

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

FABIAN M.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2013060515

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on July 11, 2013, in Alhambra, California.

Judy Castaneda, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (ELARC or Service Agency). Claimant Fabian M. (Claimant) was represented by Eduardo Granados, his authorized representative.

At the onset of the hearing, the Service Agency made an oral motion to dismiss this matter, on the grounds that Claimant's appeal was moot. ALJ Garrett took the matter under submission, and proceeded with the hearing. That motion is hereby denied, because, at the time of the motion, there was no testimonial or documentary evidence on the record to support a dismissal, and Claimant had not been afforded sufficient time to respond to the motion appropriately.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on July 11, 2013.

ISSUE

Must the Service Agency continue to fund hotel services at the Alhambra Inn in order to meet Claimant's needs?

FINDINGS OF FACT

1. Claimant is a 23-year-old man, and a consumer of the Service Agency. Specifically, Claimant has been diagnosed with mild mental retardation, disrupted behavior disorder, not otherwise specified, and psychotic disorder, not otherwise specified, and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.¹

2. The Service Agency issued a Notice of Proposed Action (NOPA) on or about May 2, 2013, denying Claimant's request for continued funding for hotel services at the Alhambra Inn. On May 14, Claimant filed a Fair Hearing Request. All jurisdictional requirements have been met.

3. Claimant currently resides in a shelter within the Service Agency's catchment area, where Claimant receives meals, a bed, and a place to shower. Until March 31, 2013, Claimant resided with his grandmother within the Service Agency's catchment area, despite a restraining order she had previously obtained in response to aggressive behavior Claimant had directed at her. On March 31, 2013, Claimant was involuntarily admitted to the Saint Francis Medical Center, pursuant to section 5150, for making verbal threats against his grandmother. Claimant was released on April 8, 2013, but Claimant's grandmother would not permit Claimant to return to her home. Consequently, the Service Agency advised Claimant that it would temporarily fund for a motel pending placement at a residential facility. As such, beginning on April 8, 2013, the Service Agency placed Claimant at the Alhambra Inn, and funded the stay at a daily rate.

4. On April 15, 2013, Claimant, his service coordinator, Ben Ruacho, and his individual living skills instructor, met for the purpose of developing Claimant's Individual Program Plan (IPP). The service provision agreement attached to the IPP provided that the Service Agency would continue funding Claimant's stay at the Alhambra Inn for two more weeks or less.

5. On April 16, 2013, the Service Agency advised Claimant that it had secured a placement at a residential facility. On April 17, 2013, after his visit to the facility, Claimant advised that he did not want to be placed at any residential facility, and that he preferred to live independently in an apartment. The Service Agency continued to fund for Claimant's stay at the Alhambra Inn while Claimant looked for an apartment.

6. On May 1, 2013, the Service Agency located an apartment in Los Angeles for Claimant, that included supports to help Claimant live independently, but Claimant declined, stating that he wanted to live with his grandmother. The Service Agency reminded Claimant that his grandmother would not permit him to live with her, and advised that it would only fund his stay at the Alhambra Inn for 30 additional days.

¹ All statutory references are to the Welfare and Institutions Code.

7. During his stay at the Alhambra Inn, Claimant claimed he was a vampire and a devil worshipper, and vandalized his room by writing graffiti on the air conditioning unit, the walls, the telephone, and on the bedding. Claimant also broke the closet mirror, and attempted to steal a microwave from the hotel's dining area. In addition, Claimant set fires to small objects, and then threw them from his hotel window. He also walked up and down the hall screaming and frightening guests.

8. On May 30, 2013, the hotel manager at the Alhambra Inn told Claimant he would have to leave the premises immediately, because of the vandalism and destruction Claimant committed. Claimant refused, which prompted the manager to summon the police. The police arrived, determined Claimant was a danger to himself and others, and then escorted Claimant to Silver Lake Medical Center for involuntary psychiatric treatment.

9. The management at the Alhambra Inn advised the Service Agency that Claimant would not be permitted back, as he was a danger to its guests. At hearing, Angelica Escobar, who has worked as a front desk clerk at the Alhambra Inn for 16 years, explained that Claimant was "86ed" from the hotel's system, and would never be welcomed back under any circumstances.

10. Upon Claimant's release from Silver Lake Medical Center, he began residing at the shelter. However, Claimant has demanded that the Service Agency return him to the Alhambra Inn, and continue funding accordingly. Despite the Service Agency's representation that the Alhambra Inn would no longer welcome Claimant back, Claimant continued to insist that the Service Agency return him there, and has refused to consider any other placement options.

LEGAL CONCLUSIONS

1. Services are to be provided to regional center clients in conformity with section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See §§ 4646, subd. (g); 4710.5, subd. (a).)

2. The services to be provided to any consumer of regional center services must be individually suited to meet the unique needs of the individual consumer in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subds. (a)(1) and (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

“Services and supports for persons with developmental disabilities” means 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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer’s family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . *special living arrangements*, physical, occupational, and speech therapy, . . . education, . . . recreation, . . . community integration services, . . . daily living skills training, . . .

(Emphasis added.)

4. Services provided must be cost effective (§ 4512, subd. (b), *ante*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, *e.g.*, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) The regional centers’ obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer’s every possible need or desire, in part because it is obligated to meet the needs of many disabled persons and their families.

5. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or his or her parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

6. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference

to services and supports that will enable an adult person with developmental disabilities to live as independently in the community as possible. (§ 4648, subd. (a)(1).)

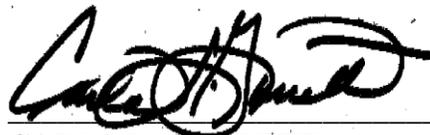
7. Section 4646.4 was also added to the Lanterman Act as a cost-containment measure in response to the state budget crisis of that time. In particular, section 4646.4, subdivision (a), requires regional centers, among other cost saving measures, to conform to their purchase of service guidelines, and utilize available generic resources. In addition, subdivision (a)(4) requires regional centers to consider the family's responsibility for providing similar services and supports for a minor child without disabilities. However, a service policy established by a regional center to govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

8. Here, the Service Agency met its burden of establishing that it should not be compelled to fund hotel services for Claimant at the Alhambra Inn. The evidence overwhelmingly showed that Claimant vandalized his room, destroyed property, and frightened guests. As a consequence, the Alhambra Inn reasonably banned Claimant from any future stay on its premises. Despite this, Claimant has demanded that the Service Agency return Claimant to the Alhambra Inn, and has refused to consider any other placement options. As set forth in Legal Conclusion 4, the Service Agency is not required to meet a consumer's every possible desire, in part because it is obligated to meet the needs of many disabled persons and their families. Claimant is urged to explore other placement options.

ORDER

Claimant's appeal is denied.

Date: July 17, 2013



CARLA L. GARRETT
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.