

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

S.C.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013050548

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 3 and 23, 2013, in Torrance.

S.C. (claimant) was not present for the hearing; she was represented by her aunt and conservator, C.C.¹

Gigi Thompson, Manager, Rights Assurance, represented Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received. The record was held open to allow the parties to submit briefs. Claimant submitted a closing brief, which was marked as exhibit I, a reply brief, which was marked as exhibit J, and a declaration with attachments, marked as exhibit K. The Service Agency submitted a closing brief, which was marked as exhibit 15, a reply brief, which was marked as exhibit 16, and an objection to the attachments to the declarations in support of claimant's reply brief, which was marked as exhibit 17. The objection was overruled.

The record was closed and the matter was submitted for decision on August 9, 2013.

¹ Initials and family titles are used to protect the privacy of claimant and her family.

ISSUE

Whether claimant must apply for SSI benefits in order to continue to receive Service Agency funding for claimant's Family Home Agency (FHA) housing.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-17; claimant's exhibits A-K.

Testimony: Mary Hernandez; Cori Reifman; Mercedes Lowery; Kaye Quintero; Angela Woods; C.C. (claimant's conservator and aunt).

FACTUAL FINDINGS

1. Claimant is a conserved 30-year-old woman who is a consumer of HRC based on her qualifying diagnosis of a condition similar to mental retardation (intellectual disability). Claimant has also been diagnosed with Attention Deficit Hyperactivity Disorder and Syncope, a condition causing claimant's body to overheat.

2. Claimant's most recent Individual Program Plan (IPP) Addendum, dated March 26, 2013, notes that claimant has poor memory skills, has difficulty learning new skills, and has trouble adapting to new circumstances. Claimant's Syncope prevents claimant from working outdoors and impedes her ability to use public transit; she becomes overheated and faints while waiting for transportation. Claimant is, however, able to use ACCESS, a county transportation service for the disabled and elderly. Claimant has hip dysplasia, which prevents her from standing for any length of time. Claimant's aunt and conservator, C.C., testified that claimant has also been diagnosed with clinical depression and that she has refused to take anti-depressant medications. C.C. testified that claimant cannot work independently, and will require the services of a job coach. C.C. testified that claimant does not know alphabetical order, does not use a calendar, and does not know how to find job listings on a computer.

3. C.C. lives part-time in Washington and part-time in California. Claimant's parents live in North Carolina with claimant's sister; claimant's two brothers also live out of state. Claimant's parents are unable to help claimant financially. Under her father's social security number, claimant is eligible for and receives Social Security Disability Insurance (SSDI) benefits; C.C. is claimant's representative payee.

4. As of February 1, 2013, claimant moved into a California Mentor FHA home in Lakewood. Prior to that, claimant had lived independently and received in-home supportive services and supported living services. The purpose of the mentor program is to provide consumers with a home in a family living environment. This living arrangement provides more structure and support than claimant would find in an independent living or supported living services environment; it is less restrictive than a group home.

5. Claimant receives \$979 monthly from SSDI, of which she keeps \$129 for personal expenses and the balance of which, \$850, C.C. applies toward the FHA housing. Claimant's housing is paid for by a combination of her SSDI benefits and Service Agency funding. FHA housing rates are established by the Department of Developmental Services (DDS); there are three tiers of FHA housing services, based on the level of care required by each consumer. Based on her needs as determined in the IPP process, claimant was placed in the tier with the lowest level of care, Tier 1. The Service Agency funds \$4,061 of claimant's FHA housing costs, and the balance is paid from claimant's SSDI benefits.

6. From February through April, the Service Agency told C.C. that, in order for claimant to continue to receive Service Agency funding for claimant's FHA housing, claimant must apply for Supplemental Security Income (SSI) benefits. In conversations with C.C., the Service Agency maintained that claimant is expected to pay \$993 per month towards her FHA residence, and that if claimant were found eligible, SSI would pay the difference between what claimant currently pays out of SSDI and \$993. This would reduce the Service Agency's funding obligation by \$143 per month.² If claimant is found ineligible for SSI benefits, the Service Agency will continue to fund for claimant's housing at the current amount. The Service Agency assured C.C. that claimant's continued eligibility for her Medicare program and for SSDI benefits would not be endangered by her application for SSI benefits. (Ex. 9.)

7. By letter to HRC dated May 1, 2013, C.C. wrote that California Mentor notified her that claimant must pay an additional share of costs over and above the amount that claimant pays from her SSDI benefits. C.C. wrote that HRC's insistence on claimant applying for SSI and its refusal to pay the balance of claimant's housing costs is jeopardizing claimant's entitlement to other benefits to which claimant is entitled. (Ex. 2.) The Service Agency responded, in a letter dated May 22, 2013, writing that claimant must explore "all generic resources that might be available," that claimant was "a proper candidate and a likely recipient for SSI benefits," that HRC would continue to fund what SSDI did not fund if claimant is found ineligible for SSI, and that HRC would continue to provide the \$150 per month funding in dispute during the pendency of a fair hearing procedure. (Ex. 3.)

² This figure varies in the documentation and testimony, but it appears always to be between \$140 and \$163 per month.

8. On May 14, 2013, C.C. submitted to HRC a Fair Hearing Request on claimant's behalf. This hearing ensued. Although no formal notice of proposed action had issued, the jurisdictional requirements of the Lanterman Act are deemed satisfied as to the issue that is the subject of this hearing. That issue was addressed in the discussions C.C. had with various Service Agency staff throughout early 2013 and in written communications in May 2013 between C.C. and the Service Agency.

SSI, SSDI, and Other Benefits

9. Prior to the time her father became eligible for SSDI, claimant was receiving SSI benefits. Upon becoming eligible for SSDI benefits under her father's social security number, claimant withdrew from the SSI program. Under SSDI, claimant is eligible for both Medicare and Medi-Cal benefits. Other than SSDI, claimant has no source of income. She has not been able to obtain employment. Her aunt testified that for 10 years, she and HRC staff have tried various means of encouraging claimant to apply for job training and employment. Angela Woods, an HRC counselor for claimant, testified that claimant's biggest issue is her lack of initiative. No evidence was submitted to demonstrate a likelihood that this will change, despite C.C.'s hopes for her.

10. C.C. testified that she inquired of the Social Security Administration as to the possible effect on claimant's SSDI benefits and related benefits should claimant apply for SSI. She testified that she was told that, upon applying for SSI, claimant would lose her eligibility under her current Medicare program and that she would only be eligible for Medi-Cal. Claimant's aunt testified that claimant should not be obligated to sacrifice her Medicare eligibility in order to allow the Service Agency to pay \$150 per month less for claimant's housing. C.C. was concerned that, should claimant ever obtain employment and earn an income, claimant could lose her eligibility for SSI and Medi-Cal.

11. The Service Agency's witnesses were unable to establish that claimant's current Medicare benefits would not be affected by her application for SSI benefits. One Service Agency witness opined that they would not be affected, but offered no supporting authoritative evidence from the Social Security Administration or any other source.

LEGAL CONCLUSIONS

1. Cause exists to grant claimant's appeal, as set forth in Factual Findings 1 through 11, and Legal Conclusions 2 through 9.

2. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.³) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) C.C. requested a fair hearing to appeal the Service Agency's decision to withdraw funding from FHA housing for claimant if claimant does not apply for SSI benefits. Jurisdiction in this case was thus established. (Factual Findings 1-11.)

3. The California Legislature enacted the Lanterman Act "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.) Section 4512, subdivision (b), provides that the determination of which services and supports are necessary for each consumer are to be made through the IPP process, "on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of . . . the cost-effectiveness of each option . . ."

5. Section 4620.3, subdivision (a), requires DDS to establish policies to maximize the use of federal funds. Section 4648, subdivision (a) (8), provides that "[r]egional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services." Section 4646.4 requires the regional center, when purchasing services and supports for its consumers, to consider utilization of other sources of funding, as set forth in section 4659.

6. Section 4659 provides, in part, that

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

...

(e) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay...

(f) In order to best utilize . . . federally funded programs . . . the department shall provide training . . . in the availability and requirements of generic, federally funded and private programs available to persons with developmental disabilities, including, but not limited to, eligibility requirements, the application process and covered services, and the appeal process.

7. Funding for residential service providers shall consist of regional center funds and SSI, *where appropriate*. (Cal. Code of Regs., tit. 17, § 56917, subd. (b).) Regional center funding shall not increase where a consumer’s SSI payment is reduced or terminated due to the consumer’s failure to submit required documentation. (Cal. Cod Regs., tit. 17, § 56917, subd. (d)(1).)

8. The Service Agency offered no conclusive regulatory authority for the proposition that a consumer must apply for a generic funding source where to do so would deprive the consumer of current benefits serving her needs, such as Medicare, or of future benefits in the event the consumer is able to earn an income. The Service Agency offered no authoritative evidence from any agency that serves as a generic funding source demonstrating that claimant’s entitlement to Medicare benefits would not be jeopardized by her application or eligibility for SSI benefits. The Service Agency cited a regulatory definition of unearned income, set forth at 20 C.F.R. § 416.1121, to show that for the purposes of SSI, SSDI is recognized as unearned income; the Service Agency asserted that SSDI benefits and related benefits such as Medicare eligibility would therefore not be affected by SSI eligibility. This assertion falls short of meeting the Service Agency’s burden. Absent further authoritative evidence or legal authority, it is unreasonable to order that claimant possibly sacrifice funds and benefits to which she is currently entitled from various government programs that serve her needs, and possibly funds and benefits to which may be entitled in the future, in order to allow

the Service Agency to capture some amount of additional funding. (Factual Findings 1-11.)

9. Claimant, who receives SSDI, is not required to apply for SSI in order to continue to receive Service Agency funding for FHA housing through the California Mentor program.

ORDER

The appeal by claimant S.C. is granted.

DATED: September 10, 2013

A handwritten signature in black ink, appearing to read "Howard W. Cohen", written over a horizontal line.

HOWARD W. COHEN
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.