

**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. 2023020243

DECISION

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 4, 2023, by videoconference.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant's mother (Mother) represented claimant. Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and his family.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 4, 2023.

ISSUES

1. Should NLACRC fund claimant's request for a down payment and mortgage on a house?
2. Should NLACRC reimburse claimant for respite expenses from July 2022 to February 2023?

EVIDENCE

Documentary: Exhibits 1 through 29; A and B.

Testimonial: Laurie Kosor, NLACRC Consumer Services Coordinator (CSC); Esteban Aldana, NLACRC CSC; Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 33-year-old conserved male who qualifies for regional center services under the category of Mild Intellectual Disability. He lives at home with Mother.
2. On January 17, 2023, claimant filed a request for a fair hearing appealing NLACRC's denial of his request to fund a down payment and mortgage on a residential home.

3. Although claimant did not request reimbursement for respite expenses for the period of July 2022 to February 2023 in his fair hearing request, the parties agreed to include the issue of respite reimbursement as a part of this fair hearing.

Claimant's Individual Program Plan

4. Claimant's most recent individual program plan (IPP), dated January 25, 2022, contains Service Agency's and claimant's agreements, sets forth specific objectives and goals, and identifies the services and supports to achieve them. It also describes claimant's needs and behaviors.

5. As set forth in the IPP, claimant is unable to walk steadily by himself, and he needs assistance with most self-care skills, including showering and shaving. Claimant needs prompting to toilet but very rarely needs assistance in that task. Although claimant is unable to cook any meals, he can prepare simple snacks. Claimant is unable to do the laundry, but he assists with folding. Claimant occasionally displays aggressive behavior, including outbursts, physical aggression, and verbal altercations with strangers in the community. Claimant also has a history of elopement. Claimant has limited safety awareness and requires supervision at all times to ensure his safety.

6. According to the IPP, NLACRC funds up to 338 hours per month of personal attendant care for claimant. In addition, claimant's family receives 272 hours of In-Home Supportive Services.

Claimant's Request for Down Payment and Mortgage

7. Mother has lived with claimant in a rented house using a Section 8 housing subsidy from the United States Housing and Urban Development (HUD). In

August 2018, Mother first requested NLACRC to help her purchase the house by funding a down payment and subsequent mortgage payments. Claimant's CSC in 2018, Lori Kosor, denied this request, on the grounds that the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code (all further references are to the Welfare and Institutions Code, unless otherwise designated), § 4500 et seq.) prohibits regional centers from funding or developing real estate properties for residential housing. (§ 4688.5, subd. (f).) On October 9, 2018, CSC Kosor issued a Notice of Proposed Action (NOPA) denying claimant's request for a down payment and subsequent mortgage payments on a future home. (Ex. 2, p. A16.)

8. Claimant's request for a down payment and mortgage payments was again documented in 2021, as a part of his 2021 IPP Progress Report. In this report, claimant's current CSC, Esteban Aldana wrote:

[Mother] asked if NLACRC could provide assistance with a down payment to purchase a home. CSC reiterated previous CSC's comments regarding NLACRC's inability to fund assistance with purchasing a home or paying rent, and encouraged her to look into the HUD's Section 8 Homeownership Voucher Program, and discussed CalAble account eligibility for possibly saving for a down payment. The family continues to utilize Section 8 benefits to assist with housing. Discussed ILS [Independent Living Services] services as mother would like assistance with transferring Section 8 to her son's name, or establishing Section 8 assistance for her son so that in the future ILS can help with independent living.

(Ex. 5, p. A49.)

9. NLACRC subsequently funded and conducted an ILS assessment of claimant through Creative Minds on August 15, 2022. However, claimant has not initiated any ILS because Mother has refused to sign an ILS goals agreement with Creative Minds.

10. At claimant's most recent IPP Annual Review on January 24, 2023, his request for a down payment and mortgage payments was again reviewed. CSC Aldana noted in his IPP Progress Report dated February 14, 2023, that he reviewed with Mother CSC Kosor's 2018 NOPA denying claimant's previous request for a down payment and mortgage payments on a house. CSC Aldana wrote, "[Mother] was asked if she understood the details [of the 2018 NOPA] reviewed and why NLACRC cannot assist with funding for a down payment mortgage payments. [Mother] verbally acknowledged that she understood." (Ex. 9, p. A83.)

Claimant's Request for Reimbursement of Respite Expenses

11. NLACRC previously approved claimant for parent conversion respite, where the parent could choose her own caregiver, at the rate of 28 hours per month, through Accredited Services. In 2021, claimant's previous caregiver stopped providing services, and Mother selected a new caregiver. However, before Accredited Services could pay Mother's new preferred caregiver, the caregiver must complete an application process, which includes the submission of a First Aid certification. Accredited Services also informed Mother that it could not pay any caregiver until the application process was complete. (Ex. 16, p. A206.) It warned Mother that if she were to use the caregiver before the completion of the application process and hiring by Accredited Services, Mother would have to pay for the caregiver out of pocket. (*Ibid.*)

12. However, Mother's preferred caregiver did not submit her First Aid certification and complete her application with Accredited Services. By January 2022, Mother no longer wished to continue with respite services, and the authorization for respite services was terminated with Mother's consent.

13. On July 8, 2022, Mother notified CSC Aldana she wished to resume respite services with her new preferred caregiver. In an IPP Addendum dated July 11, 2022, NLACRC approved the respite to start effective July 18, 2022. (Ex. 8, p. A74.) In the same IPP Addendum, NLACRC also clarified that it could not retroactively reimburse claimant for any respite services provided before Accredited Services hired Mother's preferred caregiver. (*Ibid.*) To be hired by Accredited Services, the preferred caregiver had to, once again, undergo the application process before she could be paid. Because the preferred caregiver was experiencing challenges relating to the submission of required documents with Accredited Services, CSC Aldana suggested to Mother that she could use one of Accredited Services pre-approved caregivers, but Mother refused this offer. At no time did Mother inform CSC Aldana that she intended to pay for her preferred caregiver out of pocket while the caregiver was undergoing the application process with Accredited Services. Mother's preferred caregiver did not submit her First Aid Certification and complete her application with Accredited Services until February 7, 2023, when the agency officially hired the caregiver.

Mother's Testimony

14. At the hearing, Mother testified that regional center offered to put her son in a group home. She questioned why NLACRC is willing to fund a group home for claimant but not a residential home. Mother expressed her desire to maintain claimant in his current home. Mother stated that she was a victim of domestic violence in her home country of Moldova, but she now feels victimized by the government in this

country. Regarding her request for reimbursement of the respite expenses, Mother asserted that it was not her fault the caregiver did not submit the correct paperwork to Accredited Services.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that Service Agency is required to fund a down payment and mortgage payments and to reimburse him for respite expenses from July 2022 to February 2023. (Evid. Code, § 115.) Claimant has not met his burden.

Applicable Law

2. 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 § 4620.)

3. 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.” (§ 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.” (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*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.)

4. As set forth in 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.

5. However, a regional center is required to identify and pursue all possible funding sources for its consumers from generic resources, and to secure services from generic sources where possible. Section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate. . . .

6. Section 4648, subdivision (a)(8), also provides:

Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

7. Section 4688.5, subdivision (f), states:

(f) The regional center shall not be eligible to acquire or develop real property for the purpose of residential housing.

Disposition

REQUEST FOR DOWN PAYMENT AND MORTGAGE PAYMENTS

8. Here, claimant requests a down payment and mortgage payments to purchase a residential house. However, owning a house is not a “specialized service” within the meaning of section 4512, subdivision (b). Home ownership is a generic service, same as those that are available to the general public. (See § 4646.4, subd. (a)(2).). Claimant is also already receiving housing support through a generic resource, specifically HUD’s Section 8 subsidy. Furthermore, the Lanterman Act prohibits regional center from acquiring real estate for the purpose of residential housing. (§ 4688.5, subd. (f).) Under these circumstances, claimant’s request for down payment and mortgage payments on a house must be denied.

REQUEST FOR REIMBURSEMENT OF RESPITE EXPENSES

9. Ordinarily, services are provided to the consumer through the IPP process. (§ 4646.5.) The process of creating an IPP, by its nature, is collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives, and other appropriate participants. (§§ 4646, 4648.) If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (§ 4646, subd. (g).) 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.” (§ 4646, subd. (g).) 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.

10. In this case, there is no evidence of an agreement by NLACRC during the IPP process to pay retroactive reimbursement of respite expenses while Mother’s preferred caregiver underwent the application process with Accredited Services. Mother was given notice that her preferred caregiver must complete Accredited Services’ application process before she could be hired and paid as a respite worker. NLACRC also memorialized in the July 11, 2022 IPP Addendum that it would not retroactively reimburse Mother for out-of-pocket expenses before her preferred caregiver was hired by Accredited Services. Despite these notices, however, Mother unilaterally paid for her preferred caregiver out-of-pocket while the caregiver failed to submit her First Aid certification to complete her application with Accredited Services.

Under these circumstances, claimant's request for reimbursement of respite expenses from July 2022 to February 2023 must also be denied.

ORDER

1. Claimant's appeal is denied.
2. North Los Angeles County Regional Center shall not be required to fund claimant's request for a down payment and mortgage payments on a residential house.
3. North Los Angeles County Regional Center shall not be required to fund claimant's request for reimbursement of out-of-pocket respite expenses from July 2022 to February 2023.

DATE: 04/18/2023

JI-LAN ZANG

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 Welfare and Institutions Code section 4713 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.

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OFFICE OF ADMINISTRATIVE HEARINGS
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In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2023020243

ORDER DENYING CLAIMANT'S APPLICATION FOR RECONSIDERATION

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a final decision in this matter on April 18, 2023, which was served on the parties on April 23, 2023.

On May 8, 2023, Claimant's authorized representative applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713 (application). The application was timely submitted. Claimant gave appropriate notice of the application to Service Agency and the Department of Developmental Services (DDS).

The undersigned hearing officer, who did not hear the matter or write the decision for which reconsideration is requested, was assigned to decide the application.

Pursuant to Welfare and Institutions Code section 4713, subdivision (b), a party may apply for 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, Claimant applies for reconsideration on the grounds that the ALJ made an error of fact or law in her decision which must be corrected. Specifically, Claimant contends the ALJ misinterpreted the application to this case of Welfare and Institutions Code section 4688.5, subdivision (f).

On May 11, 2023, Service Agency filed an opposition to the application, arguing Claimant did not sufficiently explain the error made by the ALJ and, in any event, the ALJ correctly applied the statute in question, in combination with the other statutory authority she relied on in denying Claimant's service request in question.

ANALYSIS

There were two issues decided in the decision. The issue relevant to the application was the request by Claimant's authorized representative for Service Agency to provide funding for a down payment and mortgage payments to purchase a home for Claimant to live in.

Legal Conclusion 8 of the Decision addressed this request as follows:

Here, claimant requests a down payment and mortgage payments to purchase a residential house. However, owning a house is not a "specialized service" within the meaning of section 4512, subdivision (b). Home ownership is a generic service, same as those that are available to the general public. (See § 4646.4, subd. (a)(2).) Claimant is also already receiving housing support through a generic resource, specifically HUD's Section 8 subsidy. Furthermore, the Lanterman Act prohibits regional center from acquiring real estate for the purpose of residential housing. (§ 4688.5, subd. (f).) Under these circumstances, claimant's request for down payment and mortgage payments on a house must be denied.

In Legal Conclusion 7, the ALJ cited verbatim Welfare and Institutions Code section 4688.5, subdivision (f): "The regional center shall not be eligible to acquire or develop real property for the purpose of residential housing."

The remainder of section 4688.5 allows three specifically named regional centers in the Bay Area to fund residential leases for consumers under specific circumstances. This statute signals the clear Legislative intent that regional centers are prohibited from providing funding for consumers to purchase residential housing.

Based on the above, the ALJ correctly interpreted section 4688.5, subdivision (f), as legal support for denying Claimant's request for Service Agency to fund the purchase of a home for Claimant. As Service Agency correctly points out in its opposition, the ALJ also relied on other statutory authority to deny this part of Claimant's appeal, which is not mentioned in Claimant's application.

For these reasons, the application must be denied.

ORDER

Claimant's application for reconsideration of the final decision is DENIED.

IT IS SO ORDERED.

DATE:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings