

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

T. U.,

Claimant,

and

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

Case No. 2013101161

DECISION

Administrative Law Judge Ralph B. Dash heard this matter on January 23, 2014, in Alhambra, California.

Margarita Duran, Supervisor, represented Eastern Los Angeles Regional Center (Regional Center or Service Agency).

Mathew M. Pope and Toni DeAztlan, Attorneys at Law, represented T. U. (Claimant) who was present throughout the hearing.

Evidence was received, the matter argued, and the case submitted for decision on the hearing date. The Administrative Law Judge makes the following factual findings, legal conclusions, and orders:

ISSUE PRESENTED

Whether Regional Center should fund 36 hours per week of supported living services (SLS) through Personalized Arrangements for Living Support (PALS).

FACTUAL FINDINGS

1. The factual issues in this matter are not in dispute. Claimant is 58 years old and is a client of Regional Center based on a diagnosis of mild intellectual disability. He has

a number of co-morbid conditions, the most significant of which is schizophrenia which currently under control through medication.

2. Claimant lives on his own in Whittier, California, and has lived in Whittier for most of his life. He is comfortable and familiar with his surroundings and does not wish to move. He would like to be able to earn money to supplement his government aid thereby enabling him to buy the common necessities of life.

3. Claimant has no formal job training. He earns some money by doing small errands for local businesses for which he is paid two to five dollars per day. He also hands out flyers for a Salvadorian restaurant at the rate of \$10 per one hundred flyers handed out, and he receives \$10 plus a meal for carrying a “sandwich board” for the restaurant for five hours per night.

4. Claimant wants Regional Center to fund 36 hours per week of SLS through PALS. Regional Center agrees that Claimant should get, and is willing to pay for, 20 hours of SLS per week through PALS.¹ Exhibit L, the PALS SLS assessment, lays out a carefully crafted 20-hour per week plan for the provision of services that would help enhance Claimant’s self-advocacy, domestic skills, deal with personal finances, and maintain good physical and mental health. The additional 16 hours per week referenced above is the time PALS believes is needed to help Respondent “establish and maintain his own small business,” also referred to in Exhibit L as a “micro entrepreneurship.” According to Exhibit L, “[Claimant] believes that with adequate support and structure (professional and financial), he can establish and maintain a self-sustainable small business, specializing in ‘gorilla [*sic*] marketing.’”

5. Rodney Mojarro, the owner of PALS, prepared Exhibit L and testified on Claimant’s behalf. Mr. Mojarro had no specific plans on how to help Claimant establish and maintain a small business. He was going to have Claimant continue “marketing” (i.e. handing out flyers and wearing a sandwich board) and would help him “get an honest wage for it.” He could then help Claimant expand this business to the point where Claimant would be able to actually solicit businesses that would pay him to hand out flyers and also print the flyers for them. This description of the type of business Mr. Mojarro felt Claimant could handle has little in common with guerilla (not gorilla) marketing, a term first used in 1984 by Jay Levinson that refers to the use of low-cost, unconventional and unique actions for promotional purposes. In any event, Mr. Mojarro stated that PALS had only been “semi-successful” in helping other clients start a small business and no evidence was presented that PALS would be able to have any success in helping Claimant start and maintain one.

6. Claimant himself was quite clear as to the type of job he wanted, and it was not guerilla marketing. Claimant had spent a day making buttons (such as used for political

¹ In fact, Regional Center has been funding such services for Claimant, through other vendors, for a number of years. Claimant desires, and Regional Center does not oppose, changing the provider to PALS.

campaigns, not for sewing) and he really enjoyed that. Mr. Mojarro did not know that was Claimant's goal, rather than forming his own business, but did estimate that it would take PALS approximately six months at seven hours per week to locate and train Claimant for a job that matched his skill set.

7. No evidence was presented that the Regional Center had convened, or that Claimant had requested, a meeting of the appropriate personnel to devise an Individual Program Plan (IPP) regarding Claimant's needs and desires with respect to any sort of job training and/or procurement of employment.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) is found at Welfare and Institutions Code section 4500 et seq. The Lanterman Act was enacted more than three decades ago. Welfare and Institutions Code section 4501² sets forth the purpose of the Lanterman Act. It states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

2. Section 4512, subdivision (a), defines "developmental disability" in part as follows:

"Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability . . . As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy,

² Except as otherwise noted, all statutory references are to the Welfare and Institutions Code.

epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

3. The State Department of Developmental Services (the DDS) is the public agency in California that is responsible under the Lanterman Act for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities. (§ 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (§ 4620.)

4. Section 4512, subdivision (b), defines “services and supports” as:

[S]pecialized 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 or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

5. Section 4646, subdivision (a), provides in 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 with developmental disabilities and takes into account the needs and preferences of the individual and the 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.

6. A regional center's responsibilities to its consumers are set forth in sections 4640-4659. The process for identifying the need for services and for providing funding for the services by regional centers is generally set forth in sections 4646 and 4648. As applied to this case, that process includes that a request for the services, or for a change in services, would be made and discussed by the team responsible for coordinating a consumer's plan of services, including the parents and Service Agency representatives.

7. The applicable sections of the Code address the team nature of the decision-making process regarding those services that are to be supplied or funded by the Service Agency. This is accomplished by the IPP process, which is described and referred to in numerous sections of the Act. Set out below are some of the sections that describe the purpose of the IPP and the process of preparing and modifying the IPP.

8. Section 4646 provides, in part:

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, 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.

9. Section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The

assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

[¶] . . . [¶]

(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 or 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.

[¶] . . . [¶]

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

10. Section 4647, subdivision (a), provides:

(a) Pursuant to Section 4640.7, 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.

11. Section 4648 provides, in part:

In order to achieve the stated objectives of a 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.

(1) 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, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

12. The process created by these sections and others can be summarized and explained in less technical terms. The Code sections set forth criteria that relate to the development and modification of an IPP for a person with a developmental disability, referred to as a consumer.

An IPP is developed through a collaborative effort involving the appropriate regional center, the consumer and/or the consumer's representative(s), and others, sometimes collectively referred to as the interdisciplinary team (or ID Team). It was the intent of the Legislature that persons with diverse skills and expertise were to serve on the ID Team. They were intended to confer, deliberate, and decide what should be included in the consumer's IPP. The ID Team may not abdicate its role or ignore its duty owed both to the consumer and to the IPP process.

The IPP is prepared for the consumer by identifying necessary services and supports. The Service Agency must allow the consumer and/or the consumer's parents to participate in developing the IPP. The plan must be based on information and assessments relating to the consumer's life goals, the barriers to meeting those goals, the consumer's capabilities and strengths, preferences, concerns, and other relevant information about the consumer.

Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the

consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family. Consumers and their parents have the reciprocal obligation to assist the Service Agency in meeting its mandate. No consumer should benefit by withholding information or by refusing to cooperate with the regional center, even if such conduct is well intentioned.

An IPP must include a statement of the consumer's goals, based on the consumer's needs, preferences, and life choices. An IPP must contain specific, time-limited objectives to implement identified goals. Objectives must be constructed to allow measurement of progress and monitoring of service delivery. Identified goals and objectives should maximize a consumer's opportunity to develop relationships and participate in community life, housing, work, school, and leisure activities. Identified goals and objectives should increase the consumer's control over his or her life, should assist the consumer in acquiring increasingly positive roles in community life, and should be directed toward developing competency to help accomplish these goals. Proper goals and objectives allow for efficient evaluation of the effectiveness of the plan and the progress made by a consumer.

The regional center is required to prepare a plan identifying the services and supports a consumer needs to meet the goals and objectives identified by the ID Team, and determine whether those services and supports are to be purchased by the regional center, obtained from generic agencies, or provided from other sources. A Consumer and his or her parents have the right to provide the Service Agency with input into the selection of the providers of those services and supports.

If a consumer and/or the consumer's representatives do not agree with all of the components contained in an IPP, the area(s) of disagreement may be noted but a disagreement with specific IPP components does not prevent implementation of those services and supports to which there is no disagreement. The regional center must send written notice advising the consumer and the consumer's representatives of the right to a fair hearing as to the areas of disagreement.

These statutes require that the services provided must be effective in meeting IPP goals, that the IPP should reflect the preferences and choices of the consumer, and that the IPP should be cost-effective in its use of public resources.

13. As set forth in Finding 4, there is no dispute that Claimant needs, and Regional Center is willing to fund, 20 hours per week of SLS through PALS. There appears to be no need for an IPP meeting with respect the provision of those services.

14. As set forth in Finding 7, no IPP meeting has been convened regarding Claimant's needs and desires with respect to any sort of job training and/or procurement of employment. Thus, no determination can be made as to whether Claimant needs skills training, business training, or any training at all. The only possible way for this determination to be made is for Regional Center to gather Claimant's IPP team and

deliberate on Claimant's wants and needs for these types of services and prepare an appropriate plan to address the same.

ORDER

1. Regional Center shall fund 20 hours per week of SLS services through PALS on Claimant's behalf in accordance with the assessment PALS has made, except Regional Center need not, at this time, fund SLS services for job or micro-entrepreneurship training.

2. Regional Center shall, within the next 60 days, convene a meeting of the appropriate members of Claimant's IPP team to create a plan of action to address Claimant's wants and needs with respect to job training and/or business creation skills.

DATED: January 29, 2014

_____/s/_____
RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. If a party chooses to appeal, an appeal from this 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).)