

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER of ORANGE
COUNTY,

Service Agency.

OAH No. 2015110145

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge of the Office of Administrative Hearings, on December 11, 2015, in Santa Ana, California.

Claimant appeared at the hearing and was represented by his mother who is also his conservator. Paula Noden, Fair Hearing Manager, appeared on behalf of the Regional Center of Orange County (regional center or RCOC).

Evidence was received and the matter was submitted for decision. The Administrative Law Judge makes the following findings, legal conclusions and order.

ISSUE

On July 15, 2015, claimant submitted an amended Fair Hearing Request setting forth six enumerated issues. In an Order and Ruling Excluding Proposed Issues, Administrative Law Judge (ALJ) Janis Rovner excluded issues 2 through 5 because they “are in the nature of consumer complaints, which are governed by Welfare and Institutions Code section 4731, and are not proper issues for fair hearing under the Lanterman Developmental Disabilities Services Act.” Issue number 6, requesting that claimant’s service coordinator be replaced, was resolved prior to the hearing. Therefore, the sole issue addressed in this matter is as follows:

Did the regional center properly terminate claimant's enrollment in the Home and Community Based Services Waiver for Californians with Developmental Disabilities (HCBS-DD Waiver Program)?

FACTUAL FINDINGS

1. Claimant is a 40-year-old gentleman who is a regional center consumer based on diagnoses of cerebral palsy and mild intellectual disability. Claimant also suffers from a hearing deficit.

2. Claimant lives with his mother who has a limited conservatorship, which authorizes her to give or withhold consent for claimant's medical treatment.

3. In 2013, claimant received psychiatric services from Dr. Gail Fernandez at the University of California, Irvine (UCI). Claimant's last appointment with Dr. Fernandez was on July 12, 2013. Claimant's utilization of this service made him eligible for enrollment in the HCBS-DD Waiver Program.

4 The HCBS-DD Waiver Program is not a regional center funded service or program. The HCBS-DD Waiver Program is a federal program established so that the states including California can qualify for federal funding for specific services such as the psychiatric services that claimant received from UCI. "Through this waiver program, certain federal Medicaid rules are 'waived,' allowing states to provide services to people with developmental disabilities in ways that are not available to other people enrolled in Medicaid (MediCal in California). . . . In California, the HCBS-DD Waiver Program provides funding for services and supports provided through regional centers. HCBS-DD waiver participants have access to the same array of services and supports available to all regional center consumers. . . . Every person who receives funding through the HBCS-DD Waiver Program must have his or her waiver eligibility reviewed by the regional center at least annually, and the regional center must reevaluate the consumer's level of care and needs. . . . Since HCBS-DD Waiver-funded services are intended to prevent the need for institutional care, it is important that the [consumer's] IPP (Individualized Program Plan) identify at least one HCBS Waiver-funded service to be provided annually. If a consumer does not need or utilize one of these services, the consumer is not eligible for the HCBS Waiver." (Exhibits 14 and 15, HCBS Waiver Primer and Policy Manual and Appendix issued by the Department of Developmental Services.)

5. Four requirements must be met for a consumer to be enrolled in HCBS-DD as follows: (1) A consumer must select a service that addresses at least two of the consumer's deficits that are set forth in the Client's Development Evaluation Report (CDER); (2) the regional center must enter into a contract with a provider of a qualifying service; (3) the consumer must utilize at least \$1,000 in waiver qualifying services each year for the purpose of preventing institutionalization; and (4) the vendor/provider must submit an invoice to the regional center for payment. A consumer's enrollment in the program is subject to

termination if the above four requirements are not met. (Exhibit 9.) However, even in the case where a consumer's participation in the HCBS-DD Waiver Program has been terminated, he or she continues to be eligible for same array of regional center services under the Lanterman Developmental Disabilities Services Act. (Exhibit 14.)

6. Because of a disagreement between claimant's mother and Dr. Fernandez, claimant has not availed himself of Dr. Fernandez' services since claimant's last appointment on July 12, 2013. Further, as a result of claimant's and/or his mother's decision not to continue to receive services from Dr. Fernandez, no bills were submitted to the regional center for this service for at least 12 months prior to January 31, 2015.

7. On March 2, 2015, RCOC issued a letter notifying claimant and his mother the regional center had "dis-enrolled" claimant from the HCBS-DD Waiver Program because claimant had not utilized a qualifying service for the preceding 12 months. Claimant's mother responded to the regional center letter, questioning the dis-enrollment and making general inquiries about the HCBS-DD Waiver Program. On April 2, 2015, Rhonda Conroy, claimant's service coordinator, wrote a letter explaining the regional center's action as follows:

The purpose of the HCBS-DD Waiver Program is to help the state maintain the entitlement program, known as the Lanterman Act, by bringing in federal revenue and to ensure that consumers have access to supports that maintain community living.

[Claimant] originally qualified for this program as a MediCal beneficiary and using a qualifying regional center service (UCI psychiatry service which ended 07/31/14). [Claimant] was disenrolled from the HCBS-DD waiver program since he was no longer utilizing the UCI service (last visit was 07/12/13). In order to maintain HCBS-DD Waiver eligibility, Regional Center of Orange County (RCOC) must be funding a qualifying service. (Exhibit 8.)

8. After receiving this letter, claimant's mother communicated via email stating "[claimant was disenrolled from the waiver services he currently needs . . . how is he going to receive those services in the interim, how long will he have to wait to receive them, or if it will be possible for him to receive them under the current circumstances." On August 19, 2015, Suzanne Butler, Insurance and Benefits Specialist for RCOC, wrote a letter responding to the email, stating in pertinent part:

The Home Based Community Services Waiver for Californians with Developmental Disabilities, hereafter referred to as HCBS-DD Waiver Program, is not a regional center funded service. As we discussed on July 1 during the conference call with Judge Rovner, the purpose of the HCBS-DD Waiver program is to

bring federal funds into the state of California for services paid by regional centers to vendors supporting individuals so they may continue living in the community, if they choose to do so.

[Claimant] was disenrolled from the HCBS-DD Waiver program on January 31, 2015, as he no longer met the following enrollment criteria:

A waiver qualifying service of at least \$1,000.00 must be billed at least once within the 12 months before the disenrollment.

The last qualifying service that [claimant] used, psychiatric consultation, was billed to RCOC in July 2013. In addition, he did not have a contract for regional center to fund a waiver qualifying service for him. (Exhibit 9.)

9. Ms. Butler's letter also noted that claimant could be re-enrolled in the HCBS-DD Waiver Program if he utilizes a qualifying service in the future and the other criteria for enrollment in the waiver program are met.

10. On April 10 2015, claimant's mother filed a fair hearing request challenging claimant's "dis-enrollment" from the HCBS-DD Waiver Program. In the fair hearing request, claimant's mother stated that "The Regional Center of Orange County continues to make decision regarding [claimant's] services without our input, knowledge or consent. We have also been ignored when making requests for specific information regarding [claimant's] services and other issues." (Exhibit 6.)

11. Ms. Butler testified at the hearing, explaining the details and the process of enrollment in the HCBS-DD Waiver Program. She testified that the regional center must comply with federal and state requirements of the waiver program. In addition, Ms. Butler noted that regional centers must review HCBS-DD waiver eligibility at least annually, and a recertification of eligibility must be determined by the regional center. Further, Ms. Butler stated that a regional center is required to "dis-enroll" a consumer from the HCBS-DD Waiver Program if the consumer no longer meets the eligibility criteria. Finally, Ms. Butler testified that dis-enrolling claimant from the HCBS-DD Waiver Program does not affect his right to receive needed services. The regional center continues to be obligated to fund needed services pursuant to claimant's Individualized Program Plan (IPP). The effect of dis-enrolling claimant from the HCBS-DD Waiver Program is that the State of California and regional centers lose federal funding for certain qualifying services.

12. Prior to the hearing, claimant's mother and representatives of RCOC had discussions regarding the the issue of claimant's dis-enrollment from the waiver program. Claimant's mother believed that, as a result of claimant's dis-enrollment, his service for psychiatric treatment had been terminated by the regional center. She did not clearly understand that claimant's dis-enrollment would not affect claimant's rights to regional

center services, including the aforementioned service. It is also noted that the letters sent to claimant and his mother explaining the HCBS-DD Waiver Program and the process of dis-enrollment, did not mention that claimant would not lose his rights to regional center services. At the hearing, claimant's mother was relieved to hear that claimant's rights to services would not be affected by terminating his enrollment in the HCBS-DD Waiver Program. Perhaps regional center representatives did not make this fact clear to claimant's mother during their discussions, or perhaps she misunderstood when this fact was expressed to her. The reason for the miscommunication does not matter. The important point is that claimant did not lose his rights to services under the Lanterman Act as a result of his termination from enrollment in the HCBS-DD Waiver Program.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (b) of the Lanterman Developmental Disabilities Services Act states in part:

Specialized service 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 re-habilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . . Services and supports listed in the individual program plan may include, but are not limited to, . . . mental health services . . . counseling of the individual with developmental disabilities and of his or her family . . .

2. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question. Within the bounds of the law each client's particular needs must be met, taking into account the needs and preferences of the individual and the family. This requires an active participation by the consumer and his conservator. (See Welf. & Inst. Code, §§ 4646, subds. (a) & (b), and 4648, subd. (a) (2).)

3. In this case, claimant discontinued the services he was receiving from UCI psychiatrist Dr. Gail Fernandez after the July 12, 2013 psychiatric session. This service had been funded through the HCBS-DD Waiver Program. Since claimant did not utilize the above mentioned psychiatric services for approximately 18 months after the last session, the regional center was required, pursuant to the HCBS-DD Waiver Primer and Policy Manual, to dis-enroll or to terminate claimant's participation in the HCBS-DD Waiver Program.

4. Cause exists to affirm the decision of the Orange County Regional Center dis-enroll or to terminate claimant participation in the HCBS-DD Waiver Program. This decision is based on the facts set forth in findings 1 through 12, the exhibits admitted in evidence, the testimony of the witnesses, Welfare and Institutions Code sections 4512, 4646

