

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

L.W.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2011110256

**DEEMED WITHDRAWAL
AND DISMISSAL
ORDER**

This matter was scheduled for fair hearing on January 17 and March 12, 2012, before Administrative Law Judge Coren D. Wong (ALJ), Office of Administrative Hearings (OAH), State of California, in Sacramento, California.

Tricia Cummings, Supervising Counselor, appeared on behalf of Alta California Regional Center (ACRC) on January 17, 2012. Robin Black, Legal Services Specialist, appeared on behalf of ACRC on March 12, 2012.

There was no appearance by or on behalf of claimant L.W. on either January 17 or March 12, 2012.

Evidence was received, the record was closed, and the matter was submitted for decision on March 12, 2012.

FACTUAL FINDINGS

1. On October 12, 2011, ACRC sent claimant a Notice of Proposed Action “denying [her] request to fund Independent Living Services (ILS).”

2. On October 26, 2011, claimant filed a Fair Hearing Request appealing ACRC’s denial under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act). In addition to a fair hearing, claimant requested an informal meeting and mediation in an effort to resolve this matter prior to a fair hearing and appointed Bobbie J. Spotts as her authorized representative.

3. OAH served a Notice of Hearing on Ms. Spotts on November 7, 2011, scheduling the fair hearing for January 17, 2012.

4. On November 4, 2011, ACRC sent Ms. Spotts correspondence acknowledging receipt of claimant's Fair Hearing Request, declining to attend mediation, and providing notice of the time, date, and location of the informal meeting.

5. There was no appearance by or on behalf of claimant at the informal meeting. However, ACRC's representatives were able to speak with Ms. Spotts by telephone and offered to provide claimant 15 hours per month of ILS.

6. This matter was called for fair hearing on January 17, 2012, at the time and location stated in the Notice of Hearing. Neither claimant, Ms. Spotts, nor anyone else appeared at the hearing on claimant's behalf. Consequently, no evidence in support of claimant's appeal was presented or considered.

7. At the January 17, 2012 hearing, ACRC filed a motion to dismiss this matter, arguing that it had agreed to provide the service that claimant had requested. ACRC's motion was denied on the grounds that Welfare and Institutions Code section 4710.9, subdivision (a), requires a claimant or her representative to withdraw the request for fair hearing only when either of them is satisfied with the decision of the service agency following an informal hearing. There was no evidence of claimant or Ms. Spotts' satisfaction with ACRC's decision after the informal hearing.

8. After the January 17, 2012 hearing, the ALJ was notified that claimant had left a message with OAH prior to the hearing requesting an "emergency continuance" of the hearing. The ALJ was also notified that Ms. Spotts had left a message with OAH prior to the hearing requesting a return call.

9. Claimant's written request for a continuance was received by OAH after the January 17, 2012 hearing. Her request was based, in part, on her argument that "I don't agree with ALTA only giving me 15 hours per month [*sic*] I feel that I will need more hours than just 15."

10. On January 18, 2012, the record was reopened for consideration of claimant's request for a continuance and to provide ACRC an opportunity to respond. No response was received by the designated deadline, and an Order Granting Continuance was issued on January 31, 2012.

11. The following day, ACRC objected to the continuance, arguing that it did not receive a copy of claimant's request for a continuance or the Order Reopening the Record. Therefore, an Order Vacating Order Granting Continuance was issued on February 1, 2012, and ACRC was provided an opportunity to respond.

12. On February 12, 2012, OAH received notice from Ms. Spotts that she was withdrawing as claimant's authorized representative.

13. ACRC did not respond by the designated deadline, and an Order Granting Continuance was issued February 14, 2012. The Order directed ACRC's representative to "immediately contact claimant for the purpose of selecting three mutually agreeable proposed hearing dates" and to provide those dates to OAH "no later than the close of business February 24, 2012."

14. On February 15, 2012, OAH received a Notification of Resolution from ACRC stating that it had agreed to fund ILS services as requested by claimant and that claimant had agreed to dismiss the appeal. The Notification of Resolution was not signed by claimant or her authorized representative.

15. No proposed dates for the continued hearing were provided by ACRC by the specified deadline, and an Order Setting Hearing Date was issued on March 2, 2012, which set the continued hearing for March 12, 2012, at 9:00 a.m.

16. On March 6, 2012, claimant requested a continuance of the hearing date. ACRC opposed the request and asked that the matter be dismissed. Both requests were denied by the Order Denying Request for Continuance and Request for Dismissal, which is marked as Exhibit 9.

17. Shortly before the hearing on March 12, 2012, a Carrie Goodwyn called OAH and advised that claimant's transportation to the hearing did not show up and neither Ms. Goodwyn nor claimant would be appearing at the hearing. During the telephone call, Ms. Goodwyn did not make clear her relationship to claimant. OAH has not received any documentation to indicate that claimant has appointed Ms. Goodwyn as her authorized representative.

18. This matter was called for fair hearing on March 12, 2012, at the time and location stated in the Order Setting Hearing Date. No appearance was made at the hearing by or on behalf of claimant. Consequently, no evidence in support of claimant's appeal was presented or considered.

19. Claimant bears the burden of proving that she is eligible for services from ACRC under the Lanterman Act. Her failure to appear and present evidence on either January 17 or March 12, 2012, the scheduled hearing dates, without prior OAH approval of a continuance, is deemed to be a withdrawal of her Fair Hearing Request and provides cause to dismiss her appeal.

IT IS HEREBY ORDERED THAT:

Claimant's Request for Fair Hearing is deemed withdrawn, and her appeal is DISMISSED.

DATED: March 16, 2012

COREN D. WONG
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 this decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)