

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

In the Matter of:

KAREN W.,

Claimant,

v.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2012080974

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on October 1, 2012, in Culver City, California.

Karen W.¹ (Claimant) was present at the hearing and she was represented by her sister Donna W. (Sister). Gigi Thompson, Manager Rights Assurance, represented Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received and argument heard on October 1, 2012. The record was held open until 5:00 p.m. on October 2, 2012, to allow the Service Agency to submit additional documents. On October 2, 2012, the Service Agency submitted a fax cover sheet, marked as Exhibit 9. On October 3, 2012, the record closed and the matter was submitted for decision.

ISSUE

Should the Service Agency be required to change Claimant's day program from the Cole program (Cole) to the Advocacy for Respect and Choice program (ARC)?

¹ The surnames of Claimant and her family have been omitted to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 58-year-old female who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.² She has a diagnosis of mild mental retardation.

2. At the time of hearing, Claimant was living with Sister; however, she was scheduled to move into an independent family home on the day after the hearing. Claimant is verbal, but needs prompting to exercise her wants and needs. She is able to follow very simple conversations and is also able to speak in two to four word phrases. She is also able to read simple words. Claimant is ambulatory, but walks with a slow gait. At times, she must grab the arm of an individual to stabilize her gait. Claimant has toileting issues. She utilizes adult disposable diapers, but is able to notify an adult when she has to use the restroom. She does, however, have occasional toileting accidents that are exacerbated when she is nervous or stressed.

3. Claimant was a client of the Service Agency from November 24, 2003 to December 19, 2011. On December 19, 2011, HRC inactivated Claimant's case due to her relocation to Arizona. On April 24, 2012, the Service Agency was informed that Claimant was living again in California with Sister and, therefore, Claimant's case was reactivated.

4. From approximately February 2004 to November 2011, Claimant attended ARC. Since May 23, 2012, Claimant has been attending Cole. Hiram Bond (Bond), Program Manager at HRC, testified at hearing. Bond explained that when Claimant resumed being a client of the Service Agency after returning from Arizona, the Service Agency reassessed Claimant's needs and determined that they can be best met at Cole as opposed to ARC. He further explained that if a client has been in a program for years, he or she is normally allowed to continue in the program. However, when a client returns to the Service Agency as a consumer, the Service Agency conducts a reassessment and places the client in the program that the Service Agency feels is superior.

5. On June 13, 2012, an Individual Family Service Plan (IFSP)³ meeting was conducted. The IFSP states as a desired outcome: "[Claimant] will attend the day program of her choice to enhance her vocational skills." Claimant's IFSP did not include a specific community integration goal.

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

³ Although HRC uses the term IFSP, which is typically associated with early intervention services, the IFSP is actually the Individual Program Plan (IPP) within the meaning of the Lanterman Act.

6. At the time of the June 2012 IFSP meeting, Claimant had already started attending the Cole day program. Claimant attends the Cole program from 1:00 p.m. to 5:00 p.m., Monday through Friday. Participants of the Cole program go out into the community for outings such as botanical gardens, museums, and community walks. They are also able to participate in cooking classes, art projects, and computer classes. A 30 day review report by Cole states that Claimant enjoys the program, has been on community outings, and has been participating in different classes and projects.

7. Claimant had attended ARC from 9:00 a.m. to 3:00 p.m., Monday through Friday. ARC provides vocational skills training to Claimant. At the program, participants work in a sheltered workshop that specializes in contract assembly and packaging services. According to a program brochure, the program employs more than 300 adults with developmental disabilities. The participants earn money at sub-minimum wages.

8. An Annual Review Summary of the ARC program, dated September 28, 2011, reports that Claimant's attendance in the ARC program was 96 percent, and that she "has made significant improvement in the areas of self direction, lifelong learning activities, health and safety, interpersonal skills and vocational development." It also states that Claimant feels happy, safe, and comfortable at the program.

In a letter dated September 25, 2012, ARC program personnel wrote in part:

Over the years with staff members' assistance and support [Claimant] started to trust and befriend them. Together we developed individual service plans in which [Claimant] was able to participate in deciding her goals and how to achieve them. She was aware that she had the right to choose the services she needed in order to achieve success in her plans. She accepted the duties in paid work activities and understood her obligation to follow procedures in terms of the facility's rules and policies. As a responsible adult, she accepted offers to participate in ancillary services available in the program, such as adaptive physical education, cooking, gardening, performance arts, basic academics and computer skills.

The authors also stated that Claimant has made several long-time friends in the program.

9. The Service Agency's position is that Cole is the more appropriate program for Claimant based, in part, on the difference in staffing ratios between the two programs. The Cole program has a staff to client ratio of 1:3; whereas, the ARC program has a staff to client ratio of approximately 1:13. Bond explained that Claimant would benefit from a richer staffing ratio since she needs assistance with her personal care needs. In order to meet Claimant's personal care needs while she was attending the ARC program, the Service Agency funded an additional staff person. The additional staff person assisted Claimant with her toileting issues and her unsteady gait. In terms of cost, Bond explained that Cole is more

expensive than ARC; however, if Claimant is provided additional support at the ARC program, the cost would then be approximately equal.

10. The Service Agency's preference for the Cole program is also based on its position that the program's quality is superior to that of the ARC program. Specifically, the Service Agency believes that ARC does not afford its clients community integration opportunities as does Cole. Its position is that the ARC workshop is a segregated program without much opportunity for clients to go out in the community; whereas the Cole program takes clients out into the community, thereby better serving the purpose of the Lanterman Act and allowing clients to interact with people who are not developmentally disabled. Bond testified that the ARC workshop program is an antiquated model since clients are segregated from the community as opposed to being integrated into the community.

11. Claimant and her family's preference is that she return to ARC. Less than two months after Claimant started the Cole program, Sister called the Service Agency and told them that Claimant was not happy there and would like to return to ARC. Claimant prefers the ARC program and feels that the program better meets her vocational needs. At the ARC program, Claimant is afforded the opportunity to earn a paycheck. Claimant took pride in earning a paycheck and it gave her a sense a self confidence.

12. Claimant also believes the ARC program is a better fit for her due to the structure and continuity the program provides. Claimant is familiar with the ARC program and has many friends at the program due to her having attended the program for years. Sometime in July 2012, Claimant was diagnosed with breast cancer and went through surgery near the end of August 2012. This experience makes the support of her friends at ARC even more important. She enjoys the familiarity, support, and friendship that she has at the ARC program. She has established a network of friends, staff, and support at the program and given her age and health, she desires the nurturing and supportive environment that she finds at the ARC program.

13. Sister also explained that the ARC program meets many of Claimant's needs. According to Sister, the program has helped Claimant improve her independent living skills, her hygiene, and her money skills. Sister also explained that Claimant does not merely do assembly-line piecework and, in fact, Claimant has participated in yoga classes, gardening, and computer-related activities at ARC. Sister further explained that the Cole program does not meet Claimant's needs and preferences. For example, the Cole program does not afford Claimant the opportunity to work and earn a paycheck.

14. Sister further explained that ARC's schedule of 9:00 a.m. to 3:00 p.m. also works better for Claimant than does Cole's schedule of 1:00 to 5:00 p.m. Claimant is a "morning person" and is more energetic and productive earlier in the day. She gets tired later in the day.⁴

⁴ An additional concern of Claimant with respect to the timing has to do with the transportation to and from the Cole program. Claimant does not like the lengthy bus ride to

15. According to Sister, Claimant's family is not concerned with Claimant's integration into the community. The family takes Claimant out into the community, including bowling, movies, and shopping, since she cannot go out into the community alone.

16. Although the Service Agency acknowledges that Claimant's preferences should be taken into account, its position is that other factors weigh more heavily and that the purposes of the Lanterman Act are better met for Claimant by her attending the Cole program as opposed to the ARC program.

17. In approximately July 2012, Claimant requested HRC to place her back into the ARC program. In a letter dated August 2, 2012, the Service Agency denied Claimant's request. Claimant timely appealed the decision and this hearing ensued.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

2. A fundamental premise of the Lanterman Act is that the determination of which services and supports are necessary for each consumer must include a consideration of "the needs and preferences of the consumer . . .," while "promoting community integration, independent, productive, and normal lives, and stable and healthy environments," and ensuring that the provision of services is "effective in meeting the goals stated in the individual program plan, reflect[s] the preferences and choices of the client, and reflect[s] the cost-effective use of public resources." (See, e.g., §§ 4512, subd. (b), 4646, subd. (a), 4648, 4685, subd. (b).) Consumers of regional center services have the right to make choices in their own lives, including "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." (§ 4502, subd. (j).)

3. The regional center's determination of which services and supports are necessary for each consumer shall be made through the IPP process, based on "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,

and from the Cole program and has, on occasion, arrived home as late as 7:00 p.m., which does not suit Claimant's lifestyle preferences. The transportation has also, at times, created stress for Claimant and consequently, exacerbates her incontinence issues. At hearing, however, the Service Agency explained that Claimant may be able to utilize alternate transportation.

the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (§ 4512, subd. (b).)

4. In this case, the Service Agency did consider Claimant’s needs in selecting the Cole program. However, the evidence presented at hearing established that it would be appropriate for Claimant to return to the ARC program. ARC meets Claimant’s stated vocational goal in her 2012 IFSP. ARC provides Claimant the ability to earn a paycheck giving her a sense of self-confidence. Nowhere in Claimant’s 2012 IFSP does it specifically mention community integration as a goal. Not only does the ARC program better meet Claimant’s stated goal in the IFSP, but it also is the program that is preferred by both Claimant and her family. Considering Claimant’s age and health, her desire to be in a familiar environment that she finds supportive is understandable. Even with an additional staff member being provided to Claimant at ARC, the cost of both programs is approximately equal. Finally, Claimant has already experienced the Cole program and believes the ARC program is more beneficial in helping her meet her goals. In these circumstances, the preferences and the decision-making authority of Claimant and her family as well as consideration of the needs and abilities of Claimant as a consumer take precedence and carry more weight than the mission of the Service Agency to try to ensure that consumers receive services in a more inclusive and community-based setting.

ORDER

Claimant’s appeal is granted. Harbor Regional Center shall provide funding for Claimant’s participation in the ARC day program.

DATED: October 17, 2012

JANKHANA DESAI
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.