

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MARIA B.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2012090787

DECISION

David Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the South Central Los Angeles Regional Center, in Los Angeles, on December 5, 2012.

Claimant Maria B. was present and was represented by her mother.¹ The South Central Los Angeles Regional Center (SCLARC or the Service Agency) was represented by Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager. Oral and documentary evidence was received and argument made, the record was closed and the case was submitted for decision on December 5, 2012.

ISSUE

The parties agreed that the issue to be decided by the ALJ is: May the Service Agency terminate funding for Claimant's independent living skills services?

¹ Claimant is referred to by her initials to protect her confidentiality.

FACTUAL FINDINGS

1. Claimant is a 44-year-old woman who is eligible for Service Agency services based on a diagnosis of moderate mental retardation. The only service funded by the Service Agency for Claimant is independent living skills services (ILS) of 40 hours per month provided by Quality of Life Services, Inc. (QLS).

2. In a Notice of Proposed Action letter (NOPA) dated August 20, 2012 (Exhibit 1), SCLARC notified Claimant that it was terminating the funding for Claimant's ILS. The reason given was that Claimant had received ILS since November 2007, almost five years, and had no present plan to move from her family's home.

3. Claimant filed a Fair Hearing Request dated September 20, 2012 (Exhibit 2).

4. Marie Ali, the service coordinator, met with Claimant and her mother on July 30, 2012. The following relevant information was discussed, and included in a report (Exhibit 5). Claimant suffers from renal failure and needs dialysis three times per week. She takes numerous medications and requires monitoring to make sure the medications are taken when scheduled and in the right dosages, and to obtain refills. Claimant is not in a day program or a work program in large part due to her dialysis schedule and because she is often fatigued. Ms. Ali suggested an end to ILS, however Claimant's mother did not agree. After the meeting, Ms. Ali met with her supervisor, Leah Chin, a program manager, and determined that, because there were no plans for Claimant to move from the family home and live independently, the NOPA would be sent to terminate funding for Claimant's ILS. Among other things, the NOPA states that progress reports are reviewed every six months to see if sufficient progress is being made and that, if the consumer's goal is to continue living with her family, services will end after one year.

5. Claimant receives transportation services to dialysis from Kaiser. She is often accompanied by her mother, and sometimes by Sonia Rodriguez, who has been her ILS worker for approximately four years. Claimant had received 35 hours per month of In Home Supportive Services (IHSS), and her worker was her mother. However, these hours stopped in October 2012. Claimant's mother does not believe that Claimant can live outside the family home as Claimant requires much assistance and monitoring for her safety, and is only able to do a few activities independently, such as making a simple breakfast and folding her clothes.

6. Ms. Ali was only aware of one activity performed by the ILS worker; that is, occasionally accompanying Claimant to dialysis. However, at the hearing, Claimant's mother described other activities by Sonia, such as taking Claimant into the community such as to the library, the movies, the store, and other activities and appointments.

7. QLS prepared an individual service plan for Claimant dated August 8, 2011 (Exhibit 8) and a six-month progress report dated July 1, 2012 (Exhibit 7). The plan identified goals related to health/medical status, living arrangements, household activities,

meal preparation and community & safety awareness, and set forth goals, current status and supports to be provided by QLS. The progress report includes various specific activities in these subject areas wherein Sonia Rodriguez is instructing, training and/or monitoring Claimant.

8. Remarkably, neither Ms. Ali nor Ms. Chin had seen the QLS service plan for Claimant or the progress report. Neither was aware of any of the information contained therein. It was inferred that they had not seen the documents because they were directed to the attention of Yana Bogok, Claimant's prior service coordinator and Ms. Ali's co-worker.

9. SCLARC provides ILS under a written policy, one version of which was effective when Claimant was first granted the service (Exhibit 10). A newer version was approved October 18, 2010 (Exhibit 9). Exhibit 10, the first policy, describes ILS, discusses the two tiers of services (comprehensive and maintenance), and the criteria to begin and to continue ILS. Based on goals established in the consumer's Individual Program Plan (IPP), ILS goals "may consist of either residing independently in their own apartment, or enhancing independent living skills while residing with their natural family." After the initial assessment, "ILS programs . . . provide specific training in deficit areas, and provide time-limited transition and monitoring services" that will enable the consumer to live independently or semi-independently. Comprehensive services may include instruction in subjects such as "cooking, cleaning, shopping, menu planning, meal preparation, money management, use of public transportation, task completion, homemaking skills, self-reliant behaviors, sex education, family and parenting skills as well as community resource awareness (e.g., police, fire, or emergency help)." "If the consumer's goal is to live independently, the services may also help the consumer save money to facilitate move-in costs including first and last month's rent and basic furnishings, and work with the consumer to locate a suitable apartment." Maintenance service "provides support/reminders/encouragement/monitoring for individuals to perform at their fullest potential for independent living and provides maintenance for tasks that were learned in Comprehensive ILS. This service is part of a continuum of independent living skills services and reinforces previous or ongoing independent living skills training. Additionally, consumers who are living independently are encouraged to maintain supportive contacts with family members, community organizations, friends and others who can offer them occasional assistance and advice. ILS Maintenance services are designed to complement, not replace those support systems."

10. Potential time limits for ILS are found in several portions of the policy. For example, the eligibility criteria for ILS include that the consumer has appropriate skills before starting the service "to complete the Comprehensive training component (if any) within approximately 6-12 months as indicated by an independent living training skills assessment." Comprehensive services "will be time-limited (not to exceed one year at 60 hours per month maximum) and shall focus on specific objectives related to independent living. If Maintenance services will be purchased alone, they shall not exceed 40 hours per month." "It is expected that after one year, the vendor would transition the consumer out of any Comprehensive services they may be receiving, and into a Maintenance-only program. If the goal of the consumer was to continue living with the natural family, services will end

after one year.” “Continuation of funding beyond the initial 6-month authorization must be based on documented progress and realistic expectation of achievement of time-limited objectives. If, after one year, no progress has been made towards independence (e.g., consumer has not saved money for deposit, or an apartment has not been located), SCLARC may terminate funding of Comprehensive services, or provide technical assistance (e.g., help vendor/consumer negotiate with landlord), pursuant [to] Title 17 regulations. The review and any recommendations for continuation of funding shall consider alternatives for helping the consumer achieve greater independence in living, and be identified in the Consumer’s IPP. Those consumers who have successfully completed a Comprehensive ILS program may continue to receive Maintenance ILS when it is needed to maintain the consumer’s independent living arrangement in the community.” (Exhibit 10.)

11. The new policy contains some similar and some different time limits. Initial ILS will be funded for only 60 days, and then will be reviewed for clinical appropriateness and consumer progress. To be eligible, a consumer must have appropriate skills before entering “to complete training in approximately 24 months as indicated by an independent living training skills assessment.” “Skills training purchased by SCLARC will be time-limited (not to exceed two years at 30 hours per month maximum per consumer) and shall focus on specific objectives related to independent living.” Any recommendations for continuation of funding “shall consider alternatives for helping the consumer achieve greater independence in living.” (Exhibit 9.)

12. It is clear that Claimant does not want to move from the family home. Under these circumstances, SCLARC’s first written policy on ILS would permit Claimant to receive ILS for a maximum of one year. After the first six months of ILS, services would continue if there was documented progress and “a realistic expectation of achievement of time-limited objectives.” The written policy is clear in establishing a limit of one year for ILS, with the potential for further ILS only if it is maintenance services for a consumer living independently, which would not apply to Claimant. Under the second policy, the limit for ILS is two years.

13. Claimant has clearly gained some benefit from the ILS she has received and QLS has provided her with valuable tools and skills that have aided Claimant to, among other things, access the community. It is also clear that Claimant has had limited progress in other subjects included in her ILS. Claimant and her mother would like ILS to continue. What is missing in the evidence is any transition plan from SCLARC or QLS, or any service coordination from SCLARC to maintain the independent living skills that Claimant has learned as well as address her continuing and changing needs.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the

Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. Where the Service Agency seeks to reduce and ultimately discontinue a service it has previously funded, Service Agency has the burden to demonstrate that its decision is correct. In this case, Service Agency had the burden to show that funding for the existing ILS should be ended, as set forth in the NOPA.

3. Welfare and Institutions Code section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow such persons, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (Welf. & Inst. Code, § 4502.)

4. Welfare and Institutions Code section 4646.5 defines the content of the planning process for the IPP. It must include a statement of goals based on the consumer's needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include 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 IPP goals and the identification of the providers of services.

5. Welfare and Institutions Code section 4646, subdivision (a), states, in pertinent part:

"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. . . . 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, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

6. The statutory directives to the Service Agency to accomplish its goals in a cost-effective manner, control costs as far as possible and to otherwise conserve resources that must be shared by many consumers are found in other sections of the Lanterman Act. (See, e.g., Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4648, subd. (a)(11), 4651, subd. (a), 4659, 4669.2, subd. (a)(2), 4685 and 4697.)

7. Under Welfare and Institutions Code section 4647, subdivision (a), “service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.”

8. Under Welfare and Institutions Code section 4648, subdivision (a)(1), “In order to achieve the stated objectives of a consumer’s individual program plan, the regional center shall conduct activities including . . . Securing needed services and supports. It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer’s individual program plan”

9. The procedures that the Service Agency must follow when terminating the services that a vendor is providing to a consumer are set forth in California Code of Regulations, title 17, section 56718, subdivision (a). Of the five scenarios discussed in the regulation, the only one applicable to Claimant is (3), which states: “The ID Team² has determined through a consumer evaluation that the vendor’s program no longer meets the consumer’s needs.”

10. Reasonable progress towards the consumer’s objectives is also required under Welfare and Institutions Code section 4648, subdivision (a)(7), which states that no service or support may be continued by the Service Agency unless “reasonable progress towards objectives [has] been made.”

11. There was no evidence that SCLARC followed the procedure set forth in the regulation (subdivision (a)(3)), which requires action by an Interdisciplinary Team, which did not take place here. The closest thing to a consumer evaluation, required by the regulation, was a meeting between Ms. Ali and Ms. Chen. Of more significance is that neither Ms. Ali nor Ms. Chen was aware of the QLC service plan for Claimant or the progress report. Although the NOPA stated that the progress report was reviewed, this statement was incorrect. It is axiomatic that, without being familiar with the service plan or the progress report, Ms. Ali and Ms. Chen could not properly evaluate whether the vendor’s program met the consumer’s needs and whether Claimant was making reasonable progress

² This refers to the Interdisciplinary Team. Under California Code of Regulations, title 17, section 54302, subdivision (a)(39), and Code section 4646, this team includes a representative of the regional center, the consumer, and a parent or authorized representative.

towards her ILS objectives. Nor was there sufficient evidence of alternative services that might address Claimant's needs in the absence of continued ILS.

12. There is insufficient evidence to support the Service Agency's position that funding for Claimant's ILS should be terminated. Although it was established that Claimant has received ILS longer than anticipated by the SCLARC policies, no proper procedure was followed in making the determination to terminate funding for Claimant's ILS.

ORDER

Claimant's appeal of South Central Los Angeles Regional Center's decision to terminate funding for ILS is granted. South Central Los Angeles Regional Center may not terminate funding for Claimant's ILS.

DATED: December 12, 2012



DAVID ROSENMAN

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.