

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

In the Matter of:

CLAIMANT,

v.

GOLDEN GATE REGIONAL CENTER, Service Agency.

DDS No. CS0006224

OAH No. 2023050750

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on July 3 and 6, 2023, by videoconference.

Claimant's conservator, her mother, appeared for claimant.

Lisa Rosene, Director of Regional Center Services, represented service agency Golden Gate Regional Center.

The matter was submitted for decision on July 6, 2023.

ISSUES

Must Golden Gate Regional Center (GGRC) increase or modify its efforts to locate a suitable residence and daily activities for claimant?

If so, in what manner must GGRC increase or modify those efforts?

FACTUAL FINDINGS

1. Claimant was born in early 1999. She is eligible under the Lanterman Developmental Disabilities Services Act (the Lanterman Act, Welf. & Inst. Code, § 4500 et seq.) for services from GGRC because she is substantially disabled by autism spectrum disorder and intellectual disability.

2. Claimant is conserved. Although her mother is claimant's sole conservator, claimant's mother consults claimant's father regarding major decisions for claimant.¹

3. In May 2023, claimant requested a hearing regarding the adequacy of GGRC's efforts to fulfill claimant's Individual Program Plan (IPP).

¹ Claimant's parents are no longer married. Her father lives on the east coast of the United States.

Claimant's Needs and Current Living Circumstances

4. Claimant is of average height, and of above-average weight for her height. She is fully ambulatory and can converse fluently.

5. Claimant currently lives alone, in an apartment. She needs assistance to nourish herself properly, to attend to her personal hygiene, to do housework, to take her medications correctly, and to manage her income and expenses.

6. Claimant is usually incontinent of urine, and wears incontinence pads or adult diapers in most settings. She can replace these absorbent items herself after she has urinated, but sometimes needs prompting to do so.

7. Despite experiencing chronic constipation, claimant is occasionally incontinent of feces. Claimant's mother characterizes claimant's bowel incontinence as rare "accidents," and believes that GGRC staff members have overstated the extent of claimant's bowel incontinence in describing claimant to prospective service and housing providers. Overall, however, the evidence does not show that GGRC staff members have described claimant inaccurately to prospective service or housing providers with respect to bowel incontinence.

8. In 2022 and 2023, claimant has experienced numerous urinary tract infections, some severe enough to require hospitalization. Claimant's mother believes reasonably that these infections have recurred because claimant's caregivers have not provided as much personal hygiene support to claimant as she needs.

9. Claimant's neurological disorders include a sleep disorder. She sometimes becomes extremely sleepy during the daytime and drops into sleep. If

someone or something wakes her abruptly, she becomes angry and sometimes violent. The evidence includes two recent examples of this behavior.

a. In February 2022, claimant accompanied one of her caregivers on an outing, in the caregiver's car. Claimant fell asleep. The caregiver woke claimant, who erupted in such rage that she kicked at and shattered the car's windshield.

b. In June 2022, claimant fell asleep in a bathtub at her home.² When her caregiver woke her, claimant banged her own head on the bathtub and threw items at the caregiver.

10. The evidence also includes a few recent examples of harm to others by claimant unrelated to sleep.

a. Claimant's mother reported to claimant's GGRC case manager, social worker Wendy Nauman, in May 2022 that claimant had hit her. She made a weekend report to the same effect to an on-duty GGRC social worker in August 2022.

b. In October 2022, claimant fought with her mother and broke her mother's wrist.

c. While claimant was hospitalized in May 2023, hospital staff members reported to one of claimant's social workers that claimant had pinched them.

11. Claimant directs most, but not all, of her aggression toward her mother. Claimant's mother believes that claimant's aggressive behavior escalates when

² Claimant had been bathing before falling asleep, but the evidence is in conflict as to whether claimant was sleeping while submerged in water.

claimant has a urinary tract infection, and that if claimant's hygiene improved to the extent necessary to prevent her from experiencing such infections her behavior also would improve. In light of all evidence, these beliefs are reasonable.

12. Because of the matters stated in Finding 11, claimant's mother believes that GGRC staff members have overstated the extent of claimant's capacity for aggression or violence in describing claimant to prospective service and housing providers. Overall, however, the evidence does not show that GGRC staff members have described claimant inaccurately to prospective service or housing providers with respect to claimant's capacity for aggression or violence.

13. Claimant attends recreational activities for developmentally disabled adults a few times each month. Her mother testified that claimant attends such events alone (with her mother providing transportation but waiting outside for claimant) and has never exhibited maladaptive behavior in this context. Aside from these activities, claimant has few opportunities for social activity with peers,³ because she does not work or participate in any adult day program.

14. Claimant's current apartment is near the top of a hill, at some distance from the closest stores and community services. For this reason, she cannot easily walk

³ Claimant does use social media. Her IPP notes that she is "reportedly 'addicted' to her phone," and that being asked to put it away "can be a trigger for her, leading to negative behavior." The evidence did not establish whether claimant's mother or anyone else restricts or monitors claimant's social media activity or relationships, but her caregivers have reported to GGRC that claimant sometimes uses social media in ways that are dangerous for herself or others.

or ride her tricycle to access these community amenities. Claimant would need transportation assistance to leave her apartment for community engagement.

GGRC's Efforts to Identify Alternatives for Claimant

15. Nauman has been claimant's case manager for between two and three years. With assistance from other GGRC staff members, from staff members at the state Department of Developmental Services (DDS), from local social workers and advocates working at other governmental and private agencies, and from staff members at other statewide regional centers, Nauman has attempted throughout her tenure as claimant's case manager to locate housing, personal assistance, and daily activity opportunities for claimant that would be likely to be effective in meeting the needs claimant's IPP identifies. These sustained efforts, summarized below in Findings 16 through 55, have been reasonable.

PERSONAL ASSISTANCE AT HOME AND FOR TRANSPORTATION

16. To live alone safely, claimant requires personal support, for the reasons summarized in Finding 5. Claimant's mother provides significant support for claimant, but claimant needs more personal support than claimant's mother reasonably can provide.

17. Starting in September 2021, claimant received personal assistance in her home from caregivers employed by Opportunity for Independence (OFI). By early 2022, claimant's mother was dissatisfied with OFI's service, because OFI was unable to provide reliable, consistent staffing for claimant.

18. On June 23, 2022 (a few days after the bathtub incident summarized above in Finding 9.b), OFI's executive director notified claimant's mother by email that

OFI would cease serving claimant effective July 24, 2022. This notice stated that OFI was "unable to fulfill [claimant's] needs." As supporting reasons, OFI cited "new aggressive behaviors towards staff" by claimant, as well as claimant's apparent lack of desire to "pursue her Individualized Service Plan goals."

19. Claimant's mother contacted another GGRC vendor agency in July 2022 as a potential replacement for OFI. In August 2022, that agency declined to accept claimant as a client, telling Nauman that this decision reflected a "conflict in expectations between family and agency."

20. Nauman referred claimant to a different GGRC vendor in August 2022. This vendor also declined to accept claimant as a client.

21. Nauman then referred claimant to two other GGRC vendors. One of these vendors, Heart of Humanity (HoH), was capable of supplying occasional nursing care, as well as non-nursing caregivers who would provide both daytime and nighttime personal assistance. The other vendor, Maxim Healthcare Services, was capable of supplying caregivers who would not only help claimant with activities of daily living but also attempt to help her change her behavior to increase adaptive behavior such as exercise and peer socialization and decrease maladaptive behavior such as aggression or self-injury.

22. Claimant's mother spent about two months discussing claimant's potential services with HoH before ultimately declining HoH's services. Claimant's mother explained this decision to Nauman as resting on claimant's religious objection to having male caregivers who were not family members. (Claimant is Muslim and female, and the caregivers HoH proposed were male.)

23. Staff members from Maxim Healthcare Services began working with claimant in late 2022. They were unable to persuade claimant to go out with them into the community on foot, and unwilling to drive her in their personal cars. Because the Maxim Healthcare Services caregivers did not help claimant socialize, claimant's mother cancelled their services in February 2023.

24. Claimant's mother has received GGRC approval to serve as the vendor for claimant's personal assistance and transportation services. Because claimant's mother believes reasonably that low wages are one reason claimant's various service providers have been unable to provide reliable, consistent care, she has proposed to offer higher wages than the standard wages DDS has approved for similar care. A GGRC staff member has helped claimant's mother formulate this request, but as of the hearing date DDS had not approved it.

DAY ACTIVITY PROGRAM

25. Because claimant lives alone, Nauman and claimant's mother have attempted to identify an adult day activity program where claimant would be able to socialize safely with peers more frequently and regularly than she does through the occasional social events described in Finding 13.

26. OFI offers a day program. While OFI employees provided in-home assistance to claimant, they were unable to interest claimant in attending OFI's program. A few months after OFI withdrew personal assistance services to claimant, OFI's day program administrators also notified Nauman that OFI would not accept claimant into OFI's day program.

27. At claimant's mother's request, Nauman referred claimant to another local adult day program in October 2022. Nauman informed this program's

administrators specifically about the windshield-kicking event described above in Finding 9.a, because she believed they needed this information to assess whether program staff members could serve claimant safely if claimant fell asleep during a group outing or while at the day program site. Claimant's mother believes that Nauman should not have shared this information with this program's administrators, but this belief is unreasonable. The program's administrators declined to accept claimant.

28. Nauman also referred claimant in October 2022 to a local adult day program that serves clients, such as claimant, who require close supervision as well as support for behavioral change. Claimant is on the program's long waiting list.

29. In January 2023, Nauman referred claimant to another local adult day program. The program's administrators declined to accept claimant.

30. In February 2023, Nauman referred claimant to another adult day program at a greater distance from claimant's home. The program's administrators declined to accept claimant, on the ground that claimant needed more supervision and behavioral support than the program's staff would be able to provide.

31. In April 2023, Nauman referred claimant to a new day program that recently had become a GGRC vendor. The program's administrators declined to accept claimant.

32. Nauman knows of no day activity program in Marin County that would be potentially suitable for claimant, but to which GGRC staff members have not referred claimant.

ALTERNATIVE HOUSING

33. Claimant's mother believes reasonably that a different housing arrangement would be likely to address some or all of claimant's unmet needs.

More Suitable Apartment

34. Nauman and claimant's mother have attempted to find a different apartment for claimant where she could walk or cycle more easily to community activities, or where she might have better social opportunities.

35. Claimant's income is extremely low. She cannot afford to rent or buy a market-rate residence in her current community, which is one of California's highest-cost housing markets. Rental housing that would be affordable to claimant at her extremely low income is rare.

36. Claimant receives a rent subsidy through GGRC for her current apartment. She subleases her current apartment from a GGRC housing services vendor that serves as the master lessee for multiple GGRC consumers who receive rent subsidies, but this vendor is unwilling to lease a new apartment for claimant and has not identified any vacancies suitable for claimant among the apartments the vendor already leases. GGRC can subsidize claimant's rent for a market-rate residence only by paying a GGRC vendor, but GGRC has not identified any local landlords who are willing to accept rent subsidies for GGRC consumers directly from GGRC by becoming GGRC vendors.

37. OFI operates a subsidized supportive apartment complex for adults with developmental disabilities. In May 2022, an OFI staff member told Nauman that OFI

did not believe claimant was a suitable candidate to live in this complex, because of her occasionally aggressive behavior.

38. Because of the challenges summarized in Findings 35 through 37, the effort to find a new apartment for claimant has been unsuccessful. The evidence does not identify any additional action GGRC reasonably can take to overcome any of these challenges, however.

Group Residential Facility

39. In early 2020, claimant lived for a few weeks in a group supportive living home. Her disruptive behavior on the first day caused conflict with another resident and the resident's family. Claimant left this home after a second incident involving disruptive, violent behavior that caused staff members to call for emergency assistance.

40. DDS operates several group homes, known as STAR (Stabilization Training Assistance Rehabilitation) homes, for developmentally disabled adults who need specialized services to address behavioral crises. In addition to housing, STAR homes offer professional staff support for residents to eliminate behavior that creates risks for themselves and others. Residents typically stay in STAR homes for several months, although the program's goal is to resolve crises and prepare residents to live safely in the general community.

41. In light of all the matters stated in Findings 5 through 11, 26 through 31, 39, 43, 46 through 48, and 51, and based on her professional experience, Nauman believes that a STAR home would be an excellent interim placement for claimant. This opinion is reasonable and persuasive.

42. Claimant's prior GGRC case manager referred claimant to the STAR program in early 2020. A STAR placement became available for claimant in March 2020 (just before the onset of the COVID-19 pandemic), but claimant's mother declined it due to concerns about the home's desert location.

43. In late 2020, claimant attempted to move into a group home for adults with developmental and mental health disabilities. On the first day, she caused a disturbance and engaged in self-injurious behavior, and staff members asked her mother to remove her.

44. In late 2021, Nauman referred claimant to a group residence in San Mateo County. Administrators at this residence agreed in January 2022 to accept claimant for a one-month trial placement. Claimant's mother participated in several meetings with staff members from GGRC and the group home to plan for this trial placement, and set a tentative move-in date for February 1, 2022. During these meetings, the participants discussed specifically the fact that the home's other residents were men, and the prospect that male staff members would assist claimant with tasks other than intimate personal hygiene tasks. On January 24, 2022, however, claimant's mother declined this placement, telling Nauman that she had reconsidered after consulting claimant's father.

45. A few months later, claimant's mother asked Nauman again whether claimant could move into the group home described in Finding 44, but no vacancy then was available for claimant.

46. In May 2022, Nauman referred claimant for an opening at another group home for adults with developmental and mental health disabilities in San Francisco. This home's administrators filled this opening with another applicant. Another vacancy

occurred at this group home in late 2022. In January 2023, this home's administrators declined claimant, however, telling Nauman that they did not believe that claimant would be compatible with the other residents.

47. Nauman referred claimant to another group home in July 2022, but the home's administrators accepted someone else for the vacancy.

48. In August 2022, GGRC social worker Janika Jaramillo referred claimant to a group home. This home's administrators declined claimant, telling Jaramillo that they did not believe that claimant would be compatible with the other residents.

49. After the incident described above in Finding 10.b in which claimant broke her mother's wrist, Nauman again referred claimant to the DDS STAR program. Claimant's mother told Nauman that she would not consider moving claimant to Southern California, but would consider placing claimant at North STAR home, in the San Francisco Bay Area. On November 15, 2022, Nauman received confirmation that North STAR home would accept claimant as a resident.

50. Placement in a STAR home requires a court order committing the resident to the home. Such an order would not alter claimant's mother's authority as claimant's conservator to make decisions for claimant. GGRC staff members acted immediately to coordinate with staff members in the office of the Marin County District Attorney to prepare and file a petition for such an order and to schedule it for hearing in December 2022. In early December 2022, however, claimant's mother notified Nauman that she and claimant's father would oppose entry of a court order committing claimant to a STAR home. Because of their opposition, the court dismissed the petition and claimant did not move into North STAR home.

51. In late 2022, Nauman referred claimant for an opening at another group home. This home's administrators declined claimant, telling Nauman that they did not believe that claimant would be compatible with the other residents. They explained further that the other residents are older than claimant, and that some are medically fragile.

52. DDS also certifies Community Crisis Homes that offer services similar to STAR homes, but for shorter residential periods and without the necessity for a court order committing the resident to the home. In July 2022, Nauman referred claimant to a Community Crisis Home in San Benito County. The home had no vacancies at that time, but as of the hearing date claimant remains on the home's waiting list.

EFFORTS BEYOND GGRC AND ITS SERVICE AREA

53. For a few years, GGRC staff members have made regular inquiries to other regional centers in California about potential housing placements for claimant, stating that an appropriate placement would be a group home for adults with developmental disabilities and either mental health disabilities or behavioral challenges. These inquiries have not identified any vacancies for claimant.

54. During 2022 and 2023, claimant's mother has vacillated about where she would prefer claimant to live. At times, she has instructed GGRC staff members to explore only housing options that would permit claimant to remain in her current community, with easy access to her current medical providers. At other times, she has demanded that GGRC staff members explore placement options elsewhere in California, or criticized them for having failed to do so. At the hearing, claimant's mother testified that she would like GGRC staff members to look into potential residential placements for claimant outside California.

55. Numerous people from organizations other than GGRC have participated in efforts during 2022 and 2023 to improve claimant's living circumstances. These people include staff members in the Marin County District Attorney's office and Marin County Department of Health and Human Services, staff members at DDS, an attorney from Disability Rights Advocates, and staff members in the office of claimant's local California state senator.

LEGAL CONCLUSIONS

1. The Lanterman Act entitles claimant to an administrative fair hearing to review GGRC's service decisions. (Welf. & Inst. Code, § 4710 et seq.) Claimant bears the burden in this matter to prove that the Lanterman Act requires GGRC to alter its services in the manner she requests.

2. As summarized in Findings 5 through 14, claimant's current residential setting serves her poorly, because she does not receive sufficient support for personal hygiene and because she has few opportunities for social activity with peers or for community engagement.

3. As summarized in Findings 17 through 23, 26 through 32, and 34 through 52, however, the most significant obstacles to improving claimant's living circumstances are a shortage of qualified caregivers who are willing to serve claimant for the available wages, the local absence of any day activity program with staffing and services that the program's administrators believe necessary to serve claimant safely, and the statewide scarcity of group residential facilities with staffing and services that the facilities' administrators believe necessary to permit claimant and other residents to live safely together. GGRC has taken reasonable steps, as summarized in Finding 24,

to address the first obstacle by seeking approval from DDS for claimant to pay higher wages to people who provide personal assistance to her. The other two obstacles are not within GGRC's control.

4. Moreover, the matters stated in Findings 16 through 53 show that GGRC staff members have made consistent, reasonable efforts since 2020 to locate housing, personal assistance, and daily activity opportunities for claimant that would be likely to meet her needs more effectively than her current services do, but that either the prospective service providers or claimant have rejected every option that these staff members have identified. As summarized in Findings 22, 44 and 45, 50, and 54, claimant's mother has complicated these efforts by giving GGRC staff members conflicting information about her preferences for claimant, and by allowing claimant's father to influence decisions that claimant's mother has sole authority to make as claimant's conservator.

5. Most recently, as summarized in Finding 50, claimant's parents rejected a placement for claimant that is relatively near to claimant's current home, that provides services addressing claimant's most important but currently unmet needs, and that offers the possibility of preparing claimant for more successful supported community living in the future.

6. Because claimant has failed to demonstrate that different measures by GGRC would be likely to improve claimant's living circumstances, no relief is available to her through this hearing process.

ORDER

Claimant's appeal is denied.

DATE:

JULIET E. COX

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 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.

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

In the Matter of:

CLAIMANT

vs.

GOLDEN GATE REGIONAL CENTER, Service Agency.

DDS NO. CS0006224

OAH No. 2023050750

ORDER ON APPLICATION FOR RECONSIDERATION

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH), acting as a hearing officer, issued a decision in this matter on July 12, 2023. On July 19, 2023, claimant applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713. The application for reconsideration was timely submitted. Claimant was informed to notify both the Golden Gate Regional Center (Regional Center) and the Department of Developmental Services (DDS) about the request for reconsideration. The undersigned did not hear the matter or write the decision for which reconsideration is requested.

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, claimant seeks reconsideration on a claimed error of fact. Specifically, claimant states the grounds on which the application is made as follows: "Page 3, Item 7, [Claimant]'s doctor has submitted a letter confirming she does NOT have bowel incontinence, never has, and I'm requesting this be corrected on GGRC."

The Regional Center did not file an opposition to the application.

ANALYSIS

Claimant requested reconsideration to add that her doctor submitted a letter confirming that she did not and never has had bowel incontinence. The issue at the fair hearing was whether the Regional Center was required to increase or modify its efforts to locate a suitable residence and daily activities for claimant. The outcome at hearing was that the Regional Center has made consistent, reasonable efforts since 2020 to locate housing, personal assistance, and daily activity opportunities for claimant that would likely meet her needs more effectively than her current services, but that either the prospective service providers or claimant have rejected every option identified.

Claimant has not identified a mistake of fact; the Decision addressed the existence of her incontinence. The facts in the Decision included claimant's use of incontinence pads or adult diapers; her mother's characterization of claimant's rare bowel incontinence "accidents," and the need for assistance to attend to her personal hygiene. The Decision applied and analyzed the facts and law as presented at hearing.

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

ORDER

The application for reconsideration is DENIED.

DATE: August 2, 2023

REGINA BROWN

Presiding Administrative Law Judge

Office of Administrative Hearings