

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

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

DDS No. CS0016685

OAH No. 2024050453

DECISION

Sean Gavin, a hearing officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 25, 2024, from Sacramento, California.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

George Hall and Estela Hall, the owners of the care facility where claimant resides, represented claimant.

Evidence was received, the record closed, and the parties submitted the matter for written decision on June 25, 2024.

ISSUE

Is ACRC required to fund claimant's placement at Jasmine-Hall III, an adult residential care facility?

FACTUAL FINDINGS

Background

1. Claimant is a 40-year-old ACRC consumer based on his qualifying diagnosis of moderate intellectual disability with unknown etiology. His condition causes disabilities in the areas of communication, learning, self-care, self-direction, capacity for independent living, and economic self-sufficiency. He has received services and supports through ACRC since August 2012.

Claimant's Residence at Jasmine-Hall III

2. In mid-2002, claimant moved into an adult residential care facility in Sacramento, California. In early 2018, the facility changed ownership and was relicensed. Specifically, on April 6, 2018, the Department of Social Services (DSS), through its Community Care Licensing Division (CCLD), licensed EH Star Care Homes, Inc. (EH Star) to operate and maintain the adult residential care facility under the name Jasmine-Hall III. At various times, EH Star owned and operated eight adult residential care facilities, known as Jasmine-Hall I through Jasmine Hall VIII.

3. Claimant still lives at Jasmine-Hall III. ACRC funded claimant's placement at Jasmine-Hall III from April 2018 until April 27, 2024, when it ceased funding because Jasmine-Hall III's DSS license was no longer valid.

Jasmine-Hall III's License Forfeiture

4. The circumstances under which Jasmine-Hall III ceased to be licensed began in approximately January 2023, when EH Star's ownership changed. Under the law that governs community care facilities, a license "shall be forfeited" when the licensee sells or otherwise transfers the ownership of the facility. (Health & Saf. Code, § 1524, subd. (a).) DSS considers Jasmine-Hall III's license to be forfeited based on a change of ownership. ACRC introduced into evidence a letter from CCLD, dated April 3, 2023, that summarized DSS's reasoning. Specifically, the letter explained:

Upon learning of the change in the Corporation, [a CCLD licensing program analyst] reviewed the Articles of Incorporation, Secretary of State filings, and other documents regarding the E. H. Star Care Homes, Inc (Star). According to documents provided during the application for a license in 2017, Star identified Paul Henderson as the owner of 60% of Star's shares and Estela Hall as the owner of 40% of Star's shares. According to the Statement of Information filed with the Secretary of State in July 2020, George Hall was the CEO. By March of 2021 Estela Hall was the CEO. In January 2023 Estela Hall advised CCLD that Paul Henderson had separated from Star and that she, Estela, now owned 60% of Star's shares and George owned 40% of Star's shares. Based on this information, there has been a change in the majority ownership interest of the licensee and as admitted by Estela Hall. This change required Star to

file a new application, as set forth in Title 22, CCR section 80034.

5. EH Star appealed the determination that it had forfeited its license. DSS denied the appeal via its letter on April 3, 2023.

6. On January 9, 2024, DSS sent Jasmine-Hall III a Notice of Operation in Violation of Law. The notice included the following language:

You are hereby notified that [Jasmine-Hall III] is operating without a license in violation of California Health and Safety Code Sections 1508, 1568.03, 1569.10, or 1596.80. These sections prohibit any person, firm, partnership, association, or corporation within the state from operating, establishing, managing, conducting, or maintaining a community care facility, residential care facility for chronically ill, residential care facility for the elderly, or child care facility in this state without a current valid license.

7. After sending the notice, CCLD personnel visited Jasmine-Hall III on February 2, February 29, and April 23, 2024. Each time, CCLD personnel observed the facility continued to operate despite not having a valid license. After each visit, CCLD personnel prepared a Facility Evaluation Report stating their observations and assessing a civil penalty. CCLD fined Jasmine-Hall III \$4,800, \$10,200, and \$10,800 on the respective visits.

ACRC's Devendorization of Jasmine-Hall III and Notice of Action

8. Based on Jasmine-Hall III's license forfeiture, on April 25, 2024, ACRC sent the facility a Notification of Termination of Vendorization. The notice explained ACRC would terminate Jasmine-Hall III as a vendor for ACRC's consumers the next working day following the notice. It further explained ACRC sent the notice because Jasmine-Hall III was "serving consumers without a current license, credential, registration, accreditation, certificate, degree or permit that is required for the performance or operation of the service," in violation of California Code of Regulations, Title 17, section 54370, subdivision (b)(1). Finally, the notice explained the facility could appeal the decision in writing within 30 days. Jasmine-Hall III did not appeal the notice.

9. On April 30, 2024, ACRC sent claimant a Notice of Action (NOA) in which it proposed to terminate funding claimant's placement at Jasmine-Hall III effective April 27, 2024. The NOA's stated reason was that Jasmine-Hall III was no longer a vendor for ACRC based on its lack of a valid state license.

10. On May 8, 2024, Mr. Hall appealed the NOA on claimant's behalf. He identified the reason for the appeal as follows:

Gubernatorial Appeal [and] Complaint for unlawful
Termination of SSP funds for Board and Care Placements
based on False Reports of Operation without Licenses;
unlawful Denial of Service Rights; [and] withholding of
Unpaid Services Due.

Testimony of ACRC's Witnesses

11. Denise Hopkins, a Community Services Specialist at ACRC, testified at hearing. She has worked at ACRC for approximately 17 years and held her current position for approximately seven years. In that role, she works with residential vendors on the vendorization process. She confirmed Jasmine-Hall III is not currently a vendor for ACRC after CCLD personnel notified ACRC the facility had forfeited its license as of January 9, 2024, based on a change of ownership. She reviewed DSS's Notice of Operation in Violation of Law, sent to Jasmine-Hall III on January 9, 2024. She also reviewed public documents on DSS's website that confirm Jasmine-Hall III's "closure date" as January 9, 2024. She has no reason to doubt the accuracy of the information she reviewed.

12. Rowena Lopez, a Client Services Manager at ACRC, testified at hearing. She has worked in an ACRC residential unit for approximately four years. She oversees 12 Service Coordinators (SC), including claimant's SC, Isabella Walsh. On April 30, 2024, she personally delivered ACRC's NOA and information about how to appeal the NOA to claimant at Jasmine-Hall III. At hearing, Ms. Lopez explained ACRC could fund claimant's placement at a different adult residential care home, so long as the facility is licensed through DSS and vendored through ACRC.

13. Isabella Walsh, claimant's ACRC SC since April 2024, testified at hearing. She participated in claimant's most recent Individual Program Plan (IPP) meeting, held June 4, 2024. Afterwards, she prepared a written IPP in which she noted claimant wishes to continue living at Jasmine-Hall III. Specifically, she wrote:

[Claimant] continues to live at the Jasmine Hall #3/EH Star room and board. The home is located at 1601 Ferran

Avenue, Sacramento CA, 95832. Jasmine Hall #3/EH Star room and board previously was vendored with ACRC but is now an unlicensed room and board and is not funded through ACRC. ACRC SC and client advocate David Lopez met with [claimant] on 5.18.2023 to discuss his options of moving into another living situation and he adamantly stated that he wants to stay living where he currently is. ACRC explained that because the home is no longer vendored with ACRC that [claimant] would need to establish a rental agreement with the room and board. [Claimant] stated that he understood and signed a document stating he is ok with the change. ACRC also offered ILS [Independent Living Skills] services and [claimant] declined.

14. Ms. Walsh believes other adult residential facilities are equipped to care for claimant. She is aware of other local facilities that are licensed by DSS and vendored through ACRC. She understands ACRC could fund claimant's placement at one of those facilities if he chose to move out of Jasmine-Hall III.

Claimant's Evidence

15. Claimant testified at hearing. He adamantly wants to continue living at Jasmine-Hall III. He authorized Mr. and Mrs. Hall to pursue his appeal because he does not want to move.

16. Mr. Hall also testified at hearing. He disbelieves Jasmine-Hall III forfeited its license. He introduced several documents into evidence to support the claim that

Jasmine-Hall III is still licensed by DSS. Many of the documents predate, and therefore do not address, DSS's January 2024 Notice of Operation in Violation of Law. The others generally discuss EH Star's complaints against a variety of governmental agencies and actors. One of the documents, dated January 28, 2024, is titled, "Addendum & Request for Stay of Revocation of Licenses." It is addressed to 12 recipients, including Governor Gavin Newsom, the Chief of the Sacramento Police Department, and the Directors of DSS, the Department of Developmental Services, and the Department of General Services.

17. Mr. Hall believes by sending the documents to those people and entities, EH Star "issued a stay on January 28, 2024." He testified the "stay" prevents DSS from treating Jasmine-Hall III as unlicensed, which in turn prevents ACRC from terminating Jasmine-Hall III's status as a vendor. He cited a letter ACRC sent EH Star in July 2023, by which ACRC withdrew a previous Notice of Termination of Vendorization while EH Star finalized its appeal process with DSS. He reasoned that EH Star's self-styled "request for stay" in January 2024 prevented ACRC from terminating Jasmine-Hall III as a vendor in April 2024.

18. Mr. Hall acknowledged the DSS website indicates Jasmine-Hall III is unlicensed. Specifically, a DSS webpage showing details about Jasmine-Hall III includes the information:

Status: Closed, Licensee Initiated

Lic. Date: 4/6/2018

Closure Date: 1/9/2024

19. Despite this information, Mr. Hall insisted Jasmine-Hall III remains licensed because the webpage also includes a rectangle within which the words "Stay Updated" appear. Mr. Hall understands those words to mean the "stay," which he believes EH Star "issued" in January 2024 by mailing documents to Governor Newsom and other government officials, has been "updated." While visiting the webpage in question, Mr. Hall has never clicked on the "Stay Updated" rectangle to determine whether it opens a new window to prompt the user to enter an email address to receive updated information about the facility.

20. Additionally, after receiving the Notice of Operation in Violation of Law in January 2024, Mr. Hall and Lyle McCollough, Jasmine-Hall III's administrator, began checking DSS's website weekly. They visited DSS's website on April 29, 2024, at which time they searched the name "Jasmine-Hall" and saw that Jasmine-Hall III, along with EH Star's other seven Jasmine-Hall facilities, were all listed as "licensed."

21. Mr. McCollough testified at hearing and agreed with Mr. Hall. Additionally, Mr. McCollough explained he was present when CCLD personnel visited Jasmine-Hall III in February and April 2024, but he "never saw any paperwork" to prove Jasmine-Hall III was unlicensed.

22. Finally, Mr. Hall, on behalf of claimant, submitted a letter from DSS to Jasmine-Hall III regarding the facility's annual licensing fee, due April 6 each year. The letter, dated February 7, 2024, identified \$454 as the annual fee and \$227 in past due fees, provided the deadline to pay the fees, and warned that failing to pay the fees might result in license forfeiture under specific Health and Safety Code sections. On March 2, 2024, EH Star paid \$4,275 in license renewal fees for multiple of its Jasmine-Hall facilities.

23. The documents Mr. Hall submitted on behalf of claimant also included paperwork showing that on May 22, 2024, DSS refunded EH Star \$2,724. The amount was the \$454 annual license renewal fee for six Jasmine-Hall facilities. The refund check included an attachment that explained, "Jasmine Hall Facilities closed" and listed six facilities by their DSS license numbers, including Jasmine-Hall III.

Analysis

24. ACRC proved it terminated Jasmine-Hall III as a vendor, effective April 26, 2024. The sole issue to be determined is whether ACRC may legally continue to fund claimant's placement at Jasmine-Hall III following that termination.

25. Claimant did not present evidence to dispute the termination of Jasmine-Hall III's status as an ACRC vendor. Nor did claimant present evidence to show ACRC can continue to fund his placement at Jasmine-Hall III despite its devendorization. Rather, Mr. Hall, on behalf of claimant, argued about the legitimacy of DSS's determination that Jasmine-Hall had forfeited its license. However, the persuasive evidence established Jasmine-Hill's DSS license is no longer valid.

26. Mr. Hall, on behalf of claimant, also argued EH Star "issued a stay" on January 28, 2024. The evidence did not support that argument. A party cannot issue a stay unilaterally.

27. Mr. Hall further argued the DSS website shows the stay was "updated." The evidence did not support that position either. To the contrary, official notice is taken that the "Stay Updated" text on the DSS webpage is a hyperlink to a page inviting visitors to enter an email address through which to receive updated information about the license. (Welf. & Inst. Code, § 4712, subd. (i)(2); Evid. Code, § 452, subds. (g), (h).)

28. The balance of the evidence Mr. Hall introduced has been considered and given its appropriate weight. The overwhelming majority of that evidence has little, if any, relevance to claimant. Rather, Mr. Hall attempted to use claimant's hearing as a forum to litigate EH Star's many grievances against a variety of government agencies. Each of those arguments is rejected as a basis for claimant's appeal.

29. In summary, ACRC terminated Jasmine-Hall III as a vendor after receiving reliable information that the facility is no longer licensed by DSS. ACRC cannot fund placement at unlicensed adult residential care facilities for its consumers. For that reason, claimant's appeal must be denied.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. ACRC has the burden of proving it is no longer required to fund claimant's placement at Jasmine-Hall III. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has "a built-in bias in favor of the status quo," and the party seeking to change the status quo has the burden "to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing"].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires ACRC to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, ACRC must prove it is more likely than not that it is no longer required to fund claimant's adult residential care facility services at Jasmine-Hall III. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) The law is meant to accomplish two purposes: “To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community,” and to “enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.” (*Assoc. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. When funding services, regional centers must follow various laws and regulations. One such law provides that regional centers may purchase services through a vendorization process:

A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer . . . determines will best accomplish all or part of that consumer’s program plan.

(Welf. & Inst. Code, § 4648, subd. (a)(3).)

4. The same statute describes the vendorization process and the regional centers’ duties regarding that process:

(A) 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.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; and the procedure for an individual or an

agency to appeal a vendorization decision made by the department or regional center.

(Welf. & Inst. Code, § 4648, subd. (a)(3)(A)-(C).)

5. One regulation regional centers must follow defines a "facility" as "a licensed community care facility as defined in Health and Safety Code Section 1502(a)(1), (4), (5) or (6) . . . which has been vendorized as a residential facility by a regional center pursuant to the requirements of Title 17, California Code of Regulations, Division 2, Chapter 3, Subchapter 2." (Cal. Code Regs., tit 17, § 56002, subd. (a)(15).) Regional centers approve each facility to provide services at a "service level" from one through four. (*Id.*, subd. (a)(44).)

6. Facilities providing services at levels one through four "shall possess a valid Community Care Facility license issued by the Department of Social Services' Community Care Licensing Division pursuant to Health and Safety Code Sections 1500 et seq., and Title 22, California Code of Regulations, Division 6, Sections 80000 et seq." (Cal. Code Regs., tit. 17, 56004, subd. (a).)

7. Regional centers must ensure vendors comply with the vendorization requirements. (Cal. Code Regs., tit. 17, § 54370, subd. (a).) One such vendorization requirement provides:

Vendorization shall be terminated at the end of the first working day after written notification is received from the vendoring regional center if any of the following conditions exist:

(1) The vendor is serving consumers without a current license, credential, registration, accreditation, certificate, degree or permit that is required for the performance or operation of the service.

(Cal. Code Regs., tit. 17, § 54370, subds. (a), (b)(1).)

8. If a service provider does not comply with applicable state laws, a regional center may terminate the vendor contract with the provider. "A regional center may terminate payments for services, and may terminate its contract or authorization for the purchase of consumer services if it determines that the provider has not complied with provisions of its contract or authorization with the regional center or with applicable state laws and regulations." (Welf. & Inst. Code, § 4648.1, subd. (d).)

9. Vendors can postpone or prevent a regional center from terminating their vendorization if they timely file appropriate written paperwork or correct the violations and provide documentation of the correction. (Cal. Code Regs., tit. 17, § 54370, subds. (e), (f).)

10. Regional centers must notify the recipient of services identified in an IPP at least 30 days prior to terminating those services, unless the termination is "necessary for the health and safety of the recipient." (Welf. & Inst. Code, § 4710, subds. (a), (f).) If terminating the services earlier is necessary for the health and safety of the recipient, "adequate notice shall be given within 10 days after the regional center or state-operated facility action." (*Id.*, subd. (f).)

Resolution of Contested Issue

11. ACRC terminated Jasmine-Hall III as a vendor as of April 26, 2024, because the facility is no longer licensed by DSS. This was consistent with Welfare and Institutions Code section 4846.1, subdivision (d), and Code of Regulations, title 17, section 54370, subdivisions (a) and (b)(1). Jasmine-Hall III did not timely appeal the termination of vendorization or correct the deficiency under Code of Regulations, title 17, section 54370, subdivisions (e) or (f).

12. Facilities such as Jasmine-Hall III are governed by the California Community Care Facilities Act. One of the purposes of that Act is to “protect the legal and human rights of a person in or receiving services from a community care facility.” (Health & Saf. Code, § 1501, subd. (b)(3).) Another purpose to “insure that facilities providing community care are adequate, safe and sanitary.” (*Id.*, subd. (b)(5).)

13. Here, terminating the funding for claimant’s placement at Jasmine-Hall III was necessary to ensure claimant’s continued health and safety. By operating Jasmine-Hall III as an unlicensed facility, EH Star deprives DSS of the opportunity to regulate it. Residing in an adult residential care facility that is unlicensed by DSS jeopardizes claimant’s health and safety because DSS cannot protect his legal and human rights or insure the facility provides adequate, safe, and sanitary care. Therefore, ACRC timely notified claimant it intended to terminate funding for his placement at Jasmine-Hall III, pursuant to Welfare and Institutions Code section 4710, subdivision (f).

14. ACRC may only fund services for claimant’s placement at an adult residential care facility that is vendored, pursuant to Welfare and Institutions Code section 4648, subdivision (a)(3), and Code of Regulations, title 17, sections 56002, subdivisions (a)(15) and (44), and 56004, subdivision (a).

15. Based on the facts and law articulated above, ACRC is not required to fund claimant's placement at Jasmine-Hall III, effective April 27, 2024.

ORDER

Claimant's appeal from Alta California Regional Center's April 30, 2024, Notice of Action proposing to terminate funding for claimant's placement at Jasmine-Hall III is DENIED.

DATE: July 10, 2024

SEAN GAVIN

Hearing Officer

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 Section 4713 of the Welfare and Institutions Code 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.