

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JASON S.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2012010081

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 7, 2012, in Los Angeles.

Jason S.¹ (claimant) was present and represented himself; he was assisted by his father and authorized representative, Charles S.

Ruth Janka, Contract Administrator, represented North Los Angeles County Regional Center (Service Agency or NLARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 7, 2012.

ISSUE

Whether the Service Agency must fund supported living services (SLS) for claimant.

¹ Initials and family titles are used to protect claimant's privacy.

EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-16; claimant's exhibit A.

Testimony. Steven E. Johnson, NLARC adult team supervisor; claimant Jason S.

FACTUAL FINDINGS

1. Claimant is an unconserved 37-year-old man who is a consumer of NLARC based on his qualifying diagnosis of autism; he has also been diagnosed with generalized anxiety disorder. Claimant lives in his father's home in Van Nuys. Claimant receives approximately 35 hours per month of in-home supportive services, with his father as provider, as well as SSI and SSA benefits.

2. Claimant had been living independently in the catchment area of the Westside Regional Center; in October 2009, for financial reasons, he moved in with his father, who lives in the NLARC catchment area. WRC had been funding SLS for claimant and continued to do so for a time until NLARC became responsible for coordinating claimant's services and supports. By letters dated February 22 and March 8, 2010, Westside Regional Center (WRC) confirmed that it had agreed to continue to fund SLS for claimant for the remainder of that fiscal year; that claimant had stated that he planned to remain in his father's home; that there would be no interruption of SLS, consisting of 140 hours per month at a cost of \$3,500 per month, provided at the time by Better Life Services, Inc.; and that WRC was transferring claimant's case to NLARC for ongoing case management. Claimant's case was transferred from WRC to NLARC effective April 1, 2010.

3. Claimant's Individual Program Plan (IPP) dated May 25, 2011, states that claimant is living with his father, that claimant would like to find employment and live independently in the near future, and that claimant does not use public transportation due to anxiety. He spends time at the gym and he paints. Claimant is able to perform some household chores, make meals, make purchases, and express his needs and

desires. He has ambulation issues and has undergone multiple surgeries on his right foot, but he does not use adaptive equipment and does not require assistance with daily living activities. The IPP noted that claimant had been assessed by an individualized adaptive skills training program, the "FADE" program provided by People Creating Success, Inc. (PCS), on April 28, 2011, and that the FADE program "could meet [claimant's] needs in money management and other independent living skills at home as well as day programming, including searching for an [sic] employment." (Ex. 4.) The assessment identified several goals for claimant, including conducting a job search and transitioning from his being driven to all destinations to using public transportation. The latter goal was supported by a consultation with claimant's long-time treating psychiatrist, Mark De Antonio, M.D., who wrote that he supports 'a gradual transition to the use of public transportation,'" and who agreed to address the issue with claimant. (*Id.*) The IPP states that the Service Agency will continue to review appropriate services for claimant. The IPP reflects the Service Agency's agreement to fund the FADE program for between 108 and 126 hours per month, six days per week.

4. The Service Agency funded the FADE program at PCS, where claimant's goals were to find employment, maintain his health, and increase his use of public transportation. A PCS quarterly report dated October 2011 notes that claimant has been "reluctant to dedicate himself" to a search for employment and that claimant has not made progress in overcoming his reluctance to use public transportation and "is unwilling to work on this goal." (Ex. A.)

5. On December 31, 2011, claimant submitted to NLARC a Fair Hearing Request, appealing the Service Agency's denial of funding for SLS. He wrote that he was requesting SLS to "help me live my days and life independently." (Ex. 1.)

6. An IPP Annual Review dated January 10, 2012, notes that claimant reported having identified an apartment to move into under a one-year lease, and that he was requesting that the Service Agency provide SLS. The Annual Review states that

an SLS agency would be identified and that an IPP addendum would then be completed to reflect the new service.

7. Also on January 10, 2012, claimant attended the Service Agency's SLS orientation program. The program and the written materials given to claimant covered the nature of SLS and how to find a service provider. At the program, claimant signed a Supported Living Process Agreement Form stating that he understands that a condition of SLS is that his residence cannot also be the residence of his father.

8. By letter to claimant's father dated January 18, 2012, Ruth Janka, the Service Agency's Contract Administrator, wrote that, at an informal meeting with claimant and his father, claimant had requested SLS and had informed the Service Agency that he had leased an apartment and expected to move into it in late January or early February 2012. Ms. Janka wrote:

Given the prospective change in [claimant's] residence from the family home to an apartment, [claimant] is now eligible to participate in supported living services funded by the North Los Angeles County Regional Center. It is my understanding that [claimant] is working with his Consumer Services Coordinator to identify a service provider and obtain a supported living assessment.

As such, it appears that the issue for fair hearing is resolved.

(Ex. 6.)

9. After that letter, on a date not established by the evidence, claimant communicated to the Service Agency his intention not to move into the apartment but to continue living with his father, and his desire to proceed with the fair hearing in order to obtain Service Agency funding for SLS notwithstanding his decision to continue living in his father's home.

10. Steven Eric Johnson, a consumer services supervisor at the Service Agency, testified that SLS is provided only to consumers who are living independently, in order to support them in their own home and assist them in pursuing a variety of outcomes, including community integration and development of specific skills. The consumer, to be eligible for regional center funding of SLS, must be at least 18 years old, must choose supported living, and must not live in a home where his or her parent also lives. Mr. Johnson testified that, although the Service Agency is not authorized to fund SLS for claimant, given that he has no intention of moving out of his father's home, it is willing to fund a number of other services for claimant that could help him achieve goals identified in his IPP. Those services include independent living skills services, which would provide habilitative training and personal support, such as an aide to accompany claimant when he takes public transportation. They include adaptive skills training, focusing on specific skill acquisition such as social skills, self-help skills, and employment skills. They include community integration programs, and an individualized day program to help claimant get out into the community and work on his goals.² The Service Agency referred claimant to some providers of these services, but due to communications problems and claimant's repeated telephoning of providers due to his anxiety, as well as claimant's leaving at least one derogatory message for a provider, none of the referrals worked out. PCS terminated claimant's services, in part because he refused to participate in activities designed to help him achieve the program's goals. Mr. Johnson testified that the Service Agency recognizes claimant's discomfort with using public transportation, that it is willing to work with Dr. De Antonio on assisting claimant's gradual transition to using public transportation, as recommended by Dr. De Antonio,

² Dr. De Antonio submitted a declaration stating that claimant "requires an individualized one to one day program comparable to the individualized program he had when he was a client of Westside Regional Center." (Ex. A.)

and that claimant is eligible to receive Paratransit services and services from Dial-a-Ride. The Service Agency also offered to fund applied behavior analysis (ABA) for claimant.

11. Claimant testified that he has no plans to live on his own, and will continue living with his father. He acknowledges that the Service Agency informed him of regulations requiring that he live on his own in order to receive funding for SLS, but he believes he should be entitled to receive services that allow him to live with his father while spending his days in the community. He would like any service that would keep him focused and busy outside the home during the day. He is highly anxious in crowds and on a bus, and the presence of an aide on the bus does not alleviate his anxiety.

//

//

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.³) An administrative “fair hearing” to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of funding for SLS. Jurisdiction in this case was thus established. (Factual Findings 1-9.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that he is entitled to funding for supported living services. (Evid. Code, § 115.)

³ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

FUNDING FOR CLAIMANT'S SLS

3. The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the 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 "places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan." (§ 4689.)

6. Supported living services consist of "any individually designed service or assessment of the need for service, which assists an individual consumer to (1) live in his or her own home, with support available as often and for as long as it is needed" (Cal. Code Regs., tit. 17, § 58614, subd. (a).) "'Home' means, with respect to the home of a consumer receiving supported living services, a house or apartment . . . in which no parent or conservator of the consumer resides" (Cal. Code Regs., tit. 17, § 58601, subd. (a).) A consumer is eligible for SLS upon a determination through the IPP process that the consumer is at least 18 years old, has requested SLS, and is "[l]iving 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).)

7. The evidence establishes that the Service Agency is not required to fund SLS for claimant. Claimant lives in his father's home and has stated that he has no current intention to live independently, making claimant ineligible for SLS under applicable statutes and regulations. Based on the evidentiary record, it also appears that the Service Agency is willing to fund various appropriate services and supports for claimant designed to help him achieve the goals set out in his IPP and that he identified at hearing. (Factual Findings 1-11.)

ORDER

Claimant's appeal is denied. NLARC is not required to fund SLS for claimant.

DATED: February 16, 2012

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.