

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SCOTT G.,

Claimant,

OAH No. 2011070542

vs.

ALTA CALIFORNIA REGIONAL  
CENTER,

Service Agency.

**DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on January 24, 2012, in Sacramento, California.

Robin Black, M.A., Legal Services Manager, represented Alta California Regional Center (ACRC or the service agency).

Jonathan Elson, Attorney at Law, Disability Rights California, represented claimant. Claimant's mother and conservator, Renee Dorr, was also present. Claimant did not appear.

Submission of the case was deferred pending receipt of written closing argument. Claimant's and ACRC's Closing Briefs were received on February 10, 2012, and marked respectively as Claimant's Exhibit 31, and ACRC Exhibit 19. Claimant filed a reply brief on February 17, 2012, which was marked as Claimant's Exhibit 32. ACRC filed no reply brief. The matter was thereafter submitted for decision on February 17, 2012.

**ISSUE**

Should claimant's request to fund supportive living services (SLS) be granted?

## FACTUAL FINDINGS

### *Claimant's Background*

1. Claimant is a 25-year-old male who qualifies for ACRC services based on diagnoses of autism, moderate mental retardation and cerebral palsy. He resides with his mother, Renee Dorr, and his sister, Colleen Holt, in their Folsom residence. Claimant's mother serves as his conservator. She is also his IHSS care provider. To assist with his support at home, claimant is currently receiving 96 hours/quarter of respite from Maxim Psych Tech, and Mrs. Dorr is vendored for respite at 90 hours per quarter. In addition, claimant is receiving 173 hours of Personal Attendant (PA) services. Claimant's sister has been his PA for approximately five years. However, she is nearing completion of a masters program in organizational development, and expects to move from their Folsom residence in April 2012.

Claimant receives SSI income through the County of Sacramento and his mother is his representative payee. Since June 2010, claimant has attended the InAlliance-CTP day program in Placerville, Monday through Friday, 5.5 hours each day. He receives 1:1 support through two different support staff in this program, Ginger Valentine and Corby. Claimant has developed a strong rapport with these two individuals. InAlliance-CTP provides transportation to and from the program from claimant's home in Folsom. ACRC is the funding source for this day program, as well as for claimant's respite and PA hours.

2. Claimant's mother has expressed a desire for him to receive supported living services. She has expressed this wish off and on over the period since claimant turned age 18 in 2003. At various times she has contemporaneously sought placement of claimant in either a residential care home or in SLS in the Sacramento area. She has also sought residential placement and SLS services outside ACRC's catchment area.

ACRC funded an SLS assessment that was conducted in March 2009, by independent assessor, Pamela La Pask, for Community Living Options. Claimant was not an active participant in this particular assessment process. Claimant's mother reported to Ms. La Pask at that time that she and her daughter were "tiring of the responsibility of keeping Scott safe" and were "hoping to have the Regional Center to make an SLS living option available to him so they can just enjoy the time they spend with him rather than it being full time care-giving." They expressed a desire that claimant not be placed in a group home. No active steps were taken to transition claimant into SLS at that time.

### *Procedural History*

3. Claimant's Individual Program Plan (IPP) team met on April 13, 2011, as part of his annual IPP review. Mrs. Dorr requested that the team move forward with the SLS process at that time. An Addendum to the IPP was prepared on April 29, 2011. Objective #6 was added to the IPP which stated: "I want to explore the possibility of Supported Living Services by 11/11." The IPP section on schedule of services and supports provided for the following two steps in meeting Objective #6:

6.1 ACRC SC<sup>1</sup> will staff case with ILS/SLS committee for discussion of appropriate services and supports.

6.2 Should SLS be determined to be the most appropriate and cost effective way to meet Scott's needs, ACRC SC will request ACRC funding for hours for SLS based on assessment and need in accordance with ACRC services and support policy.

4. On May 16, 2011, ACRC's ILS/SLS Living Options Committee met to discuss the request for SLS services for claimant. Following the meeting, the committee summarized its recommendation as follows:

SLS doesn't seem appropriate at this time because of consumer's inability to direct staff; consumer is not requesting the service nor demonstrates the understanding of the service. Also the SC doesn't believe that consumer has an understanding of the medication he takes and when it is taken or why it is taken. According to the consumer profile – consumer “cannot be left by himself! He needs 24/7 supervision. He might leave the house if unattended.”

5. Paul Flynn is claimant's service coordinator. He participated in the May 16, 2011 ILS/SLS Living Options Committee meeting. He subsequently met on June 8, 2011, with Mrs. Dorr, Colleen Holt and claimant at the family residence. Mr. Flynn considered this to be the IPP team meeting.<sup>2</sup> Claimant joined the meeting about a half hour after it started. He was accompanied by InAlliance-CTP staff. Mr. Flynn advised Mrs. Dorr of the ILS/SLS committee's recommendation. During the course of this meeting, with the help of a communication device, Mrs. Dorr asked claimant questions related to his wants and desires, especially as it related to his living arrangements. For example, she asked claimant whether he wished to live with her or with Bruce, a friend in San Diego.

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<sup>1</sup> Service Coordinator.

<sup>2</sup> Under Welfare and Institutions Code section 4512, subdivision (j), ““Planning team” means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, one or more regional center representatives, including the regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705.”

Claimant indicated that he wished to live with Bruce. Mrs. Dorr indicated during this meeting that she wished claimant to have SLS services, but she also asked for a list of board and care homes that might fit claimant's needs as well.

6. ACRC issued a Notice of Proposed Action dated June 8, 2011, denying the request to fund SLS for claimant. ACRC provided the following reason for its action: "SLS is not an appropriate service for Scott as SLS is designed to provide support, not supervision, and Scott is in need of supervision. Additionally, Scott is conserved and does not demonstrate an ability to direct his own SLS staff when alone with staff, which is required for provision of SLS. Further, SLS is not a service that Scott himself is requesting, but rather is a request of his conservator."

7. On July 5, 2011, Mrs. Dorr requested both mediation and fair hearing. In bringing this appeal, claimant is the party seeking a service or support (SLS) which is not contained in the IPP. While the April 13, 2011 IPP Addendum made reference to SLS, it was in the context of exploring the possibility of SLS. The IPP Addendum specifically contemplated initial referral of the request for SLS to ACRC's ILS/SLS committee for consideration of appropriate services and supports. (See Finding 3.) The ILS/SLS committee met and its recommendation was communicated to claimant and his mother on June 8, 2011.

Claimant contends that the SLS committee's determination was a "decision" rather than a recommendation. And that ACRC was required, but failed to convene a separate IPP team meeting to discuss the matter further in light of the SLS committee's recommendation. Notwithstanding any failure by ACRC to convene a second IPP team meeting, and the evidence is mixed on whether the June 8 meeting indeed constituted an IPP meeting, there was never a decision made by the IPP team to include SLS as a service to be provided to claimant. Claimant's most recent IPP does not specifically provide for ACRC funding of SLS. Under these circumstances, the burden remains on claimant, not ACRC, to establish that claimant is entitled to have ACRC funded SLS services.

ACRC's determination not to fund SLS for claimant is premised on two grounds. First, ACRC contends that claimant has not expressed a preference for SLS. It notes that the Lanterman Act and related regulations make consumer choice paramount in the provision of SLS. Second, because ACRC characterizes SLS as a consumer-driven service, it contends that claimant has yet to demonstrate that he has the ability to direct staff within his own home. ACRC believes that claimant's "supervision" needs are not the type of support services contemplated by SLS. These two matters are considered in order below.

#### *Claimant's Choice or Preference*

8. Claimant is conserved. Letters of Conservatorship dated July 26, 2005, appointed Mrs. Dorr as the conservator over the person of claimant. In appointing Mrs. Dorr to be his conservator, the Sacramento Superior Court made findings that claimant "is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter." While Mrs. Dorr has legal authority to make decisions on claimant's behalf regarding shelter arrangements, this does not mean that claimant's choices and preferences can be ignored. The

Lanterman Act directs that both the consumer and his conservator “shall have a leadership role in service design.” (Welf. & Inst. Code, § 4501.) Thus, section 4501 specifies:

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment and leisure, the pursuit of their own personal future, and program planning and implementation.

Section 4501 contemplates the consumer and his conservator, together, being empowered to make choices in all life areas. And it contemplates that the consumer and his conservator, together, participate in the decision making process so that the consumer is not excluded from making important life choices.

9. Similarly, Welfare and Institutions Code section 4502 provides that developmentally disabled individuals retain the same legal rights and responsibilities guaranteed all other individuals by the United States and California Constitutions and laws, and that they have a “right to make choices in their own lives, including, but not limited to, *where and with whom they live*, their relationships with people in their community, the way they spend their time, including education, employment and leisure, the pursuit of their personal future, and program planning and implementation.” (Italics supplied. Welf. & Inst. Code, § 4502, subd. (j).)

10. The IPP planning team includes the consumer. (Welf. & Inst. Code, § 4512, subd. (j). See footnote 2.) The consumer’s choices and preferences should be communicated to, and be considered by the planning team. In this case it is surely more difficult to elicit information directly from the consumer. But this only underscores the importance of doing so, and imposes a greater responsibility for finding a way of making the consumer’s needs and desires clearly known to the planning team, including the service coordinator or other regional center representative. The preferences and choices must reflect those of the consumer, and not merely the consumer’s conservator. Accordingly, Welfare and Institutions Code section 4646, subdivision (a) stresses the importance of ensuring that the IPP center on the consumer, taking into account “the needs and preferences of the individual and the family, where appropriate.... It is the further intent of the Legislature to ensure that the provision of services to consumers

and their families be effective in meeting goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

11. Consumer Preference and SLS. The Lanterman Act places a high priority on adults with developmentally disabilities living in homes that they own or lease with support when it is the preferred objective in the IPP. Regional centers must ensure that supportive living arrangements adhere to certain principles, including that the “consumer’s preference shall guide decisions concerning where and with whom he or she lives.” (Welf. & Inst. Code, § 4689, subd. (a)(3).) Regional centers are required to monitor and ensure the quality of SLS services provided to individuals in homes that they own or lease. One of the matters taken into account during monitoring is whether the services and supports outlined in the consumer’s IPP “are congruent with the choices and needs of the individual.” (Welf. & Inst. Code, § 4689, subd. (e)(2).)

Importantly, regulations setting forth eligibility requirements for SLS establish the importance of taking into account consumer preference in making such determinations. Thus, California Code of Regulations, title 17, section 58613 provides:

- (a) A consumer shall be eligible for SLS upon a determination made through the IPP process that the consumer:
  - (1) Is at least 18 years of age;
  - (2) Has expressed directly or through the consumer’s personal advocate, as appropriate, a preference for:
    - (A) SLS among the options proposed during the IPP process; and
    - (B) Living in a home that is not the place of residence of a parent or conservator of the consumer.
- (b) Consumers shall not be denied eligibility for SLS solely because of the nature and severity of their disabilities.

12. Claimant’s Preference. Preliminarily, it is noted that ACRC has not taken a position that it is against the provision of SLS to claimant. Paul Flynn indicated that ACRC is simply unaware of claimant’s intentions regarding SLS, and has reservations about whether claimant will be able to direct SLS staff and otherwise fully participate in the development and operation of an SLS arrangement. ACRC has other consumers with conditions similar to claimant who benefit from and have been successful in an SLS arrangement. ACRC believes that claimant might flourish under an SLS arrangement. However, it strongly believes that in order for this to happen claimant must be fully involved with and committed to SLS in order for such program to be successful. In short, he must express a preference for SLS.

The history of this case is one where claimant’s mother has taken the lead in

determining where and with whom claimant will reside. This has been true since claimant reached adulthood. Mrs. Dorr has simultaneously considered both SLS and placement of claimant in a board and care living arrangement. ACRC is concerned that Mrs. Dorr has viewed the two arrangements as roughly “equivalent” placements. This cannot be. While one may be placed in a residential care home, one is never “placed” in SLS.

When SLS for claimant was explored in 2009, an assessment was prepared by Pamela La Pask. (Finding 2.) Ms. La Pask noted that claimant was not an active participant in the assessment process. He briefly came out of his room to meet Ms. La Pask, but he did not engage in conversation. She did not have an opportunity to assess his communication skills. Mrs. Dorr told Ms. La Pask that claimant would require 24-hour supervision and that she did not want him in a group home. Ms. La Pask provided the following summary as part of her assessment:

[Claimant’s mother] says that Scott wants to be as independent as possible. However, Scott does not appear to want to move out of Renee’s home. Scott presents many challenges and it may not be in his best interest to live independently; he requires a lot of support. Renee expressed concern when it was discussed that SLS is a consumer driven service and that the consumer can choose to tell their support staff to not accompany them, or may even tell the support staff to leave. She asked if she could override his choices and tell the staff to never leave him alone or contact her before listening to Scott. Renee was advised to discuss this topic with Scott’s Service Coordinator, the supervisor at the SLS agency or someone she respected and trusted to obtain detailed legal information.

13. It is clear that claimant was not an active participant in the 2009 SLS assessment, and that he did not wish to move out of his home at that time. It has also been the case that Mrs. Dorr has made every decision regarding his planned living arrangements. She has sought on more than one occasion to have claimant transition into SLS, both within and outside ACRC’s catchment area. She has also sought residential care facility placement. For various reasons, she opted not to proceed in either direction. In December 2009, for example, ACRC worked closely and actively with Mrs. Dorr to transition claimant into an SLS arrangement in the San Diego area. ACRC and the San Diego Regional Center engaged in much early and intensive work to transition claimant into a particular program, only to have the arrangement scrapped when Mrs. Dorr decided not to pursue this. Similarly, in August 2010, ACRC arranged for an SLS in West Sacramento for claimant. The arrangement would have been with one other roommate. Mrs. Dorr rejected this SLS arrangement, insisting that claimant remain in Folsom and have a roommate live with him there instead. The wisdom of these decisions is not at issue here. But they do point to a history, as well as a pattern and practice of Mrs. Dorr making all decisions regarding claimant’s living arrangements, SLS or otherwise, without his active participation.

Mrs. Dorr testified that she now “knows for sure” that SLS is right for claimant. She explained that at times in the past she put transition to SLS on hold because claimant was not able to also be placed into a meaningful day or job program. She believes this is now possible with his current day program in Placerville, one of the reasons why she would like him to remain and receive SLS in Folsom. While Mrs. Dorr has expressed no intention of doing so, the reality is that she has the authority as his conservator to place claimant into a group or family home arrangement today, and that such placement would probably occur. This speaks to the need to have claimant give expression to any preference he might have regarding SLS. The decision to place him in SLS cannot be informed solely by what Mrs. Dorr believes to be in his best interest. His subjective preference for SLS, if any, must be communicated to ACRC. In this case, claimant’s simple statement during the June 8, 2011 meeting that he wished to live with Bruce in San Diego, and not with his mother, is not sufficient indication of his preference for SLS. For this and other reasons, it was established that ACRC has yet to be made aware of claimant’s preference for SLS among other living arrangement options.

14. Claimant’s Ability to Communicate. Despite his communication barriers, claimant is able to communicate preferences, especially with people who know him well. His sister, Colleen Holt, noted that claimant is like other 25-year olds. He is independent-minded and enjoys skateboarding and likes to “flirt with girls.” Claimant prefers being with people his age. Ms. Holt testified that he is more stubborn and argues when he is with his mother. She believes that he does not wish to continue living with his mother.

Ginger Valentine also testified. She is an employment training specialist and works with claimant through his InAlliance-CTP day program. Ms. Valentine noted that non-verbal communication is crucial for claimant. He uses a communication device with several different picture cues for him to press down and communicate what he wants. Pictures may be added to the device. Claimant also communicates through his behaviors. For example, when he finds himself over-stimulated in a particular setting, he is able to communicate his need to leave. He will sometimes bite himself or strike others as a means of communicating his displeasure. Ms. Valentine believes that claimant has already expressed a preference for SLS because he communicated to her that he wished to live in “my house.” Claimant also told her, in response to yes/no questions, that he did not want to live with his mother.

15. Claimant was assessed for SLS over two days in November 2011. The SLS assessment was completed by Beth Gallagher and Kirk Hinkleman, the Director and Associate Director, respectively, of Life Works. The two prepared a written SLS report with recommendations, the basic findings of which are not in dispute here. With regard to claimant’s ability to express preferences and engage in self-direction, the report noted:

Scott is fully conserved by his mom. At this point, it is unclear how well Scott grasps the concept of his rights and being a self-advocate, although he does express himself as to his wants and needs quite well. Training in this area will be a must and will need to be ongoing indefinitely. Scott is very bright and has the capacity to learn. It is important that others see self advocacy as

an important skill for Scott to improve on. Scott has the ability to make choices as they are presented to him. Through the use of his Chat PC, he can voice his wants and needs to the degree the Chat PC is programmed. This particular device is limited in its range of communication, though Scott is proficient with it. It is mandatory that all of his support team be trained on how to use the Chat PC and it is mandatory that they use it with him at all times.

The November 2011 assessment report further described claimant's communication skills as follows:

Scott has limited reliable verbal communication. He does talk, but it is generally in one-word statements. Scott is able to answer yes/no questions if posed in an understandable manner. Scott is able to communicate his wants and needs clearly with the use of his Chat PC, to the degree the Chat PC is capable of communicating. The Chat PC is limited in the detail it is able to communicate. There are several different themes within the device with several different picture cues for him to press down to communicate what he wants ....

Scott communicates a great deal through his behaviors. It will be paramount for his support team to receive extensive training in all aspects of behavior and what Scott is communicating with his behaviors. If Scott feels that he isn't being heard, his behaviors will escalate and become unsafe toward himself, his support staff and to the community.

16. There appears to be good potential in this case for claimant to communicate his preferences regarding living arrangements. He can answer yes/no questions to the extent they are posed in understandable fashion. Service coordinator Paul Flynn expressed concern that claimant gravitates toward the second part of questions, or merely engages in echolalia. These concerns might be addressed by reversing the order of the question, or by asking a series of different questions designed to elicit a consistent response.

It may also be possible to use the Chat PC by adding images of different living arrangements after first having claimant visit the locations in person.

It is apparent that any questioning of claimant needs to be done in an environment that is comfortable to him. He does not need to meet with his full IPP team. However, an ACRC representative needs to be present. A support individual who is familiar as well as comforting to claimant should be present. Colleen Holt or Ginger Valentine come to mind based upon their testimony in this case. It may be wise to have the conversation with claimant outside the presence of Mrs. Dorr. And it would be important to have a meeting in advance of the

conversation to go over and reach a consensus on strategies for eliciting responses from claimant regarding preferred living arrangements.

17. Contrary to arguments raised on claimant's behalf, he has not clearly and repeatedly indicated that he wants SLS. Claimant's statement that he does not wish to live with his mother is not tantamount to a preference for an SLS arrangement. It is also not true that ACRC has already determined that SLS is not an appropriate service for SLS. ACRC is on record that it will support SLS if claimant expresses a preference for this arrangement and if accommodation can be made for potential dangers such as his wandering away from his residence. ACRC has funded SLS for other consumers with diagnoses similar to claimant. ACRC had no issue or concerns about the recommendations made in the more recent SLS November 2011 assessment by Beth Gallagher.

Finally, there was no evidence that ACRC's actions in this case constituted a denial of SLS based on the nature and severity of his disability. (Welf. & Inst. Code, § 4689, subd. (a)(8); Cal. Code Regs., tit. 17, § 58613, subd. (b).) ACRC's primary concern in this case is that claimant has not actively participated in the SLS process, including making his own decision that he wishes to pursue SLS services as opposed to alternative living situations.

18. The above matters having been considered, it is determined that the parties must renew their efforts to determine whether claimant has expressed a preference for SLS among other options proposed. This is contemplated by the IPP process and consistent with the direction given in California Code of Regulations, title 17, section 58613. An IPP planning team should meet to determine the parameters of the meeting with claimant, taking into account the matters set forth in Findings 14 through 16. Once a plan for questioning is established, a separate meeting and conversation with claimant should be held. An ACRC representative must be present during this meeting.

#### *Ability to Direct Staff*

19. ACRC expressed additional concern in its June 2, 2011 Notice of Proposed Action that claimant is in need of supervision and has not demonstrated an ability to direct his own SLS staff. Such concerns are both premature and speculative. ACRC conceded that claimant might actually "flourish" in an SLS arrangement and it did not dispute the matters set forth in his more recent November 2011 SLS assessment.

However, it is premature to make findings that claimant is an appropriate candidate for SLS without first determining his preference for SLS.

Consumer choice and direction are necessary in any SLS arrangement. SLS regulations require that a fair degree of control be exercised by consumers. Thus, California Code of Regulations, title 17, section 58620, entitled "Consumer Preferences and Leadership," provides as follows:

Consumers receiving SLS shall have the right to make decisions that shape the nature and quality of their lives in accordance with their preferences, and consistent with the goals of the consumer's IPP. These rights shall include, but are not limited to, the following:

- (a) Choosing where and with whom to live;
- (b) Controlling the character and appearance of the environment within their home;
- (c) Choosing and changing their SLS vendors and direct service staff;
- (d) Participating actively in their IPP process so that the SLS they receive is based on their needs and preferences;
- (e) Receiving services appropriate to their evolving needs and preferences for support without having to move from the home of their choice, for as long as SLS remains the preferred objective, as determined in the consumer's IPP process; and
- (f) Informing the regional center about how satisfied they are with the services they are receiving, and to have this information taken into account in the regional center's periodic evaluation of the SLS vendor's service, pursuant to Section 58671(c).

20. It may eventually be determined that claimant is unable to participate in SLS to the degree necessary or expected under section 58620. SLS may not be a successful living arrangement for him. But it may also be that claimant will flourish under an SLS arrangement. Although SLS in practice is consumer driven, this element may, in some cases, be taught to the consumer. Thus, while consumer direction is clearly important, it is not a necessary condition precedent to any consideration of SLS. In this regard, the testimony of Beth Gallagher was instructive. Ms. Gallagher noted that much of consumer direction of staff is done in the context of the living environment, and that it is taught over time. She explained that a certain level of self-esteem is needed to direct services. In her experience, consumers may need to be in SLS to experience autonomy, and to learn the process of making choices and directing others.

Other testimony by Colleen Holt and Ginger Valentine suggested that claimant has already demonstrated the ability to direct others.

21. The above matters having been considered, no findings are made at this time regarding claimant's ability to direct others in the specific context of an SLS living arrangement. The present record and evidence regarding claimant's ability to actively participate in SLS, including the direction of SLS staff, does not allow for such determination. Accordingly, it would be premature and speculative to make such findings at this time.

## LEGAL CONCLUSIONS

1. Burden and Standard of Proof. Claimant's most recent IPP does not specifically provide for ACRC funding of SLS. Under these circumstances, the burden remains on claimant, not ACRC, to establish that claimant is entitled to have ACRC funded SLS services.

“Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting. (Evid. Code, §500.)

2. Lanterman Act. In the Lanterman Act, the Legislature has created a comprehensive scheme to provide “an array of services and supports ... 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.” (Welf. & Inst. Code, § 4501.) The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4750 – 4571; see generally *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP for the consumer. This plan is developed at the conference of the consumer or his representatives, service agency representatives and other appropriate participants. The IPP must include an assessment of the consumer's capabilities and problems, a statement of time-limited objectives for improving the consumer's situation, a schedule of the type and amount of services to be purchased by the service agency in order to achieve the goals and objectives and a schedule of periodic review to ensure that the services have been provided. (Welf. & Inst. Code, § 4646.5, subd. (a).)

A regional center is required to secure the services and supports needed to satisfy a client's needs as determined in the IPP. (Welf. & Inst. Code, § 4648, subd. (a); *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d at p. 390.)

4. Supportive Living Services. The Legislature places a high priority on providing SLS to 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.” (Welf. & Inst.

Code, § 4689.) Regional centers must ensure that SLS arrangements adhere to certain principles including that “the consumer’s preference shall guide decisions concerning where and with whom he or she lives.” (Welf. & Inst. Code, § 4689, subd. (a)(3).)

Regulations governing SLS further require and emphasize the importance of taking into account consumer preference in making eligibility determinations. Thus, California Code of Regulations, title 17, section 58613 provides as follows:

(a) A consumer shall be eligible for SLS upon a determination made through the IPP process that the consumer:

(1) Is at least 18 years of age;

(2) Has expressed directly or through the consumer’s personal advocate, as appropriate, a preference for:

(A) SLS among the options proposed during the IPP process; and

(B) Living in a home that is not the place of residence of a parent or conservator of the consumer.

(b) Consumers shall not be denied eligibility for SLS solely because of the nature and severity of their disabilities.

5. SLS Preference. The matters set forth in Findings 8 through 18 have been considered. Claimant has yet to express directly or through his personal advocate a preference for SLS among alternative living arrangements. This is contemplated by the IPP process and consistent with the direction given in California Code of Regulations, title 17, section 58613. An IPP planning team should meet to determine the parameters of a meeting to be held with claimant to determine his preference, if any, for SLS. The specific matters set forth in Findings 14 through 16 should be considered by the planning team during this meeting. Once strategies and a plan for questioning claimant are established, a second meeting with claimant should be held. An ACRC representative must be present during this meeting.

6. SLS Control. Remaining concerns set forth in the Notice of Proposed Action regarding claimant’s ability to direct SLS staff are not addressed at this time for the reasons set forth in Findings 19 through 21. SLS in practice is consumer driven. One of the principles guiding SLS is that “Consumers shall have control over the environment within their own home.” (Welf. & Inst. Code, § 4689, subd. (a)(4).) The governing regulations further specify that SLS consumers control “the character and appearance of the environment within their home” and have the right to choose and change their SLS vendors, and to “direct service staff.” (Cal. Code Regs., tit. 17, § 58620, subds. (b) & (c).) As noted in Finding 20, the ability to direct service staff may sometimes be taught to the consumer. So while consumer direction is an important piece of SLS, it is not a precondition to early consideration of SLS. The present record and evidence regarding claimant’s ability to actively participate in SLS, including the

direction of SLS staff, does not allow for an earlier determination of his ability to do so at this time.

#### ORDER

Claimant's appeal of his request to have ACRC fund SLS services is denied.

1. Claimant's IPP planning team shall meet per the direction given in Findings 14 through 16, and Legal Conclusion 5. The IPP planning team is charged with determining whether claimant has a preference for SLS among alternative living arrangements.
2. The IPP planning team shall complete the above process on or before April 1, 2012.

DATED: March 1, 2012

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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE:

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**