

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2014041177

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on July 22, 2014.

Leigh Ann Pierce, Consumer Services Representative, represented the Inland Regional Center (IRC).

Claimant appeared on his own behalf.

The matter was submitted on July 22, 2014.

ISSUE

Should the number of Supported Living Services program hours be reduced from 50 hours per month to 26 hours of Personal Assistance hours and 5 hours of Habilitation hours per month?

FACTUAL FINDINGS

1. Claimant is a 29-year-old regional center consumer with a qualifying diagnosis of mild mental retardation. He also has diabetes and chromosome anomalies. He is insulin dependent.

2. Claimant currently lives by himself in a studio apartment. He is Social Security Income (SSI) and Medi-Cal eligible. Over the last seven years, claimant has received Supportive Living Services (SLS) through New Living Options. SLS is a training program that focuses on providing the consumer the tools, techniques and resources he or she needs to live independently without paid supports. SLS Personal Support Services aid the consumer with tasks the consumer cannot perform alone. SLS Training and Habilitation Services teach the consumer to perform tasks without assistance in order for the consumer to meet his or her own needs.

New Living Options's December 23, 2013 ISP

3. According to New Living Options's December 23, 2013, Individual Service Plan (ISP), claimant requires a great deal of assistance, including prompting and training, to achieve each identified goal and to ensure that he continues to be able to live independently. His ISP identifies the following goals: Money management/budget; grocery shopping; nutrition/meal preparation; community resources/self-advocacy/reading skills; mobility; housekeeping/laundry; safe environment/disaster preparedness; medical and health/diabetic management. To accomplish these goals, New Living Options recommended 32 hours of Habilitation Training and 18 hours of Personal Support. The ISP articulates the same goals identified in claimant's September 16, 2013 Individual Program Plan (IPP). The ISP is summarized as follows:

Money Management/Budget

Under this category, claimant was noted to be unable to follow his budget despite repeated efforts by his instructor. He runs up [the] cable bill into the hundreds of dollars and his cable is shut off for months at a time. It is not unusual for claimant to make poor financial decisions and then tell his instructor that he should have listened to her in the first place. Claimant is not able to process transactions through the bank and needs the instructor to remain at his side throughout the transaction.

Grocery Shopping/Nutrition/Meal Preparation

Claimant continues to require prompting and encouragement to ensure that he maintains a balanced diet. At present it is noted that he prefers to buy junk food, although his consumption of soft drinks has decreased. He is still learning to make simple meals for himself and store the meals he makes. The instructor cooks meals for claimant at least twice a month; accompanies him to the store; instructs him how to prepare food safely; and teaches him how to shop for groceries on a budget with a monthly meals plan using store flyers.

Community Resources/Self-Advocacy/Reading Skills

Claimant was noted to have more self-confidence and is less fearful of people and the public in general. He is learning how and where he can find information on events in the community. Claimant has indicated he wishes to have a job and the instructor is assisting him in with signing up for a computer class in this regard. The instructor is also assisting him to advocate for himself.

Mobility

The instructor will provide claimant with mobility training. He will attend Freedom to Go, which will provide him with additional assistance to learn how to take a bus.

Housekeeping/Laundry

Claimant lacks the ability to apply basic sanitation methods. His apartment was noted to have pots and pans full of dried and moldy food and his stove has spilled oil and grease, which could cause a fire. Claimant leaves garbage in his apartment until the instructor arrives. His apartment smells quite bad because of trash, dirty dishes, and dirty laundry. The instructor is attempting to teach him the importance of maintaining a clean and organized home.

Medical and Health/Diabetic Management

Claimant's diabetes has now been controlled for over two years. However, claimant needs to be reminded regarding healthy eating habits and regular exercise in order to keep his diabetes under control. He does not independently follow his doctor's advice. Claimant refuses to check his blood levels; the instructor does this for him, although he is capable of doing this.

The report also documents the numerous medical and dental appointments claimant attends with Ms. Alvarez, claimant's SLS Instructor. At these appointments the instructor explains and repeats the information his doctors have given him because he often does not fully understand. His instructor stressed that claimant agreed to go to his medical appointments independently and will access Dial-a-Ride to do so. On average, claimant has three appointments a month.

IRC's March 26, 2014, Notice of Proposed Action

4. IRC reviewed New Living Options's December 23, 2013, ISP. In a Notice of Proposed Action Dated March 26, 2014, IRC approved the following hours:

4 hours of SLS Habilitation to assist claimant with cashing checks, paying bills and making payment arrangements with the assistance of his SLS instructions. IRC approved 4 hours of SLS Personal Support because claimant requires the full assistance of his SLS instructor.

6 hours of SLS Habilitation and 6 hours of SLS Personal Support were requested to assist claimant with Grocery List/Nutrition/ Meal Preparation. IRC approved 8 hours of SLS Personal Support for this goal because claimant discusses meal preparation and appropriate nutrition with the full assistance of his SLS instructor.

4 hours of SLS Habilitation were requested to assist claimant with shopping. 2 hours of SLS Personal Support were approved because claimant shops with the full assistance of the SLS instructor.

5 hours of SLS Habilitation were requested to assist with Community Resources/Self Advocacy/Reading Skills. IRC approved 4 hours of SLS Habilitation in this area because he requires the assistance of his SLS instructor in reading, understanding, and responding to important notifications. IRC also approved 4 hours because he continues to work to find an activity he can participate in, visit libraries for resources, or research various classes for claimant to consider attending.

1 hour of SLS Habilitation was requested to assist with Safe Environment/Disaster Preparedness. IRC approved this amount.

12 hours of SLS Habilitation was requested to assist with Medical and Health/Diabetic Management. 8 hours were approved of SLS Personal Support for this objective because claimant is transported to and assisted with all of his appointments with the full assistance of his SLS instructor. His prescription medication is ordered, refilled, and sorted in a pill box by his SLS instructor. His blood sugar is tested by his instructor.

6 hours of SLS Personal Support was requested to assist with housekeeping. IRC approved 4 hours because the SLS instructor fully assists claimant in cleaning one bedroom, a small kitchen and bathroom.

6 hours of SLS Personal Support was requested to assist with Grocery shopping/Nutrition and Meal preparation. IRC approved 2 hours of SLS Personal Support for this objective because claimant discusses meal planning and appropriate nutrition, and prepares meals with the full assistance of his SLS instructor.

6 hours of SLS Personal Support was requested to assist claimant with mobility. 0 hours were authorized because claimant was referred to a generic resource; claimant has previously utilized public transportation independently, and transportation services provided by SLS instructors is not a provision of SLS.

5. Claimant timely appealed IRC's proposed action.

Testimony and Documentary Evidence

6. Nicole Petty, claimant's Consumer Services Coordinator (CSC), testified. Ms. Petty also documented her conclusions regarding claimant's needs in a quarterly report she prepared. Ms. Petty has been claimant's CSC for the last six years.

Ms. Petty wrote that claimant remains dependent on others to either continuously assist him or to remind him to complete daily tasks such as meal planning, meal preparation and household chores. Claimant has not shown any interest in increasing his socialization skills. He has made minimal progress in money management/banking skills towards meeting his ISP goals. Ms. Petty noted that claimant purchases his own food and pays his own cell phone bills with the assistance of his independent living skills instructor.

Ms. Petty further reported that claimant does not check his blood sugar levels and will allow only his SLS instructor to do it. As an example, his instructor helped him set up a pill box after it was discovered that he missed taking his medications. He has not had a healthy diet. Notwithstanding her quarterly report, Ms. Petty testified that she believes that claimant has made moderate progress in managing his diabetes monitoring.

At present, claimant is dependent on his SLS instructor to drive him to appointments, although Ms. Petty noted that claimant is capable of accessing Riverside Transit's dial a ride program. Ms. Petty approved him for mobility training services through Riverside Transit, but, claimant did not attend the training program.

7. According to claimant's 2007 to 2012 ISPs, claimant has made progress over the years in becoming more independent. Since 2007, with the assistance of his SLS instructor, claimant moved to an apartment from his mother's home, and changed apartments. He continues to live independently with the assistance of SLS services. Claimant also has made important progress in controlling his diabetes, although challenges remain. He takes his medications and pays attention to his diet with constant prompting and direction from his SLS instructor.

However, according to these ISPs, claimant has shown no discernable progress in the goal areas of money management, grocery/shopping nutrition, and housekeeping/laundry.

8. Claimant testified. Claimant attended the hearing with the assistance of his SLS Instructor Rosemary Alvarez. He testified that he walks to a fast food restaurant near his apartment for meals. He visits a friend in his apartment complex on occasion. He went to the movies once with this friend. He visits his mother once a month. He can't, however, get to his medical appointments on his own.

9. Claimant's SLS instructor, Rosemary Alvarez, also testified. Ms. Alvarez has been claimant's instructor for the last four years. Ms. Alvarez testified that it takes a lot of time to get claimant to perform tasks. A lot of the time she has to do the task for him. She has to remind him constantly to make medical appointments. She must check his mail; if she did not, bills would not get paid. Claimant is scared of his surroundings and will not go to the mailbox. Claimant does not check his blood levels.

Ms. Alvarez provided a report from claimant's Travel Trainer, Bob Rowland, with Riverside Transit. This report contains insight into the challenges claimant faces and his need for continued SLS services. It reads:

I met with [claimant] and his Supportive Living Services case worker Rosemary Alvarez . . . [Claimant] has troubles remembering what he knew a few days ago or even a few hours ago. Sometimes he doesn't know where he is and calls Rosemary or goes to Google on his phone. . . [claimant] used to work at Exceed and Ability Counts. He was let go from both programs for lack of attendance. He just didn't want to go. Rosemary takes him to his doctor's visits because he cannot remember what the doctor told him after his visit. He now goes once a month. She also takes him into the community to eat and shop. Rosemary also makes sure he takes his many and various medications.

[Claimant] recently made friends in his apartment complex and walks with them to eat, the AM/PM, and to In-Out Burgers. He doesn't usually walk anywhere by himself.

I am concerned for his safety while walking in the community and taking fixed bus routes. I am recommending that [claimant] be given ADA Dial-A-Rise for now. He only goes to the doctor's office once a week and for him to remember the path of travel would be tenuous. Rosemary is trying to get [claimant] back into Ability Counts, Exceed, and even Goodwill. If successful I would recommend trying Travel Training to either of these locations. It could be possible that he would be able to take the fixed bus routes at that time.

10. Ms. Alvarez is also assisting claimant with applying for IHSS services. Claimant has a meeting in the near future to further discuss his application for those services.

11. Claimant submitted a letter from his mother. His mother stated that she is not available to assist claimant. She urges IRC to retain claimant's present level of services so that he may remain independent.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (the Lanterman Act) was designed to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from their families and communities, to enable these persons to approximate the pattern of everyday living of nondisabled persons of the same age, and to permit them 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.)

2. A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

3. Welfare and Institutions Code 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.

4. Welfare and Institutions Code section 4646, subdivision (a), states:

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.

5. A regional center must develop and implement an individualized program plan (IPP) for each consumer which specifies the consumer's needs for services and supports. These services and supports appear in statements of goals and also specific time-limited objectives in the IPP. Under the Act, both goals and objectives "shall be stated in terms that allow measurement of progress or monitoring of service delivery." (Welf. & Inst. Code § 4646.5, sub. (a)(2).) The IPP must be reviewed, reevaluated and modified no less than every three years by a planning team composed of regional center staff, the consumer, and where appropriate, the consumer's parents, to ascertain whether the planned services have been provided and the objectives have been fulfilled within the time specified in the IPP. (Welf. & Inst. Code § 4646.5, sub. (b).)

6. Welfare and Institutions Code section 4648 states in part:

In order to achieve the stated objectives of a consumer's individualized 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 by the consumer's individual program plan.

(2) . . . Services and supports shall be flexible and individually tailored to the consumer

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer . . . which the regional center . . . determines will best accomplish all or any part of that consumer's program plan.

7. Welfare and Institutions Code section 4689 states in part:

Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.

Evaluation

IRC's proposed action is denied in part and granted in part as follows:

IRC correctly determined that 6 hours of Personal Support hours per month in Mobility services is not justified because claimant has been approved for Dial-A-Ride, a generic resource that is available to claimant. This service is also redundant because, as IRC noted in its proposed notice of action, claimant's SLS instructor takes him to his medical appointments under the SLS Habilitation category for Medical and Health/Diabetic Management.

IRC's proposed action to change and reduce 6 hours of SLS Habilitation and 6 hours of SLS Personal Support to 8 hours of SLS Personal Support in Grocery Shopping/Grocery List/Nutrition/Meal Preparation is also sustained. Claimant requires the full assistance of his instructor to plan his meals and nutrition and assist him with meal preparation. The reduction in SLS hours here is consistent with claimant's SLS instructor fully assisting him, instead of instructing him, under this category.

IRC's proposed action to reduce 6 hours of SLS Personal Support services for Housekeeping to 4 hours of SLS Personal Support is sustained. Claimant requires the full assistance of his instructor to clean his apartment. The reduction in total SLS hours here is consistent with claimant's SLS instructor fully assisting him, instead of instructing him, under this category.

IRC's proposed action to reduce 4 hours of SLS Habilitation services for Shopping to 2 hours of SLS Personal Support for Shopping is sustained. Claimant presently requires the full assistance of his SLS instructor under this category. The reduction in hours is warranted because it is redundant to the Personal Support services authorized under the Grocery Shopping/Grocery List/Nutrition/Meal Preparation category.

IRC's proposed action to change 4 hours of SLS Habilitation services to 4 hours of Personal Support for Money Management is sustained. Claimant requires the full assistance of his instructor to help him manage his finances.

However, IRC's proposed action to reduce 12 hours of SLS Habilitation services for Medical and Health/Diabetic Management to 8 hours is not sustained. Over the years, claimant has shown moderate progress towards achieving his goal to manage his health. With the assistance of his SLS instructor, claimant has been able to manage his diabetes. For claimant to achieve, even partially, the ability to live independently he must continue to develop techniques to manage his personal health by making his medical appointments, monitoring his blood level and taking his medications. In this regard, claimant's SLS instructor may continue to ensure that claimant make his medical appointments by transporting him while claimant becomes comfortable using Riverside Transit's Dial-A-Ride. Further, IRC did not articulate why a reduction of hours in this category is justified.

IRC's proposed action to reduce 5 hours of SLS Habilitation services for Community Services/Advocacy services to 4 hours is not sustained. IRC did not articulate why a one hour reduction is needed. Unlike other goal categories, claimant has shown progress in this

category. He is more confident and wishes, with the assistance of his SLS instructor, to access a computer class in order to find a job.

ORDER

Claimant's appeal is granted in part and denied in part. IRC shall provide claimant with the following SLS hours: 12 hours of SLS Habilitation for Medical and Health/Diabetic Management; 8 hours of SLS Personal Support for Grocery List/Nutrition/Meal Preparation; 2 hours of SLS Personal Support for Shopping Assistance; 4 hours of SLS Personal Support for Money Management; 5 hours of SLS Habilitation for Community Services/Advocacy services; 4 hours of SLS Personal Support for Housekeeping; and 1 hour of SLS Habilitation in Safe Environment/Disaster Preparedness.

DATED: August 6, 2014.

_____/s/_____
ABRAHAM M. LEVY
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 ninety days.