

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ESTHER L.,

Claimant,

OAH No. 2012020772

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on March 29, 2012.

The Service Agency, Alta California Regional Center (ACRC), was represented by Rob Franco, Supervising Counselor and Hearing Designee.

Claimant represented herself with assistance from her sister, Hannah L.

Oral and documentary evidence was received. Submission of this matter was deferred pending receipt of closing briefs. Service Agency's Closing Brief and Claimant's Closing Brief were submitted on April 20, 2012, and marked respectively as Exhibits 6 and I. The record was closed and the matter submitted for decision on April 20, 2012.

ISSUES

1. Is ACRC required to fund claimant's Supported Living Services (SLS) provided by Summer House, Inc. during out-of-state vacations to Illinois?
2. Is ACRC required to fund additional mileage for transportation to and from claimant's volunteer sites?

FACTUAL FINDINGS

1. Claimant is an intelligent twenty-eight-year-old woman eligible for ACRC services based on a diagnosis of cerebral palsy. She lives independently in an apartment in Davis, California with her sister, Hannah L. Claimant receives SLS support services twenty-four hours per day provided through Summer House, Inc. (Summer House) and funded by ACRC. Claimant's sister is one of her paid SLS support staff. Claimant uses a motorized wheelchair for mobility and requires assistance with all activities of daily living. Her speech is difficult to understand and she communicates with her computer; her sister also interprets her speech.

Claimant moved from Illinois to California in 2005 to attend law school at the University of California, Davis. Her parents continue to live in Illinois. Claimant was admitted to the California State Bar in December, 2009, but has not obtained employment as an attorney. She has two volunteer legal positions. One position is in Sacramento at Disability Rights California and the other is with a state senator's office in Vacaville.

Claimant receives services from ACRC pursuant to the Lanterman Developmental Disabilities Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. Samantha Weinrich is claimant's ACRC Service Coordinator. She testified that in December, 2011, claimant sought an addendum to her IPP to "allow her case to remain open while she is out of state for up to 45 days, her SLS services/funding to stay in place while out of state the 45 days and that one staff cover all shifts." She also sought an increase in her mileage allotment to cover travel to her volunteer sites in Sacramento and Vacaville.

The ACRC Best Practices Committee met to discuss claimant's requests and determined that ACRC could not allow the requests.

3. On December 22, 2011, ACRC issued a Notice of Proposed Action (NOPA) advising claimant that "ACRC is denying your request to fund SLS personal support services to be provided to you by your sister for twenty-four (24) hours a day for the duration of your upcoming visit of approximately 45 days to visit your family in Illinois."

4. The NOPA advised claimant that the reason for this decision was that "regional centers are prohibited from funding services provided outside the State of California when such services are available within the State of California. Personal support services are available to you within the State of California, and vacation opportunities are available in California as well. The fact that you have chosen to vacation out of state does not obligate the Regional Center to fund personal support services to be provided to you out of state."

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

“Additionally, natural supports are available to provide care to you during your visit with your family. Moreover, SLS services were designed to be provided in one’s own home and community, and not out of state. Also, ACRC’s contract with Summer House requires weekly face-to-face visits between the consumer and Summer House Community Support Facilitator/SLS Supervisor/House Manager, and shall occur in the consumer’s residence. And last, ACRC does not believe one individual is capable of maintaining your health and safety and providing quality care to you 24 hours a day for a period of 45 days in a row, without any relief.”

5. ACRC issued a second NOPA on December 22, 2011, advising claimant that “ACRC is denying your request to fund additional mileage as part of your SLS budget for transportation to and from your volunteer sites in Sacramento and Vacaville”.

6. This NOPA advised claimant that the reason for this action was that “First, ACRC must determine whether generic resources exist to fund the requested additional transportation. You have revoked your authorization for ACRC to communicate with the Department of Rehabilitation. Therefore, ACRC is unable to determine whether they may be required to fund transportation to those volunteer sites. ACRC cannot fund the transportation until first determining such generic resources have been exhausted.”

“Additionally, SLS is provided to provide support to consumers in living in their own home and community. ACRC finds that the city of Vacaville, which is not located within this Regional Center’s catchment area, is not part of your ‘community’ and therefore SLS funds should not be expended to transport you out of the area.”

7. Claimant filed a Fair Hearing Request which was received by ACRC on December 28, 2011. The request stated that claimant disagreed “with ACRC’s decision to (1) not provide paid support for my out of state travels and (2) not increase my mileage for volunteering to Sacramento and Vacaville.” She requested “more accommodating policies. I am requesting ACRC to provide (1) paid support for my out of state travels and (2) increase mileage reimbursement to my volunteer locations.”

Supported Living Services

8. Carol Wilhelm is an ACRC Supervising Counselor in the SLS unit. Ms. Wilhelm testified that section 4519 prohibits ACRC from funding claimant’s personal support services because the vacation will take place out of the State of California. Section 4519, subdivision (a), provides:

The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director’s designee has received, reviewed, and approved a plan for out-of-state service in the client’s individual program plan developed pursuant to Sections

4646 to 4648, inclusive. The department shall authorize the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. For purpose of this section, the department shall be considered a service agency under Chapter 7 (commencing with Section 4700).

9. Ms. Wilhelm opined that natural supports are available to assist claimant during a visit to her family. She also testified that SLS services are designed to be provided in a consumer's own home and community and that ACRC's contract with the SLS provider, Summer House, Inc., would not permit this service. Finally, she expressed ACRC's concern for the safety of claimant and her service provider while traveling out of state. ACRC does not believe that one individual is capable of providing quality care and maintaining consumer's health and safety, for 24 hours per day for forty-five consecutive days without relief.

Section 4512, subdivision (e), defines "natural supports" to mean:

personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

Section 4689 provides in part:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often as for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional center shall ensure that supported living arrangements adhere to the following principles;

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to

move elsewhere.

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

(6) The services and supports shall be flexible and tailored to a consumer's needs and preference.

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

(8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

(b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes,

(c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. . .

California Code of Regulations, title 17, section 58614 provides in part:

(a) Supported Living Service...shall consist of any individually designed service...which assists an individual consumer to:

(1) Live in his or her own home, with support available as often and for as long as needed;

(2) Make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home

(b) Supported Living Service(s) are tailored to meet the consumer's evolving needs and preferences for support without having to move from the home of their choice, and include but are not limited to the following:

(1) Assisting with common daily living activities such as meal preparation, including planning shopping, cooking, and storage activities;

(2) Performing routine household activities aimed at maintaining a clean and safe home;

(3) Locating and scheduling appropriate medical services;

(4) Acquiring, using, and caring for canine and other animal companions specifically trained to provide assistance;

(5) Selecting and moving into a home;

(6) Locating and choosing suitable house mates;

(7) Acquiring household furnishings;

(8) Settling disputes with landlords;

(9) Becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community to the general public;

(10) Managing personal financial affairs;

- (11) Recruiting, screening, hiring, training, supervising, and dismissing personal attendants;
- (12) Dealing with and responding appropriately to governmental agencies and personnel;
- (13) Asserting civil and statutory rights through self-advocacy;
- (14) Building and maintaining interpersonal relationships, including a Circle of Support;
- (15) Participating in community life; and
- (16) 24-hour emergency assistance, including direct service in response to calls for assistance. This service also includes assisting and facilitating the consumer's efforts to acquire, use, and maintain devices needed to summon immediate assistance when threats to health, safety, and well-being occur.

10. In addition, Ms. Wilhelm explained that ACRC maintains a Service Policy Manual which contains General Standards for the Purchase of Services and Supports. She testified that the manual provides that the service or support provided shall "conform to the Lanterman Act, achieve goals or objectives that are clearly stated, and be cost effective." The IPP does not have a specific goal to travel out of state.

11. Claimant testified that she traveled to Illinois from December 25, 2011, through January 12, 2012, less than the possible forty-five days originally planned. She sought "back pay for the personal care services during claimant's winter travel and any out of state trips claimant takes before a decision on this issue is made, namely claimant's upcoming two week trip to Illinois for a wedding from April 24, 2012 to May 8, 2012."

12. Claimant contends that section 4519 does not apply in this case. She contends that her services are purchased within the State of California, through Summer House, and she is simply continuing the purchased service while on vacation. Her sister was hired by Summer House in California, which is also where her sister receives payment for services.

13. Claimant and her sister both testified that natural supports were not available during this winter travel. They explained that their parents are no longer able to offer care as they used to "because they are aging and their health is deteriorating rapidly with diabetes." They are also "trying to sell their house which takes up most of their time" and claimant's "friends in Illinois are not available as natural support because they have their own family commitments and lives."

14. Claimant's sister typically provides approximately 447 hours per month of SLS services for claimant. Other support staff provide the remaining care hours. Claimant gave credible examples of times when her sister provided continuous 24-hour care for extended periods of time. She contends that her sister is able to provide quality care for substantial periods of time without relief.

Claimant contends that she is independent and capable enough to be able to take care of her health, safety, and quality of care when she travels, which is questionable considering her physical and verbal limitations and the determination that she needs SLS support 24 hours per day. She argued that in an emergency, Summer House would respond similarly if she was in Los Angeles or Illinois.

15. Sandra Burt is claimant's Community Support Facilitator (CSF) with Summer House. She testified that Summer House clients have access to a 24-hour emergency on-call telephone number in Davis. She was not sure how an emergency would be handled if a consumer was out of the Davis area because she has "never been in that situation." She was not familiar with all the terms of the contract between ACRC and Summer House and did not know whether it would be appropriate to set aside implementation of parts of the contract.

Transportation To and From Claimant's Volunteer Sites

16. Claimant has been a licensed attorney in the State of California since 2009 but has been unable to find paid employment in that capacity. She has experience as a volunteer and currently has volunteer positions at Disability Rights California, 1831 K Street, Sacramento, California, and at a state senator's office, 555 Mason Street, Vacaville, California. Claimant resides in Davis, California. Her home is approximately fifteen miles from the Sacramento volunteer location and twenty miles from the Vacaville location.

17. As part of her SLS budget, claimant receives funding for 150 miles per month for incidental travel needs. She requested an increase of 120 miles per week, (480 per month), to accommodate travel to her volunteer positions, three days per week, at an estimate of forty miles per round trip. Her total transportation request totals 630 miles per month.

Neither claimant's IPP nor her SLS budget contained provision for funding mileage to volunteer sites. IPPs have addressed claimant's desire to "find employment as an attorney" but volunteer activities were not mentioned.

18. ACRC refused this request for two reasons. First, the regional center questioned whether the California Department of Rehabilitation (DOR) would be a generic agency responsible for providing that service. Claimant revoked authorization for the two agencies to communicate with each other so there was difficulty in making that determination.

ACRC also determined that SLS is designed to provide support to consumers in their home or community. The agency found that Vacaville was not located in ACRC's catchment

area, is not part of claimant's "community" and, therefore, it would not be appropriate to utilize SLS funds to provide transportation to Vacaville.

19. Claimant testified that volunteering is important for her paid employment prospects. She provided support for this position through declarations provided by colleagues in her field. She contends that volunteering allows access to her legal and professional communities and allows her to maintain her independence and access the community.

20. On March 7, 2012, and March 12, 2012, claimant signed releases of information for ACRC and the DOR to communicate regarding claimant's employment and transportation.

21. In her documentary evidence exchanged with ACRC prior to this hearing, claimant provided an October 7, 2011, Administrative Review Decision from DOR which concluded "in regards to your request for long-term, open-ended transportation services to and from volunteer jobs, I find the DOR is unable to support your request." The decision set forth the following:

The California Code of Regulations state that transportation '...Shall not be provided as a sole service because a supportive service is one which only contributes to the client's ability to receive the benefit of other vocational rehabilitation services. Alone, it is not a vocational rehabilitation service.' While volunteer work and internships are a valuable method of building a resume and making yourself more competitive, the DOR notes that you have already completed one (very prestigious) internship in Washington D.C. and that your efforts should be concentrated on job search at this time. It is your choice to seek out and perform further volunteer work at this time, but please be aware that this volunteer work is neither a service, nor something supported by your IPE. The DOR will continue to support your job search efforts, but transportation to and from your selected volunteer work sites is not something DOR can provide.

In order to continue to receive services from the DOR you will agree to continue to search for competitive employment and provide at least monthly updates to your counselor about your job search efforts. This will include a list of all employers you have applied to work for and the outcome of those applications. Should it be determined that your volunteer work interferes or prevents you from seeking permanent paid employment you will agree to end your volunteer assignments to concentrate on job placement.

22. Subsequent to receiving this DOR Decision, ACRC informed claimant that it would provide a bus sticker for transportation to her volunteer job site in Sacramento. At hearing, ACRC agreed to fund mileage to and from claimant's home in Davis and the

Sacramento site. Funding of mileage to the Vacaville site remains contested.

23. ACRC contends that claimant has been having her SLS workers drive her to and from the Vacaville site, which is outside of her home and community, absent approval by the IPP team. ACRC “respects the right of the claimant to have a leadership role in service design, and for services to reflect her personal preferences.” However, the regional center must also ensure the cost-effective use of public funds. It has agreed to fund claimant’s volunteer activities in Sacramento “even when DOR found her activities to have little merit.” It contends that an increase to her SLS budget from 150 miles per month to 630 per month is excessive. Claimant can access volunteer activities closer to home or access personal funds to cover those costs.

In addition, there was no evidence provided that claimant cannot obtain paid employment. With paid employment, the DOR would be the generic agency responsible for claimant’s transportation needs, and ACRC would be precluded from providing funding pursuant to section 4659.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center’s responsibility for providing services to persons with development disabilities. An “array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities.” (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer’s goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

Section 4646 provides in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

(b) The individual program plan is developed through a process

of individual needs determination. The individual with developmental disabilities...shall have the opportunity to actively participate in the development of the plan.

¶ . . . ¶

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

Section 4646.4, subdivisions (a)(1), (2) and (3), provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.

Section 4659 requires the regional center to identify and pursue all sources of funding for consumer's receiving regional center services including governmental or other entities or programs required to provide or pay the cost of providing services.

Section 4646.5, subdivision (a)(4), states:

(a)The planning process for the individual program plan described

in Section 4646 shall include all of the following:

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider and providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

Section 4644, subdivision (b), defines “generic agency” to mean:

Any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

Section 4648, subdivision (a)(8), specifies:

In order to achieve the stated objectives of the consumer’s individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

2. *Burden of Proof:* A party seeking to add a service or support to a consumer’s IPP typically has the burden of demonstrating that its proposed addition is correct. Therefore, claimant bears the burden of establishing that ACRC is required to provide SLS support services during travel out of state and to increase funding for mileage to and from volunteer sites.²

3. The Lanterman Act places a strong priority on providing services and supports to persons with developmental disabilities that take into account the needs and preferences of the

² California Evidence Code section 500 states that “[e]xcept 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.”

individual and family and promote community integration, independent, productive lives, and stable and healthy environments. Regional centers are charged with the responsibility of coordinating and delivering these services and supports while ensuring adherence to state and federal law and regulations and the cost-effective use of public resources. Part of this mandate requires the regional center to obtain services through generic resources, natural supports, and other available sources of funding before expending public funds.

4. The Lanterman Act specifies that SLS services are designed to assist consumers living in their own homes and communities. While limited circumstances may support the need for this supportive service during travel, it is not the intent of SLS to provide services for extended or continual travel outside of the state. In those situations, it is also difficult for the regional center to meet its obligation to appropriately monitor the provision of services and supports. Claimant has a right to travel, but did not meet her burden of establishing that ACRC is required to fund SLS services during the times requested for out-of-state travel.

5. ACRC's argument that funding travel to Vacaville must be denied because it is outside of the agency's catchment area, was not persuasive. The determination that it would not be appropriate to utilize SLS funds to provide transportation to Vacaville because Vacaville is not part of claimant's "community" is arbitrary. Davis is located in the southeast portion of the catchment area and it is reasonable to expect that the needs of a consumer residing near the border of the catchment area may be met outside of that boundary. In this case, the difference in the distance between the two sites is only approximately five miles and both locations appear to be within a reasonable proximity to claimant's residence.

6. ACRC, as a steward of public funds, was correct in its position that transportation should only be provided within a reasonable proximity to claimant's home, and in an amount and duration necessary to meet her identified needs.

In this case, the IPP team has not agreed on the need for claimant's volunteer activities. The IPP does not contain a goal addressing this need or establishing parameters for distance or duration of transportation needs. However, ACRC has agreed to fund mileage to claimant's volunteer site in Sacramento.

What the IPP does support is claimant's goal of obtaining employment as an attorney. Assistance with this pursuit has been hindered previously due to the inability of the DOR and ACRC to communicate regarding claimant.

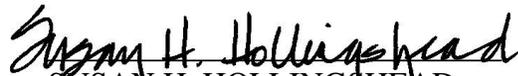
Therefore, the IPP team shall reconvene after communication between the DOR and ACRC identifying how the agencies can work together to assist claimant in her employment goal and what role volunteerism will have in that process. The team shall determine the appropriate amount of transportation for ACRC to fund for claimant's volunteer positions, and for what duration. While claimant may volunteer as often as she chooses, ACRC's responsibility for funding transportation would be limited to what is reasonable in light of claimant's IPP goals, as coordinated with DOR, and reflecting the intent to support claimant in finding paid employment in her field.

ORDER

The appeal of claimant Esther L. seeking funding of Supported Living Services (SLS) provided by Summer House, Inc. during out-of-state vacations to Illinois is denied.

The request for funding of additional mileage for transportation to and from claimant's volunteer sites shall be referred to the IPP team for further clarification as set forth in Legal Conclusions 5 and 6. Funding of transportation to the Vacaville volunteer site shall not be denied solely because it is outside ACRC's catchment area.

DATED: May 2, 2012


SUSAN H. HOLLINGSHEAD
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 this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)