

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DELVON M.,

Claimant,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2012090507

DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on September 27, and October 12, 2012.¹

Chad Carlock, Attorney at Law, represented claimant Delvon M.

Rufus L. Cole, Attorney at Law, represented Golden Gate Regional Center (GGRC), the service agency.

Submission of the case was deferred until November 16, 2012, pending receipt of closing and reply briefs. Claimant's closing and reply briefs were timely received and marked for identification as Exhibits C and D. GGRC's closing brief was timely received and marked for identification as Exhibit 9.

The record closed, and the matter was submitted for decision on November 16, 2012.

SUMMARY OF ISSUES

Claimant was informed by his social worker in early August 2012 that he would not be able to continue receiving Supportive Living Services (SLS) from Wheeler Supportive Living Services (Wheeler), because Wheeler's contract to provide SLS had been terminated by Golden Gate Regional Center (GGRC), effective October 1, 2012. Based upon claimant's

¹ This matter was consolidated for hearing, pursuant to Welfare and Institutions Code section 4712.2, with OAH case numbers 2012090515, 2012090508, and 2012090506.

demeanor, Wheeler's Program Director Glenda Presley thought that he was sad about the change in SLS providers and that he preferred to receive services from Wheeler. For this reason, she assisted claimant in filing a Fair Hearing Request from the change in SLS providers. Claimant currently receives SLS from Alternative Living Center (ALC), and as it turns out, his direct care staff from Wheeler "rolled over" to ALC and continues to provide him with direct care service. Claimant raises a number of legal challenges to the change in his SLS provider. He argues that he is entitled to choose his SLS provider. He also asserts that because he was not present at an Individual Program Plan (IPP) team meeting and he did not sign an Individual Program Plan (IPP) Addendum regarding the change in service providers, the service agency failed to follow the proper process for changing vendors. He also claims that he was not provided with adequate notice or information regarding his appeal rights, and that GGRC should have continued to provide him services through Wheeler during the pendency of his appeal.

FACTUAL FINDINGS

Service Agency Evidence

1. Claimant is a 26-year-old consumer of Golden Gate Regional Center (GGRC). He is diagnosed with moderate mental retardation, cerebral palsy and autism. His verbal skills are extremely limited, and he requires 24-hour supervision to ensure his safety. Claimant lives with a roommate in an apartment. From about 9 a.m. until 3 p.m. he attends a day program, and after his day program concludes he receives Supportive Living Services (SLS). Until October 1, 2012, claimant received SLS from Wheeler.

2. By letter dated July 31, 2012, signed by Chief of Regional Center Services Lisa Rosene, GGRC terminated its contract with Wheeler to provide SLS to GGRC consumers, effective October 1, 2012.² According to Rosene, GGRC is prohibited from providing services to a consumer unless the vendor has a contract with GGRC.³

3. GGRC Social Worker Jo Khechen has been claimant's social worker for about five years. According to Khechen, claimant speaks only when prompted. She has seen him when he is in a calm and pleasant mood, and also when he is agitated and withdrawn.

² Wheeler's contract was terminated pursuant to California Code of Regulations, title 17, section 58672, subdivision (a)(3), which provides that GGRC may terminate its contract with an SLS vendor without cause, provided that GGRC gives the vendor 60 days notice of termination.

³ Pursuant to California Code of Regulations, title 17, section 58672, subdivision (b), once a contract has been terminated, the vendor must immediately cease providing services to a consumer who was covered by the contract.

4. After learning that Wheeler's contract was being terminated, Khechen met with claimant on August 6, 2012. She informed claimant that Wheeler could no longer provide him with SLS because its contract with GGRC had been terminated. She also told claimant of his right to appeal the change in providers. Claimant appeared to understand her. Khechen described claimant's demeanor as calm and pleasant. She has worked with claimant for long enough to "know if he's okay."

5. Khechen proceeded to secure another SLS provider for claimant. At the meeting with Khechen, claimant willingly signed releases of information to three possible SLS providers. Claimant did not express a preference for one provider over another. Khechen requested that Alternative Learning Center (ALC), another SLS provider who had a contract with GGRC, assess claimant.

6. At an Individual Program Plan (IPP) team meeting on August 24, 2012, ALC was selected among a number of other providers to assess claimant because it was the most cost effective alternative that was able to meet claimant's needs. Claimant was not present at the IPP planning team meeting, and he did not sign the IPP Addendum in which funding was requested for an ALC assessment. A note at the bottom of the IPP Addendum, however, states: "Verbal consent given."

7. Claimant currently receives SLS services from ALC. Khechen has been monitoring claimant's transition to ALC, and it has been smooth.

8. Rosene explained that in order to provide services to GGRC clients, a vendor must have a contract to do so with GGRC. GGRC is prohibited from purchasing services from a provider who does not have a contract with GGRC. For this reason, in the event that a consumer said that he would only accept services from Wheeler, then the consumer would have to pay privately for such services. Rosene noted that claimant agreed to accept services from another SLS provider.

Claimant's Evidence

9. Glenda Presley is the Program Director and a supervisor at Wheeler. She supervises the direct care staff, and also performs some direct care as part of her regular duties. Presley has worked in the field for 37 years and is genuinely concerned for the welfare of her clients. She firmly believes that clients should be given an opportunity to be heard regarding their likes and dislikes.

10. According to Presley, after claimant learned that Wheeler would no longer be providing him SLS, she observed that he had tears in his eyes and looked sad for a couple of days. Presley surmised that claimant's sad mood stemmed from his dissatisfaction from the change in service providers. In the last week of August, Presley wrote a Fair Hearing Request for claimant, which he signed. It states the following reason for requesting a hearing, and what is needed to resolve his complaint:

After given the news [claimant] went upstairs to his room – did not come downstairs for rest of day or night. His action shows he was upset.

11. SLS staff helps claimant with cooking, shopping, self-help skills and other chores related to household maintenance.

12. Presley explained that after Wheeler contract was terminated, the direct care staff who worked with claimant “rolled over” with claimant to ALC. This has enabled claimant to receive SLS from the same direct service staff who formerly served claimant when he received services from Wheeler.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.)⁴ The purpose of the Act is to rectify the problem of inadequate treatment and services for the developmentally disabled, and to enable developmentally disabled individuals to lead independent and productive lives in the least restrictive setting possible, and consistent with their needs and preferences. (§§ 4501, 4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.) The Act is a remedial statute; as such it must be interpreted broadly. (*California State Restaurant Association v. Whitlow* (1976) 58 Cal.App.3d 340, 347.)

2. The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP states the consumer’s goals and objectives and delineates the services and supports needed by the consumer to implement his goals and objectives. (§ 4646.) Section 4646 contemplates that all decisions regarding the consumer’s services and supports will be made with the consent of the consumer or his conservator or authorized representative⁵ in the context of an IPP planning meeting. Section 4646 also contemplates that the consumer will sign the IPP prior to its implementation. If the consumer disagrees with any part of the IPP, section 4646 requires the regional center to provide the consumer with adequate notice of his fair hearing rights, as is required by section 4701.⁶ Section 4710 requires that regional centers provide

⁴ All citations are to the Welfare and Institutions Code unless otherwise indicated.

⁵ All references to the “consumer” in this discussion include, as applicable, the consumer’s conservator or authorized representative.

⁶ Under section 4701 “adequate notice” includes notice of the reasons for the service agency’s action, as well as the variety of rights that are afforded to consumers in connection with fair hearings.

consumers with adequate notice of their appeal rights in cases where the agency makes a decision to change services set forth in the IPP without the mutual consent of the consumer.

3. Claimant raises a number of legal issues relating to the change in his SLS provider. He alleges that he was not provided with an adequate process under section 4646, in that he was not present at the IPP team meeting, and he did not sign the IPP Addendum regarding the change in service providers. He also alleges that he was not provided with adequate notice or information regarding his appeal rights (§§ 4710, 4701); and, that he was not provided with aid paid pending his appeal (§ 4715). Finally, claimant argues that he is entitled to receive services from a provider of his choosing. (Cal. Code Regs., tit. 17, § 58620, subd. (b).) As set forth below, these claims are without merit.

4. Although claimant was not present at the IPP team meeting and did not sign the IPP Addendum regarding the change in his service provider, claimant was immediately informed by Khechen that Wheeler could no longer provide SLS services. Claimant willingly signed releases of information to three possible SLS providers, and he verbally consented to an assessment by ALC. Khechen promptly secured the services of an alternative service provider, ALC. Under these circumstances, any deviation from the requirements of section 4646 are de minimis because the consumer was informed of the need to change SLS providers, he was kept “in the loop” regarding the selection process, and he agreed to the change in service providers.

5. Claimant was not entitled to receive a Notice of Proposed Action under section 4710, and the concomitant notices that are required under section 4701, because claimant agreed to the change in providers. Against this background it cannot be said that GGRC’s decision to secure the services of ALC was “without the mutual consent” of the consumer. (§ 4710, subd. (a)(1).)

6. Claimant also asserts that he was entitled to have Wheeler continue providing him SLS services during the pendency of his appeal, pursuant to section 4715, subdivision (a), which provides that, under certain conditions, services that are being provided pursuant to a consumer’s IPP “shall be continued” during the appeal period. This section is inapplicable to the instant case because at no time were claimant’s SLS interrupted. Indeed, GGRC ensured that as of October 1, claimant continued to receive SLS from another vendor.

7. Finally, claimant alleges that GGRC’s termination of the contract with Wheeler violated his right to choose his SLS vendor. He contends that such a right emanates from California Code of Regulations, title 17, section 58620, subdivision (c), which provides, in pertinent part:

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:

[¶]

(c) Choosing and changing their SLS vendors and direct service staff.

This regulation implements the overarching policy of the Act, which is provide services that take into account the consumer's needs and preferences. It does not, however, afford the consumer with unbridled authority to determine which provider will provide services under the IPP. Instead, a consumer's preference for a service provider must be construed in the context of the service agency's rights and obligations under the Act, which, among other things, include the duty to ensure that the provider meets contract requirements, and that services are provided in a cost-effective fashion. (§§ 4648, 4659, 4640.7.)

8. In the instant case, GGRC exercised its right to terminate its contract with Wheeler pursuant to California Code of Regulations, title 17, section 58672, subdivision (a)(3), which authorizes a service agency to terminate the contract of a SLS vendor without cause, with proper notice. Upon termination of the contract, subdivision (b) of this regulation requires the vendor to "immediately cease providing services to, and remove any direct service staff from the home of, any consumer whose services were covered by the contract." Once the contract with Wheeler was terminated, Wheeler could no longer provide SLS services to claimant, and GGRC could no longer fund the services of Wheeler. Assuming that claimant preferred to stay with Wheeler, this preference does not abrogate GGRC's right to terminate its contract with Wheeler or its obligation to secure services from providers who have contracts with GGRC.

9. Claimant agreed to change his SLS provider, and the transition to ALC has been smooth. As it turned out, he was able to retain his direct care staff after he changed providers in October. Under these circumstances, there is presently no claim that remains unresolved, and there is no relief to be provided. Claimant's appeal is therefore denied.

10. Any contentions raised by the parties and not discussed above have been found to be without merit and are hereby rejected.

ORDER

The appeal of claimant Delvon M. is denied.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision.
Either party may appeal this decision to a court of competent jurisdiction within 90 days.