

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FREDERICK N.,

Claimant,

v.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2013080175

DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on September 18, 2013, in Santa Ana, California.

Paulette N., Claimant's mother, represented Frederick N. (Claimant).¹

Paula Noden, Manager, Prevention Program, represented the Regional Center of Orange County (RCOC).

The record was held open for Claimant's mother to submit documentation in support of his motion to enforce a subpoena. Claimant's mother submitted the document on September 19, 2013. It was marked for identification and received into evidence as Exhibit Y. Regional Center submitted a response on September 20, 2013, which was marked for identification and received into evidence as Exhibit 10. Claimant's mother

¹ Initials are used to protect the privacy of Claimant and his family.

submitted a reply on September 24, 2013, which was not authorized and thus will not be considered. In any event, the reply would not change the outcome of the motion. The matter was submitted on September 20, 2013.

ISSUES

As set forth in the Order dated September 12, 2013, by Presiding Judge Susan Formaker, the issues in this proceeding were limited to the following:

1. Whether RCOC denied Claimant's request for management or oversight by a physician for Claimant's medical treatment through the University of California at Irvine (UCI) clinic; and
2. Whether RCOC denied Claimant's request to receive services through the Work Creation Program (WCP).

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1-10; Claimant's exhibits A-Y.

Testimonial: Leslie Walker, RCOC Manager of Client Records and Risk Management; Peter Himber, M.D., RCOC Chief Medical Officer; Philip Brown; Don Tanglao, Claimant's former job coach²; Monice Mitchell-Ramirez, RCOC Service Coordinator; Claimant; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 37-year-old male who qualifies for regional center services based on a diagnosis of moderate mental retardation. He is also deaf.

² Although Don Tanglao, Claimant's former job coach, appeared at the hearing and was willing to give testimony, it was determined that his testimony was not relevant to the issues and thus he was excused.

2. Service Agency held a planning team meeting to discuss, in part, a day program for Claimant on July 10, 2013. By letter dated July 19, 2013, RCOC memorialized the planning team meeting, and included Claimant's options to choose between four programs. The letter indicated that at the end of the planning meeting, neither Claimant nor his mother had made a final decision regarding which day program they preferred. RCOC offered to hold a follow-up meeting, but Claimant's mother declined. On July 22, 2013, Claimant's mother filed a fair hearing request, and these proceedings ensued.

3. Claimant's fair hearing request did not articulate any decision or action of the Service Agency that would warrant a hearing. RCOC moved to dismiss the fair hearing request. By Order dated September 12, 2013, Presiding Judge Susan Formaker denied Service Agency's motion, and found that additional documentation submitted by Claimant reflected Claimant's view that two requests for services had been denied. Those issues are listed above. The Order was clear that the hearing would be limited to only those two issues.

4. Claimant's most recent individual program plan (IPP), adopted after a meeting on March 14, 2013, indicates that RCOC agreed to fund for multiple services, including a day program and visits with a psychiatrist at UCI. At the hearing, RCOC represented that it continues to remain committed to funding those services.

5. Leslie Walker (Walker), RCOC Manager of Client Records and Risk Management, testified at the hearing. Walker was present at the planning team meeting where Claimant's options regarding day programs were explained to him. Claimant had specific requests, and none of the programs that RCOC had available could accommodate all of his requests. For example, Claimant expressed that he wanted to work eight hours per day, for eight dollars per hour, at Goodwill. Goodwill was not offering those hours at that rate, but they were offering something to Claimant. Claimant's mother, on the other hand, wants Claimant to work part-time. Although Claimant's mother insists that she is

Claimant's conservator, she has not produced documentation to the Service Agency, nor at the hearing, to confirm her status. Thus, RCOC is responsible to Claimant directly because he is the consumer. Walker noted that WCP was one of the programs that RCOC offered to Claimant during the planning team meeting. Walker stated that the outcome of the meeting was that neither Claimant nor his mother made a decision about which day program Claimant should attend. RCOC offered to hold a follow-up meeting, but Claimant declined and filed the request for hearing.

6. Peter Himber (Himber), M.D., testified at the hearing. Dr. Himber is the Service Agency's Chief Medical Officer. He explained that UCI has an arrangement with RCOC to provide outpatient psychiatric care to Service Agency consumers. UCI specializes in treating patients with developmental disabilities. Claimant was seen by UCI psychiatrist Gail Fernandez (Fernandez), M.D. five times within the past year (Ex. 4.) Dr. Himber explained that Fernandez recently left her employment with UCI in July 2013. Thereafter, Angela Sagar (Sagar), M.D., has taken over Claimant's care. Dr. Sagar has seen Claimant once since July 2013. Dr. Himber spoke with Dr. Sagar about Claimant. Dr. Sagar expressed to him that she had difficulty with Claimant's mother understanding Claimant's issues. Dr. Sagar indicated that a follow-up visit is necessary. Claimant tried on one occasion; however, a deaf interpreter was unavailable. Claimant was advised to schedule another appointment, but neither he nor his mother has done so.

7. Philip Brown (Brown), Arc-Mid Cities (Arc) employee, testified at the hearing. Brown explained that Claimant had been employed at Sears through Arc, but due to an altercation, Claimant was dismissed. Although Arc was willing to place Claimant at another job site, there were no other positions available in Claimant's geographic area. The evidence showed that several months later, Claimant expressed an interest in pursuing employment with a different agency, and thus RCOC cancelled its contract with Arc, so that it could initiate a contract with another agency.

8. Monice Mitchell-Ramirez (Mitchell-Ramirez) testified at the hearing. She was Claimant's service coordinator for approximately one year, from February 2012 through March 2013. She explained that although Claimant wanted to work with WCP, she informed Claimant that it was not a viable option because Claimant had moved to Huntington Beach, and there were no jobs available in his geographic area. In addition, WCP did not have a job coach who could use sign language, and thus WCP could not serve Claimant.

9. Claimant testified at the hearing. He wants a better job to receive more money, so that he can afford both necessities and small luxuries. He does not understand why his placement in a job is being delayed. He expressed a strong desire to work; he does not want to just sit around. Claimant wants to earn money for the work he performs.

10. Claimant's mother testified at the hearing. She has issues with Claimant's medical treatment at UCI. Specifically, she is displeased that Dr. Fernandez would not allow her in the exam room with Claimant, and she thinks that Dr. Sagar is unresponsive. Claimant's mother was informed that Dr. Sagar is willing and able to treat Claimant; it is up to Claimant and/or his mother to schedule an appointment. It was also explained to Claimant's mother that the fair hearing process is not the forum to address issues with Claimant's medical provider. RCOC is responsible for ensuring that Claimant has access to medical treatment through UCI, and the evidence showed that RCOC is providing that service. Any problems that Claimant's mother may have with his doctors cannot be adjudicated during a fair hearing.

11. Claimant's mother also had issues with Claimant's day program and job placement. She opined that Claimant's expectations were not realistic to work eight hours per day, for eight dollars per hour. With regard to one of the programs offered through Integrated Resources Institute (IRI), she stated that Claimant does not want the work they are offering because he would have to start with little or no pay, even though it might lead

to more gainful employment.

12. RCOC asked Claimant's mother at the hearing whether she wanted Service Agency to complete a referral to WCP. RCOC explained that WCP's acceptance of Claimant, and their availability of jobs was not within Service Agency's control, but that Service Agency was willing and ready to make the initial referral. Claimant's mother eventually agreed, and RCOC indicated that it would make a referral to WCP for Claimant during the afternoon following the hearing.

CLAIMANT'S MOTION TO ENFORCE SUBPOENAS

13. At the hearing, Claimant's mother indicated that she had served subpoenas on both Dr. Fernandez and Dr. Sagar. Neither doctor appeared at the hearing. Claimant's mother made a motion to enforce the subpoenas. She was unable to produce the signed subpoenas at the hearing, and thus the record was held open to allow her to submit those documents. Claimant's mother was also instructed to submit an explanation as to why the record should be certified to Superior Court for contempt sanctions for the witnesses' failure to appear at the hearing. Claimant submitted a 19-page document which did not address how Dr. Fernandez's or Dr. Sagar's testimony would have been relevant to the issues in this hearing. Instead, Claimant's mother vented her frustrations with the doctors and other issues which were not relevant. Although Claimant's mother included copies of the subpoenas and a certified return receipt card, it was not established that the doctors in fact received the subpoenas. The evidence showed that Dr. Fernandez left her employment with UCI several months prior to Claimant's mother's service of the subpoena, and thus it is likely that she did not receive it. With regard to Dr. Sagar, her signature did not appear on the certified return receipt card, and it is unknown whether she actually had knowledge of the subpoena. In any event, there was no evidence that Dr. Fernandez's or Dr. Sagar's testimony would have been relevant to this proceeding. The issue is whether RCOC denied Claimant services from UCI, and the evidence demonstrated that no such

denial occurred. Any testimony that these witnesses may have given would not have affected the outcome of this proceeding. Accordingly, Claimant's motion to enforce the subpoenas is denied.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal regarding his request for services from UCI and WCP, as set forth in factual findings 1 through 13, and legal conclusions 2 through 4.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500, et seq., acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognizes that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. The Lanterman Act also provides that "[t]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option." (Welf. & Inst. Code, § 4512, subd. (b).)

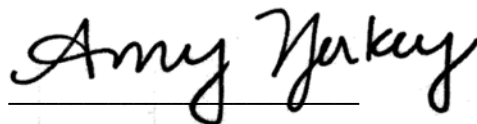
4. Applying those provisions here, Claimant's appeal must be denied. The evidence showed that RCOG has provided services as set forth in his IPP, for both medical treatment and day programs. Claimant has been seen regularly by a psychiatrist at UCI. Any issues that his mother may have with the medical providers at UCI are not properly addressed here. Regarding a day program for Claimant, there was no evidence that RCOG denied Claimant access to WCP or any day program. He must choose which program he

would like to attend, of the available options. Although Claimant may not have all of his requests fulfilled immediately, several of the programs offered may eventually lead to more gainful employment. Finally, until Claimant's mother produces satisfactory documentation to the Service Agency that she is in fact Claimant's conservator, RCOC shall continue to defer to Claimant's wishes; Claimant is an adult consumer presumed capable of making his own decisions.

ORDER

Claimant's appeal is denied.

DATED: October 3, 2013

A handwritten signature in black ink that reads "Amy Yerkey". The signature is written in a cursive style and is positioned above a horizontal line.

AMY YERKEY

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.