

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

In the Consolidated Matters of:

CLAIMANT

vs.

**NORTH LOS ANGELES COUNTY REGIONAL CENTER,
Service Agency.**

OAH Nos. 2020050583, 2020050589, and 2020050596

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these three consolidated matters by video and teleconference on September 9, 2020.

Stella Dorian, Contract Officer, represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Claimant's mother and authorized representative represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the three consolidated matters were submitted for decision on September 9, 2020.¹

ISSUES

1. Must the Service Agency promptly conduct a second Person-Centered Planning (PCP) meeting and place claimant in the Self-Determination Program (SDP)? (OAH no. 2020050583.)
2. Must the Service Agency promptly transfer claimant to Inland Regional Center (IRC), as claimant lives in the catchment area of that regional center? (OAH no. 2020050589.)
3. Must the Service Agency reimburse claimant's father for certain day care services claimant's parents funded? (OAH no. 2020050596.)

EVIDENCE RELIED UPON

Documentary: Service Agency's exhibits 1 through 26; claimant's exhibits A, B.

Witnesses: Arshalous Garlanian, Silvia Haro, Gabriela Eshrati, and Stella Dorian; claimant's mother.

¹ The parties stipulated that the three cases, previously consolidated for hearing, may be addressed in a single Decision.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 29-year-old non-conserved man, is an eligible consumer of NLACRC based on his diagnosis of Autism Spectrum Disorder (ASD).

2. On May 7, 2020, claimant's mother filed the three Fair Hearing Requests at issue in these consolidated cases.²

a. Claimant's mother asked NLACRC to transition claimant into an SDP and to schedule a PCP meeting. (OAH no. 2020050583.) The Service Agency requested details of claimant's 12 months of prior expenditures in order to prepare a budget, a step it argued is integral to the SDP process, and claimed that claimant's mother had failed to provide the information.

b. Claimant's mother asked NLACRC for reimbursement for certain expenses as previously ordered in OAH no. 2019050892. (OAH no. 2020050596.) The Service Agency responded that claimant's mother must submit a vendor packet before she can be reimbursed. Claimant's father submitted a vendor packet but, the Service Agency argued, the prior decision ordered reimbursement only to claimant's mother.

c. Claimant's mother asked that NLACRC transfer claimant's case to IRC. (OAH no. 2020050589.) The Service Agency argued that the outstanding service

² She filed six Fair Hearing Requests in total. Three were assigned OAH case numbers (2020050576, 2020050598, and 2020050602) and dismissed prior to this hearing.

issues, i.e., those pertaining to claimant's request to participate in the SDP, should be resolved first.

Background

3. According to claimant's most recent Individual Program Plan (IPP), since May 2019 claimant has resided in his own apartment in the IRC catchment area. His mother is living with him temporarily, until services are funded that allow respondent to live independently. In the past, claimant lived in the same home as his mother in Palmdale, California; his father and two siblings live together separately. In late 2018 and early 2019, he lived without his mother in his own residence located in Lancaster, California.

4. Claimant is in good physical health and he can perform many activities of daily living on his own. Claimant is able to complete household chores and hygiene tasks, although in many cases he needs prompting to do so. He has a driver's license. Claimant needs support in the areas of cooking, shopping, and money management. He sometimes has difficulty expressing himself and has limited safety awareness.

5. Claimant is an accomplished guitar player and has played in gigs for money; he hopes one day to start his own record label. He also likes to read, exercise, and hang out with his friends. Claimant currently is not attending any educational or other program. He does not participate in any social or life skills training program. Except for his guitar gigs, claimant does not have regular employment.

6. Claimant receives Social Security and Medi-Cal benefits. He does not receive In Home Supportive Services (IHSS).

Claimant's Reimbursement Request

7. NLACRC was ordered to reimburse expenses incurred by claimant's parents in paying a day care service provider for claimant for approximately two months, from May 16 to July 26, 2019, in a Decision in OAH no. 2019050892 issued on July 16, 2019. Arshalous Garlanian, Community Services Manager, testified that a person must be a Service Agency vendor in order to be reimbursed. Claimant's father submitted vendorization documents and support for the expenses incurred. Ms. Garlanian testified that, because the July 2019 Decision authorizes reimbursement to claimant's mother, his authorized representative, only she may receive reimbursement, and therefore she herself, not her husband, must be vendorized.

8. Nothing in the July 2019 Decision, however, indicates any basis for limiting reimbursement to claimant's mother. She appears to have been chosen to receive the reimbursement simply because she was claimant's authorized representative at the hearing. The July 2019 Decision, in fact, finds that reimbursement is due to the consumer himself: "Claimant is entitled to reimbursement for aid-paid-pending the fair hearing and decision" (Ex. 5, p. 14.) Because the Service Agency failed to properly serve claimant's mother and authorized representative regarding payment for day care services, resulting in her inability to timely file a request for hearing, reimbursement was ordered in accordance with "general principles of equity." (*Id.* at p. 15.)

9. Claimant's IPP clearly reflects that claimant's parents share responsibility for supporting and caring for claimant. Claimant's mother testified that the two share a bank account and community property. Application of general principles of equity warrants a broader reading of the July 2019 Decision than NLACRC advocates.

10. According to evidence on this record, the parties do not dispute that claimant's father has completed all paperwork necessary for NLACRC to vendorize and reimburse him. The purpose and purport of the July 2019 Decision can and should be achieved by NLACRC reimbursing claimant's father.

Claimant's Request for SDP and a Personal Assistant

11. Until May 15, 2019, NLACRC provided claimant with day care services from 10:00 a.m. to 8:00 p.m., five days a week from Monday through Friday. The purpose of these services was to provide claimant with appropriate care and supervision at the family home while his parents were at work.

12. Beginning in September 2017, NLACRC repeatedly requested proof of claimant's parents' employment to verify claimant's eligibility for day care services. Claimant's mother failed to provide employment verification. NLACRC discontinued funding for those services on May 15, 2019; at a July 2019 fair hearing an ALJ ruled that claimant was not entitled to a resumption of day care services until the parties had completed the IPP process and the Service Agency authorized the funding. The July 2019 Decision required reimbursement for a limited period of time because NLACRC did not provide proper notice of the funding termination. (See Factual Findings 7-10.) Claimant's mother requested a resumption of day care services funding; as of September 9, 2019, NLACRC had not received verification of claimant's father's employment and denied the request. In a December 2019 Decision, the ALJ affirmed the denial because of the parents' refusal to provide proof of employment and thereby allow NLACRC to complete the IPP process.

13. Silvia Haro, NLACRC's SDP Supervisor, testified that SDP is a pilot program that allows consumers to access services in a non-traditional way, giving

families a bit more flexibility in, for example, their choice of service providers. To transition into SDP, a consumer must attend an orientation and a Person-Centered Planning (PCP) meeting to ascertain the consumer's needs and wants, supports and services, and spending for services over the prior 12 months. A budget is thereby created, which must be certified by the Service Agency's accounting department, an IPP is conducted, a spending plan is created, and the consumer then completes the transition. The Lanterman Act does not establish a timeline for this process.

14. Ms. Haro testified that claimant was accepted into the SDP. He attended an orientation in 2019 and what was scheduled to be a telephonic PCP meeting on June 2, 2020. At the PCP meeting, Joi Pinney, claimant's service coordinator, explained the SDP process, discussed independent living services, supported living services, and personal assistance, and requested additional information from claimant's mother about claimant's current behaviors in order to assess his needs. Claimant's mother did not provide the requested information. Claimant's mother suggested that a personal assistant, rather than day care services, might be appropriate to help claimant with daily living skills; proof of the parents' employment would not be a prerequisite to funding for a personal assistant. Ms. Haro testified that, for an adult consumer living in his own home, a personal assistant would be more appropriate than day care services. To date, however, claimant's mother has not provided NLACRC itemized expenses for services over the past 12 months, nor information necessary for the Service Agency to assess whether claimant's service needs support funding for a personal assistant.

Claimant's Request for Transfer to Inland Regional Center

15. Claimant has not lived in NLACRC's catchment area for the past 16 months, and intends to remain in IRC's catchment area indefinitely. The Service Agency acknowledges that the Lanterman Act does not require outstanding service issues be

resolved before transfer. Gabriela Eshrati, formerly Consumer Services Supervisor and now a Branch Supervisor, testified only that the Service Agency prefers a resolution before transfer. She testified that, if service issues are not resolved, NLACRC can share the caseload with the transferee regional center until the issues are resolved, but NLACRC prefers to resolve the issues before transfer. That is why the Service Agency is asking claimant's mother for proof of employment so it can generate new authorizations for day care, in order to prepare the case for transfer to IRC.

16. Ms. Eshrati testified that there is some ambiguity about whether claimant's mother authorizes the transfer, and testified that claimant's mother would not provide NLACRC with an agreement to transfer the case. Claimant's mother requested and authorized transfer at least one year ago. Claimant's mother testified that she has authorized the transfer and wants it to proceed.

17. Claimant's mother testified that, if NLACRC had transferred the case when she initially made her request, claimant would still have had services funded by NLACRC and could have transitioned to SDP at IRC. But now he has no budget at NLACRC, and no one there really knows claimant well anymore due to staff turnover. Claimant's mother talked to IRC about having the case transferred, but was told that NLACRC has to initiate the process. She testified that she wants services that will allow claimant to live independently, so she can return home and be with her husband.

18. Both claimant's mother and the Service Agency would like to resolve the outstanding service issue (claimant's qualification to participate in the SDP) prior to transfer, so claimant can begin receiving funding through that program for a personal assistant or day care services. But IRC will be obligated to conduct an IPP after the transfer and assess claimant's needs independent of any determination NLACRC

makes, regardless of whether NLACRC resolves the outstanding service issue in claimant's favor and funds a personal assistant or day care services.

19. In the IPP process to be conducted at IRC, services that NLACRC authorizes may be discontinued; other services may be added. The sooner the transfer is effectuated, the sooner claimant and his new regional center, IRC, can assess what services and supports are appropriate for claimant and whether he should be in the SDP. The Service Agency shall, therefore, immediately take all required actions to transfer the case to IRC, regardless of the status of the SDP issue, funding for a personal assistant or day care services, or any other outstanding issues. (This does not affect the Service Agency's obligation to promptly vendorize and reimburse claimant's father in compliance with the July 2019 Decision.)

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 respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's denial of her requests that claimant be entered in the SDP and be transferred to IRC, and that she and her husband be reimbursed for day care expenses. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

³ Further statutory references are to the Welfare and Institutions Code.

2. Because claimant seeks benefits or services, she bears the burden of proving she is entitled to the services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove her case by a preponderance of the evidence. (Evid. Code, § 115.)

The Lanterman Act

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. The Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the

person and be directed toward the achievement of the most independent, productive, and normal lives possible.” (§§ 4502, subd. (a), 4640.7.)

6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to “find innovative and economical methods of achieving the objectives” of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or “generic resource.” Regional centers are required to “. . . identify and pursue all possible sources of funding” (§ 4659, subd. (a).) The IPP process “shall ensure . . . [u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a)(2).)

Services for Claimant

REIMBURSEMENT

7. Claimant established that NLACRC must reimburse claimant, through either of his parents, to comply with the July 2019 Decision, and that claimant’s father should promptly be vendorized and reimbursed, as set forth in Factual Findings 7 to 10.

SDP

8. Claimant did not establish that the Service Agency must promptly conduct a second PCP meeting and place claimant in the Self-Determination Program (SDP); rather, the Service Agency must take appropriate action regarding moving claimant into the SDP only after claimant’s mother provides requested information

concerning claimant's budget and service needs, which she has not done, as set forth in Factual Findings 11 to 14.

TRANSFER TO IRC

9. Claimant established that NLACRC must promptly initiate and pursue to completion the transfer of claimant's file to IRC, regardless of outstanding service issues, as set forth at Factual Findings 15 to 19.

ORDER

1. As to the issue of moving claimant into the SDP (OAH no. 2020050583), claimant's appeal is denied. The Service Agency must take appropriate action to move claimant into the SDP only after claimant's mother provides requested information concerning claimant's budget and service needs.

2. As to the issue of initiating the transfer of claimant's file to IRC (OAH no. 2020050583), claimant's appeal is granted. The Service Agency shall without delay initiate and pursue to completion the transfer of claimant's file to IRC.

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3. With respect to the issue of reimbursement (OAH no. 2020050589, 0595, 0583) claimant's appeal is granted. The Service Agency shall promptly vendorize and reimburse claimant's father for expenses claimant's parents incurred in funding day care services for claimant as ordered in the July 2019 Decision.

DATE:

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.