

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

In the Matter of:

CLAIMANT

vs.

KERN REGIONAL CENTER, SERVICE AGENCY.

OAH No. 2020060264

DECISION

On September 22, 2020, Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings, called OAH, heard this matter by videoconference.

Authorized Representative Bobbie Rufus represented Claimant. Claimant did not attend the hearing.

Attorney Matthew F. Bahr represented Kern Regional Center.

OAH received oral and documentary evidence during the hearing. The record was closed and the matter was submitted on October 6, 2020.

ISSUE

Whether Kern Regional Center should increase the level of adult day care services for Claimant?

EVIDENCE

During hearing, the Administrative Law Judge received Claimant's exhibits A, C – FF, II - KK, and NN; Kern Regional Center's exhibits 1-4; and witness testimony from Claimant's authorized representative Bobbie Rufus and Kern Regional Center Director Celia Pinal.

FACTUAL FINDINGS

1. Claimant was 27 years old and a consumer of Kern Regional Center at all relevant times. Claimant was eligible for regional center services under the eligibility category of intellectual disability.
2. As a result of her disability, Claimant had delays in intellectual and adaptive functioning. Claimant's intellectual disability impacted her involvement and progress in the areas of learning, self-care, mobility, self-direction, independent living, and economic self-sufficiency. She required comprehensive adult care for supervision and protection.
3. Claimant also had schizoaffective disorder and Post-Traumatic Stress Disorder. As a result, she demonstrated aggressive and self-injurious behaviors, and was prescribed psychotropic medications.

4. On August 13, 2008, Claimant was placed in Ms. Rufus's foster care, along with her younger, biological sister, who was also disabled. In November 2010, Ms. Rufus became Claimant's legal guardian. In 2011, Claimant turned 18 years old, and ceased being Ms. Rufus's foster child. Ms. Rufus no longer provides foster care or operates a foster care home or similar facility.

5. Claimant and her sister continued to reside with Ms. Rufus, in Kern Regional Center's catchment area, after attaining the age of majority. Ms. Rufus represents Claimant and her sister, each consumers of the Service Agency, as their authorized representative for matters involving the Kern Regional Center. Claimant is not conserved and has no other family that can provide care to Claimant or her sister.

6. Ms. Rufus is responsible for providing care and supervision to Claimant and her sister in all areas, including meals, daily needs, personal hygiene, safety, medication and transporting to doctor's appointments. Recently, Ms. Rufus also became responsible for caring for her centenarian mother.

7. Claimant receives \$1,194.37 per month in Supplemental Security Income. The funds are used for Claimant's food, shelter, clothing, medical care and personal items. Claimant pays \$1,000 per month to Ms. Rufus for meals, room and board, under a landlord-tenant agreement. Claimant's sister has a similar landlord-tenant agreement with Ms. Rufus.

8. To assist with her mental health disorder, California's In-Home Supportive Services, called IHSS, provides Claimant 283 hours per month of adult day care services. IHSS pays Ms. Rufus to provide these services.

9. Other than payment from IHSS and rent from Claimant and her sister, Ms. Rufus does not receive money from any agency or individual to care for Claimant or her sister.

The March 2020 Individual Program Plan

10. On March 13, 2020, Kern Regional Center held an annual Individual Program Plan, called IPP, team meeting for Claimant. An IPP is designed to provide cost effective services to meet the individualized needs of persons with developmental disabilities who, like Claimant, are consumers of the regional center. Ms. Rufus and Claimant attended the IPP team meeting. Crystal Williams, a representative from Valley Achievement Center, attended the meeting, along with Kern Regional Center representative Sherri Hosey.

11. Valley Achievement Center was a behavior management program that Claimant attended each weekday, 8:00 a.m. to 3:00 p.m. Kern Regional Center funded the program, along with round-trip transportation for the program.

12. The IPP team reviewed Claimant's present health, medical, and care needs, and progress towards previous IPP goals. Claimant had decreased her aggressive and disruptive behaviors. She liked attending the Valley Achievement Center, had friends and enjoyed going on community outings. She made progress towards each of her prior annual IPP goals.

13. For the pending year, the IPP team developed five new goals, in the areas of personal care, aggressive social behavior, safety awareness, inappropriate touching, and other disruptive behaviors.

14. To meet the goals, the IPP offered individualized services, including 124 hours per month of at-home adult day care and 55 hours of respite, which was also at-home adult day care. Combined, the IPP offered Claimant 179 hours of at-home adult day care, delivered by a private agency funded by Kern Regional Center. Ms. Rufus could select when to use the hours, including banking hours for vacations or holidays.

15. In addition, the IPP offered continued funding for the Valley Achievement Center program, 23 days monthly, with round-trip transportation. Claimant did not require adult day care or support from Ms. Rufus when she attended the Valley Achievement Center, as direct care and supervision was embedded in the program.

16. The IPP also offered 30 hours per month of community integration services, with related round-trip transportation, funded by Kern Regional Center. Similar to the Valley Achievement Center, community integration services did not use service hours designated for at-home adult day care.

17. The IPP identified Ms. Rufus and her husband, Leroy Rufus, as caregivers responsible for providing appropriate care to Claimant and her sister. Although not biologically or legally related, Ms. Rufus was considered Claimant's family by the Kern Regional Center.

18. Valley Achievement Center and the community integration programs were impacted by closures arising from the COVID-19 pandemic. To accommodate agency closures stemming from the COVID-19 pandemic, the March 2020 IPP offered Claimant an additional 171 hours of adult day care services, from March 19, 2020, through April 13, 2020; 104 additional hours, from April 14, 2020, through April 30, 2020, and; 184 additional hours, from May 1, 2020, to June 30, 2020. Unlike the out-of-home agency

services, the at-home adult day care services were not impacted by the COVID-19 related closures.

19. Claimant and Ms. Rufus signed their consent to the IPP on March 13, 2020.

The Fair Hearing Request

20. On May 28, 2020, Ms. Rufus sent Kern Regional Center a Fair Hearing Request, asserting the level of at-home adult day care hours was inadequate because Ms. Rufus had reduced the amount of time she personally cared for Claimant, called natural support. The request complains that an increase in adult day care hours was necessary to meet Claimant's health and safety needs.

21. On June 17, 2020, Celia Pinal, Kern Regional Center's Director of Client Services, held an informal meeting by telephone with Ms. Rufus to discuss the Fair Hearing Request. The parties were unable to reach an agreement.

22. On July 6, 2020, Ms. Pinal sent Ms. Rufus a notice of action letter outlining Kern Regional Center's determinations and proposed actions in response to the Fair Hearing Request. Ms. Rufus did not consent to the proposed actions, and Kern Regional Center submitted Claimant's Fair Hearing Request to OAH on June 8, 2020.

Ms. Rufus's Testimony

23. Ms. Rufus testified on behalf of Claimant during the Fair Hearing. She presented persuasive testimony in support of increasing at-home adult day care services for Claimant.

24. During the hearing, Ms. Rufus clarified that Claimant's Fair Hearing Request did not include the increased services that were offered to compensate for the

COVID-19 related closures of the Valley Achievement Center and the community integration services. Rather, Claimant's hearing request was limited to the level of adult day care services provided prior to, and presumably after, the COVID-19 related closures. Thus, Claimant's issue was limited to the adequacy of the 179 hours per month of at-home adult day care services. Ms. Rufus also presented evidence for claims that exceeded the scope of Claimant's Fair Hearing Request. However, claims that exceeded the issue asserted for this matter will not be considered in this Decision.

25. Ms. Rufus primarily argued that she cannot provide the same level of natural support that she previously provided Claimant, thereby creating an unmet need for Claimant. Natural support is the voluntary support and assistance that is provided by one's family or close acquaintances.

26. Kern Regional Center identified Mr. Rufus and Ms. Rufus as Claimant's caregivers, and therefore depended on Mr. Rufus and Ms. Rufus to provide Claimant natural support in Claimant's home environment. However, Mr. Rufus did not assist with the care of Claimant, or her sister, or attend their IPP meetings. Therefore Ms. Rufus was solely responsible for providing Claimant and her sister natural support. Yet, Ms. Rufus pointed out that she was not legally obligated, or paid, to provide natural support to Claimant or her sister.

27. Recently, Ms. Rufus became responsible for providing daily care and support for her elderly mother, in addition to caring for Claimant and her disabled sister. Ms. Rufus carefully and diligently supported Claimant and her sister as their primary caregiver for several years. However, she is now overwhelmed by the responsibilities of caring for Claimant, Claimant's sister, and her elderly parent.

28. During testimony, Ms. Rufus made clear Claimant's need for constant adult assistance and supervision. Claimant requires constant adult supervision and protection, including for personal hygiene, toileting, eating, and interacting with others. Transportation providers will not drop off Claimant at her residence unless they see that an adult is there to receive her. Claimant cannot be left alone at any time, except when she is in her room just before her scheduled bedtime.

29. Ms. Rufus relies on the adult day care services provided by Kern Regional Center to care for Claimant. It is normal for Ms. Rufus to not use the service hours during the weekdays, and to save the service hours for weekends, holidays, or when she requires an unscheduled break. In light of her need to care for her elderly mother, Ms. Rufus desires additional support for Claimant and her sister, so she can use the adult day care services during weekdays, weekends, and holidays, without having to bank, or save, service hours.

30. In sum, Ms. Rufus persuasively established that a reduction in natural support had created a gap in services. Claimant now requires additional at-home adult day care hours to fill that gap to support her individualized needs.

Celia Pinal's Testimony

31. Celia Pinal, Director of Client Services, testified during the hearing on behalf of Kern Regional Center. Ms. Pinal was an experienced director and coordinator of IPP services, with 25 years of experience working at Kern Regional Center. Ms. Pinal is familiar with Kern Regional Center's responsibilities and Claimant's individual needs. She was a thoughtful and deliberative witness who provided credible testimony during the hearing.

32. Ms. Pinal supported the adequacy of the March 2020 IPP at the time it was offered. When the IPP was formulated, Kern Regional Center considered Claimant's individual needs and progress under the prior IPP, in conjunction with services Claimant received from providers outside of the regional center, such as natural support and IHSS. The March 2020 IPP offer was substantially similar to Claimant's previous IPP, and Claimant had shown progress toward her prior IPP goals under that plan. It was reasonable to determine that a continuation of the same level of services was adequate to meet Claimant's individual needs and permit her to progress towards her March 2020 annual IPP goals.

33. The March 2020 IPP team reviewed Claimant's present levels of performance and progress towards past goals. On that basis, the IPP team jointly developed new annual goals, and offered a solid plan to meet those goals. The IPP included 179 hours per month of at-home adult day care, including 55 hours of respite, along with the Valley Achievement Center program, 23 days monthly, and the community integration program, 30 hours monthly, each with transportation.

34. Ms. Pinal did not dispute Claimant's disability or levels of need. Kern Regional Center's formulation of IPP services was intended to assist Ms. Rufus care for Claimant in light of Claimant's circumstances.

35. In addition, Kern Regional Center was obligated to consider outside service providers when formulating Claimant's IPP. Therefore, Claimant's receipt of 283 hours of at-home adult day care, funded by IHSS, impacted the level of services offered in her IPP.

36. Ms. Rufus's ability to provide natural support for Claimant also impacted the IPP offer.

37. Following Claimant's Fair Hearing Request, Kern Regional Center became aware of Ms. Rufus's desire to reduce the natural support she provided Claimant. During the hearing, Ms. Pinal agreed that Ms. Rufus's reduction of natural support resulted in an unmet need for Claimant.

38. In significant part, Ms. Pinal did not dispute Claimant's request for additional services because of Ms. Rufus's decreased ability to provide natural support in the home. Accordingly, Ms. Pinal recommended increasing Claimant's at-home adult day care hours by 70 hours per month. The additional hours could be used to support Claimant during weekends, eight hours each Saturday and Sunday. Consequently, Kern Regional Center would be obligated to fund 249 hours per month of adult day care services for Claimant.

39. Ms. Pinal's testimony was not refuted by any persuasive evidence submitted during hearing, and great weight was given to her recommendations.

LEGAL CONCLUSIONS

1. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept.*

of Developmental Services (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

2. The Department of Developmental Services is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.)

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620, et seq.)

4. The "services and supports" provided to a consumer include "specialized services and supports . . . directed toward the alleviation of a developmental disability . . . or toward the achievement and maintenance of independent, productive, and normal lives" (Welf. & Inst. Code, § 4512(b).) The services and supports necessary for each consumer are determined through the IPP process. (Welf. & Inst. Code, §§ 4512(b), 4646.)

5. If a generic agency fails or refuses to provide a regional center consumer with those supports and services which are needed to maximize the consumer's potential for integration into the community, the Lanterman Act requires the regional centers fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (Welf. & Inst. Code, § 4648(a)(1).)

6. The standard of proof in this case is the preponderance of the evidence. (Evid. Code, §115.) As the petitioning party, Claimant had the burden of proving that Kern Regional Center should increase her at-home adult day care service hours.

7. Claimant met her burden of proving she had an unmet need for additional at-home day care services. Claimant is severely disabled and requires constant adult supervision. Claimant's natural support, provided exclusively by Ms. Rufus, decreased because of Ms. Rufus's need to assist her elderly mother, in addition to supporting Claimant and her disabled sister. Consequently, a gap occurred in the services necessary to maximize Claimant's potential for integration into the community and to meet the goals set forth in her March 2020 IPP. (Factual Findings 30 and 38.) By the above authority, Kern Regional Center is obligated to fill that gap.

8. During the hearing, Kern Regional Center did not dispute Claimant's level of disability or need for additional services to fill the gap left by Ms. Rufus's reduction of natural support. To the contrary, Kern Regional Center's sole witness, Celia Pinal, testified that Claimant had an unmet need for services and recommended increasing services funded by the Services Agency. Ms. Pinal credibly posited that Kern Regional Center should add 70 hours per month of at-home adult care services to Claimant's IPP. Claimant did not submit persuasive evidence to refute the level of services recommended by Ms. Pinal. (Factual Findings 38.)

9. Based upon the foregoing, Claimant proved by a preponderance of evidence that Kern Regional Center should fund an additional 70 hours per month of adult day care services.

ORDER

1. Within 10 days of this Decision, Kern Regional Center shall amend Claimant's IPP to add 70 hours per month of at-home adult day care services, for a total of 249 hours per month of at-home adult day care funded by Kern Regional Center.
2. Claimant's other requests for relief are denied.

DATE:

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision, and all parties are bound by it. Either party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt of the Decision.