Developmental Services (DDS). The undersigned hearing officer did not hear the matter or write the decision for which reconsideration is requested.

Case Center is used to allow the parties to upload hearing exhibits so that the parties, hearing officer, and witnesses may access them during hearing. Following a decision's issuance, the matter in Case Center is not monitored. There has been no

change in OAH's policy for filing motions through OAH's secure file transmitter. On August 21, 2023, FNRC inquired of OAH regarding a ruling on the application for reconsideration. The application was not filed with OAH, but was discovered in Case Center after FNRC's inquiry.

The application was not properly filed with OAH nor properly served on DDS, as required under Welfare and Institutions Code section 4713. Consequently, the application may be dismissed as procedurally faulty. In the interest of fairness and recognizing applications for reconsideration are the result of a recent legislative change, the following determination is made.

A party may request reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). Here, FNRC seeks reconsideration to correct a mistake of fact, namely that the decision does not account for payments FNRC approved and that were paid to claimant's parents between February 1, 2022, and June 30, 2022. FNRC asserts claimant's parents were paid for 1,790 personal assistant hours through Mains'l, a third-party employer. To support this argument, FNRC cited to the decision, at paragraph 12. That paragraph determined FNRC switched from third-party employer Allevery to Mains'l "in approximately February 2022 ... until July 1, 2022."

FNRC attached a declaration from Larry Withers, FNRC Associate Director, dated July 27, 2023. Mr. Withers declared: "True and correct copies of the proof of [claimant's parent's] employment payment inquiries generated by Mains'l are ...attached." These "employment payment inquiries" purportedly show payments to claimant's parents between April 26, 2022, and June 26, 2023. The reports were dated as having been printed on July 25, 2023.

On August 2, 2023, claimant filed a written statement opposing the application. Claimant argued there was no mistake of fact and that any evidence presented after hearing should be excluded. Even if Mr. Withers's declaration and attachments were considered, claimant argued they do not support an alleged mistake of fact.

## **ANALYSIS**

Welfare and Institutions Code section 4713, subdivision (b), allows a party to apply to OAH for reconsideration of a final decision to correct "a mistake of fact or law, or a clerical error in the decision." Additionally, the application "shall state the specific grounds on which the application is made." FNRC argued the decision miscalculated the hours Mains'l paid claimant's parents based on new evidence attached to the application. FNRC did not cite to any document in the record to support its calculation. The information to support the hearing officer's "mistake of fact" was not before the hearing officer at the time of hearing. Additionally, the new evidence shows payments made starting on April 26, 2023, with no mention of payments starting on February 1, 2022.

Additionally, the decision calculated hours that remained unpaid to claimant's parents and considers hours paid via Mains'l when Mains'l was retained. There is no evidence in the record, nor did FNRC refer to any in its application, that claimant's calculation of unpaid hours was inaccurate.

For these reasons, the application for reconsideration must be denied.

## **ORDER**

The application for reconsideration is DENIED.

DATE: August 25, 2023

HEATHER M. ROWAN

Presiding Administrative Law Judge

Office of Administrative Hearings