

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

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF ORANGE COUNTY,

Service Agency.

DDS No. CS0009071

OAH No. 2023081040

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 2, 2023.

Paula Gray, Manager of Fair Hearing and Mediations, represented the Regional Center of Orange County (RCOC or service agency). Mother represented Claimant, who was not present. Mother and Claimant are not identified by name to preserve their privacy and maintain confidentiality.

Central Area Manager Carmen Gonzalez, Housing Associate Director Jack Stanton, and Mother testified. Documents marked Exhibit 1 through Exhibit 11 and

Claimant Exhibit 1 through Claimant Exhibit 5 were received in evidence. Documents marked Exhibit 12 through Exhibit 18 were marked for identification only. The record closed and the matter was submitted for decision at the conclusion of the hearing.

In this matter, on October 9, 2023, ALJ Russell, in error, issued a "Proposed Decision" when a "Decision" should have been issued. That error is now corrected with the issuance of this Decision. There are no substantive changes.

ISSUE FOR DETERMINATION

Whether RCOC should fund supported living services (SLS) for Claimant.

FACTUAL FINDINGS

Jurisdictional Matters

1. Mother requested the service agency fund SLS supports for Claimant. The service agency informed Mother Claimant lives with her and SLS is available only to developmentally disabled individuals who are living independently.
2. The service agency did not provide Mother with any written notice informing Mother of any proposed action in connection with her SLS request.
3. On behalf of Claimant, on August 15, 2023, Mother filed a Fair Hearing Request, in which, among other things, Mother states Claimant "is prepared for Supported Living Services" and Claimant's "living situation is all set up." (Exh. 11.)
4. Thereafter, this hearing ensued.

Claimant's Background

5. Claimant is a 39-year-old consumer of RCOC based on his qualifying diagnoses of Intellectual Disability and Cerebral Palsy. Claimant has a Leigh syndrome diagnosis, a genetic condition affecting his central nervous system. He resides with Mother, who serves as conservator handling his affairs.

6. Claimant's level of Intellectual Disability is mild. Claimant presents with severe motor dysfunction, which significantly impairs or precludes activity. His speech is difficult to understand. He is non-ambulatory. Claimant has Dysphagia or difficulty swallowing but is nonetheless able to eat pureed or soft foods. He receives nutrients through a gastrostomy tube. Claimant requires assistance with his personal care needs. His lack of bladder control requires intermittent catheterization. He has no control over his bowels.

7. Claimant enjoys social and recreational activities, which include exploring his neighborhood in his wheelchair, watching his favored television programs, listening to music, and attending church. Claimant is enrolled in online reading and math classes offered at a community college. Claimant has no concept of safety. During waking hours, Claimant requires supervision at all times.

8. Currently, RCOC funds 566 hours per month of personal assistance services to assist Claimant with his personal care needs and independent living skills. Mother serves as the coordinator of Claimant's personal assistant services, which two caregivers, one during the week and another on weekends, provide from 9:00 a.m. to 9:00 p.m. daily. RCOC additionally funds 40 Access Demand Coupons per month for transportation services for Claimant to attend his medical appointments.

9. The Orange County Housing Authority, a generic resource, subsidizes the rental payments for Claimant's two-bedroom apartment with HUD vouchers. Medi-Cal, another generic resource, funds 261.04 hours per month of In-Home Supportive Services (IHSS) for Claimant. Mother serves as Claimant's IHSS provider. Claimant receives monthly disability benefits and supplemental income from the Social Security Administration.

10. Claimant's most recent Individual Program Plan (IPP), dated March 15, 2023, includes the following statement about Claimant's future unmet need for SLS supports.

Current Status

Both [Claimant] and his mother do not want [Claimant] to be placed in a group home permanently. [Claimant] wishes to continue living at home. His mother is currently in the process of obtaining her own apartment so [Claimant] can live independently. SLS will be explored so [Claimant] can remain living independently in his apartment. Mother is elderly and has her own health issues. She has trouble tending to [Claimant's] needs and feels she needs 24hr/day support.

(Exh. 1 at p. 9.)

11. The March 15, 2023 IPP sets a March 2024 target date for the "Desired Outcome" articulated as: "SLS agencies will be explored in order for [Claimant] to live independently." (Exh. 1 at p. 9.)

Mother's Testimony Regarding Request for SLS Supports

12. Mother is aging. She has chronic medical issues. Recently, she required surgery. It is becoming increasingly difficult for Mother to continue caring for Claimant. Mother anticipates setting up her own household separate from Claimant's but is hesitant doing so without SLS supports in place for Claimant.

13. At hearing, Mother testified, "I'm too old to handle everything." She asserted Claimant is medically fragile and "will not survive in a group home." Mother does not dispute the level of RCOC-funded and generic services currently provided to Claimant to meet his needs. Mother is concerned about "what would happen when I pass away." Mother wants "an administrative agency in place" to address Claimant's "future needs."

RCOC's Position

14. The RCOC maintains SLS supports for Claimant are disallowed as long as Mother and Claimant continue to reside together. Carmen Gonzalez, the RCOC's Central Area Manager, testified SLS supports "are intended to allow someone to stay in their own home, to live independently. The regional center cannot fund SLS for [Claimant] because he lives with his mother. If in the future he no longer lives with his mother, the regional center can fund for SLS." Ms. Gonzalez noted Claimant "currently has 24 hours of support for the day for all his needs under a different name" and the RCOC "wasn't able to gather any additional information to justify the [SLS] request." Ms. Gonzalez asserted the RCOC "is ready to consider any additional information."

15. Jack Stanton, the RCOC Housing Associate Director, whose responsibilities include overseeing SLS supports, also testified SLS supports are unavailable to Claimant. "He must be in his own home without a conservator. . . . If

[Mother] moves out we can look at SLS. [Claimant] can transition from personal assistant services to SLS.”

16. Mr. Stranton testified about the RCOC’s unsuccessful efforts to convene an informal meeting with Mother to address her concerns before she requested the hearing in this matter. Mr. Stranton noted his lack of understanding of the intricacies of Mother’s request for SLS supports but he nonetheless expressed a concern for “potential negative” outcomes. He testified, “SLS is not an emergent or crises service. So, if someone calls in sick, no one is available to assist with wheel-chair dependent [Claimant], for example.” Mr. Stranton urged convening “a transition meeting” for specifically addressing “any deficient areas,” “what SLS might look like in the future,” and “what is to happen in the event Mother becomes unavailable.”

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

Applicable Statutory and Regulatory Provisions

2. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institution Code section 4500, et seq., developmentally disabled persons have a statutory right to treatment and habilitation services and supports.

(Welf. & Inst. Code, §§ 4502, 4620, & 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community." (Welf. & Inst. Code, § 4501.)

3. Services and supports for persons with developmental disabilities are defined as "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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be 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. Services and supports listed in the individual program plan may include, but are not limited to, . . . supported living arrangements[.]" (Welf. & Inst. Code, § 4512, subd. (b).)

4. Regional centers play a critical role in the coordination and delivery of services and supports to persons with disabilities. (See Welf. & Inst. Code, § 4620 et seq.) This is because regional centers, among other things, develop and implement IPPs for the individual with developmental disabilities considering the needs and preferences of the individual and the family to promote community integration,

independent, productive, and normal lives as well as stable and healthy environments. Regional centers are additionally responsible for ensuring the provision of services and supports to individuals with disabilities and their families that are effective to meet stated IPP goals and reflect the consumer's preferences and choices. (See Welf. & Inst. Code, §§ 4646, 4646.5, 4647, & 4648.)

5. Title 17 of the California Code of Regulations, which implements the Lanterman Act, provides, "'Supported living arrangement' means the full array of the regional center-funded services and supports received by a SLS consumer, including SLS, day program, transportation, and all regional center services and supports." (Cal. Code Regs., tit. 17, § 58601, subd. (a)(7).) Furthermore, SLS is defined to mean "those services and supports a regional center-funded SLS vendor provides to promote consumers' efforts to live in their own homes and participate in community activities to the extent appropriate according to each consumer's interests and capacity in order to realize their individualized potential to live integrated, productive, and normal lives." (Cal. Code Regs., tit. 17, § 54302, subd. (a)(71).)

6. The components of SLS supports include but are not limited to: (1) assisting with common daily living activities such as meal preparation, including planning, shopping, cooking, and storage activities; (2) performing routine household activities aimed at maintaining a clean and safe home; (3) locating and scheduling appropriate medical services; (4) acquiring, using, and caring for canine and other animal companions specifically trained to provide assistance; (5) selecting and moving into a home; (6) locating and choosing suitable house mates; (7) acquiring household furnishings; (8) settling disputes with landlords; (9) becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community to the general public; (10) managing personal financial affairs; (11) recruiting,

screening, hiring, training, supervising, and dismissing personal attendants; (12) dealing with and responding appropriately to governmental agencies and personnel; (13) asserting civil and statutory rights through self-advocacy; (14) building and maintaining interpersonal relationships, including a Circle of Support; (15) participating in community life; and (16) 24-hour emergency assistance, including direct service in response to calls for assistance. This service also includes assisting and facilitating the consumer's efforts to acquire, use, and maintain devices needed to summon immediate assistance when threats to health, safety, and well-being occur. (Cal. Code Regs., tit. 17, § 58614, subd. (b).)

7. "A consumer shall be eligible for SLS upon determination through the IPP process that the consumer: (1) Is at least 18 years of age; (2) Has expressed directly or through the consumer's personal advocate, as appropriate, a preference for: (A) SLS among the options proposed during the IPP process; and (B) Living in a home that is not the place of residence of a parent or conservator of the consumer." (Cal. Code Regs., tit. 17, § 58613, subd. (a).)

Discussion

8. The requirement of an IPP process to determine Claimant's eligibility for SLS supports has yet to occur. Whether Claimant satisfies the "living in a home that is not the place of residence of a parent or conservator" requirement must be determined during and at the time of an IPP meeting in accordance with California Code of Regulations, title 17, section 58613, subdivision (a). Moreover, any services an SLS vendor is required to provide Claimant to meet his need for assistance with his daily living and routine household activities, access to medical services, and any and all other specific needs Claimant cannot meet unassisted must be determined during and

at the time of an IPP meeting. The parties have yet to convene an IPP meeting for determining Claimant's eligibility for SLS supports.

9. Based on Factual Findings 5 through 16 and Legal Conclusions 1 through 8, at this time, Claimant has not met his burden of establishing by a preponderance of evidence his entitlement to RCOC-funded SLS supports.

ORDER

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Pursuant to Welfare and Institutions Code section 4713, subdivision (b), either party may request in writing a reconsideration within 15 days of receiving the decision. Pursuant to Welfare and Institutions Code section 4712.5, subdivision (a), either party may appeal the decision to a court of competent jurisdiction within 180 days of receiving the decision.