

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

JUAN G.,

Claimant,

OAH No. 2011110655

and

INLAND REGIONAL CENTER,

Service Agency.

**DECISION**

Susan Ruff, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Bernardino, California, on January 9, 2012.

Linda G., Claimant's sister and authorized representative, represented Claimant Juan G. Claimant was not present at the hearing.

Leigh-Ann Pierce, Consumer Services Representative, represented the Inland Regional Center.

On January 9, 2012, the matter was submitted.

**ISSUE**

May the Inland Regional Center cease funding 144 hours of personal assistance per month for Claimant?

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On November 3, 2011, Inland Regional Center (IRC) advised Linda G., authorized representative of Claimant Juan G. (Claimant), that IRC would cease funding 144

hours of personal assistance for Claimant because Claimant had failed to take the steps necessary to pursue alternative funding of that service through a different agency.

2. On November 10, 2011, Linda G., on behalf of Claimant, requested a fair hearing on the issue of the termination of funding. Claimant was thereafter given notice of hearing. On December 7, 2011, Linda G. signed a document extending the time for issuance of a decision under the Lanterman Developmental Disabilities Services Act (Lanterman Act or Act), and OAH granted the IRC's request for a continuance of the hearing.

3. On January 9, 2012, the fair hearing record was opened, documentary evidence was introduced, sworn testimony was given, the record was closed and the matter was submitted.

#### *Claimant's Individual Needs and the Personal Assistance Services*

4. Claimant is a 50-year-old man diagnosed with congenital musculoskeletal deformities of the spine, moderate mental retardation, cerebral palsy, and epilepsy. He is eligible for services under the Lanterman Act, and is currently receiving services from the IRC.

5. Claimant needs 24-hour care for all his life activities. He requires assistance with feeding, grooming, bathing, toileting, and medication management. He also requires assistance with, among other things, nebulizer treatments, range of motion, gastrostomy tube (g-tube) feedings, and suctioning. His caregivers must be very cautious, because he tends to become nauseated and vomit. He typically vomits multiple times during the night. When he does so, one of his caregivers must be present immediately to suction him.

6. Claimant currently lives with his 80-year-old mother, but she has her own medical concerns, so the primary responsibility for supervising his care falls to his sister, Linda G.

7. Claimant receives support services to assist with his care, including approximately 280 hours per month of In-Home Support Services through the County of Riverside and SSI benefits. Claimant also currently receives 144 hours per month of personal assistance through IRC and 24 hours of licensed vocational nurse respite care. All of these hours together are insufficient to provide the round-the-clock care that Claimant requires, and Claimant's care during the remaining hours is provided by volunteers or family members.

8. Claimant previously received services through the Orange County Regional Center. When he moved into the jurisdiction of IRC, Marissa Ramirez, the IRC consumer services coordinator assigned to Claimant, learned that Claimant could obtain personal assistance services through the Medi-Cal Home and Community Based Services Waiver Program under the California Department of Health Services. In particular, because of Claimant's needs, Ramirez believed he would qualify for a nursing facility/acute hospital (NF/AH) waiver. By law, a regional center cannot fund services for an individual if there is

another government agency that should be funding those services. Therefore, Ramirez spoke with Claimant's sister about applying for the waiver program on Claimant's behalf.

9. The NF/AH waiver is designed to keep disabled adults in the family home environment, rather than an institution. If a disabled individual who is eligible for Medi-Cal would require at least 365 days of nursing facility care, hospital care or care in a similar facility, the family caregivers for the disabled individual can choose to keep the individual in the family home and receive supportive services to assist with that individual's care through the California Department of Health Care Services. However, the cost of those services cannot exceed what it would cost the public to provide care for the individual in a licensed health care facility.

10. Unfortunately, because of limited funding, only a certain number of eligible individuals may receive services under an NF/AH waiver each year. The remaining individuals who apply for such services are placed on a waiting list. Once an individual reaches the top of the waiting list, the individual has a limited amount of time (approximately six months) to file the necessary enrollment paperwork and information with the Department of Health Care Services in order to begin receiving the services. Because there are so many applicants for the waiver program and limited funding, if an eligible individual does not complete and submit the paperwork within the required time, the individual's place in the waiver program is given to another applicant. The individual must then reapply and be placed back on the waiting list once more.

11. At the request of the IRC, Claimant's family filled out the paperwork to apply for the waiver program. In October 2009, Claimant was found eligible for NF/AH waiver services and was placed on the waiting list, effective April 23, 2009.

12. While Claimant was on the waiting list, the IRC continued to provide 144 hours of personal assistance each month, at IRC expense.

13. In January 2011, Claimant made it to the top of the waiting list, and the Department of Health Care Services sent a letter explaining that he was entitled to enroll in the program. In order to enroll in the program, Claimant's family had to fill out paperwork and supply information to the In-Home Operations branch (IHO) of the Department of Health Care Services.

14. Linda G. submitted some of the necessary paperwork for the NF/AH waiver program, and Claimant was tentatively approved for approximately 113 hours per month. However, the rest of the required paperwork and/or information was incomplete or never submitted. Ramirez had conversations with Linda G. about completing the necessary paperwork for the waiver program. In June 2011, when the waiver program had not yet begun providing funding, Ramirez spoke with a representative from the IHO. The IHO representative informed Ramirez that the IHO was going to close Claimant's case because the necessary paperwork had not been completed and submitted by Claimant's family.

15. Ramirez thereafter had numerous conversations with Linda G. about submitting the necessary paperwork. Claimant's family was given an extension of time by the IHO to complete and submit the necessary paperwork for the waiver program. When the paperwork had not been submitted by October 2011, the case was finally closed, and Claimant was no longer eligible to receive the NF/AH waiver program services.

16. As discussed in the Legal Conclusions below, the law forbids a regional center from funding services if alternative sources of funding are available but a consumer's family chooses not to pursue that alternative funding. For that reason, after the IHO closed Claimant's waiver program case, IRC gave notice to Claimant that it would cease to fund the 144 hours of personal assistance. Claimant then filed this appeal.<sup>1</sup>

#### *The Testimony of Claimant's Sister*

17. Claimant's sister Linda G. was very candid and honest in her testimony at the hearing. She admitted that the completed paperwork for the NF/AH waiver program had not been timely filed. She explained that she was very sorry that she had not filed it in time.

18. Linda G. explained that she had been under extremely stressful circumstances during 2011. In addition to coordinating the services for her brother, she was also responsible for coordinating assistance services for her 80-year-old mother, as well as being a mother to her own child and step children. Her stepdaughters became very rebellious last year and caused a great deal of difficulty for the family; the family difficulties also caused a strain on Linda G.'s marriage. Linda G. was required to fill out a tremendous amount of paperwork to various agencies as a result of all these circumstances, and she expressed genuine remorse about the failure to comply with the deadline for the NF/AH waiver for her brother. She said she will never miss such a deadline again.

19. Linda G.'s testimony was sincere and heartfelt. She clearly cares deeply about her brother and is devoted to all her family members. She testified that she would never permit her brother to be institutionalized, and will care for him in her own home, if necessary.

### LEGAL CONCLUSIONS

1. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

2. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst.

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<sup>1</sup> Claimant also appealed the IHO's decision to close Claimant's NF/AH waiver program case, but that appeal is not part of this proceeding.

Code, § 4501.) The types of services and supports that a regional center must provide are “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” (Welf. & Inst. Code, § 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made “on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (*Ibid.*)

3. However, Welfare and Institutions Code section 4659, subdivision (c), provides an exception when there is another (generic) source for funding a necessary service:

Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children’s Services, private insurance, or a health care service plan when a consumer or family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of the consumer’s individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

4. As set forth in Factual Findings 1 – 19 above, the IRC was following the law when it informed Claimant’s family that it would cease funding the personal assistance hours. The law is clear that the IRC may not fund services that are otherwise available through other government agencies, when the family does not pursue those services. In the instant case, Claimant’s family had many months to submit the appropriate paperwork to receive services through the NF/AH waiver program. The family was even given an extension of time to file the paperwork. The IRC representative contacted the family on numerous occasions regarding the necessary paperwork. Under these circumstances, Claimant has not met his burden of proving by a preponderance of the evidence that IRC should continue funding the personal assistance hours.

ORDER

The IRC's decision to terminate the funding of 144 of personal assistance hours per month is upheld.

NOTICE

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**

DATED: January 20, 2012

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings