

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER, Service Agency.

OAH No. 2023110920

DDS No. CS0010550

DECISION

Erlinda Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 5, 2024, at the Westside Regional Center (Service Agency or WRC) located in Culver City.

Claimant was represented by her mother (Mother), who is also her conservator. Claimant's co-conservator (Co-Conservator), who is a family friend, was also present. Claimant and her family members and conservators are identified by titles to protect claimant's privacy.

Service Agency was represented by Ron Lopez, IDEA Specialist.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on January 5, 2024.

ISSUES PRESENTED

The parties agreed the following two issues were presented for decision:

1. Should Service Agency fund The Ed Asner Family Center (TEAFC) Adult Day Program for claimant for the 2024 winter semester?
2. Should Service Agency fund Supported Living Services (SLS) for claimant?

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-11; claimant's exhibits A-D.

Testimonial: Kenny Lorenzen, Program Manager; Ron Lopez, IDEA Specialist; Mother; and Co-Conservator.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 27-year-old woman who is eligible for regional center services based on her qualifying diagnoses of moderate intellectual disability, autism, and seizure disorder. Claimant is a conserved adult. Mother and Co-Conservator are her conservators.

2. By a Notice of Action dated November 2, 2023, Service Agency notified Mother that her requests for additional months of reimbursement for TEAFC Adult Day Program, and for SLS, were denied. (Exh. 2, pp. A18 to A19.)

3. On November 4, 2023, Mother filed an appeal request, on claimant's behalf, to appeal Service Agency's denial of her funding request for TEAFC Adult Day Program and SLS. (Exh. 2, pp. A11 to A12.) This hearing ensued.

Claimant's Background

4. Claimant's Individual Program Plan (IPP) dated October 30, 2023, was presented at the hearing. (Exh. 4.)

5. Claimant currently resides four days per week in a group home funded by Service Agency. She spends weekends and one weekday at Mother's home. Claimant is "very happy living at" the group home and she "is fitting right in." (Exh. 4, p. A27.) Mother and claimant's biological father are divorced.

6. Claimant is verbal and ambulatory. She has some weakness in her right hand due to a stroke she had when she was very young. Claimant is social and enjoys being around people, but she tends to avoid eye contact when speaking with others. Claimant reportedly has adequate self-help skills. She can independently dress, bathe, feed herself, and use the toilet. Claimant performs household chores and can make simple meals and use a microwave oven. Claimant is unable to take public transportation independently. Mother feels claimant needs supervision when taking the bus.

7. Claimant graduated from high school in June 2018. She started attending West Los Angeles Special Services Program in August 2018. However, college was too academically challenging for claimant, so she decided not to return to school.

TEAFC Adult Day Program

8. TEAFC Academy operates the Adult Day Program that claimant currently attends five days per week. TEAFC Academy is a non-vendored service provider located in the catchment area of North Los Angeles Regional Center (NLARC). The cost of the TEAFC Adult Day Program is \$7,800 per month. The IPP states that claimant is "really enjoying" the TEAFC Adult Day Program, where she participates in creative writing, fitness, yoga, art, sex education, and counseling classes, and works at a Funko store two times per week. (Exh. 4, p. A29.)

9. In a previous appeal filed in February 2023, OAH case number 2023020722 (Previous Appeal), Mother appealed Service Agency's denial of her request for Service Agency to reimburse her for the cost of the TEAFC Adult Day Program, which Mother was privately funding.

10. While the Previous Appeal was pending, TEAFC Academy notified Service Agency by an email dated September 25, 2023, that its application to become vendored with NLARC was still in process. The email stated, in pertinent part:

Here is the status: [¶] we were told in late August we were vendored (after 9 months in the process)[:] than [*sic*] one week later we were told "that there would be a further investigation to see if we needed to be licensed" and a THIRD tour of our facility[:] as you can imagine we were

devastated as were many of our families who were waiting as your client is, for that vendor number[.]

We had a program that was due to start September 26 that we pushed a month and is now starting on October 16. However, because of this new status of complete uncertainty[,] we can't even get somebody on the phone to book this third tour[.]

So[,] unfortunately[,] the only way clients can pay for our programs is private pay, self determination funding or parental reimbursement, which doesn't have 100% reassurance to it.

(Exh. 11.)

11. On October 10, 2023, Service Agency and Mother signed a Notice of Resolution (NOR), stating they agreed to settle the Previous Appeal as follows:

[Service Agency] will reimburse claimant up to \$7800 per month for 3 months beginning October 2023 through December 2023 upon receipt of [proof of] claimant's payment to [TEAFC] Academy. If the program becomes a vendor of a regional center before December 2023 ends, reimbursement will stop. Claimant withdraws her request for hearing.

(Exh. 5.)

12. Pursuant to the NOR, Service Agency reimbursed Mother for the \$7,800 monthly cost of TEAFC Adult Day Program for the months of October, November, and December 2023.

13. As of this hearing, Service Agency has no further information regarding the status of the vendorization process for TEAFC Academy with NLARC.

14. In the present appeal, Mother contends Service Agency should fund the \$7,800 monthly cost of the TEAFC Adult Day Program for the 2024 winter semester, which runs from January 16 to April 5, 2024. (Exh. A.) Mother contends claimant is thriving in TEAFC Adult Day Program, which is designed specifically for young adults over age 22, like claimant. She notes the program has a full staff and provides a wide variety of services. Mother claims she has not found any other program that provides all of the services available in TEAFC Adult Day Program.

15. Service Agency contends it has other vendored resources that claimant can access for day program supports. (Exh. 2, p. A19.) At hearing, Service Agency presented no evidence of specific day programs it contends claimant could access from other vendored resources. Service Agency contends it funded TEAFC Adult Day Program for three months as an exception, to settle the Previous Appeal. TEAFC Academy is not yet vendored with any regional center but is in the process of becoming vendored with NLARC. Service Agency suggested to Mother the option of transitioning claimant to the Self-Determination Program (SDP), which is an alternative model of service delivery that could potentially fund TEAFC Adult Day Program for claimant. (Welf. & Inst. Code, § 4685.8.) Claimant could access the TEAFC Adult Day Program if she transitions to the SDP. Service Agency provided Mother with information regarding the SDP, including a proposed budget. According to Service Agency, Mother indicated she was not interested in pursuing SDP.

16. At hearing, Mother disputed Service Agency's claim that she is not interested in the SDP. Mother testified she is interested in pursuing the SDP for claimant and the SDP is a priority for her. In October 2023, Mother contacted an independent facilitator to begin the process of transitioning claimant to the SDP. (Exh. D.) The independent facilitator, Julie Larose of Path Forward Facilitation, informed Mother her company could not begin working with claimant until January 2024 and it would be with one of Ms. Larose's other facilitators. (Exh. D, pp. B5 to B6.) Ms. Larose informed Mother in an October 25, 2023 email: "Unfortunately, each step in the [SDP] process takes time (not just the PCP [person-centered plan] and getting the budget) and as previously stated, I do not have anyone on my team that currently has capacity to add another client to their caseload. [¶] Also keep in mind, that even if we did start today, it would be extremely unlikely that there would be an FMS [financial management service] that could start you before January. " (*Id.*, p. B4.) Ms. Larose suggested Mother could search for another independent facilitator who might be able to work on claimant's case sooner. (*Ibid.*) At hearing, Mother indicated she wanted to wait for Ms. Larose to become available.

Supported Living Services (SLS)

17. In general, SLS are services that assist and support an individual consumer to live in a home of their choice. (Cal. Code Regs., tit. 17, § 58614, subd. (a).) SLS includes but are not limited to the following: assisting with common daily living activities such as meal preparation, including planning, shopping, cooking, and storage activities; performing routine household activities aimed at maintaining a clean and safe home; becoming aware of and effectively using the transportation available in the community to the general public; managing personal financial affairs; building and

maintaining interpersonal relationships; and participating in community life. (Cal. Code Regs., tit. 17, § 58614, subd. (b).)

18. Mother would like claimant to receive training on cooking, budgeting, use of her debit card, grocery shopping, and how to ride public transportation. Mother has requested that Service Agency fund SLS for claimant from an outside agency. Service Agency denied Mother's request on the grounds that SLS from an outside agency would be a duplication of the services claimant receives at the group home.

19. As noted in the IPP, the head administrator and supervisor of the group home attended the October 30, 2023 planning meeting for claimant's IPP. (Exh. 4, p. A24.) During the meeting, the head administrator explained that the group home's staff could educate and train claimant on daily living tasks as part of being a resident of the group home. (*Id.*, at p. A27.) The staff could take claimant on outings, assist her with making purchases in the community, work with her on budgeting, and cook with her in the home. (*Ibid.*)

20. As noted in the IPP, the head administrator tried to reassure Mother the group home's staff could "most definitely" provide SLS for claimant. (Exh. 4, p. A27.) The head administrator explained the group home could request "additional supplement hours or personal assistance hours" if they felt additional hours were needed to best support claimant. (*Ibid.*) Mother, however, insisted on having an outside agency provide SLS for claimant. Mother asserted she did not believe the group home had adequate staff to provide the level of SLS she wants claimant to receive. (*Ibid.*)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The Lanterman Act, Welfare and Institutions Code section 4500 et seq., governs this case. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.)

2. When an individual seeks government benefits or services, the burden of proof is on the individual. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. In this case, claimant bears the burden of proving by a preponderance of the evidence she is entitled to the funding being requested from Service Agency. (Evid. Code, § 500.)

The Lanterman Act

4. A regional center is required to secure services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be based on 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. The Lanterman Act contemplates that the provision of services shall be a mutual effort by and between regional centers and the consumer and their family. The foundation of this mutual effort is the development of a consumer's IPP. As explained in section 4646, subdivision (d):

Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, if appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

6. Thus, the Lanterman Act contemplates cooperation between the parties and the sharing of information in determining services and supports for a consumer and their family. The preferences of the consumer and their family are an important factor, but not the only factor, to be considered in the IPP process.

7. A regional center may purchase services or supports for a consumer from an individual or agency pursuant to vendorization or a contract. (§ 4648, subd. (a)(3).) "Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).)

8. When purchasing services and supports for a consumer, a regional center shall ensure conformance with its purchase of services policies, utilization of generic services and supports when appropriate, and utilization of other sources of funding as contained in section 4659. (§ 4646.4, subd. (a).) The sources of funding contained in section 4659 include governmental entities or programs required to provide or pay for the cost of providing services, and private entities to the extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

9. 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." (§ 4648, subd. (a)(8).)

10. The SDP is an alternative model of service delivery provided under section 4685.8. A regional center consumer who has been deemed eligible for, and has voluntarily agreed to participate in, the SDP is referred to as a "participant." (§ 4685.8, subd. (c)(5).) "A participant may choose to participate in, and may choose to leave, the Self-Determination Program at any time." (§ 4685.8, subd. (d).) Participation in the SDP is available to any regional center consumer who meets the eligibility requirements contained in section 4685.8, subdivision (d).

11. "Self-determination" means "a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP." (§ 4685.8, subd. (c)(6).) The SDP "shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (§ 4685.8, subd. (c)(6).)

Discussion

TEAFC ADULT DAY PROGRAM

12. Service Agency shall be required to reimburse Mother for the \$7,800 monthly cost of the TEAFC Adult Day Program for the 2024 winter semester only, which runs from January 16 to April 5, 2024. Service Agency's reimbursement shall be provided as an exception, for the purpose of giving TEAFC Academy time to complete the vendorization process with NLARC or, alternatively, giving Mother time to complete the process to transition claimant to the SDP, while ensuring claimant's need for an adult day program is met.

13. TEAFC Academy's vendorization and claimant's transition to the SDP are two ways for claimant to access TEAFC Adult Day Program with regional center funding. The process for vendorization or transitioning to the SDP takes time to complete and varies from case to case. TEAFC Academy has been in the vendorization process with NLARC since early 2023. Although TEAFC Academy claims it was approved for vendorization with NLARC in August 2023, it was notified one week later that further investigation was still needed. Regarding the SDP, Mother is interested in pursuing the SDP for claimant but has not yet commenced the process for claimant's transition to the SDP. Based on these circumstances, it is appropriate to require Service Agency to continue to provide reimbursement, as an exception, to ensure claimant's need for an adult day program are met pending TEAFC Academy's vendorization with NLARC or claimant's transition to the SDP.

SUPPORTED LIVING SERVICES

14. Service Agency shall not be required to fund additional SLS provided by an outside agency, as requested by Mother. The preponderance of the evidence

established that claimant's group home provides SLS for claimant. Any additional SLS by an outside agency would be duplicative of those services. Claimant does not have an unmet need for SLS.

ORDER

Claimant's appeal is granted in part, and denied in part, as follows:

1. For Issue 1, claimant's appeal is granted. Service Agency shall reimburse Mother up to \$7,800 per month for the cost of TEAFC Adult Day Program for the 2024 winter semester only, which runs from January 16 to April 5, 2024. Service Agency's reimbursement shall be provided upon Mother providing proof of payment satisfactory to Service Agency. If TEAFC Academy becomes vendored with NLARC prior to April 5, 2024, Service Agency's obligation to provide reimbursement shall terminate on the effective date of TEAFC Academy's vendorization with NLARC. Otherwise, Service Agency's obligation to provide reimbursement shall terminate on April 5, 2024.

2. For Issue 2, claimant's appeal is denied. Service Agency is not required to fund additional SLS from an outside agency for claimant.

DATE:

ERLINDA SHRENGER
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.