

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

In the Matter of:

CLAIMANT

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

DDS No. CS0012364

OAH No. 2024020282

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings (OAH), heard this matter on February 27, 2024, by videoconference.

Attorney Jason A. Pollack represented claimant. Claimant's mother was present.

Attorney Aaron Abramowitz represented service agency Regional Center of the East Bay (RCEB).

The matter was submitted for decision on February 27, 2024.

ISSUES

The parties submitted briefs and presented oral arguments on two issues.

(1) Does OAH have jurisdiction in this matter, where claimant is deceased?

(2) If so, must RCEB be compelled to produce claimant's entire file?

FACTUAL FINDINGS

1. Claimant was a conserved adult consumer who received services from RCEB. Claimant's conservator was his mother.¹

2. Claimant died of a fentanyl overdose on May 1, 2023. At that time, he lived in a residential placement, the exact nature of which was not established.

3. On February 5, 2024, more than nine months after claimant's death, an appeal request form was submitted by claimant's attorney. Where the form asked for the proposed effective date of regional center action, the attorney stated May 1, 2023. Where the form asked for the reasons for appeal, the attorney wrote: "Denied Services, Denied Right to Appeal or Challenge, Denied Notice of Right to Appeal or Challenge, Racial Discrimination, Wrongful Death." The matter was referred to OAH for hearing.

¹ Claimant's attorney contends that the mother is the "claimant" in this appeal, rather than the deceased RCEB consumer. That contention is not persuasive. As used in this decision, "claimant" refers to the consumer who received services from RCEB, rather than the consumer's mother/conservator.

4. On February 12, 2024, claimant's attorney filed a motion to compel discovery. Claimant's attorney had requested a copy of claimant's complete RCEB file, and RCEB did not produce it. RCEB filed an opposition to the motion to compel on February 16, 2024, contending that because claimant was deceased, his mother was not an authorized representative to whom RCEB may produce confidential records.

5. Also on February 12, 2024, RCEB filed a motion to dismiss this appeal for lack of jurisdiction, contending that because claimant is deceased there is no person with standing to maintain the appeal, and there is no relief that OAH is authorized to grant. Claimant's attorney filed an opposition to the motion on February 14, 2024.

6. At hearing, claimant's attorney provided further clarification of the claims raised and relief sought in this appeal. Claimant's mother contends: claimant was placed in a residential placement that was insufficient to meet his needs; claimant required a one-on-one aide for his protection, which was denied; claimant was Latino; White consumers received services that were denied to claimant; and provision of requested services would have prevented claimant's death. Claimant's mother seeks to challenge the denial of services and obtain a review of the process.

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), the Legislature created a comprehensive scheme to provide services and supports for people with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) (All further statutory citations are to the Welfare and Institutions Code.)

2. The Lanterman Act sets forth a fair hearing process for resolution of disputes with regional centers about a person's eligibility for services, or the nature,

scope, or amount of services and supports that a person should receive. (§ 4700 et seq.) This appeal was initiated before OAH under those fair hearing procedures.

3. Section 4710.5, subdivision (a), provides:

Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with a decision or action of the regional center or state-operated facility under this division shall, upon filing a request within 60 days after notification of that decision or action, be afforded an opportunity for an informal meeting, a mediation, and a fair hearing.

4. As defined in section 4701:

- “applicant” means a person who has applied for services from a regional center, or on whose behalf services have been applied for (subd. (c));
- “recipient” means a person with a developmental disability who receives services from a regional center or a state-operated facility (subd. (n));
- “authorized representative” means a conservator, legal guardian, parent or person having custody of a minor claimant, or a person or agency appointed by the State Council on Developmental Disabilities or by a court order to make developmental services decisions for the claimant (subd. (d)); and
- “claimant” means an applicant for or recipient of services who has filed an appeal (subd. (f)).

5. Under California Code of Regulations, title 17, section 50966, subdivision (b), if a service agency believes that a fair hearing request raises issues that are not appropriately addressed under section 4700 et seq., or for other reasons does not comply with statutory requirements, the service agency may file a request with the agency designated for conducting these hearings (OAH) to have the matter dismissed.

6. Claimant's mother is dissatisfied with the services that were provided to claimant, and through this appeal, she seeks a review of determinations made by the regional center. However, claimant's mother is not an authorized representative who has the right to request an appeal under the Lanterman Act's fair hearing process for disputes about regional center services. Claimant was an adult who was conserved by his mother. (Factual Finding 1.) A conservatorship is terminated by the death of the conserved person. (Prob. Code, § 1860, subd. (a).) Due to claimant's death, there is no person with legal standing to file a fair hearing request under section 4710.5, subdivision (a).

7. Moreover, there is no relief that may be ordered by OAH in this matter. OAH may only act under the authority granted to it by statute or regulation. The Lanterman Act's fair hearing process is to resolve disputes about eligibility or the nature, scope, or amount of services and supports a regional center consumer receives. In this case, claimant is deceased, and may no longer receive any services or supports, even if they could be retroactively ordered. Nor is this a case in which an authorized representative seeks reimbursement for services that were actually provided during the life of a consumer. OAH is not otherwise authorized to conduct an investigation of the process by which services were rendered or denied to claimant, to issue a declaratory judgment or ruling, or to order compensation such as may be obtained in a civil damages claim.

8. It is also noted that, even if this were a matter in which OAH had jurisdiction, the appeal request was not timely filed, which would deprive OAH of authority to hear the matter. A hearing request must be filed within 60 days after the claimant is notified of a decision by the regional center to deny services. (§ 4710.5, subd. (a).) The appeal request form in this matter was filed more than nine months after claimant's death. (Factual Findings 2-3.)

9. RCEB's motion to dismiss is granted.

10. Since there is no jurisdiction, the motion to compel discovery is moot, and is thus denied.

ORDER

The motion to dismiss is granted. This appeal is dismissed for lack of jurisdiction.

DATE:

HOLLY M. BALDWIN

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.