

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**KERN REGIONAL CENTER, SERVICE AGENCY.**

**OAH No. 2020060265**

**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 26 years old and a consumer of the 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. On August 13, 2008, Claimant was placed in Ms. Rufus's foster care, along with her older, biological sister, who was also disabled and a consumer of the Kern Regional Center. In November 2010, Ms. Rufus became Claimant's legal guardian. In

2012, 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.

4. 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.

5. Ms. Rufus has assumed responsibility 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.

6. 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.

7. Other than rent, Ms. Rufus does not receive money from any agency or individual to care for Claimant.

### **The January 10, 2020 Individual Program Plan**

8. On January 10, 2020, Kern Regional Center held an annual Individual Program Plan, called IPP, team meeting for Claimant.

9. 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 meetings. Lupita Velasquez, a representative from Social Vocational Services, and Kern Regional Center representative Sherri Hosey, also attended the IPP meeting.

10. Social Vocational Services was a vocational and social skills day program that Claimant attended each weekday. Kern Regional Center funded the program, along with round trip transportation for the program.

11. The IPP team reviewed Claimant's present health, medical, and care needs, and progress towards previous IPP goals. Claimant had progressed towards her prior annual goals, including decreasing her emotional outbursts, increasing her ability to complete personal hygiene tasks, and increased safety awareness when interacting with strangers. Claimant worked eight hours monthly as a janitor, a position acquired through Social Vocational Services. Claimant enjoyed working and being able to buy personal items with the money she earned. However, she continued to struggle with social and emotional problems, including emotional outbursts and crying.

12. For the pending year, the IPP team developed new goals, in the areas of decreasing emotional outbursts, personal care, safety awareness, and enhancing vocational skills and physical safety.

13. To meet the goals, the IPP offered individualized services, including 124 hours per month of at-home adult day care and 25 hours of respite, which was also at-home adult day care. Combined, the IPP offered Claimant 149 hours of at-home adult day care, delivered by the private agency Premier Healthcare and funded by Kern Regional Center. Ms. Rufus could select when to use the hours, including banking hours for vacations or holidays.

14. In addition, the IPP offered continued funding for the Social Vocational Skills program, 23 days per month, with round trip transportation. Claimant did not require adult day care or support from Ms. Rufus when she attended the Social Vocational Skills program, as direct care and supervision was embedded in the program.

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

16. The IPP identified Ms. Rufus and her husband, Leroy Rufus, as caregivers responsible for providing appropriate care to Claimant and her sister. While not biologically related, Mr. Rufus and Ms. Rufus were considered Claimant's family by the Kern Regional Center.

17. Ms. Rufus signed her consent to the IPP on January 10, 2020, and Claimant signed her consent on January 16, 2020.

18. On March 20, 2020, Kern Regional Center amended the IPP, due to COVID-19 related closures. The closures included the Social Vocational Skills and community integration programs, which resulted in a gap of services necessary to meet Claimant's needs. To remediate the gap, Kern Regional Center offered Claimant 184 hours per month of additional day care services, also provided by Premiere Healthcare and funded by the regional center. The additional at-home services were limited to Monday through Friday, and would last 12 months.

## **The Fair Hearing Request**

19. 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 to decrease the amount of personal care, called natural support, that she could provide Claimant. The request complains that an increase in adult day care hours is necessary to meet Claimant's health and safety needs.

20. 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. On July 6, 2020, Ms. Pinal sent Ms. Rufus a letter notifying her of Kern Regional Center's determinations and proposed actions in response to Claimant's 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**

21. 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.

22. During the hearing, Ms. Rufus clarified the Fair Hearing Request did not include the COVID-19 related services offered in Claimant's March 20, 2020 amended IPP. Rather, Claimant's request was limited to the level of adult day care services offered in the January 10, 2020 IPP, prior to the COVID-19 related closures. Thus, Claimant's issue was limited to the adequacy of the 149 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 in the Fair Hearing Request for this matter will not be considered in this Decision.

23. 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.

24. Kern Regional Center identified Ms. Rufus as Claimant's caregiver, and therefore depended on Ms. Rufus to provide Claimant natural support in Claimant's home environment. Although Mr. Rufus was also identified as a caregiver in Claimant's IPP, he did not assist with the care of Claimant or her sister. 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.

25. 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 for many years. However, she is now overwhelmed by the responsibilities of caring for Claimant, Claimant's sister, and her elderly parent.

26. During testimony, Ms. Rufus made clear Claimant's need for constant adult assistance and supervision. Claimant requires constant adult supervision and protection, including for safety, protection, personal hygiene, and interacting with others.

27. 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 required 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, hours.

28. In sum, Ms. Rufus persuasively established that Claimant required additional at-home adult day care hours to support her individualized needs.

### **Celia Pinal's Testimony**

29. Celia Pinal, Director of Client Services, Case Management, for Kern Regional Center, testified during the hearing on behalf of the Services Agency. Ms. Pinal was an experienced director and coordinator of IPP services, with 25 years of experience working at Kern Regional Center. Ms. Pinal was 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.

30. Ms. Pinal supported the adequacy of the Claimant's IPP's at the time they were offered. When the IPP's were formulated, Kern Regional Center considered Claimant's individual needs and progress under the prior IPP. The January 10, 2020 IPP offer was substantially similar to Claimant's previous IPP, and Claimant had shown progress toward her prior 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 to permit her to progress towards her January 2020 IPP goals.

31. The January 2020 IPP team reviewed Claimant's present levels of performance and progress towards past goals. The IPP team jointly and thoughtfully developed new annual goals, and offered a solid plan to meet those goals. The IPP included 149 hours per month of at-home adult day care, including 25 hours of respite. In addition, the IPP offered Claimant a day program, 23 days per month, to develop

Claimant's social and vocational skills, along with a community integration program, 30 hours monthly, each with transportation.

32. There was no dispute between the parties concerning 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.

33. Kern Regional Center also considered Ms. Rufus's ability to provide natural support for Claimant, when it developed the January 2020 IPP.

34. 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 hearing, Ms. Pinal agreed that Ms. Rufus's reduction of natural support resulted in an unmet need for services for Claimant.

35. 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 an additional 70 hours per month, to support Claimant during weekends, 8 hours each Saturday and Sunday. Consequently, Kern Regional Center would be obligated to fund 219 hours per month of adult day care services for Claimant.

36. 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, subd. (b).) The services and supports necessary for each consumer are determined through the IPP process. (Welf. & Inst. Code, §§ 4512, subd. (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, subd. (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 January 2020 IPP. (Factual Findings 28 and 35.) 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 Finding 35.)

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 weekends and holidays, for a total of 219 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.