

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

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER of ORANGE COUNTY,

Service Agency.

DDS No. CS0019439

OAH No. 2024071024

DECISION

Administrative Law Judge (ALJ) Eileen Cohn, Office of Administrative Hearings, State of California, heard this matter on September 3, 2024, by videoconference.

Claimant's parent (Father) and authorized representative appeared on behalf of claimant, who was present during part of the proceedings. Claimant's mother also appeared. (Titles are used to protect the privacy of claimant and claimant's family.)

Ublester Penalosa, Assistant Manager, Fair Hearings and Mediations, appeared on behalf of the Regional Center of Orange County (Service Agency).

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on September 3, 2024.

ISSUE

Whether the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq) requires Service Agency to pay, in whole or in part, the cost of claimant's monthly rent at Glennwood Housing Foundation, Inc. (Statutory references to "Code" are to the Welfare and Institutions Code unless otherwise designated.)

EVIDENCE RELIED UPON

Service Agency's Documents: Exhibits 1 through 5, and 2A (Position Statement).

Service Agency's Testimony: Carmen Gonzalez, Service Agency's Area Manager; Jack Stanton, Associate Director of Housing.

Claimant's Documents: Exhibit A (POS Guidelines-Official Notice).

Claimant's Testimony: Father and Mother.

SUMMARY

Claimant is an adult non-conserved consumer of the Service Agency based upon her qualifying developmental disability of mild intellectual disability. Claimant also has Down Syndrome.

Claimant lives independently at Glennwood Housing Foundation, Inc. (Glennwood). Service Agency provides supported living services (SLS) for claimant. Claimant's family has been subsidizing her rent for a single room occupancy at Glennwood in addition to an activity fee. Glennwood also supplies communal dining, activities and an overall environment conducive to fostering and maintaining friendships and a sense of community. Claimant's parents are concerned they will not be able to pay for claimant's rent after they retire and have asked the Service Agency to fund claimant's rent, in whole, or in part.

The Lanterman Act is very clear that, under the circumstances presented, Service Agency cannot pay, in whole or in part, claimant's rent at Glennwood.

Claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdiction

1. On June 20, 2024, Service Agency issued a Notice of Action (NOA) memorializing its telephonic meeting of May 13, 2024 and confirming its denial of funding for rent at Glennwood. (Ex. 2.)

2. Claimant submitted a timely Request for Fair Hearing on July 19, 2024. Jurisdiction has been established.

Claimant's Services and Request for Rent

1. Claimant is 34 years old (non-conserved) and has been a consumer of the Service Agency based upon her diagnosis of mild intellectual disability. She also has a

diagnosis of Down Syndrome. Claimant is part of a supportive, loving family which includes her parents, stepfather and several siblings. She is very social and enjoys going out in the community, drinking her favorite beverage at Starbucks and her pets. She has many talents. She has experience as an actress and producer, and serves as an advocate, ambassador, and public speaker for individuals with disabilities. She enjoys the theater, going to the beach and karaoke. She can utilize technology on her phone and computer, receives dental and medical services from a private insurer and case management and service coordination from the Service Agency as well as services. She participates in the Individual Program Plan (IPP) meetings.

2. Before moving to Glennwood, claimant worked as an administrative assistant twice weekly at Independent Options, and volunteered at a pet adoption center, and a no-kill shelter.

3. Claimant cannot manage many of her activities of daily living without support. She can complete a few chores, but overall cannot cook or clean or do laundry on her own. Her nutrition and exercise regimes remain a concern. She is on a low calorie, high fiber, nutritional regime and participates in the various exercise programs offered at Glennwood. Glennwood has an on-site dietician.

4. Claimant wants to remain at Glennwood. Claimant's living arrangement consists of a small apartment with no kitchen. Meals are provided in a group setting at Glennwood. Glennwood also offers many recreational and exercise activities. Claimant has friends, activities and hopes to have a boyfriend. She just secured a job near Glennwood.

5. Claimant's parents have been very involved with her life and have explored on her behalf living arrangements which would provide her with the least

restrictive environment, support her independence, surround her with friendships and which are close to job opportunities and an accessible community. They have been funding her living costs, inclusive of rent and amenities, but anticipate with their retirement they will no longer be able to do so and claimant's own funds from social security or employment won't be enough. Claimant has recently been notified she will be receiving support from Social Security, based upon her social security wages, but it will be a small amount and not enough to pay her rent and amenities. She had earnings from previous employment, but those funds have been depleted. Claimant also receives health insurance through Kaiser Permanente.

6. Service Agency provides claimant with monthly SLS; specifically, 65 hours for a 30-day month, and 70 hours for a 31-day month, of 1:1 SLS assistance, and eight coupons per week, a total of 32 coupons per month, for public transportation to access the community. Service Agency also provides claimant with the Individual Supported Employment Program with Goodwill Industries of Orange County not to exceed 50 percent of hours worked.

7. Claimant's family and Service Agency have been discussing claimant's services and supports at Glennwood over the past several months. On May 13, 2024 Claimant's parents and Service Agency staff, including claimant's service coordinator, the supported and independent living coordinator and the area supervisor, held a telephone conference to discuss whether Service Agency can pay claimant's rent. The family expressed to the Service Agency staff what they reiterated during the hearing: Glennwood is the least restrictive environment for claimant. She is happy, has made friends and is fully engaged with the community. They will not be able to support her in the long term because the claimant has limited funds, as do they, especially since they are both retiring. (Ex. 2.)

8. During the May 13, 2024 meeting, Service Agency explained claimant's placement at Glennwood is considered independent living and individuals who live independently are expected to pay their rent and living expenses with a variety of resources ranging from SSI, employment wages, trust money, and/or housing vouchers. Service Agency explained claimant would continue to receive SLS funding, which she has received since May 2024, as long as she resides at Glennwood. Service Agency will be available to work with claimant to find alternatives to Glennwood from the Service Agency roommate list and the Orange County Affordable Housing List. (Ex. 2.)

9. On May 31, 2024, Service Agency held an IPP with claimant and claimant's family shortly after claimant moved to Glennwood. (Ex. 3.) On June 4, 2024, an IPP addendum was issued adding transportation (ACCESS) coupons to the 1:1 SLS services provided by Service Agency to claimant. (Ex. 4.)

10. Claimant's parents are appreciative of the Service Agency's supports, and do not dispute the services provided in claimant's IPP. In fact, in all the years claimant has been a consumer of the Service Agency, they have never requested a fair hearing. Nevertheless, they are of the opinion Glennwood is the least restrictive environment for claimant which meets her needs and provides her with the best opportunity to thrive as an independent adult. Glennwood promotes social and community engagement through a wide variety of activities.

11. Mother testified about the difference Glennwood has made for claimant. She described her daughter's transformation from an isolated adult to one engaged with her peers. She described a phone call she made to her daughter on a Saturday night where-for the first time-her daughter told her she had no time to speak with her

because she needed to meet her friends. Glennwood is also close to job opportunities and a town center where claimant can access stores, coffee houses and entertainment.

12. During the fair hearing, Service Agency witnesses explained the restrictions imposed by the Lanterman Act on funding rent for consumers who choose independent living. Service Agency witnesses, Carmen Gonzalez and Jack Stanton, have decades of experience at the Service Agency, were familiar with claimant's circumstances and the application of the Lanterman Act and Department of Disability Services' protocols and procedures. They provided straightforward, unbiased and credible testimony in support of the Service Agency's decision to deny funding claimant's rent at Glennwood.

13. Service Agency never signed a rental/lease agreement with Glennwood or Glennwood's amenities' fee agreement. These agreements were signed by the claimant or the claimant's authorized representatives. (Exs. 6 & 7.) At most, RCOC will fund SLS provided by Glennwood (when it is a Service Agency vendor) but not the rent. According to Mr. Stanton, any SLS provided by Glennwood during the time it has been a vendor of the Service Agency (through Glennwood Supported Living Services) has always been distinct from the rental or lease agreement which remains the obligation of the individual. (Ex. 5, p.A29.) As referenced above, the Service Agency is funding 65-70 hours 1:1 SLS services and transportation to support claimant's IPP goals.

14. Mr. Stanton confirmed claimant did not meet the exceptions set forth in the Lanterman Act for funding claimant's rent at Glennwood. Code section 4589 provides the template for Service Agency's SLS and expressly bars payment of rent or household expenses (Code section 4589, subdivision (h)) with limited exceptions. Service Agency may, for no more than six months, pay rent, mortgage, or lease

payments, or household expenses where a consumer's demonstrated medical, behavioral or psychiatric condition presents a health and safety risk to the consumer.

15. Claimant's parents concede claimant does not meet the exceptions set forth in Lanterman Act. Claimant's parents admitted they could provide no evidence of special circumstances which would support rent subsidies for a limited time, such as a psychiatric or medical need.

16. Claimant's parents assert, nevertheless, the overall design and purpose of the Lanterman Act, to address the needs of consumers with disabilities in the least restrictive environment, supports funding for claimant's rent. Claimant's parents assert the Service Agency's Purchase of Service Guidelines (Guidelines, Exhibit A) provide support for claimant's rent as well, but the Guidelines do not. The preamble to the Guidelines specifically states they "have been established in accordance with "the Lanterman Act and Early Start Program which authorizes the regional centers to develop and apply service standards while, at the same time, considering the consumer's individual needs when authorizing the service request." (Ex. A, p. Z4.)

17. Claimant's family expressed a legitimate and heartfelt concern about overall state and legislative policy and priorities concerning housing for the disabled, which cannot be resolved by claimant's fair hearing request. Claimant's father highlighted the homelessness crisis and state efforts to address homelessness, which by the terms of the Lanterman Act exclude consumers of regional centers. Claimant's father emphasized the homelessness crisis includes the adult consumers of the Service Agency.

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LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) (Factual Findings 1-2.)

Burden and Standard of Proof

2. The party asserting a condition that would make the individual eligible for a benefit or service has the burden of proof. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) In this case, claimant bears the burden of proving by a preponderance of the evidence claimant’s rent at Glennwood should be funded by the Service Agency. (Evid. Code, § 115.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324–325 (emphasis in original.) By reason of the Factual Findings, claimant did not satisfy her burden of proof.

Lanterman Act

1. A regional center is required to secure services and supports that meet the individual needs and preferences of consumers through the collaborative IPP process. (Code §§ 4501 and 4646, subds. (a), (b), and (d).) There is no dispute the IPP was a collaborative process and the SLS services provided through the IPP process, with the exception of rent, were appropriate. (Factual Findings 8, 11-12.)

2. SLS refer to services which assist regional center consumers to live in their own home, including choosing where and with whom to live. (Cal. Code Regs., tit. 17 (Reg.), § 58614, subd. (a).) SLS must be tailored to meet the consumer's evolving needs and preferences for support so that the consumer does not have to move from the home of their choice. (Ibid.) There is no dispute claimant has been provided necessary SLS, with the exception of rent. (Factual Findings 8, 12.)

3. Code section 4689 places a high priority on funding SLS to support consumers living arrangements. However, section 4689, subdivision (h) provides "the payment of rent, mortgage and lease payments of a supported living home and household expenses shall be the responsibility of the consumer and any roommate who resides with the consumer." Code section 4689, subdivision (i) provides "[a] regional center shall not make rent, mortgage, or lease payments on a supported living home, or pay for household expenses of consumers, receiving supported living services, except under the following circumstances:"

4. There are certain circumstances where the payment of rent is authorized, , which are not supported by the evidence in this matter. (Factual Findings 14-17.) Code section 4689, subdivision (i) (A) provides such payments can be made where (A) required to meet the specific care needs unique to the individual consumer as set forth in the addendum to the consumer's IPP, and is required when a consumer's demonstrated medical, behavioral, or psychiatric condition presents a health and safety risk to himself or herself, or another. Code section 4689, subdivision (C) provides "the regional center shall not make rent, mortgage or lease payments on a supported living home or pay for household expenses for more than six months, unless the regional center finds it is necessary to meet the individual consumer's particular needs pursuant to the individual program plan.

5. Claimant failed to establish by a preponderance of the evidence Service Agency is responsible for funding rent at Glennwood, in whole or in part, by reason of the Factual Findings and Legal Conclusion.

ORDER

Claimant's appeal is denied. Service Agency is not responsible to fund, in whole or in part, claimant's monthly rent at Glennwood Housing Foundation, Inc.

DATE:

EILEEN COHN

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 under Welfare and Institutions Code section 4713, subdivision (b), 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.