

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2014060831

DECISION

Administrative Law Judge Danette C. Brown, State of California, Office of Administrative Hearings (OAH), heard this matter in Visalia, California, on August 27, 2014.

The Service Agency, Central Valley Regional Center (CVRC), was represented by Shelley Celaya, Client Appeals Specialist and Hearing Designee.

Claimant was represented by his brother and conservator.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Shall claimant be discharged from Porterville Developmental Center (PDC) to a community-based placement?

FACTUAL FINDINGS

1. Claimant is a 64-year-old man eligible for CVRC services based on a diagnosis of Profound Intellectual Disability and a psychiatric diagnosis of Generalized Anxiety Disorder. He is completely blind, but has normal hearing. He is ambulatory, but requires a sighted guide. He wears customized boots and braces. Claimant requires assistance with all of his self-care tasks and is dependent on developmental center staff to meet these needs. Claimant's symptoms of anxiety manifest as restlessness, irritability, difficulty concentrating on tasks, and sleep disturbances. All of these symptoms have an impact related to claimant's open behavior plans addressing claimant's behavior of striking himself. From August 2012 to August 2013, claimant had 518 episodes of striking himself. Claimant currently receives Zoloft to treat his anxiety disorder.

Although claimant is nonverbal, he responds to his name and simple requests. When he is happy, he is calm and will smile. When using sign language, hand over hand guidance is needed to shape the sign. At times he will allow peers to sit next to him. He does not form or maintain friendships with his peers.

Claimant likes walking indoors and outdoors, reclining on the bed or chairs, taking naps, listening to music, dancing, swimming, taking warm showers, verbal praise, having his own personal space, and visiting with his brother. He prefers a consistent, stable routine. He dislikes sitting for long periods, prolonged assistance and guidance, loud noises, and others invading his personal space.

Claimant has a history of pulling peers out of their chairs, trying to bite them, and pulling their hair, especially if he wants the chair, is agitated, or is not feeling well. Claimant has a long history of overturning furniture, throwing objects, and slapping his face, especially when frustrated and being resistant to change. He is currently encouraged to wear a baseball cap to reduce the severity and occurrence of slapping his face. Claimant will occasionally disrobe at inappropriate times. He will also put his hands in his pants waistband, which appears to be a form of self-restraint. He may check doors to see if they are open, and will leave the residence if he finds a door that is unlocked. Claimant has been known to roam at night, get into wardrobes, and disturb his peers.

2. Claimant was admitted to the Porterville Developmental Center (PDC) in 1956 at the age of eight. In June 1956, he returned home for seven months, but was readmitted to PDC. In December 1992, claimant was placed in the community at the Leslie Home in Porterville. Due to that care provider's retirement, and the unavailability of an alternative home, claimant was readmitted to PDC in September 1993. He has continued to reside at PDC since that time. Claimant has been receiving services from CVRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.).¹

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

3. Claimant's parents are deceased. He has one younger brother, who resides in San Luis Obispo, California. The brother is claimant's only living relative. He has been involved in claimant's welfare and development by participating at his team meetings and signing consents for claimant. The brother became claimant's conservator in late 2013 or early 2014.

4. As indicated in his current Individual Program Plan (IPP), dated September 18, 2013, claimant's "preferred future" is to "improve his activities of daily living skills with an emphasis on motor skills." The Placement Planning section of this IPP provided:

[Claimant] currently resides on 36 North Circle Drive and has been admitted to PDC for over 57 years, except for one year of community placement. [Claimant] is responsive to the service providers and he is familiar with his environment. [Claimant's] brother, [name omitted], has indicated his continuous strong opposition to community placement. He is very pleased with the care and service [claimant] receives at PDC and would like for [claimant] to continue residing at PDC ... During last year's annual meeting, [claimant's brother] stated that he would seek legal action to keep [claimant] at PDC because he feels [claimant] is in a safe environment and to place [claimant] in a new community placement could be damaging for [claimant]. At last year's team meeting, the Central Valley Regional Center (CVRC) liaison, felt that [claimant] would benefit from community placement and was seeking a suitable home; however, at that time a home had not been identified. On 03/21/13, a Special Team was held per CVRCs request. The team agreed that [claimant] is appropriate for a lesser restrictive environment provided it meets his needs. The Team reviewed the supports and services from last year's IPP narrative dated 09/19/12 and agreed to make the following changes: *The clients who will reside at [claimant's] future group home must be of his cognitive level and have similar behaviors. In addition, the home will be for seniors.* On 08/05/13, regional center designated a group home provider to meet with [claimant] for possible community placement. [Claimant's brother] was notified who adamantly opposed this meeting and stated he will pursue conservatorship of [claimant] to stop this placement ... CVRC does not have a designated home at this time.

[¶] ... [¶]

The Team reviewed and discussed all assessments and recommendations and determined that [claimant] is still appropriate for Unit 36, Porterville Developmental Center, based

on his compatibility and functioning level of his peer group, which continues to meet his needs at this time.

If [claimant] were to be considered for placement in a community setting or less restrictive environment, he would need the following ***Services and Supports*** to be successful: Licensed facility with 24-hour awake licensed staff trained in behavior management; a home equipped for the blind and for senior individuals; residential care facility for the elderly (RCFE)/ICF-DDN home; a quiet home with a large fenced yard; with delayed egress; The clients who will reside at [claimant's] future group home must be of his cognitive level and have similar behaviors. [P]hysician; medical specialists (psychiatrist; ophthalmologist; cardiologist); Psychologist/Behavior Management Specialist; Dietician, dental, Audiology, adaptive/medical equipment (may wear customized/Specialized shoes (short-leg braces); gait belt; Adult Incontinent Briefs; Commode/Shower Chair with seatbelt; Cambro plate with plastic guard, nonskid mat, and may use a clothing protector, padded footboard and wheelchair); OT/PT/Orthotic services; community inclusion services, adult day program; recreational/leisure services; family support; and advocacy services.

(Emphasis in original.)

5. On July 1, 2014, CVRC issued a Notice of Proposed Action (NOPA) to claimant, advising that CVRC was proposing to “discharge [claimant] from Porterville Developmental Center to a less restrictive community based care facility.” The reason for the action was “to provide [claimant] with the least restrictive environment to meet his needs. [Claimant's] needs can easily be met in the community.”

The cited authority for the action, section 4502, provides:

Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

6. Claimant's brother filed a Fair Hearing Request, dated June 11, 2014, stating:

As brother and conservator of [claimant], I believe [claimant] should continue to reside at Porterville Developmental Center.

Ronald Marconi, M.D.

7. Ronald Marconi, M.D., practices family medicine in Visalia, and is affiliated with Kaweah Delta Medical Center. Dr. Marconi is a consultant for CVRC. On December 11, 2013, Dr. Marconi conducted a Medical Assessment for Community Placement for claimant. He concluded as follows:

[Claimant] would be an excellent candidate for community placement in one of the newer homes specifically developed for those individuals with sensory deprivation. He would need to have the ability to have physical therapy, occupational therapy with the ability to have Hangar Prosthetics evaluate the conditions of his AFO's periodically. He would also need to have a primary care physician to manage his general medical problems and the ability for cardiac follow-up if necessary regarding his Dyslipidemia. Prior to placement in the community communication with the brother regarding the move is essential. The new home must be capable of working with an individual with blindness. The ataxic gait and transfers would require an attendant for ambulation.

8. Dr. Marconi testified that claimant will be extremely complicated to manage as he ages. Claimant was in community placement before (in December 1992), "and they failed." Dr. Marconi averred that the new community placements are better, providing a less restrictive environment. They are home-like environments with all sorts of medical attention made available to residents. Dr. Marconi stated that CVRC can "follow" claimant in the community to meet his medical needs. The same neurologist, cardiologist, speech therapist, and other medical professionals currently treating claimant will be the same individuals treating claimant in community placement.

Dr. Kao Yang

9. Kao Yang, Ph.D., is a licensed clinical psychologist and a CVRC Staff Psychologist. She observed claimant at PDC Unit 36 on July 10, 2014, with Ms. Celaya and CVRC Counselor Miguel Haro. She observed claimant to appear his stated age. He wore a gait belt and leg braces. As claimant sat in the chair, he would frequently shift around looking for a more comfortable position. Claimant remained calm during the observation. He was nonverbal, but was responsive to PDC staff by orienting his head and responding to noise. Claimant was assisted to the classroom by PDC staff via physical guidance using the gait belt and verbal cues. In the classroom, claimant stood up when he needed to use the restroom.

During the observation, Dr. Yang spoke to PDC staff and reviewed records. She also spoke to the PDC Unit 36 psychologist Jessica Jones-Steed over the phone. Dr. Jones-Steed reported to Dr. Yang that a community placement for claimant would be beneficial if the appropriate placement can be found. Dr. Jones-Steed told Dr. Yang that claimant can be behaviorally challenged at times and can be physically aggressive. For example, Dr. Jones-Steed described claimant flipping tables. With regard to claimant's day-to-day functioning, PDC staff reported that claimant has no interest in peers, gets along fine with his roommate, sleeps through the night, and likes to sleep in the nude. Claimant eats independently and drinks on his own, although he is on a pureed diet and requires adaptive dishes. Claimant will hit his head when in pain, and stands up or reaches for something he needs. Staff also reported that claimant likes to self-restrain himself.

10. In her psychological case note dated July 10, 2014, and by her testimony, Dr. Yang's opinion is that a community placement in a Residential Care Facility for the Elderly would be the most appropriate and least restrictive living situation for claimant. A RCFE (RCFE) can provide claimant with the care and supervision he requires as well as assistance with activities of daily living. Claimant would also be able to access medical services for his medical needs. Other necessary requirements for placement are accommodations for claimant's visual impairment, mobility issues, and his "strikes self" behaviors. Dr. Yang concluded that should a RCFE be found that adequately addresses claimant's needs, it would be the most appropriate and least restrictive placement for claimant.

Diane Kraus

11. Diane Kraus is a Program Manager for the Community Placement Plan for CVRC. Ms. Kraus has worked at CVRC for 23 years. She performs all coordination and oversees CVRC's community placement plan mandated by the Department of Developmental Services. Ms. Kraus testified that CVRC submits an annual plan to the State of California which includes identifying those patients the CVRC proposes to transfer from the developmental center to the community. The CVRC also identifies the resources to meet the needs of the patients. Ms. Kraus testified that in the past, the CVRC very easily placed individuals in the developmental centers over the years. Due to changes in the law, admission to developmental centers is limited to only those individuals who are committed by a court. (Welf. & Inst. Code, § 7505.)

12. Ms. Kraus testified about the state legislature's intent to discontinue services at the developmental centers, and to safely transition developmental center clients to residential communities. Ms. Kraus further testified that costs to the developmental centers are rising as the population declines. The approximate cost in a community facility for needs similar to claimant's is significantly less than \$400,000 per year, which is the current yearly costs for a resident in a developmental center. She stated, "Dollars don't drive services, needs drive services." Ms. Kraus persuasively asserted that it is more cost effective to serve an individual in a community facility versus a developmental center.

13. Ms. Kraus has seen clients readmitted to PDC after being transferred to a community facility. She stated that one client kept running away, so for his own protection, he was transferred back to PDC. With other clients, she has seen significant changes upon their transfer to a community facility. CVRC involves the family, and receives feedback from them about community placement. Families that have been opposed to community placement are pleasantly surprised, as Ms. Kraus has seen "unforeseen changes in their countenance."

14. Ten years ago, Ms. Kraus would have stated that claimant is not appropriate for community-based care. Now, because of changes in the system, she is confident that claimant's care can be served in the community. The goal is to improve claimant's quality of life. The most appropriate placement option for claimant is a community residential setting specific to his needs. Ms. Kraus stated that CVRC has "something coming online for serving people in their 50's and 60's." CVRC has not yet identified a community-based facility for claimant.

Miguel Haro

15. Miguel Haro is a CVRC Case Manager and PDC liaison. He attends individual development plan (IDP) meetings and develops services and core needs to be duplicated in the community. Mr. Haro prepared the Regional Center Comprehensive Assessment report for claimant, dated August 21, 2014. The report contains updated information to include claimant's recent seizures. Mr. Haro supported all of the CVRC's witnesses contentions that claimant will have access to medical care (including addressing claimant's recent seizures) and behavioral intervention services. He asserted that CVRC wants the family to be "on board" to assist with transition planning. Mr. Haro previously discussed with claimant's brother the opportunity to tour some community-based homes, but he declined at that time. The CVRC wants the family to feel as comfortable as "we do" in placing claimant in a community facility. Placement can be accommodated such that claimant's location is closer to his brother.

Claimant's Brother

16. Claimant's brother is opposed to community placement for claimant. As claimant's brother and someone who has known claimant for 61 years, he feels that claimant is best served by remaining at PDC, despite the state's mandates to transfer developmental center

residents to community-based facilities, and the improvement of the quality of care and services provided at those facilities.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§ 4646.5 & 4648.)

2. Section 4646, subdivision (a) provides:

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 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.

3. Section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of the 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 as independently as possible in the community, and that allow consumers to interact with persons without disabilities in positive, meaningful ways.

4. Section 4500.5, subdivision (a) provides:

The Legislature makes the following findings regarding the State of California's responsibility to provide services to persons with developmental disabilities, and the right of those individuals to receive services, pursuant to this division:

(a) Since the enactment of this division in 1977, the number of consumers receiving services under this division has substantially increased and the nature, variety, and types of services necessary to meet the needs of the consumers and their families have also changed. Over the years the concept of service delivery has undergone numerous revisions. Services that were once deemed desirable by consumers and families may now no longer be appropriate, or the means of service delivery may be outdated.

5. Section 4418.3, subdivision (a) provides:

It is the intent of the Legislature to ensure that the transition process from a developmental center to a community living arrangement is based up the individual's needs, developed through the individual program plan process, and ensures that needed services and supports will be in place at the time the individual moves. It is further the intent of the Legislature that regional centers, developmental centers, and regional resource development projects coordinate with each other for the benefit of their activities in assessment, in the development of individual program plans, and in planning, transition, and deflection, and for the benefit of consumers.

6. Section 4418.7, subdivision (a)(1) provides:

If the regional center determines, or is informed by the consumer's parents, legal guardian, conservator, or authorized representative that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood, or the regional center is notified by a court of a potential admission to a developmental center consistent with Section 7505, the regional center shall immediately notify the appropriate regional resource development project, the

consumer, the consumer's parents, legal guardian, or conservator, and the regional center clients' rights advocate.

7. The state's drive toward transitioning developmental center clients to community-based facilities is currently happening, and will be a reality for many clients. PDC placement has worked well for much of claimant's life. However, there is no reason to believe that with proper transition planning by a dedicated IPP team, including all necessary services and supports, claimant's community placement would be anything but successful.

8. This decision is not meant to discount claimant's brother's concerns in any way. His involvement in claimant's community placement is vital. It is more than reasonable to be concerned with change after claimant was readmitted to PDC after being placed in a community facility for a short time in 1992 and 1993. However, claimant's return to PDC was not the result of his medical or behavioral issues, but rather because the care provider retired and an alternative home was not available. Many changes have occurred in the delivery of services to the developmentally disabled in the past 20 years. The evidence was persuasive that a developmental center placement would no longer be appropriate for claimant. With the continuing changes to the developmental center population, that placement becomes more and more inappropriate.

9. The evidence was also persuasive that claimant's needs could be met in a community placement with proper planning and oversight. Although a community placement has not yet been identified, CVRC is committed to finding a placement where there are similar residents of claimant's cognitive level and behaviors. Moreover the home will be for seniors. Claimant can maintain many of his current supports, including his physicians. Finally, the regional center's mandate to provide services that reflect the cost-effective use of public funds must be considered. That mandate also supports the decision to pursue community-based placement.

ORDER

Claimant's appeal is DENIED. CVRC shall take all steps necessary to further claimant's successful transition to a community-based placement.

DATED: September 9, 2014

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)