

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

OAH No. 2013120058

DECISION

Administrative Law Judge Regina J. Brown, State of California, Office of Administrative Hearings, heard this matter in Napa, California, on January 7, 2014.

Claimant was represented by her father, who appeared telephonically from Connecticut.

Kristin N. Casey, Attorney at Law, represented service agency North Bay Regional Center (NBRC).

The record was left open to January 21, 2014, to allow NBRC to ascertain whether a dependency petition had been filed by Alameda County Children Protective Services regarding Claimant, and for Claimant to respond thereto by January 28, 2014. On January 21, 2014, NBRC submitted a letter confirming that Alameda County Children Protective Services had not filed a dependency petition. The letter was marked as Exhibit 6 for identification. No response was received from Claimant. Exhibit 6 was admitted into evidence. The record closed and the matter was submitted on January 28, 2014.

ISSUE

Whether Claimant, a minor, continues to be eligible for regional center services even though her parents no longer reside in California.

FACTUAL FINDINGS

1. Claimant is a 14-year-old girl. She has a diagnosis of autism and suffers from seizures. She exhibits self-injurious behaviors. In August 2003, Claimant was determined to be eligible for regional center services through the Kern Regional Center (KRC), which serves consumers in Kern, Inyo, and Mono counties. At that time, Claimant and her parents lived in KRC's service area.

2. In November 2004, Claimant was placed in the Carrington-Brown group home in Vacaville, California, which is in NBRC's service area. Because of the distance, KRC shared with NBRC the case management responsibilities for Claimant's case. In February 2006, NBRC accepted full transfer of Claimant's case. Claimant has been receiving a variety of services from NBRC as determined in her Individual Program Plan (IPP). Her most recent IPP is dated April 2, 2013.

3. When Claimant was initially placed in the Carrington-Brown group home, her parents were living in KRC's service area. In December 2009, Claimant's parents moved out of the State of California to Missouri. They later moved from Missouri to Connecticut in 2011. NBRC staff was aware that Claimant's parents had moved out of California, but NBRC continued to provide services to Claimant, who remained in California.

4. In October 2012, the Carrington-Brown group home closed. On October 5, 2012, Claimant was placed in the Greenfield Intermediate Care Facility (Greenfield) in Fairfield, California. NBRC continued to provide services to Claimant while she lived at Greenfield. According to Claimant's most recent IPP in April 2013, Claimant's parents visited her at Greenfield and her mother participated via telephone in developing her IPP.

5. In September 2013, Claimant was admitted to Children's Hospital in Alameda County. When Claimant was to be discharged on September 20, 2013, Greenfield refused to accept Claimant back into the facility.

6. NBRC personnel attempted to find another placement for Claimant. During the search, it came to the attention of NBRC personnel that an error had been made regarding Claimant's eligibility for services after her parents moved to Missouri in 2009. NBRC determined that when Claimant's parents moved out of California, they were no longer residents of California, and, therefore, Claimant was no longer eligible to receive regional center services.

7. On November 7, 2013, NBRC issued an Addendum to Claimant's IPP. The Addendum reflected that Claimant is not a resident of California and that NBRC planned to close Claimant's case. Upon closure of the case, NBRC planned to cease providing services to Claimant. NBRC referred the matter to Alameda County Child Protective Services (CPS) to engage with Connecticut Child Protective Services on Claimant's behalf to facilitate her transfer to Connecticut.

8. In a Notice of Proposed Action (NOPA) dated November 7, 2013, NBRC notified claimant that it was closing her case. The stated reason for the action was as follows:

In order to be considered for Regional Center services, a person must be a resident of the State of California. The residence of a minor (person under 18) is considered the residence of his/her parents.

9. Claimant appealed, and this hearing followed. Claimant contends that NBRC should continue to provide services because she has been in their care for over nine years, she is a native of California, she has continually resided in California, and NBRC continued to provide services from 2009 to 2013, with full knowledge that her parents no longer resided in the State of California.

10. NBRC Procedure Memo 3780 sets forth NBRC's policy regarding residency. It states in relevant part:

I. BASIC POLICY:

In order to be considered for eligibility for services of the North Bay Regional Center, a person must be a resident of the State of California. . . .

III. GENERAL POLICY FOR THE DETERMINATION OF CLIENT RESIDENT AS IT PERTAINS TO REGIONAL CENTER REGISTRATION:

The residence of a minor (person under 18) shall be the residence of his parents or the residence established for him by a guardian or conservator of his person. . . .

IV. SPECIFIC GUIDELINES:

A. Minor Clients

. . .

8. For the purpose of Regional Center registration, the residence of a minor, who is in . . . twenty-four hour, out of home placement, shall be the residence of his parents or the residence established for him by the guardian. However, if such a client has been placed outside of the regional center service area serving his parent's residence into an out of home facility that is not a Development Center, the client's residence becomes

that of the place where he is living at the time he reaches age 18 (majority).

9. Non-Resident Minors:

...

b) For minors not living in Developmental Centers, NBRC must actively seek the minor's transfer to the state of parents' residence. Attempts to accomplish transfer shall be documented in the client record.

1. These efforts may include seeking assistance from the Legal Affairs Office of the Department of Developmental Services and/or the Attorney General's Office to determine which state is responsible for providing for the minor's care.

2. In some cases, California is receiving support payments from the parent or guardian for the minor's care and treatment in California, or California is receiving payments from the state of parental residence for the minor's care. It is not necessary to seek transfer to the client's State of residence in these cases. . . .

c) If the minor's parents do not respond, or their whereabouts is otherwise unknown, the client shall be referred to the county welfare department or the appropriate juvenile authority for initiation of proceeding to have the child declared a dependent ward of the court.

d) Until such time as the situation is resolved, the regional center shall continue to "actively seek" transfer of clients located in the community.

11. According to Guadalupe Lopez, NBRC case manager supervisor, when Claimant's parents moved out of California in 2009, NBRC should have informed them that Claimant was no longer considered to be a resident of California, and was no longer eligible for regional center services. Lopez acknowledges that it was a mistake not to inform Claimant's parents at that time, and that the mistake did not come to NBRC's attention until September 2013.

12. NBRC has made efforts to transfer Claimant's case to the Connecticut Department of Developmental Services, but, according to Lopez, Claimant's parents have been uncooperative and refused to provide written consent to allow NBRC to communicate with the Connecticut Department of Developmental Services. Lopez believes Claimant can receive similar services in Connecticut to those that she has received through NBRC.

13. Claimant's father maintained that either he or his wife has signed all required documents sent to them from NBRC, including written consent forms. He insisted that he had responded to all communications from NBRC. Given Claimant's father's representations at hearing that he wants Claimant to stay in California under NBRC's care, it is not credible that he submitted the requested written consent forms to NBRC.

14. According to Claimant's father, he has spoken with representatives from CPS and was told that Claimant would be declared a dependent ward of the court, and she would be taken into CPS' custody. Claimant's father indicated that he does not oppose CPS' proposed plan for Claimant. However, as of this hearing, CPS has not filed a dependency petition for Claimant.

15. According to Courtney Singleton, NBRC Section Manager, even if Claimant were determined to be a resident of California, NBRC has been unable to identify any placement in the State of California that would meet her needs. NBRC has exhausted all available resources in California, and has initiated a "referral to challenging placement options" with the California Department of Public Health to have Claimant placed into an institution or an out-of-state placement.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500, et seq.)¹ The Act is intended to make services and supports available to California residents with developmental disabilities and their families to enable those individuals to "approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.) Regional centers are non-profit entities that receive government funding in order to provide services and are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§§ 4620, subd. (a); 4629, subd. (b).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.)

2. Only a California resident is eligible to receive regional center services. (Cal. Code Regs., tit. 17, § 54010.) The Lanterman Act addresses the continuation of services when a client of a regional center moves from one location to another location in California.

¹ All references are to the Welfare and Institutions Code unless otherwise indicated.

(§ 4643.5, subd. (a).) The Lanterman Act does not specifically address the continuation of services when a client changes his or her residence to another state. However, it is clear that the Legislative intent of the Lanterman Act is only to make services available to California residents and their families.

3. In this case, the legal issue is whether Claimant, a minor, lost her California residency and ceased to be eligible for regional center services when her parents moved to another state. If claimant is determined to be a non-resident and no longer eligible for regional center services, then NBRC has no duty to continue to provide services under the Lanterman Act and can close her file.

4. As a general rule, the residence of a minor child is presumed to be that of the parent, and the minor cannot change that residence by any act of her own. (Gov. Code, § 244, subs. (d) & (e); see *Northwestern Nat. Cas. Co. v. Davis* (1979) 90 Cal.App.3d 782.) Welfare and Institutions Code section 17.1, which applies to determinations of residency in circumstances governed by the Welfare and Institutions Code, similarly provides that a minor's residence is that of her parents (subd. (a)), or the person with the legal right to custody of the child (subd. (b).) (See e.g., *County of Alameda v. County of Contra Costa* (1955) 134 Cal.App.2d 479, 482.)

5. Applying the facts of this case, Claimant's residence is presumed to be that of her parents. There has been no evidence of any proceedings removing legal custody from her parents. Thus, it is presumed that Claimant's parents still retain legal custody of Claimant. Moreover, her father filed the notice of appeal and appeared on Claimant's behalf at the fair hearing which demonstrates that her parents retain legal custody of Claimant. Since her parents have legal custody of claimant, her residency follows that of her parents pursuant to Welfare and Institutions Code section 17.1, subdivisions (a) and (b).² Such an interpretation leads to the conclusion that Claimant's resident status is the same as that of her parents; and, therefore, Claimant is determined to be a resident of Connecticut and a non-resident of California.

6. Case law in the area of juvenile dependency and divorce proceedings is instructive in this matter. Generally, a minor's residence must follow that of the parent entitled to custody, regardless of where the child may be living. (*Titcomb v. Superior Court* (1934) 220 Cal. 34; *County of Alameda v. County of Contra Costa, supra*, 134 Cal.App.2d 479, 482.) Also, the residence of a minor must follow the residence of the parent to determine which juvenile court is vested with jurisdiction over the minor. (*Los Angeles County v. Superior Court* (1933) 128 Cal.App.522, 527.) These cases support the conclusion that, for purposes of establishing residency under the Lanterman Act, the residence of a minor must follow that of the parent who retains the legal right to custody.

² Because subdivisions (a) and (b) apply, there is no need to analyze the matter under the remaining subdivisions (c), (d), and (e).

7. Claimant provides no legal authority for her contentions that NBRC should continue to provide services because she has been in their care for over nine years, is a native of California, and has continued to physically live in California. The determination of Claimant's residency as being that of her parents, pursuant to Welfare and Institutions section 17.1, controls. Thus, Claimant is no longer a resident of California and NBRC has no legal duty to continue to provide services to Claimant.

8. However, the analysis of the issue at hand does not end there. When a minor client is no longer considered to be resident of California, this does not mean that NBRC has no additional responsibilities to that minor client. If a minor's parents reside outside of California, NBRC Procedure Memo 3780 requires NBRC to actively seek transfer until "the situation is resolved." What constitutes "resolution" is not specified in the Procedure Memo. In this case, NBRC has actively sought transfer of Claimant to Connecticut. NBRC has contacted Claimant's parents and the proper authorities in California and Connecticut, who are responsible to ensure Claimant receives appropriate services, including transfer to Connecticut. Through no apparent fault of NBRC, no transfer has taken place. NBRC has simultaneously sought resolution of the residency issue through the subject administrative proceeding. It is therefore determined that NBRC has met its responsibilities to Claimant pursuant to its own procedures. NBRC may close Claimant's case file and stop providing regional center services to Claimant.

ORDER

The appeal of Claimant, from the determination of North Bay Regional Center that Claimant, a non-resident minor, is no longer eligible for regional center services, is denied.

DATED: February 11, 2014

//
REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.